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Critical Developments in the Evolution of Federal Civil Rights Law: How Issues of Voting Rights and School Integration Led a Path to Justice

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Introduction

From an individual's perspective, history, as it unfolds, appears to those living it to move in a plodding fashion, ever so slowly, and without regard to the impatience of those who long for, or work to implement, change. History does not happen according to the wishes of generations of people that progress take place at a certain pace, post haste. In this regard the slow pace of change tends to frustrate those who attempt to make progress. Resisters always exist; resistance movements always take shape, and must be overcome. Arguably, on many fronts, we as a human race have only marginally progressed on a number of issues over the course of centuries. We are still fighting wars amongst ourselves, in the name of religion and race; we are still persecuting one another in the name of these same factors. We have been undertaking these endeavors since the advent of recorded history. However, change and progress is detectable, as we know from the record of history; and, despite its plodding pace, moments and events come about which provide a spike in the pace of the movement toward a particular goal. These spikes of progress tend to produce violent reactions, generally designed to forestall progress but often empowering it further; enabling it. Such was the case in the period of the 1950s and 1960s, in the context of what is now known as the Civil Rights Movement, when several significant events took place, in the context of certain specific civil rights issues, to bring forth new laws, and new uses of existing legislation, governing the acts of the citizens of

the United States, and the protection of their rights. Specifically, the issues of the right to equal opportunity in education for all people, and voting rights for all people, intertwined with the political process in the United States to enable the use of federal civil rights law to extract justice in cases of a much broader context, including murder. While this landmark accomplishment is certainly noteworthy in and of itself, the path to it provides lessons that illuminate the process of the development of the law in this country, and how much further we as citizens can steer it.

The Civil Rights Era: The Beginning

Equal Opportunity in Education

The period from 1950 to 1965 was arguably among the most fertile in moving forward the cause of civil rights in the United States. Indeed, in part because this period of time, as volatile as it was, led to significant progress in the field of civil rights law, the 1950s and 1960s have become widely known as the Civil Rights Era. This progress did not come without a great cost, however, as it was also characterized by the incident violence and opposition that often accompanies radical change. The first of the two aforementioned issues—that of equal opportunity in education—consistently brought with it the threat of violence, pitting not only ordinary citizens against one another, but also state militias against federal troops.

Despite some occasional victories for civil rights activists and litigants in pursuit of equal opportunity in education after 1910, initially in the area of improved funding for black public schools, the status of blacks in 1950, especially in the states that comprised the former Confederacy, remained much the same as it had been in the early part of the

century.[1] While courtroom decisions dating back to the late 1930s had served as the beginning of the movement to admit blacks to schools of higher education through integration, in the years following these decisions it was still virtually impossible for blacks to gain admission to accredited professional, law, and medical schools without forcing such admission through the courts.[2] In addition, any successful individual actions tended to be viewed as being confined to that plaintiff and that institutional defendant,[3] and not as the opening of the door on a widespread basis to equal access for all. For example, in 1939, the United States Supreme Court, in *Missouri ex rel. Gaines v. Canada*,[4] required the University of Missouri School of Law to offer admission to a black applicant because the state of Missouri did not have a law school that was available to blacks.[5] As evidence that other schools within the University of Missouri acted as if this decision applied only to the law school, a subsequent lawsuit was necessary in order to allow the admission of black applicants to the University of Missouri School of Journalism.[6]

This effect started to change during the 1950s, as the Supreme Court of the United States began to decide cases that would have far-reaching implications, and that were not so easily isolated by the states involved to the cases at hand. The first of these two decisions were issued on June 5, 1950, and together they served as a definitive moment in history in which the civil rights movement in the United States gained significant momentum. In cases involving the states of Oklahoma and Texas, the Court ordered the admission of one black student to the Oklahoma Graduate School of Education, and one black student to the University of Texas School of Law, overriding earlier decisions by both of these schools to deny admission to the plaintiffs because they were black.[7] First,

in *Sweatt v. Painter*,[8] the Court held that a new state law school for black students failed to provide equivalent educational opportunities as those offered to white students at the University of Texas, and thus the state, in failing to admit the plaintiff student to its existing law school, denied the plaintiff-petitioner his equal protection rights as guaranteed by the Fourteenth Amendment.[9] Then, in *McLaurin v. Oklahoma State Regents*,[10] a case in which the University of Oklahoma had admitted a black applicant to its school but had segregated the school such that he had to use separate facilities, the Court held that such segregated treatment was also unconstitutional in violation of the Fourteenth Amendment.[11]

Although the Court was urged to consider much broader issues of civil rights in both of the aforementioned cases, as both the Justice Department and the National Association for the Advancement of Colored People (NAACP) had petitioned the Court to reconsider the separate-but-equal doctrine as handed down in *Plessy v. Ferguson*,[12] the Court declined to do so, continuing its tradition of deciding constitutional questions only as related to the specific situations presented in the cases at hand, thus intending a narrowly-drawn decision each time. While this failure to obtain a review of *Plessy* was a setback for the Civil Rights Movement, as it enabled states to continue to force civil rights activists to pursue each case individually, thus impeding the progress sought significantly, signs existed that the ability to apply this stall tactic would eventually be undermined.[13] First, Chief Justice Frederick M. Vinson, in crafting the opinion of the Court in *McLaurin*, detailed the humiliation endured by the plaintiff as a result of the segregation involved, clearly stating that such inequalities (a possible euphemism for segregation) must come to an end.[14] Secondly, the Court acknowledged that *McLaurin*

and *Sweatt* represented different aspects of the same general question: To what extent does the Fourteenth Amendment limit a state's power to distinguish between races when administering its state university programs?[15] Thus, the Court had begun to address civil rights issues in such a way as to broaden the scope of the law that it was creating and upholding. In considering the issues in these cases, the Court seemed to be showing indications that, perhaps with some reluctance, it would eventually be ready to take on a constitutional challenge to state segregation laws and the separate-but-equal doctrine itself.[16]

As a result of this broader scope of consideration, the decisions in *McLaurin* and *Sweatt* proved together to be a precursor to the now seemingly inevitable challenge to school segregation as a whole. On June 7, 1952, almost exactly two years after the decisions in *McLaurin* and *Sweatt*, the Supreme Court announced that it would begin hearing arguments the following December regarding challenges to state school segregation laws. In *Brown v. Board of Education*,[17] the Court reviewed the holdings of four state courts—those of Delaware, Kansas, South Carolina, and Virginia—and the District of Columbia, and considered once again the issue of whether segregation in schools based on race served to deny the members of the minority group involved equal opportunity in education.[18] This time the schools involved were the local public school systems in each state, a more far-reaching issue than had ever before come before the Court in the area of equal opportunity in education. Each case involved the denial of admission of black students to public schools attended by whites, under state laws either permitting or requiring the segregation of a school system based on race.[19] The Court's consolidation of these state cases was an even more forceful statement that it had begun

to see the civil rights issue of equal opportunity in education as being a broad one that needed to be addressed on a national basis. The Court had gone about as far as it could see fit in deciding *McLaurin* and *Sweatt*, but now it seemed prepared to enforce the "equal" part of the separate-but-equal doctrine, which theoretically would require an impossible investment by the states in building public elementary and secondary schools, universities, law schools, medical schools, etc., for black students that were truly equal in quality and experience to those that already existed for whites, or admit black students to the latter.[20]

In *Brown*, the Court held that segregation of blacks and whites in public schools represented a denial of equal protection under the law, as guaranteed by the Fourteenth Amendment, and that separation of educational facilities according to the factor of race led to inherently unequal school systems.[21] In stating that the separate-but-equal doctrine had no place in the field of public education, the Court decided emphatically that separate educational facilities were inherently unequal, eventually leading some commentators to note the impact of this holding by calling the *Brown* opinion the most important decision by the Supreme Court of the United States in the twentieth century.[22] This landmark decision, clearly applicable to public school systems in all states and not just one isolated state, as was previously the situation in decisions in civil rights matters issued by the Supreme Court, represented the kind of radical change that potentially could lead to violent reactions in the states that continued to foster segregation based on race, as resistive to this kind of interference in their culture as these states were. As incapable as the states were to spend the money necessary to build separate educational facilities for blacks that were truly equivalent to those of whites, and, more problematically, as

resistant to the very concept of providing equal opportunity to blacks as many states were, the states now had to resort to whatever means necessary to thwart the effects of the *Brown* decision. Those means included not only official state governmental acts that were designed to stand in the way of federal mandates, which might lead to violence of a broad scale akin to the severe actions of the Civil War, but also violence inflicted by individuals upon individuals, i.e., by bigoted whites upon blacks, for no other reason than racial hatred.

Almost immediately the impending resistance to the *Brown* decision by the South was evident. Within months, a state judged named Tom Brady, who lived in a soon-to-be-infamous town called Brookhaven, Mississippi, wrote a book entitled *Black Monday*, the title referring to May 17, 1954, the date on which the Supreme Court issued its holding in *Brown*.[23] Regarded as the classic writing of segregationist propaganda at the time, Brady's book spread throughout the South, condemning as it did all forms of integration between blacks and whites.[24] In his book, Brady wrote that whites in the South would never accept the concept of social integration with blacks.[25] The signs were clear that the South had no intention of quietly going about abiding by the law of desegregation and integration as put forth by the federal government.

Voting Rights

At the same time that the law was dramatically changing and potential violence was brewing in the area of equal educational opportunity for all people, tangible individual violence was coming to the fore over another civil rights issue: that of voting rights for black people. As a result of the actions of states formerly a part of the

Confederacy, between 1890 and 1910 African-Americans had generally lost their voting rights when these states amended their constitutions and enacted laws designed to discriminate against black voters.[26] As a result, Southern black people began to be denied the right to vote, either outright or as a result of burdensome regulations that prevented blacks from successfully registering to vote.[27] The Southern states successfully carried out their discrimination agenda for many years after this, with little help from the federal government such that, by 1940, estimates showed that only about five percent of African-Americans were able to exercise a right to vote in the eleven former Confederate states.[28] For decades, and despite years of lawsuits launched by the NAACP in pursuit of voting rights for blacks, favorable decisions by the courts had been circumvented routinely as local political organizations in the Southern states found ways to subvert, avoid, and/or defy these rulings, in conjunction with the use by private citizens of tactics of intimidation and violence.[29] Given the lack of a national platform for the countless incidents of racial violence with regard to voting rights for blacks, these practices continued without avenues for justice in the states and without federal government intervention. It wasn't until 1955, when further physical violence related to the racially-charged issue of voting rights converged with a pure hate crime of horrific proportions, that a national platform finally emerged, and set in motion the political process that engendered the radical change that would come about during the period known for the dramatics of its Civil Rights Movement.

As the Leadership Conference on Civil Rights began to lobby President Eisenhower, Congress, and the general public for action on voting rights, two black Mississippi men were murdered because of their involvement in voter registration

activity.[30] In May of 1955, local NAACP representative George Washington Lee, who had worked hard to register ninety-two blacks as voters, was murdered on a downtown street in Belzoni, Mississippi.[31] Lee's crime was that, when the local whites ordered him to remove the names of the registered blacks from the books, he refused, insisting that blacks had the right to vote.[32] Lee's courage in standing up for what he believed in pursuit of civil rights, in defiance of the social order in the South, led directly to his murder. Then, three months later, Lamar Smith, a black man who was in the midst of a campaign to increase voting by blacks through the mechanism of absentee ballots, was murdered on the courthouse lawn in Brookhaven, Mississippi.[33] This was the site of the office of Judge Tom Brady, who had published his book *Black Monday*, noted above, only a year earlier. Various civil rights activists gathered information on these two cases and submitted it to the FBI, as had been done previously in many similar cases involving the murders of black citizens in the South, but the FBI merely turned the information over to state authorities, who took no action.[34]

Worldwide Exposure of Hate Crimes

Then, in what can only be described as a pure hate crime based on racial prejudice, on August 28, 1955, a fourteen-year old boy from Chicago named Emmett Till was kidnapped, tortured, and brutally murdered for having whistled at a white woman in a town called Money, Mississippi.[35] The most celebrated racially-motivated lynching of the decade of the fifties,[36] this murder is widely considered to be the spark that ignited what is now referred to as the modern Civil Rights Movement.[37]

When the news of these the murders of the two civil rights workers and Emmett Till spread across the country, America wanted answers. In the previous 75 years, over 500 black people had been murdered in the state of Mississippi, most of them for allegedly associating with white women in some way,[38] and yet no national notice had been taken of these murders. Because the murders of Lee, Smith, and especially Till were given national attention, however, suddenly the focus was on injustice to black people, and on the state of Mississippi as being representative of the South. This reaction was magnified by the decision by Emmett Till's mother, Mamie Till Mobley, to hold an open-casket viewing of her son's grotesquely disfigured body at the funeral ceremony, so that the world could see what hatred based on racial prejudice had done to her son.[39] Because of the national exposure of this case, and the fact that *Jet* Magazine published photos of Emmett Till's disfigured face and body, and because the location of the funeral was in what was then the country's second largest city, tens of thousands of people attended Till's funeral and witnessed the state of his body.[40] The net effect of this savage murder, on the heels of the murders of the two voting-rights activists, was that political pressure to take action was put upon the federal judiciary, legislature, and the Presidency that had never been put upon these governmental entities before. Finally, the efforts of civil rights activists had become front-page news all over the country.[41]

Despite these pressures, however, neither Eisenhower's administration nor the federal judiciary took any action with regard to Till's murder. Medgar Evers, who would eventually become one of the most famous civil rights activists of his time, was Field Secretary for the NAACP in Mississippi at the time of Till's murder. Evers wrote a memo to the Director of NAACP Branches in New York, Gloster B. Current, two days after

Till's murder, urging him "to get the FBI on the case," in the hopes of obtaining justice.[42] This memo sparked other communications that went directly to the Director of the FBI at the time, J. Edgar Hoover, formally requesting that he launch an investigation, arguing that the case fell under federal jurisdiction because Emmett's Till's civil rights had been violated.[43] Hoover, who was thought to be someone who was no friend to the Civil Rights Movement and who generally regarded civil rights activists with suspicion, wrote to Attorney General Herbert G. Brownell on September 6, 1955, acknowledging that considerable pressure was being generated by various news organizations on the federal government to take action in the matter of Emmett Till's kidnapping and murder.[44] In Hoover's memo, however, he noted that he and the Chief of the Civil Rights Section of the FBI's Criminal Division, A. B. Caldwell, did not view the facts of the Emmett Till case to constitute a violation of the existing Civil Rights Statute nor the Federal Kidnapping Statute, as the alleged actions were taken by a group of private citizens against a private citizen, and thus were a state law matter.[45]

By late September, two persons, Roy Bryant and J. W. Milam, had been charged with the murder of Emmett Till, tried, and acquitted by a jury in a Mississippi court, spawning a public outcry over what was viewed as a gross miscarriage of justice.[46] This outcry only intensified when *Look* magazine published the confessions to the killings by the defendants in its January 1956 issue. The story in *Look* was so sensational that it spread throughout the world, and was translated into every major language.[47] The effect of the microscope of the world being focused squarely on the United States in this killing cannot be overestimated. The actions of the state of Mississippi were suddenly being attributed to the whole of the United States by other nations as a result of this worldwide

coverage. As reflected by once-Mississippi Governor William Winter (who served his term from 1980 to 1984), "The Till Case held the whole system up for inspection by the rest of the country and by the rest of the world. It was the beginning of the focusing on the problems between the races in the Deep South that culminated in the ultimate Civil Rights battles of the … rest of the 50's and … into the 60's."[48] The effect of this focus was to give much greater motivation to politicians to find a solution. Thus, while once again no justice had been extracted in a state case of racially-motivated murder, progress had been made, as formal dialogue had begun on the use of federal civil rights law for the purpose of pursuing justice in such cases. In addition, another factor was inevitable: As the activists and the general public moved closer to achieving tangible results in pursuit of their goals with regard to civil rights, more violence was brewing.

The Standoff at Little Rock

In February of 1956 a young attorney named Wiley Branton, one of a small number of black lawyers in the Southern states who handled cases involving civil rights issues, represented thirty-three African-American high school students in a suit against the Little Rock, Arkansas, School Board over the Board's failure execute a court-approved desegregation plan per the Supreme Court's decision in *Brown*.[49] Branton had grown up in Pine Bluff, Arkansas, where he had experienced segregation first-hand, having been barred from studying at the schools attended by whites; having been required to sit in the balcony when going to the movies; and having been unable to dine with his family in restaurants owned by whites.[50] He had also experienced first-hand the kind of discrimination that his clients in his case were experiencing, himself having been barred

from attending the all-white University of Arkansas solely because of his race.[51] Knowing that restrictions like these were mandated by both state and federal laws that had been enacted by elected white legislators, Branton felt strongly that one path to justice for blacks was through the exercising of their right to vote.[52] This realization led to Branton's deciding to join the NAACP upon the completion of his term of service in the U.S. Army in 1946, and to his becoming involved, as an ordinary citizen, in civil rights efforts, including those related to voting rights.[53]

After one of Branton's friends, fellow war-veteran Silas Hunt, became the first black graduate of the University of Arkansas School of Law, Branton also decided to become a lawyer, eventually graduating from the same law school in 1953.[54] Branton's intelligence and passion enabled his early success as a lawyer, such that he was selected to handle the landmark case of *Cooper v. Aaron*[55] on behalf of the thirty-three African-American high-school students less than three years after he had started practicing law.[56] The chance to argue the case presented an opportunity for another landmark moment in the course of civil rights history, as the *Brown* decision was being directly defied by a state government, and it would soon be up to the Court to enforce its own law. However, between the time of the filing of the lawsuit against the Little Rock Board and the eventual Supreme Court holding in the case, local resistance became so severe that a federal constitutional crisis ensued, testing not only the decision in *Brown* but also the federal government's authority over the states.[57]

On September 2, 1957, after the issuance of an order by the United States District Court for the Eastern District of Arkansas that high schools in Little Rock be integrated, Arkansas governor Orville Faubus sent the state National Guard to the high school which

blacks were prepared to attend, to prevent them from integrating the schools.[58] This act by the state of Arkansas was in clear defiance of federal orders. On September 4, 1957, nine black students attempted to enter the high school in Little Rock, and were forcibly prevented from doing so by the Arkansas National Guard, whose members blocked the path of the black students on this day and on every day for the following three weeks.[59] Thus, due to the actions of the governor of the state, as backed by the state legislature, and due to the threat of mob violence that directly accrued to these actions of the state government, the black students were unable to attend the school as required by federal law.[60]

After the filing of a petition by United States Attorney General Brownell, however, on September 20, 1957, the District Court enjoined the Arkansas National Guard and Governor Faubus from further attempting to prevent the Little Rock board from obeying the court's order.[61] Then on the next school day, Monday, September 23, the black children were able to enter the high school under the protection of various members of the Arkansas State Police and the Little Rock Police Department.[62] By later that morning, however, a large and unruly crowd had gathered outside the high school, causing the police officers to remove the black students from the school.[63] Upon the orders of the district court to again admit the black students, Faubus ordered all schools in Arkansas closed for one year.[64] The combined effects of the actions of the state government and of private citizens were working to effectively bar the black students from taking advantage of a federal ruling in their favor.

This success was to be short-lived, though. On September 25, based upon Attorney General Brownell's legal advice, President Eisenhower ordered federal troops

to Little Rock to ensure that the order of the court was enforced.[65] Finally, amidst the threat of mass violence, the admission of the black students to the high school in Little Rock was effected.[66] A potential standoff of the federal government against the government of a Southern state served to recall the Civil War of almost 100 years earlier. Governor Faubus's attempt to assert local authority over a federal mandate was perceived at that time as being the most direct test of the validity of the Constitution since the end of the Civil War.[67] However, lest the federal troops have to risk face-off against a state militia, the President used his authority to federalize the Arkansas National Guard, and this order was carried out by the National Guard, thus forcing the Guard to follow federal orders and to help implement the integration, instead of standing in its way.[68] The federalized National Guardsmen remained at the high school from November 27, 1957, replacing the federal troops until the end of the school year.[69] Although a violent interaction between these two governments was averted, the nation had come dangerously close to confrontation within itself, and the possibility of violence between the troops and the citizenry was tangible. During this action, black students had to be escorted into classes by armed troops.[70] Though no violence ensued, the threat of it was prevalent, and the resistance to federal orders by the state of Arkansas, joined in sympathy by other Southern states, was too disturbingly reminiscent of the Civil War, as the country was once again galvanized over the issues of civil rights.

The Political Process and Civil Rights

Despite the highly charged political atmosphere amongst the citizens of the United States, however, progress continued. On September 9, 1957, President

Eisenhower signed into law the Civil Rights Act of 1957, the initiation of which had come about as a result of wanting to garner the political support of black voters nationwide in the previous year's election.[71] The Act had begun as a bill that included Constitutional protection for those who were placed in physical danger for exercising their constitutional rights in a broad sense, but eventually passed only as a measure that served to protect from violence only those people who were attempting to vote in a federal election.[72] NAACP lobbyist Clarence Mitchell charged that the elimination of the broader effects of the Act sent a message to prejudiced public officials and common thugs alike that they could not only continue but increase their campaign to deny African-American citizens their constitutional rights.[73] Despite the shortcomings of the Act, however, important protections did come about in the area of voting rights as a result of it.[74]

Then, on September 12, 1958, the Supreme Court issued its decision in *Cooper v. Aaron*, ordering the Little Rock School Board to implement the integration plan immediately.[75] In its ruling, the Court stated that the constitutional rights of African-American children not to be prevented from attending public schools because of their race cannot be sacrificed by yielding to violence and disorder based upon actions of the state government, including its governor and the legislature.[76] Thus, the Court stated, social order may not be preserved through the deprivation of the constitutional rights of black people to attend public schools based on race, where the obstacles to the preservation of such rights is the result of state governmental action in the first place, and can also be brought under control by the action of the state.[77] Further, the Court reiterated that the federal judiciary acts supremely in the enforcement of the Constitution of the

United States.[78] Wiley Branton and his thirty-three clients had taken their case before the Supreme Court of the United States, and they had won.

The FBI Gets Involved

Similar events in other states would continue in the battle by civil rights activists for equal opportunity in education under the Fourteenth Amendment, with violence threatened but narrowly averted. However, racial hate crimes, particularly in the Southern states, continued. On April 24, 1959, a black man named Mack Charles Parker, who had been arrested and sent to jail in Poplarville, Mississippi, for allegedly raping a white woman, was dragged out of the jail and murdered by a group of hooded men.[79] Though there was no ostensible link between this murder and the civil rights issues of equal opportunity in education or voting rights, local newspapers made the connection by editorializing that the murder served to reinforce the idea that force should not be used to implement revolutionary changes in social custom, because every such action would produce an equal and opposite reaction.[80] The implication was clear: that the citizens of the South could be expected to continue to take this kind of retaliatory action against blacks, as long as blacks were going to continue to use the courts to gain justice on the civil rights issues that they had been pressing.

The FBI entered the case upon the request of Mississippi Governor J.P. Coleman, and because the case was initially a kidnapping case, as Parker's body was not found until ten days after his disappearance.[81] This time, local authorities took no action at all, neither arresting nor charging anyone in the case, and, despite an investigation by the FBI which pointed to the probable complicity of a local law enforcement official, no federal

charges were filed against anyone, either.[82] The FBI, which had entered Poplarville on the day after Mack Charles Parker disappeared,[83] and although it had determined how the murder had been carried out; how many men were responsible for it; and had even obtained confessions from some of the killers, had acted on an assumption that Parker had been carried across state lines; this assumption, if true, would have meant that the actions of the perpetrators amounted to a federal crime.[84] However, once the body was found on the Mississippi side of the Pearl River, the case reverted to a state case of murder, as prosecution under a federal kidnapping charge was no longer possible.[85] When the Mississippi District Attorney, Vernon Bloom, failed to act on the case, despite having the FBI report, thus showing how any judicial system could avoid invoking true justice, people saw this problem as evidence that the need existed for a federal law against racially-motivated violence.[86] In the end, the case simply served to intensify the national discussion of how to attempt to put an end to such racially motivated crimes.

More Murder in Mississippi

As federal action continued to take place in enforcement of equal educational opportunities into the decade of the 60s, the progress in the area of voting rights continued to lag behind, as evidenced by the murder of Medgar Evers. On June 12, 1963, Evers, who was still the Field Secretary of the NAACP in Mississippi and who was actively involved in championing voting rights for blacks, was shot in the back and killed by a sniper who had been lying in wait for him at his home in Jackson, Mississippi.[87] This time, a white man named Byron de la Beckwith was arrested and charged with the crime, though two trials resulted in hung juries.[88] Once again, no justice was achieved in

a state courtroom. At this point, the resistance to activism regarding voting rights for blacks seemed as strong and as effective as ever. However, the next such crime related to the voting rights issue never seemed to be too far in the future, and finally the dynamics that would cause a significant breach in the barriers to extracting justice for these crimes came together in 1964, in a case that came to be known as the *Mississippi Burning* murders.

On June 21, 1964, three civil rights workers, who had been working together on a campaign for voter registration and other civil rights work in the South, were murdered, all shot at point-blank range in the darkness of the night outside a town called Philadelphia, Mississippi.[89] Their names were James Chaney, Andrew Goodman, and Michael Schwerner. One key difference existed between this case and those of earlier kidnappings and killings in the former Confederate states: Goodman and Schwerner were white northerners. By this point in time in the South, the violent resistance to the efforts of civil rights activists had made the environment just as dangerous for whites as it was for blacks.[90] When this fact was borne out by the murders of the two white civil rights workers, the kind of sustained attention to the matter that was required in order to get the federal government to take legal action finally came about.[91] For years the United States Justice Department had withheld the protection of the federal government from civil rights activists, in part because of the uncertainty of the scope of existing federal civil rights law.[92] Although no state murder charges were ever brought by the state of Mississippi, the federal government finally invoked federal civil rights law and charged eighteen individuals with conspiracy to violate the civil rights of the victims,[93] effectively transmuting the state crime of murder into a crime that the federal government could

prosecute.[94] The case was dubbed the *Mississippi Burning* murders because that was the code name used by the FBI in its investigation of the murders.[95] In *United States v. Price*,[96] the Court held that 18 USC 241, the Federal Civil Rights Statute, which makes conspiracy to prevent free exercise of any right secured to a citizen by the Constitution a criminal offense, includes rights protected by the Fourteenth Amendment.[97] The Court also held that private persons and police officials violate 18 U.S.C. 242 when acting in concert to willfully deprive a person of a right, privilege, or immunity as secured by the Constitution, as they are then all acting under the color of law.[98] Eventually, seven of the conspirators were convicted in a federal court, while eight were acquitted and three other trials ended in hung juries.[99] While the nature of the court may have been a factor in the achievement of convictions in this case as opposed to previous state prosecutions,[100] the historical significance of the results of the trial was that federal civil rights law had finally been used and used successfully to extract justice where attempts at achieving justice in state courtrooms had failed.

Conclusion: The Beginnings of Justice in Federal Civil Rights Law

The events described above were among many that influenced the Civil Right Movement during the period known as the Civil Rights Era. Certainly Rosa Parks's refusal in 1955 to give up a seat on an Alabama bus that was reserved for white people was a landmark event in the Civil Rights Movement, engendering as it did a national focus on civil rights issues. So too did Martin Luther King's subsequent leading of a boycott of segregated buses in Montgomery, Alabama, as a result of the action by Rosa Parks. King's subsequent efforts in Birmingham, Alabama, in 1963, in which non-violent

disobedience on a mass scale led to an intensely violent police action that was witnessed by countless citizens of the country, also gave a national voice to the issues of civil rights, helping to move along the political process. In fact, this incident led directly to President John F. Kennedy's decision to introduce a major civil rights bill to Congress, a bill that became law as the Civil Rights Act of 1964.[101] Ironically, though, this Act played no part in the decision by the federal government to invoke civil rights law in the seeking of justice in the murders of blacks and civil rights activists in the South; instead, age-old civil rights statutes that had existed for decades were the legal devices employed to gain this justice.[102] Thus, they existed at every turn of the Civil Rights Movement to that point.

Some of the events discussed in detail above—such as the efforts of Wiley Branton in gaining justice through the courts in equal opportunity in education throughout the 1950s, and the murder of Mack Charles Parker in Poplarville, Mississippi in 1959—are not among the most famous when dialogue occurs about this volatile and extraordinarily productive period of civil rights advancement. However, all came about while the issues of equal access to educational opportunities and voting rights had come to the fore in the Civil Rights Movement. While these issues had long histories by the time the second half of the twentieth century was reached, the volatile period of the next fifteen years, from 1950 to 1965, with its violence and activism and reactionary violence, finally brought some tangible progress in the area of civil rights in general. Each reveal a thread that led to the enabling of the necessary political climate that finally put enough pressure on the federal government such that they all culminated in the first successful use of federal civil rights law for the purpose of extracting justice where justice could not be achieved in a state courtroom. As such, they serve to illuminate, in dramatic fashion,

how the law can and does evolve, albeit often too slowly, for the purpose of protecting the rights of all citizens of the United States of America.

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[1] Melvin I. Irofsky, *Civil Rights: Looking Back – Looking Forward: The Supreme Court and Civil Rights since 1940: Opportunities and Limitations*, 4 BARRY L. REV. 39, 40 (2003) (noting that the NAACP's strategy of attacking the "separate-but-equal" formula by showing that such accommodations were not equal did successfully lead to more equitable funding for black public schools in the South, the results were far from a the hoped-for equality; the extensive body of law and custom that kept black Americans in an inferior position with respect to white Americans remained intact).

[2] Jack Greenberg, *Brown v. Board of Education: An Axe in the Frozen Sea of Racism*, 48 ST. LOUIS L.J. 869, 881 (2004) (noting that the ability of blacks to gain admission to such schools did not materially develop until the 1960s).

[3] *Id*. (drawing the analogy that, in cases of court-ordered integration involving bus and railroad companies, one company did not view a decision against another as applicable to itself, and noting that

[4] Missouri ex. rel. Gaines v. Canada, 305 U.S. 337 (1938) (holding that the State is obligated to offer black students advantages of higher education that are substantially equal to those afforded to white students).

[5] *Id.* (noting that as an individual, black students are entitled to equal protection of the law, and that the State is required to furnish blacks students who reside within its borders the facilities for a legal education that are substantially equal to those which the State has afforded white persons, regardless of whether other black citizens are seeking the same opportunity).

[6] Jack Greenberg, *Brown v. Board of Education: An Axe in the Frozen Sea of Racism*, 48 ST. LOUIS L.J. 869, 881 (2004) (noting that immediately after the Supreme Court of the United States ordered that the admission of a black woman to the University of Oklahoma Law School of Law in 1948, a graduate school at the same university denied admission to male applicant because he was black).

[7] Jack Greenberg, *Brown v. Board of Education: An Axe in the Frozen Sea of Racism*, 48 ST. LOUIS L.J. 869, 881-882 (2004) (noting that the Texas Law School, when rejecting its black applicant, had set up a separate two-room school for him in lieu of admitting him).

[8] 339 U.S. 629 (1950) (reversing a judgment that denied mandamus to compel school officials of the University of Texas to admit the plaintiff black student to its law school).

[9] 339 U.S. 629 (1950) (stating that a new law school being opened exclusively for black students could not practically qualify as providing equal opportunity for those black students, due to substantial differences in faculty size, library facilities, faculty, etc.).

[10] 339 U.S. 637 (1950) (reversing a judgment of the United States District Court for the Western District of Oklahoma, which had did not grant the injunctive relief sought by the plaintiff, a black student seeking admission to a doctorate program at the University of Oklahoma, apparently assuming that the state would follow its holding that the university's denial of admission to the plaintiff on the basis of his race was unconstitutional; the injunctive relief sought by the plaintiff asked that his admission be ordered by the court).

[11] *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950) (holding that an Oklahoma statute requiring that black students be required to sit in class, study, and eat apart from all other students was unconstitutional).

[12] 163 U.S. 537 (1896) (holding that state laws requiring separate but equal accommodations for blacks and whites on railroad cars was not in violation of the Thirteenth Amendment, which had abolished slavery).

[13] Melvin I. Irofsky, *Civil Rights: Looking Back – Looking Forward: The Supreme Court and Civil Rights since 1940: Opportunities and Limitations*, 4 BARRY L. REV. 39, 43 (2003) (noting that the *McLaurin* case represented the first time that the Supreme Court faced directly addressed the core issue of segregation).

[14] *Id*. (noting that Supreme Court Justice Thurgood Marshall said of the Texas *Sweatt* opinion that it was replete with a road map telling the Court where to go next). *Id*. at 44.

[15] McLaurin v. Oklahoma State Regents, 339 U.S. 637, 849 (1950) (noting that it was fundamental that these two cases concern rights that are both present and personal, and that equal protection under the law cannot be achieved through an indiscriminate imposition of inequalities).

[16] Melvin I. Irofsky, *Civil Rights: Looking Back – Looking Forward: The Supreme Court and Civil Rights since 1940: Opportunities and Limitations*, 4 BARRY L. REV. 39, 43 (2003) (noting that the decisions in

McLaurin and *Sweatt* represented the first time that the Supreme Court had ordered the admission of a black student to an all white institution).
[16] Melvin I. Irofsky, *Civil Rights: Looking Back – Looking Forward: The Supreme Court and Civil Rights since 1940: Opportunities and Limitations*, 4 BARRY L. REV. 39, 43 (2003) (noting that Supreme Court Justice Thurgood Marshall said of the Texas *Sweatt* opinion that it was replete with a road map telling the Court where to go next).
[17] 347 U.S. 483 (1954) (noting that in the case out of Kansas, *Brown v. Board of Education*, Kansas law permitted but did not require segregation of schools in cities with a population of greater than 15,000; and that the defendant, the city of Topeka, had segregated its public elementary schools but not its other public schools).
[18] *Id*. (noting that segregation of students in public schools on the basis of race alone, even though all physical facilities and other factors of a tangible nature may be ostensibly equal, deprives the students of a minority group of equal opportunities in education).
[19] *Id*. (noting that, in the cases involving Kansas, South Carolina, and Virginia, the states relied on the doctrine of "separate but equal" as held in *Plessy v. Ferguson*, 163 U.S. 537 (1896).
[20] Melvin I. Irofsky, *Civil Rights: Looking Back – Looking Forward: The Supreme Court and Civil Rights since 1940: Opportunities and Limitations*, 4 BARRY L. REV. 39, 43 (2003) (noting also that, because the country had just been victorious in a World War against racism, and was finding it difficult to explain in international forums the racism that existed within its own borders, the international political climate contributed to the readiness for changes in the law).
[21] 347 U.S. 483 (1954) (holding also that the impact of segregation based on race is greater when it occurs under the sanction of law; because the policy of segregating the races is generally interpreted as denoting the minority group as inferior; and that this sense of inferiority can affect the motivation of children in learning. The Court further held that segregation under the sanction of law tends to retard mental and educational development of minority students, depriving them of benefits they would otherwise receive while attending school in a racially integrated system).
[22] Melvin I. Irofsky, *Civil Rights: Looking Back – Looking Forward: The Supreme Court and Civil Rights since 1940: Opportunities and Limitations*, 4 BARRY L. REV. 39, 43 (2003) (noting that Kenneth Karst, a nationally renowned constitutional law scholar proclaimed the *Brown* decision to be the leading authoritative symbol of the principle that the United States Constitution forbids the existence of a caste system in America).
[23] Howell Raines, My Soul Is Rested 132 (Penguin Books 1983) (1977) (noting that the courthouse in Brookhaven, Mississippi was the site of the 1955 murder of civil rights worker Lamar Smith, who had been an activist for black voter registration in that community).
[24] Id. (noting that Brady's book used blatantly racist analysis of history, regarding the black man's contribution to the Revolutionary War as being comparable to that which was provided by a "well-broken horse").
[25] Howell Raines, My Soul Is Rested 300 (Penguin Books 1983) (1977) (noting that social integration still did not exist, not only in Southern towns and cities such as Jackson, Mississippi and Atlanta, Georgia, but also in Northern cities such as Detroit, Michigan).
[26] Judith Kilpatrick, *Wiley Austin Branton and the Voting Rights Struggle*, 26 U. ARK. LITTLE ROCK L. REV. 641, 642 (2004) (noting that it took over sixty years for African-American voters who had lost their voting rights to fully regain them).
[27] *Id*. (noting that even those black people who were educated were generally prevented from registering as a result of the laws enacted by the former Confederate states).
[28] *Id*. (noting that, finally, in 1944, the Supreme Court of the United States issued a decision in *Smith v. Allwright*, holding that the state of Texas violated the constitutional rights of blacks by denying them participation in the selection of candidates for the Democratic Party, reversing an earlier decision which had ruled that political parties, as private associations, could not be ordered to admit those people to which they had denied admission).
[29] *Id*. (noting that thousands of people, most of them black, suffered violence and death as they labored and fought to gain an unfettered right to vote).
[30] *Id*. (noting that the convergence of three factors—the lobbying by the Leadership Conference on Civil Rights; the well-publicized violence against blacks as a result of the murders of two black voting-rights activists and a teenager named Emmett Till; and the perceived need on the part of the Republican Party to

garner more support for President Eisenhower in the months leading up to the 1956 Presidential election, led to the proposal of a civil rights bill by the Eisenhower administration in the months prior to the election).

[31] Clay S. Conrad, *Symposium: Juries: Arbiters or Arbitrary?: Redefining the Role of the Jury: Scapegoating the Jury*, 7 CORNELL J. L. & PUB. POL'Y 7, 29-30 (1997) (noting that the local sheriff involved in the case, Ike Shelton, never arrested anyone in the murder of Lee, first stating that lead pellets found in Lee's mouth were dislodged dental fillings, then later suggesting that Lee had been killed by "jealous niggers").

[32] Howell Raines, My Soul Is Rested 132 (Penguin Books 1983) (1977) (noting that Lee had been ambushed, and that although his face had been blown apart, his body was viewable after his death in an open casket).

[33] Clay S. Conrad, Symposium: Juries: Arbiters or Arbitrary?: Redefining the Role of the Jury: Scapegoating the Jury, 7 CORNELL J. L. & PUB. POL'Y 7, 29-30 (1997) (noting that Medgar Evers, the NAACP Field Secretary at the time, was assigned to investigate the murders of Lee and Smith, and that he was later murdered himself).

[34] Howell Raines, My Soul Is Rested 132 (Penguin Books 1983) (1977) (noting that, although Smith had been killed on a Saturday afternoon in the courthouse square, and yet no one came forward as a witness, and that this type of indifference to the law with regard to the killings of blacks was happening throughout the South at this time).

[35] Online NewsHour, *The Murder of Emmett Till*, January 20, 2003, http://www.pbs.org/newshour//bb.entertainment/jan-june03/till_1-20.html (noting that Emmett Till was on a trip to visit his uncle in Mississippi when he was abducted, and that his abductors did not try to hide their identities by wearing masks or hoods).

[36] Howell Raines, My Soul Is Rested 132 (Penguin Books 1983) (1977) (noting that although the white men who murdered Till were maddened over the alleged fact that Till had whistled at a white woman, Till had a speech impediment which caused him to issue a whistling sound when he tried to enunciate certain words).

[37] *Id*. (noting that when Emmett Till's mother described the moment when she sent her only son off on a vacation trip to Mississippi, so he could spend the summer months with his uncle, she asked her son, "How do I know I'll ever see you again?").

[38] The American Experience, The Murder of Emmett Till, Transcript, 2003 http://www.pbs.org/wgbh/amex/till/filmmore/pt.html (noting that at the time in the South white women were placed on a pedestal and an irrational fear existed that every black man was ready to rape every white woman he encountered, if given the opportunity).

[39] *Id*. (noting that Emmett Till's body was so badly mutilated that he had to be identified by a ring on his finger).

[40] *Id*. (noting that people had been lynched by other citizens for one hundred years, but the Emmett Till case enabled people from all over the country and the world to see with their own eyes the effects of such crimes first-hand).

[41] Judith Kilpatrick, *Wiley Austin Branton and the Voting Rights Struggle*, 26 U. ARK. LITTLE ROCK L. REV. 641, 642 (2004) (noting that it was this effect—the fact that civil rights efforts were becoming national news—that formed the background for Wiley Branton, the third black graduate of the University of Arkansas School of Law, to develop his practice in the area of civil rights law, leading to his representation of the plaintiffs in the landmark 1956 case of *Cooper v. Aaron*, which ultimately led to the desegregation of the Arkansas school system).

[42] The American Experience, The Murder of Emmett Till, Primary Sources, Memo from Medgar W. Evers, Field Secretary, NAACP, Mississippi, to Gloster B. Current, Director of Branches, NAACP, New York, August 30, 1955, http://www.pbs.org/wgbh/amex/till/filmmore/ps_reactions.html (noting that one man had already been arrested by the local sheriff in the case, and another was being sought).

[43] The American Experience, The Murder of Emmett Till, Primary Sources, http://www.pbs.org/wgbh/amex/till/filmmore/ps_reactions.html (highlighting the reactions of ordinary citizens and various officials of private organizations and the government to the murder of Emmett Till).

[44] The American Experience, The Murder of Emmett Till, Primary Sources, Memo from J. Edgar Hoover, Director, Federal Bureau of Investigation (FBI), to Herbert G. Brownwell, Attorney General, United States,

September 6, 1955, http://www.pbs.org/wgbh/amex/till/filmmore/ps_reactions.html (describing the facts of the case and that two individuals had been arrested by the local sheriff's office in the matter).
[45] *Id*. (also noting that the FBI, on the instructions of its Criminal Division, took no investigative action in a recent case in Mississippi in which white youths were beaten and stabbed by black youths).
[46] The American Experience, The Murder of Emmett Till, Primary Sources, http://www.pbs.org/wgbh/amex/till/filmmore/ps_reactions.html (highlighting the reactions of ordinary citizens and various officials of private organizations and the government to the murder of Emmett Till).
[47] Howell Raines, My Soul Is Rested 389 (Penguin Books 1983) (1977) (noting that publishers from Italy and France paid record prices for the rights to the story's translation and publication).
[48] The American Experience, The Murder of Emmett Till, Transcript, 2003, http://www.pbs.org/wgbh/amex/till/filmmore/pt.html (noting also that journalist Rose Jourdain commented that "everybody knew we were under attack, and that attack was symbolized by the attack on a 14-year-old boy.) *Id*.
[49] Judith Kilpatrick, *Wiley Austin Branton and the Voting Rights Struggle*, 26 U. ARK. LITTLE ROCK L. REV. 641, 642 (2004) (noting that the general segregation that existed at the time in the South limited Branton's law practice primarily to cases involving members of his own race).
[50] *Id.* at 644 (noting that, when Branton joined the U.S. Army in 1943, in defense of his country during World War II, he encountered segregation even in the ranks of the Army).
[51] *Id.* (noting that Branton, ultimately a graduate of Arkansas AM & N College, had applied to the University of Arkansas as part of a plan to sue for admission if he was denied; Branton did not execute the plan, even though he was denied admission).
[52] *Id*. (noting that Branton's military experience had politicized him, and when he left the Army he became determined to work to implement change in the South).
[53] *Id*. (noting that Branton eventually participated in a voter registration drive that landed him in jail for violating an Arkansas state statute that prohibited using sample ballots for the purpose of teaching people how to vote).
[54] *Id*. (noting that when Branton opened a law office upon his graduation from law school in 1953, he was asked by the NAACP to serve as Assistant Special Prosecutor in a case involving charges against a white man for raping a seven-year-old African-American girl, which resulted in a conviction; and noting that the fact that such an inexperienced lawyer would handle a case of this magnitude was an indication of both the dearth of available legal representation in these matters and Branton's legal prowess).
[55] 358 U.S. 1 (1958) (considering a petition by the School Board of Little Rock, Arkansas to postpone the implementation of a desegregation plan for public schools on the grounds that extreme public hostility made such implementation impossible).
[56] Judith Kilpatrick, *Wiley Austin Branton and the Voting Rights Struggle*, 26 U. ARK. LITTLE ROCK L. REV. 641, 642 (2004) (noting that the events surrounding this case in Little Rock, Arkansas, which were covered extensively by the media across the nation, enhanced Branton's reputation, particularly amongst blacks).
[57] *Id*. (noting that the subsequent events in Little Rock gained intensive national media coverage).
[58] John F. Romano, *State Militias and the United States: Changed Responsibilities for a New Era*, 56 A.F. L. REV. 233, 246 (2005) (noting that, seven years later, Governor George Wallace of Alabama ordered that state's National Guard to prevent the integration of the University of Alabama at Tuscaloosa).
[59] Cooper v. Aaron, 358 U.S. 1, 11 (1958) (noting that on September 2, 1957, two days earlier, the Governor of Arkansas had labeled the high school "off limits" to black students, and had placed the Arkansas National Guard at the school to enforce this action).
[60] *Id*. at 4 (noting that the district court, in finding that such events were resulting in bedlam, chaos, tensions, and turmoil in the schools, thereby disrupting the educational process, granted the request of the petitioners that their desegregation plan be suspended until December of 1960, and that the black students be sent back to their segregated schools).
[61] *Id*. at 13 (noting also that the Attorney General entered the case at the request of the court).
[62] *Id*. (noting that by this time the Arkansas National Guard had been withdrawn from the school).
[63] *Id*. (noting that, prior to removing the black students from the school on that day, the police officers had had difficulty controlling the crowd that had been demonstrating at the high school).
[64] Margaret M. Russell, *Cleansing Moments and Retrospective Justice*, 101 MICH. L. REV. 1225, 1232 (2003) (noting that the governor's defiance of federal law had encouraged a mob to surround the school,

with angry whites jeering the students and cheering on the troops that were preventing the students from entering the school).
[65] John F. Romano, *State Militias and the United States: Changed Responsibilities for a New Era*, 56 A.F. L. REV. 233, 246 (2005) (noting that, in *Sterling v. Constantin*, the Supreme Court held that a governor may only deploy the state militia in furtherance of the law, and not to undermine legitimate federal mandates).
[66] Cooper v. Aaron, 358 U.S. 1, 11 (1958) (noting that regular U.S. Army troops continued to be present at the high school until November 27, 1957).
[67] Margaret M. Russell, *Cleansing Moments and Retrospective Justice*, 101 MICH. L. REV. 1225, 1232 (2003) (noting that the initial defiance of Faubus and the state of Arkansas to the federal mandate to desegregate the Arkansas school system brought about an emergency session of the Supreme Court in August of 1958).
[68] *Id*. (noting that, when President Kennedy federalized the Alabama National Guard in 1963, the Guard supported federal officials in confronting Governor George Wallace at the University of Alabama, enforcing a federal court's order to integrate the university).
[69] *Id*. at 12 (noting that eight of the nine black students continued to attend the school until the end of the school year).
[70] Judith Kilpatrick, *Wiley Austin Branton and the Voting Rights Struggle*, 26 U. ARK. LITTLE ROCK L. REV. 641, 642 (2004) (noting that the intense national media coverage of these events gave the attorney Wiley Branton a national reputation, which later helped him in his work with the Voter Education Project, designed to educate and register black voters in the South).
[71] *Id*. at 655-656 (noting that the law had been substantially reduced in scope from the time of the creation of the bill that engendered it and the passage of the law in its final form, and that a portion of the bill that would have given the Department of Justice the authority to issue court injunctions for civil rights violations was eliminated).
[72] Michael R. Belknap, Federal Law and Southern Order, Racial Violence and Constitutional Conflict in the Post-Brown South 44 (University of Georgia Press 1987) (noting that the relief provided was that the Attorney General could file civil lawsuits on behalf of the victims).
[73] *Id*. (noting that Roy Wilkins, Mitchell's superior, pointed to the drama in Little Rock, Arkansas, as evidence of the type of required protection that the new law had failed to provide).
[74] *Id*. (noting that the portion of the bill that was abandoned by the Eisenhower Administration had been viewed by Southerners as being designed to enforce school desegregation).
[75] *See*, generally, Cooper v. Aaron, 358 U.S. 1 (holding that delay in any guise for the purpose of denying the constitutional rights of the plaintiff students by excluding them from the previously segregated schools was not to be allowed, and that only prompt compliance would constitute good faith compliance with the Court's decision in *Brown*).
[76] *Id*. at 15 (noting that the Court had 41 years earlier opined, in Buchanan v. Wiley, that segregation could not be used as an excuse to preserve the public peace). Buchanan v. Warley, 245 U.S. 60, 81.
[77] *Id*. (noting that the record in the case clearly established that the school board's difficulties in executing to the court-approved desegregation plan was the direct product of the state action taken).
[78] *Id*. at 18 (noting that it then follows that the Court's interpretation of the Fourteenth Amendment as enunciated in Brown is "the supreme law of the land."). *Id*.
[79] Margaret M. Russell, *Cleansing Moments and Retrospective Justice*, 101 MICH. L. REV. 1225, 1233 (2003) (noting that by the end of the 1950s, civil rights legislation, though ineffectual, had begun to emerge from the federal government).
[80] Jack Greenberg, *Brown v. Board of Education: An Axe in the Frozen Sea of Racism*, 48 ST. LOUIS L.J. 869, 881 (2004) (quoting comments in the combined newspaper issue of Jackson, Mississippi's Daily News and Clarion Ledger of April 26, 1959).
[81] Michael R. Belknap, Federal Law and Southern Order, Racial Violence and Constitutional Conflict in the Post-Brown South 44 (University of Georgia Press 1987) (noting that ten days after Mack Charles Parker was kidnapped and disappeared, FBI agents and Mississippi Highway Patrolmen pulled found his body in the Pearl River, nearby to Bogalusa, Louisiana).
[82] Margaret M. Russell, *Cleansing Moments and Retrospective Justice*, 101 MICH. L. REV. 1225, 1233 (2003) (noting that as the 1950s came to an end, violence inflicted by white supremacists continued to flourish in the South).

[83] Interview with James J. Rogers, Special Agent of the FBI, October 21, 2006 (who confirmed that he had been assigned to the case immediately by J. Edgar Hoover, then Director of the FBI, and had entered Poplarville on April 25, 1959, and had begun interviewing law enforcement officials and local citizens on that day, which he continued to do for the next several days, in a kidnapping investigation, until the body of Mack Charles Parker was found, at which point the case became a state murder investigation , and he was withdrawn from the case).
[84] Michael R. Belknap, Federal Law and Southern Order, Racial Violence and Constitutional Conflict in the Post-Brown South 44 (University of Georgia Press 1987) (noting that the federal crime involved would have been a violation of the Lindbergh Act, under a rebuttable presumption that a kidnap victim had been taken across state lines).
[85] *Id*. (noting that, because the FBI had apparently learned that a deputy sheriff might have been implicated in the case, at least inasmuch as he might have left Parker unprotected, thus enabling a mob to seize him, a federal charge might have been possible against the deputy sheriff, but it was never pursued; instead the FBI simply turned over its evidence to Governor Coleman).
[86] *Id*. (noting that Roy Wilkins sent telegrams to the state judiciary, calling the tragic killing of Parker a demonstration of the necessity for stronger federal civil rights laws for the purpose of protecting the rights and lives of citizens in cases in which state and local authorities are either unwilling or unable to do so).
[87] Douglas O. Linder, *Bending Toward Justice: John Doar and the "Mississippi Burning" Trial*, 72 MISS. L.J. 731, 734 (noting that dignitaries such as Martin Luther King, Jr. and Roy Wilkins attended Evers's funeral in Jackson, Mississippi).
[88] Clay S. Conrad, *Symposium: Juries: Arbiters or Arbitrary?: Redefining the Role of the Jury: Scapegoating the Jury*, 7 CORNELL J. L. & PUB. POL'Y 7, 29-30 (1997) (noting that de la Beckwith was eventually convicted of the murder in a third trial that took place in 1994).
[89] Margaret M. Russell, *Cleansing Moments and Retrospective Justice*, 101 MICH. L. REV. 1225, 1244 (2003) (noting that an earlier attempt on the life of one of the victims, Michael Schwerner, had been made as a result of his participation in a black boycott of white-owned businesses and a voter registration drive in Meridian, Mississippi).
[90] Anne Moody, Coming of Age in Mississippi 337 (Bantom Dell 2006) (1968) (noting that during this period of time, it had become "too dangerous for white civil rights workers to be caught in [her home town of] Canton [Mississippi] after dark.").
[91] Margaret M. Russell, *Cleansing Moments and Retrospective Justice*, 101 MICH. L. REV. 1225, 1244 (2003) (noting that an earlier attempt on the life of one of the victims, Michael Schwerner, had been made as a result of his participation in a black boycott of white-owned businesses and a voter registration drive in Meridian, Mississippi) (noting that Michael Schwerner's widow, Rita Schwerner, stated that she personally suspected that if the lone black victim, James Chaney, had been killed alone, the case would have gone unnoticed).
[92] Michael R. Belknap, *Federal Law and Southern Order, Racial Violence and Constitutional Conflict in the Post-Brown South* 163 (University of Georgia Press 1987) (noting that, at the same time that the federal government launched its federal prosecution of the defendants in the Mississippi Burning murders, it also filed charges of civil rights violations in another murder case, that of Lemuel Penn of Washington, DC, who was murdered in the state of Georgia).
[93] Margaret M. Russell, *Cleansing Moments and Retrospective Justice*, 101 MICH. L. REV. 1225, 1244 (2003) (noting that the executive director of the Mississippi Freedom Washington office lamented the fact that it took this kind of dynamic to bring the eyes of the nation on justice in the swamps of Mississippi).
[94] Michael R. Belknap*, Federal Law and Southern Order, Racial Violence and Constitutional Conflict in the Post-Brown South* 163 (University of Georgia Press 1987) (noting that two-and-a-half months before the FBI made the arrests of the three missing Civil Rights workers in Philadelphia, Mississippi, the Justice Department had already assigned eight lawyers to the case, including one from the Civil Rights Division).
[95] *Id*. (noting that the FBI originally developed this code name for its investigation of the fire bombing of black churches in Mississippi in the summer of 1964, one of which had been the scene of an earlier plot to kill Michael Schwerner).
[96] 383 U.S. 387 (1966) (considering the issue of whether the defendants, by conspiring to release the three civil rights workers from jail for the purpose of intercepting them and killing them, violated 18 U.S.C. 241).

[97] *Id*. (noting that the Federal Civil Rights Statute also extends to conspiracies engaged in by officials, either alone or jointly with private individuals).
[98] *Id*. (noting the conduct of private individuals, when acting in willful participation with the state or its agents, sufficiently meet the elements of violating 18 U.S.C 242).
[99] Michael R. Belknap, *Federal Law and Southern Order, Racial Violence and Constitutional Conflict in the Post-Brown South* 163 (noting that half of the eighteen defendants were still alive in 2002, and that there is a movement to reopen the case).
[100] Clay S. Conrad, *Symposium: Juries: Arbiters or Arbitrary?: Redefining the Role of the Jury: Scapegoating the Jury*, 7 CORNELL J. L. & PUB. POL'Y 7, 29-30 (1997) (noting that, in response to a question by a defense attorney, the federal judge stated that he would not allow the trial to be turned into a farce).
[101] David Benjamin Oppenheimer, *Kennedy, King, Shuttlesworth, and Walker: The Events Leading to the Introduction of the Civil Rights Act of 1964*, 29 U.S.F. L. REV. 645, 646 (noting that King's non-violent campaign lent the Civil Rights Movement political legitimacy, resulting in the shaping of a national political consensus on segregation). *Id*. at 646.
[102] *See*, generally, United States v. Price, 383 U.S. 387 (1966) (holding that the federal civil rights statute is not restricted to rights conferred by the Federal Government, and that it must be given as broad an interpretation as its language allows).