

THE ATTORNEY GENERAL'S
FIRST ANNUAL REPORT TO CONGRESS
PURSUANT TO THE EMMETT TILL
UNSOLVED CIVIL RIGHTS CRIME ACT OF 2007
APRIL 7, 2009

This report is submitted pursuant to the Emmett Till Unsolved Civil Rights Crime Act of 2007, regarding the activities of the Department of Justice (DOJ or the Department) under the Act. This initial report covers activities predating the Act, which was signed into law on October 7, 2008, and the six months since its enactment.¹

I. THE DEPARTMENT OF JUSTICE'S EFFORTS TO INVESTIGATE AND PROSECUTE UNSOLVED CIVIL RIGHTS ERA HOMICIDES

A. Overview and Background

The Department of Justice fully supports the goals of the Emmett Till Unsolved Civil Rights Crime Act of 2007. For more than 50 years, the Department of Justice has been instrumental in bringing justice to some of the nation's horrific civil rights era crimes. These crimes occurred during a terrible time in our nation's history when some people viewed their fellow Americans as inferior, and as threats, based only on the color of their skin. The Department of Justice believes that racially motivated murders from the civil rights era constitute some of the greatest blemishes upon our history. As such, the Department stands ready to lend our assistance, expertise, and resources to assist in the investigation and possible prosecution of these matters.

Unfortunately, federal jurisdiction over these historic cases is limited. The Ex Post Facto Clause of the Constitution and federal statutory law have limited the Department's ability to prosecute most civil rights era cases at the federal level. For example, two of the most important federal statutes that can be used to prosecute racially motivated homicides, 18 U.S.C. § 245 (interference with federally protected activities) and 42 U.S.C. § 3631 (interference with housing rights), were not enacted until 1968. Under the Ex Post Facto Clause, these statutes cannot be applied retroactively to conduct that was not a crime at the time of the offense. Moreover, the five-year statute of limitations on federal criminal civil rights charges presents another limitation on such prosecutions.²

¹ Pub. L. 110 – 344 (2008). The Act requires the Attorney General to annually conduct a study and report to Congress not later than 6 months after the date of enactment of this Act, and each year thereafter. Among other issues, the study and report is required to discuss the number of open investigations within the Department for violations of criminal civil rights statutes that occurred not later than December 31, 1969, and resulted in a death. The Act also requires the report to discuss any applications submitted for grants under section 5, the award of any grants, and the purposes for which any grant amount was expended. Additionally, the Act requires the Attorney General to designate a Deputy Chief in the Criminal Section of the Civil Rights Division to coordinate the investigation and prosecution of these criminal cases, and authorizes the Deputy Chief to coordinate investigative activities with State and local law enforcement officials.

² In 1994, death-resulting violations of 18 U.S.C. § 242 (civil rights violations committed under color of law) and 18 U.S.C. § 245 (interference with federally protected activities) became capital offenses; as capital offenses, these statutes are no longer subject to a statute of limitations. However,

In addition, there are certain difficulties inherent in these cold cases: subjects die; witnesses die or can no longer be located; memories become clouded, evidence is destroyed. Even with our best efforts, investigations into historic cases are exceptionally difficult, and justice in many of these cases will never be reached inside of a courtroom. Notwithstanding these legal and factual limitations, the Department believes that the federal government can still play an important role in these cases.

The Department has always been willing to reassess and review cold cases when new evidence came to light, and, as set forth below, played a major role in successfully prosecuting three such cold cases prior to the Cold Case Initiative. In order to further the Department's mission, in 2006, the FBI began its Cold Case Initiative to identify and investigate the murders committed during our nation's civil rights era.

In October, 2008, the Emmett Till Unsolved Civil Rights Crime Act of 2007 was signed into law, directing the Department to designate a Deputy Chief in the Civil Rights Division to coordinate the investigation and prosecution of civil rights era homicides, and a Supervisory Special Agent in the FBI's Civil Rights Unit to investigate those cases. The Civil Rights Division and the FBI were also given the authority to coordinate their activities with State and local law enforcement officials. For fiscal years 2008 through 2017, the Act authorized \$10,000,000 per year to the Attorney General, to be allocated as appropriate by the Department's Civil Rights Division and the FBI; \$2,000,000 per year for grants to State or local law enforcement agencies for expenses associated with the investigation and prosecution by them of civil rights era homicides; and \$1,500,000 per year to the Community Relations Service of the Department to bring together law enforcement agencies and communities in the investigation of these cases.³

B. Pre-Cold Case Initiative Efforts

For many years now, the Department has played an important role in the investigation and prosecution of civil rights era homicides, notwithstanding the constitutional and jurisdictional limitations noted above. Even prior to launching the Cold Case Initiative in 2006, the Department was able to play an important – indeed, essential – role in three successful cold case prosecutions.

For example, in 1997, the FBI reopened the investigation into the 1963 bombing of the

even death-resulting civil rights violations which occurred prior to 1994 are governed by the then-existing five-year statute of limitations.

³As of yet, funds authorized by this Act have not been appropriated; thus, the Department is meeting its obligations under this project by shifting resources from other important civil rights programs, projects, and prosecutions.

Sixteenth Street Baptist Church in Birmingham, Alabama. Civil Rights Division attorneys worked with the United States Attorney for the Northern District of Alabama in conducting a grand jury investigation. We were able to assume federal jurisdiction because a predecessor statute to the current arson and explosives statute, 18 U.S.C. § 844, provided that in situations where death resulted from an explosive transported in interstate commerce, the penalty was death, and under 18 U.S.C. § 3281, crimes punishable by death have no statute of limitations. Ultimately, we could not prove that the explosive traveled in interstate commerce, so we released the grand jury investigation to the State of Alabama, which used that investigation as the basis for a successful prosecution of the last two defendants who were involved in the bombing. The United States Attorney for the Northern District of Alabama, Doug Jones, was cross-designated to serve as the lead prosecutor in the state trials. Thus, this case – which was investigated by federal agents and a federal grand jury, and ultimately successfully prosecuted by a federal prosecutor in state court – provides a perfect example of the Department's efforts to find creative ways to pursue civil rights era cases.

In 1999, the Civil Rights Division and the United States Attorney's Office for the Southern District of Mississippi reopened the investigation into the 1966 murder of Ben Chester White, an elderly African-American farm worker, by Ernest Henry Avants, a Mississippi Klansman. Avants, along with two other men, lured White to Pretty Creek Bridge in the Homochitto National Forest outside of Natchez, Mississippi. Once there, White was shot multiple times with an automatic weapon, and also was shot in the head with a single barrel shotgun. Following the killing, which was intended to lure Dr. Martin Luther King to the area, White's body was thrown off the bridge. His bullet ridden body was discovered several days later. A 1967 state prosecution for murder resulted in an acquittal for Avants and a mistrial for another defendant who is now deceased. A third defendant, also now deceased, was never prosecuted by state officials. The Justice Department opened an investigation into the death of White in 1999, using a federal statute that prohibits murder on federal property, 18 U.S.C. § 1111. Avants was indicted in June 2000, convicted in February 2003 and sentenced to life in prison in June 2003.

Another matter in which federal resources contributed to the conviction of a civil rights era murderer involved the reopened investigation into the 1964 the murder of three civil rights workers in Philadelphia, Mississippi - an incident commonly known today as the "Mississippi Burning" case. At the time of the murders, the Assistant Attorney General of the Civil Rights Division, John Doar, personally led the investigation and prosecution of these murders. Despite facing extraordinary hurdles, he was able to secure the convictions of 7 of the 18 defendants charged with these murders; however, they received sentences ranging from just 4 to 10 years of imprisonment. One of the ringleaders, Ku Klux Klan member Edgar Ray Killen, was acquitted because one of the jury members refused to convict a "preacher." The Department, however, remained committed to ensuring that Justice eventually prevailed in that case. The FBI worked with local law enforcement and provided invaluable assistance on the reopened investigation, which resulted in the indictment of Killen on three counts of state murder charges on January 6, 2005. Killen was finally convicted on June 21, 2005 for three counts of manslaughter for his

involvement in the case. The then-80-year-old Killen was sentenced to twenty years for each count, to be served consecutively.

These three cold case prosecutions represent the three different models in which the Department of Justice has dedicated its resources to the investigation and prosecution of civil-rights era crimes: 1) non-civil rights federal statutes, such as the federal murder statute, have been used to successfully prosecute the perpetrators in federal court; 2) a federal prosecutor has been cross-designated to serve as a prosecutor using a federal investigation in a successful State trial when the evidence fails to establish federal jurisdiction; 3) federal and local investigators have jointly investigated and provided assistance to a State prosecutor in a successful State prosecution.

II. THE COLD CASE INITIATIVE

A. Overview

In order to further the Department's commitment to investigating and prosecuting civil rights era homicides, the FBI in 2006 began its Cold Case Initiative (the Initiative) to identify and investigate the murders committed during the civil rights era. Each of the 56 field offices was directed to identify cases within its jurisdiction that might warrant inclusion on a list of cold cases meriting additional investigation. In 2007, the FBI announced the next phase of this initiative, which includes a partnership with the National Association for the Advancement of Colored People (NAACP), the Southern Poverty Law Center (SPLC), and the National Urban League to identify possible additional cases for investigation and to solicit their assistance with already identified matters.

B. Prosecutions

This Cold Case Initiative, which is ongoing, has resulted in another successful federal prosecution. This case involved the 1964 murders of 19-year-old Charles Moore and Henry Dee, in Franklin County, Mississippi. On May 2, 1964, James Ford Seale and other members of the Ku Klux Klan forced Moore and Dee into a car and drove the teenagers into the Homochitto National Forest. Mistakenly believing that Dee was a member of the Black Panthers and that he was bringing guns into the county, the Klansmen beat the boys while interrogating them about the location of the weapons. In order to stop the beating, the boys falsely confessed, telling the Klansmen that guns were stored in a nearby church. The Klansmen then split into two groups. One group went to search the church for the guns. The other group, including Seale, transported the victims across state lines, into Louisiana, and then back into Mississippi to a remote location on the Mississippi River. Moore and Dee, bound and gagged, were chained to a Jeep engine block and railroad ties, and were taken by Seale out onto the water in a boat, and were pushed overboard to their deaths. Their severely decomposed bodies were found months later.

Seale and another Klansmen, Charles Edwards, were arrested on state murder charges in

late 1964, but the charges were later dropped. The Civil Rights Division and the United States Attorney's Office for the Southern District of Mississippi reopened an investigation into the murders in 2006. The new investigation revealed evidence that supported a federal prosecution under the federal kidnaping statute, 18 U.S.C. § 1201. Edwards, who was in the group of Klansmen who searched the church, but who did not participate in the actual murders, was granted immunity and testified against Seale, the only other surviving participant. Seale was indicted in January 2007, and convicted in June 2007, of two counts of kidnaping and one count of conspiracy. He was sentenced to three life terms. Although his conviction was reversed on appeal on a legal technicality involving the statute of limitations, the Fifth Circuit has granted en banc review, and oral arguments are set for mid-May 2009. In the meantime, Seale remains in custody.

C. Ongoing Outreach Efforts

As part of the Department's efforts to uncover relevant information regarding our unsolved civil rights era homicides, we have reached out to the community in almost unprecedented ways, meeting with NGOs, law professors, journalists, and film makers. For example, senior officials with the Department and the FBI have met with representatives from the NAACP, SPLC, and the National Urban League, and we anticipate further bi-annual meetings with these organizations during the course of the Initiative. The purpose of these meetings is threefold: 1) to encourage those organizations to reach out to their field offices and to try to obtain information on cold cases; 2) to provide the organizations with updates on our progress; and 3) to educate these organizations on the scope of the Cold Case Initiative and the impediments that we face in pursuing these matters.

In addition, the Department has proactively reached out to all of the United States Attorneys' Offices in districts in which there are open cold cases, notifying them of the cases in their districts and seeking their assistance.

In November, 2008, moreover, Department officials, along with the Director and staff of the Community Relations Service, met with a number of key supporters of the Cold Case Initiative, including the Chairman of the Emmett Till Justice Campaign, and the brother of slain civil rights worker James Chaney to update them on the status of the Department's cold case work. We also discussed: (1) how their coalition could help law enforcement find witnesses, especially those who emigrated north; (2) how their coalition might assist in providing psychological comfort and closure to victims; (3) what their coalition can do to otherwise facilitate the Initiative; and (4) how the Community Relations Service could assist in facilitating community forums that would bring together community, family and law enforcement officials to reduce racial tensions that might evolve during the investigation of these cold cases. We expect these productive dialogues with these groups to continue throughout the Initiative.

Other participants in that November 2008 meeting were professors from the Syracuse University College of Law, which has been active in issues related to civil rights era matters.

The Syracuse law school founded a Cold Case Justice Initiative (CCJI) project in response to the unsolved 1964 murder in Ferriday, Louisiana of shoe shop owner Frank Morris, who suffered fatal burns when his store was set on fire, presumably by members of the Ku Klux Klan. On a previous occasion, the United States Attorney for the Western District of Louisiana, other representatives from his office and from the FBI, and a representative from the Civil Rights Division met with one of the Syracuse law professors and a local investigative reporter regarding the Morris matter. Under the supervision of the professors, Syracuse University College of Law students have researched thousands of documents related to the Morris matter and other cold cases in that geographic area. As a result of our alliance, the professors have generously provided the Department with the results of the research conducted by their students.⁴

The Department has also met with journalists to seek input, ideas, and possible leads. For instance, we have reached out to the Cold Case Truth and Justice Project, a multi-partner, multi-platform effort focused on the unresolved history of the South during the civil rights era, seeking any information that it may have relevant to cold cases. Among the participants in that project are investigative reporters from Alabama, Mississippi, and Louisiana, who are vigorously investigating the matters in their respective regions. Another participant in that project is a documentary film maker from the Canadian Broadcasting Corporation, who provided the Department with invaluable information during the investigation and successful prosecution of the James Ford Seale case.⁵ We are hopeful that they, too, will be willing to share information from their investigations with us as we go forward.

In another attempt to utilize the resources of the media, in January 2009, the Department sponsored a joint press conference held by representatives from the FBI, the Civil Rights Division, the United States Attorneys and other prosecutors from the Northern and Southern Districts of Mississippi, senior officials from the United States Marshals Service, and the Mississippi Attorney General. During this press conference, the Department released the names of the victims whose murder cases are currently under review in the state of Mississippi, provided a phone number for a cold case hotline, and asked for citizen assistance in solving these crimes.

In addition to these efforts, the Department is reaching out to local civil rights organizations and participating in conferences in an effort to encourage the active assistance of these groups. For example, an official from the FBI recently participated in the Mississippi Civil

⁴It should be noted that the Department is continuing to vigorously pursue the Morris murder case. In conjunction with that effort, the FBI has offered \$10,000 in reward money for information leading to an indictment in the Morris matter.

⁵An FBI official was also interviewed by another film maker for a documentary on another particularly egregious cold case – the murder of Johnnie Mae Chappell, and African-American mother of ten who was gunned down by a car full of white men as she walked along the side of the road searching for her wallet. At the end of the documentary, which aired on the History channel in February, 2009, the film maker provided an FBI phone number for viewers to call with information related to any cold cases.

Rights Veterans Conference in Jackson, Mississippi, where the official met with journalists, veterans of the civil rights movement, and others to discuss issues related to cold cases. Similarly, officials from the FBI and the Civil Rights Division jointly participated in a two-day conference in Monroe, Georgia, sponsored by the Moore's Ford Memorial Committee. During that conference, officials participated in a panel discussion and met with community members, civil rights veterans, local law enforcement, jury consultants, and others in an attempt to re-invigorate the Moore's Ford investigation, which focuses on the lynching of two African-American couples on the Moore's Ford bridge in 1946.

The Department of Justice will remain involved in other outreach programs, and it hopes that as a result of the publicity generated by these programs, other leads may develop. At a minimum, we believe that our demonstrated commitment already has provided the communities with the assurance that they are being heard and that the Department is doing everything possible to bring closure on these important cases.

III. COLD CASE STUDY AND REPORT

As set forth above, the Department's efforts to investigate and prosecute unsolved civil rights era homicide cases predate the Emmett Till Unsolved Civil Rights Crime Act. During the course of the Department's focus on these matters, we have opened 107 matters for review. Eleven of those matters have been opened within the past six months. The potential impact of the Emmett Till Unsolved Civil Rights Crime Act cannot yet be measured. We are hopeful that funding will be appropriated to support the Act, and that our Report next year will reflect a resulting increased ability to address the goals of this important legislation.

Thus far, our efforts have resulted in two successful federal prosecutions, and two successful state prosecutions, all of which are described in detail above. The first federal case was *United States v. Avants*, 367 F.3d 433 (5th Cir. 2004), which was indicted in the Southern District of Mississippi in June, 2000. Avants was convicted in February, 2003, and sentenced to life in prison. The second federal case was *United States v. James Ford Seale*, which was indicted in the Southern District of Mississippi in January, 2007. Seale was convicted in June, 2007, and sentenced to three life terms.

The first successful federally-assisted state prosecution was the Sixteenth Street Church bombing case. Charges were filed against defendants Thomas Blanton and Bobby Cherry in Birmingham, Alabama, in May, 2000. Defendant Blanton was convicted in April, 2001, and sentenced to four life terms; Cherry was convicted in May, 2002, and sentenced to four life terms. The second successful federally-assisted state prosecution was the *State of Mississippi v. Edgar Ray Killen*. Charges were filed against Killen in Philadelphia, Mississippi, in January, 2005; he was convicted of three counts of manslaughter in June, 2005, and was sentenced to 60 years in prison.

There are three matters thus far which have been referred to state authorities or for which

the Department has shared relevant information from its investigation with state authorities. In each of those matters, the FBI is lending assistance to local law enforcement officials. In one of those matters, State charges have been filed against then-Alabama State Trooper James Bonard Fowler for the 1965 murder of Jimmie Lee Jackson in Marion, Alabama. The murder of Jackson, an unarmed civil rights protester, was one of the events which led to the Selma to Montgomery marches. In May, 2007, Fowler was charged with murder in Marion, Alabama. His October, 2008 trial date was vacated, and the court has not yet set a new trial date.

Of the 107 matters opened as part of the Department's review of civil rights era homicides, the Department, has thus far made a decision to close 14 matters without federal prosecution. However, we are awaiting contact information for identifiable next-of-kin to the victims for 12 of those matters so that we may notify them of our decision. Because that notification has not yet taken place, in deference to the family members of the victims, we have not identified these matters in this report, but expect to include them in our next annual report. The following two matters were closed on April 3, 2009: *In re: Clarence Pershing Cloninger*; and *In re: William D. Owens*. In both matters, our review revealed no viable federal statutory basis for prosecution.

Since January, 2007, at least 40 federal prosecutors have worked on cases under review as part of the Department's Cold Case Initiative and the Emmett Till Unsolved Civil Rights Crime Act of 2007. Although no matters are currently under federal indictment, several cases have been identified as potentially viable prosecutions at either the state or federal level. The resources involved in a viable prosecution are enormous. More than 40 federal employees participated in the Seale prosecution alone. That number does not include the numerous retired federal employees, local law enforcement officials, or contract employees who provided additional assistance.

The Department has received no applications for grants from State or local law enforcement agencies for expenses associated with the investigation and prosecution of criminal offenses, involving civil rights, that occurred not later than December 31, 1969, and resulted in a death.⁶

⁶ It should be noted that the Department has received no funding to support these grants; thus, no grants have been given.