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Retreat in Mississippi

Section 1. The right of Citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account or race, color, or previous condition of servitude.
Section 2. The Congress shall have power to enforce this article by appropriate legislation.

—Fifteenth Amendment to the United States Constitution, 1870

IN 1964, NEARLY ONE HUNDRED years after the black man was constitutionally granted the right to vote, only 6.4 percent of the eligible black people in the state of Mississippi had been allowed to register to vote. Between 1965 and 1970, the registration of black Mississippians increased to 66 percent.

This was not due to any change in the hearts or attitudes of registration officials of the state of Mississippi. It was due almost entirely to the provisions of the federal Voting Rights Act of 1965, which contained specific procedures applicable to any state in which less than 50 percent of those eligible to vote had been registered on November 1, 1964. Seven states of the Deep South, including Mississippi, were in this category. By 1970, nearly one million black people had registered to vote in the South, despite frequent harassment, intimidation and violence.

The promise of the Fifteenth Amendment was finally

becoming a reality. Under the 1965 Voting Rights Act, if twenty or more citizens in a locality petitioned that they were being denied the right to vote or register, the federal government could send federal registrars there and could enforce their right to vote by both criminal- and civil-court action.

When President Nixon took office, federal registrars were operating in thirty-two of Mississippi's eighty-two counties. Less than six weeks later, on March 29, 1969, the Administration ordered the removal of all such registrars from the state. For the next two and a half years, the Southern Strategy apparently included a prohibition against sending federal registrars to Mississippi. The law said that aggrieved Mississippi citizens were entitled to federal registrars; the Attorney General chose simply to decline to enforce that law.

Some idea of what Mississippi's black citizens suffered as a result can best be understood by considering the following excerpts from a letter sent in June 1970 to a Justice Department attorney from a group of voter registration officials in Humphreys County.

> We are writing to request that Federal Registrars be sent to Humphreys County, Mississippi.
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> . . . Mr. J. H. Hood, Humphreys County Circuit Clerk and the man charged with registering people to vote, has been less than cooperative. One of his most effective means of noncooperation has been the adoption of grossly erratic (at best) or non-existent office hours. Throughout the last two years, whenever a voter registration drive was begun, he has suddenly become unavailable.
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> . . . Harassment and intimidation have been commonplace for a long time, and have shown no signs of diminishing. A few examples should suffice.

The most severe intimidation has been Mr. Hood's practice of notifying plantation owners when workers from their holdings register or attempt to register. Even when nothing results from this notification, or is only threatened, the effect on the workers is overpowering. Most of the blacks in Humphreys County work for large farmers, and are dependent on them for employment and housing, and often for financial help with such expenses as medical bills. Thus it is quite frightening when Mr. Hood asks people who are attempting to register, as he is constantly doing (e.g.—Mrs. Bernice Ray Latiker as late as this week), "Where do you live," "Who do you work for," "Whose place do you live on," "Does your boss know you're down here," etc. Mr. Hood proceeds to call these plantation owners often enough (e.g.—Mrs. Shirley Rucker of the Four Mile Plantation when she registered), and word of it gets around quickly enough, that most tenant farmers are too scared even to attempt to register in the first place. . . .

In August of 1970, a task force including Mrs. Bobbie J. Davis and Mr. Admiral Liddle took Miss Willie Ella Ginn to register, which she did. Miss Ginn lived on Mr. B. W. Smith's plantation near Louise, and her only employment was occasional work for Smith chopping cotton. When Mr. Smith learned that Miss Ginn has registered (presumably Mr. Hood told him), she was given one week to find someplace else to live and work. The reason, ostensibly, was that the land was needed for something else. Miss Ginn had lived there for seven years previous and today, ten months later, the house is exactly as she left it, but vacant.

Mr. Phil Moore McCormack attempted to register today [June 10, 1971], but was told by Mr. Hood that he could not because he had been previously arrested. Mr. McCor-

mack told Mr. Hood that he had never been arrested, that the incident in question had seen him taken into custody because of his acquaintance with a man arrested (not convicted) for forgery, that no connection had ever been demonstrated, no charges brought, and he had been rapidly released. He was nonetheless not allowed to register.

Mrs. Ethel White, who has poor eyesight, was told she could not register unless she returned with her glasses the next time.

Mrs. Edna Pickett was asked why she didn't have more respect for her elders (in this case, Mr. Hood) and forced to fill out the same form 4 times.

Mr. Hood has demonstrated a remarkable aversion to accepting registration applications with the name prefixed by a "Miss," "Mr." or "Mrs.," and many people (a few: Mrs. Bobbie J. Davis, Mrs. Mary Taylor, Mrs. Shirley Rucker) have had their names struck from the book for this offense.

The total result of all this derogation, harassment, intimidation, reprisal and obstruction has been a widespread fear of the ballot box in the black community in Humphreys County. Indeed, Mr. Hood's reputation is such that many people would not register to vote if he came knocking at their door. . . .

In spite of past voter registration drives in Humphreys County, the total number of blacks registered to vote is only 2,935 out of an eligible (1970 Census) population of 5,561, or less than 52% at present. White voter registration presents an interesting comparison: in 1968, 91% were eligible to vote; in 1970, 99.5%; at present, some 400 more are registered to vote than the 1970 Census reveals to be alive. . . .

It's a sad comment on democracy in Humphreys

> County that a huge segment of the population lives in fear of their own right to vote. That this fear is buttressed by physical obstacles exacerbates the situation to the point where democratic government in the county is impossible. In the self-evident inability of county officials, over a period of years, to alleviate this situation, we see the obligation of the federal government to do so. . . .

As of July 1971, over a year later, no federal registrars had been sent to Mississippi despite a number of similar such letters. The Nixon Administration's refusal to send registrars to Humphreys County seems nothing short of scandalous. It was hard to understand until the Voting Rights Act of 1965 came up for renewal in 1970.

The key provision of the Voting Rights Act was Section 5, a master stroke of legal craftsmanship, designed to prevent Southern legislatures and voting officials from changing their laws and procedures to block black registration and voting. It required affected areas to submit any change in election law or voting practice to the Attorney General or to a three-judge federal court in the District of Columbia for approval prior to its taking effect, thus putting the burden on those who would bring change to prove that the change was fair and useful. Section 5 raised hackles all over the South. Any Southern Strategy to obtain votes there would necessarily have to deal with that section.

The Nixon Administration made its position clear in 1970 when Attorney General Mitchell testified in opposition to the renewal of Section 5, proposing the restoration to Southern legislatures and voting registrars of the power to avoid federal-court review of such innovative practices and procedures as they might develop to deny blacks the voting franchise. Mr. Mitchell argued that Southern states should

not be singled out for special treatment. All states should be treated the same.

There was no problem outside the Southern states, however, save perhaps for literacy tests imposed on racial minorities in several of the Northern states. As Congressman William M. McCulloch (R., Ohio), ranking member of the House Judiciary Committee, said, Mitchell's proposal "creates a remedy for which there is no wrong, and leaves grievous wrongs without adequate remedy . . ."

With Administration support, the House voted narrowly to delete Section 5, but the Senate stood firm. Ultimately the 1965 act was extended with the crucial section intact. Thereafter, however, the law-and-order Attorney General decided he *couldn't enforce* Section 5. At a meeting with reporters on May 13, 1971, Mitchell said about the obligations imposed on him by the law, "I can't fulfill them properly."

The Attorney General's statement confirmed the criticisms of many civil-rights lawyers that the Nixon Administration was deliberately declining to enforce the Voting Rights Act. From the date President Nixon took office, the Department of Justice declined to bring court action against re-registration plans instituted by many of the counties of Mississippi. Redrawing voting-district boundaries and alleging "confusion" in voter rolls, those counties demanded the re-registration of voters, including black voters who had been registered by federal examiners. This was clearly against the law unless approval of the re-registration was first obtained from either the federal court or the U.S. Attorney General. When Mississippi declined to even submit application for approval, Attorney General Mitchell refused to take any action, although the act specifically gave him the power to do so. Then, when an application was finally re-

ceived from Mississippi, the Attorney General declined to either approve or disapprove the changes in the state's voting procedure as the law required of him.

The anger and frustration of federal judges against both Section 5 and the Attorney General's dilatory conduct are rather succinctly set forth in the following passages from the opinion of the three-judge U.S. District Court for the Southern District of Mississippi, filed April 27, 1971.

> If we were free to perform our judicial duties according to our ability and agreeably to our understanding of the Constitution of the United States, we would, to a man, concur with Mr. Justice Black's views that Section 5 of the Voting Rights Act of 1965 is clearly unconstitutional. This Section 5 imposes a prior restraint upon certain of the sovereign states by enjoining the enforcement of statutes they may enact until they can convince federal judges of a district foreign to their soil that these presumptively valid acts of their duly elected legislature pass Constitutional muster, or until their chief legal officer has submitted such statutes to a political appointee of the Executive Department of the central government for his review and tacit approval.
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> In the case at bar, the application of the vicious "conquered province" theory embodied in this section is uniquely opprobrious because the State of Mississippi's humiliation in bringing its laws to Washington for bureaucratic approval *has been met with an obtuse patronizing failure by the federal government official to discharge the duties Congress placed upon him.* [Emphasis added.]
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> The problem for Mississippi in the case at bar is that having done what Congress humbled her to do, she did not

> receive a letter of approval, or a disapproval or a mere failure to interpose an objection within the statutory time. Rather, she received a lengthy, Pilate-like response in which the Attorney General recognized he had the very duty we declare the statute imposed upon him, bemoaned Congress's failure to accept his predecessor's suggestion to leave the matter to the courts, declared that he was not prepared to make the determinations required by the act, but made no literal objection.

"Obtuse patronizing failure"—these are harsh words to apply to an Attorney General of the United States, particularly for judges who unanimously shared his sentiments on doing away with the alleged evils of Section 5. Although I disagree strongly with the district court's constitutional views, I have to agree that its characterization of the Attorney General was amply justified.

In recent years law enforcement and the Department of Justice received a higher proportionate increase in appropriated funds than any other cause and agency. The Nixon Administration was supposedly dedicated to law and order —an evenhanded enforcement of the laws. The failure to enforce the Voting Rights Act, coupled with the earlier attempt to emasculate it legislatively, can only be interpreted as another victory of political expediency over principles of law.

As one civil-rights attorney put it in testifying before an investigating House judiciary subcommittee in June 1971, "In Mississippi . . . the law has been violated by state and local officials from the early days of the act to today, with no compunction and no redress. . . . The quickest way to get compliance would be for the Justice Department to file *one* criminal information. I daresay this would bring instant compliance throughout the South within about forty-five

seconds." Only the Attorney General, of course, can bring criminal proceedings to enforce the act. To date he has not chosen to do so.

When Mr. Nixon accepted his party's nomination for the Presidency in 1968, he had said, "Let those who have the responsibility of enforcing our laws, and our judges who have the responsibility to interpret them, be dedicated to the great principles of civil rights."

Again, a comparison of his words and his actions serves only to deepen the despair of those who seek a restoration of faith and truth in American government.

PART V

THE JUDICIARY