

VOTING RIGHTS AND CIVIL RIGHTS ERA COLD CASES: SECTION FIVE AND THE FIVE CITIES PROJECT

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Voting. It is hailed as the hallmark of democratic society and representative government.¹ Enfranchisement and exercise of the ballot are considered the sine qua non of governmental legitimacy. This legitimacy, in turn, is contingent on free and full participation across all sectors of the governed. However, while the U.S. government touts itself as the foremost democratic society in the world,² enfranchisement and electoral participation has been marked more by exclusion and denial than inclusion and access.³ This has been true in historical and contemporary times, and has been most persistent regarding the denial of voting rights based on race and ethnicity in the United States, as well as the intersectional force of inequality and disenfranchisement.⁴

¹ The Supreme Court expressed this sentiment in the landmark voting rights case, *Reynolds v. Sims*, opining:

Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.

See *Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964), quoting *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

² As editors Kelley and Lewis note, for example, “The Second World War had exposed the persistent contradictions between the American ideal and the American reality. Black Americans resolved to eliminate that contradiction. They would not only fight for democracy abroad, they would pursue democracy at home.” ROBIN D.G. KELLEY AND EARL LEWIS, *Preface*, TO MAKE OUR WORLD ANEW: A HISTORY OF AFRICAN AMERICANS (Robin D.G. Kelley and Earl Lewis, eds., 2000), at xvi-xvii. “Despite a long and noble history of black resistance to racism and oppression in the United States, the period 1945 to 1970 might be described as a protracted war for freedom. Black Americans were determined to be the architects of an inclusive America, one that championed human rights for all.” *Id.*

³ See, e.g., SAMUEL ISSACHAROFF, PAMELA S. KARLAN & RICHARD H. PILDES, *THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS* (3d ed.), noting that “the entitlement to vote in the only popular federal election was entirely dependent on a state’s grant of the franchise, and all states limited the right to vote to only a subset of the population. The most widespread limitations involved age, sex, race, property ownership, and length of residence within the jurisdiction, but there were others as well.”

⁴ The 15th Amendment conferred the right to vote to Black men as part of the Civil Rights Amendments. It prohibits federal or state government from denying the right to vote to citizens of the United States “on account of race, color, or previous condition of servitude.” U.S. Const. Amendment XV (1870). However, it was not until passage of the 19th Amendment, in 1920, which forbade denial or abridgement of the right to vote “on account of sex,” that Black women also won the right to vote. U.S. Const. Amendment XIX (1920). Yet, it is important to note the intersectional dynamics of racism and sexism. As Professor-activist Kathleen Cleaver explains,

“Feminism does not inoculate women against racism, because gender for black women has represented a category different from white women, whose race reserved them a place within the

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Since before this nation's founding, Black people's quests for full citizenship and full participation in American society were met with virulent excesses that sought to preserve the social and governmental system of White supremacy. From the violence of enslavement, the violence of Jim Crow, and the continuing violence of racist attacks and societal disparity, Black people have met each era of deprivation of their humanity, equality, and rights with protest and resistance. Scholar-activists Manning Marable and Leith Mullings note,

As African Americans sought to forge themselves as a people in the leviathan of slavery, and in the process expanding democracy for all Americans, the concept of freedom has been central to our struggle. Though freedom has meant different things, at different times, to different people, it has nonetheless been the golden thread in the tapestry of African American history.⁵

Activist movements for Black freedom and participation throughout American society saw broad civil rights demands and particular voting rights demands as intertwined. The linkage between civil rights and voting rights was especially pronounced during the civil rights movement of the 1960s.⁶ Indeed, the struggle for Black enfranchisement was at the center of the civil rights movement as it demanded equal justice, equal opportunity in education and employment, and the right to vote. The terrain on which this struggle was waged was centered – but by no means exclusively located – in the Southern United States. In the South, the enforcement of White supremacy through violence was most visibly evident in terroristic groups such as the Ku Klux Klan. However, more subtle and insidious forms of institutional and governmental forms of racism made the devaluation of Black people's lives replete and entrenched in Jim Crow law. During the Civil Rights era of the 1950s and 1960s, Black people who were known to be civil rights and voting rights activists, those who were perceived to be activists, or those who

dominant society from which black women were barred...Patriarchal norms, economic exploitation, and racial denigration give a polydimensional character to the sexism that oppresses black women, which one-dimensional feminism cannot combat. Instead, the feminism appropriate to African Americans requires a complex recognition of the gendered dimension of racial subjugation.”

Kathleen Neal Cleaver, *Racism, Civil Rights, and Feminism*, in *CRITICAL RACE FEMINISM* 48, 52 (Adrien K. Wing, ed., 2003).

⁵ MANNING MARABLE AND LEITH MULLINGS, *Introduction*, *FREEDOM: A PHOTOGRAPHIC HISTORY OF THE AFRICAN AMERICAN STRUGGLE* 6 (Text by Manning Marable and Leith Mullings, Pictures edited by Sophie Spencer-Wood) (2002). See also JOHN HOPE FRANKLIN AND ALFRED A. MOSS, JR., *FROM SLAVERY TO FREEDOM: A HISTORY OF AFRICAN AMERICANS* (7th ed., 1994); and *TO MAKE OUR WORLD ANEW*, *supra* note 2.

⁶ Dr. King expressed the sentiment, stating: “The denial of the vote not only deprives the Negro of his constitutional rights – but what is even worse – it degrades him as a human being.” Martin Luther King, Jr., *Speech Before the Youth March for Integrated Schools*, in *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR.* 22 (James M. Washington, ed., 1986). See also *Id.*, King, *Civil Right No. 1: The Right to Vote*, at 182-88.

were ordinary citizens without direct ties to activist movements, were the victims of racially motivated killings that were committed with impunity.

This essay discusses two interlinked demands for racial justice – the demand for voting rights and the demand for accountability for the victims of racially-motivated murders that occurred during the Civil Rights Era. Specifically, it discusses the legal responses to these demands which threaten their effectiveness, and hence, the prospect of racial justice they were designed to achieve. Further, it pays homage to those witting and unwitting martyrs whose sacrifices made these legal measures necessary and make the attainment of justice a continuing national imperative. At issue are the U.S. Supreme Court's decision in *Shelby County v. Holder*,⁷ in which a majority of the Court ruled the essential "coverage" provision of the Voting Rights Act of 1965 to be unconstitutional, and the Emmett Till Unsolved Crimes Act,⁸ in which Congress mandated the Department of Justice and FBI to reopen investigations and prosecute civil rights era cold cases, but which has heretofore resulted in scant few prosecutions. The essay concludes that despite the passage of time, and as some would suggest, the changed racial circumstances in contemporary social and political U.S. society, sections 4 and 5 of the Voting Rights Act remain necessary to protect minority voters' rights to meaningful exercise of the franchise.⁹ It further concludes that Congress must require full implementation of the Emmett Till Act in order to hold individuals and institutions accountable for the racially-motivated deaths of victims who procured the right to vote with their lives.

It was a torturous road to the passage of the Voting Rights Act of 1965. In the aftermath of the Civil War, the so-called Reconstruction Amendments were necessitated by White recalcitrance to Black freedom, including the right to vote. As Brian Landsberg notes, with specific regard to Alabama but with broader implication:

Slavery had created an economic system dependent on white subjugation of blacks. Although reconstruction, which lasted from 1865 to 1877, brought a brief semblance of equality to the races, Alabama whites continued to believe that their economic, political, and social stability required maintenance of a racial class system, with blacks at the bottom. The black vote was initially secured by military reconstruction, which brought about nearly 100 percent black registration and over 70 percent black voter turnout. Some blacks were elected to local, state, and congressional office. [A]fter the withdrawal of federal troops, neither the Fourteenth nor the Fifteenth Amendments to the

⁷ *Shelby County v. Holder*, 133 S. Ct. 2613 (2013).

⁸ Emmett Till Unsolved Civil Rights Act of 2007, Pub. L. No. 110, 122 Stat. 3934 (2008).

⁹ In *Shelby County*, the Supreme Court declared the coverage formula under section 4 to be unconstitutional; however, in light of the manner in which section 4 (coverage) and section 5 (preclearance) are conjoined for statutory application, it is difficult to imagine that the same five-member majority would deem section 5 constitutional upon reasoning that federalism dictates equal treatment of all states regarding voting rights issues.

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Constitution proved to be effective protections against the redemptionist government.¹⁰

Federal enforcement against Southern states' denial of the U.S. constitutional guarantees was minimal and ineffectual. Thus, as Landsberg adds, "Had the country continued to enforce the rights initially secured during Reconstruction, the course of twentieth-century Southern history would have been much different, and there would have been no need for a Voting Rights Act. Instead, the country repealed most of the reconstruction-era civil rights laws, and Alabama's 1901 constitution was specifically and successfully designed 'to eliminate Negro voter'". As a result by the mid-twentieth century, 95 percent of blacks continued to be disenfranchised."¹¹ Hence, the Fifteenth Amendment, which was passed expressly to remove racial barriers to voting for Black men, was rendered meaningless. Voting Rights scholar Richard Pildes remarks, "The Supreme Court, Congress, and various presidents ignored the amendment or lacked the nerve to enforce it; the Amendment became the most willfully ignored one in constitutional history."¹² Moreover, when the Supreme Court began to address inequality in voting rights, such as the "one-person, one-vote" decisions in *Baker v. Carr*¹³ and *Reynolds v. Sims*,¹⁴ they did not expressly confront the racial discrimination regarding the opportunity to cast a meaningful vote.¹⁵

Subsequent national legislative measures sought to improve the lassitude in enforcement of African Americans' right to vote. The Civil Rights Acts of 1957 and 1960 addressed these deficiencies by giving the Department of Justice greater authority to bring federal lawsuits to enforce the 15th Amendment. These measures were minimally effective and relied primarily on case-by-case litigation.¹⁶ Thus Pildes states without exaggeration that "The original VRA was the most aggressive assertion of federal power over voting issues since the Civil War and

¹⁰ BRIAN K. LANDSBERG, *FREE AT LAST TO VOTE: THE ALABAMA ORIGINS OF THE 1965 VOTING RIGHTS ACT* 10 (2007).

¹¹ *Id.* at 10-11 (quoting *U.S. v. Alabama*, 252 F. Supp. 95, 98 (M.D. Ala. 1966)).

¹² Richard Pildes, *Introduction*, in *THE FUTURE OF THE VOTING RIGHTS ACT* xii (David L. Epstein, Richard Pildes, Rodolfo O. de la Garza, and Sharyn O'Halloran, eds.) (2006).

¹³ *Baker v. Carr*, 369 U.S. 186 (1962)

¹⁴ *Reynolds v. Sims*, 377 U.S. 533.

¹⁵ See discussion in CHARLES L. ZELDIN, *SUPREME COURT AND ELECTIONS: INTO THE THICKET* 37 (2010) (noting that the *Baker* and *Reynolds* decisions spurred the Congressional passage of the Voting Rights Act, but also noting the limitations of the cases themselves in failing to adequately deal with racial discrimination in electoral schemes.)

¹⁶ See PILDES, *supra* note 12, at xii, discussing enactment of the 1957 Civil Rights Act and its minimal effect on securing voting rights.

Reconstruction.”¹⁷ More to the point, the Voting Rights Act is nearly universally regarded as the most effective legislation in American history.¹⁸

The indisputable effectiveness of the VRA was based on the provisions which directly addressed the resistance of Southern states in particular to recognize and enforce the rights of Black voters. These provisions notably included the coverage and preclearance formulas of Section 4 and Section 5, which require that specific states and jurisdictions with a history of discrimination, mostly in the South, must obtain approval from the Department of Justice or a federal court prior to making changes to their election procedures or practices.¹⁹ It is these provisions that the Court determined to be unconstitutional in *Shelby County*.²⁰ According to Chief Justice Roberts, writing for a five-member majority of the Court, the statute defied principles of federalism by deeming that select states fell under the presumptive coverage and preclearance formula of the VRA while other states or jurisdictions did not.²¹ The original list covered states included much of the former Confederacy: Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina, and Virginia.²²

The Chief Justice’s federalism concern was animated by the belief that the Congressional record renewing the Voting Rights Act in 2006 did not reflect geographical distinctions in racial discrimination that justified the continued prerequisites of Sections 4 and 5 for some jurisdictions but not for others.²³ According to the majority opinion, the Court was compelled to invalidate the coverage and preclearance provisions because Congress’ failure to act in this

¹⁷ See PILDES, *supra* note 12, at xii.

¹⁸ See, e.g., Heather Gerken’s comments about the effectiveness of the Voting Rights Act:

It worked. It worked miraculously well, in fact. In a remarkably short period, African-American registration rates shot up. Section 5 mattered especially for the Deep South, where there were large concentrations of black voters. By the 1990s, these states were able to send a historic number of black representatives to Congress. But Section 5 didn’t just matter for the big-ticket races. For decades it provided strong protections for minority voters in local and state elections as well as federal ones. Based on those successes, Congress renewed Section 4’s ‘coverage formula’ – the provision that determines which jurisdictions have to preclear changes and which don’t – again and again.

Heather Gerken, *Goodbye to the Crown Jewel of the Civil Rights Movement*, SLATE, [Slate.com/articles/news_and_politics/jurisprudence \(9/27/2013\)](https://www.slate.com/articles/news_and_politics/jurisprudence/2013/09/27/2013.html).

¹⁹ U.S.C. §§ 1973b-1973c.

²⁰ *Shelby County v. Holder*, 133 S. Ct. 2619, 2631 (2013).

²¹ See *Shelby County v. Holder*, 133 S. Ct. 2631 (2013).

²² U.S.C. §1973c. In addition, the original formula covered twenty-six counties in North Carolina, three counties in Arizona, one county in Hawai’i, and one county in Idaho. In 1975, Congress amended the VRA to include “language minorities,” defined as American Indians, Asian Americans, Alaskan Natives, and persons of Spanish Heritage. 42 U.S.C. sec. 1973aa-1a(e). As Laughlin McDonald notes, the 1975 amendments expanded the preclearance requirement to fifteen counties and townships in California, Florida, Michigan, New Hampshire, New York, and South Dakota, and the entire states of Alaska, Arizona, and Texas. See Laughlin McDonald, *Expanding Coverage of Section 5 in Indian Country*, in THE FUTURE OF THE VOTING RIGHTS ACT, *supra* note 12, at 163-64.

²³ *Shelby County v. Holder*, 133 S. Ct. 2612, 2613 (2013).

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regard.²⁴ However, the the Supreme Court’s conservative block -was compelled less by the purported inaction by Congress, than by the determination to eradicate all race-specific remedial legislative measures from constitutional viability by. This effort is led by the Chief Justice himself, as discussed further below. As Justice Ginsburg noted in her dissent, Congress had amassed a solid legislative record after holding numerous hearings prior to reauthorizing the legislation, to which the Court owed great deference.²⁵ However, the majority opinion curtly dismissed Congress’ voluminous record in support of renewing the Voting Rights Act in 2006.

The Emmett Till Unsolved Civil Rights Crimes Act of 2007, like the Voting Rights Act, was enacted to rectify the denial of Black people’s fundamental rights that stemmed from White rejection of legal and societal racial equality as asserted by Black people’s activism during the Civil Rights Movement. This insistence for equal rights, equal justice, and full participation throughout American society brought about the Civil Rights Act of 1964²⁶ the Voting Rights Act of 1965.²⁷ These major legal measures were won through the sacrifices of women and men of diverse racial, ethnic and geographic backgrounds, although the brunt of the violence and loss was borne by African American people in the South. The terror campaign that was waged by White supremacist organizations like the Klan and White Citizens Councils was directed at the civil rights community as well as broader population of Black people in the South. Although the Emmett Till Unsolved Crimes Act was enacted forty years after the Voting Rights Act, this statute provides insight into the impetus for the Voting Rights Act and the courage and human cost that paid for the right to vote.

Many of the racially-motivated crimes against Black people during the Civil Rights Era were unsolved or unpunished. This was due not only to the intentional criminal acts of individuals and supremacist organizations, but also to the institutional racism in law enforcement and other governmental structures that did not value Black people’s lives. During the Civil Rights Era it was common for racially motivated killings to be “misabeled as accidental killings or missing person

²⁴ According to the Majority opinion, “The Act imposes current burdens and must be justified by current needs.” *Shelby County v. Holder*, 133 S. Ct. at 2622 (quoting *Northwest Austin Municipal Utility District No. One v. Holder* (NAMUDNO), 129 S. Ct. 2504, 2513 (2009).

²⁵ See Justice Ginsburg noting Congress’ finding of “countless examples of flagrant racial discrimination” since the last reauthorization; and further noting systematic evidence that “intentional racial discrimination in voting remains so serious and widespread in covered jurisdictions that section 5 preclearance is still needed.” *Shelby County v. Holder* (Ginsburg, J., dissenting) (quoting *Shelby County v. Holder*, 679 F 3d 848, 866 (D.C. Cir. 2012). Justice Ginsburg was joined in dissent by Justices Breyer, Kagan, and Sotomayor.

²⁶ 42 U.S.C. sec. 2000e *et seq.*

²⁷ 42 U.S.C. sec. 1973 *et seq.*

cases.²⁸ In other instances, cases were simply not investigated or were subverted by racist proceedings.²⁹ As journalist Hank Klibanoff noted, “Reporters and lawyers investigating murders from the era of the civil rights movement encounter – as the Federal Bureau of Investigation did many years ago when its investigations frequently went unprosecuted – webs of names that appear again and again. They identify violent Klansmen who operated with the knowledge of law enforcement, legislators, mayors and governors, often with their participation and protection.”³⁰

In October 2008, Congress passed the Emmett Till Unsolved Civil Rights Crime Act.³¹ The Till Act brought to fruition activism by grassroots civil rights activists and leading civil rights organizations to reopen the investigation into the 1955 murder of 14-year-old African American youth Emmett Till.³² The Till case epitomized the brutality of White supremacist ideology and its gendered dimensions. Till was accused of whistling at a White woman (Carolyn Bryant) in Mississippi, which in the culture of White supremacy, was an affront for which he was tortured and killed. Roy Bryant and J.W. Milam, the two White men who murdered Emmett Till were acquitted by an all-White jury and later bragged of their acts in *Look Magazine*.³³

The Till Act created a cold case unit within the Department of Justice and the FBI to carry out its mandate. The statute also provides appropriations of \$10 million per year specifically for civil rights era cold case investigations and prosecutions. The statute also provides funding for local law enforcement and local community efforts regarding cold cases in their areas. The statutory period is for crimes that occurred prior to 1970.³⁴ On the original Senate bill, which ultimately became the Emmett Till Act, there is a list of unsolved cases that occurred during the civil rights era. The list is reflective of the range of victims and racially-motivated crimes that remained unsolved. A number of the victims were directly involved in civil rights activism, and voting rights activism in particular. The Southern

²⁸ Barbara A. Schwabauer, *The Emmett Till Unsolved Civil Rights Crime Act: The Cold Case of Racism in the Criminal Justice System*, 71 OHIO ST. L.J. 654, n. 4, 655 (2010). (citing statement of Sen. Leahy, 154 Cong. Record S9351, quoting FBI Director Mueller’s statement that “[m]any murders during the civil rights era [were] covered up or were misidentified as accidental death or disappearance.”)

²⁹ *Id.* at 655 and n.5 (citing, e.g., S. Rep. No. 110-88, at 4 (2007)(noting that “[m]any of these killings were never fully investigated” and were often subject to “cover-ups”).

³⁰ Hank Klibanoff, *Here’s What People Want to Know: Why Do Journalists Tell These Stories?* in NIEMAN REPORTS SYMPOSIUM ISSUE, COLD CASE REPORTING: REVISITING RACIAL CRIMES 5 (Fall 2011).

³¹ Emmett Till Unsolved Civil Rights Crime Act of 2007.

³² See Schwabauer, *supra* note 28. See also Dan Berger, *Rescuing Civil Rights from Black Power: Collective Memory and Saving the State in Twenty-First Century Prosecutions of 1960s-Era Cases*, 3 JOURNAL FOR THE STUDY OF RADICALISM 1, 3-4 (Spring 2009); see also Margaret Russell, *Cleansing Moments and Retrospective Justice*, 2003 MICH. L. REV. 1225, 1231.

³³ William Bradford Huie, *The Shocking Story of Approved Killing in Mississippi* LOOK, available at *The Murder of Emmett Till*, PBS AMERICAN EXPERIENCE, http://www.pbs.org/wgbh/amex/till/sfeature/sf_look_confession.html.

³⁴ Emmett Till Unsolved Civil Rights Crime Act of 2007.

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Poverty Law Center's (SPLC) list of Civil Rights Martyrs, for instance, includes the names of individuals who were killed during the civil rights movement between 1954 to 1968. SPLC's list was expanded and appended to the Emmett Till Bill. Among those who were killed for activism directly related to voting rights include:

Lamar Smith, August 13, 1955, Brookhaven, Mississippi. Shot dead on the courthouse lawn by a white man in broad daylight while dozens of people watched. The killer was never indicted because no one would admit they saw a white man shoot a black man. Smith had organized blacks to vote in a recent election.

Herbert Lee, September 25, 1961, Liberty, Mississippi. Lee worked with civil rights leader Bob Moses to help register black voters. He was killed by a state legislator who claimed self-defense and was never arrested. Louis Allen, a black man who witnessed the murder, was later killed also.

James Earl Chaney, Andrew Goodman and Michael Schwerner, June 21, 1964, Philadelphia, Mississippi. The three civil rights workers were arrested by a deputy sheriff and then released into the hands of Klansmen who had plotted their murders. They were shot and their bodies were buried in an earthen dam.

Rev. James Reeb, March 11, 1965, Selma, Alabama. A Unitarian minister from Boston, Reeb was among many white clergymen who joined the Selma marchers after the attack by state troopers at the Edmund Pettus Bridge. Reeb was beaten to death by white men while he walked down a Selma street.

Viola Liuzzo, March 25, 1965, Selma Highway, Alabama. A housewife and mother from Detroit, Liuzzo drove alone to Alabama to help with the Selma march after witnessing the attacks at the Edmund Pettus Bridge. She was shot to death by a Klansman in a passing car as she drove marchers back to Selma from Montgomery.

Clarence Triggs, July 30, 1966, Bogalusa, Louisiana. Triggs was a bricklayer who had attended civil rights meetings sponsored by the Congress of Racial Equality (CORE). He was found dead on a roadside, shot through the head.

Wharlest Jackson, February 27, 1967, Natchez, Mississippi. Jackson was the treasurer of the local NAACP chapter and was one of many blacks who received threatening Klan notices at his job at Armstrong Rubber and Tire Company. He was promoted to a position previously reserved for whites. A bomb was planted under his car after his promotion; it exploded minutes after he left work on February 27, killing him instantly.

The struggle for voting rights, of course, did not begin at the Edmund Pettus Bridge, although the atrocities that occurred there were pivotal in moving passage of the VRA forward. Legendary African American journalist Simeon Booker tells the story of Rev. George W. Lee, for example. Rev. Lee is on the FBI's list of unsolved racially-motivated crimes from the civil rights era that is attached to the Emmett Till Act. Simeon Booker recalls a voting rights rally in Mississippi on April 29, 1955, with 13,000 Black people in attendance. Booker notes that it was the largest voting right rally ever held in the South – and, significantly, “the first since the Supreme Court, one year earlier, had declared segregated schools unconstitutional.”³⁵ Booker recalls that despite the rising tensions from the *Brown v. Board of Education* decision and the emergence of White Citizens Councils in neighboring Sunflower County, Mississippi to resist *Brown's* constitutional commands, no mainstream press organizations covered the rally or Rev. Lee's subsequent murder.³⁶ Following is Simeon Booker's recounting of the circumstances surrounding Rev. Lee's murder:

A week after I returned to Chicago from the Mound Bayou rally and my interviews with Lee and other voting rights activists in the Delta, I got a call telling me of his murder.

At 51, he had been a cofounder of the local branch of the NAACP and was the first black since Reconstruction to register to vote in Humphreys County, Mississippi. He had gotten most of the county's other blacks to register, but Sheriff Ike Shelton and the Citizens' Council were using intimidation and economic pressure to purge each one of these voters from the rolls. Lee had been so successful that whites even offered him protection if would cease his voter registration efforts. He refused, and on the evening of May 7, 1955, a bullet fired from a pursuing car into a rear tire of his Buick sent it careening off the road into a shanty as a Ford convertible pulled alongside and two shotgun blasts almost blew his face off.

Shelton took one look at Lee's lifeless body and declared that the death was due to a concussion from a traffic accident. When a postmortem found lead pellets in Lee's face and head, Shelton claimed they were dental fillings torn loose by the impact of the crash. When further investigation identified the pellets as buckshot, Shelton theorized that the reverend was a lady's man who was gunned down by a rival.

A Federal Bureau of Investigation probe focused on two members of the small town's Citizens' Council who were known for prior acts of violence. The

³⁵ Simeon Booker, *Being There to See – With the Challenge of Being Heard*, in NIEMAN REPORTS SYMPOSIUM ISSUE, COLD CASE REPORTING: REVISITING RACIAL CRIMES 24 (Fall 2011). Booker is referring to *Brown v. Board of Education*, 374 U.S. 483 (1954).

³⁶ *Id.* at 24.

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NAACP, after demanding the investigation, helped the bureau track down eyewitnesses to the murder. But when the FBI turned over its evidence to the local prosecutor, he declined to convene a grand jury. The agents held one suspect's 20-gauge double-barrel shotgun and shells for use in a federal civil rights trial, but that never happened either. The United States Department of Justice said it could not substantiate allegations that the minister was murdered because of his voting rights activities.³⁷

The images of the events that took place on the Edmund Pettus Bridge, in Selma, Alabama, are seared into American and global consciousness.³⁸ It is familiar to note that in the aftermath of the violence against the peaceful voting rights protesters on March 7, 1965 – “Bloody Sunday” – that President Johnson sought passage of the Voting Rights Act and Congress overwhelmingly obliged.³⁹ What is also important to note are the events that preceded the passage of the Voting Rights Act, and that precipitated the Selma march. In 1960, the voting age population in Perry County consisted of 3,441 Whites and 5,200 Blacks. The disparity was greater in 1962, when over 3,000 Whites were registered to vote, while a paltry 527 Blacks were registered.⁴⁰ In 1962, Black citizens formed the Perry County Civic League in order to mount an organized challenge to voting rights violations. Albert Turner was the first president of the Civic League. He and his wife, Evelyn, and about 40 others sought to register to vote in Perry County.

Jimmie Lee Jackson was involved in the Perry County Civic League. Jackson was shot by Alabama State Troopers as he tried to protect his grandfather and mother from a trooper attack on civil rights marchers. He died from his wounds on February 26.⁴¹ Jimmie Lee Jackson's death ignited the fervor for the Selma-Montgomery march. After his death, James Bevel likened Jimmie Lee Jackson to the Biblical martyr James.⁴² As civil rights historian Taylor Branch writes: “An officer put two bullets into the stomach of Jimmie Lee Jackson, a twenty-six-year-

³⁷ Booker, *supra* note 35, at 26-27. Simeon Booker also reported on the Emmett Till murder trial and as editor of Jet Magazine agreed with Mrs. Mamie Till Mobley to publish a photo of Emmett Till's brutalized body in Jet. See Simeon Booker, *To Be a 'Negro' Newsman – Reporting on the Emmett Till Murder Trial*, *Id.* at 26.

³⁸ See JOHN LEWIS, *WALKING WITH THE WIND: A MEMOIR OF THE MOVEMENT* 345-69 (1998) for his witness' description of the Selma march. See also TAYLOR BRANCH, *AT CANAAN'S EDGE: AMERICA IN THE KING YEARS 1965-68*, at 44-57 (2006).

³⁹ See DENNIS W. JOHNSON, *THE LAWS THAT SHAPED AMERICA: FIFTEEN ACTS OF CONGRESS AND THEIR LASTING IMPACT* 318-32 (2009) (describing events and providing a timeline leading to the passage of the Voting Rights Act. On March 15, 1965, only eight days after the violence in Selma, President Lyndon B. Johnson requested that Congress pass the Voting Rights Act. The Senate passed the Voting Rights Act with bipartisan support on May 26, 1965. It was passed by the House of Representatives on July 9 and signed by President Johnson on August 6, 1965.

⁴⁰ See LANDSBERG *supra* note 10, at 143.

⁴¹ LANDSBERG *supra* note 10, at 143.

⁴² See BRANCH, *supra* note 38, at 8.

old pulpwood worker whose application to register to vote had been rejected five times.”⁴³ As Rev. Bevel implored, “We must go to Montgomery and see the king. [B]e prepared to walk to Montgomery! Be prepared to sleep on the highway!”⁴⁴ Significantly, these events involve a civil rights cold case stemming from the murder of Jimmie Lee Jackson. It was not until November 2010 – some 40 years later – that anyone was held accountable for killing Jimmie Lee Jackson. James Bonard Fowler, a former Alabama state trooper, pleaded guilty for Jackson’s death. Fowler shot Jackson twice in the abdomen at point blank range. Fowler received six months in jail followed by six months unsupervised probation.⁴⁵ As the Cold Case Justice Initiative noted at the time of Fowler’s plea, “The Jimmie Lee Jackson case exemplifies the consequences of decades of disregard, delay and inaction...Like Fowler, there are many perpetrators and accomplices who have yet to be brought to justice or answer for their crimes.”⁴⁶

It is equally critical to note that others on the SPLC’s Civil Rights Martyrs List (and the larger list of “the Forgotten”), that were part of the Emmett Till legislation included people who were killed solely because they were Black. Among them were:

Willie Edwards, Jr., January 23, 1957, Montgomery, Alabama. Edwards was a truck driver who was on his way home from work when he was stopped by four Klansmen. The Klansmen mistook him for another man they believed was dating white woman. They forced Edwards at gunpoint to jump off a bridge into the Alabama River. His body was found three months later.

Cpl. Roman Ducksworth, April 9, 1962, Taylorsville, Mississippi. Cpl. Ducksworth was a military police officer stationed in Maryland who was on leave to see his pregnant wife who was ill, when he was order off a bus by [a police officer] and shot dead. The officer claimed to shoot Cpl. Ducksworth in self-defense.

Johnnie Mae Chappell, March 23, 1964, Jacksonville, Florida. Mrs. Chappell, a mother of ten, was murdered as she walked along a roadside. Her killers were white men who were looking for a black person to shoot following a day of racial protest in Jacksonville.

Henry Hezekiah Dee and Charles Eddie Moore, May 2, 1964, Meadville, Mississippi. Dee and Moore were killed by Klansmen who believed they were part of a plot to arm Blacks in the area. There was no such plot. Their

⁴³ *Id.*

⁴⁴ Rev. James Bevel quoted in BRANCH, *supra* note 38, at 9. Rep. John Lewis, who was a leader of the march, also recalls James Bevel’s call to “take Jimmie Lee’s body to Montgomery...and lay [his] casket on the capitol steps.” LEWIS, *supra* note 38, at 329.

⁴⁵ See Cold Case Justice Initiative Statement on the Guilty Plea in Jimmie Lee Jackson Murder Trial, November 16, 2010 (on file with author).

⁴⁶ *Id.* Cold Case Justice Initiative Statement on the Guilty Plea in Jimmie Lee Jackson Murder Trial, November 16 2010.

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bodies were found during a massive search for the missing civil rights workers Chaney, Goodman, and Schwerner.

In examining the path of the passage of the Voting Rights Act, full acknowledgement must be given to national civil rights organizations such as the NAACP, SCLC, and SNCC, and pivotal events such as the Edmund Pettus Bridge, and the remarkable sacrifice and courage of avowed civil rights activists. However, Professor Landsberg is correct in stating that “[t]he emphasis on national civil rights organizations does not fully recognize the essential role of local blacks – those who had fought for voting rights even before the national organizations came on the scene – and the ordinary people who put their livelihoods and even their physical safety at risk by seeking to register to vote.”⁴⁷ Rep. John Lewis remembers regarding the Selma march, “Many of the men and women gathered on that ballfield had come straight from church. They were still wearing their Sunday outfits. Some of the women had on high heels...None of us had thought much further ahead than that afternoon...If this march did indeed go all the way to Montgomery – we figured we would take care of as we went along. The main thing was that we *do* it that we march. [T]here were no big names up front, no celebrities. This was just plain folks moving through the streets of Selma.”⁴⁸

As described in the above profiles, the fuller picture of the pervasiveness of racist ideology is reflected in the cases of ordinary Black citizens who were killed simply because they were Black, in addition to those who assiduously participated in civil rights and voting rights activities. Their deaths, too, were part of the larger struggle for voting rights and are captured within the statutory objectives of the Emmett Till Act, as their deaths were generally treated with indifference and impunity. Rep. John Lewis, a sponsor of the Emmett Till Act, stated with regard to the reason why the civil rights era cold cases must be resolved:

Through all this, in Mississippi and in Georgia, where our voter registration efforts were concentrated and where the backlash of violence was most brutal, the federal government was conspicuous by its absence. There were words of support from Washington, and no physical support in the way of federal marshals. Pleas were pouring in to the White House for the government to step in and help. But those pleas were ignored...Soon thereafter, there was just such a case – the unidentified body of a black man was found in the small Mississippi town of Goodman.⁴⁹

The Cold Case Justice Initiative (CCJI) is an interdisciplinary project that conducts investigations of unsolved racially-motivated murders that occurred during the civil

⁴⁷ LANDSBERG, *supra* note 10, at 5.

⁴⁸ LEWIS, *supra* note 38, at 337-38.

⁴⁹ LEWIS, *supra* note 38, at 191.

rights era. CCJI advocates on behalf of families in their efforts to obtain justice, and also serves as an educational and legal clearinghouse for sharing and receiving information on active cases. CCJI works with several of the families mentioned above. CCJI is committed to the task of identifying all individuals who were killed under suspicious circumstances within the statutory period of the Emmett Till Act, and beyond the 1970 cutoff date of the Act. Through its actions thus far under the statute, the Department of Justice has devoted considerable time and resources closing cases, rather than conducting full investigations and identifying all victims of racially-motivated killing during the era, as the statute mandates.⁵⁰

The common themes at the intersection of the Supreme Court's decision in *Shelby County* striking down Section 4 and Section 5, and the Department of Justice's narrow interpretation of its responsibility under the Emmett Till Act suggest a belief in a finite shelf life for racism in the United States obviating the need for legislative actions that specifically address individual and institutional racism in these realms. Chief Justice Roberts has said that "Our country has changed, and while any racial discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy the problem speaks to current conditions."⁵¹ The co-sponsors of the Emmett Till Act also seem to be motivated by the notion of finality with respect to unsolved racially-motivated crimes committed during the civil rights era. For example, in this regard, former Senator Christopher Dodd (D-CT), who introduced the bill in the Senate, called the bill "the last and best chance we have as a nation to write a hopeful postscript in the struggle for racial equality in our Nation."⁵²

In both instances, the relevant branches of government have declared the need for effective voting rights legislation and more aggressive investigative or criminal prosecutorial efforts to be time-limited. However, this is far from accurate. There is no doubt that racial progress has occurred since the passage of the Voting Rights Act of 1965. The election of President Obama is a testament to this forward movement; however, by no means does his election, albeit for two terms, signify the end of racial discrimination in access to and meaningfulness of the votes of people of color. Likewise, where there have been a few successful prosecutions of the perpetrators who committed racist murders during the 1960s, this does not begin to account for the scores of victims of such crimes whose names largely remain unknown, whose cases largely remain uninvestigated, and whose perpetrators remain unpunished. Thus, it is too soon to abandon the effective coverage and preclearance formula that place the onus on states and jurisdictions known for past and ongoing discrimination to justify their electoral change. The Department of

⁵⁰ See Emmett Till Unsolved Civil Rights Crime Act of 2007.

⁵¹ *Shelby County v. Holder*, 133 S. Ct. 2612, 2631 (2013).

⁵² 153 Cong. Rec. S1788 (daily ed. Feb. 8, 2007) (statement of Sen. Dodd), quoted in Schwabauer, *supra* note 28, at 656.

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Justice, as well, must do more than prioritize case closures over more expansive discharge of their obligations under the Emmett Till Act.

As discussed in this essay, these legislative measures are interlinked by purpose, history and the persistence of racial discrimination in electoral systems, criminal justice systems, and U.S. society at large. The case has been for more, not less, vigilance for martyrs who have given all for future generations' promise