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BENDING TOWARD JUSTICE: JOHN DOAR AND THE “MISSISSIPPI BURNING” TRIAL

*Douglas O. Linder**

“If we can crack Mississippi,” the students said, “we can crack segregation anywhere.”¹ All other civil rights groups in 1964 considered Mississippi—the most impenetrable state in the union—hopeless.² The radical decision of Bob Moses and other leaders of the Student Non-Violent Coordinating Committee (SNCC) to “shake up”³ the state by sending six hundred young volunteers into every corner of the state to register new black voters brimmed with danger. Moses, the twenty-nine-year-old black director of the Mississippi Summer Project—considered a saint by those who worked with him—⁴ explained to a first gathering of student volunteers that Mississippi could only be understood by being there—like racism itself, it could not be understood abstractly.⁵ J. Res Brown, one of four Negro lawyers in the state, had an ominous warning for the students: “You’re going to be classified into two groups in Mississippi: niggers and nigger-lovers, and they’re tougher on nigger lovers.”⁶

When John Doar told Mississippi Summer Project volunteers, “There is no federal police force—the responsibility

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¹ Calvin Trillin, *Letter from Jackson*, NEW YORKER, Aug. 29, 1964, at 94.

² *Id.* at 105 (Comment of James Forman, SNCC Executive Secretary).

³ *Id.* at 104.

⁴ *Id.* at 96.

⁵ TAYLOR BRANCH, *PILLAR OF FIRE: AMERICA IN THE KING YEARS 1963-65* 353 (1998).

⁶ Claude Sitton, *Students Warned on Southern Law*, N.Y. TIMES, June 19, 1964, at 16.

for protection is that of the local police,"⁷ many in the crowd booed the forty-two-year-old Justice Department official. "They were hostile," Doar later recalled.⁸ "I hadn't thought through their likely reception to my comments. When the students started to hammer me, I thought I'd been set up a little."⁹ As Deputy Chief of the Civil Rights Division, Doar had a responsibility to spell out the interpretation of separation of powers adopted by the Johnson Administration. The Justice Department would only authorize the FBI to investigate after a federal crime was committed. In addition to the question of the FBI's legal authority, the agency lacked the manpower to provide protection for six hundred students wandering in and out of rural Mississippi counties over an entire summer. Nonetheless, Doar recalled, "the SNCC kids were pushing hard to get the federal government into a position of protecting students."¹⁰

Doar, as the Deputy Chief of the Justice Department's Civil Rights Division, sympathized very much with the objectives of the students assembled for a weeklong training session at the Western College for Women in Oxford, Ohio. "I admire what you intend to do," Doar told two hundred Summer Project trainees in his speech. "The real heroes in this country today are the students and particularly those students who have given their time, energy, and dedication to correct the very bad and evil problems in the South with respect to the way in which American Negro citizens are treated before the law."¹¹

Among the crowd listening to Doar on June 19, 1964, were three idealistic young men who the next day would be heading south to Meridian, Mississippi to begin a summer of work registering blacks to vote. Mickey Schwerner was a good-natured twenty-four-year-old native New Yorker who was in

⁷ SETH CAGIN & PHILIP DRAY, *WE ARE NOT AFRAID* 32 (1988).

⁸ Interview with John M. Doar, prosecutor in *United States v. Price*, in Rockford, Ill. (Nov. 6, 1999).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Claude Sitton, *U.S. Official Warns Mississippi-Bound Students*, N.Y. TIMES, June 20, 1964, at 12.

his sixth month as a Mississippi-based field worker for the Congress of Racial Equality (CORE). White supremacists despised Schwerner, known to them as "Goatee" or "Jew-Boy," for having organized a boycott of a store in Meridian that depended heavily on black customers, but had never hired a black employee. Schwerner had come to Ohio with his chief aide and companion in Meridian, James Chaney. Chaney, age twenty-one, was a shy African-American who had come to the CORE office in his hometown to help the movement in any way he could. The recruit Schwerner and Chaney found to bring back with them to Mississippi was Andrew Goodman, an intelligent, unassuming twenty-year-old Queens College student from Manhattan's Upper West Side.¹²

Schwerner was anxious to get back to Mississippi. He had received word in Ohio of an assault and church firebombing in Longdale, a small town that he had visited with Chaney two weeks before. About 10:00 P.M. on June 16, a meeting of Mount Zion Church leaders had just broken up. As seven black men and three black women left the church, masked men lined up in military fashion with rifles and pistols blocking their path. The masked men told the church members they were looking for "Jew Boy." Some of the thirty or so armed white men began beating the departing blacks. Someone spread diesel fuel around the inside of the church—then lighted it. Schwerner had hoped to use the Mount Zion Church as a site for a new "freedom school." The first thing he wanted to do when they got back was to travel to Longdale and gather what facts he could about the frightening incident.

In the early morning hours of June 20, Schwerner, Goodman, and Chaney boarded their blue CORE station wagon and left the rolling hills of southwestern Ohio, bound for Meridian. The next day, after a short night's sleep and a breakfast, the three civil rights workers were again in their wagon, heading northwest toward Longdale.

¹² See generally, WILLIAM B. HUIE, *THREE LIVES FOR MISSISSIPPI* 54-77 (1968); CAGIN & DRAY, *supra* note 7, 1-65, 162-96, 245-77.

John Doar's courage was well known to his classmates at St. Paul's Academy in Minneapolis. In the final game of the 1939 football season, St. Paul's unbeaten team met its archrival, Blake. In the final quarter of a close game, Blake drove the ball deep into St. Paul's end of the field. Classmate Ted Brooks recalled, "Three times John Doar stood alone between the Blake ball carrier and the goal line. He nailed the guy. Three crunching tackles. We won 7-0. He was fearless."¹³

It was a quality that served him well in the South. In Jackson, Mississippi, in the wee hours of June 12, 1963, a sniper waited in a honeysuckle thicket near the driveway of Medgar Evers, a thirty-seven-year-old national field secretary of the Mississippi NAACP. When Evers walked from his car to the front door of his house, the gunman shot and killed him. Three days later, black dignitaries, including Dr. Martin Luther King, Jr. and Roy Wilkins, were in Jackson to attend the assassinated civil rights leader's funeral and participate in a silent march. After the march in 100-degree heat ended, several hundred young blacks refused to disperse. They swept down Farish Street toward the main white business district singing "This Little Light of Mine" and clapping hands. A battalion of helmeted riot police in short-sleeved shirts and sunglasses formed a line to stop them. When Deputy Police Chief A. L. Ray ordered the demonstrators to go home, the young blacks began throwing bricks, stones, and bottles in the direction of the police line. "We want the killer! We want the killer!"¹⁴ the crowd chanted. Demonstrators in the rear began stomping feet and shouting "Freedom! Freedom! Freedom!"¹⁵ Police dogs went berserk and were yanked back by their leashes. Cursing police officers drew pistols or began swinging riot clubs. Merchants along Farish Street hurriedly bolted their doors.

Into the no-man's land between the police and the rioters

¹³ Wayne Washington, *Doar Honored for Quietly Seeking Justice*, MINNEAPOLIS STAR TRIB., Oct. 27, 1994, at 1B.

¹⁴ Claude Sitton, *27 Are Arrested in Jackson Riots*, N.Y. TIMES, May 16, 1963, at 1.

¹⁵ *Id.*

walked John Doar. The crowd stopped for a moment, stunned as though they were watching a ghost. Then bottles, bricks and other missiles began crashing around him. Doar called to the crowd. "You're not going to win anything with bottles and bricks,"¹⁶ he said. He could hardly be heard above the roar of the crowd, which began to encircle him. A man with a tire iron lifted it and took aim at Doar's head. An angry black woman yelled in his face, "We get our rumps shot up!"¹⁷ She asked with sarcastic disgust, "Are we gonna wait for *the Justice Department*?"¹⁸ Doar pleaded, "Aw, give us a break."¹⁹ Then he shouted again, "Hold it! Is there someone here who can speak for you people?" One black youth emerged from the demonstrators and joined Doar in the street. "This man is right,"²⁰ the youth said, pointing at Doar. "My name is John Doar—D-O-A-R," the official called again and again. "I'm from the Justice Department, and anybody around here knows I stand for what is right."²¹ He walked toward the mob, shouting—begging—for the crowd to disperse. "Medgar Evers wouldn't want it this way,"²² he called. In an alley, a CORE worker grabbed a teenager with a rifle who was taking aim at Doar. "Hold hands with me and help us move these people along,"²³ Doar said to some nearby protesters. A few people linked hands and they slowly began to push the mob back from the police line. A massacre was averted. Barricades were removed and a motorized streetsweeper began whisking up the broken glass and other hurled debris.

President Kennedy called Doar the next day to congratulate him on defusing the dangerous situation.

Thirty-seven years later, when asked about the Jackson incident, Doar's face broke into a still-youthful-looking smile.

¹⁶ *Id.*

¹⁷ TAYLOR BRANCH, PARTING THE WATERS: AMERICA IN THE KING YEARS, 1954-63 827 (1988).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Sitton, *supra* note 14, at 1.

²¹ Sitton, *supra* note 14, at 1.

²² MARY ANNE VOLLERS, GHOSTS OF MISSISSIPPI 144 (1995).

²³ *Id.*

"I wasn't concerned about my safety—perhaps I should have been. I never was hit by any of the projectiles, they were sort of skipping in front of me."²⁴

The phone rang in John Doar's rambling home in Chevy Chase, Maryland. It was 1:30 A.M. on Monday, June 22, 1964. On the line was Mary King, a staff worker in the Atlanta office of the SNCC. King told Doar alarming news. On the first day of Freedom Summer, three civil rights workers were missing in east central Mississippi. King explained that Mickey Schwerner, Andrew Goodman and James Chaney had set out from Meridian on Sunday morning in a blue station wagon to investigate a church bombing in rural Neshoba County, a known "high risk" area. When the three failed to return in the afternoon as scheduled, movement workers called local hospitals, jails and law enforcement offices. The calls yielded no word on the whereabouts of the civil rights workers. Could Doar help, King asked.

Doar knew Mississippi well enough to be deeply worried. The three might be dead. Doar told King that he was concerned and he would do what he could. But, as Doar told Freedom Summer volunteers just a week earlier, there was no federal police force. He suggested that King call the Mississippi Highway Safety Patrol. After hanging up the phone, Doar alerted the FBI of the disappearance of the civil rights workers.

Two weeks earlier, Doar and Burke Marshall, head of the Justice Department's Civil Rights Division, briefed Attorney General Robert Kennedy on the growing tensions in Mississippi. Since the White Knights of the Ku Klux Klan of Mississippi formed on February 15, 1964, Doar had been getting periodic reports from the FBI on the clandestine group's activities. An April report to Doar told of sixty-one crosses simultaneously burning across the state. KKK membership in Mississippi was exploding in response to stepped-up voter registration drives. Over 10,000 white men

²⁴ Interview with John M. Doar, *supra* note 8.

made up the membership of twenty-nine "klaverns," or chapters. Equally disturbing was the lack of any political will to counter the KKK with state power. What, Doar wondered, was to stop them?

A 6:55 A.M. call to Mrs. Minnie Herring at the Neshoba County Jail produced the first clue to the mysterious disappearance of the three civil rights workers. Herring, who the previous afternoon had told a caller she had no information about the three, acknowledged to a caller from the Movement's office in Jackson that Schwerner, Goodman and Chaney had been arrested for speeding early Sunday afternoon. She said the three had eaten supper at the jail and then been released around 6:00 P.M. after paying a twenty-five dollar fine. Sheriff Lawrence Rainey, minutes later, confirmed Herring's story.

When Doar received another call from SNCC's Atlanta office at about 6:00 A.M., he reported, "I have invested the FBI with the power to look into this."²⁵ By noon, Meridian-based agent John Proctor had received orders from the FBI's regional office in New Orleans to dig up what facts he could in Neshoba County. Proctor's afternoon interview schedule included black residents living near Mount Zion Church in Longdale, Sheriff Rainey and Deputy Price in Philadelphia. Rainey told Proctor, "If they're missing, they hid somewhere, trying to get a lot of publicity out of it."²⁶ Price admitted arresting the three men. He told Proctor that they "told me they had spent the day in the neighborhood of that burned-out nigger church." He added, "I figured they might have had something to do with the church-burning."²⁷ At the end of his interview, believing his answers satisfied Proctor, Price slapped the FBI agent on the back and said, "Hell, John, let's have a drink."²⁸

While Proctor was poking around in Neshoba County,

²⁵ CAGIN & DRAY, *supra* note 7, at 319.

²⁶ Claude Sitton, *Three in Rights Drive Reported Missing*, N.Y. TIMES, June 23, 1964, at 1.

²⁷ CAGIN & DRAY, *supra* note 7, at 323.

²⁸ CAGIN & DRAY, *supra* note 7, at 324.

John Doar was at the White House to receive the President's Award for Distinguished Civilian Service. Doar got a handshake at the award ceremony from President Johnson, who praised his "contribution to our democracy as a vigorous champion of equal voting rights."²⁹ Doar returned to his office to find a barrage of urgent phone messages from Mississippi. He called SNCC's Atlanta office at 4:20 P.M. to relay to Mary King information gathered in the FBI's preliminary investigation. Doar reported that Schwerner, Goodman and Chaney had been released not at 6:00 P.M., as Jailer Herring and Sheriff Rainey first reported, but after 10:00 P.M. The three were last seen after their release driving south from Philadelphia, Mississippi on Highway 19, Doar said. He added that the state patrol had issued an all-points alert.

After calling King, Doar met with Burke Marshall to consider the touchy issue of stepping up federal involvement in the search. Doar urged action, citing the extensive training of the civil rights workers as evidence that they would not have remained out of contact for twenty-four hours unless they were prevented by force from doing so. His view won out. At 5:20 P.M. the Justice Department announced the order of Attorney General Robert Kennedy for a full kidnap investigation under the "Lindbergh Law."

On Tuesday afternoon, day two of the search for the missing civil rights workers, the parents of Andy Goodman and the father of Mickey Schwerner waited with Lee White, counsel to the President, outside the Oval Office. Inside the office, Lyndon Johnson had just taken a call from FBI Director J. Edgar Hoover. A White House aide announced, "The President will see you now,"³⁰ and the Goodmans and Schwerner were ushered into the Oval Office, where the President was still on the phone. The anxious parents listened

²⁹ BRANCH, *supra* note 5, at 364.

³⁰ Carolyn Goodman, *My Son Didn't Die in Vain*, GOOD HOUSEKEEPING, May 1965, at 164.

as Johnson asked, "They found the car?"³¹ Carolyn Goodman recalling the moment later wrote, "I wanted to leap toward his desk and shout, "Tell me quickly—are they all right?"³² Hoover had just told the President that the blue CORE station wagon had been found in a swamp northeast of Philadelphia. According to the FBI Director, the car was badly burned—still too hot to touch. "Get back as soon as you have something," the President ordered and hung up. He stood to greet his guests. "I'm sorry to give you this news," said Johnson, as he told the anxious parents the information he had just learned. Taking Carolyn Goodman's hand, the President said, "Ma'am, we'll do everything we can."³³

The crisis in Mississippi occupied the next five hours of Johnson's time. In a meeting with Robert Kennedy, Burke Marshall and Nicholas Katzenbach, Johnson summed up the situation: "There are three sovereignties involved. There's the United States, there's the State of Mississippi, and there's J. Edgar Hoover."³⁴ The group believed that the zealous FBI Director would be intrigued by the opportunity to penetrate the violent and secret KKK. Hours of debate yielded a consensus on a first step: the Administration would announce that it was sending a high profile envoy to Mississippi to investigate the disappearance of the civil rights workers. Their choice for the job was former CIA Director Allen Dulles.

John Doar was at the Justice Department working late on Tuesday night when he received a call from the Oval Office. It was his boss Burke Marshall telling him to "pull together all the information you have on the Mississippi Klan."³⁵ Doar assembled a set of FBI memos the Department had received together with a twenty-page speculative report on the Klan written by a summer intern and put them in a three-ring binder. At 10:00 P.M., Doar delivered the requested materials to a chauffeur, who brought them directly to the White House.

³¹ *Id.*

³² CAGIN & DRAY, *supra* note 7, at 331.

³³ Goodman, *supra* note 30, at 164.

³⁴ CAGIN & DRAY, *supra* note 7, at 333.

³⁵ Interview with John Doar, *supra* note 8.

Early the next morning, Doar met with Kennedy, Marshall and Dulles in the Attorney General's office. Someone needed to accompany Dulles to Mississippi. Robert Kennedy suggested Doar. "No federal official knows the territory better,"³⁶ the Attorney General said. That afternoon Doar and Dulles arrived in Mississippi. The first scheduled meeting was to be with Governor Paul Johnson. Johnson was already on record speculating that the missing men "could be in Cuba."³⁷

John Doar had met the Mississippi Governor nearly two years earlier, in another time of racial tension.³⁸

On September 26, 1962, a green twin-engine Cessna dropped from thick clouds above the Oxford-University Airport. On board the plane was Doar, Federal Marshal James McShane, and a twenty-nine-year-old Air Force veteran named James Meredith, who hoped to become the first Negro to enroll at the all-white University of Mississippi (Ole Miss). Doar and McShane had accompanied Meredith in two earlier failed attempts to enroll. Mississippi Governor Ross Barnett blocked both previous attempts in defiance of an order of the Fifth Circuit Court of Appeals. This day's low clouds had kept Barnett in the capitol, leaving it to Lieutenant Governor Paul Johnson to prevent Meredith from reaching the registrar's office.

Doar, McShane and Meredith walked from the steps of the Cessna to a waiting green sedan. Escorted by several state highway patrol cars, the three men headed for the Ole Miss campus. A block and a half from their destination, the convoy was stopped by about twenty state troopers and a nearly equal number of sheriffs from surrounding counties. Lieutenant Governor Johnson moved forward from the ranks of the troopers as the three men in the green sedan got out of the

³⁶ Interview with John Doar, *supra* note 8.

³⁷ CAGIN & DRAY, *supra* note 7, at 342.

³⁸ See Anthony Lewis, *Quick Action Due: Officials Say Force is Only Way to Uphold Law in State*, N.Y. TIMES, Sept. 26, 1962, at 1; Claude Sitton, *U.S. Defied Third Time*, N.Y. TIMES, Sept. 27, 1962, at 1; BRANCH, *supra* note 17, at 647-72.

car. "I'm going to have to refuse Mr. Meredith,"³⁹ Johnson told Doar. Doar, after introducing himself as "an officer of the court,"⁴⁰ reminded Johnson of the federal court order prohibiting state officials from interfering with Meredith's enrollment. When Doar tried to hand Johnson a copy of a contempt citation, Johnson said, "I would not accept the papers."⁴¹ Meredith, wearing a gray suit, white shirt, and a red tie, looked on silently. Federal Marshal McShane vainly tried to push his way through the troopers. "We are going to block you and if there is any violence it will be on your part,"⁴² Johnson said sternly. Doar replied, "You people understand you are in violation of a court order."⁴³ Doar then began calling off names from the metal tags on the troopers' shirts while the Marshal wrote them down on a pad. Finally, after another unsuccessful attempt to muscle past the troopers, Doar, McShane and Meredith returned to their car. As they drove off, they could hear the troopers and sheriffs loudly applauding their defiant state leader.

Four days later, Doar and Meredith again circled the Oxford airport. Doar looked down from the Cessna to see a field lined with Army trucks, jeeps, buses, planes, in addition to tents, giant searchlights and assorted riot equipment. Meanwhile, the sightings of dozens of federal marshals with their white helmets and yellow armbands had swept the northern Mississippi campus town into a frenzied state. Crowds waving Confederate flags and chanting anti-administration slogans gathered near the university's administration building. Drivers honked horns as recordings of "Dixie" blared on their car radios. Doar dropped Meredith off at deserted Baxter Hall, leaving him with marshals under orders to shoot anyone who attempted to break into his second-floor room. He then left to meet with university officials to work out the details of a face-saving plan, secretly

³⁹ Claude Sitton, *U.S. Defied Third Time*, N.Y. TIMES, Sep. 27, at 1, 28.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

arranging with the Governor to register Meredith the next morning after a theatrical display of federal force. (Robert Kennedy and Governor Barnett had haggled over such issues as how many federal marshals must draw arms.) Events, however, quickly spun out of control.

Rioting broke out that night. As students drifted away from the confrontation, more violent diehard segregationists drifted in. Rocks and bottles turned to bullets. Protestors attacked marshals with bulldozers, fire trucks and automobiles. Casualties mounted. Robert Kennedy, on the phone with an obviously distressed Doar, consoled him, saying he knew Ole Miss was "a long way from Wisconsin."⁴⁴ His brother, the President, commented, "I haven't had such an interesting time since the Bay of Pigs."⁴⁵ Around midnight, the Kennedys made the decision to send in the United States Army. The battle continued to rage all night. When it was finally over, 160 marshals had been wounded—twenty-eight by bullets—and two people, including a British reporter, were dead.

In the wee hours of the morning Doar returned to Baxter Hall to share a dormitory room with James Meredith. Early the next morning, they drove to the registrar's office in a bullet-riddled border patrol car. With John Doar standing by his side, Meredith enrolled at Ole Miss. At 9:00 A.M., he attended his first class, Colonial American history. For the next few weeks, to ensure Meredith's protection, Doar and University of Mississippi's first black student lived together.

Reflecting later on the episode, Doar agreed that the government should have come in earlier with more military power: "Would the Justice Department of the United States ever have done it that way again? No, they wouldn't have."⁴⁶

Four days after Schwerner, Goodman and Chaney were reported missing, an unnamed FBI source was quoted in the

⁴⁴ BRANCH, *supra* note 17, at 667.

⁴⁵ BRANCH, *supra* note 17, at 667.

⁴⁶ Interview with John Doar, *supra* note 8.

New York Times as saying, "We're now looking for bodies."⁴⁷ Only Mississippi politicians seemed to be in self-delusion about the three men's fate. Governor Paul Johnson, who the day before had promised Dulles cooperation in the search, joked about the mystery that gripped the nation. Standing next to the Governor of Alabama, Johnson responded to a reporter's question about progress with the quip and a smile, "Governor Wallace and I are the only two people who know where they are—and we're not telling."⁴⁸

Day four brought three bus loads of sailors wearing blue bell-bottom trousers and old shoes and boots to Bogue Chitto, the site of discovery of the burned car. Using walking sticks to fend off water moccasins, rattlesnakes and copperheads, the sailors slowly beat their way through the swamp and countryside, looking for bodies or evidence. Nothing was found.

As the intense search for bodies continued, investigators found several corpses of civil rights workers in lonely Mississippi places—but not any of the three everyone was looking for. They pulled the corpse of a black boy of about fourteen out of the Big Black River. The boy, found wearing a CORE T-shirt, was never identified.

It finally became apparent that the bodies, if they were ever to be discovered, would be found not by a search but by an investigation. John Doar was later to tell a jury of twelve Mississippians that "rarely in the history of law and enforcement" was it "so difficult to obtain evidence"⁴⁹ of a crime as it was to determine what took place in the four hours beginning at 9 P.M. on June 21, 1964 in and around Philadelphia. Doar said "a thousand eyes explored every corner of Neshoba County" but "Neshoba County remained silent."⁵⁰ He added that only "extraordinary methods" and

⁴⁷ Claude Sitton, *Hope for 3 Wanes as Dulles Opens Mississippi Talks*, N.Y. TIMES, June 25, 1964, at 1. Bob Moses agreed, telling volunteers in Ohio, "The kids are dead." BRANCH, *supra* note 5, at 374.

⁴⁸ CAGIN & DRAY, *supra* note 7, at 357.

⁴⁹ *United States v. Price*, Crim. No. 5291, at 2328 (S.D. Miss. Oct. 11-21, 1967) [hereinafter *Transcript*].

⁵⁰ *Id.* at 2327-28.

"the maximum effort of the FBI" could bring the conspirators "to the bar of justice of law."⁵¹

The FBI recognized that solving the case would require infiltration of the White Knights of the Ku Klux Klan of Mississippi, an organization protected both by its own insularity and the fear that it inspired in the community. Before it was over, the Bureau's "Mississippi burning," or MIBURN, investigation would include interviews with nearly one thousand Mississippians. About half of the interview subjects were known or suspected members of the Klan. The final report was over 150,000 pages long. FBI Major Case Inspector Joseph Sullivan summarized the problem: "They owned the place. In spirit, everyone belonged to the Klan."⁵² Sullivan said the usual Bureau approach of convincing people that cooperation was in their own best interest did not work. "It didn't pay to push Neshobans, because they weren't afraid."⁵³ Locals delighted in sending agents off on wild goose chases or debating agents on issues such as communist influence in the civil rights movement. Sullivan bemoaned the countless hours spent "wheel-spinning" and engaging in "jolly talks with Klansmen."⁵⁴

On August 4, the forty-fourth day of the investigation, a Caterpillar bulldozer began excavating an earthen dam site on a property southwest of Philadelphia known as the Old Jolly Farm. FBI agents had spread the word a week before that a substantial reward would go to anyone who told the Bureau where the bodies were buried. For the sum of thirty thousand dollars and a guarantee of absolute confidentiality, an unknown Neshoba citizen, acting through an intermediary, provided the information nearly one hundred agents had spent weeks trying to uncover. Shortly before 3:00 P.M., agents began noticing "the pungent odor of decaying flesh."⁵⁵ Blowflies swarmed in the 106-degree heat near the Cat's ten-foot blade and buzzards began circling in the sky above the

⁵¹ *Id.* at 2378.

⁵² CAGIN & DRAY, *supra* note 7, at 373.

⁵³ CAGIN & DRAY, *supra* note 7, at 373.

⁵⁴ CAGIN & DRAY, *supra* note 7, at 374.

⁵⁵ CAGIN & DRAY, *supra* note 7, at 398.

dam. Minutes later, the heels of a pair of men's boots poked out of the newly exposed clay. That evening the Department of Justice announced that half of the mystery was solved: the bodies of the three civil rights workers had at last been found.

Klan conspirators, once so smug, began to worry.

As dozens of FBI agents continued their investigation through the late summer and fall, John Doar followed agency reports from Mississippi closely, but spent much of his time doing what he had done since he ended ten years of work in a family practice in New Richmond, Wisconsin, to join the Justice Department at the close of the Eisenhower Administration. He litigated voter rights cases in the Deep South. It was, according to Doar, "a job nobody else wanted."⁵⁶

The job offer had come, sight unseen, when Doar was in California working on a paternity suit. Doar slept on the offer a night and then called Harold Tyler, chief of the Civil Rights Division to say, "I'll do it."⁵⁷ Doar recalled, "I liked trial work, and I knew this was tough trial work. Also, I had some clear ideas about civil rights in this country."⁵⁸

Doar arrived in Washington in July 1960 at age thirty-nine. In addition to ten years of litigation experience at the family law firm, his resume included an undergraduate degree from Princeton (where he was captain of the basketball team), a law degree from Boalt Hall in Berkeley, and Air Force service during World War II. Six-foot-three, 185 pounds, with dark, curly hair, he was described as "boyish"⁵⁹ looking. A 1963 *New York Times* profile of Doar reports that "[o]bservers sometimes liken his manner to that of Gary Cooper, or his voice to that of James Stewart. They then add immediately that his total lack of self-consciousness and his aversion to

⁵⁶ Nadine Cohodas, *Remembering the Voting Rights Revolution*, N.J. L.J., Aug. 14, 1995, at 9.

⁵⁷ BRANCH, *supra* note 17, at 332.

⁵⁸ Roy Reed, *Ubiquitous Rights Aide*, N.Y. TIMES, Sept. 3, 1963, at 26.

⁵⁹ *Prosecutor for Rights*, N.Y. TIMES, Dec. 4, 1965, at 35.

publicity make comparisons with any actor misleading."⁶⁰

Whatever may be said of his style, everyone considered the reserved, laconic Doar a man of substance. "John Doar had a clear vision of what was unjust and intolerable, and he kept focused on that," [said] prominent civil rights lawyer William L. Taylor."⁶¹ Within months of his arrival at the Justice Department, Doar became impatient with standard bureaucratic responses to problems. Until Doar showed up, Justice Department lawyers used what were called "coaching" or "box" memos to obtain from FBI agents the facts necessary to develop voting rights cases.⁶² Sometimes 200 pages in length, these memos dictated to agents the specific questions and follow-up questions they were to ask frustrated black voter applicants. Doar realized that it would be much more efficient to poke around himself. He did. His first trip took him to rural western Tennessee, where black sharecroppers had complained that farmers evicted them when they tried to register. The Justice Department needed to determine whether the complaints were justified and how many blacks were affected. Doar's first night in Tennessee was something of an epiphany. He walked into the dim light of a rural clapboard church filled with Negro sharecroppers. Doar nervously announced to the crowd that he was there to help. How many people, he asked, had received eviction notices. To his great surprise, virtually every hand went up.

Doar learned that building a strong case required being his own investigator. "I was the first Justice Department lawyer who went down South to see what the facts were for himself,"⁶³ he said. Sometimes he traveled incognito so as not to alert local whites to the presence of an official from the hated Department of Justice. Doar, wearing khaki pants, work shirts, and old boots, trekked across cornfields and knocked on doors in search of rejected black voters. "I spent a great deal of each year on the road,"⁶⁴ he said in his plainspoken,

⁶⁰ Reed, *supra* note 58, at 26.

⁶¹ Cohodas, *supra* note 56, at 9.

⁶² BRANCH, *supra* note 17, at 333-34.

⁶³ Cohodas, *supra* note 56, at 9.

⁶⁴ Cohodas, *supra* note 56, at 9.

understated way. In fact, Doar's frenetic pace of travelling was legendary. "John Doar's in Birmingham," one reporter announced at dinner. "No, he's in New Orleans," another reporter said. "No," chimed in a third, "I saw him here in Jackson." "You're all right," said a fourth reporter. "He was in Birmingham this morning, argued a case in New Orleans this afternoon and arrived in Jackson tonight."⁶⁵

His busy public life had its personal costs. The fourth child of Doar and his wife, Anne, went unnamed for six weeks in 1963 as Doar crisscrossed the South taking care of civil rights emergencies. While he was away, Justice Department employees wrote various names on slips of paper and put them in a hat. When he finally returned to Washington, the name Doar drew was Burke, for Burke Marshall, then his boss. The child was named John Burke. "It was hard on my wife," Doar later recalled. "It may have impacted my children some."⁶⁶

Although recognized early on as a very talented lawyer, Doar never stopped trying to become an even better one. In one of the first of nearly thirty voting rights suits brought by Doar, a judge reprimanded him for not backing up his arguments with enough hard evidence. Doar took the judge's criticism to heart. From then on, southern judges learned to expect mountains of supporting evidence from Doar and other Justice Department lawyers. "He goes in with evidence by the bale now," a court reporter said. "I'll bet that judge is sorry he opened his mouth."⁶⁷

Doar was a great respecter of truth. One of his former assistants at the Justice Department and now Touro Law School Dean, Howard Glickstein, remembered discussing strategy in a voting rights case with Doar. There were two ways of presenting the case to the court, Glickstein recalled. One way was to straightforwardly present the facts. The other way was to blur the facts in a way that somewhat strengthened the government's position. When Glickstein

⁶⁵ Reed, *supra* note 58, at 26.

⁶⁶ Interview with John Doar, *supra* note 8.

⁶⁷ Reed, *supra* note 58, at 26.

suggested to Doar that they adopt the second approach, Doar sat up straight in his chair. "Absolutely not!" he said. "You just present the facts as they are. We represent the United States of America. We don't blur."⁶⁸ Draft briefs sent to his desk by younger lawyers were frequently returned with the demand for more "facts, fact, facts."⁶⁹ Doar once sent to every lawyer in his division a copy of a Rolls Royce advertisement. The ad said that the ticking of the dashboard clock was the only noise that could be heard inside the automobile. This, Doar pointed out, was much better than saying that the car was quiet.⁷⁰

Doar was so sincere and so well prepared that judges "took anything that came out of his mouth as the Gospel truth."⁷¹ His careful, thorough approach and soft-spoken arguments bordered on being dull, but "with all the emotionally charged rhetoric of the time, being dull could be very effective."⁷²

There was one night in McComb, Mississippi, when Doar had second thoughts about his decision to become the Justice Department's southern troubleshooter. A voter registration rally at the McComb governmental center ended with nearly all participants rounded up and sent to jail. The only movement figure to escape arrest was Charles Jones, who had stayed away in order to preserve a communications link. Jones called Robert Kennedy, who suggested that he call John Doar. Jones reached Doar at his suburban Washington home and told him the facts as he understood them. Everyone he knew was in jail. He had no bond money or support. Rumors were floating that the Klan would take Bob Moses, the group's leader and later director of the Mississippi Summer Project, out of jail and kill him. "Help," Jones pleaded. "Okay, I'm coming right in," Doar answered.⁷³

⁶⁸ Telephone Interview with Howard A. Glickstein, Dean, Touro Law School (Sept. 25, 1999).

⁶⁹ *Prosecutor for Rights*, *supra* note 59, at 35.

⁷⁰ Telephone Interview with Howard A. Glickstein, *supra* note 68.

⁷¹ Telephone Interview with Howard A. Glickstein, *supra* note 68.

⁷² Telephone Interview with Howard A. Glickstein, *supra* note 68.

⁷³ FREED POWLEDGE, FREE AT LAST? THE CIVIL RIGHTS MOVEMENT AND THE

While he waited for Doar, Charles Jones hid in a black-owned butcher shop. The next day, when the police came in looking for him, Jones was in a butcher's coat chopping meat. "I didn't know what I was doing," Jones later recalled. "I must've messed up twenty dollars' worth of meat, whacking on that board with this knife."⁷⁴ But the ruse worked. The officers left after being told by Jones that he had not seen the man they were hoping to arrest. "That night," Jones recounted, "I heard this knock on the door. I opened the door, and John Doar said, whispering, 'Hurry, hurry, close the door.' . . . He said, whispering again, 'Close the door. Those people are serious! I'm afraid they're going to kill me. They've been snooping around my motel room.'"⁷⁵ Jones had expected the authority of the federal government to come swooping in with a cape to save him. The contrast with reality could hardly have been greater. "This was the might of the United States of America, the greatest country in the history of the world, quote-unquote, telling me to close the door and keep the light down and talk quiet."⁷⁶

On the gray, drizzling morning of December 4, 1964, federal agents swept through east-central Mississippi arresting nineteen alleged conspirators in the murders of Mickey Schwerner, Andrew Goodman and James Chaney. All of the men were identified as Ku Klux Klansmen. One of the men charged was Cecil Price, the deputy sheriff who arrested the three civil rights workers in the afternoon, then freed them later that night. Also arrested was Sheriff Lawrence Rainey. The men were not charged with murder, a state crime, but rather with violation of a Reconstruction Era federal law that prohibited "conspiring to violate the civil rights" of citizens "under color of state law."⁷⁷

PEOPLE WHO MADE IT 331 (1991).

⁷⁴ *Id.* at 332.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Fred P. Graham, *Legal Poser on Rights*, N.Y. TIMES, Feb. 26, 1965, at 14.

Six days later, United States Commissioner for the Southern District of Mississippi Esther Carter dismissed the charges against all nineteen men, declaring that the confession on which the arrests were based was hearsay evidence. *Life* magazine published a photo taken at the hearing before Judge Carter that reinforced every northern civil rights supporter's stereotype of southern law enforcement. The photo showed a smiling Sheriff Rainey leaning back in his chair, booted foot and exposed hairy calf on knee, with a huge chew of tobacco in his cheek and holding a popcorn-bag sized package of Red Man tobacco in his hand.⁷⁸ After the hearing, the smiling and the laughing continued as defendants and their lawyers congratulated themselves. Inside the courtroom, the mother of James Chaney wept quietly. Outside, an unidentified woman rested on her knees on the sidewalk wailing, "Jesus, Jesus, no."⁷⁹

John Doar and other Justice Department attorneys a month later convinced a federal grand jury in Jackson to issue indictments against the conspirators. But again Doar would be disappointed. On February 24, 1965, Federal Judge William Harold Cox, as ardent a segregationist as could be found on the federal bench, threw out the indictments against all conspirators other than Rainey and Price. Cox ruled, in a very narrow interpretation of the federal civil rights statute, that the other seventeen were not acting "under color of state law." "The right of every person not to be deprived of his life or liberty without due process," Cox wrote, "merely guarantees" against "interference by *the states*."⁸⁰ Doar began to prepare the government's appeal of Cox's decision.⁸¹

The defendants were charged with violating the Civil Rights Act of 1870, 18 U.S.C. § 241, 242 (1966).

⁷⁸ David Nevin, *Strange, Tight Little Town, Loathe to Admit Complicity*, LIFE, Dec. 18, 1964.

⁷⁹ CAGIN & DRAY, *supra* note 7, at 437.

⁸⁰ Graham, *supra* note 77, at 14.

⁸¹ With Doar on the brief for the United States submitted to the Supreme Court were Louis F. Claiborne and Gerald P. Choppin. Solicitor General Burke Marshall argued the case for the United States before the Court on November 9, 1965.

One month after Judge Cox tossed out the indictments he had secured against the Neshoba County conspirators, the ubiquitous John Doar tramped gamely in a downpour along Route 80 in rural Lowndes County, Alabama. Soaked to the skin, his black hair hanging across his forehead, Doar passed the midpoint of his fifty-four mile journey from Selma to Montgomery. The new Assistant Attorney General for Civil Rights considered it his duty to superintend 300 Alabama Freedom marchers. The risk of violence was great, Doar knew. He hoped that the presence of hundreds of National Guard troops would discourage would-be attackers.⁸²

Doar and the troops were on hand because of what had happened in two abortive marches earlier in the month. On March 6, "Bloody Sunday," police and mounted deputies beat marchers led by Dr. Martin Luther King as they attempted to cross the Edmund Pettus Bridge over the Alabama River. After a second unsuccessful attempt to cross the same bridge three days later, white toughs in downtown Selma bludgeoned to death one of the marchers, a white Unitarian minister from Boston named James Reeb.

The mostly young and mostly black marchers sang freedom songs as they walked, their spirits undampened by the elements. Many wore plastic bags converted into ponchos. Some children sported hats made of cereal boxes. The Reverend Martin Luther King limped along with the group, favoring his blistered left foot. Organizers of the march hoped it would focus attention on Alabama's unwillingness to extend basic civil rights to blacks. They planned to present a petition demanding equal treatment to Governor George C. Wallace in Montgomery.

Twenty-one miles from their destination, Doar and the other wet and weary marchers made camp in a pasture-turned-quagmire. The group listened to songs and speeches from over two dozen entertainers supporting their cause, then retired early to four large tents pitched on the muddy property.

⁸² Roy Reed, *Alabama March Passes Midpoint*, N.Y. TIMES, Mar. 24, 1965, at 1; Interview with John Doar, *supra* note 8.

Two days later on March 25, at 11:30 P.M., John Doar was eating his first meal of the day at the Elite Café in downtown Montgomery. Things had gone well, he thought. Thousands of marchers and supporters had participated in the final rally at the Capitol. More importantly, the march had been completed without violence. Then Doar was summoned to the telephone. He returned to his table minutes later with a worried look on his face. "It was the FBI," Doar told his dinner companion. "A Mrs. Liuzzo has been killed on the road back to Selma."⁸³

Mrs. Viola Liuzzo, a Detroit housewife and white freedom marcher, had been travelling with a black man on Route 80 in rural Lowndes County—the same stretch of road the marchers had walked just two days before. She was shot and killed by one of four men riding in a passing car. One of the other three riders was Gary Rowe, a FBI informant and Klan infiltrator. Rowe identified the three Klansmen riding in the car, including the shooter, twenty-two-year old Collie Leroy Wilkins, Jr. Rowe said the killing was carried out under orders from a Klan superior known only as "Robert."

Wilkins was tried twice on murder charges in Alabama state courts. A trial in May ended in a hung jury. An October trial ended in an acquittal. In his successful defense of Wilkins, attorney Matt Murphy described Mrs. Liuzzo as "a white nigger" who "turned her car over to a black nigger" so that he might haul "niggers and Communists back and forth."⁸⁴ Murphy attacked the prosecution's star witness Gary Rowe as a man "who would accept money from the Communists, money from the NAACP, money from the Martin Luther King outfit."⁸⁵ He asked the jury: "Could you believe him on oath when you know he's a liar and a perjurer, holdin' himself out to be a white man and worse than a white nigger?"⁸⁶

Following the failed state prosecutions, John Doar

⁸³ *Prosecutor for Rights*, *supra* note 59, at 35.

⁸⁴ DON WHITEHEAD, *ATTACK ON TERROR: THE FBI AGAINST THE KU KLUX KLAN IN MISSISSIPPI* 307-308 (1970).

⁸⁵ *Id.* at 308.

⁸⁶ *Id.*

prosecuted Wilkins and his two fellow Klansmen on federal charges in Montgomery. Doar had to convince the all-white jury that the three men violated an 1870 Reconstruction law that made it illegal to conspire to "injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States."⁸⁷ Doar contended that the Klansmen's action fell under the law because the march from Selma to Montgomery had been sanctioned by a federal court order. It was considered a "difficult"⁸⁸ argument, but Doar had the right judge, Frank M. Johnson, a courageous southern judge who handed down numerous decisions applauded by civil rights advocates. He conducted the trial with his usual stern decorum. After two days of deliberations, the jury came in with its verdicts: "guilty" for all three defendants. Judge Johnson handed down the maximum sentence allowed under federal law: ten years imprisonment.

The first successful federal civil rights prosecution in Alabama history came in Doar's first criminal prosecution. President Lyndon Johnson, recuperating from gall bladder surgery on his Texas ranch, congratulated Doar on the "successful conclusion"⁸⁹ of the conspiracy trial. Doar was obviously moved by the jury's verdict. He said that he was proud to be an American and proud to be a lawyer. He expressed the hope that the verdict would send a message to racist terrorists. "The court and the jury did their duty. I'm very proud of the system of justice in this country."⁹⁰ The jury's decision came on Doar's forty-fourth birthday. He said he would celebrate by planning a strategy to cope with the appeal.

Two years later John Doar prepared to conduct his second—and last—prosecution. He sifted through voluminous

⁸⁷ Roy Reed, *U.S. Opens Conspiracy Case Against Three Klansmen*, N.Y. TIMES, Nov. 30, 1965, at 33. The Klansmen were charged with violating 18 U.S.C. § 241, a Reconstruction Era statute enacted in 1870.

⁸⁸ *Id.*

⁸⁹ Robert B. Semple, Jr., *Jury in Alabama Convicts Klansmen in Liuzzo Case*, N.Y. TIMES, Dec. 4, 1965, at 1.

⁹⁰ *Id.* at 35.

FBI files, talked with potential witnesses, and traveled extensively throughout Neshoba County. Doar recalled, "I knew the area just like I know St. Croix County"⁹¹—the county of his youth in northwestern Wisconsin.

Martin Luther King twice visited Philadelphia, the "strange, tight little town"⁹² with a "nearly pathological"⁹³ hatred of ideas from outside Mississippi.

During King's first visit, a month after the civil rights workers disappeared, he addressed a crowd of blacks. He spoke about the case that was on everyone's mind. "Three young men came here to set you free," he told the crowd. "Things are going to get better," he promised. "Walk together, children. Don't get weary."⁹⁴ Four carloads of FBI agents protected King as he spoke in 1964.

Two years later, King returned to Philadelphia to mark the second anniversary of the civil rights workers' deaths. By this time, King's outspoken opposition to the Vietnam War had caused him to fall out of favor with the Johnson Administration, and federal protection for his visit was almost non-existent. King led a procession of 300 from a local church to the jail on Myrtle Street, where he stopped to pray at the site where Schwerner, Chaney and Goodman had been incarcerated. As the group bowed their heads, mobs of armed white men closed off both ends of the narrow street. One young man turned a hose on the group. Battling their way on to the courthouse, King and other marchers fended off hoes, broomsticks and ax handles. A large man dressed in a cowboy hat, sunglasses and a short-sleeved uniform met King at the two-story red-brick courthouse. It was Deputy Cecil Price. Price said, "You can't come up these steps."⁹⁵ "Oh, yes," King replied. "You're the one who had Schwerner and the other

⁹¹ Interview with John Doar, *supra* note 8.

⁹² CAGIN & DRAY, *supra* note 7, at 380.

⁹³ CAGIN & DRAY, *supra* note 7, at 381.

⁹⁴ CAGIN & DRAY, *supra* note 7, at 381.

⁹⁵ CAGIN & DRAY, *supra* note 7, at 382.

fellows in jail."⁹⁶ "Yes, sir," Price answered. King tried to address the crowd above the loud jeers of white onlookers. "In this county, Andrew Goodman, James Chaney, and Michael Schwerner were brutally murdered. I believe the murderers are somewhere around me at this moment."⁹⁷ "You're damn right—they're right behind you,"⁹⁸ muttered the Deputy. King bravely continued, "I want them to know that we are not afraid. If they kill three of us they will have to kill us all."⁹⁹

King described that afternoon in Philadelphia as one of the most frightening in his life. "This is a terrible town, the worst I've seen. There is a complete reign of terror here."¹⁰⁰

Doar later agreed with King's characterization. "Neshoba County was a rough, tough, mean, insular place—a bootlegging rural outpost. It was awful."¹⁰¹

William Harold Cox and John Michael Doar had met numerous times in the judge's courtroom. It would be fair to describe them as being old adversaries. A 1963 letter from Cox to Doar, written in response to Doar's request to give the voting rights case of *United States v. Mississippi*¹⁰² immediate attention, is revealing of their relationship:

Dear Mr. Doar,

I have a copy of your letter of October 12 . . . [I] thought I had made it clear to you . . . that I was not in the least impressed with *your impudence* in reciting the chronology of the case before me with which I am completely familiar. If you need to build such transcripts for your boss man, you had better do that by interoffice memoranda because I am not favorably impressed with you or your tactics in undertaking

⁹⁶ CAGIN & DRAY, *supra* note 7, at 382.

⁹⁷ CAGIN & DRAY, *supra* note 7, at 382.

⁹⁸ CAGIN & DRAY, *supra* note 7, at 382.

⁹⁹ CAGIN & DRAY, *supra* note 7, at 382.

¹⁰⁰ CAGIN & DRAY, *supra* note 7, at 382.

¹⁰¹ Interview with John Doar, *supra* note 8.

¹⁰² 229 F. Supp. 925 (S. D. Miss. 1964) (reversed by a unanimous Supreme Court, *United States v. Mississippi*, 380 U. S. 128 (1965)).

to push one of your cases before me. I spend most of my time in fooling with lousy cases brought before me by your department in the civil rights field, and I do not intend to turn my docket over to your department for your political advancement You are completely stupid if you do not fully realize that each of the judges in this court understands the importance of this case to all the litigants. I do not intend to be hurried or harassed by you or any of your underlings in this or any court where I sit and the sooner you get that through your head the better you will get along with me, if that is of any interest to you¹⁰³

In a recent interview, Doar called Cox "a piece of machinery," and remembers that the judge "would really lambast me when I came into his court with a motion."¹⁰⁴ Doar once tried to have Cox censured by the Fifth Circuit for his lawless behavior on the bench.

Cox owed his position on the federal bench to his friend and Ole Miss Law School roommate, James Eastland, chair of the Senate Judiciary Committee. Senator Eastland had the power to block President Kennedy's appointment of NAACP counsel Thurgood Marshall to the United States Court of Appeals for the Second Circuit—an appointment Kennedy very much wanted to make. Eastland bargained for his old friend, saying to Robert Kennedy, "Tell your brother that if he will give me Harold Cox I will give him the nigger."¹⁰⁵

Robert Kennedy and Burke Marshall met with Cox prior to his nomination. Cox assured the Attorney General and the head of the Civil Rights division that he would enforce federal law as it had been interpreted by the Supreme Court. Satisfied with Cox's assurance, President Kennedy nominated Cox for the federal district bench. As soon as his robe was on, however, Cox became a major obstacle to the Justice Department. In one voting rights suit brought by Doar, for example, Cox refused to let government lawyers inspect the public voting records of

¹⁰³ 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, 10 (1997).

¹⁰⁴ Interview with John Doar, *supra* note 8.

¹⁰⁵ CAGIN & DRAY, *supra* note 7, at 308.

Clarke County. The Fifth Circuit Court of Appeals overruled that and many of Cox's other decisions, but his manipulations caused considerable delay in the progress of civil rights in Mississippi.

Eventually, however, the volume of suits brought by Doar and other Justice Department attorneys began to limit Cox's room to throw up major roadblocks. "We smothered them with paper," Doar later recalled. "We were really putting the bite on Judge Cox."¹⁰⁶

John Doar saw Cox make the most serious mistake of his judicial career. "It was a Saturday morning in 1964," Doar recalled. "I was in his chambers on an application for a temporary injunction. I said to Judge Cox, 'there's nothing un-American about blacks wanting to vote.'¹⁰⁷ Cox responded to Doar's mild contention by describing Negro voter applicants as "a bunch of chimpanzees."¹⁰⁸ Cox's offensive statement appeared the next day in a story in the New York Times. The resulting controversy nearly cost Cox his job. Senator Jacob Javits of New York and Congressman Peter Rodino of New Jersey led an impeachment effort. The attempt failed, but received substantial support.

Was Cox somewhat humbled by the experience? The question was very much on the minds of attorneys as they prepared for the upcoming case of *United States v. Price*. The United States Supreme Court had reached its decision in the appeal of Judge Cox's decision dismissing the indictments. The Court ruled unanimously that the indictments be reinstated against all defendants.¹⁰⁹

Trial proceedings began on Monday, October 9, 1967, in

¹⁰⁶ CAGIN & DRAY, *supra* note 7, at 325.

¹⁰⁷ Interview with John Doar, *supra* note 8.

¹⁰⁸ VOLLERS, *supra* note 22, at 84.

¹⁰⁹ *United States v. Price*, Crim. Action No. 5291, heard in Federal District Court for the Southern District of Mississippi in Meridian, Oct. 11-21, 1967. Justice Fortas announced the opinion for a unanimous Court on March 28, 1966, reversing the district court's dismissal of the indictments. *United States v. Price*, 383 U.S. 787 (1966).

the white stone federal building in Meridian. Across the street from the courthouse, in front of Bill Gordon's barber shop, Raymond Roberts, the brother of one of the defendants, placed a large Confederate flag, bringing cheers from onlookers. Barricades set up by Meridian police to keep cameramen off the grounds surrounded the federal building. Two federal marshals stood on the courthouse steps to further discourage anyone who might think of climbing over the barricades. Inside the building, a crowd of jurors, witnesses and reporters gathered outside the second-floor courtroom. As the 350 members of the jury venire waited for the nine o'clock start of the proceedings, they nervously shifted their weight from foot to foot and talked in low tones. The men almost all wore suits and ties, the women their best dresses.

Inside the courthouse, Judge Cox imposed a strict discipline. No cameras were permitted anywhere in the building and reporters were allowed to enter and leave the courtroom only during recesses. Fifteen attorneys were assembled at the tables in front of the judge. John Doar led a team of three prosecution lawyers, including Justice Department colleague Robert Owen and the United States District Attorney for Mississippi, Robert Hauberg. A dozen lawyers represented the defendants, including the entire Neshoba County bar.

In what Doar called the "first big turning point"¹¹⁰ in the trial, Judge Cox had granted a prosecution motion to have the jury drawn from the entire Southern Mississippi District rather than from just the six counties around Neshoba County, as the defense had requested. Doar said, "We would never have had a chance with a jury from those counties around Neshoba."¹¹¹ With surprising speed, an all-white jury of seven women and five men was selected from the over 200 prospective jurors summoned. "We were looking for signs of intelligence," Doar recalled. "I had my guys look at everybody's homes—we were looking for homes that were well kept up."¹¹² Seventeen Negroes had been among those on the panel from which the final

¹¹⁰ Interview with John Doar, *supra* note 8.

¹¹¹ Interview with John Doar, *supra* note 8.

¹¹² Interview with John Doar, *supra* note 8.

jury was drawn; challenges from defense lawyers excluded every one of the seventeen.

On Tuesday, John Doar delivered a brief opening statement. He told the jury that the defendants plotted murder "because they didn't like what these boys stood for."¹¹³ Knowing that feelings against the federal government ran strong in east-central Mississippi, he felt that he had to explain the need for a federal civil rights prosecution. The defense had been saying the case belonged in state court. It was, the defense said, a murder case, not a civil rights case.

I hope very much that you will understand the reason I have come here, its [sic] not because of any skilled experience that I am here, but only because I hold the office as head of the division with the Department of Justice, and it is my responsibility to try and enforce the law in which these defendants have been charged.

The United States Government felt it was essential that one of its Washington officials be here to speak directly and frankly to you about the reason for the extraordinary effort the Federal Government undertook to solve this crime, and to state to you twelve Jurors why the Federal Government has assumed the role of prosecutor of this conspiracy involving murder I am here because your National Government is concerned about your local law enforcement and in a conviction local law must work if we deserve our liberty and freedom

When local law enforcement officials become involved as participants in violent crime and use their position, power and authority to accomplish this there is very little hope to be hoped for, except with assistance from the Federal Government, but Members of the Jury, exactly what does that mean? It means that the Federal Government is not invading Philadelphia or Neshoba County, Mississippi, it means only that these defendants are tried for a crime under Federal law in a Mississippi city, before a Mississippi Federal Judge, in a Mississippi courtroom . . . before twelve men and women from the State of Mississippi. The sole responsibility of the determina-

¹¹³ Walter Rugaber, *All-White Jury Picked as Trial of 18 in Slaying of 3 Rights Workers Begins in Mississippi*, N.Y. TIMES, Oct. 10, 1967, at 21.

*tion of guilt or innocence of these men remain in the hands where it should remain, the hands of twelve citizens from the State of Mississippi.*¹¹⁴

One of the twelve defense attorneys used his opening argument to tell the jury that the government's lead lawyer was the same spokesman for the despised Justice Department who "forced the Negro James Meredith into the University of Mississippi."¹¹⁵ Doar nodded in confirmation.

On the first day of testimony John Doar put on the stand the Reverend Charles Johnson as a background witness to describe Mickey Schwerner's activities in Mississippi. Doar asked Johnson where Schwerner lived, what he did, what he wore, and whether he had a beard. Johnson testified that Schwerner wore "a goat beard,"¹¹⁶ prompting Judge Cox to interrupt and ask, "What kind of beard?"¹¹⁷ Johnson repeated the answer he had given to Doar. On cross-examination, defense attorney Laurel Weir bombarded Johnson with a series of questions designed to make Schwerner look bad to jurors. "Did he advocate the burning of draft cards? Was he an atheist? Did he encourage the boycotting of stores? Was he a member of the NAACP?" Then Weir crossed the line. "Now let me ask you if you and Mr. Schwerner didn't advocate and try to get young male Negroes to sign statements agreeing to rape a white woman a week during the hot summer of 1964?"¹¹⁸ Cox's lips trembled. He told Weir the question was "highly improper" unless the defense had "a good basis" for it.¹¹⁹ He demanded to know what that basis might be. "A note was passed to me by someone," answered Weir. Cox persisted, "Well, who is the author of that question?" A pause. Herman Alford, one of the other defense attorneys, broke the embarrassing silence at the defense table. "Brother Killen wrote the question, one of the defendants." Edgar Ray Killen raised his hand. Cox looked

¹¹⁴ *Transcript, supra* note 49, at 2323-24.

¹¹⁵ Interview with John Doar, *supra* note 8. (Nov. 6, 1999).

¹¹⁶ *Transcript, supra* note 49, at 97.

¹¹⁷ *Transcript, supra* note 49, at 97.

¹¹⁸ *Transcript, supra* note 49, at 100-13.

¹¹⁹ *Transcript, supra* note 49, at 114.

sternly at the crowded defense table. "I'm not going to allow a farce be made of this trial and everybody might as well get that through their heads, including everyone of these defendants, right now."¹²⁰

"The rape question was a tremendous blunder," Doar said later. "It was the second big turning point. If there had been any feeling in the courtroom that the defendants were invulnerable to conviction in Mississippi, the incident dispelled it completely. Cox made it clear he was taking the trial seriously. That made the jurors stop and think: 'If Judge Cox is taking this stand, we'd better meet our responsibility as well.'¹²¹

The defense strategy of relying on their old ally Judge Cox to bail them out of trouble was beginning to look misguided.

John Doar and his prosecution team began to provide an answer to the question that had baffled so many investigators for so long: What happened in Neshoba County in the hours between the release of the three civil rights workers from jail about 10:30 P.M. and 12:45 A.M., when an engulfing fire stopped a watch in their CORE station wagon?

*Members of the Jury, this is no extraordinary case, it has no precedent anywhere. Members of the Jury, this was a calculated, cold-blooded plot. Three men, hardly more than boys, were the victims. The plot was executed with a degree of self-possession and steadiness equal to the wickedness to which it was planned. The participants believed themselves safe, safe because the crime was committed in Neshoba County, and Neshoba law was involved. Members of the Jury, the defendants were mistaken. Such a secret could be safe nowhere, there is no nook nor corner on this earth where the secret of this plot would remain safe.*¹²²

The prosecution's case was built, witness by witness. Ernest Kirkland, a black Longdale resident, described seeing the

¹²⁰ *Transcript, supra* note 49, at 115.

¹²¹ CAGIN & DRAY, *supra* note 7, at 446-47.

¹²² *Transcript, supra* note 49, at 2326-27 (summation of John Doar).

three men off on the Sunday afternoon of their disappearance after they had stopped to discuss the recent firebombing with Kirkland and other members of the Mount Zion congregation. He recalled their dress: Chaney in a white T-shirt and jeans, Goodman in a khaki shirt and jeans, and Schwerner in a blue shirt with khaki trousers and a ballcap. State Patrolman, E. R. Poe, testified that Cecil Price radioed from his location on Highway 16 east of Philadelphia about 3:00, "I've got a good one!"¹²³ Fifteen minutes later Poe pulled his white patrol car to a stop at the intersection of Beacon and Main Streets in Philadelphia, where Deputy Price was parked behind three men, two white and one black, who were changing the tire on a blue station wagon. County jailer, Minnie Herring, testified that Cecil Price showed up at the jail shortly before 10:30 P.M.—six-and-a-half hours after booking them for speeding and "investigation"—telling her, "Chaney wants to pay off—we'll let him pay off and release them all." Herring told jurors that after the three were let out of their cells and their billfolds were returned, Price told them, "See how quick you can all get out of Neshoba County."¹²⁴ Dr. William Featherstone, the doctor who performed the autopsies, described the bullet wounds. Bullets went through the hearts of the two white bodies, he said. The Negro was shot in the head. Travis Buckley, one of the defense lawyers, asked Featherstone, "You don't know for certain these deaths were not caused by poisoning, do you doctor?" Featherstone replied, "They might have been bit by a rattlesnake." Laurel Weir, another defense lawyer asked, "You don't know if those bullet holes were put there before or after death?" Featherstone answered, "All I can say is I found them there."¹²⁵

This is a case, in part, of circumstantial evidence. Mid-night murder in the rural areas of Neshoba County provide few witnesses . . . Mrs. Herring was the last known person to see them alive. She saw them as they walked from jail. Five bullets are found in their bodies. The boys are alive at 10:30

¹²³ Transcript, *supra* note 49, at 2345.

¹²⁴ Transcript, *supra* note 49, at 193.

¹²⁵ Terry Keeter, MERIDIAN STAR, Oct. 11, 1967. at 1.

*when they are released, the station wagon is on fire at 12:45 fourteen miles northeast of Philadelphia . . . Cecil Ray Price controlled the time of release. He could have released them an hour later, he could have released them an hour early, but he released them just so they would go to their deaths.*¹²⁶

*Members of the Jury, Neshoba County chose to remain silent as to what was known about the events that night in that county. Much has and will be said about the extraordinary methods in discovering the guilty. Should it have been otherwise? Was this a State to be forgotten? Was this not a case for maximum effort of the F.B.I.? Could the Federal Government have succeeded in any other way other than rewards, payment for information, tending to expose the band of murderous conspirators, the midnight killers, to bring them to the Bar of Justice of Law?*¹²⁷

Three Klan members were Doar's key witnesses. Wallace Miller, Delmar Dennis, and James Jordan became three of the most hated men in Neshoba County.

*Faced with this wall of silence, the FBI encouraged Wallace Miller to step forward to furnish what he had heard from his friends within the Klan, and to appeal to Delmar Dennis to penetrate the hierarchy of the plan and to reveal their secrets, believing that this would lead to fixing the responsibility on all of those who planned this crime. All of you probably have an initial resentment against paid informers, but before you finally decide examine these men, Miller and Dennis. They are native sons of Mississippi, they are men of courage, because whom among us would doubt their lives are constantly in danger?*¹²⁸

Heavysset, jowly, balding, forty-three-year-old Wallace Miller was an officer in the Meridian Police Department. In April 1964, Klan recruiter Edgar Ray Killen administered in Miller's living room the secret oath that made him a member of the

¹²⁶ *Transcript, supra* note 49, at 2331 (summation of John Doar).

¹²⁷ *Transcript, supra* note 49, at 2328 (summation of John Doar).

¹²⁸ *Transcript, supra* note 49, at 2328-29 (summation of John Doar).

KKK. In response to Doar's questions, Miller described a Klan meeting in which Killen announced that the "elimination" of "Goatee" had "been approved" by Imperial Wizard Sam Bowers. The night of his testimony, Miller received threatening phone calls. Patrol cars were assigned to keep a close check on his home. Miller told reporters, "It's hard to have to sit there and point your fingers at relatives and people you've known a long time. It's hard."¹²⁹

*To understand this case, you must understand the White Knights of the Ku Klux Klan. In seeking members, the White Knights are reported to be a political organization, a non-violent, peaceful group, but once the members were inducted, once the oath was administered, the members soon learned from Edgar Ray Killen that this was an organization of action. This was no Boy Scout group, it was here to do business.*¹³⁰

Delmar Dennis was a handsome twenty-four-year-old Baptist and Methodist minister when he joined the Meridian Klan chapter as its kludd, or chaplain. Dennis, dressed in a conservative business suit and tie, calmly told the jury about a meeting attended by about seventy-five Klan members at an abandoned school gymnasium on the night of June 16, 1964. He testified that one of the members interrupted the proceedings to announce that there seemed to be "an important meeting" taking place at the Mount Zion Church. Armed volunteers set out for Longdale, returning about an hour later to report that they had beaten a group of Negroes, but saw no sign of the despised "Goatee." "It was agreed we had better leave the building," Dennis testified, "so the meeting broke up."¹³¹

Dennis, who had left the Klan, was asked to re-enter and to penetrate the heart of the secret organization, and that he did. Members of the Jury, the payment for information that

¹²⁹ Jack Nelson, *Witness Identifies Nine Suspects in Civil Rights Deaths*, L.A. TIMES, Oct. 13, 1967, at 1.

¹³⁰ *Transcript, supra* note 49, at 2339 (summation of John Doar).

¹³¹ *Transcript, supra* note 49, at 2344; Terry Keeton, *Minister-Turned Informer Offers His Story in Court*, MERIDIAN STAR, Oct. 12, 1967, at 1; WILLIAM H. MCILHANEY II, *KLANDESTINE* 85-86 (1975).

*these informers received for the risk they took, for the time they consumed, for the expenses they incurred for the inevitable isolation when their role came out is pretty meager. Their payment was made for value received. These men are not criminals, they played no part in this or any other conspiracy, and for the FBI there was no other way to proceed. So, I come here now to ask only that you do justice.*¹³²

Dennis told the jury that he had met with Imperial Wizard Sam Bowers after the killings. Bowers said that he was “pleased” with the operation. Bowers told Dennis, “It was the first time that Christians had planned and carried out the execution of a Jew.”¹³³ Dennis said that Bowers appeared unconcerned about the upcoming trial: “He said Judge Cox would probably make them take [the three bodies] and put them back under the dam—that it was an illegal search.”¹³⁴

*This was a small, secret militant group, masterminded by a fanatic, who had singled out Schwerner as a man who had to be eliminated—not to preserve or protect Mississippi, but rather to satisfy his own consuming hate.*¹³⁵

On cross-examination, defense lawyer Laurel Weir attempted to portray Dennis, who had received \$5,000 a year for three years from the FBI for his cooperation in the case, as a Judas: “Instead of thirty pieces of silver, you got \$15,000.”¹³⁶ Weir’s comment brought a stern rebuke from Judge Cox.

The most incriminating testimony came from James Jordan. The FBI knew from Wallace Miller that Jordan was a Klansman. They also learned of comments that Jordan had made to two nuns suggesting that he might have been involved in the murders. Jordan found it hard to keep secrets. John Proctor, the FBI’s Meridian-based agent, sensed that Jordan was someone he could break down. “You either get on the right

¹³² *Transcript, supra* note 49, at 2330 (summation of John Doar).

¹³³ Keeton, *supra* note 131, at 1.

¹³⁴ Keeton, *supra* note 131, at 1.

¹³⁵ *Transcript, supra* note 49, at 2338 (summation of John Doar).

¹³⁶ KEETON, *supra* note 131, at 1.

side or you can go to jail,"¹³⁷ Proctor told him. Scaring Jordan by revealing his secret Klan number, twelve, Proctor finally convinced Jordan to talk.

*With the aid of this information the FBI persuaded Jordan to stop running, to give information and return from sanctuary which required the expenditure of Three Thousand Dollars, and partial support for Jordan since that day.*¹³⁸

James Jordan was scheduled to testify for the prosecution on October 11. He was flown into Meridian from his relocated home in Georgia and placed under heavy guard in the office of John Proctor. Proctor returned from lunch that day to find the government's star witness sprawled out on his desk, lying on his back with his shirt off. Suspecting a heart attack, Proctor frantically began pumping Jordan's chest. FBI men rushed Jordan to the hospital where his severe chest pains were diagnosed as the result of hyperventilation, not a heart attack. Later that afternoon Jordan was ushered through the back door of the courthouse by six guards with drawn guns. At the courthouse, he collapsed again and was carried from the building on a stretcher. The next day he was back at the courthouse. At 3:30 P.M., John Doar stood and said the two words the packed courtroom had been waiting to hear: "James Jordan."¹³⁹ The courtroom stirred in anticipation as marshals went out to fetch Jordan. Every eye turned to the door. Some in the crowd leaned forward for a better look. In walked Jordan, a bald, square-faced blocky man. He looked straight ahead as he walked forward to the witness stand. Looking pale and exhausted as he testified with his hands clasped in front of him, he never made eye contact with the defendants.

Members of the Jury, in the execution of a conspiracy, there are members of the conspiracy who play different parts. There are master planners, there are the organizers, there are the lookout men, there are the killers, there are cleanup and

¹³⁷ CAGIN & DRAY, *supra* note 7, at 432.

¹³⁸ *Transcript, supra* note 49, at 2329 (summation of John Doar).

¹³⁹ Walter Rugaber, *Witness Tells of Role in Slating of Rights Workers*, N.Y. TIMES, Oct. 13, 1967, at 43.

*disposal people, and there are the protectors. Each of these defendants played one or more part in this conspiracy. Now, we'll take the testimony of Jim Jordan who told you exactly what happened between eight o'clock and one o'clock that morning.*¹⁴⁰

Jordan, in a flat, quiet voice, told the jury about a Klan meeting around 6:00 P.M. on June 21 at the Longhorn Drive-In in Meridian. Preacher Killen came in and "said he had a job he needed some help with over in Neshoba County. He said that two or three of those civil rights workers were locked up and they needed their rear ends tore up." Jordan said that Killen told him he "needed about six or seven men." Responding to Killen's request, Jordan began rounding up men. A dozen eager young men showed up to meet with Edgar Ray Killen at Akin's Mobile Homes in Meridian in the early evening. Killen told the men to get gloves and to be at the courthouse in Philadelphia by 8:15 P.M. Two carloads of Klan members met Killen in Philadelphia. He took them on a drive-by tour of the jail where the civil rights workers were being held, then to a spot "near an old warehouse right at the edge of town" where they were to lie in wait for their prey. Killen left to see his uncle, who was lying in repose at a local funeral home.¹⁴¹

Jordan continued his story. He testified that around 10:30 a city police car drove up to the parked cars. "They're going on Highway 19 toward Meridian," the officer told Jordan and the others. "Follow them." Jordan's car set off down the highway, following a red Chevrolet with other armed men in it. The red car broke down and Jordan's car stopped beside it. One of the Klan members in the red car told Jordan's group to "go ahead" and that the civil rights workers' car "would be stopped anyway by the Deputy Sheriff." Jordan's car again raced off down the highway until they got sight of Price's patrol car, red light blinking, pulling a station wagon over to the side of a cut-off road. "[Price] got out and told the three men in the car to get

¹⁴⁰ *Transcript, supra* note 49, at 2345-46 (summation of John Doar).

¹⁴¹ *Transcript, supra* note 49, at 957.

out. They got in the back of his car.¹⁴² A three-car caravan, including the CORE wagon with a Klan member at the wheel, made its way back to a deserted clay road. Rock Cut Road, it was called.

Jordan told the jury and the filled courtroom that he was serving as a lookout on a rise above the road when he heard "about four"¹⁴³ shots. He said that he did not see the shootings—just the three bodies lying along side the road when he returned a few minutes later. As Jordan testified, a black female spectator in the courtroom began to sob uncontrollably. She was led out into the hallway.

*Much will be said about Jordan's part in the participation of the crime or murder in this case. It is not important for you to decide who actually fired the gun, or which gun killed the three boys.*¹⁴⁴

For an eyewitness account of the actual killings, Doar turned to a confession. "Horace Doyle Barnette," Doar told the jury, "felt an irresistible impulse of conscience to be true to himself."¹⁴⁵ Barnette made his confession to two FBI agents during a six-hour interrogation in a motel room in Louisiana in November 1964. But he had since repudiated it and stood trial with the other defendants.

*Always beside [the young men of the Klan who might have reservations about what they were doing] were other men deep into the swamp, men of violence and fury, men who were going to kill anyone who broke away. The most violent of all was Wayne Roberts.*¹⁴⁶

As John Doar read Barnette's confession to the jury, Barnette, nearly bald with glasses, stared impassively ahead. Since Judge Cox ruled that the confession could not be used as evidence against any of the defendants but Barnette himself, the name of Wayne Roberts in the confession was read as

¹⁴² Transcript, *supra* note 49, at 968-73.

¹⁴³ Transcript, *supra* note 49, at 988.

¹⁴⁴ Transcript, *supra* note 49, at 2349-50 (summation of John Doar).

¹⁴⁵ Transcript, *supra* note 49, at 2329-30.

¹⁴⁶ Transcript, *supra* note 49, at 2356 (summation of John Doar).

"Blank."¹⁴⁷ Roberts was a beefy, twenty-six-year-old, dishonorably discharged ex-Marine. At the time of the murders, Roberts sold mobile homes in Meridian.

"Blank," Doar intoned, "pulled Schwerner out of the car, spun him around so that Schwerner was standing on the left side of the road, with his back to the ditch, and said, 'Are you the nigger lover?' and Schwerner said, 'Sir, I know just how you feel.' Blank had a pistol in his right hand, then shot Schwerner. Blank then went back to the car and got Goodman, took him to the left side of the road with Goodman facing the road, and shot Goodman."

"At this time," Doar continued reading, "Jim Jordan said 'save one for me.' I do not remember how many times Jordan shot. Jordan then said, 'You didn't leave me anything but a nigger, but at least I killed me a nigger.'"¹⁴⁸

The defense case consisted mainly of a parade of dozens of character and alibi witnesses, almost all of them friends or relatives of the defendants. During one day of testimony, they took the stand at a rate of one every seven minutes. M. L. Graham praised Bowers as a person of strong religious convictions: "Sam is in church everytime the doors are open. I believe Sam has had an experience with the Lord."¹⁴⁹ Finis McAdory remembered that he had met with Deputy Price at 10:30 on the night of the murders to talk about a runaway niece. Friends of Edgar Ray Killen said they saw him on evening of June 21 paying his respects to a departed uncle at the funeral home. Wayland McMullen remembered that he and his wife planned to go dancing with the Roberts, but they couldn't get a sitter and had to cancel. Other wives, friends and relatives testified about ailing backs and quiet nights at home.

Other defense witnesses challenged the veracity of the prosecution's informers. Joyce Dennis, the estranged wife of Delmar Dennis, told the jury that her husband's testimony did

¹⁴⁷ *Transcript, supra* note 49, at 2361.

¹⁴⁸ *Transcript, supra* note 49, at 2361.

¹⁴⁹ Walter Rugaber, *Mississippi Civil Rights Slaying is Expected to Go to Jury Today*, N.Y. TIMES, Oct. 18, 1967, at 25.

not "deserve full faith and credit."¹⁵⁰ Beverly Rawlings recalled a conversation with James Jordan in September 1964 in which he confessed to shooting James Chaney. "I'm looking for the FBI to pick me up most anytime," she remembered him saying. "I'd just as soon kill another Negro as not," he was said to have added ominously. The defense witness list also included two African-Americans. Annie Coleman, a Laurel, Mississippi resident since 1910, testified that she had once worked in a theater owned by Sam Bowers "selling tickets, and making popcorn and doing other things." She said that she did not know him to be involved in Klan activities. He was "a very nice person." She said she thought Bowers was now working as a distributor of "those machines you play records in." After testifying, Coleman complained to reporters that other blacks had "been calling me the worst names I ever heard." She said that "they think I'm some sort of bad person cause I came up here and told the truth."¹⁵¹

The defense rested its case. Jurors had heard 160 witnesses presented by the two sides.

On Wednesday morning, October 18, 1964, John Doar delivered his summation in his flat, soft-spoken voice. A reporter for the Meridian Star wrote that the local people in the audience sat in "rapt attention" as it listened to "Doar's crisp, unfamiliar accents."¹⁵² Blacks in the audience occasionally dropped their heads into their hands as Doar painted his graphic picture of the deaths on Rock Cut Road. It is not Doar's style to be theatrical. His most demonstrative moment came when he pointed directly at Cecil Price and charged that the Deputy had used "the machinery of his office, the badge, the car, the jail, the gun"¹⁵³ to facilitate the murderous conspiracy.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Terry Keeton, *MERIDIAN STAR*, Oct. 18, 1967, at 1.

¹⁵³ Walter Rugaber, *Trial of 18 Charged with Conspiracy in Mississippi Goes to All-White Jury*, *N.Y. TIMES*, Oct. 19, 1967, at 37.

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.

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 as he stood over the body of his slain king, "Say I slew him not." The queen replied, "Then say they were not slain." But they are dead. If you find that these men are not guilty of this conspiracy it would be as true to say that there was no nighttime 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.¹⁵⁴

Mississippi law gave defense lawyers the last word. Mike Watkins told the jury that although defense witnesses might have been friends and relatives of his clients, "at least they're not paid informers." He suggested that "if life in Mississippi is miserable for the agitators who come here, it's because they made it that way." W. D. Moore complained that "the government brought in its crack leader-organizer John Doar . . . and then they opened up the coffers of the United States for money." Moore speculated that the prosecution was instigated by LBJ, Vice President Humphrey, and Senator Robert Kennedy. Herman Alford, in his closing, made the improbable claim that the defendants were "as innocent and pure as the driven snow."¹⁵⁵

At 4:24 P.M., on October 18, the case of *United States v. Price* went to the jury. After deliberating for three hours, the jury was escorted to the Lamar Hotel in downtown Meridian, where they spent the night.

Most courtroom observers thought a guilty verdict was

¹⁵⁴ *Transcript, supra* note 49, at 2363-64 (summation of John Doar).

¹⁵⁵ Rugaber, *supra* note 154; Oct. 19, 1967, at 37; Terry Keeton, *MERIDIAN STAR*, Oct. 19, 1967, at 1.

impossible. William Bradford Huie, a native of the South covering the trial for the *New York Herald Tribune*, wrote: "Those are little people. Some of them are quite poor. Some of them live out on the edges of small communities, far back in the piney woods. How can they afford to take the risks?"¹⁵⁶

As the jury deliberated for a second day, most of the eighteen defendants stood or sat on benches in the hallway outside the second-floor courtroom. They tried to look confident. They talked. They waited. Cecil Price leafed through a copy of *Gun Sport Magazine*. Sheriff Lawrence Rainey talked with friends, telling them, "Even if they turn me loose, they'll have done what they set out to do—break me." Two questions were heard over and over: "When do you think the jury will come back?" and "What do you think they will do?"¹⁵⁷ A few yards away, the jury continued its deliberations.

The jury filed into the courtroom shortly after 3 P.M. to report that they were at an impasse. Judge Cox proceeded to read the so-called "Allen charge," a set of directions upheld by the Supreme Court in the 1898 case of *Allen v. United States*.¹⁵⁸ Also known as "the dynamite charge" for its success in blowing open deadlocked juries, the Allen charge was opposed by attorneys for the defendants who would count a hung jury a victory. Cox reminded the jury that trials are expensive, that a second jury is unlikely to be any more capable of reaching a verdict, and that—although no juror should surrender his "honest conviction"—jurors should "deliberate" with others and not hesitate to change opinions. In the hallway following the judge's reading of the charge, a court officer overheard Wayne Roberts joking to Cecil Price, "Judge Cox just gave that jury a 'dynamite charge.' We've got some dynamite for them ourselves."¹⁵⁹ The court officer reported the remark to a not very amused Judge Cox.

¹⁵⁶ HUIE, *supra* note 12, at 159.

¹⁵⁷ Walter Rugaber, *Deadlocked Jury is Ordered to Continue Deliberations in Mississippi Slayings of 3 Rights Workers*, N.Y. TIMES, Oct. 20, 1967, at 31.

¹⁵⁸ 164 U. S. 492 (1896).

¹⁵⁹ Rugaber, *supra* note 157, at 31.

The next morning the jury returned its verdict. The jury foreman, Langdon Anderson, a fifty-two-year-old oil exploration operator, handed the sealed verdict to Judge Cox. Cox glanced at the papers, then passed them to his courtroom clerk who read the decision. "We, the jury, find the defendant Cecil Ray Price not guilty. I'm sorry, your honor, may I start over?" Cox nodded. The clerk began again: "We, the jury, find the defendant Cecil Ray Price guilty of the charges contained in the indictment."¹⁶⁰ The defendants appeared to stiffen as they heard the first verdict. The list continued. Seven defendants were found guilty, including triggerman Wayne Roberts and Klan leader Sam Bowers. Eight other defendants, including Sheriff Rainey, were acquitted. The jury reached no verdict on Edgar Ray Killen and two other defendants.

"To have that jury return that verdict was a great thing," Doar recalled. "The jury paid attention; they were serious people." It appeared to be a compromise verdict, but Doar is not so sure: "What is more likely is that they were applying the beyond-a-reasonable-doubt standard very strictly." Looking back more than thirty years later, Doar believes that "the trial helped Mississippi get beyond the caste system. Up to that time, no white person in the state had ever been convicted for violence against a black. After the trial, the good people of Mississippi became more confident that they could move away from their past."¹⁶¹

Not all conspirators are equal in the eyes of a prosecutor; some may be guiltier than others. Doar believed Edgar Ray Killen "was really central to the conspiracy."¹⁶² The jury may have divided on Killen's guilt, Doar believes, because much of the evidence against him was more circumstantial than was the case against those defendants the jury convicted. Returning home to Philadelphia after the trial, Killen greeted one of his neighbors: "Man, I thought they were fittin' me for overalls

¹⁶⁰ Walter Rugaber, *Mississippi Jury Convicts 7 of 18 in Rights*, N.Y. TIMES, Oct. 20, 1967, at 1.

¹⁶¹ Interview with John Doar, *supra* note 8.

¹⁶² Interview with Joan Doar, *supra* note 8.

over there."¹⁶³

Judge Cox sentenced Wayne Roberts and Samuel Bowers to ten years each. The other convicted defendants received either five or three-year sentences. Cox later said, "They killed one nigger, one Jew, and a white man. I gave them all what I thought they deserved."¹⁶⁴

Forty days after the Mississippi jury returned its verdict, John Doar announced his retirement from the Justice Department. "I just felt it was the right time," he said at the time. "I've been here for seven years. I worked principally in the South and we got a good start on many of the things on which I've worked."¹⁶⁵

Doar's departure from the Justice Department caused dismay in the civil rights community. Civil rights leader Joseph Rauh said, "This is a terrible loss at a time when we can't afford any losses." A former leader of the Student Nonviolent Coordinating Committee agreed, calling Doar "one guy in the establishment they could get to." John Lewis, one of the civil right's movement's most courageous figures—and later Congressman John Lewis—said of Doar's years at Justice: "His job was great, his will and talent even greater."¹⁶⁶

Columnist Jimmy Breslin wrote of Doar: "His life has been in those nothing motels on the highways or in the dirty-windowed hotels of small cities. It has been spent with people afraid to help him or with people who think about shooting him, in courtrooms where you can't win and with politicians who will not listen."¹⁶⁷ He did sometimes win, of course—as in

¹⁶³ Terry Keeton, *MERIDIAN STAR*, Oct. 21, 1967, at 1.

¹⁶⁴ CAGIN & DRAY, *supra* note 7, at 452.

¹⁶⁵ Ronald Maiorana, *Doar to Be Executive Director of Drive to Aid Brooklyn Slum*, *N.Y. TIMES*, Dec. 3, 1967, at 36.

¹⁶⁶ Roy Reed, *Doar Resigns as Chief of the U.S. Civil Rights Division; Integration Leaders Term Action 'Gigantic Loss'*, *N.Y. TIMES*, Nov. 30, 1967, at 35; Office of Congressman John Lewis, *Congressman John Lewis Keynotes Ceremony Commemorating 40th Anniversary of the Civil Rights Division of Justice* (Dec. 8, 1967)

¹⁶⁷ Jimmy Breslin, *John Doar: Doar Prize* (Nov. 28, 2000), available at <http://goprincetontigers.fansonly.ocsn.com/genrel/080100.aaj.html> (last visited Jan. 6,

Meridian in 1967. And politicians did listen—eventually. Whether in the form of landmark voting rights legislation or in the growing number of people willing to do what is right, the marks of John Doar on the South were undeniable as he ended his tenure at the Justice Department.

Upon leaving Justice, Doar and his family moved to New York, where he had accepted Robert Kennedy's invitation to be the executive director of a corporation set up to redevelop the Bedford-Stuyvesant, an African-American and Puerto Rican neighborhood of Brooklyn. He later left the corporation and returned to private practice, but Doar's years of public service were not over.

On a Friday afternoon in early January of 1974, Hillary Rodham was called into the plain office of John Doar, chief counsel for the House Judiciary Committee's investigation of the Watergate Affair. Doar's straight-arrow ethics and Republican credentials had made him a consensus choice for the job. Stony-faced and terse, Doar looked across his desk at the twenty-six-year-old woman, fresh out of law school. They had first met the previous year. "Burke Marshall asked me to judge a moot court up at Yale," Doar recalls. "Hillary and Bill, then Yale students, were there to meet me when I got off the train in New Haven. They took me out to lunch and, after the moot court arguments were over, they put me back on the train. That's how she got her job."¹⁶⁸ Prepare a memo on the constitutional grounds for impeaching the President, Doar ordered, and have it on my desk by Tuesday.

Doar told his team of forty mostly young lawyers that they must forget ideology and focus on facts. Keep your mouths shut, he demanded, as no leaks would be tolerated. And be respectful. Nixon must be referred to at all times as "the President." Doar's penchant for secrecy caused one member of the Judiciary Committee, Bill Hungate of Missouri, to grumble, "We're so damn secretive that we're going to impeach Nixon in

2003).

¹⁶⁸ Interview with John Doar, *supra* note 8.

secret and he'll never know it."¹⁶⁹

Throughout all the tumult and rhetoric of Watergate, the reserved Doar kept his characteristic low profile. He turned down Ethel Kennedy's invitation to swim at her pool. Too political, he said. Unlike virtually all other players in the Watergate, Doar never appeared on television. He never wrote a book.

Most observers credit Doar's careful presentation of the evidence for convincing undecided Republican members of the Committee to support the resolution of impeachment. His fair and even-handed manner received bipartisan praise.

It is in his work in the South, not Watergate, that Doar takes his greatest pride. In his law office in New York City is a large framed map of the southern United States covered with pins representing the many voting rights challenges instituted by Doar. "My time as a lawyer is almost over," Doar wrote in a 1997 article in the *Florida State Law Review*, but "the roll call of those Civil Rights Division lawyers still rings in my head."¹⁷⁰

In 1994 Doar returned to his old school in the Twin Cities, St. Paul Academy, to address a group of seventh graders and be honored at a distinguished alumni banquet. For forty-five minutes, Doar answered the questions of the junior high students about civil rights and his personal life. He talked about his father, one of the most respected lawyers in northwest Wisconsin. He talked about his mother Mae, a former school-teacher with a strong interest in reading and in the arts. He told the students of a conversation he had several years earlier with his mother. He asked her what she was most proud of. He half-expected, he said, to hear how proud she was of her lawyer-sons. Instead, "She drew herself up to full height and said, "That's easy: Being able to hold a job and play the piano." The class seemed to miss the humor and turned the discussion back

¹⁶⁹ Evan Thomas, *Bill and Hillary's Long, Hot Summer*, NEWSWEEK, Oct. 19, 1993, at 36.

¹⁷⁰ Doar, *supra* note 103, at 16.

to civil rights. A boy in the class asked Doar, "Did you ever agree that white people are better than black people?" "No, do you?" Doar asked. The boy quickly said "No." Doar nodded.¹⁷¹

As he approached eighty, Doar's once black and curly hair had turned straight and silver. His large frame had begun to bend. I interviewed Doar in late 1999. He spent most of that fall in a large windowless room, in a sprawling building owned by the Ingersoll Machine Milling Company of Rockford, Illinois. Court records and other documents spread out before him on a large table. He said he expected his work defending the company to occupy him another year. Then he planned to retire to split time between his farm in upstate New York and an oceanfront property in Sonoma County, California.

"As a lawyer, no one could have a more fortunate career than I've had. It's been all luck and being at the right places at the right time." Thinking back on his career, Doar's thoughts seem to turn instantly to others—to people such as Burke Marshall ("the best there is—somebody who comes along once every 600 years") and Robert Kennedy ("I have the greatest respect for what he did"). He saw himself not as a visionary, but as a competent workhorse. "If someone says 'this is what the drill is,' I'll get it done."¹⁷²

He spoke almost reverently of "the spirit of Justice" in the sixties. It was, he said, a spirit governed by a "philosophy grounded in hope." Doar and his colleagues persevered "because it made sense," not because they thought their work would succeed. Failures and frustrations led to better approaches. "We learned," Doar said, "you just got to keep going back. We couldn't change Mississippi from a desk in Washington."¹⁷³ The Department's eventual success, Doar believed, was due in no small measure to its being seen by white southerners as independent from the campaigns of SNCC, Martin Luther King and other social reformers. "We didn't want white people to be able to say 'the Civil Rights Division and SNCC are hitched together at the hip like Siamese twins. We kept our

¹⁷¹ Washington, *supra* note 13, at 1B.

¹⁷² Washington, *supra* note 13, at 1B.

¹⁷³ Interview with John Doar, *supra* note 8.

distance." Doar suggested that the caste system broke because each group "did what they did best—each moved through the South like an independent campaign."¹⁷⁴

Doar did not consider what he did heroic: "I don't think it's quite the right word. We just knew viscerally that we were doing something that was awfully important. We weren't trying to be heroes. At the same time, all of us realized that when our lives were almost over we wanted to be able to look back and say, 'we did our best: we worked as hard and as long as we could.'¹⁷⁵

In a 1977 *New York Times Magazine* interview, Cecil Price revealed that he had recently watched and enjoyed the television mini-series, "Roots." His views on integration had changed, he said. "We've got to accept this is the way things are going to be and that's it."¹⁷⁶

Meridian resident John Proctor, on whom Gene Hackman's portrayal of a no-nonsense Mississippi-based FBI agent in the 1989 movie *Mississippi Burning*¹⁷⁷ was loosely based, said both he and most of the convicted defendants just want to put the whole terrible episode behind them. "Why don't they leave all that alone?" Proctor responded when asked by Diane McWhorter in 1989 about the controversial movie. The movie is going to "be about as popular around here as a turd in a punchbowl," he predicted. Proctor said he still occasionally bumped into Cecil Price and others that he helped to convict. He said that if Wayne Roberts, the killer of the three rights workers ran into him, "he'd come over and shake my hand."¹⁷⁸

The decades, and the federal voting rights acts, have changed Mississippi politics. In 1964, Mississippi officials from the governor on down opposed—and, in many cases, attempted to thwart—the *Mississippi Burning* investigation. Now some officials say they want to prosecute the midnight killers of

¹⁷⁴ Interview with John Doar, *supra* note 8.

¹⁷⁵ Interview with John Doar, *supra* note 8.

¹⁷⁶ CAGIN & DRAY, *supra* note 7, at 456.

¹⁷⁷ *MISSISSIPPI BURNING*, Metro Goldwyn Mayer (1988).

¹⁷⁸ Diane McWhorter, *Since Mississippi Burned*, PEOPLE, Jan. 9, 1989, at 36.

Schwerner, Chaney and Goodman. Mississippi Attorney General Mike More and Neshoba County District Attorney Ken Turner began in 1999 trying to build a state case against some of those responsible for the horrific murders on Rock Cut Road thirty-five years earlier. If not for Cecil Price's untimely death in 2001, it is likely that prosecutions would have begun.¹⁷⁹

Martin Luther King, Jr. said many times, "The moral arc of the universe is long, but bends toward justice."¹⁸⁰ If King's prophecy is correct—and, at least with respect for the civil rights of black Americans, it seems to be—it is not the result of some Darwinian propensity, but rather because of the hard work of citizens of courage and principle such as John Michael Doar.

¹⁷⁹ Emily Wagster (Associated Press), *Attention Turns to Civil Rights' Era's Last Major Unresolved Case*, ATHENS-BANNER HERALD, May 27, 2002, available at http://www.onlineathens.com/stories/052702/new_20020527017.shtml. State murder trials would likely have begun by 2002 were it not for the untimely death, due to injuries sustained in a workplace fall, on May 6, 2001, of Cecil Price. Price had begun cooperating with prosecutors, but had not yet furnished a sworn statement.

¹⁸⁰ CAGIN & DRAY, *supra* note 7, at 292.

