Introduction

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Although Malcolm X was born in May of 1925, this September special issue is in recognition of the 19th day of that month, 95 years ago. And what better time to revisit the intellectual and spiritual evolution of one of the most controversial, dynamic and inspirational figures of twentieth century America than now. The Honorable Minister Malcolm X has been featured in every form of media imaginable and the focus of every meaningful academic enterprise—from book length manuscripts to encyclopedia entries, in both life and death.

For more than a half century, the murder of Malcolm X has, for all intents and purposes, gone unsolved. I say largely, for only one of the assailants, Thomas Hagan (aka Talmadge Hayer), was ever brought to justice. The other four men with whom Hagan conspired were never apprehended, largely because Hagan refused to name names until years into his prison term. This special issue of the *Journal of African American Studies* is not about how Malcolm was murdered but about how he lived and the evolution of his thought processes. Still, the fact that his murderers escaped justice is one of the twentieth century's most grave injustices. Nine years ago, I penned a letter to the U.S. Attorney General Eric Holder, the first African American ever appointed to that post, urging a reopening of the case involving Malcolm's 1965 murder. The response was wholly disappointing, but not altogether surprising (see below).

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AUG 4 2011

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Dear Mr. Jeffries:

Thank you for your letter dated April 19, 2011, to the Attorney General asking the Department of Justice to initiate an investigation into the 1965 murder of El-Hajj Malik El-Shabazz ("Malcolm X"). The Department of Justice and FBI have carefully reviewed your request and have concluded that an investigation will not be initiated.

In order for the FBI to initiate a federal investigation, a violation of a federal statute must have occurred. In 1965, federal criminal civil rights violations were not capital offenses and accordingly, were subject to a five-year statute of limitations. Although non-civil rights statutes have been used to overcome the statute of limitation challenges in some cases, such as those occurring on federal land and kidnapping resulting in death, the facts of this matter do not lend themselves to federal prosecution under these specific statutes. Furthermore, the FBI considered The Emmett Till Unsolved Civil Rights Crime Act of 2007, which authorizes the FBI to investigate racially motivated crimes that occurred prior to December 31, 1969 and resulted in death. The circumstances surrounding Malcolm X's murder also does not fall within the parameters of the Till Act.

I appreciate you bringing this matter to our attention, and I hope this information will be helpful to you.

Sincerely yours,

Vida G. Bottom
Chief
Public Corruption/Civil Rights Section

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Thank you for your letter to the Attorney General asking the Department of Justice to investigate the facts and circumstances surrounding the 1965 assassination of El-Hajj Malik El-Shabazz ("Malcolm X"). Your letter suggested a number of statutes that the Department could consider using to pursue an investigation of this crime and recommended that the Department of Justice partner with the States of New York and New Jersey to conduct a criminal investigation relating to possible crimes committed by additional suspects.

The Department has carefully reviewed your requests regarding an investigation into the murder of Malcolm X and other allegedly associated acts of violence. Based on this review, we have concluded that the Department of Justice will not open an investigation in these matters.

The applicable statute of limitations precludes a prosecution under the federal criminal civil rights statutes. In 1965, federal criminal civil rights violations were not capital offenses and accordingly, were subject to a five-year statute of limitations. See 18 U.S.C. § 3282(a). In 1994, some of these statutes were amended to provide the death penalty for violations resulting in death, thereby eliminating the statute of limitations for such offenses. See 18 U.S.C. § 3281. The *Ex Post Facto* Clause, however, prohibits retroactive application of the 1994 increase in penalties and the resultant change in the statute of limitations. Although the Department has used non-civil rights statutes to overcome the statute of limitations challenge in some cases, such as those occurring on federal land and kidnapping resulting in death, the facts presented by you in this matter do not lend themselves to federal prosecution under these statutes.

As you are aware, the Emmett Till Unsolved Civil Rights Crime Act of 2007 ("the Till Act") authorizes the Civil Rights Division to coordinate the investigation and prosecution of violations of criminal civil rights statutes, in particular, unsolved civil rights murders, that occurred not later than December 31, 1969. The allegations detailed in your letter, and in the accompanying 1979 petition filed on behalf of the convicted assassins, however, do not fall within the parameters of the Till Act. As such, the Department will not be adding the murder of Malcolm X to the list of civil rights era homicides under investigation pursuant to the Till Act.

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The Department has also reviewed the possible application of the National Firearms Act of 1934 and 18 U.S.C. § 844 to these allegations. Assuming for discussion purposes that the above criminal statutes apply, we have found no persuasive evidence that the statute of limitations for these crimes may have been tolled under 18 U.S.C. § 3290. Because the applicable statute of limitations would preclude prosecution, the Department declines the request to investigate this matter under the National Firearms Act of 1934 or 18 U.S.C. § 844.

Finally, pursuant to 28 U.S.C. § 533, the Attorney General may authorize an investigation of the commission of a federal crime for which the applicable statute of limitations has run, in order to establish the facts of the crime, independent of whether such facts may lead to a prosecution. The Attorney General has carefully considered your request to exercise his discretion to authorize an investigation into the assassination of Malcolm X. Although the Justice Department recognizes that the murder of Malcolm X was a tragedy, both for his family and for the community he served, we have determined that the matter does not implicate federal interests sufficient to necessitate the use of scarce federal investigative resources into a matter for which there can be no federal criminal prosecution. The Attorney General has thus declined to authorize an investigation into the assassination of Malcolm X pursuant to 28 U.S.C. § 533.

Sincerely yours,

Thomas E. Perez
Assistant Attorney General

Few freedom fighters were as outspoken on the matters of freedom, justice, and equality where Blacks were concerned. The Honorable Brother Minister Malcolm X was forever teaching, always trying to enlighten those whose vision had for so long been obstructed by a veil of ignorance. Malcolm X never got tired of castigating the American White man for his sins—the destruction he has wrought, not only against the Black man, but to people of color around the world. Malcolm X was among Black people's staunchest supporters. His love for his own kind was unconditional and his commitment to Black liberation unwavering. Although his life lasted just 39 years, his spiritual and political metamorphosis was one that few men or women will ever experience in a lifetime. Understanding the significance of this reawakening is vital to any study of Malcolm X and the politics of his maturation. For these reasons, alone, the Honorable Brother Minister Malcolm X deserves to be remembered, taught in classrooms everywhere, and written about in novel ways that introduce him to a new generation of scholars, activists, laypersons, and intellectuals with the hope that they will find inspiration and meaning in his example and life's work.

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