CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-3-1468 Date 2/5/2025

To: Chief, Criminal Section

Re: Horace M. Miller (Deceased) – Subject;
Rayfield Davis (Deceased) – Victim;
CIVIL RIGHTS

This matter should be closed for the reasons described below:

1. Synopsis of the Facts and Reasons for Closing:

On the late evening of Sunday March 7, 1948, Rayfield Davis, a 53-year-old[1] black man, got off a city bus on his way home from work at the Brookley Air Force Base in Mobile, Alabama. Shortly thereafter, he was fatally beaten by Horace M. Miller, a 20-year-old white airplane mechanic at Brookley, who had exited the same bus. Miller later stated that he had become enraged when Mr. Davis said something to the effect of "President Truman is our good friend and he will give us equal rights," referencing President Truman's civil rights program. Miller admitted that, in response, he beat and kicked Mr. Davis, and then left him in a ditch next to the railroad tracks. Later that night, Gustave Arcement found Mr. Davis and called the police.

Cristina Gamondi
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 Chief, Criminal Section
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[1] There is some conflicting information about Mr. Davis's age at the time of his death. But, based on his military registration SS NUMIDENT file, it appears that he was born in August 1894 and was, therefore, 53 in March 1948.

Although Mr. Davis was still breathing when Arcement found him, he died before the arrival of officers. Two days later, on March 9, 1948, Miller turned himself into a Mobile Police Department (MPD) station, where he confessed to beating Mr. Davis. Following a preliminary hearing, Miller was bound over on a murder charge to a state grand jury, but the grand jury declined to return an indictment. In December 2021, an eligible entity referred Mr. Davis's case to the Cold Case Unit in the Criminal Section of the Civil Rights Division, pursuant to the Emmett Till Unsolved Civil Rights Crimes Reauthorization Act of 2016 ("the Till Act"). Miller died two months later, on February 17, 2022. For the reasons explained more fully below, this matter is being closed without prosecution or referral to the state. Miller, the only perpetrator, is deceased and, therefore, cannot be prosecuted by either federal or state authorities. In addition, no federal hate crimes existed at the time of Mr. Davis's death and the statute of limitations has long run on the only federal civil rights crimes in effect at the time.

2. Factual Background and Referral:[2]

Mr. Davis and Miller were both employed at Brookley but there is no evidence that they knew each other, and Miller said that they did not. In the late evening of Sunday, March 7, 1948, both got off a bus, at the intersection of Tennessee and Broad Streets.[3] Miller estimated the time of the incident between 10:15 and 10:30 p.m. **Bennie Ford** (deceased), a night shift worker at the nearby Oakdale Ice & Fuel Company, saw them get off the bus.[4]

Sometime later, possibly about an hour later, **Gustave P. Arcement** (deceased) was digging for frogs in the area and heard a bubbling sound. When he investigated the sound, he found Mr. Davis's badly battered and "still warm" body in a dark spot near the rear of the Oakdale Ice plant. According to an article, the ditch ran along the Gulf, Mobile, and Ohio railroad tracks. Mr. Davis was still breathing when Arcement found him, but he died before MPD officers arrived.

The next day, the *Mobile Register* reported the incident.[5] The brief article included the fact that Bennie Ford reported seeing Mr. Davis and a white man get off the bus together and start walking down the side of the canal. The article also indicated that it appeared that Mr.

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[2] Aside from the Coroner's Office's documents, most of the information below comes from contemporaneous articles.

[3] The bus stop was a couple of blocks away from Mr. Davis's home, at 961 Tennessee Street (as listed on his death certificate). On the other hand, according to a March 10, 1948, *Mobile Register* article, Miller's address was 707 S. Carolina Street. A March 20, 1948, *Chicago Defender* article stated that because Miller was staying at a rooming house on S. Carolina, in the opposite direction from Mr. Davis's home, he should have gotten off the bus at a different stop.

[4] Oakdale Ice was located at 900 S. Broad Street, about a block away from where Mr. Davis's body was later found at Broad and Tennessee Streets.

[5] The article was titled "Dead Man Found in Mobile Canal."

Davis had been hit on the head with a heavy instrument and that Coroner Dr. H.S.J. Walker had been called to investigate.[6]

Also on March 8, 1948, then Assistant Coroner **Dr. Tom Henderson** (deceased) filed a report memorializing a call requesting determination as to cause of death. In the "history" portion of the report, Dr. Henderson stated that Mr. Davis's body had been found in a ditch at Broad and Tennessee Streets at 11:45 p.m. on March 7, 1948.

Subject's account

According to **MPD Captain Tally Rollings** (deceased), two days after the killing of Mr. Davis, on Tuesday, March 9, 1948, Miller surrendered to police, accompanied by his attorney J. Terry Reynolds (deceased). At the station, Miller dictated a statement.[7]

According to Miller's statement, when he and Mr. Davis got off the bus, Mr. Davis greeted him with "Hey Buddy," and invited Miller over for a drink. Miller said that he refused but shook hands with Mr. Davis to avoid trouble. Mr. Davis began talking about equality between blacks and whites. He reportedly said something to the effect of "President Truman is our good friend and he will give us equal rights." Miller's statement reportedly clarified that Mr. Davis had been referring to "the civil rights program being published" by Truman.[8]

Miller said that "this sort of talk" kept making him "madder and madder," and he struck Mr. Davis once with his "bare left hand," knocking Mr. Davis to the ground. Mr. Davis reportedly got up "cursing." Miller again struck Mr. Davis. Miller claimed that Mr. Davis started "fumbling in his coat pocket," leading Miller to believe that Mr. Davis might have been

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[6] As will be discussed in the autopsy section, the postmortem report did not mention evidence of blunt force trauma from a heavy instrument.

[7] Several contemporaneous articles quote or purport to quote different portions of Miller's statement. The account included in this memo is based on those portions that are most consistently quoted.

[8] A March 10, 1948, article in the Mobile Register reported that Mr. Davis's coworkers at Brookley described him as "an energetic employee" who had "never given them trouble," and that they had never heard him "discuss or agitate the racial rights program." Similarly, according to an AP article published that same day in various newspapers, including the *Chattanooga Daily Times*, the foreman at Brookley reported that Mr. Davis and Miller were both "good workers" and had never discussed the "racial question" during working hours. And a March 20, 1948, article in the *Chicago Defender* reported that the foreman and workers at Brookley said that Mr. Davis had "never manifested any interest in such a subject as a Civil Rights Program." Given that by the time Miller gave his confession, he would have been certain that no one had witnessed the interaction between him and Mr. Davis, it is certainly possible that he made up some, if not most, or all, of the circumstances surrounding the murder, including what prompted the attack in the first place. It is possible that, given the surrounding climate on the issue, Miller thought that the civil rights talk "provocation" theory might appeal to an all-white jury if it got that far. In fact, the author of the March 20 *Chicago Defender* article speculated that the true motive behind the attack might have been robbery given that both men had received their weekly pay at Brookley on Friday, March 5.

armed with a knife or pistol.[9] Miller admitted that he then kicked Mr. Davis in the face and head "four or five times," claiming that he was afraid Mr. Davis would "would shoot or cut" him. Miller left Mr. Davis lying on the ground, about 5 to 6 feet from the Tennessee Street drainage ditch, and then went home.

Miller claimed that he had not known about Mr. Davis's death until he read about it in a newspaper at Brookley, on March 8, 1948.[10]

MPD Investigation, findings by the Coroner/autopsy, preliminary hearing, and grand jury

Miller was held in the Mobile city jail without bond in anticipation of a preliminary hearing set for March 16 which was ultimately held on March 17.[11]

The investigation was conducted by Rollings and two other detectives (**John Brunson** and **Hugh Prine**, both deceased). The investigators reportedly interviewed Bennie Ford (the night shift worker who saw Mr. Davis and Miller get off the bus) and Gustave Arcement (the man who found Mr. Davis in the ditch).

The county coroner, **Dr. S. H. J. Walker** (deceased), found that Mr. Davis had been "badly beaten" and concluded that he died by homicide. Mr. Davis's death certificate, registered March 12, 1948, lists his "immediate cause of death" as "undetermined," and due to "beating and immersion in water."

The Assistant State Toxicologist from the Mobile Division, **Dr. Nelson E. Grubbs** (deceased), performed the autopsy examination on Mr. Davis. Dr. Grubbs wrote a memo to file, dated March 14, 1948.[12] His memo noted that the examination revealed the presence of "extensive swelling of the face and neck" as well as "extensive brush burns and abrasions about the forehead and both sides of the face." Dr. Grubbs noted the following cuts and wounds: "a 3/8-inch vertical cut on the center of the upper lip;" "slight lacerations on the inside of the mouth"; "a 2 ½ inch arc shaped wound on the left forehead extending from the corner of the left eye to the hairline" and a "1 inch cut 4 inches above the left ear parallel to the temporal ridge in the left parietal area." The arc shaped wound "pierce[d] and undermine[d the skin," but did not "enter the muscle tissue."[13] He also noted a shaved area overlying a "greenish contusion" on the

[9] Had a weapon been found on Mr. Davis's body or even near it, that fact would have been reported and become part of the court record.

[10] As indicated above, the *Mobile Register* reported on the finding of Mr. Davis's death on March 8, 1948.

[11] The hearing was postponed by a day, reportedly because Assistant State Toxicologist Dr. Nelson Grubbs was out of town.

[12] After the Northeastern students identified XXXX as a relative of Mr. Davis, she obtained records from the Alabama Department of Forensic Sciences.

[13] As previously indicated, the March 8, 1948, *Mobile Register* article reported that it appeared that Mr. Davis had been hit in the head with a "heavy instrument." A March 20, 1948, *Chicago Defender* article went

top of the skull between the bregma and obelion. According to the report, the force that produced the brush burns and abrasions and the arc shaped wound was applied from the front toward the back of Mr. Davis's head.

Dr. Grubbs's memo went on to note the presence of "[old] extensive contusions and hemorrhagic areas […] about the temporal areas and back of the head." Dr. Grubbs iterated his opinion that these "lesions [were] of long standing." The memo also discussed two areas of trauma in Mr. Davis's brain: one in the left lobe, corresponding to the 1-inch cut in the left parietal area; the other corresponding to the shaved area/greenish contusion. Both areas were sectioned revealing "white cystoid bodies and well defined adhesions demonstrating tissue repair." The examination revealed no fractures to the skull.

The second page of Dr. Grubbs's memo set forth his opinion as follows: Mr. Davis "had received extensive injuries about the head several days prior to death and that the most recent injuries were superficial not within themselves sufficient to cause death."[14] Furthermore, Dr. Grubbs opined that Mr. Davis's death "resulted from shock due to the combined effects of all the injuries and alcohol; a considerable quantity of which was determined to be in the blood by chemical analysis."

In another memo, directed to the attention of Dr. C. J. Rehling (then State Toxicologist, deceased), titled "Specimen submitted for laboratory examination, Case No: 6509," Dr. Grubbs stated that he had shipped "a metal box containing a bottle of blood and a bottle containing blood stained cloth packed in ice." Dr. Grubbs requested that the lab in Auburn determine the "alcoholic content of the blood," and "type or have typed the stain on the cloth" to compare it to the "type of blood in the bottle." Dr. Grubbs added that a black man had been found "dead in a ditch" and that a white man had admitted striking the black man "several hours prior to his discovery," concluding that the "comparison of blood types" was "essential" to the case.[15]

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further, stating that Mr. Davis's face and head had been "badly battered," "indicating that a deadly weapon such as a blackjack, heavy club or brass knuckles had been used in the fatal attack." The 2.5-inch wound is the only one described as having a specific shape, but the memo does not state that it was produced by a weapon. In fact, the wound is essentially described as superficial which is reiterated in Dr. Grubbs' final opinion discussed below.

[14] There is no indication that authorities took steps to investigate the cause of the "extensive injuries" allegedly sustained by Mr. Davis "several days prior to his death." We could locate no contemporaneous reports regarding earlier incidents. If Mr. Davis did not sustain those injuries by accident, it is, perhaps, possible that Miller attacked Mr. Davis twice. If so, Miller is deceased and cannot be prosecuted. It is also possible that some other person attacked Mr. Davis a few days before Miller did. If so, we have no leads to determine who that person might be (much less what motivated any attack).

[15] This second memo was dated March 15, 1948. It, thus, appears that this memo requesting that the Auburn lab determine the BAC of the "bottle" of blood (presumably from Mr. Davis) was dated a day after the memo in which Dr. Grubbs stated that a chemical analysis had determined that a considerable amount of alcohol had been found in Mr. Davis's blood. Given that Mr. Davis's body had been recovered the night of March 7, and Dr. Grubb's memo to file was dated a week later, it is probable that Dr. Grubbs had conducted the initial chemical analysis himself and sent another blood specimen for confirmation and for typing.

A **preliminary hearing** for Miller was held on March 17, 1948, before Recorder's Court Judge/City Recorder William M. Bekurs (deceased), who bound Miller over to the Mobile County grand jury on a murder charge. Miller's bond was set at $2500.

Bennie Ford (deceased), the night shift worker at the Oakdale Ice plant, reportedly testified that he saw a black man and a white man get off a bus and walk away. The white man gestured several times at the black man.

Toxicologist **Dr. Grubbs** testified at the preliminary hearing consistent with his opinion in his March 14 memo, i.e., that Mr. Davis "came to his death as a result of shock, caused by a beating and two old head wounds." Dr. Grubbs testified further that an analysis of Mr. Davis's blood indicated that he had been "intoxicated sufficiently to stagger and speak with blurred speech."

Miller's statement was read during the hearing.

On April 16, 1948, a Mobile County **grand jury** heard the case and declined to indict. **State Solicitor Carl M. Booth** (deceased) made the announcement after the jury had given its April report to Circuit Judge Claude Grayson (deceased). Booth was quoted as saying that the inquiry had been "very thorough" and that every witness "connected with the case" had been called.

According to an April 24, 1948, article in the *Chicago Defender*, the local branch of the NAACP "sought [..] to secure a new warrant for Miller, hoping to bring the case back into court," but Miller's friends were "hiding him," and had sent him out of town.

Referral to the Cold Case Unit

The Cold Case Unit initiated a review of this matter in December 2021, after receiving a referral from the Restorative Justice Project (CRRJP) at Northeastern University School of Law (Northeastern). Northeastern is an eligible entity under the Till Act.[16] An experienced attorney from the cold case unit obtained the materials from Northeastern, conducted an independent search for information about Miller, and reviewed numerous contemporaneous articles. The cold case attorney also viewed *Murder in Mobile*, a short documentary by Northeastern Film, produced by Adam Fischer and Benjamin Bertsch, and released in 2019. At the attorney's request, the USAO for the Southern District of Alabama contacted the district attorney's office in Mobile and determined that they did not have a file on the case.[17]

[16] Under the Till Act, an eligible entity is defined as "an organization whose primary purpose is to promote civil rights, an institution of higher education, or another entity, determined by the Attorney General to be appropriate.' Emmett Till Unsolved Civil Rights Crimes Reauthorization Act of 2016, Pub. L. No. 114-325, 130 Stat. 1965 (2016).

[17] Northeastern student XXXX said in the documentary that, after several calls, she was told there were no court records on the case, and that they had been destroyed.

CRRJP Contact with Mr. Davis's family and August 2018 event[18]

Northeastern student XXXX was assigned to Mr. Davis's case in 2012. As part of her work, she located members of Mr. Davis's family, including XXXX. XXXX was interviewed for the documentary and said that one of XXXX recalled XXXX mentioning that a cousin had been killed by the railroad tracks (where they had walked all their lives) but that Mr. Davis "was not a topic" in their house.

On August 18, 2018, CRRJP Director Margaret Burnham joined members of Mr. Davis's family to honor Mr. Davis and the five other black men murdered in Mobile in the 1940s.[19] A historical marker, which became part of the "Dora Franklin Finley African-American Heritage Trail" and the Historical Marker Database, was also placed at the site of the event.[20] Additionally, at the event, a street sign bearing the name "Honorary Rayfield Davis Way," was unveiled at the site of Mr. Davis's murder.

At the time of XXXX's initial contact with Mr. Davis's family, they expressed that what they wanted most was to be able to sit down with Miller and ask him "why did you do this?" At the end of *Murder in Mobile*, XXXX stated again her wish to talk to Miller. She states: "I would ask him, 'How is your feelings toward the African American race? Can I sit down at your dinner table with you and have dinner with you? Would you invite me?'" As a result of the reporting on the case, one of Miller's XXXX, XXXX, contacted XXXX and wrote a letter of apology to Mr. Davis's family, which XXXX read excerpts from at the August 18, 2018, event. Among other things, XXXX's letter said that her "XXXX's offspring, and their offspring followed by their offspring do not share the same racial viewpoints." XXXX added that, "Matter of fact, XXXX have married African-American men."

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[18] Most of the information discussed in this section was obtained from the documentary *Murder in Mobile*.

[19] The other five black men were Ennis Bell (1818-1943), Prentiss McCann (1922-1945), Theodore Wesley Samuels (1908-1944), Henry Williams (1918-1942), and Johnny Williams (1907-1943).

[20] The inscription on the marker, which was erected in 2019, reads as follows:

Restoring Justice

Henry Williams, Johnny Williams, Ennis Bell, Theodore Wesley Samuels, Prentiss McCann, and Rayfield Davis all died at the height of the segregation era in Mobile. Mobile's black community protested each of these deaths at the time and called for justice. None of the perpetrators were held criminally responsible.

Decades later, The Civil Rights and Restorative Justice (CRRJ) Project at Northeastern University School of Law investigated these cases. In 2018 CRRJ brought together descendants of the individuals who lost their lives with the City of Mobile and the History Museum of Mobile to commemorate them and to reflect on their lives. The History Museum of Mobile curated an exhibition featuring materials associated with the cases. Tennessee Street where Rayfield Davis was killed, was permanently dedicated to him and the official proclamation issued by the City. These restorative justice measures sought to remind residents of the City and the country of the collective legacy of racial violence in Jim Crow Mobile.

As indicated in the synopsis section of this memo, **Horace M. Miller** died on February 17, 2022.

3. Legal Analysis:

Mr. Davis's tragic death cannot be prosecuted federally, nor will it be referred for state prosecution. The Section determined that Miller, the only suspect, died shortly after the matter was referred to us, therefore, he cannot be prosecuted in either federal or state court for the murder of Mr. Davis. Moreover, no hate crime statutes existed at the time of Mr. Davis's death, and the statute of limitations on the only existing civil rights crime has long expired.

In 1948, at the time Miller killed Mr. Davis, there were no federal hate crime statutes. Although federal hate crime statutes now exist, the *Ex Post Facto* Clause of the United States Constitution, art. I, § 9, cl.3, prohibits applying them retroactively to prosecute anyone. A civil rights conspiracy statute, 18 U.S.C. § 241 did exist at the time, but it was narrowly construed. In addition, it applied only to conspiracies. Because Miller acted alone, it could not have been used even at the time of the offense. Moreover, § 241 was, at the time, subject to a five-year statute of limitations—a limitations period which has long since expired. *See* 18 U.S.C. § 3282(a).[21]

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). Since there is no evidence indicating that Miller transported Mr. Davis across state lines or killed him on federal land, no alternative basis for federal jurisdiction exists. Moreover, as explained above, Miller's death altogether precludes prosecution.

The Till Act permits federal prosecutors and agents to assist in state and local prosecutions when federal jurisdiction is unavailable. *See* Reauthorization Act, Pub. L. No. 110-344, 122 Stat. 3934 (2017). However, given that Miller is deceased and there is no evidence that anyone else may have participated in the beating that led to Mr. Davis's death, referral to the state is inappropriate.

4. Conclusion:

For the reasons stated above, this matter is being closed without prosecution or referral. The United States Attorney's Office for the Southern District of Alabama concurs with this recommendation.

[21] In 1994, § 241 was amended along with the other existing criminal civil rights statutes, and now any death-resulting civil rights offense can be brought at any time without limitation.