



1-1-2013

## Symposium: Voices of the Civil Rights Division: Then and Now (October 28, 2011)

Brian K. Landsberg  
*Pacific McGeorge School of Law*

Gerald Stern

James P. Turner

John Rosenberg  
*Pillersdorf, DeRossett and Lane*

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### Recommended Citation

Brian K. Landsberg, Gerald Stern, James P. Turner & John Rosenberg, *Symposium: Voices of the Civil Rights Division: Then and Now (October 28, 2011)*, 44 McGEORGE L. REV. (2013).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol44/iss2/2>

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## *Symposium*

### **Voices of the Civil Rights Division: Then and Now (October 28, 2011)**

Featuring Symposium Commentary by Gerald Stern, James P. Turner, John Rosenberg, and Chad Quaintance, a Guided Conversation Between Owen Fiss and John Doar, and an Introduction by Brian K. Landsberg

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#### I. INTRODUCTION BY BRIAN K. LANDSBERG\*

Our law reviews are full of analyses of recent appellate court decisions, of legislation and regulation, and of trends in the law. We often, however, overlook the question, how are laws enforced? All too frequently, analysis strips away the human element and the historical context. This issue of the *McGeorge Law Review* contains four short pieces by veterans who served in the Civil Rights Division of the United States Department of Justice in the 1960s and an interview of former Assistant Attorney General John Doar by another Division veteran, Owen Fiss. These pieces provide a sense of place, a sense of historical context, a sense of the racial caste system, and a sense of the role of the Department of Justice in enforcing the civil rights laws.<sup>1</sup>

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\* Brian K. Landsberg, Distinguished Professor and Scholar, Pacific McGeorge School of Law. Lawyer for the Civil Rights Division of the Department of Justice, 1964–1986.

1. Because of the nature of the program, the presentations were based on personal experiences of the speakers. The speakers had no reason to footnote their recollections. However, the editors of the *McGeorge Law*

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In October 2011, the Civil Rights Division Association presented a one-and-a-half day program, including one-half day co-sponsored by the Department of Justice.<sup>2</sup> The pieces that appear in this issue were part of that program. The first four were presented in the Great Hall of the Department of Justice, so that current Civil Rights Division staff could have a sense of their heritage. Gerald Stern, James P. Turner (represented that day by his son Jim), John Rosenberg, and Chad Quaintance spoke about the methods John Doar introduced to enforce the civil rights laws; they also described voting rights cases in the Black Belt of Alabama and Mississippi and how the Doar methods worked to protect African-Americans from race-based retaliation for registering to vote, from discrimination by voter registrars, and from discrimination in counting ballots. James Turner also tells the story of the criminal prosecution of the killers of Viola Liuzzo, and Chad Quaintance talks about the contributions made by three African-American women in Alabama.

The following day began with talks by Taylor Branch and Robert Moses. Branch, the author of a trilogy of books on America in the King Years,<sup>3</sup> and Moses, the leader of the Student Nonviolent Coordinating Committee's Mississippi Summer of 1964,<sup>4</sup> painted vivid pictures of the civil rights movement in Mississippi in 1964 and the role of the Department of Justice. This was followed by a reenactment of the closing arguments in the federal criminal trial of the persons accused of conspiring to kill three civil rights workers, Michael Schwerner, James Cheney, and Andrew Goodman, in Philadelphia, Mississippi. John Doar's closing argument borrowed from Robert Jackson's closing argument in the Nuremberg Trials.<sup>5</sup> Doar ended his argument with these words:

Members of the Jury, this is an important case. It is important to the government. It's important to the defendants, but most important, it's important to the State of Mississippi. What I say, what the other lawyers say here today, what the Court says about the law will soon be forgotten, but what you twelve people do here today will long be remembered.

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*Review* have added some footnotes for the convenience of readers who may wish to find additional information. In addition, the editors attach a short bibliography of material pertinent to the Civil Rights Division's work in Alabama and Mississippi during the period of time covered by the program. See *infra* Appendix.

2. Prior programs appear in Volume 26 of the *Pacific Law Journal* and Volume 30 of the *McGeorge Law Review*. 26 PAC. L.J. 765 (1995); 30 MCGEORGE L. REV. 955 (1999). A program in 2007 celebrating the fiftieth anniversary of the Civil Rights Division can be viewed at <http://www.law.georgetown.edu/webcast/eventdetail.cfm?eventid=403> (on file with the *McGeorge Law Review*).

3. TAYLOR BRANCH, *PARTING THE WATERS: AMERICA IN THE KING YEARS, 1954-63* (1988); TAYLOR BRANCH, *PILLAR OF FIRE: AMERICA IN THE KING YEARS, 1963-65* (1998); TAYLOR BRANCH, *AT CANAAN'S EDGE: AMERICA IN THE KING YEARS, 1965-68* (2006).

4. Douglas O. Linder, *Bending Toward Justice: John Doar and the "Mississippi Burning" Trial*, 72 MISS. L.J. 731, 731 (2002).

5. *Nuremberg Trial Proceedings Volume 19: One Hundred and Eighty-Seventh Day*, AVALON PROJECT, <http://avalon.law.yale.edu/imt/07-26-46.asp> (last visited Sept. 15, 2012) (on file with the *McGeorge Law Review*).

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Does not everyone see and understand that it was a matter of absolute necessity that you twelve people of Mississippi be asked to sit as jurors and judge this case? These defendants will stand before you on the record in this case and they will beg of you for indulgence. . . . In effect they will say as Gloucester said of old as he stood over the body of his slain king, he begged of the queen “say I slew him not.” The queen replied then say they were not slain, but they are dead. If you find that these men or that each of them is not guilty of this conspiracy it would be as true to say that there was no night time release from jail by Cecil Price, there were no white knights, there are no young men dead, there was no murder. If you find that these men are not guilty you will declare the law of Neshoba County to be the law of the State of Mississippi.<sup>6</sup>

The Fiss-Doar conversation followed in the afternoon.<sup>7</sup> This program was held six weeks before John Doar’s ninetieth birthday and seven months before he received the Medal of Freedom from President Obama.<sup>8</sup> In presenting the Medal, the President noted that John Doar

was the face of the Justice Department in the South. He was proof that the federal government was listening. And over the years, John escorted James Meredith to the University of Mississippi. He walked alongside the Selma-to-Montgomery March. He laid the groundwork for the Civil Rights Act of 1964 and the Voting Rights Act of 1965. In the words of John Lewis, “He gave [civil rights workers] a reason not to give up on those in power.” And he did it by never giving up on them. And I think it’s fair to say that I might not be here had it not been for his work.<sup>9</sup>

—*Brian Landsberg*

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6. Trial transcript, *United States v. Price*, excerpted at <http://law2.umkc.edu/faculty/projects/ftrials/price&bowers/doarclose.htm> (on file with the *McGeorge Law Review*). The reference to Gloucester and the queen is from Shakespeare’s *Richard III*, Act I, Scene 2. In convicting seven defendants, the jury sent a strong message that the law of Neshoba County would not be the law of Mississippi and that Ku Klux Klan members could no longer intimidate African-Americans with impunity. *See id.*

7. *See infra* Part VI.

8. Tracy Russo, *A Champion of Civil Rights: John Doar Awarded the Medal of Freedom*, JUSTICE BLOG (May 29, 2012), <http://blogs.justice.gov/main/archives/2230> (on file with the *McGeorge Law Review*).

9. President Barack Obama, Remarks by the President at Presidential Medal of Freedom Ceremony (May 29, 2012) (transcript available at <http://www.whitehouse.gov/the-press-office/2012/05/29/remarks-president-presidential-medal-freedom-ceremony> (on file with the *McGeorge Law Review*)).

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## II. OPENING COMMENTS BY GERALD STERN\*

After Jack Kennedy took office as President in 1961, he and his brother, the Attorney General Bobby Kennedy, appointed Burke Marshall to be the Assistant Attorney General of the Civil Rights Division.<sup>10</sup> Mr. Marshall kept John Doar, a Republican holdover from New Richmond, Wisconsin, as the Division's First Assistant.<sup>11</sup> The first person John hired was Bud Sather, a young man John knew from New Richmond, Wisconsin.<sup>12</sup> I was the second person John hired. But I like to brag that I was the first person hired by Burke Marshall and John Doar, who was not from New Richmond, Wisconsin. I had just graduated from law school, and I had just turned twenty-four years old.

Burke and John immediately changed the way business had been done. In the past, when the Division received complaints about civil rights violations in the South, the Division lawyers asked the FBI to investigate. That changed—now when complaints came in, Marshall and Doar sent a few of us young lawyers down South to talk directly to the complainants, or to just try and find out what was going on. My first full year in the Division, I set a record—quickly broken by others—of being out of Washington for 185 days flying South on propeller-driven airplanes before the age of jets—making numerous stopovers, before we finally landed in Alabama or Mississippi—then renting air-conditioned Oldsmobiles—and driving the back country, unpaved dirt roads looking for civil rights violations.

We had a badge to show people. That made us look real official.

On our first trip South, Bud Sather and I drove through the Black Belt of Alabama, and then on into Mississippi where we met with Bob Moses from the Student Nonviolent Coordinating Committee, called SNICK (SNCC).

Bob Moses had been sending memos to the Justice Department, complaining about Blacks not being able to register to vote in three counties where SNCC students from Nashville were training black farmers how to fill out the difficult Mississippi voter registration application.<sup>13</sup> Among other things, that application

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\* Gerald Stern was a trial lawyer with the Civil Rights Division of the Department of Justice; 1961–1964. He joined the law firm of Arnold, Fortas and Porter, of which he eventually became partner in 1964. While with Arnold, Fortas and Porter, Stern was the lead counsel for survivors of the coal mine disaster in West Virginia. He wrote the book *The Buffalo Creek Disaster* about the experience. In 1976, Stern co-founded the Washington, D.C. law firm of Rogovin, Stern, and Huge. After leaving the firm in 1981, Stern became General Counsel and a member of the Board of Directors of Occidental Petroleum Corporation in Los Angeles. From 1993–1995, Stern served as Special Counsel for Financial Institution Fraud and Health Care Fraud at the U.S. Department of Justice. Stern currently works as a legal consultant in Washington, D.C.

10. Interview by T.H. Baker with Burke Marshall, former Assistant Attorney General of the Civil Rights Division of the Department of Justice (Oct. 28, 1968) [hereinafter Burke Marshall Interview] (transcript on file with the *McGeorge Law Review*).

11. *Id.*

12. John Doar, *The Work of the Civil Rights Division in Enforcing Voting Rights Under the Civil Rights Acts of 1957 and 1960*, 25 FLA. ST. U. L. REV. 1, 4 (1997) (documenting the hiring of Bud Sather).

13. See HOWARD BALL, MURDER IN MISSISSIPPI 38–39, 46 (Peter Charles Hoffer et al. eds., 2004)

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required an applicant to state the duties and obligations of citizenship and to interpret a randomly selected section of the Mississippi Constitution.<sup>14</sup>

In McComb, Mississippi, SNCC had a registration school on the second floor of a grocery store. I spent a few days there taking a lengthy statement from Bob Moses about all that had occurred in the three counties where SNCC was working. Bob Moses had just returned from the neighboring county of Amite, where a white cousin of the Sheriff brutally beat Moses with brass knuckles when he tried to bring black people in to register to vote.

In the neighboring Walthall County—on the other side of McComb—John Hardy, another SNCC student from Nashville, had taken two elderly black farmers in to the registrar's office, where they were immediately thrown out of the office. The registrar then followed John Hardy out the front door of the courthouse, hitting him over the head with a gun. Almost immediately, the Sheriff appeared. He promptly arrested John Hardy for breach of the peace and put him in jail.

Our job was to interview the black witnesses and report back to Marshall and Doar. When we did, they asked if we thought there was a conspiracy among the three counties, so we could prosecute under an old post-civil war statute.

We had no evidence of a conspiracy. So Marshall asked, "what about enjoining the local breach of the peace case against John Hardy?" I told Mr. Marshall that the black letter law I had just learned at Harvard Law School was very clear. A federal court cannot enjoin a state criminal prosecution. Burke Marshall was a graduate of the much more free-wheeling Yale Law School, so he said "we'll try it anyway." That was the last time I relied on my conservative Harvard Law School legal training.

The Marshall/Doar approach was "let's try something—anything." We did and we got an injunction from the Fifth Circuit Court of Appeals.<sup>15</sup> We also went south on our own just to see what we could learn. I was raised in Memphis, just above the Mississippi Delta. My parents and sisters still lived there. So I drove alone through the Mississippi Delta to visit a Jewish uncle in Senatobia, then went to see a Jewish family friend in Indianola, and finally, I called on a German-Jewish refugee teaching in Clarksdale. As soon as I left my uncle's home, he drove up to Memphis to plead with my Memphis rabbi to get me reassigned to Alabama or Georgia, where I could not bring harm to the Jews of Memphis and Mississippi. And the German-Jewish refugee drove immediately to the Sheriff in Clarksdale to tell him I had been in town—there was lots of fear in Mississippi!

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(depicting discriminatory voting practices in Mississippi in the early 1960s and efforts to assist black voters in the South).

14. See *The Struggle for Voting Rights in Mississippi—The Early Years*, CIVIL RIGHTS MOVEMENT VETERANS, [http://www.crmvet.org/info/voter\\_ms.pdf](http://www.crmvet.org/info/voter_ms.pdf) (last visited Sept. 18, 2012) [hereinafter *The Struggle for Voting Rights*] (on file with the *McGeorge Law Review*) (noting the requirements for voter applicants).

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

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Another example of our decision to try whatever we could occurred in the Alabama Black Belt county of Bullock County, Alabama. The discriminatory practices against Blacks in Alabama were similar to those in Mississippi: each had a written literacy test that gave the voting registrar *complete* discretion to decide that a black applicant was not qualified.<sup>16</sup>

The Division had gotten an early preliminary injunction prohibiting discrimination against black voter registrants in Bullock County.<sup>17</sup> That unusual order was issued by the Federal District Judge in Montgomery, Alabama, Judge Frank Johnson, a courageous man who issued a number of rulings in those early years prohibiting discrimination against Blacks.

We learned that Bullock County's registrar now was violating Judge Johnson's preliminary order by secretly registering white college students when they came home from school on Sundays. A legendary Alabaman named Snag Andrews ruled Bullock County. Snag was the powerful speaker of the Alabama Senate, and his brother was a Congressman. My mother had attended the University of Alabama with Snag, and she told me she knew him. So I suggested to Marshall and Doar that I go to Bullock County, and tell Snag that he had to agree to a permanent injunction or face the wrath of Judge Johnson.

Marshall and Doar said why not, but they told me first to go and tell Judge Johnson what I planned to do. So I visited Judge Johnson in his chambers. He smiled, knowing Bullock County way better than I did, and wished me luck. So off I drove into the Alabama backwoods. I called on Snag early in the morning in his office in rural Bullock County. We argued back and forth, getting nowhere. Finally we took a break, and he asked me if I wanted a Coke. Since I was a Southerner, I knew that meant now we are going to talk business—a Coke in the morning is a big step.

Snag finally agreed to a permanent injunction—so long as it did not go into effect until after his brother got reelected to Congress in the upcoming election.

We agreed.

Doar and Marshall insisted on the most careful attention to the preparation and trial of our cases. For example, we prepared a complaint about poll taxes in Panola County, Mississippi. After I watched Burke Marshall sign his name, and then sign Attorney General Bobby Kennedy's name, to the complaint, I flew the complaint down to Doar in Mississippi.

There, I watched John take out a ruler and read through the complaint word for word, line by line. However, no matter how well we prepared and tried our cases, we usually lost—because of racist, federal district court judges.

The major problem with the Civil Rights Act we then were enforcing was the fact that we had to try our cases before judges in Alabama and Mississippi. For

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16. See Jack H. Pollack, *Literacy Tests: Southern Style* (1947), in *THE LIBRARY OF AMERICA, REPORTING CIVIL RIGHTS PART ONE: AMERICAN JOURNALISM 1941–1963*, at 86 (2003).

17. *United States v. Alabama*, 192 F. Supp. 677 (M.D. Ala. 1961).

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example, in rural Clarke County, Mississippi, five black people, including the school superintendent, tried to register. They had to fill out the lengthy Mississippi voter registration application, then they had to interpret a section of the Mississippi Constitution. And then they were rejected.

We had no evidence of what Whites were asked to do to register to vote. We had the right to photograph voting records, but Judge William Harold Cox in Mississippi, just like most of the district court judges in the Alabama Black Belt, kept delaying our efforts. Doar knew how small towns worked from the time he spent in his home town of New Richmond, Wisconsin. So he sent me to the local newspaper office in Quitman, Mississippi, and I started reading old newspapers.

I wrote down names from recent high school graduating classes, recent weddings, and the names of those listed for work on the county road crews each week. All of these people were white, of course. Blacks were never mentioned in the newspapers unless they committed a crime.

We assumed these white people would have registered to vote, particularly the road crews who got their jobs from the local politicians, so we sent their names to the FBI and had them all personally interviewed. We quickly got evidence that white people were not required to fill out the Mississippi voter registration application. And of course they were not required to interpret any section of the Mississippi Constitution.

Eventually, we also got access to the Clarke County voting records.

And after many more delays, Judge Cox finally agreed to give us a trial date for a preliminary injunction. John Doar let me try this Clarke County case before Judge Cox when I was barely out of law school. Frank Schwelb assisted me.

All of the county's six-thousand voting-age Whites and none of the three-thousand Blacks had been registered to vote when we filed our case. The eighty-four-year-old registrar testified, proudly, that he had never allowed black people to even apply to register to vote until after we filed our case. He said he always sent them home when they came in, after telling them that everyone was getting along so well in Clarke County that black people did not need to register to vote.

We also proved through FBI handwriting analysis of the signatures in the registration book that for 1,500 white registered voters, two or more of their names had been signed by the same person. For example, husband for wife. In one case, one person had signed for fourteen people. So there was no literacy test for white voters. And white people didn't even have to go to the registrar's office to register.

Judge Cox then made the mistake of casually saying offhand from the bench that we had shown a prima facie case of discrimination. I made sure the Associated Press reporter put that in the *Meridian*, Mississippi paper, where it was the big headline on the front page the next morning. That was a mistake by me.

A very angry Judge Cox came to court that morning and made a new headline for the paper, announcing that he now wanted to hear from the United

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States why our two major black witnesses should not be held for perjury. Judge Cox eventually decided that although we had made a prima facie case of discrimination, there was no “pattern” and “practice” of discrimination—the language of the federal Voting Rights law.<sup>18</sup> We appealed, and about one year later, the Fifth Circuit reversed Judge Cox and said his finding of no pattern or practice was “clearly erroneous.”<sup>19</sup>

When the case got back to him, Judge Cox just withdrew his clearly erroneous finding and then decided, in his discretion, not to decide whether there had been a pattern or practice of discrimination.

Our trial losses encouraged Congress of the need for new laws.

What Marshall and Doar and their teams of lawyers were able to prove in the early days of the Civil Rights Division, through this Clarke County case and our other Alabama, Mississippi, and Louisiana voting rights cases, was: the decision on whether black people would have the right to vote had to be taken out of the hands of racist, federal district judges in the South.

No matter how good we were as lawyers, or how hard we prepared, we could not win in a timely fashion before judges like Judge Cox. So the lawyers in the Civil Rights Division wrote the Voting Rights Act of 1965 that abolished the literacy test in certain Southern states, that took the decision power out of the hands of racist, federal judges, and put that power in the hands of appointed federal examiners.<sup>20</sup>

Black people then got the right to vote in massive numbers in the South.<sup>21</sup>

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18. 42 U.S.C. § 1971(e) (2006).

19. *United States v. Ramsey*, 331 F.2d 824, 837 (5th Cir. 1964).

20. Voting Rights Act of 1965, 42 U.S.C. § 1973; *see also The Voting Rights Act of 1965*, U.S. DEP’T OF JUSTICE, [http://www.justice.gov/crt/about/vot/intro/intro\\_b.php](http://www.justice.gov/crt/about/vot/intro/intro_b.php) (last visited Sept. 23, 2012) (on file with the *McGeorge Law Review*) (explaining how the Voting Rights Act of 1965 removed the literacy test requirement).

21. *See Doar, supra* note 12. Following the passage of the Act, registration offices opened in nine counties in three states, “[o]n the first day of opening, these offices registered 1144 blacks. By the first of the year, federal officials operating in thirty-six counties had registered 79,815 blacks. During the same period, local officials in the five states of the deep south registered 215,000 blacks.” *Id.* at 14.

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## III. COMMENTS BY JAMES P. TURNER\*

In February 1957, I graduated from the University of Colorado Law School, accepted an offer in the second year of the AG's Honor Recruitment Program, and was assigned to the Tax Division. I left Tax in 1961 and went back to practice in Denver; but in early 1965, I became a recidivist and rejoined the Department's Civil Rights Division as part of a big build-up of about a dozen new attorneys hired to help enforce the omnibus Civil Rights Act of 1964. I was hired by the new Assistant Attorney General John Doar and have been asked to give you one person's account of how the Civil Rights Division matured into a major generator of social progress.

From my very first day in the Civil Rights Division, I noticed some major differences in the way it worked compared to other Divisions. We had, it seemed, a different mission, a different spirit, one that had been carefully built by pioneers such as Attorney General Robert Kennedy, who when asked how to achieve racial justice in the South, answered, "well, just get out the road maps and go." In early 1965, John Doar, a Wisconsin Republican who had joined the Division in 1960, became its leader during the Johnson administration.

Right away, I noticed that the Division of 1965 was using some new basic approaches. First, because its business was to challenge discrimination, the Division aimed every hiring decision at achieving diversity. Ultimately, Civil Rights would become this Department's very first fully integrated division.

Then, there was a group of dedicated college graduates, mostly young women, initially called "research analysts," who worked in each section. They were always "around the action," cheerfully doing almost everything—preparing exhibits, making phone calls, drafting reports. Later they would be renamed "paralegals." Some would go on to law school, some would leave after a year or two, and some would marry Division lawyers. I could call out an instant list of about ten such marriages, including my own.

Next, civil rights lawyers—male and female, minority and white—traveled non-stop, mostly to the South, endlessly interviewing, checking records, observing demonstrations, and taking complaints. There was even an annual competition to see which lawyer had spent the most time on the southern roads. The winner was crowned "Carpetbagger of the Year."

And finally, there was something almost military about the Division's use of personnel. When action became frequent and daily—as it did in Selma, Alabama, around my arrival—the Division concentrated its forces where the action was. And, if things became really serious in such a place, it would emphasize that civil rights was a Departmental priority by borrowing lawyers from other Divisions like Tax, Civil, and Lands. Moreover, our case assignments were frequently made on the basis of pay grade—the more important the case, the higher grade

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\* James P. Turner, Deputy Assistant Attorney General, Civil Rights Division, 1969–1994.

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level of the lead lawyer. Doar explained that this approach was regularly used by law firms asking higher paid partners to handle the more important cases.

Remarkably, over the next thirty years, virtually all of our lawyers would follow John Doar's approach as the only way to enforce the federal civil rights laws.

Fourteen days after I came on board, March 7, 1965, came the day that would be remembered forever as Bloody Sunday, and which would help pass the Voting Rights Act. The video you saw a few minutes ago gave an accurate history of the events around Selma in 1965. Bloody Sunday became another civil rights watershed moment. As its shocking pictures of the Cossack charge flashed around the world, John Lewis—now a veteran Congressman from Georgia—was hospitalized with a serious concussion and Dr. King's Southern Christian Leadership Conference (SCLC) filed a court action before Judge Frank Johnson.<sup>22</sup> But while many Division lawyers were in Alabama for this action, I was just too new and was sentenced to be patient and stay in Washington.

After Dr. King's speech to some 25,000 supporters who had traveled to the state capitol from every nook and cranny of our country,<sup>23</sup> the demonstrators began heading back to Selma. Among them was Viola Liuzzo, a forty-three-year-old white, Detroit housewife who had driven by herself to Alabama after watching the televised reports of Bloody Sunday. Accompanied by Leroy Moton, a nineteen-year-old black man who worked for SCLC's Transportation Committee, she headed from Selma towards Montgomery to transport a second load of returning demonstrators. Then, the absolutely unthinkable happened. Out in the darkness of rural Lowndes County, a car carrying four Klansmen caught up with her and, point blank, fired first one and then a hail of bullets into her Oldsmobile. Liuzzo was killed instantly. Somehow, Moton, who had leaned forward to adjust the radio, was not hit.

Nearly exhausted after several weeks of really hard work, Doar received this shocking news while eating dinner in Montgomery at a restaurant the locals called the Elite (Ee Light) Café. He called the next morning and told me to fly down that day from Andrews Air Base on a military JetStar. When I got there, I found him in the U.S. Attorney's office, dead tired. He offered a quick brief about this office which had been the Division headquarters for the march: this phone is to the White House, that one to the Pentagon, that one to the Border Patrol which has a plane for our use. The FBI was down the hall. Then, looking me right in the eye, he explained "we have to get back to Washington and get the FBI started on this case. You are in charge here. Call me every two hours." With that done, he and about ten other exhausted government lawyers simply picked up their bags and walked out. His admonition about regular calls became my very

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22. *Williams v. Wallace*, 240 F. Supp. 100 (M.D. Ala. 1965).

23. See Steven F. Lawson, *Prelude to the Voting Rights Act: The Suffrage Crusade, 1962–1965*, 57 S.C. L. REV. 889, 914 (2006).

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first lesson in the Doar approach: Civil Rights Division (CRD) lawyers must always set up a system of telephone communication.

Wow, I thought. I finally get to go South. But more significant to my legal career was working directly for John Doar, where I began the business of learning a new approach to law enforcement that would last my entire career. In a late phone call the night he returned to Washington, Doar gave me a second lesson: “suggesting” that “you might want to drive a rental car over to Selma and check on things.” Thinking about the wild shooting spree on that road the night before, I took a big gulp, but started my first trip to Selma. I drove somewhat rapidly, but still managed to look behind virtually every tree in Lowndes County for the Kluckers I knew were lurking out there.

The next day, President Johnson announced that the FBI had arrested three Klansmen for the Liuzzo shooting. The fourth man in the car turned out to be a paid FBI informant—Gary Thomas Rowe, who had called his FBI handler the instant he got back to Birmingham. In Selma, another agent took Slim Barrett and me on a reenactment of the chase and shooting, narrating exactly what happened. Slim was Doar’s Second Assistant, and already was preparing to present the case to a federal grand jury. I was to help him. Here was lesson three: always promptly establish the facts of a serious crime in sworn testimony to a federal grand jury. The next week, the grand jury returned felony indictments of the three Klansmen for conspiracy, and I finally returned to D.C.

There, in Doar’s office, he offered still a fourth lesson, this one on federalism. Alabama’s governor and attorney general had proposed that the state would go first and try the three Klansmen for first-degree murder. After all, Alabama could seek a death sentence instead of a maximum of ten years for a federal civil rights conspiracy. Given the racial background in rural Alabama, the chance of a successful prosecution here seemed very doubtful, but the AG had ruled that it would have to be granted. Doar asked me to be the official conduit for providing all the federal evidence and witnesses to the state and to attend the trial in Hayneville, the seat of Lowndes County.

My next lesson was critical: civil rights lawyers must always study and understand the context of their case. And that was pretty bleak. First, under local law, women could not serve as jurors. Second, its racially biased court system had earned this county the local nickname “Bloody Lowndes.” Although about seventy percent of its people were black, there were virtually no black voters and every county official was white. Clearly, every juror in this trial would be a white male. And, in the antebellum Hayneville Courthouse, the restrooms were still labeled “White” and “Colored,” a steel prisoner’s cage stood in the back, and Alabama songbirds flew freely in and out through the open windows. Lowndes County schools were not just segregated, they clearly favored the Whites—Blacks mainly attended in unpainted shacks propped up on cinder blocks with outdoor toilets.

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I delivered the FBI reports to District Attorney Arthur Gamble, a soft-spoken prosecutor, arranged interviews for him with the two eyewitnesses, FBI informant Rowe and Mrs. Liuzzo's passenger, Leroy Moton. The State decided to try the three defendants separately, starting with Collie Leroy Wilkins, who had fired the first shot. Trial began May 3, only thirty-nine days after the killing.

Here, I simply must take a moment to describe the scene on that spring day in Hayneville, Alabama. It most clearly resembled the set of the movie *To Kill a Mockingbird*. I watched as defense attorney Matt Murphy, the self-styled "Klan Klonsel," showed up early and paraded around the courthouse square, pausing to talk with members of the large press corps and stopping to admire the statue bearing the names of the county's confederate war dead. As though escorting a foreign dignitary, Murphy sashayed around the square with Klan Imperial Wizard Robert Shelton and the three defendants with their families. On his lapel, Murphy wore a KKK insignia and a NEVER button. In some Klan Fracas in his younger days, he had lost two fingers from his right hand. Here is his picture on the cover of *Life Magazine* over forty-six years ago.<sup>24</sup>

He made a flamboyant figure with curly, graying hair, a light tan suit and brown straw hat, waiving his maimed hand around. He responded to reporters in a gravelly voice: indicating the defendants, he intoned, "These boys are heroes and no jury in the State of Alabama will ever convict them."

And, at least at the state trials, Murphy was absolutely correct. After hearing his hour-and-a-half closing, in which he labeled the victim a "white nigger," ridiculed and demeaned her black passenger, and condemned Rowe as an absolute liar who violated his klan secrecy oath, the jury reported a hopeless deadlock. They stood ten-to-two for a conviction of misdemeanor manslaughter. The two holdouts later said Rowe's violation of the klan secrecy oath made him totally unreliable.

Alabama Attorney General Richmond Flowers, a rare racial moderate who was campaigning for governor, stated he would personally lead the retrial, but it too was doomed to failure. First, a young white seminarian and civil rights worker, Jonathan Daniels, was shot and killed in Hayneville for trying to buy a soda pop at the "cash store" while accompanied by a black woman. At a hurry-up trial, a local white defendant was quickly charged and acquitted of manslaughter. And then, after a second Liuzzo trial, another Lowndes County jury flat-out acquitted Klansman Collie Leroy Wilkins. Each jury deliberated about ninety minutes.

Now it was crystal clear. The only remaining possibility for justice in the Liuzzo case was to prosecute the outstanding federal indictment for conspiracy to violate civil rights. In Montgomery, in a real trial before a real judge, Frank Johnson, Assistant Attorney General Doar, U.S. Attorney Ben Hardeman, and

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24. See LIFE MAGAZINE, May 21, 1965, for picture referenced herein.

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Assistant U.S. Attorney J.O. Sentell represented the government and obtained a conviction.

I watched as Doar's total preparation approach kicked in. I learned how the FBI vetted the potential jurors, and I helped as Bob Owen and a slew of other CRD lawyers and research analysts worked to assemble the case in the U.S. Attorney's office. Under the Doar system, for public appearance reasons, only one other Division lawyer would be allowed inside the courtroom—his job was to review each witness folder and to take meticulous trial notes for use in any pre-transcript appeals. I had to learn and do that job, too.

After a day's deliberations, the jury reported itself hopelessly deadlocked, but Judge Johnson ruled they had not even begun to deliberate long enough for that result. At Doar's request, the judge gave the *Allen*, aka, the dynamite, charge.<sup>25</sup> The next day, the jury returned the very first guilty verdict in a civil rights death case in modern American history. And that day was December 3, 1965; that day was John Doar's forty-fourth birthday. Judge Johnson sentenced each defendant to the maximum of ten years.

Thus, during the first generation of federal civil rights enforcement, these and dozens of other lessons from John Doar became the absolute gold standard for every Civil Rights Division lawyer. And following his lessons certainly served me well. I continued to work in the Civil Rights Division, was promoted first to Section Chief and later Deputy Assistant Attorney General. I did not retire for almost thirty years, trying to explain and follow John Doar's lessons for a total of seventeen Attorneys General in eight national administrations.

You are all invited to Sidwell Friends School tomorrow to hear an interview with John, whose ninetieth birthday is almost here. You will also see a reenactment and hear a discussion of his closing argument in the federal prosecution in the Mississippi Burning case, where three civil rights workers were first arrested and then murdered.

As you watch that, I urge you to carry with you Bob Kennedy's crisp instructions on how to enforce federal laws related to social reform: first, find a committed leader like John Doar, and then tell him, "Just get out the roadmaps and go."

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25. *Allen v. United States*, 164 U.S. 492, 501 (1896) (holding that the jury may be instructed to reconsider their views and listen to the positions of other jurors).

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IV. COMMENTS BY JOHN ROSENBERG\*

My name is John Rosenberg. My family, survivors of the Holocaust in Germany, immigrated to this country in February 1940. I grew up in a segregated South, largely in the small town of Gastonia, North Carolina. I spent four years as a navigator in the United States Air Force, where I witnessed the success of an institutionally integrated society. So, after graduating from law school at the University of North Carolina in 1962, I was hopeful that being a lawyer with the Civil Rights Division might give me the opportunity to help bring that sort of institutional change to the South, where I planned to return to practice law.

At the time of the Selma march, I was the Deputy Chief of the Southeastern Section, which included responsibilities for civil rights activities in the State of Alabama. I had been with the Division three years, having spent most of my time in Mississippi on voting cases under the watchful eye of my Mississippi Section Chief and John Doar protégé, the superb lawyer, Bob Owen. I had learned and taken to heart John's mantra that "there was romance in the records," as we pored over microfilm copies of voter applications for hours on end; and I learned his strategy that we would win our cases with our witnesses and the defendant's records. Almost always facing hostile federal district judges, we knew that in our trials we were making a record for an appeal in virtually every case. There were rare exceptions. One of them, as Gerald has pointed out, was federal Judge Frank M. Johnson in Montgomery.<sup>26</sup> It was the respect that he had developed for John and the Division's lawyers that would become so important during this period. He would often make us an amicus participant in any significant racial case in his court because he could depend on us to give him our fair, objective view of a case; and he would again play a pivotal role in the Dallas County voting case.<sup>27</sup>

As Jim Turner and the video pointed out, the Selma march was the spark that accelerated the passage of the Voting Rights Act of 1965.<sup>28</sup> Literacy tests in

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\* John Rosenberg worked as a trial attorney and Section Chief in the Civil Rights Division of the U.S. Department of Justice from 1962 until 1970. He then served as the Director of Appalachian Research and Defense Fund of Kentucky, Inc. (AppalReD, a legal services agency in Appalachian, Kentucky and headquartered in Prestonsburg, Kentucky) for thirty-one years before moving into private practice at Pillersdorf, DeRossett and Lane, a Prestonsburg law firm. In 2004, Rosenberg received a Lifetime Achievement Award from the magazine, *American Lawyer*. Additionally, Rosenberg received honorary doctorates from the William Mitchell School of Law and Berea College, and an Honorary Doctorate of Public Service from Morehead State University.

26. See Robert D. McFadden, *Frank M. Johnson Jr., Judge Whose Rulings Helped Desegregate the South, Dies at 80*, N.Y. TIMES (July 24, 1999), <http://www.nytimes.com/1999/07/24/us/frank-m-johnson-jr-judge-whose-rulings-helped-desegregate-the-south-dies-at-80.html?pagewanted=all&src=pm> (on file with the *McGeorge Law Review*) (describing the legacy of Judge Johnson).

27. *United States v. Exec. Comm. of the Democratic Party of Dall. Cnty.*, 254 F. Supp. 537, 539 (S.D. Ala. 1966).

28. Voting Rights Act of 1965, 42 U.S.C. §§ 1973–1973aa-6 (2006); see also Sheryll D. Cashin, *Democracy, Race, and Multiculturalism in the Twenty-First Century: Will the Voting Rights Act Ever Be Obsolete?*, 22 WASH. U. J.L. & POL'Y 71, 85–86 (2006) (noting that Bloody Sunday was the turning point

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covered states would become a thing of the past.<sup>29</sup> Most importantly, the Act provided that the Attorney General would designate counties in which federal examiners would be registering voters, and that federal observers could be present to oversee elections.<sup>30</sup>

The Act also directed the Attorney General to initiate litigation under the Act to challenge the poll tax in covered states.<sup>31</sup> This tax, imposed as a condition of voting, had served as an additional barrier to the rights of Blacks to register to vote.<sup>32</sup> The cases were filed almost immediately, and preparation of the Alabama case under Steve Pollak's direction became a major part of my work. Steve presented the case to a three-judge court and the court promptly declared the tax invalid under the Fifteenth Amendment.<sup>33</sup> Judge Johnson, in a concurring opinion, would have held the poll tax invalid under the Fourteenth Amendment as well.<sup>34</sup>

In the months following the passage of the Voting Rights Act, thousands of Blacks throughout the South would become registered by federal examiners.<sup>35</sup>

The first major election to be held following passage of the Voting Rights Act was to be the Democratic Party primary elections on May 3, 1966.<sup>36</sup> John Doar worried that this election could present some real challenges. This would be the first election since Reconstruction in which large numbers of Blacks would be voting, in which there would be black election officials, and in which there would be black candidates for office. So, true to his style in preparing cases for trial, in March 1966, he organized a major effort by the Division attorneys to conduct a comprehensive fact-finding mission in the various counties where federal examiners were registering voters, to visit with probate judges and other officials, and to prepare an assessment of the county's situation so we could be prepared for any eventuality on election day.

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towards passing the Voter's Rights Act of 1965).

29. 42 U.S.C. § 1973b(a)(1).

30. *Id.* § 1973a(a).

31. *Id.* § 1973h(b).

32. *See id.* § 1973h(a) (These requirements "in some areas has the purpose or effect of denying persons the right to vote because of race or color.").

33. *See United States v. Alabama*, 252 F. Supp. 95, 96 (M.D. Ala. 1966) (holding the poll tax to be invalid).

34. *Id.* at 105 (Johnson, J., concurring).

35. *See Doar, supra* note 12, at 14 ("By the first of the year, federal officials operating in thirty-six countries had registered 79,815 blacks. During the same period, local officials in the five states of the deep south registered 215,000 blacks.").

36. *See id.* at 15 (noting that "Dallas County, Alabama, was the test county" for this "first post-Voting Rights Act primary election").

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Here is what he wrote, in part, to the lawyers who would be participating in this effort:

This Division's most important project in the immediate future is the impending Alabama elections on May 3. Our efforts to date to see that Blacks are able to register to vote will lose most of their meaning if Blacks, in fact, are not able to vote and to have their votes properly counted. We want to be certain that we have used every resource and method available to us to ensure free and fair elections in Alabama. Those of you who are assigned to work on the project should give it priority over all other work which you have.<sup>37</sup>

On March 3, 1966, sixteen Division attorneys left for the thirty Alabama counties with federal examiners, each with a notebook in hand with complete information about the county, Alabama election laws, officials, and relevant voter information. They were to report back to me, and I would report to John.

We might well have expected that a major challenge would confront us in the Dallas County primary election. Selma had become the focus of black registration efforts and the first efforts by Blacks to access public accommodations following the passage of the Civil Rights Act of 1964.<sup>38</sup> The resistance by Sheriff Clark, his posse, even the Dallas County prosecutors and judiciary was unrelenting and even violent. For example, Clark used cattle prods in evicting four black students who sought service at a local drive-in restaurant, and then trumped up charges against them for resisting arrest and carrying a concealed weapon—a bicycle chain and padlock. This pattern of official interference is chronicled in the per curiam opinion by the three-judge court in *United States v. Clark*, which John Doar presented to the court in December 1964.<sup>39</sup> There were over 125 witnesses and approximately 100 exhibits.<sup>40</sup> In its opinion, the court recounted the continuous pattern of obstruction and interference by Dallas County officials with the legitimate rights of Blacks to register to vote and to the use of public accommodations.<sup>41</sup> The court specifically enjoined Sheriff Clark and his posse from further interference with those rights.<sup>42</sup>

So, it was not surprising that John Doar had decided to be in Selma on that Election Day, May 3. As in many of the other counties, the lines of voters were long, and Blacks were voting in large numbers for the first time. Prior to the passage of the Voting Rights Act, approximately 15,000 persons were registered

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37. Memorandum from John Doar, Assistant Attorney General, Civil Rights Division, to Attorneys Assigned to Work on Alabama Elections (on file with the *McGeorge Law Review*).

38. See Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964).

39. *United States v. Clark*, 249 F. Supp. 720, 724 (S.D. Ala. 1965).

40. *Id.* at 723.

41. *Id.* at 728.

42. *Id.* at 730.

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to vote in Dallas County, of whom only about 1,500 were black. Yet, between August 10, 1965, when they began to take applications, and April 10, 1966, federal examiners had registered 8,670 Blacks. The largest number of voters in the history of Dallas County turned out for this election.

Dallas County still used paper ballots and the ballot was extremely long. The ballot contained the names of seventy-three candidates competing for twenty-four positions. Several hundred federal observers, appointed under the Voting Rights Act, were present to observe the voting in the eighty boxes in Dallas County that day. The most publicized and hotly contested was the race for Sheriff. Jim Clark, the symbol of segregation, was seeking another term. He was opposed by the more moderate Public Safety Commissioner Wilson Baker.

The ballot counting proved to be slow going, especially for the first-time black officials. By the early morning hours of the next day, May 4, the ballot counting had still not been completed in six boxes with overwhelmingly black voters. The Dallas County Democratic Party Executive Committee, all white, then instructed the acting sheriff to pick up the boxes as they were and to impound them. The following day, the Committee designated representatives to complete the count, examine the ballots, the signed voter lists, and contents of the boxes, and recommend whether the ballots should be counted. Three of the representatives recommended that the ballots in the boxes they examined should be counted. Yet, the Committee ruled that, because of claimed irregularities that they had found, none of the votes in these six boxes should be counted.

John realized that swift action was necessary to do everything possible to ensure that the ballots in the six boxes would be counted. Most of the Blacks who voted in this election had been registered by federal examiners, and the right to have their votes counted, as established by the Voting Rights Act, was paramount. Furthermore, without the inclusion of the ballots in these six boxes, the results of the race for Sheriff were relatively close. Baker had 7,582, Clark had 7,445, but because of the 1,060 votes split between the other two candidates, neither Baker nor Clark would have a majority, and there would have to be a runoff. However, the inclusion of the votes in the six boxes would result in a victory for Wilson Baker. 1,412 of the 1,515 votes cast in the six boxes were for Baker; Clark received 76, and the other two candidates 27. Baker would have a clear majority.

Under John's direction, the Division lawyers went to work. Brian Landsberg, then in Montgomery, recalls getting the call in his motel room about 11:00 p.m. the night of May 4 to come to Selma, and he, along with Division Attorney Lou Kauder, drafted the necessary papers through the night. Every few hours, according to Brian, they would awaken John Douglas, the Chief of the Civil Division of the Department of Justice at the time, and he would edit the latest draft. Douglas had come to Alabama in connection with the election to provide any assistance he could. The next day, May 5, John would send Division Attorney George Rayborn to the Clerk's office in Mobile to file the complaint,

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since Selma was in the Southern District of Alabama. By that afternoon, an Application for a Restraining Order had been prepared, supported by an affidavit from John, to preserve the ballots and voting records intact and to ensure that federal observers would be present at any proceedings where the ballots might again be inspected or recounted.

The federal judge in the Southern District of Alabama, where the complaint was filed, was Judge Daniel Thomas. However, he was out of the district at the time, so perhaps fortuitously, John presented the papers seeking temporary relief to Judge Johnson in Montgomery. Chad Quaintance, our lawyer in Selma, who follows me on the podium today, recalls driving John to find Judge Johnson, who was not in his office. They did—on the Golf Course at Maxwell Air Force Base, a moment of respite for the hard-working and beleaguered judge. Judge Johnson signed the Restraining Order, and the following day, signed the Order to Show Cause, setting the case for a hearing on May 16.

We set about preparing for trial. We were concerned about Judge Thomas, who would hear the case, because he had generally ruled against us. He had been reversed several times by the Court of Appeals for the Fifth Circuit for not granting stronger relief in the Mobile school desegregation case.

The six ballot boxes were brought to the Dallas County Courthouse. Representatives of the Sheriff's Office and the U.S. Marshall were there to watch them around the clock. The FBI photographed the contents of each of the boxes. With the able work of our research analysts, then Dorothy Shelton and Jean Voelker, now Dorothy Landsberg and Jean Rosenberg, as a result of the first of many Division marriages, we carefully inventoried the contents of each of the contested boxes, the ballots, and the poll and voter lists. Dorothy and Jean had to fend off the advances of the deputy sheriffs, who offered to show them the local after-hours clubs. One of the deputies named "Buck" offered to take Jean to that evening's Klan rally. Dorothy still has the NEVER button the deputies gave them.

On May 17, we began a two-day hearing before Judge Thomas. John gave me the responsibility of trying the case and he would sit with me as co-counsel. Our task was to demonstrate that, while there may have been some minor technical errors committed by the officials, there was no evidence of fraud, or other serious violations of the election laws which could justify the drastic action taken by the Executive Committee. To that end, we elicited testimony from polling officials, federal observers, and Chad Quaintance. John gave a fine closing argument. He said, in part: "The right to vote is the foundation of this country. If it can be swept away by an arbitrary, wholesale action of this Committee, it doesn't mean very much."

Judge Thomas agreed. In his published opinion, he wrote:

The Court listened to testimony concerning alleged defects for almost two days. The Court did not hear at that time any evidence which would

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indicate that votes were bought or sold, that boxes were stuffed, or that there was any misconduct on the part of polling officials or voters which could be construed as even approaching fraud.<sup>43</sup>

He found the discrepancies that existed were minute in nature, attributable to the inexperience of the election officials, and could not justify the rejection of any of the six boxes or the legal ballots that had been cast.<sup>44</sup> Looking to Alabama law, he ordered that the results be recertified to include the ballots in the six boxes, subject to any individual challenges that an individual voter's intent had not been carried out.<sup>45</sup> Wilson Baker became Sheriff of Dallas County. The Division, under John's leadership, had met its first big test under the Voting Rights Act with flying colors.

Epilogue: A brief epilogue of progress. In the 1988 Dallas County elections, three of the elected five county commissioners—a majority—were black.<sup>46</sup> Jim Turner and Voting Section Chief Gerry Jones were there on January 16, 1989, when the Commissioners were sworn in by the first black federal judge to serve in Alabama, Judge U.W. Clemon.

Thank you!

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43. *United States v. Exec. Comm. of the Democratic Party of Dall. Cnty.*, 254 F. Supp. 537, 539 (S.D. Ala. 1966).

44. *Id.*

45. *Id.* at 542.

46. See James Blacksher et al., *Voting Rights in Alabama: 1982–2006*, 17 S. CAL. REV. L. & SOC. JUST. 249, 262 (2008) (The election “resulted in the election of black majorities on the Dallas Country School Board and the Selma City Council.”).

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## V. COMMENTS BY CHAD QUAINANCE\*

First, I miss Jim Turner. And Anita. Thank you, Jim, for standing in for your dad. In the midst of this palpable reminder of how transient life is, I affirm that it is a joy to be here with friends and people I have cared for and admired all my adult life—John Doar, Steve Pollak, John Rosenberg—and many others. What a joy, as well, to be with you who are now devoting your working lives to advancing civil rights in this country.

John Doar hired me in 1964. For the next three-plus years, I spent nearly every day working in Black Belt Alabama. Let me describe some of that work through stories of three African-American women: Mrs. Amelia Boynton, Ms. Lois Reese, and Ms. Annie Johnson.

*1964*

Mrs. Amelia Boynton, now Mrs. Amelia Boynton Robinson, is one of the largely unsung heroes of the 1960s Civil Rights Movement, the history of which often seems written by men, mostly about men.

Long before I arrived in Selma, Mrs. Boynton had dedicated herself to encouraging African-Americans to work to end the system of total segregation there. My first week on the job consisted largely of helping to harvest some of the fruits of Mrs. Boynton's labors. John Doar told me to interview and recommend witnesses for him to present to the three-judge panel John Rosenberg mentioned—in the first major trial against Sheriff Jim Clark and other segregationist officials in Selma.<sup>47</sup>

I interviewed scores of black youth and adults who had been arrested for protesting segregation in Selma. It turned out that those below the age of eighteen had been tried before juvenile court Judge Bernard Reynolds. He sent every one of them to jail for what he called “contempt of court.” What contempt? In each case it was the same: a black child had referred to Mrs. Boynton as “Mrs. Boynton.” Judge Reynolds refused to listen to any witness who referred to her as “Mrs. Boynton.” He raged at them, insisting that they must, instead, call her “Amelia.” Dozens of black children were jailed for using a title—one as simple as “Mrs.”—to refer to a black woman.

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\* Chad Quaintance was a trial lawyer with the Civil Rights Division of the Department of Justice, 1964–1970; he lived in Selma, Alabama, with his wife and the first two of their three children from 1965–1968. In 1969, he received the John Marshall Award as the outstanding trial lawyer in the Department of Justice. He was a trial lawyer in Minneapolis from 1970–1995. He is a fellow of the American College of Trial Lawyers. Beginning in 1980, Quaintance began formal education in theological studies and lay ministry. After retiring from the practice of law in 1995, he received a Ph.D. in Theology, a subject he then taught at Hanover College in Indiana for a number of years. He is now retired from all paid work. He and his wife of fifty years live in Minneapolis.

47. See *United States v. Clark*, 249 F. Supp. 720, 730 (S.D. Ala. 1965) (handing down the decision in the first major case against Sheriff Jim Clark).

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There are many horrible racial inequities that remain, but one of the enduring changes in America during my lifetime has been the rejection of open, direct, state-sponsored racism. To me, the civil rights legislation of the 1960s is something like the abolition of slavery. Neither abolished racism—a habit of the heart deeply engrained in America’s collective psyche. However, in each case, our nation did abolish one more obscene form of a state-sponsored view that white people are somehow more human than black people.

It’s not that Selma was the worst city in the land. From 1964 to ‘66, however, Selma was a highly visible symbol of a clash between federal power that insisted upon human dignity and a state and local power structure that responded loudly: “NEVER!”

*1965*

By 1965, I was spending so much time in Selma that my wife and I decided to move there. We bought our first house in Selma; our daughter went to nursery school there; our first son was born there. And there I opened the Civil Rights Division’s first field office.

Shortly before that office opened I asked someone I had met to recommend a secretary. Her immediate response: “Lois Reese.” You just saw her photo in the video—right outside the office she and I shared, directly across the street from Sheriff Jim Clark’s headquarters. Lois—now Mrs. Lois Reese Bonner—was barely eighteen when she began working for the Civil Rights Division. Long after we closed our Selma office in 1968, she continued for decades to do solid work for the federal government.

My favorite memory of Lois Reese Bonner comes from an emergency hearing in which we sought protection for black students who had just integrated the formerly white high school in nearby Choctaw County. The hearing became electric when the judge heard minutes of what the superintendent had to say about white students who had threatened the newly enrolled black students. The superintendent dismissed most complaints rather cavalierly. One complaint, however, did distress him: white students armed with rubber bands and metal paper clips were shooting the metal clips at black students in the classroom. The superintendent expressed his deep concern—not that a black student might be injured, but rather that a paper clip might miss its intended black victim and “hit a white student and put his eye out.”

The judge, Thomas Pittman, was visibly shaken by this crude remark and wanted to issue an injunction on the spot. He was holding the hearing on a Saturday afternoon, however, and he had no secretarial help. He asked me if I could find someone who could take dictation and type an order that afternoon. After checking with Ms. Reese, I knocked on the door of Judge Pittman’s chambers. I don’t think he had a *clue* until the moment Lois Reese walked in, that a black woman would be sitting there in front of him—ready to work.

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Neither he nor she blinked an eye. Instead, he dictated a temporary restraining order. She took it down in shorthand and typed it up. Judge Pittman signed it and had a marshal serve it immediately.

I was recalling this with Lois a few weeks ago, and she laughed. “Yes! Yes! I don’t know how I did it, but I *did* it!”

*1966*

Lois Reese and I worked together on many cases. One in 1966 was our lawsuit against the Wilcox County Board of Education. Wilcox County lies just south of Selma—quintessentially Black Belt: utterly rural and heavily black. More than eighty percent of its students were African-American.

As John Rosenberg mentioned, John Doar told us more than once that we win cases with our witnesses and the defendants’ documents. Sometimes he’d phrase it more colorfully: “with our ponies and the defendants’ footprints.”

We started in Wilcox County by gathering footprints—documents and photographs, including the photographs of black schools you saw in our introductory video. Together, those photographs and the defendants’ documents helped demonstrate the utter hoax of “separate but equal.” Every year for the past ten years Wilcox County had spent *five times* more per white student than it had per black student.

In order to breathe life and meaning into the documents and photos, we needed witnesses. The best witness I ever had in any case was a seventeen-year old senior at Lower Peach Tree High School, Annie Johnson. A spirited, articulate witness, she testified that her elementary school in Lower Peach Tree had one pot-bellied stove to heat four classrooms. Smoke poured into each of those classrooms; the two rooms near the stove were burning hot, the other two near freezing.

Her testimony about Lower Peach Tree High School was equally devastating. For example, she described her biology course. The class had *no* equipment: *nothing*. The only “experiment” the class conducted was to examine frogs. To get the frogs, she explained: “We went outside and caught some frogs in the pond. Then we *looked* at them. Then we turned them loose.”

Even the defendants’ lawyer was a little shaken by her testimony. He tried to recover by ingratiating himself with Ms. Johnson and then trying to use her to show that Lower Peach Tree School was not really *that* bad. In his uniquely patronizing way, he began: “Annie, you’re obviously a bright girl.” “Thank you, sir.” “You obviously have learned to read and write very well.” “Thank you, sir.” Pausing for effect, he asked her triumphantly, “You didn’t know how to read and write before you went to school, did you, Annie?” She looked him in the eye: “Yes, sir, I surely did. My grandmother taught me by the time I was five-years old.”

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Judge Daniel Thomas—who had resisted desegregation for years—grinned broadly and shook his head. The courtroom erupted somewhere between laughter and amazement that a skilled lawyer would make such a silly mistake.

One of the pleasures of preparing for this wonderful gathering today has been reconnecting with Annie Johnson, now Mrs. Annie Morton. After we laughed together about how she had out-dueled one of Alabama’s best-known lawyers, she went on to tell me a little about what happened in the next and following years. Lower Peach Tree High School closed in 1967, the year she graduated. She worked a bit, saved money, moved to Birmingham, obtained a college degree, brought up three sons, and has recently retired after serving a major hospital in Birmingham for thirty-seven years.

Back to the trial. Soon after Ms. Johnson had actually made him smile, Judge Thomas beckoned me aside. I hesitated, since John Doar had warned me never to talk with Judge Thomas alone, but rather always to insist upon having a court reporter present. By now, however—after his education at the hands of the Fifth Circuit Court of Appeals (and John Doar and John Rosenberg and others)—Judge Thomas could see the handwriting on the wall. “Quaintance,” he said, “you don’t have to bring a court reporter into my chambers with you on this case. I’m going to sign your order.”

True to his word, two or three days later, Judge Thomas signed the fifteen-page injunction we proposed. He ordered the immediate closure of the two most dilapidated black schools. He ordered the district to dismantle its dual school system. He ordered that black students be permitted to enroll in formerly white schools immediately. He ordered the defendants to spend more money on schools formerly all black. He ordered the district to terminate immediately its practice of assigning teachers and staff on the basis of race.

Of course, the federal government never has had—and never will have—the power to force white parents to send their children to school with black children. What it can do—and did do in Wilcox County, Alabama, and many other school districts—was to obtain court orders with teeth in them to require districts to dismantle their dual school systems.

The results in Wilcox County have been mixed. For black students, the results from day one have been better schools, courses, buses, and libraries. For white students, the results have been different, because their parents pulled them out of the Wilcox County public schools.

Today, over forty years later, there are signs of sanity emerging even on that front. A recent article in the *Birmingham News* described the financial and quality problems “segregation academies” are experiencing.<sup>48</sup> The story’s lead

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48. See Carla Crowder, *Private White Academies Struggle in Changing World*, BIRMINGHAM NEWS (Oct. 27, 2002), <http://www.al.com/special/special/report/birminghamnews/index.ssf?blackbelt/blackbelt16.html> (on file with the *McGeorge Law Review*).

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example comes from Wilcox County.<sup>49</sup> Parents of a white fourth grader just last year enrolled him in a public school there.<sup>50</sup>

Why did he enroll in a Wilcox County public school?<sup>51</sup> Because in his three years at the segregation academy, he had not learned how to read.<sup>52</sup> The article carries a photo of the white child reading with two of his new black classmates.<sup>53</sup> He tells the reporter why he stays: “They explain things better here.”<sup>54</sup> The reporter asks what his white friends have to say about all this.<sup>55</sup> The boy’s response: “I don’t give a damn what they say.”<sup>56</sup>

We have a long way to go in this country before we can say truly that every human—black, white, male, female, gay, straight—is treated with equal dignity. I am grateful to have been part of the ongoing efforts you all have made—and continue to make—to help us get there.

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49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

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## VI. A GUIDED CONVERSATION WITH JOHN DOAR\* BY OWEN FISS\*\*

**Professor Fiss:** We wound up this morning on what seemed to be a triumphant moment, and yesterday we spent a great deal of time talking about the Voting Rights Act of 1965 and the Civil Rights Act of 1964. We also talked about some of the voting cases that were initiated both before and after the enactment of the statutes. There were many other great moments that emerged yesterday.

But John, I want to take you back before these triumphant moments and get a sense of what was on your mind when you accepted the invitation by Harold Tyler in 1960 to become the First Assistant. At that time, we did have the Civil Rights Act of 1957, but no teeth had been placed in it yet. In the spring of 1960, the Civil Rights Act of 1960 was passed but not yet implemented. We were in the closing months of the Eisenhower Administration, and for some reason you packed up your family from New Richmond, Wisconsin, and drove them to Washington, D.C., and took this job. What was the vision that you had at that time of the road that lay in front of you?

**Mr. Doar:** Well it's pretty hard to tell you exactly what I had in my mind. It was hard to tell you almost sixty years ago what I had in mind at that particular point, but I can tell you two or three things.

Number one, I was fortunate to go to Princeton University at a time when Princeton was pretty much a southern school, and I had a lot of friends from the South. At that time it was not co-ed, it was all-male and all-white. But on a time or two with my classmates, we might talk about the problem in the South, the caste system, and the one thing I can remember, my friends from the South acknowledged that they had a problem, but they had to solve it for themselves. The worst thing that could happen to the country would be if any Yankees came down and messed with it.

Then I went to University of California Law School and then back to New Richmond, Wisconsin, which is as small as small can be to practice law with my father, brother, cousin, and myself. I was there for ten years, and I looked up and here we had the sit-ins in North Carolina. It seemed to me that nothing really had happened from the end of World War II, when President Truman desegregated the military, to the sit-ins in 1960 in North Carolina.

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\* John Doar served as Assistant Attorney General in charge of the Civil Rights Division and First Assistant in the period 1960–1967. He is currently Senior Counsel in the firm of Doar Rieck Kaley & Mack, located in New York City.

\*\* Owen Fiss was Special Assistant to John Doar in the period 1966–1967. He is currently Sterling Professor of Law at the Yale Law School.

*Editor's Note:* To maintain the conversational quality of this piece, there is no citation to authority. However, please see the Appendix, *infra*, where additional source materials are provided. Additionally, there were a few amendments to the original language to account for the movement from the spoken to the written word.

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The next thing is that Wisconsin always seemed to me to be a second-class State because it had a first-class system of democratic government. It had a two-party system, but in the South, with the one-party system, the southern senators, the southern Congressmen, controlled most of the activities in the House and the Senate, and I didn't think that was right for Wisconsin. I didn't think that was right for the country.

Last of all, it seemed to me that if we as a people, we white people of the country, didn't do something about this, there would be no way that we would have the respect of the peoples around the world. Now did I think of each one of those things at that time? Am I fantasizing that maybe I thought about that? But I think I can say to you honestly that those were among my thoughts.

I was trying a case in Santa Barbara, California, involving a paternity issue when I got a call from the Assistant Attorney General, who asked me if I would take the job as First Assistant. I remember one fact he gave me. He said, "We've got a lot of interesting cases." And I said, "Like what?," and he said, "We have a case against Jimmy Hoffa," if you can believe it. So it wasn't that he gave me any indication of the experience I would have in the next seven years working in the Civil Rights Division, but I decided we would move from New Richmond, Wisconsin, to Washington. I got to Washington right after the Fourth of July.

Now, some of my friends who worked in Washington or lived in Washington, were lawyers in Washington, pointed out to me immediately that number one, you don't take a job as First Assistant when you're forty-three years old. You should have a presidential appointment if you're going to move to Washington. Number two, it's reckless to move to Washington six months before an election because you're liable to be out on your ear sooner than you'd like. But I had a trade, like a carpenter. I was a trial lawyer, a litigator, I was confident that I could go back to Wisconsin and pick up the same thing I did before, so that didn't change my mind. As it so happened, within six months I had the best job in Washington, the very best job in Washington, after the Kennedys came into office.

**Professor Fiss:** When the Kennedys came into office. I'm interested in the dynamics that led the Attorney General and Assistant Attorney General to reappoint you as First Assistant, or continue your appointment. On many occasions, and it has been a theme throughout these two days, you've expressed the appreciation of Burke Marshall's leadership of the Division. One time, John, in a moment of understatement, you said that Burke Marshall is the kind of man that one comes across once in six-hundred years. I know of the extraordinary relationship that the two of you had, but I wonder if you could give us a sense of the first encounters with Burke and how you earned his confidence and trust to continue as First Assistant.

**Mr. Doar:** As I remember it, once the Administration changed on January 20, 1961, the head of the Division, Harold Tyler, the Assistant Attorney General,

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was out the door, so temporarily, I was in charge. I had a room adjacent to his office, the Assistant Attorney General's Office, and it was either on the afternoon of the 21st or the afternoon of the 22nd as I remember it, that Robert Kennedy and one of his political colleagues came into the office unannounced and wanted me to tell them what was going on, and that was my first encounter with Robert Kennedy. He asked me to put together some material and set it up so he could read it, and it happened that we had started an effort to enforce the 1957 Civil Rights Act.

You've heard Bob Moses talk about "A" cases and "B" cases. "B" cases involve intimidation, and we had filed on the 19th of January an intimidation case seeking to protect a single black farmer in East Carroll Parish, Louisiana, to protect his ability to get his cotton ginned at the end of the crop season. He had gone to New Orleans to testify before the Civil Rights Commission. He said he couldn't get registered in East Carroll Parish. That story appeared in *The Times Picayune*, and when he got back to East Carroll Parish, the sheriff came to his door and said, "I just want to tell you, your cotton won't gin." Atlas asked why, and the sheriff said, "Civil Rights." So there was Atlas without his crop for the year, hanging on from being in bankruptcy, and then having the channels of trade shut to him because he tried to register to vote.

The claim first came to us, I think on the 1st of December or so. At that time, it wasn't until Bob Owen and I started to go out into the field that we went to East Carroll Parish to interview Francis Case and Joseph Atlas, the first or second week of January. That experience of talking to a single black farmer who had eight children that he and his wife had raised, educated, they were living all over the country, bus drivers, school teachers, various other jobs, some still in college, one in high school. And to think that just going down to New Orleans to testify about his experience would ruin him for life was something we saw to be a story that should be told, and we filed this suit.

So Robert Kennedy was faced with a situation where we're moving for an injunction in the next ten days, he doesn't have any of his team in place yet, and so he has to deal with me one-on-one with respect with what to do about that case. His decision was he was going to get that cotton ginned. He was going to try to do it without embarrassment to the political colleagues in Louisiana, but push-come-to-shove, he was going to get it done, and he did that, and then he sent me down to see that it was all recorded before Judge Dawkins in Monroe, Louisiana. So I had that experience with the Attorney General right away.

I have to tell you that there's more to it than that. The first person he selected as part of his team was a lawyer from Colorado named Byron White. Byron White was a famous football player from Colorado, and when he got out of college, he just happened to be recruited to play professional football with the Pittsburgh Steelers. The coach of the Pittsburgh Steelers at that time was a distant cousin of mine. I was a waterboy at the Pittsburgh Steelers summer training camp in 1939.

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So, I brought the material to the Attorney General's Office that he wanted me to bring up. I was standing outside the big room where the Attorney General's desk is, and I look in there, and there's Byron and the Attorney General, and Byron sees me and he waves me in, and he says to the General—and of course the General had already met me downstairs a day or so before—but he said, "General, this is John Doar. He's a cousin of Johnny Blood, he played for Green Bay." Robert Kennedy said, "Johnny Blood, that's a household name in our family, have him come to the White House and meet Jack." I don't think that hurt me.

**Professor Fiss:** When did Burke come in?

**Mr. Doar:** Burke called me maybe ten days later. At that time, you may remember, there was discussion as to who would be the head of the Civil Rights Division, and I think many people, many of Robert Kennedy's colleagues who were active in the campaign, wanted Harris Wofford to be the Assistant Attorney General. But Burke was recommended, and Robert Kennedy allegedly interviewed him. The story is told, it's probably apocryphal, but it wasn't much of an interview because neither of them said anything. But anyway, there was something that caught the Attorney General's mind—and he had a sharp mind—and he hired Burke. And then as soon as Burke knew he was going to be nominated, he came to our house and asked me if I'd take him down to the office on Sunday and show him what was going on.

Well, he came down, and we had this case that we just filed against the ginners in East Carroll Parish, and we had a wonderful case in Haywood County, Tennessee, against bankers and farmers and merchants and landowners who were going to use economic boycotts to drive the sharecroppers off the land who tried to register to vote. We had been in hearings down in Memphis about the week before Christmas, and so there was something concrete going on in the Division. Burke was just a wonderful, wonderful man, and he had amazing judgment, so it all seems so simple, but it's not as simple as it seems.

I think he realized that if he was going to be successful, he had to depend on lawyers who would develop the facts of matters that came before him for investigation and he would be pretty helpless if he didn't have good investigators who believed in preparing the facts, not shading them. I think when he met St. John Barrett, who was Second Assistant, when he met Harold Greene, who was Chief of the Appellate Section who went on to become a very prominent and admirable federal district judge in the District of Columbia, and, especially perhaps, when he met David Norman and Bob Owen, who were two honor graduates and had just come in the year before that or two years before that to work in the Division. He saw people he thought he'd really like to work with, and he gave us his support one-hundred percent from that time on.

We just loved working in the Civil Rights Division, the line lawyers, because we came to believe very quickly that if we convinced Burke that we had a case,

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of course he was going to have to get it approved through the Deputy's office and up to the Attorney General, but we were pretty confident early on that what often happened in the federal bureaucracy is that recommendations at the line level get sandbagged on the way up for final approval, and you never really know where the sandbagging was coming from, you don't get a chance to answer any objections with what you're trying to do, but we never had any of that at all in the Civil Rights Division. That made for us lawyers in the Division just a wonderful place to work, and he was just an amazing leader. His judgment was infallible. His courtesy and appreciation for the work of the people that worked for him was just remarkable. He had no ego, none at all. So we couldn't have found a better place to work.

Then you go up to the Attorney General, and the Attorney General was this kind of a guy. He said to Burke, after Burke had been there about two weeks, "Come up and tell me what your strategy is with respect to voting," and Burke, Tyler, really, had said to me, "You work on the voting cases." So Burke came in and said, "Bring your map and come to the Attorney General's Office and tell him what your strategy is." So I had a few pins in the map, very few, one for "A" cases, those are the discrimination cases against registrars, and we had maybe four pins in the map for the South. The "B" cases, the intimidation cases, and we had the *Haywood* case, and we had the Francis Joseph Atlas case, and the rest of the map was empty.

After we got up there, Burke said to me, "Tell what your strategy is." And I said, "Well, there are seven or eight judicial districts in Alabama, Louisiana, Mississippi—three in Louisiana, two in Mississippi, and three in Alabama, as I remember it—and we're going to keep the federal judges in each of those districts busy with cases." Robert Kennedy said, "That's too slow." He wanted pins in every county of those three states the day before yesterday. That's the way he moved. And Burke said, "Well, General, we're going to need more lawyers." We had about that time five or six lawyers. And he said, "Well, how many do you want?" Burke said, "Four." We started hiring those four the next day, and that built up from four, to six, to ten, to twelve, to fifteen, to twenty, to twenty-five lawyers.

What happened in the Voting Section of the Civil Rights Division—now don't be misled, there are other things that the Civil Rights Division had to deal with besides voting. They had to deal with criminal cases, 241 cases, 242 cases; they had to have an Appeals and Research Section; and they had to enforce some other statutes, one of which involved some union election fraud, and that was Tyler's case involving Jimmy Hoffa. But the instructions with respect to enforcing the 1957 Act and 1960 Act, which was an improvement on the 1957 Act with respect to procedure, were very clear. Go as hard as you can as fast as you can, but be right, be right on the facts. And that's the way we worked. And it was fortunate for the country who the lawyers were that came there. Yesterday you saw four of them, several of them spoke today, and sadly Bob Owen is gone,

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Dave Norman is gone, Nick Flannery is gone, Harold Greene is gone. Those lawyers were just very, very fine men.

**Professor Fiss:** John, yesterday there was a lot of talk about “Doar’s approach.” You alluded to that approach when talking about the obligation to get the facts, but there’s an ambiguity that arose in the course of these last two days. What was the motive force driving the Doar approach? There’s the suggestion that it might have been due to the inadequacy of the Bureau, that the Bureau was not adequate in getting the facts, and that you had to develop your own investigative attorneys to get the facts. But I’ve often wondered whether there was something deeper than just this. Perhaps it wasn’t just the inadequacy of the Bureau, but rather something deeper—your view of law.

**Mr. Doar:** The important, basic policy decision with respect to the Department of Justice was that we represented the United States; we didn’t represent the Civil Rights Movement, we didn’t represent the students, we didn’t represent Dr. King. We were officers, law enforcement officers, of the United States government. And with respect to our investigations, we went right down the middle, and there was no fooling about that, regardless of what your personal feelings were. I would not permit my lawyers to attend mass meetings, and an old fellow like Nick Flannery who had a lot of romance in him, thought he was back in 1918 at the Russian Revolution. He wanted to be right there with the Blacks. But no, it’s counterproductive. We’re not going to get there if we do that. We have to convince people in Mississippi that we’re fair, and that means we cannot fraternize with the black movement.

Now with respect to the black witnesses and the black farmers and the sharecroppers that we came to know, at least speaking for myself, my experience was that while I had had no experience with life in Mississippi or Alabama before I went to the Division, black people in those three States were not much different, if any, from the ordinary white citizens, farmers, shopkeepers, school teachers, who lived in Wisconsin. They weren’t whiners, they weren’t sissies, they didn’t think that somebody owed them something. They had built a really solid community, and you couldn’t help but admire them. So even though all of us knew we were attorneys for the government, we came at our job with ever-increasing admiration for the black farmers and also, I should add, with an ever-increasing admiration for the students who came to Mississippi and southwest Mississippi in 1961. So I would say that that was the principal thing—that we were lawyers for the United States government, not lawyers for any of the participants in the movement.

**Professor Fiss:** Taylor Branch spoke this morning of a difficult moment in the relationship between civil rights organizations and the Department of Justice. He was referring particularly to the outset of Freedom Summer, and he in that context said, “I think it was sensitive and tough for both sides.” I’m interested in

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getting your reflections on this dynamic, particularly as you approached Freedom Summer and explained to the SNCC workers and to others going down to Mississippi that there is no federal police force. I gather that announcement was greeted in an unfriendly manner, but it nonetheless expressed a deep conviction on your part about the structure of the government.

**Mr. Doar:** Well you have to first look at it in the fall of 1961 when we stopped a young black student from Nashville named John Hardy from being prosecuted for taking four black women in Tyler County, Mississippi, up to register to vote. We were able to persuade the Court of Appeals that that prosecution should not go forward because the inevitable effect of it would be to intimidate Blacks from attempting to register to vote. And so that time, we gained a little credibility with the student leaders, Bob Moses and others, and we began to have a line of communication back and forth as to what we knew was going on, because at that time it was not possible to learn from the Bureau any intelligence that would suggest something might go on.

For example, when the Freedom Riders came down south, the amount of intelligence that we got from the Bureau ahead of time with respect to what was happening as they were coming down through North Carolina and Georgia was very, very meager, and Burke was not really equipped to make judgments because he didn't have enough information. Of course, the other thing you have to remember is no one in the upper level of the Justice Department and really no one in the Civil Rights Division had any experience as to what might happen in a situation where there was an overt challenge to the caste system in any way, shape, or form in any one of those three States.

So as we developed a relationship with the students—I want to just add as an aside, I believe the country really owes those young guys and women an enormous amount of appreciation and respect for what they did for the country because—and with all due respect to Dr. King and Rosa Parks and what happened in Birmingham—to me, the energy and the courage and the stick-to-itiveness and the good humor with which those young people put their lives on the line is just a remarkable, wonderful story to the country. It's a story that needs to be told in the high schools and the colleges, and it's not really being told the way it should be. But I editorialize a little now. I think the schools do an awfully good job of having mixed races in their student bodies, but the history they've taught doesn't give the credit to the Student Nonviolent Coordinating Committee, their mentor/elevator, to one of their leaders, Jim Forman, that they truly deserve, and it's a story the country needs to hear.

At the same time that we were building up some good relationships with the students, there was an ever-increasing chant from every side that the federal government should be protecting these young people who are down in Mississippi under terrible conditions, and we had to tell the students that we can't protect you, we don't have the forces, the statutes or such that we would have to

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have to lay the groundwork for federal intervention. What you're suggesting just won't fly, and furthermore, I think both Burke and Robert Kennedy believed that if we did try to enforce the Civil Rights Act, with soldiers or great bodies of law enforcement officers, it would be counterproductive because at some time, those officers would go back home and we'd be right back where we started.

Anyway, this all came to a head in Greenwood when Bob Moses had developed a strategy of not taking five or not taking four black people to register, but taking forty or eighty, and they'd march up in a very peaceful line to the courthouse. But this just drove the local police bananas, and they had the dogs out and they acted every way they could to get them arrested, and they arrested the eight SNCC workers who were guiding this parade of potential voters up to the courthouse. I think Bob thought—or maybe I should say, I think Bob hoped—that this was going to be enough to cause the Justice Department to go down and provide protection for the workers that were helping people to register to vote.

Now, whatever you feel about the right or wrong of that, and that's whether the protection should be offered or not, the fact of the matter is it wasn't going to happen, and I told Bob that, and we had a meeting out in a black part of Greenwood, and you could see he was visibly disappointed in the Justice Department. As I see it, what he was resourceful enough and imaginative enough to see was that he was going to have to switch his tactics if he was going to succeed, and that's when he turned to building up political parties, black political parties, in Mississippi. He also decided to bring white kids, white students, down to Mississippi the following year for aid and assistance with voting registration. Bob is very, very modest, but every once in a while, maybe, he gives himself away occasionally, and he said to me in the last year, "You know, John, we weren't dumb." So that led to the Justice Department, Marshall, Kennedy continuing to be hammered all through 1963 and 1964 for not providing federal protection.

**Professor Fiss:** This morning Taylor Branch spoke about the extraordinary significance of the jury verdict in the *Neshoba* case, but also wondered whether the most significant event was the killing or disappearance of the three civil rights workers in Neshoba County in June of 1964. He spoke of the tremendous changes that were set in motion by those disappearances and the notable increase in the presence of federal law enforcement officials in Mississippi. Could it be that the disappearances of the civil rights workers in June of 1964 produced the kind of federal protection that perhaps Bob Moses and the SNCC workers were looking for? Not soldiers, but enough of a federal presence of law enforcement officials to discourage or deter the kind of violence that had just occurred.

**Mr. Doar:** Well, you know, as I listened this morning to Bob and to Taylor—you know, Taylor is a fantastic writer, and he's good with images and good with contrasts, but he hit it almost on the head when he talked about that

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tension in 1963 and the Greenwood connection with the case I referred to. But I think the second thing this morning that I agree with was that once the investigation of the three boys who were murdered got underway, the FBI did very clearly turn a corner with respect to how they performed their job. And make no mistake about it, the agents who worked on that case, and there were probably fifty or seventy-five of them, were brought in from all over the country, and they were hard-nosed, tough investigators, and they were led by Joe Sullivan and Roy Moore, who became head of the Bureau office in Jackson. And they did a very credible job of law enforcement with respect to the Klan in Mississippi, Alabama, and Louisiana from that day forward.

Now with respect to the students, Burke Marshall sent me up to Ohio to talk to the students. I don't want to put you on, but I want to tell you that there's not much sophistication about me, so when I tell you that I really didn't see this coming, it's true. I'll just divert for a minute. I was at my desk in March 1961, and I had gotten a call from Judge Johnson, this was very, very shortly after Robert Kennedy took office. He said he was setting a voting case down for Opelika in the third week of March, so I said, we'll be ready. Dave Norman and I had gone down to help prepare the case, and we got to Tuskegee and started looking at the records and started looking at just what the facts were on the ground. We just found we had a wonderful case because it wasn't just the registrar rejecting highly qualified Blacks, but they were letting every white person register who could breathe, whether they could neither read nor write or had a fifth-grade or sixth-grade education. Everybody voted who was white, and boy when Dave Norman, Bob Owen, Frank Dunbaugh, and Nick Flannery, and I saw that, we really saw the possibilities of a trial with a black educated school teacher with a college degree and then a white farmer who was just struggling and can't read, and a qualified black merchant, another unqualified white person, which is the perfect case . . . .<sup>57</sup>

I reported to the Attorney General, "We've got this wonderful case we've been looking for." "Well, you better come out to the house," he says, "and tell me about it." So I go out there on Sunday morning, and he comes downstairs, and he says, "Everybody's in Florida, but Kathleen and me, we'll go over to the drugstore." So we go to the drugstore and we have bacon and eggs and sit on three stools there, and I tell them about the case, and at some time I better tell them about the fact that I had replaced Ben Brooks with this new lawyer, Bob Owen, so I said, "I gotta tell you something. I made a decision, and I took Ben Brooks off the case, and I've put Bob Owen on, but he's really wonderful, you're just gonna really like him; he works hard." Robert Kennedy's eating his eggs and doesn't say anything. Finally he says to me, "Is Ben Brooks Speaker Rayburn's

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57. *Editor's Note:* Some of John Doar's answer was lost when the cassette tape was turned here from Side A to Side B.

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friend?” And I look up and I say, “I don’t know. Eat some more eggs.” Then he looks at me and says, “How old are you?”

When I went out to Ohio and told the kids that we weren’t going to be able to protect them, I didn’t see the hammering that came from the audience. But that’s what did happen. I was set up, but it did portray what the issue was, the feeling was getting more and more, the Civil Rights Movement was collectively demanding protection, and Kennedy and Burke, the President were saying we can’t provide it. I think fortunately for the country, that came after a time that students had worked in Mississippi for three years, Dr. King had worked in the South for three years, Bob Moses had worked in the South for three years, and the Civil Rights Division had worked in the South for three years, and the one thing that the Civil Rights Division was able to do was that we were able to move through the hostile environment of the district courts in those three states and get up to the Court of Appeals. By 1964, or early 1965, we had some absolutely great opinions from the Court of Appeals, the old Fifth Circuit, principally John Minor Wisdom’s opinion in *United States v. Louisiana*, and Judge Brown’s dissent in *United States v. Mississippi*. And to me, that effort culminated with President Johnson urging Dr. King to go down to some county in the South, and he went to Selma where SNCC had worked for three years before that time, where the Justice Department had worked for three-and-a-half years. That was the first case the Kennedy Administration ever filed in voting. All of that convergence of efforts by three different organizations or groups or armies or divisions, whatever you want to call it, each working independently, not being managed by a single commander-in-chief, but each group doing what they could do best, came together at Selma. The mistake that Governor Wallace made at the bridge in Selma by attacking the marchers just led inevitably to the passage of the Voting Rights Act of 1965.

In my opinion, it’s the Voting Rights Act of 1965 that changed the world. The world changed with the passage of that Act. I think in the Neshoba case, it could very well have been the first indication of change, or the beginning of a change after that. But if you think of relief from voting as a strategy to adopt, you can’t really argue against the fact that voting can give you what I call “wholesale relief.” You’re up at the wholesale level with respect to numbers. Schools, criminal prosecutions, one at a time, one school district at a time, but within six months after the passage of the Voting Act, there were 200,000 or 300,000 black persons registered to vote. And look what it had done within a period of forty years, just a moment in history time. The country elects a black citizen to be President. But more important than even that, even before the returns were in in 2008, the sense from the country’s reporting was that everybody who wanted to vote voted, and that, as I say, changed the world.

**Professor Fiss:** John, can I ask you about the James Meredith case? Let’s turn our minds back to 1962 and inquire about the role of the federal judiciary in

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that case. We saw on video this morning the registration of James Meredith at Ole Miss on October 1, but as we know, on Sunday, September 30, after the Lieutenant Governor interposed himself, there was an increased risk of obstruction and interference with the implementation of the Court of Appeals' July decree. On that day, there were some five-hundred marshals on the campus for the purpose of maintaining the peace and getting James Meredith registered. As it turned out, however, the marshals were unable to maintain public order, and on that Sunday evening, a vicious riot developed on campus. As a result of that riot, 150 marshals were wounded and two people were killed. Eventually, the President dispatched five-thousand troops to the campus and restored order. Subsequently, criminal contempt proceedings were brought against the Governor and Lieutenant Governor for their failure to maintain order and for their interference in the process of registration of James Meredith.

In May 1965, the Fifth Circuit Court of Appeals refused to hold the Governor and Lieutenant Governor in contempt. There was a very eloquent, moving dissenting opinion by Judge Wisdom, and also dissenting opinions by Judge Tuttle and Judge Brown. They all complained of the unwillingness of the Court of Appeals to carry through on its commitment. So I have two questions relating to this case: One, what accounts for the delay, perhaps unfortunate delay, of the President in dispatching the troops to secure the peace; and two, what accounts for the failure of the Court of Appeals to follow through on its initial decree and have a trial of the Governor and Lieutenant Governor for being in contempt of its order?

**Mr. Doar:** Well you're asking me for opinions or judgments about something I really don't feel I'm well enough informed to really fully reply, but I'll tell you just what I think. I've heard it said by John Seigenthaler, one of Robert Kennedy's helpers—he would talk in straight political terms—he said, let's face it, the President carried Alabama, Mississippi, Louisiana, and Georgia in 1960, and they felt that they had to carry those States in 1964 to win a reelection. I'm not saying that that was the reason for all this, but that was in the equation. The second thing is that no matter how easy it is to look back and say this is what should have been done, nobody in the Justice Department had any experience as to what would happen if you got a force of five-hundred marshals to go down and protect one person to go into a university. You never thought you were going to have a state-wide, or almost three-state-wide riot, with people coming from as far away as Mobile and Baton Rouge and Shreveport to participate in the opposition to Meredith's admission. So I don't think that the Attorney General deserves a lot of criticism for not sending twenty-thousand troops into Oxford before there had been any kind of disorder whatsoever. When I think that there are lots of people who think that that was the wise thing that should have been done, I can tell you that I'm sure Burke and the Attorney General would never have done it that way again.

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Now with respect to the defiance of Governor Barnett and the contempt—contempt is a difficult legal principle, and how you use it and whether it’s civil contempt or criminal contempt, whether it’s going to be useful or effective to bring about the change that Robert Kennedy and Burke Marshall unqualifiedly were committed to bring about, to prosecute Governor Barnett—although I think they had some enthusiasm for that avenue of attack, I think it didn’t seem worth the effort or the price that you’d have to pay to see it through or that it would do any good. I may be Pollyannaish, but I agree with that, I agree with what I said earlier, I think we were just terrifically fortunate to have Marshall and Kennedy making the judgments. I don’t claim they were infallible, but they were awfully high-class public servants.

**Professor Fiss:** One more question. I know the audience wants to ask questions, but I’ll ask you one final question, and this one relates to the relationship between the Department of Justice and the federal judiciary. I know how deeply you believe in the notion of separation of powers and that the executive should do what it thinks is just, and the judiciary should be left to do what is just. However, at various moments, the question could be raised as to whether there was too much of a dependence by the federal judiciary on the Department of Justice during the civil rights era. I’m thinking particularly about the practice that was begun and made famous by Judge Johnson of issuing an order in almost every civil rights case in his court that appointed the United States as amicus and gave it virtually all the powers of a party. This practice reflected the enormous respect the judge had for the integrity and capacity of the Department of Justice—but I’m wondering whether that practice, especially as it developed over time and almost became a habit of Judge Johnson, impinged on the notion of separation of powers that you so deeply believe in?

**Mr. Doar:** Well you know I’m now responding to a very, very qualified Yale Law professor as a poor second-year student in Constitutional Law, but I don’t really see the point at all. Look, if you’re going to bring about a big cultural change in this country, you need the three branches of the federal government to work together, and the assignment with respect to voting was to get the Executive aboard 100 percent, then to get the Legislature aboard 100 percent, and I’ll say the Legislature, finally in 1965, came on 110 percent because they (the members of the Judiciary Committee in the House of Representatives) were the people that introduced and added to the bill federal observers at the election date, and that was what made the difference in the Selma, Dallas County election that John Rosenberg spoke about yesterday. He didn’t tell you all the details, but under Frank Dunbaugh, we put federal observers in every voting booth in Dallas County, and it was an enormous amount of effort, and the fact that they were right there all during the day of the voting made all the difference. Then we needed the Supreme Court to act finally, and they did with upholding the constitutionality of the Voting Rights Act very quickly after the Act was

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challenged. So there you have it. The three branches of government that were based on the principle of separation of powers but working together in the way Justice Jackson urged it to happen, that they're independent but they're cooperative. I think this is really what we have to do today is get ourselves back on the right course—we have to find some way to get the three branches of the federal government to work together.

**Professor Fiss:** I stand corrected. [Cheers from the audience.]  
We do have time for a few questions.

**Audience Question:** John, I agree with you, I think everybody in the room would agree with you about the historic nature, the historic impact of the Voting Rights Act, and I'm curious as to what you think about what's happening today. We're seeing in at least thirty states' efforts, largely driven by the Republican Party, to limit the ability of people to vote by putting all kinds of new qualifications in, restrictions that are going to impact especially minorities but also college students and to some extent the elderly. I'm wondering what you think about this trend that's going on right now, and if you have ideas of what should be done?

**Mr. Doar:** Well, I think I've told you, Arlie, that I am kind of anchored to making judgments based on the facts, and I don't know, with all due respect, how accurate and how much that's going on. So I don't have an opinion about what should be done about it without knowing a lot more about it than the fact that you say that thirty states are really making a lot of trouble.

**Audience Question:** First, if you have trouble making a decision about some things because you don't have enough facts, how much time do you have to get more facts? Second, were you protecting the judges before whom you were appearing by making the strongest record that you could?

**Mr. Doar:** Well, I don't understand what you mean by protecting the judges by making the strongest record. We were up against what you might call hostile judges most of the time, and our job was if we lose, we'd have to reverse them. So I don't think I was teaching the lawyers to protect the judges, but I was trying to teach the lawyers that if you lose, you better have a good enough record to get it reversed, and that was the assignment.

**Audience Question:** [Question about the breadth of jurisdiction now assigned to the Civil Rights Division, highlighted by the Division's presentation Friday afternoon.]

**Mr. Doar:** You know, as I sat there yesterday, it did kind of wear on one, but as I thought about it and I looked at the faces and listened to each of the lawyers who spoke, I really came away with a lot of appreciation and respect for what they're doing. I think it's something that seems to me is inarguably something that needs to be done. Some of those things with respect to some of the

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jurisdictions are quite remarkable, I thought. Now, maybe it's gotten larger than it needs to be, but I couldn't make a judgment about that. We're in different times, really, and these problems aren't like the cultural problem with a caste system, but they are problems that need attention. The only hesitation I have about it is that I drove back from Chicago to New York after the hurricane came through because we couldn't get back on the train, and I couldn't but be impressed by the distances. I just came away with the judgment, personal judgment, that we are lucky that we have a federal system and some of the problems are solved by the state level rather than everything being solved in Washington. I did wonder whether all of the things that the Civil Rights Division was doing in Washington needed to be done in Washington, but I don't know the answer. I'm just not qualified to make a judgment on that.

**Audience Question:** [Question about the practice of appointing federal judges recommended by senators from the South even though they were hostile to civil rights.]

**Mr. Doar:** What was going on was the real world. That's the way the system worked. What was going on for one-hundred years from President Lincoln to 1960 when the solid South was all democratic? We're just not going to be able to change that by saying, get elected President or get elected to this and say I'm going to do it all different. It takes a real effort to bring about the correction, so you have to get people in positions, a leading senator from a state to see the importance of making a careful selection of federal judges.

**Audience Question:** In the *Neshoba* trial, the decision to grant Jim Jordan immunity must have been a difficult one . . . Can you reflect on that at all, what was going through your mind?

**Mr. Doar:** No, I don't think it was a difficult decision, and when you said granted immunity, I believe he was tried independently and convicted and received a sentence, but maybe my memory is just gone on that. I don't think that's right, but I would have to check it.

**Audience Question:** [If you had come to the judgment at the end of the trial that there wasn't enough evidence to convict Travis Barnette, shouldn't you have been in a position at the outset of the trial before you proceeded any further to make the same judgment? What happened in the course of the trial that led to this decision?]

**Mr. Doar:** My recollection is that we thought we had to read that confession with the names blanked out to flesh out and show that we were absolutely right with our conception of what the scheme was and the way he described it and how a conspiracy worked, so I don't think there was any thought at the beginning of the case to dismiss him, frankly, but maybe there was. I just don't remember.

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**Audience Question:** How early did you form an opinion that losing cases in the district courts and the court of appeals would lead to corrective legislation?

**Mr. Doar:** I don't know that we ever thought that so specifically. I believe that the lawyers in the Division collectively believed that if they kept running at it as hard as they could, running at the issue of the caste system as reflected in voting, and if we used the court of appeals and the district courts and the tools we had as aggressively as we could, that something would happen—some way things would change. But to say that led to a belief that we'd get legislation, I don't think people were thinking that clearly. Leading up to the 1964 Act, I think Marshall and Kennedy had decided that they just weren't going to get any voting legislation in the 1964 Act. But what happened between 1964 is that Selma happened, and then the possibility of legislation became obvious. Harold Greene and Nick Katzenbach, the lawyers that drafted that legislation, had something before the House in three weeks.

**Professor Fiss:** I'd like to thank a number of people. One of course is Steve Pollak, who has done an incredible job in orchestrating this program. There are many things for which I'm grateful for Brian Landsberg, but most of all taking the telephone calls from Steve Pollak every morning at 7:00 a.m. to make sure all the arrangements had been made for this event. The second thank-you is not to an individual, but to John's family. His son Burke is not here, he is campaigning for public office in Connecticut. But I want to extend a very deeply felt thank-you to his family, to Gael, Robert, Michael, and especially to Anne. John spent 187 days out of the year poking around Mississippi or wherever else he happened to be, and such a devotion to duty posed a tremendous burden not just on him but on his family as well. The nation is grateful for their willingness to shoulder this burden in order to make sure that justice was done. My final thank-you is to my teacher, not a second-year student. Every attorney, the five, the nine, the twenty-five, the thirty, forty, who worked in the Division, was inspired by the sense of purpose that Taylor Branch spoke about this morning, and they were all the students of John Doar. He taught each of us the full meaning of the words that are carved over the Department of Justice: "*The United States Wins When Justice Is Done.*" So I thank you, John, for your lessons and for this presentation.

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## APPENDIX: WORKS REFERENCED

For further information about the work of the Civil Rights Division, please see:

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