

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-3-1429

Date 05/20/2011

To: Chief, Criminal Section

Re: Elmer L. Cook (Deceased),
Birmingham, Alabama - Subject;
James Reeb (Deceased) - Victim
CIVIL RIGHTS

It is recommended that the above case be closed for the following reasons:

Case Synopsis

On March 9, 1965, three Unitarian Universalist ministers – James Reeb of Boston Massachusetts, Orloff Miller also of Boston Massachusetts, and Clark Olsen of Berkeley California – participated in a civil rights march from Selma to Montgomery that was led by Reverend Martin Luther King, Jr. According to archived newspaper reports that were gathered by the Federal Bureau of Investigation (“FBI”), the three ministers were a part of a group of more than 450 clergymen from across the country who were in Alabama to protest the violent treatment

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To: Records Section
Office of Legal Administration

The above numbered file has been closed as of this date.

Date

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of African Americans who were seeking the right to vote. After the march, Reeb, Miller and Olsen dined at a restaurant for African Americans in Selma. As the three ministers left the restaurant, four white men attacked them on the sidewalk. One of the four attackers struck Reeb in the head with a club. Reeb was transported by ambulance to University Hospital in Birmingham, Alabama, where two days later he died from the injuries sustained in the attack.

LOCAL INVESTIGATION AND ENFORCEMENT ACTIVITY

On March 10, 1965, the day after the attack on Reverends Reeb, Miller, and Olsen, local police officials arrested four men, Elmer L. Cook, a novelty store manager; William Stanley Hoggle, a salesman; Namon O'Neil Hoggle, an auto mechanic; and R.B. Kelley, for the assault. The state charges were based upon Edgar Stripling's statement to the local police officials, and he told them that Cook, William Hoggle and Namon Hoggle were involved in the attack on Reeb. R.B. Kelley was the only one of the four to make a statement to the local police officials, and he told them that Cook, William Hoggle, and Namon Hoggle were involved in the attack on Reeb. The police conducted a search of Kelley's car and seized a club that fit the description of the club that was used in the attack on Reeb. According to the FBI lab analysis contained in the 1965 file, no bloodstains, tissue particles or human hairs were found on the club that the police seized from Kelley's car.

When Reeb subsequently died from the injury suffered during the attack, the State of Alabama indicted three of them, Elmer Cook, William Hoggle and Namon Hoggle for murder. The state did not indict R.B. Kelley for murder. Docket entries for the Dallas County Circuit Court indicated that the murder trial of Elmer Cook, William Hoggle, and Namon Hoggle began on December 7, 1965 and ended three days later with acquittals for all three men on December 10, 1965. A newspaper article regarding reactions to the judgments of acquittal was critical of the handling of the case by the state prosecutor, Circuit Solicitor Blanch McLeod, and reported that Solicitor McLeod "permitted a man whose brother was a suspect in the attack and another man, a well-known racist, to sit as jurors."

Newspaper reports of the trial proceeding indicate that the judge ruled that Edgar Stripling – the eye witness who was the first to identify Cook, William Hoggle, Namon Hoggle, and R.B. Kelley as the assailants in the attack on Reeb – was incompetent to testify at trial. Although there is no official record of the proceedings that memorializes the trial court's findings or rationale for excluding Mr. Stripling, a report within the FBI's 1965 file noted that Edgar Stripling had been confined to a Veterans Administration Hospital from 1949 until 1957, where he was found to be permanently disabled from a mental condition. Based upon the newspaper accounts, R. Kelley, who was not on trial as a defendant and had provided statements to police identifying Cook, William Hoggle and Namon Hoggle as assailants in the attack on Reeb, invoked his Fifth Amendment right not to incriminate himself and refused to testify. With the trial judge's exclusion of Mr. Stripling as a witness and Kelley's refusal to testify, Reverends Miller and Olsen provided the only eyewitness testimony regarding the identity of the assailants. According to the trial summary contained in the FBI file from 1965, "MILLER and OLSEN testified and identified Earl (sic) L. Cook as the individual who struck them, but claimed that they did not know who struck Reverend REEB. They identified the HOGGLE brothers as being

individuals who resembled persons in the company of COOK at the time of the assault, but could not positively identify them as assailants.”

FEDERAL INVESTIGATION

On the same date as Elmer Cook, William Hoggle, Namon Hoggle, and R.B. Kelley posted bond and were released from state custody, federal law enforcement officials immediately arrested all four men, pursuant to a filed complaint that charged them with conspiracy to violate federal civil rights laws, in violation of 18 U.S.C. § 241. The four men were subsequently released on bond for the federal charges as well. Documentation in the FBI’s 1965 file show that federal agents interviewed more than 50 people as parts of its investigation into the death of Reeb, and all of its investigative materials and findings were given to the local prosecutor, Blanchard McLeod, prior to the trial.

The United States Attorney for the Southern District of Alabama does not maintain case files for matters before 1980 and there is no documentation memorializing the Department’s action relating to any indictment decisions or activity. Consequently, it is not known where the matter was ever presented to a grand jury. There is no indication that federal charges were brought.

Pursuant to the Department of Justice’s “Cold Case” initiative, which focuses on civil rights homicides that occurred not later than December 31, 1969, the FBI initiated an investigation on July 7, 2008 into the circumstances surrounding the victim’s death. During the current investigation, the FBI retrieved from the National Archives and Records Administration (NARA) its 1965 file relating to the murder of Reeb. With respect to the historical media reports of federal charges against the three men, the United States Attorney for the Southern District of Alabama had no files regarding the murder and informed the FBI that it did not store any files or cases prior to 1980.

On August 19, 2008, the FBI interviewed XXXXX, the XXXXXX of XXXXX, as part of its supplemental investigation into the death of Reeb. XXXXXX provided no new information regarding the attack on Reeb and claimed that a “retarded” man “falsely accused” Elmer Cook of attacking Reeb. During its supplemental investigation, the FBI discovered that Edgar Stripling – the witness who identified Elmer Cook, William Hoggle, Namon Hoggle, and R.B. Kelley as the assailants in the attack upon Reeb, but was ruled incompetent to testify at trial – died on June 28, 1988. The FBI also learned, pursuant to its supplemental investigation, that Elmer L. Cook died on February 12, 1972, approximately seven years after the death of Reeb; R.B. Kelley died on March 4, 1994; and William Stanley Hoggle died on June 14, 1996. The FBI learned XXXX

A review of the 1965 file provides no leads for further investigation. No other leads for further investigation have been identified by the FBI, any other law enforcement agency, or no-governmental organization.

LEGAL ANALYSIS

The applicable statute of limitations precludes prosecution of Reverend Reeb's murder under the federal criminal rights statutes. Prior to 1994, federal criminal civil rights violations were not capital offenses, thereby subjecting them to a five-year statute of limitations. See 18 U.S.C. § 3282(a). In 1994, some of these civil rights statutes, including 18 U.S.C. § 242, were amended to provide the death penalty for violations resulting in death, thereby eliminating the statute of limitations. See 18 U.S.C. § 3281 ("An indictment for any offense punishable by death may be found at any time without limitation."). The *Ex Post Facto* Clause prohibits the retroactive application of the 1994 increase in penalties and the resultant change in the statute of limitations to the detriment of criminal defendants. *Stogner v. California*, 539 U.S. 607, 611 (2003). While the Civil Rights Division has used non-civil rights statutes to overcome the statute of limitations challenge in certain cases, such as those occurring on federal land and kidnapping resulting in death, the facts of the present case do not lend themselves to prosecution under other statutes.

Additionally, the FBI investigation revealed that Mr. Kelley, Mr. William Hoggle, and Mr. Cook, the man who allegedly delivered the fatal blow to Reeb, are deceased. Moreover, Mr. Namon Hoggle, the only surviving individual implicated in Reeb's death, was tried and acquitted of this crime in state court, which bars further state prosecution.¹ Accordingly, this matter lacks prosecutive merit and should be closed. Assistant United State Attorney Vicki Davis of Southern District of Alabama concurs with this recommendation.

¹ Although press reports from the time of the state trial suggest that the prosecution was not vigorous and that some jurors may not have been impartial, further prosecution at the state level is prohibited. As the Supreme Court has observed, "[p]erhaps the most fundamental rule in the history of double jeopardy jurisprudence has been that '[a] verdict of acquittal . . . could not be reviewed, on error or otherwise, without putting [a defendant] twice in jeopardy, and thereby violating the Constitution.'" *United States v. Martin Linen Supply Co.*, 430 U.S. 564, 571 (1977)(quoting *United States v. Ball*, 163 U.S. 662, 671 (1896)). *See also*, *United States v. Scott*, 437 U.S. 82, 91 (1978)(quoting *United States v. Green*, 355 U.S. 184, 188 (1957))(observing that "[t]o permit a second trial after an acquittal, however mistaken the acquittal may have been, would present an unacceptably high risk that the Government, with its vastly superior resources, might wear down the defendant so that 'even though innocent, he may be found guilty.'" ").