

In the Absence of Governmental Protection

The Struggle of the Brownsville NAACP to Secure the Right to Vote



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I. Introduction

“If Elbert Williams is not avenged, if Elisha Davis, Rev. Buster Walker and the other refugees dare not return to their homes, just because they sought to exercise their right to vote, then democracy has no meaning, is a grim and empty fiction, is a terrible jest.”¹

During the 2012 presidential election, issues of race and voter participation, which proved so volatile in 1940s Brownsville, Tennessee returned to the political agenda once more. A number of states enacted measures purportedly to minimize voter fraud that could also decrease participation of voters of color.² While the tools states employ to suppress votes of color have changed over time, the underlying motivations to deter black vote participation have been a longstanding part of this nation’s history. Today, the US Justice Department stands poised to strike unlawful state measures under the Voting Rights Act of 1965.

However, it was a very different Justice Department in 1940 and a far weaker system of federal civil rights laws. The opening captures the experience of black NAACP members in Brownsville, Tennessee, who learned that the right to vote is hollow in the absence of vigorous protection by government. The tragic story of black Brownsville residents has been comprehensively researched and eloquently documented.³ This essay adds to existing research by offering an account of the legal history of the events leading to the expulsion of Elisha Davis and his family, and the murder of Elbert Williams in Brownsville in 1940. It also grapples with the question of how to obtain justice decades after the formal doors to legal redress have been closed.

II. Black Voting in Brownsville, June 1940

¹ “Democracy in Brownsville, Tenn,” *Pittsburg Courier*, August 10, 1940.

² Charlie Savage “Holder Seeks Tough Review of New State Laws on Voting,” *NY Times*, December 13, 2011, accessed December 20, 2011, http://www.nytimes.com/2011/12/14/us/politics/in-speech-holder-to-critique-new-voting-laws.html?_r=1&ref=us

³ Richard A. Couto, *Lifting the Veil: A Political History of Struggles For Emancipation* (Knoxville: The University of Tennessee Press, 1993), 116-181 and Patricia Sullivan, *Lift Every Voice: The NAACP and the Making of the Civil Rights Movement* (New York: The New York Press, 2009), 237-242.

The Brownsville, Tennessee chapter of the NAACP was organized on June 12, 1939.⁴ In part, the chapter aimed to encourage Blacks to register to vote in the upcoming presidential election.⁵ As of 1939, Blacks had not voted in Haywood County, of which Brownsville is the county seat, since 1884.⁶

On May 6, 1940, Rev. Buster Walker, president, Taylor Newburn and, Elisha Davis, each members of the executive committee along with members John Lester and John Gaines, all black members of the Association, visited the county registrar's office to inquire about registration.⁷ Shuttled between the city judge and the chairman of the elections committee, the NAACP's representatives were ultimately told that registration would not take place until August.⁸

The following day, Deputy Sheriff Bolden informed Buster Walker that he should stop "encouraging Negroes to vote, or there would be trouble."⁹ A few weeks later, another white man, Strauss Drumwright, paid a visit at the service station that Elisha Davis managed.¹⁰ Drumwright told Davis to "let the thing drop or Negroes will get into some serious trouble . . . people down at the courthouse say they will run you and Walker out of town if you try to vote."¹¹

III. Kidnapping, Exile and Murder

Inquiries about the voting rights effort and pressure on local NAACP activists soon escalated to action. The warnings and threats by local law authorities and other white men turned to action and violence.

The Kidnapping and Exile of Elisha Davis

⁴ NAACP's Statement of Facts in the Brownsville, Tennessee, Case (on file with the Library of Congress).

⁵ *Id.*

⁶ More Negroes Disappear and Feeling Grows, *Memphis Press-Scimitar*, June 28, 1940, 10.

⁷ NAACP's Statement of Facts in the Brownsville, Tennessee, Case (on file with the Library of Congress).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

At around one o'clock in the morning on Saturday, June 16, Elisha Davis awoke to the sound of loud pounding on his front door.¹² When he opened it, Tip Hunter, then Night Marshal of Brownsville stood there, clad in his official uniform, accompanied by two other men unknown to Davis.¹³ Sheriff Hunter told Davis to dress and come outside. There Davis was confronted with an armed mob¹⁴ of approximately fifty to sixty men.¹⁵ Hunter forced Davis to sit in the back of a car next to Night Policeman, Charles Reed.¹⁶ Hunter drove to Forky Deer River Bottom, and the mob apparently followed.¹⁷

One of the men in the group, Albert Mann, told Davis that “we have brought you out here to kill you, but I ain’t going to let them do it.”¹⁸ Mann told Davis that the group simply wanted the names of the NAACP members and to know what the NAACP intended to do.¹⁹ Davis gave up the names and told the men that the chapter had received the approval of white officials in Brownsville to form with the purpose of encouraging the “colored citizens of Brownsville” to vote.²⁰ Members of the mob told Davis to leave the county immediately, warning him that if he ever showed his face in town again that they would kill him.²¹

This marked the beginning of Elisha Davis’ banishment from Haywood County, where he and his family had resided since the Civil War.²² Once released by the mob, Davis walked

¹² Elisha Davis Aff. 1, Dec. 12, 1941(on file with the Library of Congress).

¹³ *Id.* at 1.

¹⁴ Mob participants- Davis later identified the mob participants as including Clyde Hopkins (Highway Commissioner), Albert Mann (a farm foreman for the President of the Brownsville Bank), P.G. Fairy (truck driver for the Brownsville Laundry) Elliot Hayes (grocer and meat proprietor), Shorty Smith (W.P.A worker), William Mann (farmer) and Albert Mixon (a mule trader for Mr. Dan Shaw of the Brownsville Bank). Letter to President Roosevelt, from Elisha Davis, January 26, 1941.

¹⁵ Elisha Davis Aff. 1, Dec. 12, 1941 (on file with the Library of Congress).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 2.

¹⁹ *Id.* at 2.

²⁰ *Id.* at 2.

²¹ *Id.* at 3.

²² Davis, Debra, *Homepage of Isaac and Dora Davis*, no longer active link (on file with author).

eight or nine miles.²³ Eventually, he was picked up by some men who were unknown to him, and was taken to the home of Dr. L. D. Thomas,²⁴ who put in a call to Milmon Mitchell, president of the NAACP's Jackson Branch.²⁵ Forced out of Brownsville, Davis had to abandon his service station, equipment, tools, and all he had accumulated to run his business.²⁶ Later, the equipment was seized by individuals acting under the authority of the sheriff, allegedly to satisfy an unpaid loan.²⁷ In addition, Davis was forced to leave behind land that his family owned.²⁸

In 1900, Isaac Davis, the son of an unknown white man and Elisha Davis's father, had purchased forty acres of land in Haywood County for his children.²⁹ After Isaac Davis's death in the 1930s, Elisha Davis, who had been residing in Chicago with his wife Nan, had returned to his family's property to help his mother.³⁰ Thus, when Davis fled Brownsville, he and his family were forced to leave behind substantial family assets for which the Davises were never adequately compensated.³¹ After a period of separation and stops along the way, Elisha, Nan and their growing family reunited in Niles, Michigan by early 1941.³² Elisha Davis was forced to start from scratch in Niles and, due to his unrecovered loss of property and business, he had to request public assistance to meet his family's basic needs.³³

The Murder of Elbert Williams

²³ Richard A. Couto, *supra* at 137.

²⁴ *Id.*

²⁵ Elisha Davis Aff. 3, Dec. 12, 1941 (on file with Library of Congress).

²⁶ *Id.*

²⁷ Richard A. Couto, *supra* at 149.

²⁸ *Id.* at 164.

²⁹ *Id.* at 122.

³⁰ Richard A. Couto, *supra* at 123.

³¹ *Id.* at 150.

³² *Id.* at 164.

³³ *Id.*

According to Thomas Davis, Elisha Davis' younger brother, at about 9:30 pm on Thursday, June 20, 1940, Tip Hunter, accompanied by Ed Lee, manager of the Coca Cola plant, and another individual³⁴ came to his home.³⁵ The men inquired about the activities of the NAACP. Thomas Davis told them that he was a former member but that he did not know anything about the group's current activities.³⁶ The men told Thomas Davis to get in the car and they drove to the home of Elbert Williams, a member of the Brownsville branch of the NAACP.³⁷

When Hunter asked Williams' wife whether he was home, Elbert came to the door dressed in his pajamas and vest. Hunter asked him to come outside to his car, which was parked in front of the Williams home.³⁸ After Elbert Williams was forced into the car,³⁹ Tip Hunter drove to the police station and placed both Thomas Davis and Elbert Williams in custody.⁴⁰ The men were held until 1:30 am at which point Hunter told Davis that he could leave.⁴¹ Thomas Davis left the jail while Hunter continued to detain Williams.⁴² As he left the jail, Thomas Davis saw forty or fifty men gathered outside.⁴³ Davis fled from Brownsville and traveled to Milmon Mitchell's home in Jackson, Tennessee.⁴⁴

In the meantime, Elbert's wife Anne Williams walked down to the City Hall but she could not locate her husband.⁴⁵ She asked Night Policeman, Charles Reed, whether her husband

³⁴ Name blacked out of the records.

³⁵ Thomas Davis Aff. 1 (on file with author).

³⁶ Thomas Davis Aff. 1 (on file with author).

³⁷ *Id.*

³⁸ Anne Williams Aff. 1, Sept. 11, 1940.

³⁹ *Id.*

⁴⁰ Thomas Davis Aff. 1 (on file with author).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Anne Williams Aff. 1, Sept. 11, 1940 (on file with Library of Congress).

was in the jail, but Reed told her that no one was there.⁴⁶ The following day, when Mrs. Williams went to the jail, Sheriff Hawkins told her, “They aren’t going to hurt him; they may just ask him a few questions but they’ll let him loose... if he doesn’t come back home in a day or so, come back and let me know.”⁴⁷

Mrs. Williams then traveled to Jackson where she learned from Thomas Davis that he had left Elbert in the jail. Back in Brownsville, she sought help from her employer, Spence Dupree.⁴⁸ Dupree said he knew nothing of her husband’s whereabouts but told her that “these laws are just wrong Annie . . . [t]here’s just a bunch here [with whom] we can’t do anything.”⁴⁹

In the morning of Sunday, June 23, 1940, Al Rawls, the undertaker, or someone under his employ, sent word to Mrs. Williams to go to the river to identify a body that had been found by fisherman.⁵⁰ She identified the body as that of her husband.⁵¹ She would later report that the body was “beaten and bruised and there were holes in the chest.”⁵² The coroner told Mrs. Williams that the body had to be taken away at once.⁵³ According to the death certificate, Elbert Williams body was buried by the Rawls funeral home in the Taylor Cemetery in Brownsville.⁵⁴ on the same day that the fisherman found him. An inquest was held almost immediately and the cause of death was listed as “unknown.”⁵⁵

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Anne Williams Aff. 2, Sept. 11, 1940 (on file with Library of Congress).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Anne Williams Aff. 2, Sept. 11, 1940 (on file with Library of Congress).

⁵³ *Id.* at 2

⁵⁴ Online Tennessee Death Records & Indexes, Tennessee Death Records and Index 1908-1959 (except 1913) online at <<http://www.deathindexes.com/tennessee/index.html>> Death Certificate Entry for Elbert Williams downloaded April 4, 2012.

⁵⁵ *Id.*

When Anne Williams fled from Brownsville,⁵⁶ she traveled to New York and, according to NAACP records, settled in Farmingdale, Long Island.⁵⁷ During an interview with the NAACP in December, 1941, Mrs. Williams informed the NAACP that, prior to Elbert's death, he had met Elisha Davis in Jackson to discuss the possibility of taking over Davis's gas station lease and operating the business.⁵⁸ Anne recalled at that time that the voice from the car that she mentioned during her affidavit was that of Thomas Davis and he was at the time referring to conversations about Elbert potentially taking over the gas station lease.⁵⁹

IV. Legal Action

Soon after Elbert Williams was killed, Sheriff Hawkins had promised Mrs. Williams that he and Judge Bond would "do something about this."⁶⁰ On August 13, 1940, after a two day investigation into Elbert Williams' murder, a special session of the Haywood County Grand Jury, over which Judge W.W. Bond presided, returned a no true bill against any⁶¹ of the accused.⁶² The jury foreman, H.W. Stratton, reported "[t]he jury made a careful and earnest investigation examining people from all walks of life *including relatives of the dead negro*, and no evidence was brought out that might place the suspicion on anyone as having part in the case."⁶³

The Federal Investigation- Bias and Foregone Conclusions

⁵⁶ Memorandum, RE: Interview with Mrs. Annie Williams Boone, wife of Elbert Williams, concerning her reference to a "property deal" between said Elbert Williams and Elisha Davis of Brownsville, Tennessee. (Dec. 12, 1941) (on file with the Library of Congress).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Memorandum, RE: Interview with Mrs. Annie Williams Boone, wife of Elbert Williams, concerning her reference to a "property deal" between said Elbert Williams and Elisha Davis of Brownsville, Tennessee. (Dec. 12, 1941) (on file with the Library of Congress).

⁶⁰ Anne Williams Aff. 2, Sept. 11, 1940 (on file with Library of Congress)

⁶¹ There are no records available to identify the number or the names of individuals accused of killing Williams.

⁶² "No Blame is Placed in Death of Negro", *Commercial Appeal*, Aug. 14, 1940.

⁶³ *Id.*

The FBI and the Justice Department investigated the Williams murder to determine whether any federally protected rights had been violated.⁶⁴ In the nascent stage of the investigation, Walter White, Secretary of the NAACP, supplied William McClanahan, United States Attorney, with the results of the NAACP's investigation of the events in Brownsville.⁶⁵ White urged the government to take prompt action, suggesting that the facts supported a violation of the federal statute criminalizing the violation of civil rights by both private and public defendants under 18 USC § 51.^{66 67}

On July 2, 1940, William McClanahan, United States Attorney for the state of Tennessee, wrote to Thomas Dodd, Jr., Special Assistant to the Attorney General, Criminal Division about the matter.⁶⁸ The local FBI office had prepared a report on the case that reflected serious doubt over whether there had been a violation of federal law and questioned the need for further investigation.⁶⁹ McClanahan stated that, while he and his office intended to enforce all federal laws, including sections 51 and 52,⁷⁰ he observed that the “racial situation in counties like

⁶⁴ Walter White, Secretary, NAACP, to William McClanahan, United States Attorney, Memphis (July 1, 1940) (on file with author).

⁶⁵ *Id.*

⁶⁶ “If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than \$5,000 and imprisoned not more than ten years, and shall moreover, be thereafter ineligible to any office, or place of honor, profit, or trust, created by the Constitution or laws of the United States.” 18 U.S.C. § 51 (1940).

⁶⁷ William McClanahan, to Thomas Dodd, Jr. Special Assistant to the Attorney General, Criminal Division, (July 2, 1940) (on file with author).

⁶⁸ *Id.*

⁶⁹ Letter from William McClanahan, to Thomas Dodd, Jr. Special Assistant to the Attorney General, Criminal Division, July 2, 1940 (on file with author).

⁷⁰ “Whoever, under color of any law, statute or ordinance, regulation or custom, willfully subjects or causes to be subjected, any inhabitant of any state, Territory or District to the Deprivation of any rights, privileges or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains or penalties on account of such inhabitant being an alien, or by reason of his color, or race then are prescribed for the punishment of citizens shall be fined not more than \$1,000, or imprisoned not more than one year; or both.” 18 U.S.C. § 52 (1940).

Haywood is such as to require extremely careful handling.”⁷¹ The racial situation to which he referred was that blacks outnumbered whites in the county by two to one, and he reiterated that blacks had not been mistreated in this particular county.⁷²

According to McClanahan, Haywood county blacks were not mistreated and were the aggressors in the county.⁷³ To provide context, McClanahan stated in the letter that “one white man ha[d] been killed and another seriously wounded by *negroes* . . . recently. . . Williams is the only negro that has been killed, if he was killed.”⁷⁴ As described by Richard Couto, McClanahan’s biases in the case were clear.⁷⁵ Not only did he conclude at an early stage that the evidence was insufficient to support a federal violation, but McClanahan seemed to imply that given the racial balance of the area, white citizens had reason to take the law into their own hands.⁷⁶

From July to November, O. John Rogge, Assistant Attorney General, urged the FBI to actively to investigate the Brownsville case.⁷⁷ In the FBI report dated November 23, 1941, the agents record a summary of an interview with Tip Hunter.⁷⁸ Hunter told the investigating agent that he had questioned Elisha Williams because there was concern that blacks from Jackson, Tennessee were starting trouble.⁷⁹ Hunter claimed a railroad watchman was present at the time at the time that he had released Williams.⁸⁰ He denied threatening Williams but acknowledged

⁷¹ Letter from William McClanahan, United States Attorney-Memphis, to Thomas Dodd, Jr. Special Assistant to the Attorney General, Criminal Division (July 2, 1940) (on file with author).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Richard A. Couto, *supra* at 147.

⁷⁶ Letter from William McClanahan, United States Attorney -Memphis to Thomas Dodd, Jr. Special Assistant to the Attorney General, Criminal Division (July 2, 1940) (on file with author).

⁷⁷ Memorandum from Mr. Clyde Tolson, FBI Associate Director to L.B. Nichols, FBI Assistant Director, [Blackout] Civil Rights and Domestic Violence (Oct. 4, 1947) (on file with author).

⁷⁸ Memorandum, Statement of Facts as Revealed by Investigation Conducted in Re Tip Hunter, et al Civil Rights. And Domestic Violence: Analysis of FBI Reports-Report of 11/23/40 (Dec. 16, 1941)(on file with author).

⁷⁹ *Id.*

⁸⁰ *Id.*

rumors that he, Hunter, was a “bad man,” and that some people believed him to be Elbert Williams’ murderer.⁸¹

On November 28, the United States Attorney’s office at Memphis informed the FBI that “any further contacts in this case would be cumulative and no additional inquiry was deemed desirable or practical.”⁸² On December 30, Wendell Berge, Assistant Attorney General, stated that, pending a decision by presumably the Attorney General’s office, no further investigation was required.⁸³

But shortly thereafter Attorney Berge’s strategy shifted.⁸⁴ On March 31, 1941, he sent a letter⁸⁵ to McClanahan outlining the facts of the case and concluding that there were violations of federal law.⁸⁶ In unequivocal language, Berge wrote “[t]he department is of the opinion that on the facts disclosed thus far, the matter undoubtedly warrants prosecution to a federal grand jury.”⁸⁷ Subject to approval by McClanahan’s office, he instructed the FBI to continue its investigation and advised the FBI to interview Reverend Buster Walker.⁸⁸

⁸¹ *Id.*

⁸² Memorandum from Mr. Clyde Tolson, FBI Associate Director to L.B. Nichols, FBI Assistant Director, [Blackout] Civil Rights and Domestic Violence (Oct. 4, 1947) (on file with author).

⁸³ *Id.*

⁸⁴ Letter from Wendell Berge to William McClanahan, Re: Tip Hunter et al. Civil Rights and Domestic Violence, (Mar. 31, 1941) (on file with author).

⁸⁵ An excerpt of the letter included the following “[t]he obvious purpose of the night-riding activities of the city police and the other mobsters acting in concert appears to have been to injure oppress, and intimidate the named negroes in the exercise of their right to vote. In addition, the further purpose of such intimidation was to frighten the entire colored population of Brownsville and thus prevent qualified negroes from exercising their franchise. This appears to make out a violation of Section 51 title 18 of the United States Code, and a violation of Section 1 of the Hatch Act. Police Officers involved would be originally liable under section 52, title 18, United States Code, by reason of their participation under color of their authority in these oppressive tactics.” Letter from Wendell Berge to William McClanahan, Re: Tip Hunter et al. Civil Rights and Domestic Violence, (Mar. 31, 1941) (on file with author).

⁸⁶ Letter from Wendell Berge, Assistant Attorney General, to William McClanahan, United States Attorney-Memphis Re: Tip Hunter et al. Civil Rights and Domestic Violence, (Mar. 31, 1941) (on file with author).

⁸⁷ *Id.*

⁸⁸ *Id.*

United States Attorney McClanahan wrote back to Attorney Berge a few times and requested more time to submit his report on the case.⁸⁹ Armed with the FBI report of September 9, 1941, which included an interview with Buster Walker, on October 2, 1941, Berge wrote that the Department had decided that the case should be presented to a grand jury immediately.⁹⁰ Attorney Berge explained that the basis for the indictment should be section 1 of the Hatch Act⁹¹ and not 18 U.S.C. §§ 51 and 52.⁹² According to an instructional memorandum presented to the FBI by the Attorney General, the difference between 18 U.S.C. §§ 51 and 52 is the former applied to private individuals and public officers alike, whereas the latter applied to cases in which only public officials were defendants.⁹³

Attorney Berge requested an update on McClanahan's progress and warned him that were he to reach a contrary conclusion he would need to request a personal conference with the Attorney General in Washington.⁹⁴ He closed the letter with a request for a draft indictment.⁹⁵ Six days later, McClanahan responded to Berge; he informed him that although he sought additional facts, he requested a personal conference with the Department.⁹⁶ The FBI interviews

⁸⁹ Letter from William McClanahan, United States Attorney-Memphis to Wendell Berge, Assistant Attorney General, re: Tip Hunter, et al. Civil Rights and Domestic Violence. Dept. Just. File: WB: FGF: mb, 144-72-0; (Apr. 23, 1941) & Letter from William McClanahan, United States Attorney-Memphis to Wendell Berge, Assistant Attorney General, June 11, 1941 Re: Tip Hunter et al. Civil Rights and Domestic Violence. Dept. Just. File: WB: FGF: mb, 144-72-0.

⁹⁰ Letter from Wendell Berge, Assistant Attorney General to William McClanahan, United States Attorney, Memphis Re: Tip Hunter, et al; Civil Rights and Democratic Violence (Oct. 2, 1941) (on file with author).

⁹¹ Section 1 states “. . . [i]t shall be unlawful for any person to intimidate, threaten, or coerce, or to attempt to intimidate threaten or coerce, any other person to vote or to vote as he may choose, or of causing such other person to vote for or not to vote for, any candidate for the office of the President, Vice President, Presidential elector” Hatch Act, S. 1871, 76th Cong. § 1 (1939).

⁹² Letter from Wendell Berge, Assistant Attorney General to William McClanahan, United States Attorney, Memphis (Oct. 2, 1941) (on file with author).

⁹³ Memorandum from O. John Rogge, Assistant Attorney General to J. Edgar Hoover, Director of the FBI, RE: Alleged Violations of Civil Liberties of Negroes. Brownsville, Tennessee. (July 11, 1940)(on file with author).

⁹⁴ Letter from Wendell Berge, Assistant Attorney General to William McClanahan, United States Attorney, Memphis: (Oct. 2, 1941) (on file with author).

⁹⁵ Letter from Wendell Berge, Assistant Attorney General to William McClanahan, United States Attorney, Memphis (Oct. 2, 1941) (on file with author).

⁹⁶ Letter from William McClanahan, United States Attorney, Memphis to Wendell Berge, Assistant Attorney General (Oct. 11, 1941)(on file with author).

that followed the correspondence between Berge and McClanahan were enormously important. Additional corroborative evidence may have led to the US Attorneys' office to move forward with the draft indictment; and without additional evidence, the investigation would likely close.

A review of the nine final FBI interviews makes clear that the federal investigation would be drawn to a close with no indictments. The interviews advanced a narrative that both undermined the allegations made by the NAACP leaders and bolstered Tip Hunter's alibi. The first theme that emerged was that blacks were treated well by whites but that there was tension within the black community in Brownsville. An unnamed black male restaurant owner apparently stated to the FBI that blacks were treated well by whites.⁹⁷ The sentiment is repeated in another interview by an unnamed black male who witnessed the recovery of Williams' body from the Hatchie.⁹⁸

With respect to the trouble within the black community, a number of white interviewees offered support for that narrative. An unnamed white male repeated a rumor that there was "friction and strife among the colored population." Another white male, who appeared to have been accused of threatening NAACP leaders seeking to organize blacks to vote, denied that allegation and reported that his efforts were intended to allay "trouble and strife among coloreds."⁹⁹ A white male, likely another member of law enforcement, reported that there was an alert that "Jacksonville Negroes" were coming to Brownsville to cause trouble.¹⁰⁰

A second related theme that emerged was that the Williams killing and the Davis banishment did not involve organized mob action.¹⁰¹ Some interviewees completely denied that

⁹⁷ Memorandum, Statement of Facts as Revealed by Investigation Conducted in Re Tip Hunter, et al Civil Rights. And Domestic Violence: Analysis of FBI Reports- Report of 10/16/41 (Dec. 16, 1941)(on file with author).

⁹⁸ Memorandum, Statement of Facts as Revealed by Investigation Conducted in Re Tip Hunter, et al Civil Rights. And Domestic Violence: Analysis of FBI Reports-Report of 10/16/41 (Dec. 16, 1941)(on file with author).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

there was any mob, while other interviewees placed themselves in a position to have witnessed a mob had there been one outside the jail when Williams was released.¹⁰² A white hotel owner denied that he saw any mob activity and further stated that he was normally awake at that hour and lived only a block and half away from the jail.¹⁰³ A white attorney stated that he was usually alert and had no knowledge of people gathered outside the jail on June 20, 1940.¹⁰⁴ Finally, a white male, likely a member of law enforcement, stated that he was walking the beat on what he thought was the date in question, and noticed no unusual activity or any crowds outside the jail.¹⁰⁵

A third line of approach was to question whether Williams met his death by violence. One interviewee suggested that it was impossible to tell from his remains that Elbert Williams met a violent death. A black male, who had viewed Elbert Williams' body first hand, reported that the body was so decomposed that he was unable to detect any marks of violence.¹⁰⁶ The FBI agent who conducted the interview added a handwritten note on the interview summary, stating that the body was in the water for less than two days. He seemed to openly doubt whether a body could decompose so rapidly.¹⁰⁷

Closing the Federal Case

On December 23, 1941, Victor Rotnem, Chief of the Civil Rights Section at the Department of Justice, released a memorandum to the effect that the facts of the Williams case did not provide sufficient evidence to present the matter to a trial jury for violations of 18 USC

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Memorandum, Statement of Facts as Revealed by Investigation Conducted in Re Tip Hunter, et al Civil Rights. And Domestic Violence: Analysis of FBI Reports-Report of 10/16/41 (Dec. 16, 1941)(on file with author).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

51, 52 or similar statutes.¹⁰⁸ Rotnem described the accused as “prominent citizens of the community” and found that the victim’s story did not match that of the accused.^{109 110} He wrote further that whether a grand jury in Memphis would return an indictment would be speculation, although his memorandum acknowledged that perhaps a vigorous Federal Grand Jury investigation might elicit some testimony which corroborated the accounts presented by the victims.¹¹¹ He concluded that such an inquiry would not likely be worth it, as too much time had elapsed since the murder.¹¹²

On January 30, 1942, after learning of the department’s decision to close the case in conference, Thurgood Marshall expressed his strong objection in a letter to Wendell Berge.¹¹³ He argued that “there does not seem to be any question of the quality of evidence, but rather, its quantity.” He charged that the FBI’s interviews were corrupted because agents had brought Tip Hunter to the interviews.¹¹⁴ According to Marshall, Hunter’s presence diminished the chances that blacks would speak freely during those interviews.¹¹⁵ Finally, Attorney Marshall warned that, without any charges brought in this case, “the intimidation of other Negroes who want to register to vote will be complete.”¹¹⁶

Five years after closing the case, L.B. Nichols, Assistant to the Director of the FBI, prepared a memorandum for Clyde Tolson, Associate Director of the FBI, evaluating the

¹⁰⁸ Memorandum for the Files from Victor Rotnem, Chief of the Civil Rights Section, Department of Justice (Dec. 23, 1941)(on file with author) .

¹⁰⁹ The file does not appear to contain a list of “accused” individuals. It is assumed that Tip Hunter was among them.

¹¹⁰ Memorandum for the Files from Victor Rotnem, Chief of the Civil Rights Section, Department of Justice (Dec. 23, 1941) (on file with author).

¹¹¹ Memorandum for the Files from Victor Rotnem, Chief of the Civil Rights Section, Department of Justice (Dec. 23, 1941).(on file with author).

¹¹² *Id.*

¹¹³ Letter from Thurgood Marshall, NAACP Special Counsel to Wendell Berge, Assistant Attorney General (on file with the Library of Congress).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

decisions made in this case.¹¹⁷ The memorandum reveals that there were delays in interviewing Buster Walker and those two critical interviews were not completed prior to the decision to close the case.¹¹⁸ Nichols observed that if the Agency were accused of failing to follow up on leads, “[the FBI] would have difficulty avoiding a basic responsibility of at least locating key witnesses and interviewing them.”¹¹⁹ A handwritten note of unknown authorship appeared at the bottom of the memorandum: “[t]his case received poor supervision both in the field and at the seat of government.”¹²⁰

Ten Years Later – “It is much too late...”

Elisha Davis wrote to the NAACP sometime either in late 1951 or early 1952 seeking further legal assistance for the murder of Elbert Williams. NAACP Special Assistant Counsel Constance Baker Mottley wrote back to Davis that “[i]t is much too late to do anything about Tip Hunter and the other persons involved in this case, because as you know the incident occurred more than ten years ago and the Statute of Limitations would probably prevent the bringing of an action at this time against the person responsible for the lynching.”¹²¹

V. Alternative Remedies: Restorative Justice

It perhaps deserves mention that Constance Baker Mottley did not make reference to the state level criminal investigation of Elbert Williams’ murder. As with all state jurisdictions, the Tennessee Code provides that “[a] person may be prosecuted, tried and punished for an offense punishable with death or by imprisonment in the penitentiary during life, at any time after the

¹¹⁷ Memorandum from Mr. Clyde Tolson, FBI Associate Director to L.B. Nichols, [Blackout] Civil Rights and Domestic Violence (Oct. 4, 1947) (on file with author).

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Memorandum from Mr. Clyde Tolson, FBI Associate Director to L.B. Nichols, [Blackout] Civil Rights and Domestic Violence (Oct. 4, 1947) (on file with author).

¹²¹ Letter from Constance Baker Mottley, Assistant Special Counsel, NAACP to Elisha Davis (Jan. 24, 1952)(on file with the Library of Congress).

offense is committed.”¹²² Thus, if the statute of limitations on murder never runs, the possibility for legal action continued to exist well beyond 1952.

However, as in many cold cases, the barriers to legal redress under the state criminal laws here present insurmountable evidentiary issues. Over seventy years have passed since the murder, and the perpetrators, as well as any witnesses, have all since passed away. As to the physical evidence, Williams’ body was buried on the day it was discovered in the water before any autopsy or forensic investigation could be conducted. An attorney who appears to represent Haywood County court and law enforcement personnel claims that there are no records pertaining to Elbert Williams’ murder.¹²³ In sum, the men who participated in the murder of Elbert Williams, as well as those who banished Elisha Davis and his family from the county, lived out the rest of their lives without facing any consequences.

In her letter to Elisha Davis, Attorney Mottley referred to the federal statutes under which criminal charges could be brought in the Williams case, to wit 18 USC § 51, 18 USC § 52 and §1 of the Hatch Act. In 1940, the statute of limitations for violations of these three laws was three years.¹²⁴ Hence the statute would have tolled in such a case by June 1943.

In sum there are no available criminal remedies available for these travesties of justice. What alternative remedies are available? One framework for this problem of remedies is discussed in “Reframing Redress: A ‘Social Healing Through Justice’ Approach to the United

¹²² Tenn. Code Ann. § 40-2-101 (2012).

¹²³ Letter from Michael S. Banks, Attorney, to Evon Williams, Law Student, University of Tennessee at Knoxville, RE: Open Records Act (May 24, 2011)(on file with author).

¹²⁴ “No person shall be prosecuted, tried, or punished for any offense, not capital, except as provided in section 1046 [crimes under revenue laws or slave trade laws], unless the indictment is found, or the information is instituted, within three years next after such offense shall have been committed: Provided however, that in offenses involving the defrauding or attempts to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner, and now indictable under any existing statutes, the period of limitation shall be six years. This Act shall apply to acts, offenses, or transactions, where the existing statute of limitations has not yet fully run, but this proviso shall not apply to acts, offenses, or transactions which are already barred by the provisions of existing laws.” *Weinhandler v. United States*, 20 F.2d 359, 360 (2d Cir. N.Y. 1927) citing 19 Stat. 32, 42 Stat. 220.

States- Native Hawaiian and Japan Ainu Reconciliation Initiatives.”¹²⁵ The framework is theoretical in that it brings together a more academic discussion, but it is also practical in that it seeks to find what actually might be used in real life social justice struggles.¹²⁶ The authors identify the four R’s of Social Healing through justice- (1) *recognition* of the ways individuals, because of their group membership, continue to suffer; (2) *responsibility* for power abuses; (3) *reconstructive* acts that build new relationships; and (4) *reparations*, broadly defined to include public education, memorials, and other public acts of remembrance.

The framework is not a strict formula, but rather a set of guiding principles that can be applied in Brownsville to capture the violence of 1940 and address its legacy. Here, recognition of the inequities that continue to plague Brownsville and surrounding communities must be seen as part of continuing suffering. While the level of threat that certain whites posed in Brownsville at the time of Elbert Williams’ murder appears to have subsided, black oppression continues to be alive and well.¹²⁷ To date, black politicians face tremendous obstacles in securing positions of leadership within the city of Brownsville.¹²⁸ The local, state and federal governments need to take responsibility for their part in the failure of justice. Equally important, these entities must be willing to commit to reconstructive acts that allow members of all racial communities to participate freely and fully in Brownsville civic life today. Finally, reparations in some form would help to establish a new narrative based on a factually true account of the violence of 1940.

VI. Conclusion

¹²⁵ Eric K. Yamamoto and Ashley Kaiao Obrey, *Reframing Redress: A "Social Healing Through Justice" Approach to United States-Native Hawaiian and Japan-Ainu Reconciliation Initiatives*, 16 Asian Am. L.J. 5 (2009).

¹²⁶ Eric K. Yamamoto and Ashley Kaiao Obrey, *Reframing Redress: A "Social Healing Through Justice" Approach to United States-Native Hawaiian and Japan-Ainu Reconciliation Initiatives*, 16 Asian Am. L.J. 5, 31 (2009) (discussing the justice through social healing framework).

¹²⁷ Civil Rights and Restorative Justice Community Meeting at the Dunbar Carver Museum on Mar. 31, 2012.(Notes on file with author).

¹²⁸ *Id.*

Since these events occurred over seventy years ago, there has been no public acknowledgement of the improper biases that plagued the state and federal law enforcement investigations of the crimes against Elbert Williams and Elisha Davis. No-one was ever charged in connection either with the murder of Elbert Williams or the kidnapping of Elisha Davis. At the state and the federal level, the case was closed without a single indictment. Although there was a sound basis for federal jurisdiction, there was no federal grand jury investigation. In the wake of these crimes the state and federal government's completely ineffectual attempts to seek justice served to further victimize Black citizens who were seeking the right to vote..

Due to insurmountable evidentiary challenges and the expired statutes of limitations, the doors to legal redress appear to have closed. However, there are many other vehicles for meaningful redress. For the families of the victims – many of whom have been interviewed by this author-- and for members of the community of Brownsville, the effort to obtain justice, expressed so compellingly in Elisha Davis' appeal to NAACP lawyer Constance Baker Motley in 1952, has far too long been ignored.