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NAACP v. THE ATTORNEY GENERAL: BLACK
COMMUNITY STRUGGLE AGAINST POLICE VIOLENCE,
1959-68

JAY STEWART*

INTRODUCTION: THE FATEFUL POLICY DECISION

On March 30, 1959, the U.S. Supreme Court issued two decisions which set the stage for a new era in police-community relations. In *Abbate v. United States*,¹ and *Bartkus v. Illinois*,² the Court gave the U.S. Justice Department the power to prosecute police officers under federal civil rights laws for acts of racist violence – even when they were already under state or local investigation – without fear of violating states’ rights.

These decisions – had they been enforced – would have been welcome news at the New York headquarters of the National Association for the Advancement of Colored People (NAACP). An organization dedicated to the eradication of lynching and other forms of extra-judicial violence against black persons, the NAACP lobbied the Justice Department ceaselessly since 1909 to combat the wave of murders and beatings committed both by police officers and private persons, particularly in the American South. Using a judicious mix of public appeals, lobbying, and litigation, this mainstream mass membership organization focused national attention on police abuse for half of a century.³

At the Department’s disposal were two Reconstruction era statutes – Sections 241 and 242 of Title 18 of the United States Code – which permitted criminal prosecutions of anyone operating under state authority or otherwise who acted to deprive another person of his or her civil rights. In Walter White’s survey *Rope and Faggot: Thirty Years of Lynching*, the

* Professor Stewart is a political science instructor at Howard University and an adjunct Legal Research and Writing instructor at the University of the District of Columbia David A. Clarke School of Law.

¹ 359 U.S. 187 (March 30, 1959).

² 359 U.S. 121 (March 30, 1959).

³ *E.g.*, Press Release, National Law Enforcement Commission, Law Enforcement Commission Asked to Probe Injustices to Negro (June 24, 1929) (on file with author); *see generally* Warren D. St. James, NAACP: TRIUMPH OF A PRESSURE GROUP, 1909-1980 (1980).

NAACP concluded that there had been numerous incidents of routine and often publicly advertised extra judicial punishment between 1889 and 1919. Under the hostile pressure of white public opinion, the Justice Department had brought few cases since the era of Southern Redemption began, and secured no more than a handful of convictions in the century since the passage of the laws.⁴

A fledgling agency with a scarcity of personnel and other resources, the Department's Civil Rights Division was hard pressed to respond to the volume of reported incidents. Allegations of police brutality were especially difficult to pursue since the Department's investigative arm, the Federal Bureau of Investigation (FBI), relied upon close contacts with local police to solve other types of federal crime. In its 1957 annual report, Division attorneys took note of the climate of renewed intolerance in the wake of *Brown v. Board of Education*,⁵ citing "election fraud and voter complaints, allegations of police and jail brutality and infringement of rights growing out of resistance to desegregation in the public schools."⁶

The state governments of the New South were adamantly opposed to federal efforts to prosecute state or local police misconduct. The police – like the Confederate armies of old – were seen as the bulwark of Southern defenses against both federal meddling and black efforts to integrate Southern institutions. While the federal government acted as though the states were partners in a crusade for an orderly society, state officials made clear that they regarded the enforcement of civil rights laws to help black persons as inimical to the Southern way of life.⁷

⁴ See generally, Bernard Schwartz, CIVIL RIGHTS, STATUTORY HISTORY OF THE UNITED STATES SERIES, (New York: Chelsea House Publishers, 1970) (For a general background on the Reconstruction Era statutes); Walter F. White, ROPE AND FAGGOT: THIRTY YEARS OF LYNCHING (New York: Alfred Knopf, 1929); see Herbert Shapiro, WHITE VIOLENCE AND BLACK RESPONSE (Amherst: University of Massachusetts Press, 1988) (for an account of the Justice Department's spotty pre-*Brown* civil rights law enforcement record).

⁵ 347 U.S. 483 (1954).

⁶ The Civil Rights Division was established as a section of the Department's Criminal Division in 1939 by Attorney General and former NAACP board member Frank Murphy. KENNETH O'REILLY, RACIAL MATTERS: THE FBI'S SECRET FILE ON BLACK AMERICA, 1960-1972 23 (1989); The Civil Rights Act of 1957 enabled the Attorney General to turn the Civil Rights Section into a full fledged Division. See 1957 DOJ ANN. REP. at 75.

⁷ See, e.g., 102 Cong Rec. 4515-16 (1956) (the "Southern Manifesto")

NAACP v. The Attorney General: Black Community Struggle

In July 1956, on the eve of the inauguration of the modern day civil rights movement, Georgia State Attorney General Eugene Cook made plain the stakes involved in the coming struggle between Southern police departments and the desires of the law abiding black community, as epitomized by the NAACP. With the full knowledge of the Justice Department's investigatory arm, the Federal Bureau of Investigation, Attorney General Cook issued a declaration of war:

... the activities of the NAACP and its local fronts pose a serious threat to the peace, tranquility, government, and way of life of our State ... I pledge the full resources of my office to the enforcement of all existing State laws and constitutional provisions relating to subversive activities and our traditional pattern of race relations. And, toward that end, I solicit – and know I can count on – the full support and cooperation of you, the peace officers of Georgia.

Eugene Cook, Georgia State Attorney General, Speech before The Peace Officers Ass'n of Georgia (July 1956).

In this exceptionally tense racial climate, the Justice Department's resolve wilted. Perhaps mindful of the Southern dominance of key positions on powerful Congressional committees, U.S. Attorney General William Rogers announced in the week after the *Abbate* and *Bartkus* decisions that he would interpret the clear statement of the law with extreme caution. He opted to continue to defer to state and local governments in investigations of acts which violated both state and federal law, such as police misconduct and other forms of lynching.⁸

With this landmark decision, Rogers placed squarely in the hands of self-avowedly racist state authorities the tools to overlook, deflect, and otherwise whitewash investigations of racial violence by police officers and others against black persons and civil rights workers. At the dawn of the direct action phase of the modern day civil rights movement, the U.S. Attorney General had decided – as a matter of policy, not in accordance with clearly stated law – to withdraw the protection of the Justice Department from those who were most sorely in need of its assistance.

I. THE DIRECT ACTION CHALLENGE

signed by one hundred national legislators from Southern states proclaiming massive resistance to federally mandated desegregation).

⁸ Memorandum from U.S. Attorney General William Rogers to U.S. Attorneys (Apr. 6 1959) (on file with author); Press Release exhibit in *NAACP v. Bell* (Case File No. 75-1317), available at Washington National Records Center, Suitland, MD.

The historic black social protest movement intensified dramatically in the wake of the famous lunch counter sit in which took place in Greensboro, North Carolina on February 1, 1960. The NAACP was ill prepared to handle the wave of non-violent direct action which followed. As black persons and others interested in civil rights began to wade in at segregated beaches, picket segregated establishments, and seek to register to vote in numbers not seen since the demise of Reconstruction, the organization was hobbled by repercussions from its advocacy of the precursors of the movement.

In 1955, in a departure from the organization's traditional voter registration and lobbying activities, the national NAACP agreed to support a fledgling bus boycott in Montgomery, Alabama. Led by a then unknown young minister named Martin Luther King, Jr., the black community in Montgomery organized the Montgomery Improvement Association to challenge segregated seating practices on the city bus lines. With the assistance of NAACP attorneys, the MIA scored a key legal victory.⁹

Within days after the judge's ruling, the state governments of Texas, Alabama, Georgia, and Florida moved decisively against the NAACP. State officials seized association records and membership rolls, stripped local branches of the right to conduct business within state lines, and launched legislative investigations into NAACP activities. In the Upper South, the Virginia state bar association disbarred local attorney Samuel W. Tucker in reprisal for his NAACP work.¹⁰

Court battles over the association's right to exist in the South would continue in various states until 1964. The Southern backlash hobbled the NAACP's ability to act at precisely the time when the black community began to agitate more vigorously for social change. Local NAACP chapters initially would act sporadically, if at all, to channel community energies unleashed by the non-violent social protests.

On the evening of March 7, 1960, for example, white marauders caught Felton Turner as he walked in his Houston, Texas neighborhood. They drove Turner to a remote area, beat him mercilessly, carved the initials "KKK" into his stomach, and hung him upside down by his feet from a tree as a warning to the "NCAAP" (sic). The local NAACP chapter studiously avoided any provocative responses. The NAACP's national youth coordinator – who happened to be in town during the incident – was forced to make all of the necessary arrangements for Turner's care, and to draft the

⁹ Parks v. City of Montgomery, 92 So.2d 683 (11th Cir. 1957).

¹⁰ See, e.g., NAACP v. Alabama, 357 U.S. 449 (1958).

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press release to call for a national investigation himself.¹¹

The NAACP national board took note of the new spirit which swept the country. At their monthly meeting in April 1960, national board members concluded that the predominantly middle class and middle-aged organization should do more to reach out to black youth. Although local NAACP chapters in Washington, DC and elsewhere mounted isolated sit-in protests in the 1940's and late 1950's, the nation-wide upsurge of picketing, marches, and other forms of social protest in the wake of the Greensboro incident meant that the modern day civil rights movement had taken on a life of its own.¹²

In February of 1958, the NAACP board decided that the voter registration campaign in the South would be the organization's number one priority. The board elected to work with King's newly formed Southern Christian Leadership Conference (SCLC) to register as many formerly disenfranchised black persons as possible.¹³

In 1960, the NAACP board reluctantly realized that their steady voter registration efforts – combined with occasional litigation and constant lobbying – would not satisfy the demands for action of a newly assertive generation of black persons and others committed to the cause of civil rights.

The board members noted with alarm that Bernard Lee, one of Martin Luther King's lieutenants in the SCLC, had begun to tell donors that the NAACP was ineffective because it "had white members and, therefore, could not interpret the aspirations of the Negro." The SCLC members sought to divert funds from the more senior organization into the coffers of the SCLC.¹⁴

¹¹ NAACP Board of Directors Meeting Minutes (Mar. 14, 1960), NAACP Wash. Bureau Papers (hereinafter NAACP Papers), *available at* Minutes 1956-65 Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.; Report of the NAACP Secretary for the Month of April 1960 (May 09, 1960), NAACP Papers, *available at* Box III A 30, Manuscript Reading Room, Library of Congress, Washington, D.C.

¹² NAACP Board of Directors Meeting Minutes (Apr. 11 1960), NAACP Papers, *available at* Box III A 26, Minutes 1956-65 Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.; Report of the NAACP Secretary for the Month of April 1960, NAACP Papers, *available at* Manuscript Reading Room, Library of Congress, Wash., D.C.

¹³ NAACP Board of Directors Meeting Minutes (Feb. 10, 1958), NAACP Papers, *available at* Box III A 30, Manuscript Reading Room, Library of Congress, Wash., D.C.

¹⁴ NAACP Board of Directors Meeting Minutes (May 9, 1960), NAACP Papers *available at* Box III A 30, Manuscript Reading Room, Library of

The NAACP's relationship with its own Legal Defense and Educational Fund (LDF) also became strained. Originally composed of former NAACP attorneys like Thurgood Marshall, the LDF split away to form a law office separate and distinct from the NAACP, its parent organization. The separation was complete by 1957. As the sit-in movement began, donors who sought to support the effort gave generously not to the NAACP, but to LDF. The NAACP board members mourned the fact that the limited resources of the association only permitted the NAACP to have a one person legal department, General Counsel Robert Carter. The board set up the first of many committees to negotiate with LDF over use of the "NAACP" initials in its title.¹⁵

Despite the perception of the NAACP as too mainstream for some persons dedicated to the direct action movement – and the confusion attendant upon the LDF's use of its name – the organization plowed ahead on its time honored agenda of patient encouragement of social change via peaceful means. In May 1960, the organization published its first comic book aimed at community self-empowerment. Entitled "The Street Where You Live and What You Can Do to Improve It!" the illustrated pamphlet emphasized the NAACP's traditional approach – voter registration – as the tried and true method for obtaining adequate public facilities.¹⁶

The NAACP paid a high price for its continued advocacy in the climate of violence which pervaded the South. On April 19, 1960, a bomb nearly claimed the life of national NAACP board member Alexander Looby in his Nashville home. Local authorities investigated and, to the surprise of none, failed to turn up any clues.¹⁷

The NAACP had long experience with the dilatory efforts of local officials. In November 25, 1955, NAACP local chairperson Gus Courts had been shot in Mound Bayou, Mississippi for registering to vote. Although it was well known in the community that local White Citizens Council President Hezekiah Fly had been responsible, the local police were at a loss to solve the murder. Fly followed Courts for days before the incident took place. Ominously, Fly told Courts prior to the shooting that the local FBI

Congress, Wash., D.C.

¹⁵ See *supra*, note 12.

¹⁶ Attachment to Memorandum from Henry Moon to Roy Wilkins (May 31, 1960), NAACP Papers, *available at* NAACP Pamphlets - General, 1956-65 Folder, Box III A 235, Manuscript Reading Room, Library of Congress, Wash., D.C.

¹⁷ Report of the Secretary for the Month of April 1960, (May 9, 1960), NAACP Papers, *available at* Box III A 30, Manuscript Reading Room, Library of Congress, Wash., D.C.

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would not help Courts because they were loyal to the WCC.¹⁸

In February 1956, Wilkins reminded Civil Rights Division Chief Warren Olney that the Department had taken no substantive steps to resolve the voter registration related murders of NAACP officials George Lee and Lamar Smith, two NAACP officials who were murdered in Mississippi in 1955. Wilkins remarked:

We have now reached the time when it is frankly necessary for the country and the world to be advised as to whether the United States Department of Justice will or will not proceed to protect Negro Americans in the State of Mississippi from this reign of terror brought about as a result of the open defiance of the laws of the United States by the elected officials and law enforcement officers of that state.¹⁹

Subsequently, Congress passed the Civil Rights Act of 1960, legislation enacted to counter the spate of white hate bombings of synagogues and black churches unleashed in response to the sit-in movement. Despite the personal entreaties of NAACP Secretary Roy Wilkins, the Justice Department's acting Civil Rights Division Chief Joseph M. F. Ryan, Jr. declined to recognize the applicability of this law in the Looby bombing incident. The official Justice Department response was to place the FBI's crime lab at the disposal of state and local authorities to assist them in their fruitless investigation. The NAACP Board concluded that the 1960 Civil Rights Act was a flop.²⁰

On May 17, 1960, Clarence Mitchell, the director of the NAACP's Washington Bureau, addressed the staff of the Department's Civil Rights Division. He was accompanied by Washington Bureau Counsel John Francis Pohlaus – who was himself a former staff attorney for the Division – and by Harry L. Kingman, a former Regional Director of the President's Committee on Fair Employment Practice.

¹⁸ Report of the Secretary to the Board of Directors for the Month of January, 1956, (Feb. 14, 1956), NAACP Papers, *available at* Box III A 31, Secretary's Reports 1956-62 Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

¹⁹ *Id.*

²⁰ NAACP Board of Directors Meeting Minutes, (Mar. 14, 1960), NAACP Papers, *available at* Box III A 26, 1956-65 Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.; Report of the Secretary for the Month of April 1960, (May 9, 1960); NAACP Papers, *available at* Secretary's Reports, Box III A 31, 1956-62 Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

“The colored people of the South have no faith in the law enforcement machinery of that region,” Mitchell began. He added that “increasingly, the colored people of the South are losing faith in [the] law enforcement machinery of the Federal Government in the South.” He acknowledged that many white persons in the region accepted the doctrine of civil rights, but observed that few of these persons occupied positions of authority and that virtually none were police officers. He pointed out that in such a context, when persons of color sought to exercise their civil rights, only the Justice Department stood “between law and chaos.”²¹

The Washington Bureau Director offered examples of police officers who operated on their own or in collaboration with mobs to assault and arrest black persons who challenged the color line on public beaches, interstate buses, railway stations, and airports. He pointed out that these officers acted pursuant to their official duties; they operated under the aegis of state or local segregation laws. With respect to the vigor with which the police carried out these duties, Mitchell proffered the example of a recent beating of a pregnant woman who later miscarried as a result of her injuries. He also described how a man who had attempted to file a complaint at police headquarters was beaten while he was there.²²

Mitchell credited the FBI for its reputation for responsiveness and excellent investigation skills.²³ He strongly disagreed with Justice Department pronouncements that the government failed to act because of a dearth of complaints. Mitchell listed several complaints that the NAACP had already submitted for investigation, particularly with respect to persistent voter intimidation.²⁴ He noted that the very complaints that the

²¹ Clarence Mitchell, Director, Washington Bureau of the NAACP, Statement to the Staff of the Civil Rights Division, U.S. Department of Justice (May 17, 1960), NAACP Papers, *available at* Box 97, Department of Justice File, Manuscript Reading Room, Library of Congress, Wash., D.C.

²² *Id.*

²³ Meanwhile an FBI investigation of peonage conditions in Haywood County, TN was dragging so slowly that Civil Rights Division attorney John Doar decided to investigate for himself. See KENNETH O'REILLY, RACIAL MATTERS 52-54 (1989).

²⁴ On March 31, 1958, Hoover denied an NAACP request for an FBI report on obstacles to Southern black voting. On January 15, 1959, Clarence Mitchell reviewed for Wilkins the status of the Mississippi voting cases submitted the year before. He expressed frustration with the U.S. Justice Department and the U.S. Civil Rights Commission, stating:

It is very clear that, although a number of cases are now before the

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NAACP leveled against the Department in a meeting with Civil Rights Division Chief Warren Olney in 1955 held true five years later. He concluded with a pointed question: “[d]oes the Government really mean business?”²⁵

In 1955, Washington Bureau Counsel Pohlaus presented a brief list of issues to Assistant Attorney General Olney which captured the NAACP’s frustrations with the Department. Accompanied by Wilkins, Marshall, Mitchell, Southeast Regional Secretary Ruby Hurley, and Southeast Regional Chair Medgar Evers, Pohlaus criticized the Department’s “reluctance to institute a civil rights case” unless victory was assured. He reminded Olney that civil rights suits were a struggle for “law and morality,” and represented “a showdown fight to preserve the Constitution” in the face of contemptuous state governments and expectant public and world opinion.

Pohlaus challenged the Department’s practice of proceeding in civil rights cases only by grand jury indictment. Grand jury secrecy – when provided to all white Southern grand juries – meant that civil rights cases in the South could be covered up or glossed over.

Finally, Pohlaus challenged what the NAACP regarded as the Department’s unwarranted caution with respect to state’s rights. He took issue with:

the Department’s policy of deferring to state action if there is concurrent jurisdiction. Because of the attitude of some state officials, from the Governor on down, of defying the law of the land, it is obvious that there will be no state action in the areas of acute resistance.²⁶

The trend of violence against NAACP members would continue under the next Presidential administration. On February 27, 1961, bombs damaged the home of another NAACP member in Mableton, Georgia. When Pohlaus contacted then acting Civil Rights Division Chief John Doar about the incident, Doar told him that the Department would consider a national investigation, but hinted that matters would be left to the Cobb County police

[U.S. Civil Rights] Commission and the Department of Justice, there has been a constant failure on the part of both of these agencies to give any effective remedies.

Memorandum from Clarence Mitchell to Roy Wilkins, (Jan. 15, 1959), NAACP Papers, *available at* Box III A-145, Department of Justice Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

²⁵ *Id.*

²⁶ *Id.*

force and the Georgia Bureau of Investigation. To add insult to the NAACP's injury, these state and local authorities declined to respond to the Department's offer of technical advice, lab facilities, and assistance to conduct an interstate investigation.²⁷

The Justice Department consistently discredited NAACP reports of police violence or indifference to white hate crimes partly out of frustration with the alleged black victims. On March 9, 1956, at the urging of President Eisenhower, FBI Director J. Edgar Hoover presented an overall summary of the investigatory efforts in civil rights cases to date. Hoover spelled out a litany of difficulties with civil rights investigations, not the least of which was that:

[i]nvariably, when atrocious acts of violence break out we run into an iron curtain of silence ... The Negroes are afraid to talk and in case after case we have had to wait until nightfall to go see them if we hoped to secure any information.²⁸

Hoover neglected to mention the fear and intimidation that FBI agents, overwhelmingly white Southerners themselves,²⁹ instilled in the black complainants. In previous years, agents questioned witnesses to civil rights violations in the company of the local sheriff, inevitably stifling reports on police brutality. Information provided to FBI agents at great personal risk would often leak back to the persons complained about. Both black and white complainants lost their jobs in retaliation, or were forced to leave town for their own safety. Black complainants felt that agents

²⁷ Letter from John Doar to J. Francis Pohlaus (Mar. 15, 1961), NAACP Papers, *available at* Box 97, Department of Justice File, Manuscript Reading Room, Library of Congress, Wash., D.C.

²⁸ U.S. Department of Justice, Federal Bureau of Investigation, "Racial Tensions and Civil Rights," declassified report, reprinted in *CIVIL RIGHTS, THE WHITE HOUSE, AND THE JUSTICE DEPARTMENT, 1945-68* (Michal R. Belknap, ed., 1991).

NAACP officials were well aware early on that the FBI thought that black complainants sent them off on "wild goose chases." Memorandum from Walter White to Roger Baldwin (Sept. 5, 1941), NAACP Papers, *available at* Box II A328, Department of Justice Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

²⁹ NAACP officials knew – and complained about – the unofficial color bar on FBI employment. Memorandum from Walter White to J. Edgar Hoover (June 17, 1941), NAACP Papers, Box II A267, FBI Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

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investigated them instead of their complaints.³⁰ The state of affairs was so bad that former NAACP Executive Secretary Walter White was moved to exclaim:

... what I want to do is to put on record to [Attorney General] Clark and [FBI Director] Hoover that the government will never get anywhere investigating lynching and other crimes against Negroes in the South until it does some housecleaning and sees that assignments of FBI men to investigate these cases do not go in with prejudices against Negroes and on behalf of the criminals.³¹

Finally, there was the not-so-subtle prejudice evident in the institutional culture of the FBI, of which the NAACP was all too aware. Since the 1940s, NAACP officials complained about the agency's lily white hiring policy.³² Lesser known, but probably suspected, was the agency's domestic surveillance mission – called COMINFIL – to spy on the NAACP to root out any hint of Communist subversion.³³ The institutional bias was

³⁰ Summary of Correspondence between Department of Justice and the NAACP (Sept. 4, 1940), NAACP Papers, *available at* Box II A328, Department of Justice Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.; Letter from Thurgood Marshall to J. Edgar Hoover (May 10, 1946), NAACP Papers, *available at* Box II A197, Columbia, TN Riot Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.; Memorandum from Franklin Williams to Walter White (Sept. 12, 1946), NAACP Papers, *available at* Box II A267, FBI Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

³¹ Letter from Walter White to Robert Carter (Aug. 12, 1946), NAACP Papers, *available at* Box II A267, FBI Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

³² Press Release, NAACP, NAACP Scores FBI on Hiring Policy (Aug. 7, 1947). NAACP Papers, *available at* Box II A267, FBI Folder, Manuscript Reading Room, Library of Congress, Wash., D.C. Edith Lucas, a veteran government worker, explained in a signed affidavit how the FBI rejected her application and others submitted by blacks. The job interviewers denied that any of the 2000 FBI clerical positions advertised at that time were available. They marked off with parentheses a certain phrase on the applications furnished by white persons, but not ones by black persons. Affidavit of Edith Lucas (Aug. 6, 1947). NAACP Papers, *available at* Box II A267, FBI Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

³³ See generally, NAACP File (No. 61-3176), Roy Wilkins File (No. 62-78270), Freedom of Information Act Reading Room, FBI Building, Wash., D.C.

clear when Hoover told the U.S. President that “one of the most encouraging developments in civil rights matters has been the changed attitude of Southern law enforcement officers toward civil rights.”³⁴ He complained that the situation was aggravated by “some overzealous but ill-advised leaders of the NAACP.”³⁵

The NAACP had adapted to this state of affairs as resourcefully as possible. On occasion, NAACP members themselves would gather witness accounts to submit to the FBI. In those situations – even though the evidence gathered offered a thorough and exhaustive detailing of each incident – the FBI would disregard the information presented.³⁶

Top NAACP officials had personal experience with the dangers of reporting on racial violence. Former Executive Secretary Walter White posed as a land speculator in 1918 in order to obtain information about the lynching of Jim McIlherron in Estill Springs, Tennessee. Roy Wilkins researched peonage conditions faced by black farmers after the Mississippi River valley flood of 1927. Alexander Looby and LDF attorney Thurgood Marshall were beaten while investigating a riot by state patrolmen and National Guardsmen in Columbia, Tennessee in 1946. Marshall demonstrated remarkable restraint in his letter to the Attorney General, stating, “the FBI has established for itself an incomparable record for ferreting out persons violating our federal laws ... On the other hand, the F.B.I. has been unable to identify or bring to trial persons charged with violations of federal statutes where Negroes are the victims.”³⁷

³⁴ *Id.*

³⁵ CIVIL RIGHTS, THE WHITE HOUSE, AND THE JUSTICE DEPARTMENT, 1945-68 69 (Michael Belknap ed., 1991).

³⁶ NAACP investigators turned over to the Justice Department the names of everyone connected to a lynching in Minden, Louisiana. The Justice Department rejected the list as insufficient evidence, prompting Thurgood Marshall to confide to Executive Secretary Walter White that “I, however, have no faith in either Mr. Hoover or his investigators and there is no use in my saying I do.” Memorandum from Thurgood Marshall to Walter White (Jan. 23, 1947), NAACP Papers, *available at* Box II A267, FBI Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

³⁷ MINNIE FINCH, THE NAACP: ITS FIGHT FOR JUSTICE 50, 81 (1981); Press Release, NAACP, NAACP Committee Demands Justice Department Act (Nov. 27, 1946), NAACP Papers, *available at* Box II A197, Columbia, TN Riot Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.; Memorandum from Thurgood Marshall to Tom Clark (Dec. 27, 1946), NAACP Papers, *available at* Box II A267, FBI Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

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To his credit, Hoover also acknowledged the difficulties that the FBI experienced with state governments inimical to the federal agency's half-hearted civil rights investigations. As extraordinary as it sounds today, the twin doctrines of interposition and states' rights were very much alive in the South in the years leading up to the civil rights era. Hoover reported that:

We are greeted by open antagonism on the part of some local authorities. In the States of South Carolina, Georgia and Florida, we are not permitted to interview prisoners complaining of violations of their civil rights in state institutions without a prison official being present and in South Carolina we have to secure the written permission of the Governor. Circuit Judge [later Governor] George Wallace, at Union Springs, Alabama, on February 6, 1956, in a charge to a Grand Jury, asserted that if the FBI invaded the State sovereignty by investigating the selection of jurors in his county as we did in Cobb County, Georgia, he, the Judge, would order the arrest of every member of the FBI or any other Federal agency involved in such investigation on contempt of court charges.³⁸

When Congress enacted the first civil rights legislation since Reconstruction in 1957, Southern Congressmen would cry – with only slight hyperbole, from their jaundiced perspective – that national involvement in civil rights law enforcement would turn the FBI into a “Gestapo.”³⁹ On January 22, 1958, FBI Director Hoover discovered that an aide to Senator Olin Johnston of South Carolina attempted to bribe the agency with appropriations bills, seeking to split off civil rights investigations to another unit within the Civil Rights Division with no enforcement authority. Faced with a direct challenge to his “investigatorial prerogative,” Hoover stiffened and insisted that the FBI could do the job of civil right enforcement.⁴⁰

In response to these crystal clear state challenges to federal government authority, Hoover insisted in his report to the President that the best approach would be for the FBI to train state law enforcement personnel in civil rights law. In an authorized history of the Bureau published the next year, the official line would be to call for the use of “stronger local law

³⁸ CIVIL RIGHTS, *supra* note 35, at 24.

³⁹ Report of the Secretary to the Board of Directors for the Month of February, 1957 (Mar. 11, 1957), NAACP Papers, *available at* Box III A 31, Secretary's Reports 1956-62 Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

⁴⁰ ATHAN G. THEOHARIS & JOHN STUART COX, *THE BOSS: J. EDGAR HOOVER AND THE GREAT AMERICAN INQUISITION* n.323 (1988).

enforcement backed by intelligent public opinion” to ensure the proper resolution of the civil rights crisis.⁴¹ This attitude of willful blindness to the extent of Southern resistance to racial conciliation fatally undermined the Department’s efforts to effect compliance with the federal civil rights laws.

II. TRADITIONAL ADVOCACY CONTINUES

As the year 1961 wore on, events continued to move faster than the Justice Department, under the direction of the new Kennedy administration, could anticipate. That summer, emboldened by the wave of social agitation in favor of civil rights, an organization called the Congress of Racial Equality staged integrated bus rides through the Deep South to test the federal government’s commitment to desegregation. In full view of the international press, white Southerners ambushed the buses, dragging white and black riders off and beating them mercilessly as FBI agents looked on. In a demonstration of the hollowness of the federal government’s reliance on state authorities, the local police were nowhere to be found. When questioned by reporters, the local police chief stated blandly that his officers were “home with their mothers” at the time of the incidents. Subsequent FBI investigations revealed that the Chief of Police made arrangements with the leaders of the mob to give them a clear span of time in which to work their depredations. Wilkins sent a cable to Attorney General Kennedy, observing that the “Alabama dictatorship of the mob appears to be as great a menace to America as any foreign threat.”⁴²

Embarrassed by this vacuum of authority – in which the mob beat not only black persons, but also a high level Justice Department official – President Kennedy finally ordered the FBI into action to protect the Freedom Riders on the rest of their journey. Accompanying the agents was a new force on the scene: assistant U.S. Marshals. The U.S. Marshals Service was a little known security force used primarily to escort prisoners and maintain order in federal courthouses. Now, for the first time in recent memory, assistant U.S. Marshals were dispatched to offer protection for persons seeking to exercise their civil rights.⁴³

⁴¹ DON WHITEHEAD, *THE FBI STORY* 257-8 (1963), *quoted in* STEPHEN J. WHITFIELD, A DEATH IN THE DELTA: THE STORY OF EMMETT TILL 76 (1988).

⁴² Letter from Roy Wilkins to Robert F. Kennedy (May 15, 1961), NAACP Papers, *available at* Department of Justice Files, Manuscript Reading Room, Library of Congress, Wash., D.C.

⁴³ Annual Report of the Attorney General for the United States for the Fiscal Year Ending June 30, 1961, *available at* U.S. Dept. of Justice Library, Wash., D.C.

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In the eyes of the NAACP, this new protective entity was most welcome. The FBI did little more than stand to the side and record the violent incidents with cameras; this evidence gathering without further action was regarded by many in the NAACP – including Secretary Wilkins – with contempt. He concluded that the FBI agents were of little use. The assistant U.S. Marshals, on the other hand, arrived late, but helped a good deal.⁴⁴

The NAACP continued in its own regard to attempt to keep abreast of the rapidly unfolding direct action social protest movement. Deeply involved in voter registration projects long before President Kennedy espoused them as alternatives to sit-ins, the NAACP redoubled its efforts in that sphere. To combat perceptions in the black community about its hidebound mainstream status – and to motivate local branches still considered lethargic – the NAACP launched Operation Mississippi, a boycott of white owned businesses in the state known as the worst for civil rights violence. The NAACP's calls for the federal government to join the campaign by withholding federal funds from the state were rebuffed. State officials swiftly arrested local NAACP leaders who organized the boycott. NAACP calls for help to the federal government fell on deaf ears.⁴⁵

The NAACP experienced similar frustrating failures in its referrals of police misconduct cases to the federal government for prosecution. On August 11, 1961, the national office released the contents of a letter from Ft. Lauderdale branch president Eula Johnson to the national press. Johnson decried her city's decision to invoke an ordinance against "undesirable persons" as a justification for police to clear black persons from the municipal beach. The police followed up with raids to round up young black teenagers in the black section of town. The police arrested them on charges of disorderly conduct and incitement to riot. Witnesses described the teens as seated in an orderly manner at a popular local drive-in lunch counter.⁴⁶

Black persons in the South did not have to be involved in civil rights protests in order to experience police mistreatment. On January 6, 1962,

⁴⁴ ROY WILKINS WITH TOM MATTHEWS, *STANDING FAST: THE AUTOBIOGRAPHY OF ROY WILKINS* 283 (1982).

⁴⁵ NAACP Board of Directors Meeting Minutes (May 8, 1961), NAACP Papers, *available at* Box III A 26, 1956-65 Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.; Press Release, NAACP, NAACP Protests Arrests of Mississippi Leaders (Dec. 9, 1961), NAACP Papers, *available at* Box III A 233, 1956-65 Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

⁴⁶ Press Release, NAACP, Intimidation Laid to Ft. Lauderdale Police (Aug. 11, 1961), NAACP Papers, *available at* Box III A 243, 1956-65 Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

twenty-three year old Arthur James “took up” for another black person in a confrontation with two police officers in front of the Safari Restaurant in Savannah, Georgia. The two officers, Chatham County Patrolmen C.L. Goosly and C.L. Duffenberger, followed James inside the restaurant. According to the testimony of eight witnesses inside the restaurant, James raised his hands and backed away from the officers. Each officer fired once. The local police court cleared the officers in James’ death. The officers had claimed that James wielded a bar stool when they had attempted to apprehend him. Local NAACP chapter president Westley W. Law noted that the court had abdicated its responsibility and faulted the training of the two officers. In a national NAACP press release, he concluded that, “[a]ny trigger-happy police officer has now been given license ... to disregard his responsibility as a law enforcement official, where Negroes are concerned.”⁴⁷

A third example of random police violence offers a window into the official Justice Department stance towards these egregious violations of federal civil rights law. On the evening of April 9, 1962, a uniformed black soldier died at the hands of a police officer trying to maintain segregated seating on an interstate bus. The Department’s appraisal was instructive of the length to which national government officials would go to look the other way in such incidents.

On April 8, 1962, Roman Duckworth, a black Army Corporal received word from his wife in Taylorsville, Mississippi that their sixth child was due to be born. He took emergency leave from his post as a military policeman stationed on the U.S. Army bus in Ft. Richard, Maryland, and boarded a Trailways bus to return home. Upon arrival, the bus driver summoned Taylorsville police officer William H. Kelly, who awakened the sleeping corporal and dragged him off of the bus. Another black passenger later reported to NAACP officials that she heard scuffling in front of the bus, and then heard shots fired. Corporal Duckworth died on the morning of the birth of his child.⁴⁸

The President responded swiftly to the negative publicity surrounding the incident. The official explanation provided by the Army illustrates the ludicrous excuses provided by the state and local police departments – and accepted by the federal government – in the routine course of civil rights law enforcement. The official White House report stated that:

[o]n the outside of the bus, Duckworth allegedly struck the officer

⁴⁷ Press Release, NAACP, Justice Department Probe of Georgia Killing Sought (Jan. 26, 1962), NAACP Papers, *available at* Box III A 243, Police Brutality-Georgia, 1958-65 Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

⁴⁸ *Id.*

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with judo punches and attempted to take the officer's gun. The officer fired one round at Duckworth's feet at which time Duckworth said, "You will have to do better than that," and started toward the officer. The officer fired again and the round penetrated Duckworth in the vicinity of the heart ... On 10 April 1962 [the next day], the Smith County Grand Jury in Taylorsville, Mississippi returned a bill of justified homicide in favor of the officer.⁴⁹

In the face of this federal hypocrisy and ineptitude, the NAACP did what it could in holding the Justice Department accountable to follow up on the allegations of police violence. For example, on July 20, 1962, Vernon E. Jordan, Jr., NAACP Georgia Field Secretary, released a statement to the national press to decry the death of a man named Grady Ross. Ross allegedly died at the hands of police officer Bobby Hancock in McRae, Georgia. Jordan harped on the fact that both the city and county denied NAACP requests for an inquest, autopsy, or investigation, concluding that, "[w]ith no action on the part of city or county officials no Negro citizen can be assured of equal police protection in the community, and justice cannot be served without the intervention of the Justice Department."⁵⁰

On the positive side of the ledger, the Justice Department maintained a cordial surface relationship with top NAACP officials. The Attorney General even solicited a recommendation from Roy Wilkins for the President's decision to select Thurgood Marshall for the federal judiciary. Wilkins responded with enthusiasm, stating in a letter dated September 12, 1961 that Marshall was "a friend, a loyal American, and a superb lawyer." To the extent that the Justice Department was willing to provide help, the NAACP responded with alacrity.

In the face of this rank federal indifference, the NAACP inevitably began to draw closer to other civil rights organizations involved in the struggle. While the CORE Freedom Rides were considered beyond the bounds of propriety, NAACP officials nevertheless concluded that the newer, smaller organizations contained positive elements. Washington

⁴⁹ Memorandum from Adam Yarmolinsky to Lee C. White (Apr. 9, 1962), NAACP Papers, *available at* Box III A 243, Police Killing-Duckworth Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

⁵⁰ Press Release, NAACP, NAACP Protests Killing of Negro by GA. Police (July 20, 1962), NAACP Papers, *available at* Box III A 243, Police Brutality-GA, 1958-65 Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

Bureau Chief Mitchell expressed his view to Wilkins privately, confiding that:

[t]he writer of this memorandum believes that there is a collision of two philosophies in the current efforts to end segregation in the South. This does not mean that one is better than the other. Both can be effective because they appeal to different types of persons... One of these is the approach of the NAACP. The other ... is frequently referred to as a program of non-violence... In something so enormous as the task of ending racial segregation there is a great deal of room for many workers and many ideas. The problems come only when attempts are made to draw support from the same financial sources and to use the same people for different activities.⁵¹

Mitchell went on to reaffirm the right to seek corrective justice in the courts. He laid down ground rules for NAACP demonstrations, requiring that they take place only in areas where black citizens had a strong voter impact, and only when adequate bail money and experienced NAACP leadership were on hand.⁵²

For their part, representatives of CORE and other civil rights organizations engaged in voter registration efforts in the state of Mississippi initially eschewed contact with the local NAACP chapters. In fact, these organizations tried to persuade local black persons to join their ranks instead of the NAACP. Medgar Evers, the NAACP's Mississippi Field Secretary, noted bemusedly that encounters with local law enforcement – in the form of beatings and jail time – soon persuaded the CORE activists to seek NAACP help.⁵³

The NAACP's awareness of the new style of civil rights struggle advocated by CORE and similar groups was reinforced by a letter that Mississippi attorney Jack Young sent in August 1961. Young, an NAACP lawyer, had gone to obtain the release of Student Non-Violent Coordinating Committee (SNCC) activist Bob Moses from jail in Magnolia. Moses was arrested after questioning a police officer during a routine traffic stop.

⁵¹ Memorandum From Clarence Mitchell to Roy Wilkins (Apr. 18, 1960), NAACP Papers, *available at* Box III A-289, Sit in Assessment Folder, Manuscript Reading Room, Library of Congress, Wash., D.C

⁵² *Id.*

⁵³ Special Report from the Mississippi Field Secretary to Roy Wilkins, Gloster B. Current, & Ruby Hurley (Oct. 12, 1961), NAACP Papers, *available at* Box III A 231, Mississippi Pressures - General, 1961-1962 Folder, Manuscript Reading Room, Library of Congress, Wash., D.C

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Young reported the difficulty that he experienced in persuading Moses to agree to post bail. Moses apparently felt “that if he remained in jail his presence in jail would serve to inspire members of the Negro community and encourage them to vote.” The NAACP representative’s response – to suggest a trial instead – completed the contrast between the older organization’s approach and that of the new.⁵⁴

On the other side of the coin, the NAACP began to distance itself from its Legal Defense Fund. By 1960, the two organizations had established a committee to negotiate their differences over sharing funds and credit taken for the various civil rights efforts then underway. This relationship developed increasing strain. Years later, the rift grew wide enough to result in litigation whereby which the NAACP unsuccessfully sought to remove its initials from the Legal Defense Fund name.⁵⁵

The Kennedy Administration soon lurched on to its next full blown civil rights crisis. Attempts to enroll black student Charles Meredith at the previously segregated University of Mississippi prompted another wave of Southern white outrage and violence in the fall of 1962. Exhorted by Governor Ross Barnett, the white citizenry of the area surrounding the university stormed the campus, stoned the soldiers and assistant U.S. Marshals sent to protect Meredith, and executed a foreign journalist in cold blood.

The NAACP subsequently took the opportunity to remind Justice Department officials that it had called for a suspension of federal subsidies and services to the state of Mississippi. The Department rebuffed the NAACP’s offers to aid in tracking down the white wrongdoers. The NAACP national board recognized that the federal government barely acknowledged the central role of the organization in the litigation on Meredith’s behalf, and even sought to be interveners in the case to file briefs without consultation with the NAACP attorneys. On October 19, 1962, NAACP board member Spottswood Robinson reminded the Department of the overall atmosphere in Mississippi – where civil rights workers were regularly bombed and were subject to vociferous telephone threats – as a basis to call for a “broad dispersal of federal forces” in the state.⁵⁶

⁵⁴Letter from Jack H. Young to Roy Wilkins re Robert Paris Moses (Aug. 18, 1961), NAACP Papers, *available at* Box III B 5, Legal File, Manuscript Reading Room, Library of Congress, Wash., D.C

⁵⁵ NAACP v. NAACP Legal Defense and Educational Fund, Inc., 753 F.2d 131 (DC Cir 1985).

⁵⁶ NAACP Board of Directors Meeting Minutes (Oct. 8, 1962), NAACP Papers, *available at* Box III A 26, Manuscript Reading Room, Library of Congress, Wash., D.C; Press Releases, NAACP, Send Troops to Miss.,

The incident prompted the intervention of yet another heretofore unrecognized arm of the federal government: the U.S. Court of Appeals for the Fifth Circuit. This court boasted jurisdiction over all federal activity within the boundaries of the Old Confederacy. Staffed with conservative Eisenhower-appointed judges, the court nonetheless came to distinguish itself in the battle against anti-civil rights violence in the years to come. In the fall of 1962, the court took the unprecedented step of ordering the Justice Department to institute criminal contempt proceedings against Mississippi Governor Ross Barnett for the obstruction of justice.⁵⁷ The significance of this unexpected exercise of federal power – and the potential for similar action by this and other U.S. circuit courts – was not lost on the NAACP.

In the NAACP's view, the remainder of 1962 proceeded with modest improvements. In Prince George County, Virginia, the Justice Department took the initiative to file suit to desegregate the public schools.⁵⁸ Clarence Mitchell relayed the organization's thoughtful suggestions on peaceful ways to resolve the SCLC desegregation efforts underway in Albany, Georgia to the Attorney General. He reiterated the now familiar NAACP concerns about police misconduct as the number one priority, stating:

[A] great part of the trouble in Albany and elsewhere arises because law enforcement officials have unmitigated contempt for the Constitutional rights of colored citizens. Most of the complaints in this field are not prosecuted... The Department can do much to awaken the public conscience and possibly increase the number of convictions.⁵⁹

On the other hand, NAACP Secretary Wilkins noted the final decision of an all white jury in Mississippi with anguish in his weekly newspaper column. The jury rejected an extensive FBI investigative report into the circumstances surrounding the Charles "Mack" Parker lynching of 1958. Parker, a truck driver accused of raping a white woman, had been

NAACP Urges President (Sept. 28, 1962), & NAACP Asks JFK to Protect Miss. Integration Leaders (Sept. 28, 1962), NAACP Papers, *available at* Box III A 233, 1956-65 Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

⁵⁷ *Id.*

⁵⁸ See Memorandum from Clarence Mitchell (Oct. 1, 1962), NAACP Papers, *available at* Department of Justice Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

⁵⁹ Memorandum from Clarence Mitchell to Attorney General Robert F. Kennedy (Aug. 2, 1962), NAACP Papers, *available at* Department of Justice Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

dragged from his jail cell, driven across state lines, castrated, shot, and dumped into a river by a mob of white townspeople. International attention to this case of lynching prompted a massive FBI investigation which revealed that police officers on duty handed the keys to the jail over to the mob, and had driven to the far side of town so as to be out of radio contact during the time of the lynching.⁶⁰

Secretary Wilkins pressed repeatedly for a copy of the FBI report, which identified each townspeople responsible for the murderous act.⁶¹ The Justice Department instead elected to use the report as the basis for a non-civil rights prosecution under the federal kidnapping statute, which the Department's attorneys lost in the hostile local atmosphere. Rather than attempting to bring a civil rights case – or to permit the local U.S. Attorney to do the same – the Department chose to turn the FBI investigation report over to state and local authorities, who promptly suppressed it.⁶²

Throughout the affair, state authorities insisted that the matter was a local issue, and could best be handled by (white) Mississippians. The NAACP tore at this hypocrisy with an appeal to the state to vindicate itself. In an open telegram to Governor James Coleman, the association noted that:

Leading spokesmen in Mississippi, including yourself, have declared repeatedly that the state wishes to take firm action to punish the crime of lynching. Jerome Hafter of Greenville, former president of the Mississippi Bar Association, testified before a Senate subcommittee in Washington May 11 that a federal anti-lynching law is both unneeded and undesirable because Mississippi already has stiff laws to deal with lynching. He asked that Mississippi courts be permitted to function "in punishing those who commit these atrocious crimes" ... The state now has the opportunity to vindicate the declarations of those Mississippians who decry the enactment or invocation of federal laws to protect

⁶⁰ Report of the Executive Secretary, Poplarville, Miss., Lynching (June 8, 1959), NAACP Papers, *available at* Box III A 26, Secretary's Reports Folder, Manuscript Reading Room, Library of Congress, Wash., D.C. On November 5, 1959, Wilkins told all branches to protest the Parker case. He assured them that "wide protests and sharp demands can secure Federal action." Memorandum from Roy Wilkins to the Branch President (Nov. 5, 1959), NAACP Papers, *available at* Box III A 230, Mississippi Pressures Cases M-Y 1956-58, Manuscript Reading Room, Library of Congress, Wash., D.C.

⁶¹ *Id.*

⁶² 1960 ATT'Y GEN. ANN. REP. 1; *Behold Mississippi*, NEW YORK AMSTERDAM NEWS, (Nov. 3, 1962).

the constitutional rights of citizens.⁶³

The NAACP would adopt a similar stance with respect to its enemies on the national level in the spring of 1963. President Kennedy had all but promised increased federal protection to black persons and others engaged in civil rights work if exchange for diversion of their efforts away from mass civil disobedience, and into ostensibly less confrontational approaches such as voter registration. When the expected federal protection did not materialize – and the NAACP received reports about the shootings of young black voter registration workers in Greenwood, Mississippi – the resourceful organization turned to the Senate Internal Security Subcommittee.⁶⁴ This anti-Communist watchdog committee would later investigate the activities of the Ku Klux Klan, but preferred to maintain an attitude of suspicion towards the NAACP.⁶⁵

III. TRADITIONAL ADVOCACY REASSESSED

The NAACP suffered a staggering blow on June 12, 1963, when an assassin's bullet took the life of Medgar Evers, the Mississippi State Conference Secretary. A tireless organizer, Evers was single-handedly responsible for much of the NAACP's activity in the South. Within a month, the NAACP national board elected to post an unprecedented amount of \$10,000 as a reward for information leading to the capture of Evers' killer.⁶⁶

Events moved more swiftly elsewhere on the national level. On the eve of the August 28, 1963 March on Washington, televised images of police violence against civil rights protestors in Birmingham galvanized public opinion against Sheriff "Bull" Connor. A bomb blast in a church which took the lives of four young black girls caused Wilkins to place an emphatic demand on President Kennedy for intervention of the Justice Department. Wilkins also called for the passage of a strong civil rights bill to prod the

⁶³ Report of the Secretary for the Month of May 1959 (June 8, 1959), NAACP Papers, *available at* Box III A 31, Executive Secretary Reports, 1956-62 Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

⁶⁴ Executive Committee Meeting Minutes (Mar. 11, 1963), NAACP Papers, *available at* Box III A 26, Board Meeting Minutes 1956-65 Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

⁶⁵ *See generally* O'Reilly, *supra* note 6.

⁶⁶ Board of Directors Meeting Minutes (July 3, 1963), NAACP Papers, *available at* Box III A 26, Minutes 1956-65 Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

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cautious Department into action on a front broader than just voter registration. The President declined to intervene in Birmingham, judging that no federal statute had been violated in the police riot.⁶⁷ Secretary Wilkins warned, in an uncharacteristically terse manner, that “the picayune and piecemeal coverage heretofore extended tempted the NAACP to employ such methods as their desperation may dictate”.⁶⁸

The more assertive spirit on the national level may have developed partially in response to the belated emergence of grassroots activism among local NAACP chapters across the South. Spurred by the direct action tactics of other organizations, local chapter presidents began to importune Wilkins and others on the national board for tangible gains. Wilkins reported to the Justice Department in June “that his headquarters gets an average of one telephone call every five minutes from Negroes throughout the country who want instructions on how to organize demonstrations.”⁶⁹

As always, police brutality was the key source of complaints. Clarksdale, Mississippi Chapter President Aaron Henry, for example, asked the national office to request status reports on each reported incident of police abuse for which his chapter had carefully compiled affidavits.⁷⁰ Henry would warn – in connection with another incident that he termed a police “lynching” – that, “We will not forever be able to channell [sic] the activity of Negroes in nonviolent chanells [sic] if this violence against continue to go on unabated.”⁷¹

An incident in September 1963 illustrated the level of confrontation between the police and the black community. In response to the Birmingham church bombing, Reverend Harry Blake, the president of the Shreveport, Louisiana chapter, applied for a permit to mourn the deaths of the four girls murdered in the explosion. George d’Artois, the local Commissioner of Public Safety, denied the permit application and warned that the police would “enforce the laws of the city and state regardless of a

⁶⁷ *Id.*

⁶⁸ Belknap, *supra* note 35, at 189.

⁶⁹ Supplementary Correlation Summary 9 (Jan. 31, 1962), FBI-Roy Wilkins File (62-78270), *available at* FOIA Reading Room, FBI Building, Wash., D.C.

⁷⁰ Letter from Aaron Henry to Roy Wilkins (Sept. 6, 1963), NAACP Papers, Box III A 243, Police Brutality - Mississippi Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

⁷¹ Letter from Aaron E. Henry to Burke Marshall, cc Jack Young, Roy Wilkins, & Clarence Mitchell, (Oct. 6, 1963), NAACP Papers, *available at* Box III A 243, Police Brutalities - Clarksdale, Miss. Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

few individuals and organizations who want to destroy our American way of life.”⁷²

The Shreveport NAACP decided instead to hold a memorial service at a municipal auditorium. On the night of the service, police officers led by the Commissioner cordoned off the area around the auditorium. These officers beat and harassed neighborhood residents who sought to attend the service, and turned away members of the media and agents of the FBI. The police entered the auditorium and beat and arrested those who had assembled, singling out the NAACP officials for especially harsh treatment. The next day, 200 Shreveport high school students attempted to carry out the march. The police tear gassed and clubbed these students.⁷³

In this volatile atmosphere, the NAACP national board threatened to turn to the streets to seek a vindication of federal civil rights. Echoing the rhetoric of the more radical organizations that they had formerly eschewed, NAACP national officials declared that mere investigation was useless without Justice Department protection. The officials advocated self defense as a viable option to legal recourse. Collectively catching their breath, the board would renew their call for increased Justice Department authority, stronger civil rights legislation, and the establishment of a Fair Employment Practices Committee. That year, the organization boldly proclaimed its “Goals of the fight for freedom.”⁷⁴

The Justice Department, on its part, belatedly began to recognize the importance of its relationship with the NAACP. The NAACP – despite its questionable left wing taint – was infinitely preferable to the organizations which arose in the heat of the civil rights direct action phase. Roy Wilkins, at least, could be counted on to report imminent civil rights protests in advance to the FBI.

⁷² Press Release, NAACP, NAACP Protests Beating of Leader in Louisiana (Sept. 26, 1963), NAACP Papers, *available at* Box III A 243, Police Brutality - Louisiana, 1962-63 Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

⁷³ *Id.*

⁷⁴ Meeting of Executive Committee Minutes (Oct. 14, 1963), NAACP Papers, *available at* Box III A 26, Minutes 1956-65 Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.; Letter from Roy Wilkins to John F. Kennedy (Sept. 16, 1963), NAACP Papers, *available at* Box III A 271, Reprisals-Alabama-Birmingham Church Bombing 1963 Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.; Pamphlet, Target for 1963: Goals for the Fight for Freedom (1963), NAACP Papers, *available at* Box III A 235, NAACP Pamphlets, General 1956-65 Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

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From a cynical point of view, it was preferable to cultivate the more mainstream organization as friction continued between the NAACP, CORE, and the SCLC. The FBI kept close tabs on media reports of the rivalry which persisted among the heads of these organizations – Wilkins, King, and James Farmer of CORE – as they debated who deserved credit for various combined civil rights efforts, and which group should receive donations. The FBI knew of Wilkins’ belief that the other two groups claimed credit for activities planned and carried out by the NAACP. When the various agency offices debated ways to marginalize the increasingly prominent Martin Luther King, one suggestion was “to increase his dislike of Wilkins.”⁷⁵

Beginning in the summer of 1963, the FBI began to protect Secretary Wilkins from threats against his life. In July and August, after the Chicago NAACP office received a postcard which contained a death threat against Wilkins, the FBI interviewed suspects. That November, FBI agents kept a close eye on Wilkins as he traveled. As threats against his life continued to mount, Wilkins received FBI notices and offers of protection. King did not.⁷⁶

The NAACP’s most favored organization status did not endear the association to the Department. The FBI continued to hunt for black leadership wholly outside of the civil rights mainstream. The agency’s preferred spokesperson for the black community was Samuel Pierce, a man later selected by President Ronald Reagan as the sole black member of his Cabinet.⁷⁷ Pierce was later indicted – along with the rest of his management staff – for total dereliction of duty in his tenure as Reagan’s Secretary for Housing and Urban Development.

The NAACP, for its part, continued to aid the efforts of the other civil rights organizations. On September 25, 1963, for example, the association’s Washington Bureau alerted the Justice Department of the arrest and beating of SNCC Field Secretary Lafayette Surney in the Clarksville, Mississippi jail. The office forwarded the affidavits of Surney and several witnesses, which stated that the police had beaten Surney unconscious in the county jail.

In the spring of 1964, NAACP Washington Bureau Counsel Pohlaus would lay bare the NAACP’s disenchantment with the Department’s continued inertia in the field of civil rights law enforcement. Donald Sullivan, a graduate student, interviewed Pohlaus as part of his research for a

⁷⁵Louis E. Lomax, *The Negro View: ‘Now or Never’ - Leadership ‘Disunity’ Grows Graver*, NEW YORK JOURNAL AMERICAN, (July 16, 1963); DAVID GARROW, *THE FBI AND MARTIN LUTHER KING, JR.* 115 (1981).

⁷⁶ *Id.*

⁷⁷ See Garrow, *supra* note 75, at 115.

doctoral dissertation on the civil rights efforts of the national government under President Kennedy. In this interview, Pohlaus criticized the failure of the Civil Rights Division under Assistant Attorney General Burke Marshall to prosecute misconduct charges leveled against police officers in the South.⁷⁸

Further, Pohlaus emphasized that the Department would not pursue such allegations even when they were supported by eyewitness reports. He pointed out that the Department maintained its obdurate stance against prosecution in the face of evidence accumulated in the course of non-violent social protest demonstrations over the previous two years. Not only did the Department fail to file police misconduct charges under Sections 241 and 242. The Department also failed to provide the NAACP with the basis for its decision not to prosecute, as a means to independently evaluate the Department's decision. Pohlaus concluded that, with respect to complaints forwarded from his office to the Justice Department:

There is no longer any doubt that the Department uses a different standard in civil rights cases than it uses in others ... Despite the clear investigatory authority given it ... by Congress, [the Department] uses this authority only when the pressure of civil rights organizations or the glare of publicity requires it.⁷⁹

The summer of 1964 saw the NAACP rid of the last state strictures on its ability to operate in the South and focused on the task of social change through peaceful protest. Its membership had grown past the half million mark. In a self review in January, the traditional middle class association hailed its youth and college wing for its civil rights activities. The national board had come to explicitly recognize the importance of direct action, non-violent social protest as the means to secure integration and equal opportunity.⁸⁰ The organization had turned a corner from its cautious reliance solely upon voter registration and lobbying efforts.

The disappearance of civil rights workers James Chaney, Andrew

⁷⁸ Letter from Donald F. Sullivan to J. Francis Pohlaus (Mar. 14, 1964), NAACP Papers, *available at* Box 97, Department of Justice Files, Manuscript Reading Room, Library of Congress, Wash., D.C.

⁷⁹ Letter from J. Francis Pohlaus to Donald F. Sullivan, (Apr. 6, 1964), NAACP Papers, *available at* Box 97, Department of Justice Files, Manuscript Reading Room, Library of Congress, Wash., D.C.

⁸⁰ Press Release, NAACP, NAACP 1963 Membership Tops Half-Million Mark (Jan. 10, 1964), NAACP Papers, *available at* Box III A 233, Mississippi Pressures Press Releases Miscellaneous 1956-65 Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

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Goodman, and Michael Schwerner. during the Freedom Summer campaign in Mississippi sparked an uproar among the national delegates at the NAACP's annual convention in Washington, DC in June. Perhaps reluctantly, the national board had allowed the youth wing of the association to affiliate with the Council of Federated Organizations (COFO) to spur a summer long voter registration drive in Mississippi. The national officials likely echoed the hope of COFO director Robert Moses that the presence of hundreds of black and white college students in the state would draw a "constellation" of assistant U.S. Marshals to protect them.⁸¹

When the three young civil rights workers failed to reappear after a suspicious arrest by Neshoba County Deputy Sheriff Cecil Price, the entire NAACP conference of 2000 delegates demonstrated outside of the Justice Department main headquarters building. The conference drafted a resolution calling, for the second time in four years, for the federal take over of the state of Mississippi to prevent further bloodshed.⁸²

The national board met inside with Attorney General Robert Kennedy about the conditions faced by black persons and civil rights workers in Mississippi. The Attorney General promised that the FBI force in Mississippi would be "beefed up," and that there would be a thorough investigation. The FBI quintupled its presence in the state over the next two weeks.⁸³

Dissatisfied with the Justice Department's response, the NAACP launched its own investigation into the civil rights workers' disappearances, and into the racial climate of the state of Mississippi generally. In early July, a committee of national board members, local officers, and other officials

⁸¹Report of the Special Mississippi Investigation Committee of the National Board of Directors of the NAACP (July 23, 1964), NAACP Papers, *available at* Box III A 32, Special Mississippi Investigation Committee 1964 Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.; Memorandum from Bob Moses to Roy Wilkins et al. (Apr. 6, 1964), NAACP Papers, *available at* Box III A 231, Mississippi Pressures General 1963-65 Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

⁸² Report of the Special Mississippi Investigation Committee, *supra* note 81; Board of Directors Meeting Minute (June 25, 1964), NAACP Papers, *available at* Box III A 26, Minutes 1956-65 Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

⁸³ Report of the Special Mississippi Investigation Committee, *supra* note 81; Memorandum from Robert Carter to Clarence Mitchell (July 24, 1964), NAACP Papers, *available at* Department of Justice Files, Manuscript Reading Room, Library of Congress, Wash., D.C.

traveled through Mississippi to learn more about conditions there and to draw media attention to these conditions.⁸⁴

At every hearing that the committee conducted in towns and cities across the state, members of various black communities outlined in detail instances of police misconduct. They reported that police officers everywhere in the state threatened black persons who sought to vote. Officers beat and killed black persons without provocation. Police departments did not appear to screen out applicants with affiliations to white supremacy organizations. Police threatened to kill white and black civil rights workers, and ordered them to leave the state. Officers forced confessions out of civil rights workers in jail, and imprisoned them under inhuman conditions. One police chief threatened to close the businesses of both white and black restaurant owners if any of them served members of the other race in their establishments.⁸⁵

Throughout its investigation, the NAACP committee noted that the activities reportedly carried out by the local police departments appeared to be part and parcel of the mindset of the state government. The Governor of Mississippi, Paul Johnson, refused to meet with them and labeled them “invaders.” State employees in Jackson hurled racial epithets and objects at committee members as they called for compliance with national civil rights laws in the rotunda of the state capitol building. The police themselves taped and photographed the committee members and those with whom they associated at every stop.⁸⁶

Two weeks after their investigation of conditions in Mississippi, the committee met with Attorney General Kennedy, Civil Rights Division chief Nicholas Katzenbach, and Division attorney John Doar to present their report and recommendations. The committee called for official government hearings in the state and for the Justice Department’s assistance in sending voter registrars or referees to enroll eligible black Mississippians. The committee made a point to emphasize that the Department should take special steps in the area of police brutality, requesting that Department devote additional resources to:

[i]nvestigate every allegation of physical abuse of authority by state and local officials in Mississippi, and institute criminal proceedings in all cases in which such action appears to be warranted ... [and] ... make recommendations to the Congress for the passage of further legislation designed to protect American

⁸⁴ Report of the Special Mississippi Investigation Committee, *supra* note 81.

⁸⁵ *Id.*

⁸⁶ *Id.*

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citizens from being physically abused by persons acting under the color of governmental authority.⁸⁷

The Justice Department officials assured the committee that the Department's attorneys had filed one hundred-fifty police misconduct or voter intimidation complaints in various courts across the region. If the Department appeared to move slowly on these issues, it was "because of the need to be able to prove their cases and therefore get the facts together for presentation to the courts."⁸⁸

In its annual report that year, the Department would conduct a survey of its actions in the civil rights sphere between 1959 and 1964. Out of 3340 complaints, the Civil Rights Division had secured only five convictions. The FBI would insist that "it does not have authority to provide protection for victims in these cases," referring to Goodman, Chaney, and Schwerner.⁸⁹

At the meeting, the committee presented portions of the U.S. Code which gave explicit authority to FBI agents and other Justice Department officials to conduct on the spot arrests of civil rights violators.⁹⁰ General Counsel Robert Carter told the Attorney General bluntly, "our fight is desperate ... we are not satisfied with any of the action taken by the Justice Department to date."⁹¹

Attorney General Kennedy dismissed the federal statutory authority presented to him, hinting that he did not want to trammel Mississippi state sovereignty. He expressed confidence that Schwerner, Goodman, and Chaney would be found, but doubted that the church bombing case that those three men had investigated at the time of their disappearance would be solved. The Attorney General intimated that the Department would not push hard for voter registrars to enroll black persons. He promised to pass along the committee's suggestion about official federal hearings in Mississippi to the U.S. Commission on Civil Rights, which lacked the power to act on any of its findings.⁹²

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ 1964 ATT'Y GEN. ANN REP.

⁹⁰ Powers of Federal Bureau of Investigation, 18 U.S.C § 3052 (1958) (FBI agents may "make arrests without warrant for any offense against the United States committed in their presence").

⁹¹ Memorandum from Robert Carter to Clarence Mitchell (July 24, 1964), NAACP Papers, *available at* Box 97, Department of Justice Files, Manuscript Reading Room, Library of Congress, Wash., D.C.

⁹² *Id.*

IV. DIRECT ACTION, NAACP STYLE

In the summer of 1964, a police-related incident in predominantly black Watts, California ignited the first of several summers of black rioting in cities across the country. Secretary Wilkins was relieved to see that the FBI, in its report on the first summer of riots, exonerated the NAACP of any connection to the violence.⁹³ The NAACP national leadership rode out a minor rebellion of young association members after having issued orders to dissociate themselves from COFO. The NAACP board members deemed the summer volunteers too undisciplined and too closely tied to SNCC.⁹⁴

The NAACP would have further cause for alarm in the fall of 1964, when SCLC head M.L. King, Jr. openly began to criticize FBI director Hoover for the agency's failure to prosecute civil rights violations vigorously. Hoover immediately retaliated with an accusation that the civil rights movement contained "sexual degenerates" and declared himself a "states righter." The FBI prepared a tape of King's sexual indiscretions to play for other black civil rights leaders in an attempt to discredit him. Agents sent a copy of the tape to SCLC headquarters along with an anonymous letter encouraging King to commit suicide. The letter was also meant to exacerbate tensions specifically between King and Wilkins, reading in part, "we will now have to depend on our older leaders like Wilkins a man of character and thank God we have others like him."⁹⁵

Wilkins immediately requested an interview with Hoover. He was granted a meeting with Hoover's lieutenant Cartha DeLoach. Later commentators accused Wilkins of betrayal because he encouraged DeLoach to separate Hoover's ill will for King from his consideration of the civil rights movement as a whole. In fact, Wilkins was quite supportive of King both in the media and in private. Hoover would later find that Wilkins seconded King's accusations about Hoover to none other than President Lyndon Johnson himself.⁹⁶

Wilkins knew from experience the extent to which the FBI and Hoover in particular took criticism personally. At his last meeting with DeLoach in 1960, he had been subjected to a one-sided lecture on the difficulties faced by the agency in the course of investigating the Parker

⁹³ Wilkins, *supra* note 44, at 304.

⁹⁴ EMILY STOPER, *THE STUDENT NONVIOLENT COORDINATING COMMITTEE: THE GROWTH OF RADICALISM IN A CIVIL RIGHTS ORGANIZATION* 62 (1989).

⁹⁵ Theoharis and Cox, *supra* note 40, at 358; Garrow, *supra* note 75, at 128.

⁹⁶ *Id.*

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lynching.⁹⁷ Wilkins wisely then, and again in 1964, took care to praise the FBI effusively for its efforts while cautiously sharing the NAACP's criticisms as well. His guarded assessment of the FBI, as he stated forthrightly in his weekly news column was that it was:

... a highly efficient bureau which had done a good job in the Parker case, but which also collaborated too much with local law enforcement... The FBI has to maintain close working relationships with local police since it is not an independent national police force itself. In such cooperation, civil rights can well get lost in the shuffle. Negro complaints can fall, often, on deaf – or unresponsive – ears.⁹⁸

That winter, Wilkins' diplomatic approach enabled him to score a symbolic success in the battle for the hearts and minds of FBI agents. In connection with the arrest of the members of the Neshoba County sheriff's department responsible for the Schwerner, Chaney, and Goodman murders, a lone agent confessed his dawning realization that white Mississippians were the ones responsible for fomenting civil rights unrest. The agent regarded the determination to maintain white supremacy as a state religion. Wilkins swiftly added the NAACP perspective, observing:

Already the home folks are rallying around the accused men and a huge defense fund is being organized. The Mississippi system of having white men, including law enforcement officers, kill or aid in killing black men or their sympathizers will be defended against the entire Federal Establishment; against newspapers, radio and television; against the churches of all faiths and denominations; against the NAACP and all Negroes everywhere; against the "Communists," whoever they may be; against outsiders from Omaha and foreigners from overseas; indeed, against the world.⁹⁹

⁹⁷ Memorandum from M.A. Jones to Cartha DeLoach (Mar. 16, 1965), available at FBI-Roy Wilkins Papers (62-78270), FOIA Reading Room, FBI Building, Wash., D.C.

⁹⁸ Roy Wilkins, *Dr. King Needs No Defense*, NEW YORK AMSTERDAM NEWS, available at Roy Wilkins Papers, News Newspaper Column Clippings 1962-69 Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

⁹⁹ Roy Wilkins, *Mississippi - And The Right To Kill*, N.Y. AMSTERDAM NEWS, Dec.12, 1964, available at Box 37, Newspaper Column Clippings 1962-69, Roy Wilkins Papers, Manuscript Reading Room, Library of Congress, Wash., D.C.

The spring of 1965 witnessed the civil rights debacle at the Edmund J. Pettus Bridge. Civil rights marchers from Selma to Montgomery, Alabama were met by a police charge on horseback. State troopers tear-gassed and clubbed peaceful demonstrators back across the bridge and into the black neighborhoods, in some cases riding horses up onto porches in hot pursuit of fleeing black persons. This event occurred at the orders of Governor George Wallace.¹⁰⁰

The NAACP executive committee sent telegrams to U.S. Attorney General Katzenbach and to the Alabama attorney general to urge them to take criminal action against state officials responsible for the assault. Executive committee members expressed their pent up frustration:

For more than half a century, the NAACP and other organizations have adhered to the position that the guarantees of individual liberties and rights could be provided and secured through the democratic process and within the United States legal and political system. Even when detractors of the American system both at home and abroad either of the left or the right, were urging the contrary, thoughtful and responsible leadership in the NAACP defended the American system and exerted every effort in the courts, the polls, before the Congress, and before state legislatures and in the area of public opinion ... in short making use of all the lawful means available to free citizens of a democracy to secure for the Negroes their inalienable rights ... It was demonstrated in Selma on Sunday, March 7, 1965 that in the State of Alabama these devices will not work without the intervention of the Federal Government.¹⁰¹

The NAACP had paid a high price for its obdurate stance of moderation in the face of egregious police provocation. King, of the SCLC, had bitterly broken with Wilkins over the NAACP's "go slow" approach on civil disobedience, a stance that the association had adopted to help ensure the passage of the 1964 Civil Rights Act. Elements within the NAACP board itself seethed with the sentiment that underground resistance would be necessary to challenge the state of Alabama. Instead, the organization filed for injunctive relief in federal court to compel the state highway patrolmen to respect their rights.¹⁰²

¹⁰⁰ *Id.*

¹⁰¹ Executive Committee Meeting Minutes (Mar. 8, 1965), NAACP Papers, available at Box III A 26, Board Meeting Minutes Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

¹⁰² Memorandum from M.A. Jones to Cartha DeLoach (Mar. 16, 1965),

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The subsequent trial of the white supremacists responsible for the murder of white civil rights worker Viola Liuzzo did nothing to reassure the NAACP national leadership in their moderate approach. A rare burst of effective FBI investigation had revealed the circumstances which led up to her death. As in the Parker lynching case of 1959, a white Southern jury brushed the FBI testimony aside. Secretary Wilkins was moved to pen an article entitled "What Law?"¹⁰³

The Justice Department reported respectable improvements in its ability to enforce civil rights law. The Civil Rights Division had grown by 1965 into an office of eighty six attorneys. The Division had finally been reorganized to shed non race related functions, the better to handle the 3318 complaints that it received in the year 1965 alone. Field offices were established in Jackson, Mississippi and Selma Alabama. The U.S. Marshals Service had been given augmented duties and responsibilities. Federal judges were taking an active interest in upholding federal civil rights law.¹⁰⁴

Notwithstanding this heightened commitment to civil rights law enforcement, Division lawyers continued to regard police misconduct as the most volatile area of work. The largest category of complaints terminated at initial stages of review were the type euphemistically called "summary punishment," better known as lynching. In 1965, the Department had only thirty five pending police brutality cases underway, and six for racial violence by private individuals.¹⁰⁵

The credibility gap presented by the enormous number of complaints and the minuscule number of prosecutions was wide enough that the FBI inserted a self conscious defense of its work in the Department's 1965 annual report. The agency sought to explain that:

[t]he FBI's duties in civil rights matters are solely investigative. Its jurisdiction is strictly limited by law and it has no authority to maintain the peace or provide protection. At various times, considerable pressure has been exerted on the FBI in connection with its civil rights investigations. There have been those, for example, who wanted the FBI to furnish personal protection to civil rights workers and there have also been those who sought to have the FBI retreat from the full performance of its legally established duties. The FBI's answer has always been the same –

available at Roy Wilkins File (62-78270), FOIA Reading Room, FBI Building, Wash., D.C.; 1965 ATT'Y GEN. ANN. REP.

¹⁰³ Roy Wilkins, *What Law?*, NEW YORK POST, May 16, 1965.

¹⁰⁴ See generally 1964 ATT'Y GEN. ANN REP; see also 1965 ATT'Y GEN. ANN REP.

¹⁰⁵ See generally 1965 ATT'Y GEN. ANN REP.

it cannot and will not exceed its authority; neither will it shuck its responsibilities.¹⁰⁶

The agency's high minded assertion of neutrality in the civil rights struggle was belied by the disappointing statistics contained in the remainder of the report. Out of 4,389 alleged civil rights violations which received agency attention in 1965, FBI efforts had resulted in only nine convictions. In a Justice Department press release in July, Director Hoover would admit that his agents had only managed to make arrests in one civil rights case that year: the one which involved the murder of white civil rights worker Viola Liuzzo.¹⁰⁷

Hoover would swiftly change the subject from the agency's ineffectual civil rights work to the threat posed by the minuscule Communist Party, USA. He admitted that the Communists neither instigated nor controlled the burgeoning civil rights demonstrations, but cautioned that they sought to exploit them. He ended with a rousing endorsement of local law enforcement.¹⁰⁸

For its part, the NAACP continued to funnel complaints of police brutality from its local chapters primarily in the South into the national sphere. If the Justice Department could not be of much help, then perhaps national media attention would ameliorate conditions somewhat. The NAACP press releases revealed the typical police pattern of indifference shown towards white assaults on blacks, but excessive force demonstrated against the black persons themselves.

On July 17, 1965, a mob attacked several black teenagers who attempted to use a public beach in St. Augustine, Florida. None of the perpetrators was apprehended in this incident, or in several previous incidents of racial violence. The local NAACP chapter collected evidence and circulated petitions to seek the dismissal of the St. Augustine police chief and the St. John's County sheriff for lax law enforcement. NAACP complaints sent to the Governor were referred directly to the police chief and sheriff.¹⁰⁹

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Press Release, FBI (July 14, 1965), NAACP Papers, *available at* Department of Justice Files, Manuscript Reading Room, Library of Congress, Wash., D.C.

¹⁰⁹ Press Release, NAACP, Florida NAACP Moves to Oust St. Augustine Police Aides (July 24, 1965), NAACP Papers, *available at* Box III A 243, Police-Fla. Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

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In Dublin, Georgia, police clubbed, tear-gassed, and arrested fifty black persons – some as young as eight years old – who picketed a service station. The NAACP filed charges about the threats and intimidation with the FBI office in Savannah.¹¹⁰

Black persons did not have to be engaged in civil rights activities to face police abuse. On May 28, 1965, police officers Joe Crosby and Orvis Yawn shot an epileptic man named Charles Fyne in Stuart, Florida. Robert Saunders, the NAACP's state field director requested that national authorities investigate the incident in light of inconsistencies about the time and place of the killing. Despite the contradictory reports, a local coroner's jury absolved the two officers of any malfeasance.¹¹¹

An incident in Mississippi illustrates the reluctant and hesitant nature of Justice Department efforts to counter white violence against civil rights protestors. On the evening of August 8, 1965 the manager of a movie theater in Tunica beat up a teenager named Bernice Clark. Clark was part of a group of protestors which picketed the town's segregated theater. She was hospitalized for her injuries. Later that night, another teenager named Jess Chatman was shot in the head and leg as he picketed a segregated restaurant with another group in the same town. Witnesses were available to identify the assailants in both incidents, but the police refused to issue warrants.¹¹²

The FBI was contacted, and sent two agents to the town. The agents declined to remain in Tunica long enough to monitor subsequent civil rights protests. The NAACP forged ahead and organized a meeting and protest demonstration two days later. Civil Rights Division attorney Nicholas Floureg was contacted in the forlorn hope that FBI observers, if not protection, would be sent.¹¹³

Even when federal protection was provided, FBI agents would continue to place reliance on the uncertain graces of local law enforcement. On February 8, 1966, NAACP Washington Bureau director Mitchell wrote to

¹¹⁰ Press Release, NAACP, NAACP Files Complaint Against GA Police (Aug. 13, 1965), NAACP Papers, *available at* Box III A 243, Police Brutality, Georgia, 1958-65 Folder, Manuscript Reading Room, Library of Congress, Wash., D.C..

¹¹¹ Press Release, NAACP, NAACP Urges U.S. Probe of Police Killings of Negro (June 12, 1965), NAACP Papers, *available at* Box III A 243, Police-Fla. Folder, Manuscript Reading Room, Library of Congress, Wash., D.C.

¹¹² Letter from J. Francis Pohlaus to John Doar (Aug. 10, 1966), NAACP Papers, *available at* Box 97, Department of Justice File, Manuscript Reading Room, Library of Congress, Wash., D.C.

¹¹³ *Id.*

John Doar, now the head of the Civil Rights Division. He alerted Doar about threats made against the president of the NAACP branch in Brookhaven, Mississippi. Reverend R.L. Stanton feared for his safety as he attempted to integrate the local schools. The FBI agent sent to interview Stanton was accompanied by the local police chief.¹¹⁴

In the summer of 1966, the NAACP national office strove once again to impress on the Department the urgency of decisive federal action to halt the beatings of black persons and others engaged in non violent social protest. Defeated in their direct approach to then Attorney General Kennedy in 1964, the executive board sought this time a more circuitous route. Washington Bureau director Mitchell sought out Emmanuel Celler, the chair of the congressional Committee on the Judiciary to discuss the federal laws already on the books which gave FBI agents and other federal officials the power to make on the spot arrests of civil rights lawbreakers. When approached by Celler, Attorney General Katzenbach dissembled, stating a policy preference for obtaining warrants before making arrests for civil rights violations.¹¹⁵

Undeterred, Mitchell would try again without success that fall to show others in Congress the devastating impact of this failure to enforce federal law on the morale and credibility of the peaceful civil rights movement. Through its participation in an umbrella organization – the Leadership Conference on Civil Rights – the NAACP would voice once again the general discontent that FBI agents and even assistant U.S. Marshals would not make on the spot arrests, leading to flagrant disregard for civil rights.¹¹⁶

At the same time, wise to the delicacy involved in seeking yet further gains on the legislative front, Secretary Wilkins muted NAACP opposition to the U.S. involvement in the Vietnam conflict. He did not want to lose the public relations battle by allowing the general public to link the civil rights movement and the anti war crusade. Wilkins recognized the importance to

¹¹⁴ Letter from Clarence Mitchell to John Doar (Feb. 8, 1966), NAACP Papers, *available at* Department of Justice Files, Manuscript Reading Room, Library of Congress, Wash., D.C.

¹¹⁵ Letter from Clarence Mitchell to Emanuel Celler (June 25, 1965), Letter from Nicolas Katzenbach to Emanuel Celler (July 21, 1965), & Letter from Emanuel Celler to Clarence Mitchell (Aug. 13, 1965), NAACP Papers, *available at* Department of Justice Files, Manuscript Reading Room, Library of Congress, Wash., D.C.

¹¹⁶ Letter from Arnold Aronson to the Attorney General (Dec. 2, 1965), NAACP Papers, *available at* Department of Justice File, Manuscript Reading Room, Library of Congress, Wash., D.C.

pull rhetorical punches in order to secure the passage of laws needed to punish, for example, the killers of Vernon Dahmer, a prominent NAACP member who died January 1966 in Hattiesburg, Mississippi.¹¹⁷

The association could not help but offer criticism for the Justice Department in the course of comments made on the succession of civil rights bills that President Lyndon Johnson sought to have enacted to strengthen the Department's role. Wilkins opined publicly that the Justice Department bent over backwards to let localities act. He concluded that, "[i]f there is a central of all critics it is that Justice is cautious, preferring to deal with development[s] after the fact rather than initiate affirmative action."¹¹⁸

To drive the point home more effectively, Wilkins tried to communicate to white persons what life was like under police oppression. On January 28, 1967, he outlined in a *New York Post* article the plans of recently elected Florida Governor Claude Kirk to establish a private police force. Governor Kirk, a Republican, had tapped into a white voter backlash against civil rights to win the election. Wilkins pointed out the latent anti civil rights message in the public comments of the new head of the police force, George Wackenhut. Wackenhut said that he would not limit himself to criminal matters; rather, he would "investigate everyone and anyone who needs investigating." He hastened to add that "we are not going to become a gestapo."¹¹⁹

Wilkins rejoined that a Gestapo was exactly what this police force would become. He noted that white Floridians may have inadvertently brought down a police state on themselves. He predicted that:

It looks as though the white voters of Florida, in their haste to turn thumbs down on Negro political action, have let themselves in for a nagging, if not large trouble. Negro citizens do not like secret police, but their experiences with fully uniformed and publicly paid police have eased the shock of gestapo-like force which is about to bestow its blessings upon the people of Florida.¹²⁰

¹¹⁷ Roy Wilkins, *Civil Rights Being Hurt*, N.Y. AMSTERDAM NEWS, Dec. 11, 1965, available at Box 37, Roy Wilkins Papers, FOIA Reading Room, FBI Building, Wash., D.C.

¹¹⁸ Roy Wilkins, *White House Rumbles*, NEW YORK POST, Nov. 28, 1965, available at Box 39, Roy Wilkins Papers, FOIA Reading Room, FBI Building, Wash., D.C.

¹¹⁹ *Id.*

¹²⁰ Roy Wilkins, *Florida's Secret Police*, NEW YORK POST, Jan. 28, 1967, available at Box 39, Roy Wilkins Papers, FOIA Reading Room, FBI Building, Wash., D.C.

V. JUSTICE DEPARTMENT INTRANSIGENCE

For its part, the Department's Civil Rights Division continued to regard local police in the South as partners in the effort to uphold civil rights. The Supreme Court had affirmed the guilt of the police officers implicated in the Chaney, Scherner, and Goodman murders and the Klansmen responsible for the drive by shooting of black National Guard colonel Lemuel Penn.¹²¹ The Department persisted in attempting to compel the local police to protect civil rights workers, rather than investigate them aggressively for their own egregious civil rights violations. In Bogalusa, Louisiana, Justice Department attorneys sought a federal court injunction to compel local police to carry out their duty to protect black persons who attempted to register to vote rather than bring in assistant U.S. Marshals to accomplish the task.¹²²

The Division received 5,181 civil rights complaints in 1966, and dealt with bombings in McComb, Mississippi and New Bern, North Carolina. Its degree of responsiveness to this crisis could be measured in the number of times that Division attorneys appeared before Congressional committees in support of stronger civil rights laws. Out of 182 appearances by the Department in that year, the Division testified a total of three times. The FBI would protest yet again that, "it is not within the authority of the FBI to maintain the peace or provide protection for individuals in civil rights matters since it is solely an investigative agency."¹²³

In the early months of 1967, the NAACP's optimism about the prospects for peaceful social change began to falter. White public opinion militated against the passage of yet another civil rights bill, this time explicitly aimed to address police brutality. Despite assiduous efforts to distinguish the civil rights movement from the anti Vietnam War protest and a scandal involving black Congressman Adam Clayton Powell, NAACP national officials noted that these issues were siphoning away the movement's energies.¹²⁴

Wilkins observed that Federal government programs to help the poor and to aid in the preservation of civil rights were being cut and warped. He perceived that national white concern with black crime and black welfare,

¹²¹ U.S. v. Price, 383 U.S. 787 (1966); U.S. v. Guest, 383 U.S. 745 (1966).

¹²² 1967 ATT'Y GEN. ANN. REP.

¹²³ *Id.*

¹²⁴ Roy Wilkins, *Obstacle Course*, NEW YORK POST, Feb. 25, 1967), available at Box 39, Roy Wilkins Papers, FOIA Reading Room, FBI Building, Wash., D.C.

and calls for equal housing laws, had grown. By the summer of 1967, Wilkins noted that the federal government had cut school and civil rights law enforcement appropriations. On July 15, 1967 the FBI noted that, "Congress's refusal to pass open-housing legislation and other needed civil rights bills was "creating the atmosphere for violence."¹²⁵

The central problem remained police brutality. In May 1967, local police rioted on the campus of historically black Texas Southern University (the future home of the Thurgood Marshall School of Law). Wilkins faulted the police for overreacting to student protest. In the context of police-minority relations, he emphasized that federal law was needed to halt the struggle of the police against the people. As another long hot summer of urban rioting began, he espoused the firm belief that police-community relations were key to dissipating violence.¹²⁶

Wilkins appreciated that police brutality issues had moved beyond a strictly black vs. white paradigm. He expressed distaste for black power, and supported the use of federal troops to quell the ghetto riots. Wilkins blamed white persons for being responsible for ethnic divisiveness, but believed that angry black youth exacerbated the problem.¹²⁷

The Black-Power movement had come to the fore, emerging from the ashes of SNCC's self destruction. Once again, the NAACP found itself under attack as an "Uncle Tom" middle class, moderate civil rights organization. Wilkins saw that there was a contest for the hearts and minds of black and white persons alike between extremist elements and reformist elements on both sides. He noted that Congress' decision to cut programs aided both the black and the white extremists.¹²⁸

In 1967, Civil Rights Division attorneys would testify before Congress only once out of a total of eighty eight Justice Department appearances. For the first time, the Division would acknowledge in the Department's annual report the problems caused by local police. There was a dawning realization that federal protection was necessary against their

¹²⁵ Roy Wilkins, *What the Figures Show*, NEW YORK POST, May 6, 1967; *School Aid Diversion*, NEW YORK POST, Apr. 24, 1967; *Report on Reading*, NEW YORK POST, June 3, 1967, available at Box 39, Roy Wilkins Papers, FOIA Reading Room, FBI Building, Wash., D.C.; *The Tydings Ouster Is Part Of a Disturbing Pattern*, LOUISVILLE COURIER JOURNAL, July 15, 1967 available at Roy Wilkins File, FOIA Reading Room, FBI Building, Wash., D.C.

¹²⁶ Interview with Roy Wilkins, on *Meet the Press* (July 16, 1967) (transcript on file with author).

¹²⁷ *Id.*

¹²⁸ *Id.*

depredations, albeit in Northern urban areas, not in the South. The report noted the problems experienced with Sheriff James Clark in Selma, Alabama as well as continuing suits involving the police in Bogalusa and Montgomery.¹²⁹

The Division remained adamant in the belief that local law enforcement itself held the key to successful civil rights law enforcement. In the face of a small mountain of accumulated evidence of police antagonism towards black persons generally, and civil rights workers in particular, the official line was that:

In the past few years, when the civil rights movement was very active in the Deep South, the Department's enforcement program necessarily emphasized the problems involved in the failure of local law enforcement officials to provide proper protection to Negroes and civil rights workers... In connection with this phase of the program, the Civil Rights Division has presented to the courts legal principles which, if accepted, would require local law enforcement officials to assume greater responsibility in providing protection...¹³⁰

Protection against the self same local law enforcement officials went nearly unmentioned in the Department's annual report. In one bright spot, the Civil Rights Division reported that on October 20, 1967, the Neshoba County police officers implicated in the Schwerner, Goodman, and Chaney murders in Mississippi were found guilty. The number of civil rights complaints received in that year, however, had risen to 5,366.¹³¹

The FBI persisted in its refusal to take direct action to protect black persons and civil rights workers. The agency reiterated its standard disclaimer – albeit at greater length – and maintained its steadfast allegiance to the police. In the face of the growing avalanche of civil rights complaints, the FBI temporized:

However, in the course of these investigations, it is not within the authority of the FBI to arrogate local police responsibility of maintaining the peace or providing protection for individuals when such circumstances appear warranted ... While the maintenance of law and order in civil rights demonstrations and conflicts involving civil rights issues is the primary duty of local and state law enforcement agencies, the FBI extends numerous services to assist them in this responsibility. The full resources of the FBI

¹²⁹ See generally 1967 ATT'Y GEN. ANN. REP.

¹³⁰ *Id.*

¹³¹ *Id.*

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Laboratory and the FBI Identification Divisions are available to them. In addition, for many years the FBI has provided civil rights courses and lectures to law enforcement agencies across the Nation, and these include training in the control of mobs and demonstrations which sometimes grow from civil rights protests.¹³²

In fact, the FBI had discerned yet another pretext to keep mainstream black mass membership organizations such as the NAACP under suspicion. Replacing COMINFIL, the witch hunt for Communists within the civil rights movement, there would be the Black Hate investigation. Taking advantage of the growing climate of frustration among black Americans, the FBI would maintain its suspicious stance towards the NAACP as a possible source of black political extremism. The FBI would continue to overlook state government condoned police violence in its pursuit of troublesome blacks. The agency lost no time in denouncing so called nationalist activities, equating the white supremacist work of the Ku Klux Klan with the efforts of groups with which the NAACP did not associate, such as SNCC and the Revolutionary Action Movement.¹³³

From the NAACP's standpoint, the Justice Department had remained stock still during the course of the non-violent social protest era, and would continue to resist the notion of police responsibility for civil rights abuses in the next phase of more violent black struggle. The NAACP national office would continue to receive complaints from local chapters similar to the one forwarded from the Los Angeles chapter on October 24, 1967. In response to a civil rights complaint, FBI agents had appeared on the scene. The Department had not taken subsequent action. As with incidents in 1959, the NAACP would call for the prosecution of local officials by the federal government. No substantive relief would be forthcoming.¹³⁴

The year 1968 marked the first significant change in the Justice Department's stance with respect to police misconduct. At long last, under growing pressure from the NAACP and other sources— and in light of the course of events in the civil rights movement as a whole— Civil Rights Division chief Stephen J. Pollak instructed Division attorneys to intervene

¹³² *Id.*

¹³³ *Id.*

¹³⁴ 1967 ATT'Y GEN. ANN. REP; *see also* Letter from Harvey Ronald H. Brittan to Gloster B. Current, cc Clarence Mitchell, Bob Carter, Richard L. Dorkey, & Louis Berry (Oct. 24, 1967), NAACP Papers, Box 97, Department of Justice File, Manuscript Reading Room, Library of Congress, Wash., D.C.

more forcefully in incidents of alleged police abuse.

Pollak redefined the “compelling circumstances” necessary before the Justice Department would act to include instances when state or local investigations of a police incident had failed to prosecute an errant officer. The revised Departmental policy reflected a growing awareness – brought about in no small part due to NAACP agitation – that the local police issue would not resolve itself without some further oversight by the federal government.¹³⁵

In addition, the Division’s power to prosecute racist police officers was strengthened by the enactment in 1968 of Section 245 of Title 18 of the U.S. Code, which criminalized the use of violence against civil rights protestors.¹³⁶ Now more than ever, federal agents such as FBI men and assistant U.S. Marshals had the ability to conduct on the spot arrests of racist cops.

It was not until 1975, however, that Rogers’ 1959 non-intervention policy came under sustained criticism. In a lawsuit filed in the U.S. District Court for the District of Columbia, the NAACP – working in conjunction with Chicano civil rights groups – exposed the policy and its results.¹³⁷ The Department was forced to confess that it relied almost exclusively in nearly every instance of alleged police brutality on the word of state authorities, who almost invariably cleared police officers of any wrongdoing. When the policy was exposed in 1978 during President Carter’s administration, then Attorney General Griffin Bell decided to rewrite it finally to promise that the Justice Department would investigate police misconduct cases independently of the states, and make its own determination if prosecution was warranted.¹³⁸

VI. EPILOGUE: NAACP CHALLENGES THE POLICY

¹³⁵ Memorandum from Stephen J. Pollak, Assistant Attorney General, Civil Rights Division, Memorandum (Feb. 14, 1968), NAACP Papers, *available at* Manuscript Reading Room, Library of Congress, Wash., D.C.

¹³⁶ Civil Rights Act of 1968, Pub. Law No. 90-284, 82 Stat. 73 (1968) (codified as 18 U.S.C. § 245 (1976)).

¹³⁷ The Mexican American Legal Defense and Educational Fund and other Chicano advocacy organizations joined in the NAACP’s criticism of Justice Department handling of police brutality complaints. The focus of their concern was a 1976 case in Texas in which a sheriff was found to have killed an unarmed robbery suspect in his custody. U.S. Dept. of Justice FOIA materials provided by Emmanuel Ellison (on file with author).

¹³⁸ NAACP v. Levi, 418 F.Supp. 1109 (D.D.C. 1976), Plaintiffs’ Second Amended Complaint, Feb. 22, 1977.

NAACP v. The Attorney General: Black Community Struggle

In the past few years, the issue of police misconduct has belatedly come to the attention of the (white) general public. The Rodney King police beating – and the resulting riot which caused one billion dollars worth of damage to the city of Los Angeles – finally provided the impetus for the enactment of a 1994 federal statute which permitted the Justice Department to investigate police departments for systematic civil rights abuses. This is the legislation in use today in the federal investigation of the New York police department in the wake of the 1998 Abner Louima lynching and the 1999 Amadou Diallo police shooting.

Historical commentators have painted a rosy picture of the relevant actors in the non violent social action phase of the civil rights movement during the 1960s. Legal historian Michael Belknap, writing from the perspective of President Kennedy's civil rights division chief Burke Marshall, concluded that white Southerners themselves had realized the futility of maintaining segregation, and had willingly acquiesced to the civil rights movement.¹³⁹

This interpretation is sharply at odds with the NAACP perspective. NAACP and Justice Department records from the time period in question reveal the desperate attempts of the black mainstream civil rights organization to obtain the Department's assistance to enforce federal law in the South. The files also contain ample evidence to indicate that the Department was extraordinarily reluctant to become involved in the conflict between black civil rights workers and white police forces across the region. The war that was fought took place with the NAACP in the middle, under attack from other elements of the black community on the one side, and white segregationists on the other, with the Justice Department only responsive under pressure.

The positive aspect of the struggle from the NAACP's point of view was that the association learned that it could pursue legal remedies against police abuse without recourse to the Justice Department. The case filed in 1975 – and won three years later – demonstrated conclusively that the mainstream black community possessed the tools necessary to achieve the vindication of civil rights.

The other significant outgrowth of the NAACP's efforts to compel Justice Department action was the stimulation of other aspects of the federal government better able to help. The U.S. Marshals Service was one case in point, standing guard over civil rights workers while the FBI "investigated." The federal court system was another: the singular efforts of the U.S. Court of Appeals for the Fifth and the U.S. District Court for the District of

¹³⁹ See Belknap, *supra* note 35.

Columbia made possible the enforcement of the law when the Supreme Court and the Justice Department stood idle. The civil rights struggle had transformed the federal government from one which respected individual states' rights to the exclusion of the rights of black citizens into a truly national entity.

As the federal government continues to adapt to new civil rights exigencies – and the NAACP perseveres in its ceaseless advocacy on behalf of black Americans – one can only hope that the transformation will continue.