

THE WORK OF THE CIVIL RIGHTS DIVISION IN ENFORCING VOTING RIGHTS UNDER THE CIVIL RIGHTS ACTS OF 1957 AND 1960*

JOHN DOAR**

In 1957 Congress created the Civil Rights Division (Division) as part of the Civil Rights Act of 1957.¹ During the first two and one-half years of its life, the Division moved slowly. As late as February 1960 the Division had not yet begun to act effectively to bar racial discrimination in voting.

In 1960 the Division faced extraordinary obstacles. Distinguished constitutional lawyers believed that, under the Constitution, the federal government had no power to regulate voter qualifications. According to these scholars, voter qualifications were the exclusive domain of the separate states. Each state was entitled to make an independent determination as to how literate or intelligent its citizens must be before being allowed to participate in local, state, and national elections. Because of this uncertainty, the U.S. Attorney General, William Rogers, decided that the Division should proceed cautiously until the Supreme Court decided the extent of federal authority over voting.

Still, there was much that needed to be done. While Louisiana, Mississippi, and Alabama do not comprise much of the United States, the size of these states is considerable. Shreveport, at the Texas border of Louisiana, is 500 miles west of the Alabama-Georgia border. Memphis, Tennessee, is 400 miles north of New Orleans. Each of the states had its own laws respecting voter qualifications. In each state, registration procedures and practices were different. Each had peculiar application forms.

Local county or parish officials administered the state registration laws. There were some 160 counties or parishes within the states, and most needed to have their practices investigated to

* Copyright © 1997 John Doar.

** Managing Partner, Doar Devorkin & Rieck, New York City. Member of the California, Wisconsin, and New York state bars. A.B., Princeton University, 1944; LL.B., Boalt Hall School of Law, University of California, 1949. Practiced law in New Richmond, Wisconsin, 1950-1960. Served U.S. Department of Justice, Civil Rights Division, 1960-1967. Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, 1965-1967. President, The Bedford-Stuyvesant Development and Service Corporation, 1968-1973. Special Counsel, Committee on the Judiciary, House of Representatives, in connection with the Impeachment Investigation of President Richard M. Nixon, 1973-1974. Counsel to the Investigating Committee to the Judicial Council, U.S. Court of Appeals for the Eleventh Circuit, in connection with the Investigation of District Judge Alcee L. Hastings, 1983-1986.

1. Pub. L. No. 85-315, 71 Stat. 634 (1957) (codified as amended in scattered sections of 28 and 42 U.S.C.).

determine whether a pattern of racial discrimination in voting existed.

Besides the uncertain state of the law, and the size of the area where enforcement was required, there was another problem. In 1960 the Division was small—very small. It consisted of about fifteen lawyers who, as if the Division did not have enough to do, had been assigned criminal² and civil jurisdiction³ over election fraud and federal custody matters.

Fortunately, the Division was not without resources. Among its lawyers were two remarkable men. St. John Barrett⁴ was the Division's second assistant. Harold Greene⁵ was the head of the Division's Appeals and Research Section. Four young lawyers were apprentices to Barrett and Greene: Dave Norman,⁶ Bob Owen,⁷ Frank Dunbaugh,⁸ and Nick Flannery.⁹ Norman and Owen were among the first of the Department of Justice's honor recruits. They brought complementary abilities to the Division. A large amount of the credit for the development of the government's strategy in enforcing the Civil Rights Act of 1957 belongs to Norman, and the credit for implementing that strategy with skill, energy, and style belongs to Owen.

These lawyers quickly demonstrated their talent. In early 1961, Judge Frank Johnson of the Middle District of Alabama set the

2. See 18 U.S.C. §§ 241-242 (1994).

3. See 28 U.S.C. § 1343 (1994); 42 U.S.C. § 1971(d) (1994).

4. Law Offices of St. John Barrett, Washington, D.C. B.A., Pomona College, Claremont, California; LL.B., Boalt Hall School of Law, University of California. Deputy District Attorney, Alameda County, California, 1948-54. Served U.S. Department of Justice, Criminal Division, 1955-1957; U.S. Department of Justice, Civil Rights Division, 1957-1967. Deputy General Counsel, Department of Health, Education and Welfare, 1967-1977.

5. U.S. District Judge, District of Columbia. B.A., George Washington University; LL.B., George Washington Law School. Served U.S. Department of Justice, Civil Rights Division, 1957-1965. Chief Judge, District of Columbia Superior Court, 1966-1978.

6. 1924-1995. B.A., University of California at Berkeley; LL.B., Boalt Hall School of Law, University of California. Served U.S. Department of Justice, Criminal Division, 1956-1957; U.S. Department of Justice, Civil Rights Division, 1957-1972. Vice-President, The Bedford-Stuyvesant Development and Service Corporation, 1968. Assistant Attorney General, Civil Rights Division, 1971-1972. Associate Judge, Superior Court of the District of Columbia, 1973-1983.

7. 1930-1981. B.A., Princeton University; LL.B., University of Texas Law School. Served U.S. Department of Justice, Civil Rights Division, 1958-1969. Partner, Patterson Belknap Webb & Tyler, 1969-1981.

8. Law Office of Frank M. Dunbaugh, Annapolis, Maryland; Chair, Maryland Justice Policy Institute, Annapolis, Maryland. B.B.A., University of Miami; LL.B., University of Miami. Served U.S. Department of Justice, Civil Rights Division, 1958-1978.

9. Associate Justice, Massachusetts Appeals Court. B.A., Wilkes University; LL.B., University of Pennsylvania. Served U.S. Department of Justice, Civil Rights Division, 1958-1970. Acting Director, Center for Law and Education, 1970-1974. National Director, Lawyers Committee for Civil Rights Under Law, Washington, D.C., 1974-1975. Partner, Foley, Hoag & Eliot, Boston, Massachusetts, 1975-1984. Associate Justice, Massachusetts Superior Court, 1984-1995.

government's Macon County, Alabama, racial discrimination voting case down for trial. In a matter of days, the team of Owen, Norman, and Dunbaugh had prepared the case. Following a trial, Judge Johnson accepted the suggestion of the Division that later became known as freezing relief.¹⁰ He ordered the Board of Registrars to register applicants who met the qualification of the least qualified white on the voting rolls.¹¹ Since the Division had proved there was universal white suffrage in Macon County, Alabama, the only qualification for voting in Macon County under Judge Johnson's order was age and residence.¹²

When Robert Kennedy arrived as the U.S. Attorney General, he was determined to make a mark for the new administration in enforcing the Civil Rights Acts. He selected Burke Marshall¹³ to head the Division. Throughout his tenure, Marshall directed and honed the Division's enforcement strategy as it was being developed by Barrett, Greene, Norman, and Owen.

Shortly thereafter, we were called to the Attorney General's office to outline the Division's strategy in enforcing the Civil Rights Acts of 1957 and 1960.¹⁴ Kennedy went directly to the point by asking how we were going to get something accomplished in Louisiana, Mississippi, and Alabama. We explained that there were seven judicial districts within the three states, and the Division's strategy was to develop and file a case of voter discrimination against a registrar in one county in each of the judicial districts in the three states.

We had brought a detailed map of the southern part of the United States with us. "Too slow," said the Attorney General. "It won't do. You've got to do more." He sized up the number of counties in Louisiana, Mississippi, and Alabama. He wanted pins on the map, suits filed in every county where there were under-registrations of black people, and he wanted this accomplished "the day before

10. Where a pattern or practice of racial discrimination in voting registration was found, freezing relief required that registration be conducted under the lenient standards applied to whites, such as age and residence, before the states imposed higher standards, such as the ability to interpret portions of the state constitution, to effectively bar the registration of blacks.

11. See *United States v. Alabama*, 192 F. Supp. 677, 682-83 (M.D. Ala. 1961), *aff'd*, 304 F.2d 583 (5th Cir. 1962), *aff'd per curiam*, 371 U.S. 37 (1962).

12. See *id.* at 679 (finding the Board of Registrars deliberately engaged in acts that perpetuated the disparity between the numbers of blacks and whites registered to vote such that many whites who did not finish grammar school were registered, but many high school and college educated blacks were repeatedly rejected).

13. Professor, Yale Law School; Partner, Covington & Burling, Washington, D.C.; Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, 1961-1964; General Counsel, IBM, 1965-1969. B.A., Yale University; LL.B., Yale Law School.

14. Pub. L. No. 86-449, 74 Stat. 86 (1960) (codified as amended in scattered sections of 18 and 42 U.S.C.).

yesterday.” Burke Marshall said, “Well, General, we’re going to need more lawyers.” The Attorney General asked, “How many?” Burke said, “Four.” Without argument or delay, the Division got four, maybe six newly created positions. Bud Sather, Gerald Stern, John Martin, Gordon Martin, Dick Parsons, and Jim Groh were hired.

Marshall said we would need the assistance of the FBI. At the time, the FBI had 5600 agents. Theoretically, support from the FBI should have increased the Division’s capability. However, before the Division could make use of the Bureau, the Division first had to learn how to carry out the assignment. Division lawyers had to master everything that goes into understanding the realities of a distant and unknown territory: the back roads; the operations of county registrar’s offices; the states’ registration laws; 100 years of history; the identity of the local leaders; the way the court’s family in each judicial district functioned—the clerk, the judge’s secretary, the marshals, the U.S. Attorney, the court reporter—you name it.

I can still recall how the Division operated during the 1961-1963 time period. On a Friday afternoon I would see a row of suitcases and briefcases lined up in the first floor corridor of the Department of Justice, alongside the offices of the Division lawyers. Whenever lawyers went south to investigate, they departed Washington on Friday night to return on the third Sunday following. This meant sixteen straight days in the field. Travel past Atlanta was on a DC-3 with local stops at Montgomery, Meridian, Jackson, Monroe, and Shreveport. At each of these airports, two or more lawyers from the Division would leave the plane and move out into the field to learn more and more about the particular counties to which they had been assigned.

As the Division lawyers criss-crossed the rural roads of Louisiana, Mississippi, and Alabama, they found a complex legal and social network designed to protect and preserve the caste system. The scheme was not haphazard. A means used was official corruption and official and unofficial intimidation in connection with voting. They also saw that Louisiana, Mississippi, and Alabama remained largely a part of the American frontier, the rural white society riddled throughout with bewildering patterns of suspicion and silence.

So the Division began, county by county, a case-by-case assault on the caste system. Suits were quickly filed in East Carroll, Ouchita, and Madison parishes in Louisiana; in Forest, Clark, Jefferson Davis, Walthall, Tallahatchee, and Panola counties in Mississippi; and in Bullock, Dallas, and Montgomery counties in Alabama.

I have often wondered how the Division could have gone about its assignment with such enthusiasm. For a long time I attributed much of it to youth, to what Joseph Conrad calls that moment of strength,

of romance, of glamour—of youth. Now I think I've found the answer. The spirit of the Division lawyers assigned to enforce the Civil Rights Acts was governed by what President Havel of Czechoslovakia calls a philosophy grounded in hope. This kind of hope is not the same as optimism. It is not a willingness to invest in an enterprise that is obviously heralded for early success, but rather the ability to work hard for something because it makes sense, not because it stands a chance to succeed.

Once our suits were filed we ran into trouble. There were no District judges other than Judge Johnson on the District benches in the judicial districts of Louisiana, Mississippi, or Alabama.

At the same time, other forces had begun to work. In the summer of 1961, the Student Non-Violent Coordinating Committee (SNCC) undertook a voter registration project in Mississippi. Bob Moses was placed in charge. SNCC decided to work in the counties along the Louisiana border in southwest Mississippi. These counties, Wilkinson, Amite, Pike, and Walthall, were rural, out of the way places. To go into those counties was like going back into the nineteenth century.

As soon as Bob Moses opened his voter registration school, he began to bring black citizens to the circuit clerk and registrar's office to register. He immediately ran into serious trouble. Moses and other SNCC workers were threatened, attacked, and, after reporting their experiences to the high sheriff, arrested. Earlier, in late 1960 and early 1961, the Division had achieved some success in checking economic intimidation against sharecroppers who tried to register to vote in Haywood and Fayette counties, Tennessee, and in helping a farmer who could not get his cotton ginned in East Carroll Parish, Louisiana. But control of violence in the states of Louisiana, Mississippi, and Alabama was a different matter.

At first, the Division confronted this hostile local law enforcement in southwest Mississippi. Sather and Stern were sent to southwest Mississippi to interview witnesses. They returned with their notebooks full of information that reflected serious violations of the federal laws we were bound to enforce. The Division moved immediately before Judge Harold Cox, Chief Judge of the United States Court for the Southern District of Mississippi, to enjoin a state criminal prosecution of John Hardy, who had accompanied a young black woman, Ruby McGee, to the registrar's office to register. As he was leaving his office, the registrar hit Hardy on the head with a pistol. Hardy sought the high sheriff to complain. At the same time, the high sheriff was looking for Hardy. They met in the middle of the main street, and Hardy was immediately arrested for breach of the peace. We obtained no relief from Judge Cox, but, for the first time, Judge Richard Rives of the United States Court of Appeals for

the Fifth Circuit interceded and issued an injunction pending appeal that halted the prosecution.¹⁵

On Sunday, September 28, 1961, Bob Moses guided me through Amite County in order to speak with several of the local black people who had been willing to try to register. In the middle of the afternoon, we pulled up to E.W. Steptoe's house on a rural lane some miles south of Liberty. The earth was red clay, the land rolling, divided between pasture and pine trees. Mr. Steptoe said he and his friends were having trouble encouraging black citizens to register to vote. He identified the most important white person in the area—a man named Hurst, a state senator who lived on neighboring land. As boys, Steptoe and Hurst had played and fought together.

Mr. Steptoe said we should see Herbert Lee. Steptoe had not seen the white men who had been taking down license numbers of cars parked at the SNCC voter registration school, but he believed Herbert Lee had seen the white men and knew who they were. Lee lived four or five miles down a county road. We tried to see him, but he was not there and not expected back for several hours. Because I had an appointment in Hattiesburg the following morning, Mr. Lee's interview was deferred until the next trip to Mississippi. The next day I reached Meridian in time to catch the plane to Atlanta and be in my office in the Justice Department by 10:00 p.m. Monday, September 29, 1961. Upon arrival, a memo from the Bureau advised that in the morning, during an alleged dispute at the Liberty cotton gin, Hurst had shot and killed Lee. Hurst claimed that Lee had come at him with a tire iron.

Although the Division believed that the killing was unjustified, we were never able to do anything about it. Lewis Allen, a local black logging trucker, saw what had happened. The next morning he testified under pressure to a coroner's jury that he saw Lee with the tire iron. At the same time he told Bob Moses he was afraid to say what really happened. Moses inquired whether under federal law there was a way Allen could be protected. We said no.

Within several days of Herbert Lee's death, suits had been prepared against the following: the sheriff of Pike County; three of his deputies; the chief of police of McComb, Mississippi; a town marshall; a state highway patrolman; the son of the sheriff; the father of the deputy sheriff; and the clerk of the Chauncey Court of Amite County for attempting to intimidate black applicants who attempted to register or persons who had encouraged white citizens to intimidate black applicants who attempted to register. But these suits were never filed. The Division decided that if local law enforcement were sued, the consequences would have been

15. See *United States v. Wood*, 295 F.2d 772 (5th Cir. 1961).

unpredictable and might have led to uncontrollable violence. It surely would have expended the Division's limited resources, and we would have had little left for the rest of Mississippi. Burke Marshall decided it was not the best way to break the caste system in Mississippi. Without reservation, I agreed with him.

Instead, the Division treated the killing of Herbert Lee as a criminal matter, but we were unable to establish the state involvement required for federal prosecution. Several years later the tragedy was made worse when Allen was murdered as he stepped out of his front door in rural Amite County to see who had come to visit him in the night. The killing of Herbert Lee and the subsequent unsolved murder of Louis Allen remain on our consciences, not because we could have done something about these terrible crimes, but because there was no federal statute at the time that permitted us to proceed with a prosecution.

During 1962 Division lawyers were constantly in the field. Lou Kauder, Jay Goldin, Dennis Dillon, and Frank Schwelb had signed on. The Division's voting section had grown to perhaps fifteen lawyers. With the help of research assistants, now referred to as paralegals, cases were filed on a regular basis. Hearings on preliminary injunctions were held. Although cases were lost in the district courts, we were beginning to obtain relief from the Fifth Circuit, even to the point of having Chief Judge Tuttle of the United States Court of Appeals for the Fifth Circuit assign three judges from that court (judges John Minor Wisdom, John Brown, and Griffin Bell) to hear a contempt trial against Theron Lynd, the registrar of Forest County, Mississippi, for violation of an injunction issued by that court.

While the Division pushed its county-by-county campaign, Dave Norman conceived and planned a broader attack—state-wide lawsuits. On December 28, 1961, the Division, on behalf of the United States, filed an action in the Eastern District of Louisiana against the state of Louisiana and the directors and members of the Louisiana Board of Registration. Norman's theory was that the Louisiana law was in violation of federal law and the U.S. Constitution. The Louisiana Constitution required a voter to read, understand, and give a reasonable interpretation of any section of either the U.S. or the Louisiana Constitution, the administration of which rested in the uncontrolled discretion of a parish registrar.¹⁶

While proof was being developed in the Louisiana case, the Division was preparing a similar suit against the state of

16. See *United States v. Louisiana*, 225 F. Supp. 353, 357 n.6 (E.D. La. 1963), *aff'd*, 380 U.S. 145 (1965).

Mississippi. On August 29, 1962, the Division filed suit on behalf of the United States against the state of Mississippi and six county registrars throughout the state, challenging the entire system of registration in Mississippi on three grounds: Mississippi's elaborate system of registration was not being applied to most of the whites; the system vested uncontrolled discretion in the registrar; and tests of intelligence, understanding or comprehension in Mississippi were unconstitutional because black citizens had not been afforded an educational opportunity equal to that afforded white citizens.

In early September 1962 judges Wisdom, Brown, and Bell began the contempt hearing in the Federal District Court for the Southern District of Mississippi in Hattiesburg.

For several days that September, the Division tested the voting registration system by alternating between an unqualified white voter and a qualified, unregistered black applicant. By unqualified, I mean an illiterate or marginally literate applicant. At the conclusion of that trial, the Division had proven two facts about voting in Forest County, Mississippi: qualified black citizens were being kept off the rolls by a variety of illegal schemes, and there was universal white suffrage.

On July 13, 1963, the Court of Appeals judges, sitting as a trial court in Hattiesburg, found the circuit clerk and registrar of Forest County in contempt and ordered him to immediately register forty-three black people, to agree not to use the application form as an obstacle course, and to use only fourteen sections of the Mississippi Constitution to determine an applicant's qualifications under the interpretation test.¹⁷

During this same time the Division lawyers were involved with serious enforcement problems in the Mississippi Delta. SNCC had opened an office in Greenwood, Mississippi, and was preparing to take black applicants to the registrar's office in groups. As soon as a group effort began in late March 1963, the Greenwood police interfered. At about the same time, eight SNCC registration workers were arrested and convicted after they and about 100 local blacks walked to the city hall to protest a shooting into the house of a black registration worker. The eight SNCC workers, including Bob Moses and Jim Foreman, were sentenced to four months in jail and fined \$200.

On behalf of the United States, the Division brought suit against the city of Greenwood, the mayor, fire commissioner, police chief, city prosecutor, and against LeFlore County, its county attorney, and a deputy sheriff. The Division sought a temporary restraining order. Although it was denied, we obtained agreement from the city of

17. See *United States v. Lynd*, 349 F.2d 790, 791, 794-95 (5th Cir. 1965).

Greenwood and LeFlore County to release the SNCC workers pending a hearing on a preliminary injunction. In June 1963 forty-five residents of Itta Bena in LeFlore County were arrested after they marched downtown to seek police protection because an unknown person had released a noxious substance into a church where a voter registration school was being held. Within a few days of the arrest, the Division brought suit on behalf of the United States against the local enforcement officials.

The suits presented difficult assignments before a difficult federal district judge, Judge Claude Clayton of the Northern District of Mississippi. SNCC's increased pressure against the caste system caused the suits, but the suits afforded no answer.

On March 9, 1963, the Louisiana state-wide suit came up for trial. A massive amount of evidence was stipulated into the record and the court adjourned to reach its decision. Meanwhile, discovery was getting underway in the Mississippi state-wide suit. The state of Mississippi had served the Division with massive interrogatories that inquired into the factual underpinnings of each and every allegation of the government's complaint.

Sometime in April 1963 while Bob Owen and I were together in a motel somewhere in the Delta, we talked about how we were going to respond to those interrogatories. We decided to answer them in monumental detail, with information from most of Mississippi's eighty-two counties. We mobilized the Division's lawyers, research assistants, and secretaries, and enlisted a cadre of summer interns. We pushed them to their limits and beyond, regardless of cost, regardless of casualties. Bob Owen, however, demanded and delivered more of himself than he ever asked of anyone who worked with him.

On August 31, 1963, the Division served the United States' answers to the state of Mississippi's interrogatories. In the history of complex litigation, these interrogatory answers set a standard for responses to burdensome interrogatories calling for massive amounts of detailed information. The answers drew upon and organized the collective hard work of a small number of Division lawyers who had labored in the field for two and one-half years.

The answers covered the factual basis to support the United States' claim for relief and were contained in seven volumes. The first contained the name, race, education, and other background information of each person contacted in connection with the case. The second covered state-wide registration statistics by county and by race on six specific dates between 1890 to 1962. The third contained the factual basis showing the racially discriminatory purpose of the registration laws under attack, white primary practices in Mississippi, and the decrease in black registration since

1890. The fourth contained the facts that showed that, in Mississippi, public education provided for black persons was inferior to public education provided for white persons. The fifth detailed how white political supremacy was established and maintained in Mississippi prior to 1955 when the constitutional interpretation test was adopted. Volumes six and seven included, by county, factual data since 1955 showing a lack of uniform administration of the voting laws, favored treatment of whites, and unlimited discretion vested in the registrars.

Throughout these years, the Division faced resistance in trying the voting rights cases before certain United States district judges. *United States v. Mississippi*¹⁸ is a prime example.

On October 12, 1963, I wrote judges Cameron, Brown, and Cox, who were assigned the case, to request a firm trial date in the near future. I provided the court with a chronological history of the case to that date. The letter urged the court to give the case immediate attention. It reminded the court that Judge Richard Rives of the Fifth Circuit had recently stated that “[t]he right to vote is one of the most important and powerful privileges that our democratic form of government has to offer.”¹⁹

It did not take long for Judge Harold Cox to reply:

Dear Mr. Doar:

I have a copy of your letter of October 12 regarding the above case and thought I had made it clear to you one time in Hattiesburg that I was not in the least impressed with your impudence in reciting the chronology of the case before me with which I am completely familiar. If you need to build such transcripts for your boss man, you had better do that by interoffice memoranda because I am not favorably impressed with you or your tactics in undertaking to push one of your cases before me. I spend most of my time in fooling with lousy cases brought before me by your department in the civil rights field, and I do not intend to turn my docket over to your department for your political advancement. You have been given every consideration and every courtesy in my court, and I don't think that you have any sense of gratitude or appreciation therefor. You are completely stupid if you do not fully realize that each of the judges in this court understands the importance of this case to all of the litigants. I do not intend to be hurried or harassed by you or any of your underlings in this or any court where I sit and the sooner you get that through your head the better you will get along with me, if that is of any interest to you. I do not think that the very important actions in this case should be shelved just because you are in a hurry to make some kind of showing in your docket, and I

18. 229 F. Supp. 925 (S.D. Miss. 1964), rev'd, 380 U.S. 128 (1965).

19. *United States v. Atkins*, 323 F.2d 733, 743 (5th Cir. 1963).

shall not vote for any such irregular and completely improper procedure simply for the advancement of your political goals.²⁰

On March 6, 1964, the court ruled in this case and the United States lost. Judge Cameron, writing for the majority, labeled the government case a frontal attack by the “‘Indestructible Union’ member of the partnership . . . upon the other member, the ‘Indestructible State.’”²¹ The court dismissed the complaint without holding a trial.²² Judge Brown, in his dissent, observed that while “the tone of indestructibility is good,” history teaches that no political institution is indestructible.²³ He insisted that if a political institution were to survive, it must save itself from destruction, and that the peril of destruction was what the case was all about.²⁴

Judge Brown labeled the contest as between all citizens of the United States and the State.²⁵ He clearly explained the government’s theory.

The underlying Mississippi constitutional provisions and the implementing statutory law regulating registration of voters came into being—and are currently maintained—out of a purpose by the organized State to deny Negroes the right to vote by contriving a structure having the appearance of legality, but having known, built-in devices which would, and did, effectually deny or overwhelmingly discourage the Negroes’ effort toward full citizenship.²⁶

He insisted that “[t]he immediate means—the understanding test—must be judged, both in its purpose and in its effect,” in light of Mississippi’s policy of segregated “education and the wide disparity in the quality and quantity of education afforded by Mississippi to its white and Negro children.”²⁷

On November 27, 1963, Judge Wisdom handed down the Court’s opinion in *United States v. Louisiana*.²⁸ The court declared the Louisiana statute and laws respecting its interpretation test unconstitutional, and froze the standard in those parishes where the test had been applied.²⁹

20. VICTOR S. NAVASKY, *KENNEDY JUSTICE* 248-49 (1971) (emphasis added).

21. *Mississippi*, 229 F. Supp. at 928.

22. *See id.* at 958.

23. *Id.* at 974 (Brown, J., dissenting).

24. *See id.*

25. *See id.*

26. *Id.* at 975.

27. *Id.*

28. 225 F. Supp. 353 (E.D. La. 1963), *aff’d*, 380 U.S. 145 (1965).

29. *See id.* at 356, 397-98.

Judge Wisdom held that a wall stood in Louisiana between registered voters and unregistered eligible black voters, and that the wall must come down.³⁰

Judge Wisdom explained how the registrar selects the constitutional section and must be satisfied with the explanation.³¹ He pointed out that “[i]n many parishes the registrar is not easily satisfied with constitutional interpretation from Negro applicants.”³² The court held that, considered in its historical setting and its actual operation and inescapable effect, this law was a sophisticated scheme to disfranchise black people.³³ Judge Wisdom rejected apathy as a reason for the low registration of black people.³⁴ Apathy is, he said, “an unctuous and self-excusing word” used to rationalize the small black registration.³⁵

Judge Wisdom’s opinion and Judge Brown’s dissent should be required reading in senior high school or college level American history courses in every school in the country.

Aside from these two state-wide cases, by the end of 1963 the Division had filed thirty-four suits against county registrars for discrimination in voter registration and had forty-eight other counties under investigation. It had filed twelve suits seeking injunctions against intimidation, with another eight under investigation. It had examined the voter registration records in twenty-seven counties in Alabama, fifty counties in Mississippi, and twenty-seven counties in Louisiana. In 1964 that pace continued, even though SNCC’s program in Mississippi for Freedom Summer and the murders in Neshoba County in June 1964 forced the Division to revise its priorities.

This brings me to Selma, Dallas County, Alabama, which became the turning point in the battle for voting rights. The Division had first gone to Selma in February 1961. At that time, a local organization of blacks were trying to break down the barrier to voting. Several months later Burke Marshall and Robert Kennedy authorized the Division to file its first voting case against the registrars of Dallas County. The next year SNCC opened a field office in Selma. During the next four years Division attorneys spent more time in Dallas County than in any other county in the south.

Late in 1964 Dr. King and his Southern Christian Leadership Conference organization (SCLC) came to Selma. Out of a convergence of the forces of SNCC, SCLC, and the Division, each

30. See *id.* at 356.

31. See *id.*

32. *Id.*

33. See *id.*

34. See *id.* at 359-60 n.8.

35. *Id.*

having challenged the caste system in its own way, came a series of events that culminated at the Selma bridge where mounted state police dispersed, with clubs and tear gas, a number of blacks on their way to the state capitol in Montgomery to present their grievances to the governor. After that episode the Voting Rights Act of 1965³⁶ quickly followed.

On March 18 a bill entitled The Voting Rights Act of 1965³⁷ was introduced. On the same day Attorney General Nicholas Katzenbach appeared before the House Judiciary Committee to testify in detail about the bill. He spelled out how the registration process in the south had been perverted to test “not literacy, not ability, not understanding-but race.”³⁸

Katzenbach told the Committee members that three times since 1956 Congress adopted litigation in the federal courts as the solution to this problem. He complained of the inadequacy of the judicial process and described it as “tarnished by evasion, obstruction, delay, and disrespect.”³⁹ He cited example after example, and he proposed a new approach to the Committee.

No one in the Division quarreled with the need for a new approach, nor with the frustrations because of judicial delay and obfuscation. But cries of frustration do not move mountains. The Division’s hard work underpinned the opinions and orders of federal judges Tuttle of Georgia, Rives and Johnson of Alabama, Wisdom of Louisiana, and Brown of Texas—opinions and orders that established the freezing principal;⁴⁰ that stayed a state criminal prosecution of an SNCC voter registration worker;⁴¹ that caused a real contempt trial to be held in Mississippi;⁴² and that led to Judge Wisdom’s and Judge Brown’s penetrating and persuasive findings as to the purpose and the effect of Louisiana’s⁴³ and Mississippi’s⁴⁴ constitutional and statutory requirements for voting. These decisions had an influence on individual members of the House Judiciary

36. See Pub. L. No. 89-110, 79 Stat. 437 (1965) (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973bb-4 (1994)).

37. See H.R. 6400, 89th Cong. (1965); see also S. 1564, 89th Cong. (1965) (enacted with amendments to include language from House bill).

38. Voting Rights: Hearings on H.R. 6400 Before Subcomm. Number 5 of the House Comm. on the Judiciary, 89th Cong. 5 (1965) (statement of Nicholas B. Katzenbach, U.S. Attorney General).

39. *Id.*

40. See *United States v. Alabama*, 192 F. Supp. 677 (M.D. Ala. 1961), *aff’d*, 304 F.2d 583 (5th Cir. 1962), *aff’d per curiam*, 371 U.S. 37 (1962).

41. See *United States v. Wood*, 295 F.2d 772 (5th Cir. 1961).

42. See *United States v. Lynd*, 349 F.2d 790 (5th Cir. 1965).

43. See *United States v. Louisiana*, 225 F. Supp. 353 (E.D. La. 1963), *aff’d*, 380 U.S. 145 (1965).

44. See *United States v. Mississippi*, 229 F. Supp. 925 (S.D. Miss. 1964), *rev’d*, 380 U.S. 128 (1965).

Committee as they decided upon the final content of the 1965 Voting Rights Bill, and on individual members of Congress to vote to pass the Voting Rights Bill.

By August 6, 1965, Congress acted, and the President signed the legislation.⁴⁵ In acting, Congress added a very important provision to the bill. Congress provided that in every county where federal examiners had been assigned, the Attorney General might assign federal observers to any polling place within the county to see that all persons entitled to vote were permitted to vote and would have their votes properly counted.⁴⁶

On the day of the signing ceremony, President Johnson said he was directing the Attorney General to immediately file a lawsuit challenging the constitutionality of the poll tax in the state of Mississippi. He also requested the Department of Justice to work all through that weekend so that on Monday morning next, it could designate ten to fifteen counties where federal examiners would be at work registering qualified voters on the following day. He also promised that by the following Tuesday, additional poll tax suits would be filed in the states of Texas, Alabama, and Virginia. The Division met the President's commitment.

On the Monday following the passage of the Voting Rights Act, the Civil Service Commission announced that registration offices would open in nine counties in three states. On the first day of opening, these offices registered 1144 blacks. By the first of the year, federal officials operating in thirty-six counties had registered 79,815 blacks. During the same period, local officials in the five states of the deep south registered 215,000 blacks.

This compliance did not occur by chance. On the day following the passage of the Act, Attorney General Katzenbach sent letters prepared by the Division to the 650 registration officials. He explained the provisions of the statute and said he would appoint examiners when it was clear that past denials of the right to vote justified it, or where present compliance with federal law was insufficient to assure prompt registration of all eligible citizens.

Following the passage of the Act, FBI agents checked, on a weekly basis, voter registration books in every county in a five-state area. Young attorneys in the Division spent their days in rural southern counties explaining the law to local officials and to black citizens, and to bringing situations of noncompliance to the attention of the Attorney General.

45. See Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973bb-4 (1994)).

46. See 42 U.S.C. § 1973(f) (1994).

On March 7, 1966, the Supreme Court upheld the validity of the Voting Rights Act.⁴⁷

On May 3, 1966, the first post-Voting Rights Act primary election arrived. Dallas County, Alabama, was the test county. The key race was for sheriff. The contestants were Jim Clark, the segregationist sheriff, and Wilson Baker, the sensible, moderate police chief of the city of Selma.

I was in Selma that day. Election day in Selma was a beautiful day. Within fifteen minutes after the polls opened, you could sense a movement of black people toward the polls. Near the federal courthouse in Selma, black men and women could be seen walking to the polls. By 8:15 a.m. in the public housing area where the Selma march began, there was a line outside the polling place of at least 350 black people. For most it was the first time in their lives that they participated in the democratic selection of public officials.

Across town in another black neighborhood, where the streets were unpaved and the houses unpainted, there was the same movement of people toward the polls.

The little town of Orville in rural Dallas County, some eighteen miles from Selma, a town consisting of a closed bank, a post office, a general store, a drug store, a town hall, and a machine shop or two, also had four polling places. By 9:30, the streets around the polling places were filled with blacks. These were rural people. None had ever voted before. More than 500 of 700 registered blacks deposited their votes into four voting boxes.

That night the Dallas County returns came in very slowly. The largest number of citizens in Dallas County's history had appeared at the polls to vote, leading to long lines at every polling place, especially in predominantly black areas. The ballot contained seventy-three candidates competing for twenty-four different nominations. The clerks had to count each contest on each paper ballot. The race for sheriff was very close. The lead switched back and forth. First, Jim Clark was ahead, then Wilson Baker.

By three or four o'clock in the morning, six boxes containing more than 1672 black and 162 white votes remained unreported. At that time Clark held a small lead. The local probate judge sent "replacement clerks" to finish the count. These clerks were white and were part of the Clark Machine. The Justice Department immediately sent federal observers to observe the "replacement clerks." Before the count was finished, the county judge decided to impound the six boxes.

A few hours later the Dallas County Democratic Executive Committee decided to have white CPAs count the ballots in the six

47. See *South Carolina v. Katzenbach*, 383 U.S. 301 (1966).

boxes. This went on at the county courthouse throughout the day and the next night, with federal observers in each room observing this second count. The result in the six boxes—Baker, 1412; Clark, 92—determined the result of the election. However, the Dallas County Democratic Executive Committee, consisting of forty lily-white men, immediately rejected all the votes in the six boxes.

The Division was determined that the black citizens of Dallas County not be disillusioned with their first actual participation in a local election. That afternoon the United States filed a federal court action seeking an injunction against the wholesale rejection of the ballots of registered voters. Judge Frank Johnson immediately ordered that no ballots be destroyed. From that time until the federal court decided the case twenty days later, federal observers guarded the boxes.

In preparation for the hearing, lawyers and research assistants analyzed all of the ballots for that election—17,440 ballots. Within eight days they were ready to advise the federal court about the mechanics and operation of that election, including a complete analysis of each poll list, tally sheet, certificate of result, and, where necessary, each ballot.

After hearing testimony for two days, the federal court concluded there was no evidence to indicate that votes were bought or sold, or that the boxes were stuffed. Thus, Jim Clark was defeated and Wilson Baker was elected Dallas County sheriff.⁴⁸

Before that time in Dallas County, Alabama, about 6500 persons usually voted in key elections. That year, 17,440 voted in the first primary and 15,717 in the November election.

On the day of that election in Selma, over 500 federal observers were in Dallas County—observers from New York, Milwaukee, Denver, and San Francisco. They were civil servants sent to the various polling places in Dallas County to observe and insure that the elections were properly held. The Division's lawyers managed the movement of federal observers.

Today my career as a lawyer is almost over. As I call upon myself to account, more and more, my memory goes back to those days and years with the Division, working for the United States, enforcing its fundamental law, and the roll call of the Division lawyers, the Civil Rights Division lawyers, keeps ringing in my ears.⁴⁹

48. See *United States v. Executive Comm. of the Dem. Party of Dallas County, Ala.*, 254 F. Supp. 537, 539 (S.D. Ala. 1966).

49. Hubbard, Maceo W.1946-78
 Barrett, St. John.....1955-67
 Norman, David1957-73
 Greene, Harold1958-65
 Owen, D. Robert1958-69

Schwelb, Frank 1962-79
 Rosenberg, John..... 1962-70
 Ross, Alexander.....1962-present
 McIntyre, Kenneth..... 1963-67
 Lyon, John.....1963-68

Flannery, J. Harold	1958-70	Moore, Robert.....	1963-88
Dunbaugh, Frank	1958-78	Sutin, Jonathon.....	1964-65
Tyler, Harold	1960-61	Landsberg, Brian	1964-86
Doar, John	1960-67	Glick, Martin.....	1964-66
Groh, Rupert.....	1960-63	McCabe, William.....	1964-67
Marshall, Burke.....	1961-65	Nixon, John	1964-69
Sather, Arvid A.....	1961-64	Fleischer, Hugh.....	1964-71
Stern, Gerald	1961-64	Turner, James.....	1965-93
Golden, Harrison	1961-63	Nesson, Charles	1965-66
Gordon, Martin	1961-63	Pollak, Steve	1965-67
Parson, Dick.....	1961-66	Livingston, Gene.....	1965-68
Gabel, Carl.....	1961-88	Bingler, John H.....	1965-67
Martin, John.....	1962-64	Fiss, Owen.....	1966-68
Dillon, Denis	1962-63	Allen, Frank	1966-88
Henderson, Thelton	1962-63	Kirby, John J.....	1967-68
Kauder, Louis	1962-67	Barnett, Walter.....	1967-87