

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-54M-602

Date: _____

To: Chief, Criminal Section

Re: Ronnie Broadwell (Deceased)
Rufus Nelson (Deceased)
XXXX
XXXX
XXXX – Subjects;
James Cates (Deceased) – Victim;
CIVIL RIGHTS

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

1. Date of the Incident: November 21, 1970
2. Synopsis of the Facts and Reasons for Closing:

On November 20, 1970, James Cates, a young Black man who grew up in Chapel Hill, North Carolina, attended an all-night dance on the University of North Carolina Chapel Hill (“UNC”) campus. The dance, organized by a UNC student organization to improve race relations, was instead the scene of a racially motivated fight in which Cates was murdered and multiple other Black men were injured.

Sarah E. Howard
Attorney

To: Records Section
Office of Legal Administration

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

Date

Barbara Bosserman
Deputy Chief, Cold Case Unit, Criminal Section

An earlier, off-campus physical racial altercation—between members of a white supremacist motorcycle gang known as “the Storm Troopers” and Black residents of Chapel Hill—led to a later altercation at the campus event. The dance soon erupted into chaos, with multiple simultaneous confrontations between the Storm Troopers and Black attendees of the dance. During the chaos, Cates was fatally stabbed. As he lay outside the Student Union, bleeding, Cates was treated by an Army medic who had attended the dance. Cates’ family and friends urged law enforcement on the scene to call an ambulance or to take Cates to the hospital. An ambulance never arrived, and by the time Cates was transported to the hospital in the back of a patrol car, his injuries had progressed too far. He was pronounced dead shortly after arriving at the hospital, in the early morning hours of November 21, 1970.

As explained more fully below, federal prosecution of anyone responsible for Cates’ death is not possible due to a lack of available evidence and the fact that the statute of limitations period has passed with respect to the only two applicable federal hate crimes that were in effect at the time the crime occurred.

Although the Emmett Till Unsolved Civil Rights Crime Act¹ (the “Till Act”) and its Reauthorization² authorize the Department of Justice (the “Department”) to refer cold cases to state and local jurisdictions for prosecution, such a referral is not appropriate in this case. The Department’s review of the file has not produced evidence sufficient to prosecute any living suspects on any state charge. Therefore, the case is being closed without prosecution or referral to the state.

3. The Current Till Act Investigation

This matter was referred to the Department for review under the Till Act. The Till Act authorizes the Department to identify, investigate, and (when allowed by law and warranted by the evidence) prosecute violations of criminal civil rights statutes that resulted in death and occurred before 1980.

After opening the matter under the Till Act, the Department conducted interviews with the following: attendees of the UNC event;³ police officers who responded to the scene; family and friends of Cates; XXXX, the XXXX prosecutor involved in the prosecution of the Storm Troopers who were charged with Cates’ murder; and individuals (including XXXX XXXX) who have conducted independent research into Cates’ death. Further, the Department reviewed available court records related to the arrest and 1971 prosecution of Storm Troopers Ronnie

¹ Pub. L. No. 110-344, 122 Stat. 3934 (2008).

² Pub. L. No. 114-325, 130 Stat. 1965 (2016).

³ As explained in further detail below, attendees interviewed by the Department include multiple associates of Cates; the medic who treated Cates at the scene; and Storm Trooper XXXX. The Department attempted, but was unable, to interview Storm Troopers XXXX and XXXX; XXXX told the Department that he believed nearly all the 1970 members of the Storm Troopers were now deceased. The Department was further unable to locate or interview any immediate family members of deceased Storm Troopers Rufus Nelson and Ronnie Broadwell.

Broadwell, Rufus Nelson, and XXXX for Cates' murder;⁴ media reports; the December 10, 1970, report following UNC's investigation into Cates' death (the "UNC Report"); and the North Carolina State Bureau of Investigation file on the Cates case. The Department also sought to review local law enforcement records related to the case, but no records were available from the Chapel Hill Police Department, UNC Police Department, or Orange County Sheriff's Office.

4. Investigative Findings

On the evening of November 20 and the early morning hours of November 21, 1970, the UNC campus was the scene of an all-night dance outside the Student Union. It was also the scene of James Cates' murder; he was fatally stabbed during a racially motivated fight between dance attendees and members of the Durham-based Storm Troopers motorcycle gang.

The dance was sponsored by the Carolina Union Student Activities Group and UNC's Afro-American Society.⁵ It featured two live bands and was scheduled to last from midnight to 7:00 A.M.⁶ Unlike many events in the South at the time, this event was specifically intended to be interracial⁷ and was open to both UNC students and members of the wider Chapel Hill community. One student I.D. card would admit both the I.D. holder as well as a guest.⁸

On the evening before the dance, Cates met his friend, XXXX, at a bus station. XXXX had just returned home from his second tour in Vietnam, so when Cates asked XXXX to attend the dance with him, XXXX declined because he was tired. XXXX gave Cates his pea coat because the evening was cold and rainy, and Cates was wearing only a thin wind breaker. With his friend's coat, Cates left XXXX and went to the dance. A group of Cates' friends were attending, along with Cates' XXXX, XXXX, who was working as a XXXX at the UNC campus snack bar during the event.

Racial tensions were already running high when members of the Storm Troopers turned up on campus. The Storm Troopers were known for wearing swastikas on their jackets and displaying firearms on their hips.⁹ At least five Storm Troopers—Ronnie Broadwell, XXXX, Rufus Nelson, XXXX, and XXXX—and possibly more came to the dance.

⁴ The Department also requested court records related to Storm Trooper XXXX's prosecution for assault with intent to kill Grady Burnett, another attendee of the dance. However, no records were available.

⁵ UNC Report at 2.

⁶ *Id.* at 2.

⁷ Say His Name, The Assembly (June 13, 2021), available at <https://www.theassemblync.com/essays/say-his-name-james-cates/>.

⁸ UNC Report at 2.

⁹ *One Youth Killed on N.C. Campus*, THE COLUMBIA RECORD (Nov. 21, 1970).

According to multiple witnesses, a Black man named Jerry Rogers¹⁰ had been involved in an earlier altercation with members of the Storm Troopers in downtown Chapel Hill.¹¹ XXXX, who was with Rogers at the time of the earlier altercation, told Department investigators that he and Rogers had been walking past the downtown Chapel Hill post office when Rogers bumped into a Storm Trooper. Rogers and that Storm Trooper exchanged words. XXXX did not recall specifically what was said, but the interaction was clearly unfriendly and involved some pushing.

Rogers later attended the UNC campus event¹² and spread the word about the earlier altercation. Thus, when the Storm Troopers showed up at the interracial dance, a group of Black men confronted them.¹³ This group, which did not include Cates, pinned Storm Trooper Broadwell against a wall, punching and kneeling him. The Black men involved then left campus. The assault left Broadwell with a cut over one eye and a wound to his head, which was bleeding when UNC Police Department Officer Charles Mauer arrived on the scene. Officer Mauer questioned Broadwell, who told him that three Black men had jumped him and had then left in a small car.

Following the initial attack on Broadwell, the scene outside the Student Union became increasingly chaotic. A friend of Cates named XXXX heard Broadwell use racial slurs while threatening to kill four Black men that night. Cates' XXXX, XXXX, likewise heard a Storm Trooper use a racial slur when threatening to kill a Black man that evening.¹⁴

Subsequently, multiple physical confrontations erupted between the white Storm Troopers and the Black attendees of the campus event. During one of these confrontations, Broadwell tried to attack Cates' friend XXXX with either a knife or a spiked ball and chain, but

¹⁰ One witness reported that Rogers' first name was Jose.

¹¹ Two witnesses reported to Department investigators that this altercation occurred earlier the same day as the campus event, while a third witness reported that this altercation occurred several days before the campus event.

¹² XXXX did not attend the UNC event. He told Department investigators that he and his brother had intended to go, but they fell asleep. The next morning, their older brother informed them that their friend, Cates, had been killed at the event.

¹³ One dance attendee interviewed by Department investigators reported that he believes the fighting started because someone—possibly a member of a rival biker gang—pushed over one of the Storm Trooper's motorcycles. He believed that once the fighting began, the Storm Troopers would have stabbed anyone they saw and were not specifically targeting anyone based on race.

¹⁴ In an interview with Department investigators, Storm Trooper XXXX denied that there was a racial element to the fight that broke out and stated that he did not know how or why any of the altercations outside of the Student Union started or how they ended. Rather, XXXX recalled being inside the Student Union and leaving only after someone yelled that there was a fight outside. He denied seeing anyone get cut or stabbed and denied cutting or stabbing anyone himself. XXXX remembered that Ronnie Broadwell and XXXX had been on the scene, but he told investigators that he did not know Rufus Nelson and that although XXXX's name sounded familiar, he "would hate to say anything to get anyone in trouble."

XXXX was able to escape. Three additional Storm Troopers, all of whom were carrying weapons described as hunting knives with nine-inch blades, joined Broadwell.

Witnesses say that when the assaults began, Cates was in the Student Union. Both Cates' friend, XXXX, and Cates' XXXX, XXXX, saw him there. XXXX reported that Cates left the Student Union before XXXX did. When XXXX did leave the Student Union a short time later, he saw a Storm Trooper brandishing a 13- or 14-inch dagger. XXXX grabbed a wooden table to defend himself, and the biker walked away.

XXXX and XXXX both witnessed Cates defending himself against Storm Troopers, who were fighting with edged weapons. Specifically, XXXX reported seeing Cates fending off multiple Storm Troopers who had pinned Cates in a corner. XXXX knew that his snack bar co-worker kept a gun in a safe and went to retrieve it, but his supervisor would not open the safe. When XXXX returned to where he had last seen Cates, he saw that Cates was still struggling against multiple Storm Troopers. XXXX, along with three other Black men (Walt McMillan, Grady Burnett, and Jimmy Stephenson) tried to get the Storm Troopers away from Cates. By the time they were able to do so, one of the Storm Troopers had stabbed Cates. In addition, three of the would-be rescuers were also injured.¹⁵ XXXX, who had himself been fending off a Storm Trooper shortly beforehand, saw Cates lying on the ground, suffering from a stab wound with his blood running into a nearby drainage gate.¹⁶ As XXXX knelt next to Cates, Cates said, "Tell Ma Cates I love her."

Eventually, the officers on scene were able to stop the assaults.¹⁷ Cates' friend XXXX recalled thinking, however, that law enforcement should have been more focused on the Storm Troopers—the only individuals who were armed—rather than simply trying to separate the crowds. Similarly, Cates' friend XXXX recalled wondering why the Storm Troopers had been permitted to attend the event in the first place and why UNC had not provided more officers as security.

¹⁵ Burnett, McMillan, and Stephenson were stabbed, but their wounds were not fatal. According to XXXX and XXXX, Burnett ran to the hospital, which XXXX estimated was less than a mile away, after being injured in the altercation with the Storm Troopers.

¹⁶ XXXX believes that the Storm Trooper who stabbed Cates was the same Storm Trooper that XXXX encountered upon leaving the Student Union. XXXX further reported that the individual who stabbed Cates was a white male wearing a leather jacket, who was XXX tall and stocky. XXXX heard later that Cates had been stabbed by Broadwell, the same Storm Trooper that XXXX had witnessed using racial slurs earlier in the evening.

¹⁷ Officer Mauer and UNC Police Department Officer XXXX were interviewed by Department investigators, and both identified UNC Police Department Officer Charles Jackson as placing the initial call for assistance with the incident and as being the primary officer to address the incident. Officer Jackson is now deceased, but XXXX, XXXX, was interviewed by Department investigators. She stated that XXXX had not talked to her about the matter; that she was not aware of any law enforcement documents that had been maintained by XXXX; and that she no longer had any of XXXXs' documents or belongings. During the Till Act investigation, the Department was not able to identify any additional living law enforcement witnesses.

After law enforcement stopped the assaults, the bikers left the scene. According to XXXX and XXXX, police officers made no effort to detain or question them. Around this same time, Cates' friend XXXX recalled seeing a group of people kneeling around Cates, who was bleeding profusely. XXXX recalled an Army medic tending to Cates and repeatedly stating that Cates needed an ambulance and needed to be seen at a hospital.

The medic, XXXX, told Department investigators that he vividly remembers the evening of Cates' death. Even though decades have passed, XXXX still has trouble sleeping and suffers from flashbacks from the incident. XXXX attended the dance because, although he was no longer a student at UNC, he was working at nearby Duke University Hospital and remained involved in activities on the UNC campus. He had gone directly to the dance from work and was still wearing his white hospital scrubs. He was inside the Student Union when a fight broke out. When he walked outside, he saw Cates lying in a puddle of blood, although he did not see any biker gang members in the area. He knew when he saw Cates that Cates had lost a dangerous amount of blood, and he recalled undoing Cates' clothing and observing a large gash to Cates' abdomen. He attempted to stop the bleeding with napkins and tissues.

While XXXX was tending to Cates, XXXX—Cates' XXXX—left the Student Union and drove to Cates' grandmother's house and then to Cates' XXXX XXXX to tell them what had happened. When he returned to the Student Union, he saw that Cates remained on the ground, although everyone around him was urging that he be taken to the hospital as quickly as possible. According to Officer Mauer, officers called for an ambulance, but the dispatcher told them that the Durham ambulance was transferring blood and was unavailable. The dispatcher attempted to call a separate ambulance, but the line was busy, and he was unable to reach them.¹⁸ XXXX recalled that a police officer announced to the crowd that an ambulance was not on the way, and Cates was placed in the back of a patrol car to be transported to the hospital.

XXXX held Cates' head in the police car. He told investigators that, by the time the police car arrived at the hospital, he knew that Cates had died. Likewise, XXXX told investigators that he checked Cates' pulse in the car and could not find it. XXXX unsuccessfully attempted CPR. After the police car arrived at the hospital, staff discovered that, in addition to the stab wound to his abdomen, Cates had also been stabbed in the groin. XXXX had been unable to detect this injury in the dimly lit area outside the UNC Student Union. Cates was pronounced dead at the hospital at approximately 3:00 A.M.¹⁹

A. Arrest and Prosecution of the Storm Troopers

¹⁸ During UNC's investigation into the incident, described in further detail below, the Director of Durham Ambulance Service stated that the first call for an ambulance came in at 2:11 A.M. on the morning of November 21, 1970, and that his call log indicated that the call was made by the Chapel Hill Police. The director further stated that the ambulance service received three calls to send an ambulance and that the ambulance service arrived on scene at 2:25 A.M.

¹⁹ *Three More Storm Troopers Arrested*, THE CHAPEL HILL WEEKLY (Nov. 25, 1970).

Police did not arrest any Storm Troopers on scene, but law enforcement arrested five in the days following. Ronnie Broadwell, Rufus Nelson, and XXXX were charged with first degree murder;²⁰ XXXX was charged with assault with intent to kill Grady Burnett; and XXXX was arrested and held as a material witness to the fighting.²¹

Because of the racially charged nature of the case, the Black community in Chapel Hill, including Cates' grandmother, wanted a XXXX prosecutor to assist in the case. Community advocates raised money and approached XXXX's law firm, which took the case and assigned XXXX as XXXX prosecutor. As XXXX explained to Department investigators, it was common at the time for a XXXX attorney to assist in prosecuting matters with racial overtones. XXXX's law firm had been involved in a XXXX prosecution capacity in at least three cases, including the Cates case. However, XXXX was not involved in Cates' case past the preliminary hearing phase due to funding issues. State prosecutor Herb Pierce thus became the lead attorney at trial.

When the trial began on March 22, 1971, the state announced that it would seek second-degree murder, or manslaughter, convictions instead of first-degree murder convictions with respect to Broadwell, Nelson, and XXXX.²² Although the state sequestered a reported 50 witnesses, significantly fewer were called at trial, as the state presented about three days of testimony. Two of the state's eyewitnesses, critically, failed to make in-court identifications of the defendants.²³ The person identified by the media as the government's "key" witness was just seventeen years old,²⁴ and multiple individuals interviewed by Department investigators described his testimony as not credible. After the trial, state prosecutor XXXX said that the state closed its case because "the testimony was getting really confusing and hazy."²⁵

The defense presented no evidence.²⁶ Judge Thomas D. Cooper instructed the jury on second-degree murder with respect to Broadwell, but based on the evidence admitted at trial, only instructed the jury on aiding and abetting second-degree murder with respect to Nelson and

²⁰ See 70 CRD 8069; 70 CRD 8070; 70 CRD 8071. The Department requested all records related to these docket numbers; however, few records and no transcripts were available.

²¹ *Three Charged with Murder*, THE DURHAM SUN (Nov. 23, 1970). The Department requested all court records related to King's case; however, no records were available.

²² 70 CRD 8069; 70 CRD 8070; 70 CRD 8071. Wilson was never charged with respect to the events at the dance, and the prosecution of XXXX for assaulting Grady Burnett proceeded separately. Because no records related to XXXX's case were available when the Department requested them, the resolution of the case is unknown.

²³ *State Rests Case in UNC Slaying*, THE NEWS AND OBSERVER (March 25, 1971); *Defense Offers No Evidence*, ROCKY MOUNT TELEGRAM (Mar. 25, 1971).

²⁴ *Gang Members Acquitted in Slaying*, THE NEWS AND OBSERVER (March 26, 1971).

²⁵ *Gang Members Acquitted in Slaying*, THE NEWS AND OBSERVER (Mar. 26, 1971).

²⁶ *Bikers Acquitted in Cates' Trial*, THE DAILY TAR HEEL (Mar. 26, 1971).

XXXX.²⁷ On March 25, 1971, the all-white jury, comprised of eleven men and one woman, deliberated for one and a half hours before acquitting all three defendants.²⁸

B. *UNC Response*

Because UNC was hosting a football game later on the day of Cates' death, the area outside the Student Union where Cates was killed was never secured as a crime scene.²⁹ Instead, it was cleaned in preparation for the game. Little physical evidence was collected from the scene. State records indicate that two pocketknives were collected and analyzed for the presence of blood; blood was found on one knife, but the quantity was insufficient for further testing, and no blood was found on the second knife. A straight razor was also collected and processed for latent fingerprints, but the results of that examination are unknown from the records now available.

On the Sunday following Cates' death, a group of young men approached UNC President William Friday at his home to express their concerns regarding Cates' death and the way UNC had handled it.³⁰ The group met with additional members of the UNC administration on Monday, November 23, 1970. Following this meeting, UNC launched an investigation into Cates' death. The resulting report spans only six pages; the supplemental materials that accompany the report, including summaries of all interviews that UNC conducted, are 22 pages long.

When describing his assessment of UNC's response to Cates' death, Cates' friend XXXX explained to Department investigators that he believes that UNC was concerned that the incident would negatively affect alumni, future students, and sporting events. According to XXXX, the school was therefore eager to publicize that Cates was not a UNC student in an attempt to distance him from the university. Although Cates was not a student, he did have close ties to UNC: he was raised by his paternal grandmother, Annie Cates, who worked for UNC at the University Laundry until 1968.³¹

C. *Community Impact*

As two of Cates' XXXX, XXXX and U.S. Congresswoman XXXX, have explained, the circumstances surrounding Cates' death "rattled Chapel Hill's close-knit Black community."³²

²⁷ *Firebombings Follow Acquittal of Whites*, THE DAILY TIMES-NEWS (Mar. 26, 1971).

²⁸ Court records; *Bikers Acquitted in Cates' Trial*, THE DAILY TAR HEEL (Mar. 26, 1971).

²⁹ Say His Name, The Assembly (June 13, 2021), available at <https://www.theassemblync.com/essays/say-his-name-james-cates/>; Murder Charge is Filed, THE CHARLOTTE NEWS (Nov. 21, 1970).

³⁰ UNC Report.

³¹ Say His Name, The Assembly (June 13, 2021), available at <https://www.theassemblync.com/essays/say-his-name-james-cates/>

³² *Id.*

Cates' close friend and XXXX, XXXX, who lent Cates his pea coat the last time he saw Cates alive, recalled the emotional and painful moment when his XXXX and Cates' grandmother told him that Cates had been killed. XXXX recalled how strange it felt to come home from war only to become a pall bearer at his friend's funeral, and to then leave home again to fight for the rights of people he did not know when he could not protect his friend at home.³³

Cates, or, "Baby Boy," as he was called by those who knew him well, was a beloved member of the community. Congresswoman XXXX remembers XXXX as a "charismatic jokester," both intelligent and athletic. Likewise, XXXX described Cates as a good person who helped others, as well as someone who was known for being very smart and suave. Both XXXX and XXXX recalled how much they and Cates enjoyed the Hargraves Community Center while they were growing up. XXXX would later serve for 28 years as the Center's director, while XXXX would go on to serve as the President of the nearby Rogers Eubanks Neighborhood Association Community Center.

Not only did Cates' death significantly affect his family, friends, and community at the time, it continues to affect the UNC campus. On November 21, 2022, UNC dedicated a memorial to Cates, near the site of his stabbing 52 years earlier. As described by UNC, the memorial serves as an ongoing effort "to create a more inclusive community by continuing to tell the University's full story."³⁴

5. Legal Analysis

The Till Act investigation into Cates' murder is being closed because the murder cannot be federally prosecuted, and referral to the state is not appropriate for the reasons described in more detail below. The present Till Act investigation, like the original local investigation, uncovered evidence that the altercation that led to Cates' death involved members of the Storm Troopers motorcycle gang and Black men who were attending the UNC campus event. Five members of the Storm Troopers were present around the time Cates was fatally stabbed: Ronnie Broadwell, XXXX, Rufus Nelson, XXXX, and XXXX. Because none of these individuals can be prosecuted, either federally or locally, the matter is being closed.

A. *Multiple Barriers, Including the Statute of Limitations, Preclude Federal Prosecution*

³³ XXXX wrote a poem expressing his feelings regarding what happened to Cates. It reads as follows: "The last time I saw you, you were so full of life in a safe place on a cold raining night. I gave you my peacoat to keep you warm and dry knowing I would see you again. Full of joy and life, but it was not to be. I got to go thousands of miles from home to fight to preserve life and the rights of people because we as a country pursue justice, democracy, and freedom, yet I could not do anything to protect my friend at home."

³⁴ Carolina Dedicates James L. Cates Jr. Memorial, University News (Nov. 22, 2022), *available at* <https://www.unc.edu/posts/2022/11/22/carolina-dedicates-james-l-cates-jr-memorial/>.

The Shepard-Byrd Hate Crime Prevention Act, which the Department now uses to prosecute racially motivated murders, did not exist at the time of Cates' death. Only two federal hate crime statutes could have potentially been used to prosecute the case—18 U.S.C. § 245(b)(2) and 18 U.S.C. § 241. Because the statute of limitations has expired for these statutes, no federal prosecution is legally possible. In addition, two of the potential defendants are deceased and therefore cannot be prosecuted by the federal government or by the state, and double jeopardy would prevent state prosecution of the more culpable subjects.

- i. It is unclear whether the government could prove a violation of 18 U.S.C. § 245(b)(2).

The statute most applicable is 18 U.S.C. § 245. As explained below, its statute of limitations has expired. To prove an offense under § 245(b)(2), the government must prove (as relevant here) the following elements beyond a reasonable doubt: 1) that the defendant used force or threat of force; 2) that the defendant willfully injured, intimidated, or interfered with a person; 3) that the defendant acted because of that person's race, color, religion, or national origin; and 4) that the defendant acted because that person was attending a public college (§ 245(b)(2)(A)), enjoying a facility provided or administered by a state (§ 245(b)(2)(B)), or enjoying a public accommodation (§ 245(b)(2)(F)).

There is certainly evidence that the incident involving Cates was racially motivated. The Storm Troopers wore racist insignia, subscribed to racist ideology, and used racial slurs before the attack.³⁵ Prosecutors could thus likely show that Cates would not have died but-for the Storm Troopers' racial motivation, as the government would be required to do to satisfy the third element above.

There is also evidence that some members of the Storm Troopers used force or the threat of force against Cates. However, at a scene described as chaotic, no witness we have located saw the actual stabbing firsthand or was able to describe exactly who stabbed Cates or what Cates was doing in the moments before he was stabbed, precluding prosecutors from showing which of the Storm Troopers specifically was responsible for the wounds that killed Cates.³⁶ Thus, based upon the evidence known to date, no particular member of the Storm Troopers could be prosecuted.

Moreover, it would be insufficient for conviction under § 245 for the government to prove only a racially motivated use or threatened use of force. Instead, this statute also requires that the government prove that the assault occurred because Cates was enjoying one of the federally protected activities identified in the statute. While the attack happened to occur on the

³⁵ Two witnesses recalled hearing a Storm Trooper use racial slurs to state he was going to kill a Black man that evening. One of those witnesses identified the Storm Trooper as Broadwell.

³⁶ It can also be anticipated that, given that a different group of Black men physically confronted the Storm Troopers, any defendant prosecuted would argue self-defense. Given that there are no witnesses who could say otherwise, it would be difficult to prove beyond a reasonable doubt that the Storm Troopers had *not* acted in self-defense.

UNC campus, the Department is not aware of any currently available, admissible evidence that any of the Storm Troopers attacked Cates *because* he was enjoying a facility provided or administered by a state or a public accommodation as defined in § 245(b)(2)(B) and (F), respectively. Nor could it prove that Cates was attacked because the assailant believed Cates was attending a public college or University. *See* § 245(b)(2)(A). In fact, the Storm Troopers had attacked a different Black man earlier in the day in an area far outside of the campus, meaning the assailant, if he could be identified, could argue he would have attacked any Black person he saw and that the attack had nothing to do with any of the protected activities identified in the statute.

ii. It is unclear whether the government could prove a violation of 18 U.S.C. § 241.

The government has also analyzed whether prosecution is possible under 18 U.S.C. § 241, but as explained below, its statute of limitations has also expired. To prove an offense under § 241, the government must prove the following elements beyond a reasonable doubt: 1) a conspiracy—that is, an agreement between two or more people—existed that the defendant joined; 2) the object of the agreement was to injure, oppress, threaten or intimidate a person in the free exercise or enjoyment of a right protected by the laws or Constitution of the United States, in this case the right to enjoy public accommodations free from racial discrimination; and 3) the planned interference with the protected rights was willful. *See* 18 U.S.C. § 241; *Anderson v. United States*, 417 U.S. 211, 223 (1974) (discussing nature of purpose of a § 241 conspiracy); *United States v. Johnson*, 390 U.S. 563, 565-566 (1968) (upholding § 241 prosecution involving right to enjoy public accommodation).

There is likely evidence sufficient to prove that an agreement to injure, oppress, threaten, or intimidate Cates existed among some of the Storm Troopers; however, as explained above, it would be difficult to prove which of the Storm Troopers specifically participated in the conspiracy with the admissible evidence available to the Department at this time. Moreover, while there is evidence that the Storm Troopers acted because of Cates' race, there is insufficient evidence to meet the government's burden of proving that the Storm Troopers acted specifically because Cates was enjoying a public accommodation. The government would therefore be unable to prove a § 241 violation beyond a reasonable doubt.

iii. The statute of limitations has expired.

Finally, and most fundamentally, the statute of limitations has expired on any prosecution that could be brought against any living individual under either of the only two federal hate crime statutes that applied at the time—18 U.S.C. §§ 241 or 245. In 1970, the federal

government would have had to bring a prosecution within five years. *See* 18 U.S.C. § 3282(a).³⁷ The government cannot prosecute any defendant after expiration of this limitations period.³⁸

B. Referral to the State is Not Appropriate in this Case.

The Till Act and its Reauthorization provide that the federal government can assist state or local governments in prosecuting cold cases when the cases cannot be prosecuted federally. However, referral to the state is not appropriate here. As an initial matter, Broadwell and Nelson are deceased, and they—along with XXXX—were already prosecuted by the state for second-degree murder in 1970. None of these men (even if alive) could legally be prosecuted a second time for the same crime of which they were acquitted in 1971. Further, and as explained above, the available evidence is insufficient to prove any of the remaining Storm Troopers were criminally responsible for Cates’ death, likely precluding prosecution under North Carolina statutes prohibiting murder, aiding and abetting a murder, or conspiracy. In any event, the Department’s investigation has not uncovered any additional evidence previously unknown to state prosecutors.

6. Conclusion

The death of James Cates, known to those closest to him as Baby Boy and described by his family and friends as a beloved and charismatic member of the Chapel Hill community, was an untimely and tragic loss. After a thorough evaluation of all available evidence, the Civil Rights Division concludes that this matter should be closed without prosecution, as there is no basis for federal prosecution or referral to the state. The United States Attorney’s Office for the Middle District of North Carolina concurs with this recommendation.

³⁷ In 1994, several statutes were amended to eliminate the statute of limitations for certain death-resulting offenses. This was accomplished by making certain offenses defined by 18 U.S.C. §§ 241, 242 and 245 death-eligible. *See* Pub. L. No. 103-322, 108 Stat. 1796 (1994); 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 government from retroactively extending the statute of limitations once it has expired. *See Stogner v. California*, 539 U.S. 607, 610 (2003). Thus, while a death-resulting offense under 18 U.S.C. §§ 241 or 245 would now be death-eligible—and would therefore not be subject to the five-year statute of limitations—the five-year statute of limitations continues to apply in this case because the offense occurred before the change to the law in 1994.

³⁸ The Department of Justice has used non-civil rights statutes to overcome the statute of limitations challenge in a small number of cases, such as those involving kidnapping across state lines, *see United States v. Seale*, 600 F.3d 473 (5th Cir. 2010), or offenses occurring on federal land, *see United States v. Avants*, 367 F.3d 433, 440 (5th Cir. 2004). However, there is no evidence to suggest that Cates was transported across state lines, that his murder occurred on federal land, or that any other federal statute applies. For these reasons, the government cannot now federally prosecute anyone for the murder of James Cates even under non-civil rights statutes.