



Department of Justice

STATEMENT

OF

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UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, DC

BEFORE THE

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY
U.S. HOUSE OF REPRESENTATIVES

CONCERNING

JOINT HEARING ON H.R.923,
THE "EMMETT TILL UNSOLVED CIVIL RIGHTS CRIME ACT"

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Statement of Grace Chung Becker
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Before the Subcommittee On Crime, Terrorism, And Homeland Security, Committee on the Judiciary,
US House of Representatives

Concerning
H.R. 923 - Emmett Till Unsolved Civil Rights Crime Act

June 12, 2007

As the Civil Rights Division celebrates its 50th Anniversary this year, it is an honor to appear before this Committee to talk about H.R. 923, also known as the “Emmett Till Unsolved Civil Rights Crime Act.”

The Department wholeheartedly supports the Act’s goals, which reflect principles of justice and equality that led to the founding of the Civil Rights Division half of a century ago. During the last 50 years, the Civil Rights Division has been instrumental in bringing justice to some of the nation’s most disturbing civil rights era crimes. Those crimes remind us of a terrible chapter in our Nation’s past when some people viewed their fellow Americans as inferior based only on the color of their skin. Racially-motivated murders from the civil rights era constitute some of the greatest blemishes upon our history.

The Civil Rights Division began in February 1939 with the creation of the Civil Liberties Section in the Criminal Division of the Department of Justice. Five years later, the Section was reorganized and renamed the Civil Rights Section. During its short existence, the Civil Rights Section averaged between six and eight attorneys “responsible for supervising the enforcement of the Federal Civil Rights law throughout the Nation.”¹

It soon became clear that more was needed. As early as 1949, President Harry S. Truman began calling for the formation of a Civil Rights Division within the Justice Department, stating: “[t]he [Civil Rights] Section simply does not have an adequate staff for the careful, continuing study of civil rights

¹ Hearing Before Subcommittee No. 2 of the Committee on the Judiciary House of Representatives, Eighty-Fourth Congress, First Session, p. 162.

violations, often highly elusive and technically difficult, which occur in many areas of human relations.”¹ In 1954, the Supreme Court handed down its momentous decision in *Brown v. Board of Education*. The decision led to Congressional hearings in 1955 that resulted in the Civil Rights Act of 1957, the first civil rights legislation enacted into law following Reconstruction. As part of that legislation, the Civil Rights Division was officially formed. Almost immediately, the Division began to address racially-motivated brutality.

In 1964, the Civil Rights Division investigated and prosecuted the murder of three civil rights workers in Philadelphia, Mississippi - an incident commonly known today as the “Mississippi Burning” case. The Assistant Attorney General of the Civil Rights Division, John Doar, personally led the investigation and prosecution of these murders. He was able to secure the convictions of 7 of the 18 defendants charged with these murders; and they received sentences ranging from just 4 to 10 years of imprisonment. One of the ringleaders, Ku Klux Klan member, Edgar Ray Killen, was acquitted because one of the jury members refused to convict a “preacher.” Ultimately, in June 2005, Killen was convicted in a state prosecution for his involvement in the crime - 41 years after the brutal murders were committed.

Today, the Division continues to use its resources and expertise to identify, locate, and, where possible, prosecute those responsible for committing racially-motivated crimes committed more than 40 years ago. For example:

In 2005, the United States Attorney for the Southern District of Mississippi, along with the Civil Rights Division, launched a federal-state law enforcement task force to reinvestigate the 1964 murders of 19-year-old Charles Moore and Henry Dee, a civil rights activist, in Franklin County, Mississippi. In January 2007, James Seale, age 71, a former member of the Ku Klux Klan, was indicted by a federal grand jury on two counts of kidnapping and one count of conspiracy in connection with the murders of the two young men. The indictment alleges that Seale and other Klansmen abducted Dee and Moore and drove them into the Homochitto National Forest in Mississippi, where the Klansmen beat the victims and interrogated them at gunpoint. The Klansmen allegedly drove the victims to Warren County, Mississippi on a route that took them through the state of Louisiana. Upon their arrival at Parker’s Landing, the

¹ Ibid., p. 163

Klansmen weighted each of the victims and threw them into the Old Mississippi River, drowning them. Trial in that case is proceeding while we convene here.

In 2003, the Civil Rights Division successfully prosecuted Ernest Avants, a Mississippi Klansman who murdered an African American man in 1966. Avants was convicted for his role in killing Ben Chester White. Avants and others lured White to the Homochitto National Forest where they shot him multiple times and threw his body off a bridge.

Avants participated in the racially motivated killing in an attempt to lure Dr. Martin Luther King, Jr. to the area so that he, too, could be attacked. Although Avants had been acquitted of state murder charges in 1967, the Justice Department opened an investigation into White's death in 1999, using a federal statute that prohibits murder on federal property.

In addition, the Federal Bureau of Investigation recently worked with Mississippi authorities to investigate the 1955 murder of Emmet Till, a 14 year-old African-American teenager, who was kidnapped and killed in rural Mississippi – and is the namesake of this proposed legislation. While federal jurisdiction was lacking, the FBI was authorized to conduct its investigation into a local matter because Till had traveled from out of state into the state in which he was murdered. The FBI reported the results of its extensive investigation to the District Attorney for Greenville, Mississippi. In early 2007, the matter was presented to a state grand jury, which declined to indict anyone in the 50 year old case.

Despite these notable examples, the United States Constitution and federal law limits the Department's ability to prosecute most civil rights era cases. There are *Ex Post Facto* issues with the retroactive application of the current criminal civil rights statutes to prosecute historical cases covered by the proposed legislation. H.R. 923 charges the Department to investigate "violations of criminal civil rights statutes . . . result[ing] in death" that "occurred not later than December 31, 1969." Two of the most important federal statutes for prosecuting racially-motivated homicides, 18 U.S.C. § 245 (interference with federally protected activities) and 42 U.S.C. § 3631 (interference with housing rights), were not enacted until 1968. Therefore, the *Ex Post Facto* Clause bars use of 18 U.S.C. § 245 and 42 U.S.C. § 3631 for crimes that occurred prior to 1968. Consequently, the vast majority of racially-motivated offenses from the cold case era cannot be prosecuted by federal authorities.

In addition, the statute of limitations bars prosecution of many of these offenses. Prior to 1994, federal criminal civil rights violations were not capital offenses, thereby subjecting them to a five-year statute of limitations. 18 U.S.C. § 3282(a). In 1994, some of these civil rights statutes were amended to provide the death penalty for violations resulting in death, thereby eliminating the statute of limitations. 18 U.S.C. § 3281 (“An indictment for any offense punishable by death may be found at any time without limitation.”). However, the *Ex Post Facto* Clause prevents the retroactive application of the 1994 increase in penalties, and the resultant change in the statute of limitations.

Nevertheless, the Division has used non-civil rights statutes to overcome the statute of limitations challenge. For example, the Division has brought a prosecution involving first degree murder committed in the special maritime and territorial jurisdiction of the United States, 18 U.S.C. § 1111, as well as a prosecution involving kidnapping resulting in death, 18 U.S.C. § 1201.

In addition to the legal hurdles to prosecution, there are substantial factual impediments. As you might imagine, prosecutions of 40-year-old cases may present insurmountable difficulties. In discussing the investigation and prosecution of these historical cases, FBI Director Mueller recently noted, “[w]e know that some memories fade away, evidence is lost, and witnesses pass away. We know that no matter how much work we devote to an investigation, we may not always get the result we’re hoping for....” The unfortunate truth is that many of the victims’ families, friends, and the nation will never be able to see justice served inside of a courtroom because the passage of time has destroyed the evidence we would need in order to obtain convictions.

Notwithstanding these constitutional, jurisdictional, and factual limitations, the Department believes that the federal government can still play an important role in these cases. In 2006, the FBI began its cold case initiative. The program was a comprehensive effort to identify and investigate racially-motivated murders committed during our nation’s civil rights era. Toward that end, each of the 56 FBI field offices searched their so-called “cold cases” to catalogue offenses which might be ripe for investigation. In February of this year, the FBI announced the next phase of this initiative, which includes a more formal partnership with the National Association for the Advancement of Colored People, the Southern Poverty Law Center, and the National Urban League to assist the FBI in identifying additional

cases for investigation and to solicit their help. These organizations have already provided the FBI with valuable information from their files, and the Department will follow those and future leads.

The Department shares Congress's legitimate concern regarding the unsolved murders of the civil rights era, and recognizes that the bill is a substantial step toward helping to bring closure to a number of these tragic incidents. We know that not every case will be resolved. In some cases, the perpetrators may already be dead. In many cases we will find no federal jurisdiction. But these unsolved crimes remain on our radar, and through these expanded lines of communication we hope we can bring closure to some of these cases.

In view of the successes and limitations mentioned above, the Civil Rights Division believes that the following recommendations would improve the effectiveness of the proposed legislation. First, the bill should provide the FBI with flexibility in allocating its resources to address these historical cases rather than creating a new Unsolved Civil Rights Crime Investigative Office. The flexibility would allow the FBI to focus on assigning agents and analysts to those offices in the field which would investigate the cases.

Second, H.R. 923 would authorize \$10 million to be shared between the Civil Rights Division and the FBI, and an additional \$1.5 million to the Community Relations Service. We believe that the authorization would be more effective if it provided the Attorney General with the flexibility to distribute the \$11.5 million among the Criminal Section of the Civil Rights Division, the Civil Rights Unit of the FBI, and the Community Relations Service, in order to advance the purposes set forth in the bill. In addition, because federal jurisdiction is often lacking in these cases, it would be more effective if the bill also authorized the Attorney General to provide grants of these funds to State and local officials to assist in the investigation and prosecution of the crimes described in the bill.

The Department welcomes the opportunity to work with the Committee to refine provisions of H.R. 923 so that the bill best addresses these sad but important events in our nation's history.