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WILEY AUSTIN BRANTON AND THE VOTING RIGHTS STRUGGLE

Judith Kilpatrick

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Judith Kilpatrick[*]

I. INTRODUCTION

Less than fifty years ago, the Voting Rights Act of 1965 was enacted. It was a landmark achievement for African-Americans in their struggle to regain voting and other constitutional rights taken from those residing in the former Confederate states between 1890 and 1910 when the states revised their constitutions and enacted other laws to discriminate against Black voters.[1] The barriers established to prevent southern Blacks from exercising their civil rights were strong and varied. In many states, the right to vote was denied outright or was subject to myriad regulations and requirements that prevented even educated Blacks from registering successfully.[2] Economic intimidation and physical violence kept many Blacks from making an

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1. *See generally* STEVEN F. LAWSON, BLACK BALLOTS, VOTING RIGHTS IN THE SOUTH, 1944–1969, Ch. 1 (1976). The 1965 Act focused on Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia, and West Virginia. For Arkansas actions, see Judith Kilpatrick, *(Extra)Ordinary Men: African-American Lawyers and Civil Rights in Arkansas Before 1950*, 53 ARK. L. REV. 299, 354–56 (2000).

2. The existence of the "poll tax" in most Southern states kept the poor of both races from registering to vote. LAWSON, *supra* note 1, at 55–56. Assuming the potential voter was able to pay the poll tax, literacy tests also were the law. Administered unfairly, they kept the number of Black voters low. *Id.* at 87–88 (reporting on one college graduate who failed the test when she "omitted the word 'more' in reciting the preamble of the Constitution from memory").

effort to register, even where it was technically allowed.[3] The federal government provided little help. Progress toward improved conditions was slow. Thousands of ordinary people, most of them Black, labored, fought, and suffered violence and death to gain the unfettered right to vote.

Many of those most involved in this effort have since died. The stories of the most well-known personalities, Roy Wilkins, Whitney Young, and Martin Luther King, Jr., have been related by the men themselves or told in biographies by others.[4] These men were not the entire story, however. If they might be likened to the generals in a war, then there were hundreds of lieutenants who worked behind the headlines.[5]

Wiley Austin Branton was unique in this second group. Although he worked among the acknowledged African-American leaders and was respected by them, he was never really one of them. He established a long-term working relationship with the National Association for the Advancement of Colored People (NAACP),[6] but he was not "its man." This independence let him avoid the rivalries among the Black organizations, yet provide the intermediation that allowed the national groups to work together for a critical period of time in the early 1960s. Wiley Branton reached employment heights shared by few other African-Americans, yet he never lost the sense that service in a cause was its own reward.[7]

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3. *Id.* at 97–98.

4. *See, e.g.*, ROY WILKINS & TOM MATHEWS, STANDING FAST: THE AUTOBIOGRAPHY OF ROY WILKINS (1982) (telling of his work with the National Association for the Advancement of Colored People, the oldest existing civil rights group); TAYLOR BRANCH, PARTING THE WATERS: AMERICA IN THE KING YEARS, 1954–63 (1988) (relating the history of Martin Luther King, Jr. and his Southern Christian Leadership Conference) [hereinafter BRANCH 1]; TAYLOR BRANCH, PILLAR OF FIRE: AMERICA IN THE KING YEARS, 1963–65 (1998) (relating the history of Martin Luther King, Jr. and his Southern Christian Leadership Conference) [hereinafter BRANCH 2]; NANCY J. WEISS, WHITNEY M. YOUNG, JR. AND THE STRUGGLE FOR CIVIL RIGHTS (1989) (focusing on the National Urban League); JOHN LEWIS & MICHAEL D'ORSO, WALKING WITH THE WIND: A MEMOIR OF THE MOVEMENT (1998) (describing his experiences with the Student Non-Violent Coordinating Committee); AUGUST MEIER & ELLIOTT RUDWICK, CORE: A STUDY IN THE CIVIL RIGHTS MOVEMENT, 1942–1968 (1973) (relating the history of revitalization by James Farmer of the Congress of Racial Equality).

5. *See, e.g.*, ANDREW YOUNG, AN EASY BURDEN (1996) (relating his work with the Southern Christian Leadership Council and Dr. Martin Luther King, Jr.).

6. Document regarding the NAACP Involvement of Wiley A. Branton (undated) (on file with author) (stating that he had joined the organization while a teenager and become a life member while living in Washington, D.C., with continuous activities with the group in between).

7. Branton had role models for public service. His grandfather, J.A. Wiley, was a charter member of the Pine Bluff Chapter of the NAACP, begun in 1918, and appeared regularly in the records as a continuing member thereafter. Application for Charter of Pine Bluff, Ark., Branch of the National Association for the Advancement of Colored People (Nov. 28, 1919), *in* PAPERS OF THE NAACP, Part 1, G13, Branch Files, Pine Bluff, 1917–1922, at 4 (on file with the Library of Congress); Membership Report (June 14, 1930), *in* PAPERS OF THE NAACP, Part I, G13, Branch Files, Pine Bluff, 1928–1930 (on file with the Library of Con-

Branton believed strongly in the value of the vote as a vehicle for self-determination and equality for his race. He had good reason for this belief. Branton was born in Pine Bluff, Arkansas, a part of the segregated South, in 1923. As he grew up, he was barred from attending the same schools as the white children with whom he played in his integrated neighborhood.[8] He and his family could not eat in white-owned restaurants.[9] When Branton went to the movies, he was required to sit in a segregated balcony.[10] When he began college, he could not attend the University of Arkansas.[11] In 1943, at the age of 20, Branton joined the Army to serve his country in the battles of World War II.[12] Even at war, there was segregation.[13] These and other restrictions were mandated by state and federal laws enacted by white officials and legislators who had been elected by the voting public. Branton knew that if Blacks were allowed to vote without hindrance, they could wield significant power.

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gress); Letter from W.B. Leloman, President, Ark. State Federation of Colored Women's Clubs, to NAACP (Jan. 10, 1935), *in* PAPERS OF THE NAACP, Part I, G13, Branch Files, Pine Bluff, 1935–1936 (on file with the Library of Congress); Letter from A.M. Parker, Secretary Ark. State Federation of Colored Women's Clubs, to Mr. White (Jan. 22, 1938), *in* PAPERS OF THE NAACP, Part I, G13, Branch Files, Pine Bluff, 1937–39 (on file with the Library of Congress).

Later, Wiley Branton's grandmother, Effa Stuart Wiley, served on the Executive Committee of the Women's Auxiliary. Letter from J.J. Black, Branch Secretary, to Miss Dora L. Alston, NAACP (May 12, 1928), *in* PAPERS OF THE NAACP, Part I, G13, Branch Files, Pine Bluff, 1924–1928 (on file with the Library of Congress). In 1930 Wiley Branton's Aunt Julia and Uncle Joe Wiley became members. *See* Membership Report, *supra*, at 1929–1930. His mother, Pauline W. Branton, and Uncle Frank Wiley joined in 1937. *See* Membership Report, *supra*, at 1937–1939 (on file with the Library of Congress).

8. Wiley A. Branton, *Post-War Race Relations in Pine Bluff*, *in* LEGAL PAPERS OF WILEY A. BRANTON, at 4 (on file with author) [hereinafter WAB Pine Bluff Essay]. This was still the case after World War II and would not begin to change until after the United States Supreme Court decision in *Brown v. Board of Education*, 347 U.S. 483 (1954).

9. WAB Pine Bluff Essay, *supra* note 8, at 7–8.

10. Kenneth L. Adelman, "You Can Change Their Hearts," THE WASHINGTONIAN, Mar. 1988, at 107, 109; WAB Pine Bluff Essay, *supra* note 8, at 8 (noting that some theatres refused to admit Blacks at all). Even the drive-in theatre was no exception. At first, Blacks were not admitted at all. Later, they were admitted but could not use the restrooms. When some White patrons complained about seeing Blacks seated in cars next to them, Blacks were again prohibited from attending. *Id.* at 9.

11. Guerdon D. Nichols, *Breaking the Color Barrier at the University of Arkansas*, 27 ARK. HIST. Q. 3, 15 (1968) (stating that the university was integrated on February 2, 1948); *see infra* note 25, regarding Branton's involvement with that event.

12. Enlisted Record and Report of Separation Honorable Discharge, National Archives and Records Administration, National Personnel Records Center, St. Louis, Missouri (on file with author).

13. Adelman, *supra* note 10, at 110.

In 1940 it was estimated that only five percent of Blacks were able to vote in the eleven states of the former Confederacy.[14] In 1944, while Branton was still in military service, the United States Supreme Court decided the case of *Smith v. Allwright*,[15] which culminated years of lawsuits by the NAACP for voting rights.[16]

In *Allwright*, the Supreme Court held that the selection of Democratic candidates in the state of Texas involved application of state law and violated the constitutional rights of Blacks who were not allowed to participate in the Democratic Party.[17] If party primaries were not treated as part of the states' governing process, subject to constitutional and federal franchise law, then thousands of eligible voters barred from party membership were effectively denied the franchise.[18] This decision reversed the court's prior position, which had held that political parties were private associations that could not be forced to admit Blacks.[19]

The *Allwright* decision opened the door but it did not immediately dissolve decades of discrimination that kept Blacks from voting. Southern states and local political organizations immediately acted to subvert, avoid, or defy the Court's decision.[20] In Arkansas, for example, where the Democrats exerted authority over primaries in the same manner as in Texas, immediate reactions of white political figures were negative.[21]

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14. LAWSON, *supra* note 1, at 22.

15. 321 U.S. 649 (1944).

16. *See, e.g.*, Nixon v. Herndon, 273 U.S. 536 (1927); Nixon v. Condon, 286 U.S. 73 (1932); *see also* QUIET REVOLUTION IN THE SOUTH: THE IMPACT OF THE VOTING RIGHTS ACT, 1965–1990, at 22 (Chandler Davidson & Bernad Grofman, eds. 1994) (noting that the NAACP was "the main organization through which the laws preventing black voting were attacked").

17. 321 U.S. at 664–65. The Court was convinced by evidence demonstrating that selection of Democratic candidates in the state of Texas primary was controlled by state law, even though performed by a private association, and thus was state action. *Id.*

18. *Id.* at 663–64.

19. Grovey v. Townsend, 295 U.S. 45 (1935).

20. *See, e.g.*, LAWSON, *supra* note 1, at 49.

21. C. Calvin Smith, *The Politics of Evasion: Arkansas' Reaction to Smith v. Allwright, 1944*, 67 J. NEGRO HIST. 40, 45 (1982). In addition to rhetorical challenges, the State Democratic Committee appointed a committee of lawyers to study the decision and recommend methods for evading compliance. *Id.* at 46. The first effort was to require a loyalty oath that eliminated anyone who had ever voted for Republican candidates in past elections. *Id.* A second ploy was to allow nonmembers to vote in Democratic primaries but continue to deny them membership in the party and, thus, any participation in the selection of party candidates. *Id.* at 47. A third action required nonmembers to "agree to support the principles and laws outlined in the 1874 Arkansas Constitution," which instituted segregation within the state. *Id.* Two bills were promulgated in the state legislature that would continue the pre-Allwright status quo by other means. *Id.* at 48. Passage of these measures led to multiple pre-election elections and such electoral chaos that a newspaper editorial stated "if Negroes are interested in laughing at white people, there is a fine opportunity currently available." *Id.* at 49.

When Wiley Branton returned to Pine Bluff after his military discharge in 1946, he had been politicized by the experience.[22] He was determined to work for change in the South. Branton immediately joined the local NAACP branch and became involved with voting and other civil rights efforts.[23] This led to his participation in a voter registration drive that resulted in Branton's arrest for violating a state statute that prohibited the use of sample ballots to teach people how to vote.[24] This first effort to expand voting rights as an ordinary citizen is described in Part I.

During this same period, Branton participated in successful action to integrate the University of Arkansas through the admission of his friend, Silas Hunt, another war veteran, to the University's School of Law in 1948.[25] These and other experiences resulted in Branton's decision to become a lawyer himself. In 1953, Branton became the third Black graduate of the University's law school.[26]

Wiley Branton became a lawyer when civil rights efforts were becoming front-page news across the country. Segregation limited his law prac-

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22. Adelman, *supra* note 10, at 110. This was a common reaction at the time. In Arkansas, there were at least two organizations created by Black soldiers following the war—the Veterans Good Government Association in Little Rock, JOHN A. KIRK, REDEFINING THE COLOR LINE, BLACK ACTIVISM IN LITTLE ROCK, ARKANSAS, 1940–1970, 31 (2002), and the Veterans and Citizens League for Better Government in Pine Bluff. *Democrat Vote Stuns Arkansas*, CHIC. DEFENDER, Nov. 29, 1947 (noting that all but one of the candidates supported by this group won office).

23. Interview of Wiley Austin Branton with Steven Lawson, 51, Oral History Research Office, Eisenhower Library, Columbia University (October 1970) (on file with author) [hereinafter WAB 1970 Interview].

24. Sec. 20 of Act 123 of 1935, codified as Sec. 4873, Ch. 55, Pope's Digest, Vol. 1, Statutes of Ark. 1393 modified as Ark. Code Ann. § 7-1-103(17).

25. Interview by William A. Elwood with Wiley A. Branton, The Civil Rights Lawyers Documentary Project, University of Virginia 103–04 (July 15, 1987) (on file with author) [hereinafter WAB 1987 Interview]. Branton stated that the action was taken when Governor Ben Laney put pressure on Arkansas AM&N College, the state's Black institution of higher education, to begin offering graduate degrees. *Id.* The pressure was an effort to provide graduate education for Blacks that would avoid integration of the University of Arkansas. *Id.* At a meeting Laney attended, Branton stated that he would register for a degree in business administration at the university and would sue if he were not admitted. *Id.*

Publicity about Branton's declaration pushed the university into announcing a plan for integration that would begin with graduate schools in February 1948. To test the plan, Branton talked his AM&N classmate, Silas Hunt, into going with him to attempt registration. Branton would try first to register in the undergraduate college. If he was denied, then Hunt would apply to the law school. If both were denied, Branton would sue for admission and Hunt would go on to the University of Indiana where he had already been admitted to the school of law. A suit wasn't necessary. Although Branton was denied admission, Hunt was admitted. *Id.*

26. *Id.* at 102 (noting that he actually was admitted to the practice of law in 1952, by virtue of a veteran's preference that allowed him to take the bar exam after accumulating a certain number of law school credits).

tice.[27] He found his clientele almost exclusively from members of his race, as had earlier Black lawyers.[28] When he traveled to other courts within Arkansas, there were few hotels where he could find lodging.[29] He was required to stay with friends or drive back to Pine Bluff each night, sometimes hundreds of miles.[30] These limitations also helped, in a way. During the next ten years, Wiley Branton was one of the few Black lawyers in the South who represented clients on civil rights issues.[31] This provided him with opportunities to pursue that work on, first, a regional, then a national, scale.

Despite these barriers, Branton's compassion and intelligence made him a good lawyer,[32] and his practice was a successful one. The year after he opened his law office, in 1953, the NAACP asked him to serve as an Assistant Special Prosecutor in the trial of a white man for the rape of a seven-year-old Black girl, which resulted in conviction.[33] Branton soon be-

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27. In one of his earliest cases, described *infra* note 33 and accompanying text, the judge asked the all-White jury panel whether they would be biased by the fact that the State of Arkansas was being represented by a "colored lawyer." Wiley A. Branton, Speech addressed to American Association of Law Schools' program: Access 2000, The Challenge to Assure Diversity in the Legal Profession 1 (Oct. 1988) (on file with author) [hereinafter WAB Access 2000 Speech] (continuing "[a]nd then he reared back, and said 'of course, he's a graduate of our own state university.' And then he hunched his shoulders and leaned forward and said '[b]ut he's a Negro.'").

28. Kilpatrick, *supra* note 1, at 309, 311.

29. WAB 1987 Interview, *supra* note 25, at 119; WAB Access 2000 Speech, *supra* note 27, at 10.

30. WAB 1987 Interview, *supra* note 25, at 119; WAB Access 2000 Speech, *supra* note 27, at 10.

31. In 1950 the U.S. Census showed 186 Black lawyers in the eleven former Confederate states. 1950 U.S. Census, Vol. II, Characteristics of the Population. In his book EMANCIPATION, THE MAKING OF THE BLACK LAWYERS, 1844–1944, 634–36 (1993), J. Clay Smith, Jr., included 1940 U.S. Census figures revealing only 156 Black lawyers in those eleven states, so there had not been much change in ten years. In Arkansas and the two contiguous states, there were only twenty lawyers when Branton began his practice. 1950 U.S. Census, Vol. II, Characteristics of the Population, pp. 4–183, 18–204, and 24–180.

In 1961, when Thurgood Marshall asked Branton to go to Jackson, Mississippi, to help the "freedom riders" of the Congress of Racial Equality, the numbers had not changed significantly. Interview by James Mosby with Wiley A. Branton, The Civil Rights Documentation Project, Moorland-Spingarn Research Library, Howard University 29–30 (1969) (on file with author) [hereinafter WAB 1969 Interview]. Only three of the four lawyers Branton knew about would work on civil rights cases. *Id.* If we assume that some others in the group of twenty also would not work on civil rights cases, then the picture looks even bleaker.

32. Eulogy for Wiley Austin Branton, Sr. by Vernon E. Jordan, Jr., 3–4 (Dec. 19, 1988) (on file with author) (describing Branton's attitude toward his work).

33. Watt v. State, 222 Ark. 483, 261 S.W.2d 544 (1953). The Arkansas Conference of NAACP Branches received the Thalheimer Award from the national NAACP for its conduct in pursuing the matter. 1958 Branton Biography (resume), Exhibit 10, attachments to letter from Wiley Austin Branton to Roy R. Russo, Cohn and Marks, Washington, D.C. (May 9, 1985) (on file with author).

came involved in other cases that attracted attention within and without the state.[34] That a young lawyer, recently admitted to practice, would handle cases of this import so quickly demonstrates the dearth of available counsel for these matters. That he was successful is an indication of his legal prowess.

Branton's most notable representation was the case of *Cooper v. Aaron*.[35] In February 1956[36] he sued the Little Rock School Board on behalf of thirty-three Black high school students and their parents for the Board's failure to implement a court-approved desegregation plan following the United States Supreme Court's 1954 decision in *Brown v. Board of Education*.[37] The U.S. Supreme Court issued its decision in Branton's case on September 12, 1958, ordering the school board to implement its court-approved integration plan immediately.[38] Between the filing of the Little Rock suit and its ultimate conclusion in favor of Branton's clients, local politics and white resistance created a federal constitutional crisis that tested the *Brown* decision and the authority of the federal government.[39] The refusal of Arkansas Governor Orville Faubus to obey federal court orders requiring Central High School to admit nine Black students forced President Eisenhower to send the 101st Airborne Division to enforce the orders.[40] During that action the Black students were escorted to classes by armed troops.

The Little Rock events, covered intensively by the national media, gave Branton a national reputation, particularly within Black communities.[41]

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34. See *infra* notes 35–40 and accompanying text; *see, e.g.*, Payne v. Arkansas, 226 Ark. 910, 295 S.W.2d 312 (1956) (successfully appealing another death sentence, having lost at trial, to the United State Supreme Court, 56 U.S. 560, 78 S. Ct. 844 (1956); Wabbaseka Sch. Dist. v. Johnson, 225 Ark. 982, 286 S.W.2d 841 (1956) (obtaining back pay and reinstatement for a Black schoolteacher unfairly fired just before the school year began); Alford v. State, 223 Ark. 330, 266 S.W.2d 804 (1954) (successfully appealing a death sentence imposed after a trial in which two white lawyers represented the defendant)).

35. 358 U.S. 1 (1958).

36. *Little Rock: The Chronology of a Contrived Crisis*, *in* PAPERS OF THE NAACP, Part III, A98, Desegregation, Schools, Arkansas, Little Rock-Central High, 1956–1957, at 4 (on file with the Library of Congress).

37. 347 U.S. 483 (1954).

38. *Cooper*, 358 U.S. at 17. Thereafter, Governor Faubus closed the Little Rock public schools, preventing any students from attending for the next two years. ROY REED, FAUBUS: THE LIFE AND TIMES OF AN AMERICAN PRODIGAL 245, 255–56 (1997).

39. *Cooper*, 358 U.S. at 4. An excellent review of the events may be found in TONY FREYER, THE LITTLE ROCK CRISIS: A CONSTITUTIONAL INTERPRETATION (1984).

40. The troops were sent in on September 25, 1957, and remained until November 27, when they were replaced by federalized Arkansas National Guardsmen. *Cooper*, 358 U.S. at 12. See LAWSON, *supra* note 1, at 204, for a general description of these events.

41. *See, e.g.*, *Judge Bars Stay on Segregation for Little Rock*, N.Y. TIMES, June 24, 1958, at 1; *Ask Court Act on Little Rock*, N.Y. J. AM., June 26, 1958, at 1; *Special Supreme Court Little Rock Hearing Asked*, CHIC. SUN-TIMES, June 27, 1958, at 2 (regarding Branton's

Thus, Branton was well-known and respected in civil rights circles by the time the Voter Education Project (VEP), a program to educate and register Southern Black voters, was proposed in 1962. Part II of the article traces Branton's work from 1962 to 1965, when he directed implementation of this unique regional effort.

Branton's success with the VEP led him to Washington, D.C., when Vice President Hubert H. Humphrey asked Branton to become Executive Director of President Lyndon B. Johnson's Council for Civil Rights. Part III focuses on Branton's tenure with the Council, where his civil rights efforts expanded to include implementation of the 1964 Civil Rights Act.

Branton went from the President's Council to the United States Department of Justice (DOJ) at the request of President Johnson. Part IV reviews his work within the DOJ, when he again made voting rights his primary focus as he aided in the implementation and enforcement of the 1965 Voting Rights Act.

Branton's successful career continued after he left the Department of Justice. He served as Executive Director of Washington, D.C.'s United Planning Organization (an anti-poverty effort) from 1967 to 1969.[42] He directed the civil rights efforts of the Committee on Community and Social Action for labor leader Walter E. Reuther's quixotic Alliance for Labor Action during the years 1969 to 1971.[43] Success followed Branton during years of private practice in Washington, D.C., from 1971 to 1976.[44] In 1976 he became Dean of Howard University's School of Law.[45] He left that position in 1982 to join the D.C. office of the mega-lawyer firm, Sidley & Austin.[46] Wiley Austin Branton died in 1988.[47]

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resort to the United States Supreme Court to vacate a District Court order granting the School Board a two-and-one-half-year stay on its integration plan); *Appeals Court Studies Delay in Integration in Little Rock*, ST. LOUIS POST-DISPATCH, Aug. 4, 1958, at 1 (reporting on the hearing in the 8th Circuit Court of Appeals on the same issue); and *Little Rock Waits New School Test*, CHIC. AM., Sept. 1959 (explaining the State of Arkansas' efforts to create new laws to delay full integration after schools were reopened). In 1959 Branton spoke about the case in Wisconsin, *Sounds Warning on Baiting of Minorities*, THE MILWAUKEE J., Oct. 19, 1959, at Part 1, and in Louisiana. *Branton Listed as Top Speaker*, THE TIMES-PICAYUNE, Sept. 6, 1959.

42. *UPO "Most Challenging" to New Director*, WASHINGTON AFRO-AMERICAN, Oct. 7, 1967, at 3.

43. *Branton Joins New Labor Alliance*, WASH. POST, July 15, 1969, at C3.

44. Letter from Wiley Austin Branton to West Publishing Company (Feb. 17, 1972) (on file with author) (noting formal name change of new firm).

45. Letter from James E. Cheek, President, Howard University, to Wiley Austin Branton (Nov. 30, 1977) (on file with author).

46. *The Profession; On the Move*, THE LEGAL TIMES, Feb. 11, 1985, at 3.

47. Susan Heller Anderson, *Wiley Branton, Early Desegregation Lawyer, Dies*, N.Y. TIMES, Dec. 17, 1988, at Obituaries; *Tribute to Howard University Law School Dean Wiley Branton*, 101st Cong., 1st sess. 4 (1989).

Throughout his life Branton continued to speak about his experiences and to urge African-Americans to participate in the election process and in other areas of civic life.[48] Despite the titles given to his various positions, Branton was not the public focus in most of them. Rather, his personal and lawyering skills were best suited to "getting the job done" without excessive fanfare. His lack of any need to make headlines has resulted in his virtual disappearance from historic accounts of the momentous events of the 1960s.[49] This article is an effort to "set the record straight," as Branton might have said, by telling the story of his work in the struggle to obtain voting rights for Black Americans.[50]

To recapitulate, this article pulls together information about Wiley Branton's voting rights work, which formed a general theme throughout his career. Part I reviews his 1948 work as a nonlawyer in voter registration efforts of the NAACP in Pine Bluff, Arkansas, after the United States Supreme Court's 1944 decision in *Smith v. Allwright*. Part II follows his activities in creating and directing the largest voter registration effort in U.S. history, the Voter Education Project, during 1962–1965. Part III covers Branton's contribution, working under Vice President Hubert H. Humphrey in 1965, to the President's Council for Civil Rights, which began to coordinate the U.S. Government's various civil rights efforts following enactment of the Civil Rights Act of 1964. Finally, Part IV relates his involvement in efforts to implement the 1965 Voting Rights Act as a Special Assistant to Attorney Generals Nicholas deB. Katzenbach and Ramsey Clark during 1965–1967.

II. FIRST EFFORTS: THE 1948 VOTER REGISTRATION DRIVE, ARREST, AND CONVICTION

Branton's belief in the power of the vote was not unique. That belief was widespread. Throughout its history, the NAACP had spent a significant amount of its energies on voter registration drives.[51] President Harry S. Truman's 1946 Commission on Civil Rights, charged with determining

48. *See, e.g.*, Dorothy Gilliam, *Look for a Way Around Reagan's Budget Cuts*, WASH. POST, May 2, 1981, at B1 (including Branton statement that legal and voting rights should be key concerns when budget cuts were made).

49. For example, he is barely mentioned in most of the books cited *supra* note 4.

50. Letter from Mrs. Wylene Branton Wood to author (Mar. 27, 2002) (on file with author). Mrs. Wood recalled that "setting the record straight" was part of Branton's fundamental being. *Id.*

51. WILKINS & MATHEWS, *supra* note 4, at 109. As early as 1929, NAACP members were applauding the power of the vote. In a speech to those attending the 22nd Annual Convention of the NAACP (1929), which was broadcast live over radio, civil rights attorney Clarence Darrow stated that "[t]he Negro does have the weapon which he can use if he will. That is the vote . . . . Vote strictly to advance the interests of your race." *Id.*

what was needed to make equality a reality for all citizens, cited voting rights as an essential component for achieving basic civil rights for Black citizens.[52] Even President Eisenhower, not considered a particular friend to integration, was quoted as stating "[w]e must work for the abolition of restrictions remaining anywhere on the basic American right to vote."[53]

A. Voter Registration Efforts in Arkansas, 1946–1952

In 1946, when Branton returned to Pine Bluff after his military service, voting in Arkansas was theoretically available to Blacks, but the procedures to do so were burdensome. First, as was the case in other southern states, Arkansas had a poll tax, payment of which was required to cast a vote. That requirement can be stated simply, but it was not simple in practice. A potential voter was required to pay the tax each year and to retain the payment receipt for display before entering the voting booth at the next election, which might be almost a year away.[54] Even if one had the means to pay, and managed to keep track of the poll tax receipt over the period between its payment and election day, the choices of sharecroppers and farm laborers frequently were subject to coercion from white landowners.[55]

The second procedural knot for unsophisticated voters was Arkansas's ballot form. The paper ballot listed the names of all candidates for the various offices under the title of that office. A voter was required to cross out the names of all those for whom he or she was not voting, leaving the name of their selected candidate untouched.[56]

Arkansas's procedures were not the worst then in existence for Blacks. At least Blacks could vote. Wiley Branton was born and raised in a community where his educated middle-class family had been able to vote without hindrance.[57] His mother's family had been prominent residents of Pine Bluff

52. *Id.* at 200. The title of the Commission's report, "To Secure These Rights," would reappear as part of President Lyndon Johnson's voting rights efforts, in which Branton was involved.

53. LAWSON, *supra* note 1, at 144.

54. WAB Pine Bluff essay, *supra* note 8, at 20; *see also* Calvin R. Ledbetter, Jr., *Arkansas Amendment for Voter Registration Without Poll Tax Payment*, 54 ARK. HIST. Q. 134, 138 (1995) (demonstrating that the situation had not changed by 1964).

55. WAB Access 2000 Speech, *supra* note 27, at 7 (noting that they would buy blocks of receipts, hold those receipts until election day, then collect the workers and take them to polling places after telling them how to vote). In some instances, as Branton put it, the employers would "just put 'em on a truck or bus and . . . have them . . . physically walk through while somebody else marked the ballot." WAB 1987 Interview, *supra* note 25, at 101.

56. WAB 1987 Interview, *supra* note 25, at 101; WAB Access 2000 Speech, *supra* note 27, at 7.

57. WAB Pine Bluff essay, *supra* note 8, at 20. This was not unusual in the larger towns of the South. A. Stephen Stephan, *Changes in the Status of Negroes in Arkansas, 1948–50*, 9 ARK. HIST. Q. 43, 43 (1950) (stating that ". . . the Negro in Arkansas apparently votes to a

for several generations.[58] His father and paternal grandfather operated a taxicab company established in 1915 that was the first of its kind in town and was used by both Blacks and Whites.[59]

Branton recognized his privileged status and quickly joined the efforts of the local NAACP branch to educate and register other Blacks who did not have his advantages.[60] In the first elections after his return from the Army, Branton worked both on increasing Black voter registration and electing White mayoral candidate George Steed, having been impressed by Steed's "plea for 'good government.'"[61] Wiley Branton believed that Blacks and Whites should work together for the good of the community.[62]

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higher degree in cities than in rural areas, being most active politically in Little Rock and Pine Bluff."). In cities and towns, blacks often had no trouble either registering or voting. VERNON E. JORDAN, JR. & ANNETTE GORDON-REED, VERNON CAN READ! A MEMOIR 176 (2001) (writing about Georgia). It was in the rural areas where the white power structure prevented unfettered exercise of the franchise. *Id.*

58. Transcript of the Audio tape: Branton Family History by Sterling Branton 5 (June 1, 1995) (on file with author) [hereinafter Sterling Branton, Family History]. His mother had graduated from Tuskegee Institute and his maternal grandparents had long resided in Pine Bluff. His maternal grandfather had become prosperous through steady work as a railway repair shop foreman, a private contractor with the United States Postal Service, and judicious investments in real estate. Pine Bluff, like some other larger towns in the South, maintained fewer hard and fast rules about segregation, and Branton's parents and grandparents lived in a large house in a neighborhood with white families across the street. Telephone Interview with Sterling Branton (May 15, 2003) (on file with author). Branton and his siblings played with the neighborhood children of both races. *Id.* Secure in his place in that world, Branton was destined for a life of relative ease as manager and owner of the family's cab company had not World War II intervened. *Id.*

59. Wiley A. Branton, Draft of Remarks for Founder's Day Program at the University of Arkansas at Pine Bluff (April 27, 1975) (on file with author).

60. WAB Access 2000 Speech, *supra* note 27, at 7.

61. Letter from Wiley Austin Branton to the Editor, Pine Bluff Commercial (Nov. 4, 1980) (on file with author). This letter is an example of Branton's concern about setting the record straight. Branton continued to subscribe to the Pine Bluff newspaper after he left Arkansas and had noticed Steed's obituary. His letter, he said, was written because "[i]t is easy for people to forget the contributions that people make, particularly after the passage of time." *Id.* Branton noted that Steed had not only accepted Branton's help, but had attended every meeting arranged in the Black community, had treated Blacks with courtesy, and had not minded being called "George" by Branton. *Id.* As Branton stated, "[t]hese may seem like small things now but they meant a lot to me and my colleagues in 1946." *Id.*

Steed won and, in creating the first municipal park commission in Pine Bluff, carefully complied with the law by creating two commissions—one white and one black. Branton was named as Chair of the Black Commission and presented the names of other individuals from which Steed selected the remainder of the group. Steed also "saw to it that we received a fixed percentage of the revenue from the then recently installed parking meters," with which Branton's group was able to construct a field house and the first swimming pool available to Pine Bluff's Black citizens. *Id.*

62. WAB, Pine Bluff essay, *supra* note 8, at 22–23.

The 1948 primary elections involved the largest number of Black voters in Arkansas since the end of Reconstruction.[63] The winner of the Democratic Party's gubernatorial primary run-off was Sidney S. McMath, who was among a group of white war veteran candidates more liberal than the norm.[64] The Democratic Party's Old Guard membership, not liking the results, assumed there had been fraud at the polls. A grand jury investigation was instituted. Subpoenaed by investigators, Branton refused to speak about his registration efforts on the advice of his attorney.[65] He was immediately charged with violating section 4873 of the Arkansas Penal Code, which prohibited the duplication of election ballots "for the purpose of instructing voters how to vote."[66] The deed that resulted in Branton's arrest was making mimeograph copies of a list of offices to be filled and the names of the candidates for each of those offices. Branton then distributed the copies to a Black audience, along with pencils, and demonstrated the mechanics of voting.[67]

Branton was convicted. The case was appealed to the Arkansas Supreme Court on two grounds: that the papers he distributed were not "ballots" within the meaning of the statute, and that the statute was an unconstitutional restriction on free speech. Both arguments lost and his conviction was affirmed. In the only dissent, Chief Justice Griffin Smith stated that "[a] casual glance at the photographs [of the distributed papers] is sufficient to show there was no attempt to reproduce a ballot in the sense that the term is ordinarily used."[68] The United States Supreme Court refused to hear a further appeal.[69] Branton was fined $300.[70] Section 4873 remained on the

63. Stephan, *supra* note 57, at 43 (commenting that the exact number of black voters was not known, but the long-time president of the Arkansas Negro Democratic Association estimated it to be about 22,600).

64. *Id.* Civil rights were not an issue in the campaign. On becoming governor, however, McMath requested the legislature to submit a constitutional amendment to repeal the poll tax. The legislature failed to comply. McMath also advocated anti-lynching legislation, but could not get it introduced. *Id.* at 43–44.

65. WAB Access 2000 Speech, *supra* 27, at 7–8.

66. Sec. 4873, Ch. 55., Pope's Digest, Vol. 1, Statutes of Arkansas, at 1393 (1937). The pertinent portion of that section, which appears after a sentence on threatening or intimidating a voter and before a prohibition of handing out election materials at a voting place, states: "It shall be unlawful to print or distribute any ballots, outside of those ballots ordered for use in the election, for the purpose of instructing voters how to vote." *Id.*

67. *See* Branton v. State, 214 Ark. 861, 861–62, 218 S.W.2d 691 (1949) (stating that he showed those assembled at the meeting "how to vote").

68. *Id.* at 867–68, 218 S.W.2d at 693 (Griffin, J., dissenting).

69. Branton v. Arkansas, 338 U.S. 878 (1949).

70. WAB Access 2000 Speech, *supra* note 27, at 8 (recalling that the fine was paid by a collection within the Black community).

books until 1969,[71] although Wiley Branton apparently was the only person ever convicted under this statute.[72]

The kind of voter registration work in which Branton engaged in 1946 and 1948 was duplicated across the south.[73] Between 1947 and 1952, the number of registered Black voters increased from twelve to twenty percent of those eligible.[74] As a comparison, the percentage of registered white southern voters averaged sixty-five percent in 1952.[75] In the years following, Black voter registration efforts continued, but the post-war energy flagged and progress was slow. White resistance remained strong.[76]

B. Voting Rights in the Eisenhower Administration, 1953–1961

Between 1952 and 1960, there were two efforts by the Eisenhower administration to enact civil rights bills. They were a response to pressure from three directions. First, the Leadership Conference on Civil Rights, comprised of more than fifty national civil rights groups,[77] lobbied the President, members of Congress, and the public.[78] Second, violence against Blacks took a well-publicized turn when two Mississippi men were killed for engaging in voter registration, and teenager Emmett Till was murdered,

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71. At that time, statutes relating to elections were rearranged, renumbered, and modified. During this process the language quoted above was eliminated. *See* sec. 4873, Article 11, Sec. 4 (Misdemeanors), sub-section (cc). The current section is Ark. Code Ann. § 7-1-103(17) (Michie 1987).

72. *Throw Out a Lifeline and Repeal Jim Crow—Again*, ARK. DEMOCRAT-GAZETTE, June 14, 1994, at 6B.

73. JOHN DITTMER, LOCAL PEOPLE, THE STRUGGLE FOR CIVIL RIGHTS IN MISSISSIPPI 28 (1994) (noting that, usually, voter registration drives were "centered on the small black middle class. Not until the civil rights movement of the 1960s would activists attempt to register and organize the hundreds of thousands of black sharecroppers and unskilled urban workers.").

74. ROBERT MANN, THE WALLS OF JERICHO: LYNDON JOHNSON, HUBERT HUMPHREY, RICHARD RUSSELL, AND THE STRUGGLE FOR CIVIL RIGHTS 152 (1996).

75. *Id.*

76. LAWSON, *supra* note 1, at 140 (noting that efforts to pass antipoll-tax legislation in the United States House of Representatives was thwarted by the southern stranglehold on the Senate).

77. *Id.* at 144 (commenting that the Leadership Conference evolved out of earlier unsuccessful efforts toward the creation of a federal Fair Employment Practices Commission). Members included the NAACP, Walter Reuther's United Auto Workers, and the B'nai B'rith Anti-Defamation League. *Id.*

78. *Id.* 144–46. Among the Leadership Conference's suggestions was strengthening of the Civil Rights Division of the Department of Justice (DOJ) so that existing voting law might be enforced. *Id.* at 146. Because it could not obtain indictments from local grand juries against local registrars for violating the law, the DOJ spent its energies working with local white leaders in hopes that registration procedures would be changed voluntarily. *Id.* These efforts were seldom successful. *Id.* (noting that "officials [of Forrest County, Mississippi] often asked black applicants such questions as, 'how many bubbles are in a bar of soap?'").

also in Mississippi.[79] Third, President Eisenhower's 1955 heart attack and the lack of an obvious replacement in the 1956 election compelled the Republican Party to consider the importance of additional Black voters.[80]

A first civil rights bill, drafted by Attorney General Herbert Brownell in 1956, proposed creating a Civil Rights Commission (Title I), strengthening the Civil Rights Division of the DOJ (Title II), and giving the DOJ authority to request court injunctions for violations of civil rights (Title III), particularly the right to vote (Title IV).[81] While there were differences of opinion within the administration over its content, the intact bill went to Republican legislators for introduction.[82] The bill passed the House of Representatives but was stalled in the Senate by rules and senatorial machinations that prevented its consideration before the 1956 presidential elections.[83]

The Republican effort paid off. Although the bill was unsuccessful, the mere effort resulted in increased Black votes for Eisenhower.[84] Buoyed by this result, Eisenhower made it clear that he was in full support of the bill.[85] It was reintroduced. Threatened with even stronger measures if they attempted to filibuster the civil rights bill, Southern Democrats in the senate worked to "weaken [the bill] by deleting some sections and attaching crippling amendments to others."[86]

Opponents most wanted to eliminate Title III, which would allow the DOJ to obtain injunctions against individuals for *any* civil rights violations. Southerners were willing to live with some action regarding voting rights but managed, with the help of western senators,[87] to add a provision that would provide for a jury trial for any alleged violation, thus keeping the

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79. *Id.* at 148.

80. *Id.* at 150.

81. *Id.* at 153. Roy Wilkins asserted that the 1957 Act resulted from the efforts of the NAACP's Clarence Mitchell, who worked with Attorney General Herbert Brownell to develop "a package of civil rights proposals." WILKINS & MATHEWS, *supra* note 4, at 234.

82. LAWSON, *supra* note 1, at 153–56.

83. *Id.* at 159–60. Evidence of the type of actions that could be used in this regard came from Mississippi Senator James Eastland, who boasted in early 1956 "[y]ou know, [] the law says the committee has got to meet once a week. Why, for three years I was chairman [of the Judiciary Subcommittee on Civil Rights], that committee didn't hold a meeting . . . for years I carried those bills around in my pockets everywhere I went and every one of them was defeated." *Id.* at 157.

84. *Id.* at 162.

85. *Id.* at 165.

86. *Id.* at 167.

87. *Id.* at 189. Political wheeling and dealing to exchange votes on a bill to dam the Snake River in Hell's Canyon between Oregon and Idaho also won some votes for opponents. *Id.* at 190. Other votes for a compromise came through the support of organized labor. *Id.* at 191 (stating that labor leader John L. Lewis, who had once been fined for ignoring a federal injunction, put pressure on senators from mining states).

decision of guilt with local jurors.[88] President Eisenhower backed down and "clarified" his position, stating he did not believe the government could legislate conduct except in the voting rights arena.[89] Title III was eliminated. The remaining parts of the 1957 Civil Rights Act were signed into law by President Eisenhower on September 9.[90] Black reactions were mixed,[91] while the segregationist South considered it a victory.[92]

The government did little to enforce the Act during the next three years. Immediately after its passage, Little Rock, Arkansas, exploded over the issue of school integration, [93] and Eisenhower was distracted. Herbert Brownell, who drafted the original Act, stepped down as Attorney General.[94] He was replaced by William Rogers,[95] who took the position that the DOJ would prosecute only the most egregious violations and, otherwise, depend on the use of "friendly persuasion" to remedy civil rights complaints.[96] In other words, the federal government would not use its new powers with regard to voting rights unless a case was foolproof.

Only three cases met that standard before 1960.[97] Two were lost at the trial level when local federal judges questioned the validity of the 1957 Act or its application,[98] thus requiring time-consuming and expensive appeals to the United States Supreme Court.[99] The third case was a victory for the DOJ in the trial court, but it, too, was appealed to the Supreme Court, this time by the defendants.[100] These suits did little to persuade Southern officials to change the voting situation for Blacks in the South.[101]

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88. LAWSON, *supra* note 1, at 169; CARL M. BRAUER, JOHN F. KENNEDY AND THE SECOND RECONSTRUCTION 10 (1977).

89. LAWSON, *supra* note 1, at 180.

90. *Id.* at 199.

91. *Id.* at 196 (citing the *Afro-American* newspaper as stating "[a] half-loaf is better than no bread at all" and the *Chicago Defender* as calling that position "appeasement").

92. BRAUER, *supra* note 88, at 10 (reporting "[t]he ability 'to confine the Federal invasion of the South to the field of voting and keep the withering hand of the Federal Government out of our schools' was to Georgia's Richard Russell, the leader of the Southern forces, his 'sweetest victory' in twenty-five years as a Senator").

93. *See supra* notes 35–40 and accompanying text; LAWSON, *supra* note 1, at 204.

94. LAWSON, *supra* note 1, at 205.

95. *Id.* at 205.

96. *Id.* (noting that "the expectation was that once the government won a few landmark cases, most southerners would recognize the right of Negroes to vote").

97. *Id.* at 206.

98. *Id. U.S. v. Raines*, 362 U.S. 17 (1960), involving Terrell County, Georgia, was filed in September 1958. *Id.* 206–07. The federal trial court declared the Act unconstitutional. *Id.* at 207. The second suit, *U.S. v. Alabama*, 362 U.S. 602 (1960), involved Macon County, Alabama, and was filed in early 1959. *Id.* at 209. This time the trial court held the Act did not apply because it named the state as defendant, rather than any particular "persons." *Id.* at 210.

99. *Id.* at 207, 210.

100. LAWSON, *supra* note 1, at 211. *United States v. Thomas*, 362 U.S. 58 (1960), set in

A strengthened liberal wing in Congress and recognition by political parties that a focus on civil rights would win Black votes led to an agitation for stronger laws by both political parties. Proposed bills came from a group of liberal congressmen and senators, and from Majority Leader Lyndon Johnson.[102] In response, the White House submitted its own proposal.[103] In the end, there was compromise. Instead of an omnibus civil rights bill, the final product again focused on voting rights.[104]

The 1960 Civil Rights Act made two minor improvements to the law: it required state officials to "preserve federal election records for two years and make them available to the attorney general for inspection [upon subpoena]," and it provided for the appointment of federal referees where voter discrimination was documented in specific detail.[105] The additional judicial process was cumbersome[106] and continued to rely on "enlightened" Southern judges to support the process, despite the DOJ's recent experience.[107]

C. Voting Rights in the Kennedy Administration, 1961–1963

The election of John F. Kennedy as President in 1960 offered new hope for Blacks. During his campaign, Kennedy made numerous statements

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Washington Parish, Louisiana, was the only one in which the federal district judge initially supported the law. *Id.* at 211.

101. *Id.* at 216–17. The DOJ's action may be contrasted with that of the new Civil Rights Commission that, although it began slowly, forged new paths toward highlighting the repressive conditions by using public hearings to educate the nation. *Id.*

102. *Id.* at 223. Johnson's bill would have "established an independent conciliation service to mediate racial disputes in tense communities, extended the life of the Civil Rights Commission for two years, and provided for federal investigation and penalties in bombing cases." *Id.* It also gave the DOJ authority to subpoena documents. *Id.* The liberals' bill provided funds for school systems to integrate, gave the Department of Education and Welfare authority to create desegregation plans for communities that would not move on their own, revived the 1957 bill's Title III that gave DOJ authority to sue on behalf of individuals whose civil rights had been violated, and endorsed the Supreme Court's *Brown* decision. *Id.*

103. *Id.* at 233. The administration's proposal was limited to procedural changes once the DOJ had obtained a court injunction against voting officials. The proposed law then would give the judge authority to find a "pattern and practice" whereupon the judge could appoint a referee to determine if the charges were accurate. If so, the rejected voters were required to attempt registration a second time (giving the state another chance to follow the law) before the court would make a final decision against the state defendants.

104. 86 P.L. 449, 74 Stat. 86.

105. LAWSON, *supra* note 1, at 405 n.124; *see also* BRAUER, *supra* note 88, at 11 (commenting that "it did nothing significant about school desegregation or about the apartheid practices that sit-ins protested while the filibuster droned on").

106. LAWSON, *supra* note 1, at 233–46.

107. *Id.* at 249. One observer believed such reliance a futile hope, stating, "[j]udicial decisions here . . . are not likely to make any major departures from the norms of the community." *Id.*

indicating support for new civil rights laws.[108] He also ran his campaign in a way that demonstrated great sensitivity to the feelings of black citizens. For example, he would not participate in segregated meetings.[109] These actions made him popular with the Black media and Black citizens, whose votes are considered to have provided the margin of Kennedy's win.[110]

Disappointingly, President Kennedy did not propose any civil rights legislation in 1961.[111] Instead, he used executive orders to support civil rights actions, hoping to avoid confrontations with powerful Southern senators.[112] For example, "[i]n March 1961 President Kennedy issued an executive order [, E.O.10925,] . . . forbidding racial discrimination in employment by firms doing business under federal government contracts and subcontracts."[113]

The DOJ, under Attorney General Robert Kennedy, used the 1957 and 1960 Civil Rights Acts to file fourteen voting rights suits by the end of 1961, more suits than Eisenhower's DOJ had filed in three years.[114] Kennedy's Justice Department, however, followed the Eisenhower model, limiting its litigation to the worst situations and attempting to resolve violations of the Acts by developing relationships with local officials in an effort to persuade them informally toward change.[115]

Like the Eisenhower Administration, the Kennedys initially failed to understand how tenaciously protective of its privileges the Southern white power structure would be and how much support that attitude would receive from Southern federal judges. The Kennedys would learn, as would the entire country, when local reactions to new civil rights efforts became fodder for the national media.

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108. BRAUER, *supra* note 88, at 42 (commenting that Kennedy "waged a campaign in which the elimination of racial discrimination became . . . a powerful magnet for black votes and simultaneously raised expectations of what a President might accomplish in the civil rights area").

109. *Id.* at 46 (also noting that "several blacks, including Andrew Hatcher, who worked under Pierre Salinger in press relations, traveled with the Kennedy party and impressed black newsmen with the importance of the role they played"). The action having the most impact was Kennedy's telephone call to Mrs. Martin Luther King, Jr., to express sympathy when her husband was jailed in Georgia. *Id.*

110. *Id.* at 58–59.

111. MANN, *supra* note 74, at 306.

112. CHARLES V. HAMILTON, THE BENCH AND THE BALLOT, SOUTHERN FEDERAL JUDGES AND BLACK VOTERS 81–83 (1973).

113. *Id.*

114. MANN, *supra* note 74, at 306.

115. *Id.* at 307 (noting that Assistant Attorney General Burke Marshall spent much of his time working with Southern officials, "establish[ing] important lines of communication with political and community leaders throughout the south").

III. THE VOTER EDUCATION PROJECT

By 1962 Wiley Branton had been a practicing lawyer for ten years. His work primarily was the standard legal fare of a small town lawyer, *e.g.*, wills and trusts, criminal defense and real property transactions.[116] Branton's interest in civil rights, whetted by his organizing work with the NAACP in the late 1940s, had continued. He remained active in the NAACP[117] and used his legal skills in a number of important cases. His 1953 service as a special prosecutor was described earlier.[118] In 1954 he was able to reverse a death sentence imposed on a Black defendant for the rape of a white woman on the ground that the trial court erred in failing to properly instruct the jury.[119]

In 1956, in addition to handling the Little Rock case of *Aaron v. Cooper*, described earlier,[120] Branton began a second case that would take him to the United States Supreme Court and would, four years later, result in reversing the murder conviction of a Black man on grounds that his confession was coerced.[121] In a third 1956 case, Branton successfully obtained damages for a black school teacher who was wrongfully denied a contract renewal by the school district.[122]

In 1957 Branton was able to save an elderly black woman's farm by proving that the lender had charged usurious interest on a crop loan, thus convincing the court to reverse an adverse judgment.[123] In 1961, Branton was asked by Thurgood Marshall of the NAACP Legal Defense and Education Fund, with whom he worked during the Little Rock case, to represent a

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116. Branton estimated that seventy-five percent of his work was civil law and twenty-five percent involved criminal law. Personal Data Questionnaire for Wiley A. Branton 5 (undated) (on file with author). About eighty percent of his time during those years involved state court matters, fifteen percent federal court, and five percent in other courts. *Id.* at 7.

117. Branton became State Director of Branches in 1948. He was a member of the Pine Bluff Branch Executive Board as early as 1953. Letter to Gloster B. Current, Director of Branches (Oct. 31, 1953), *in* PAPERS OF THE NAACP, Part II, CIO, Branch Files, Pine Bluff, 1948–55 (on file with the Library of Congress). At the time he filed the Little Rock case in 1956, Branton was chair of the NAACP State Conference of Branches' Legal Redress Committee. WAB 1969 Interview, *supra* note 31, at 17 (on file with author). Earlier, in 1953, he served as Branch President. WAB 1987 Interview, *supra* note 25, at 110.

118. *See supra* note 33 and accompanying text.

119. Alford v. State, 223 Ark. 330, 266 S.W.2d 804 (1954).

120. *See supra* notes 35–40 and accompanying text.

121. Payne v. Arkansas, 356 U.S. 560 (1958). On retrial, Payne was again convicted and sentenced to death, but the Arkansas Supreme Court reversed the decision at *Payne v. State*, 231 Ark. 727, 332 S.W.2d 233 (1960).

122. Wabbaseka Sch. Dist. No. 7 of Jefferson County v. Johnson, 225 Ark. 982, 286 S.W.2d 841 (1956).

123. Brooks v. Burgess, 228 Ark. 150, 306 S.W.2d 104 (1957).

group of Freedom Riders arrested in Jackson, Mississippi.[124] The multiracial Freedom Riders, members of the Congress of Racial Equality (CORE), were testing the United States Supreme Court's decision prohibiting segregation on inter-state transportation.[125] Branton also represented students from Southern University (Louisiana), who were arrested during a 1961 sit-in in Baton Rouge.[126]

Branton thus was a highly experienced lawyer by 1962. He had appeared in the Arkansas Supreme Court numerous times and several times traveled to represent clients before the Eighth Circuit Court of Appeals and the United States Supreme Court. This work led Branton to attend and speak before conventions at venues across the country,[127] so he had met many of those in various Black communities who were active in civil rights efforts and he was known to the national media.[128] During this period, he also continued to operate the family's taxicab business, thus honing his business skills.[129]

Wiley Branton could work, and was at ease, with many different kinds of people, a skill he developed early by working in the taxicab business where customers were of all races and ranks.[130] He cared about maintaining "community" and was a good friend,[131] and he made friends everywhere.[132]

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124. WAB 1970 Interview, *supra* note 23, at 59.

125. *Id.*

126. *Seeker of Votes in Dixie Drive*, ATLANTA INQUIRER, Mar. 31, 1962, at 1.

127. *See, e.g.*, Wiley Branton, A Tribute to Justice Thurgood Marshall 2 (Jan. 12, 1984) (on file with author) (recalling attendance at annual meetings of the NAACP since 1947).

128. *See supra* note 41 and accompanying text. Later in 1962 Branton was named one of the 100 most important young men and women in the United States by LIFE Magazine. *Introducing the Generation, a Foldout Gallery: Young Leaders of the Big Breakthrough, a Red-Hot Hundred*, LIFE, Sept. 14, 1962.

129. Executive Inventory Accuracy Check Form 2, U.S. Gov. CSC Form 161 (stating he was "President and General Manager from 3-46 to 09-62"). His college major also had been in business administration. *Id.* at 3 (noting B.S. degree in 1950).

130. Wiley Branton, Jr., Judge of the Circuit Court, Pulaski County, Arkansas, speech at a lunch honoring his father, sponsored by the law firm Sidley & Austin (1994) (videotape and transcript on file with author).

131. Vernon E. Jordan, Jr., Eulogy for Wiley Austin Branton, Sr. (Dec. 19, 1988) (on file with author) (stating that "Wiley was the one friend who could go the second mile, lend a helping hand, share and care and come when needed").

132. William Raspberry, *A Few Thousand Close Friends*, WASH. POST, Dec. 23, 1988 (quoting an attendee at Branton's funeral who commented "[t]here are only two categories of people, . . . those who didn't know Wiley at all, and . . . those who considered him a close personal friend"). Branton was able to put people at ease through an incredible facility as a story-teller. Alice Bullock, former Dean of Howard University School of Law, speaking at a 1992 lunch honoring Wiley A. Branton, remembered that Branton used stories to demonstrate negotiating points and that she never heard the same story twice. Alice Bullock, Speech Honoring Wiley A. Branton (1992) (on file with author.) As this author has interviewed friends and associates of Wiley Branton, the skill and humor of Branton's "stories" are always a major topic of discussion.

As a young boy, Wiley Branton spent much of his free time accompanying his maternal grandmother to conventions across the South of the various civic and social groups to which she belonged,[133] so he saw and learned about the issues facing Southern Blacks at an impressionable age. With this background and experience, he had much to offer as Executive Director of the Voter Education Project (VEP).

A. Creation of the Voter Education Project

The idea for the VEP apparently originated with staff members of the Kennedy administration,[134] although the Southern Regional Council, a tax-exempt corporation that would sponsor the project, later took pains to deny any connection with politics.[135] The administration was concerned about the denial of voting rights, but the primary motivation for the project was to reduce the "sit-in" and "freedom rider" confrontations in which some civil rights activists were engaged by urging them toward more "appropriate" efforts to effect change.[136] The proposed VEP was designed to focus on

133. Interview with Sterling Branton 5 (July 20, 2000) (on file with author). Effa L. Stuart Wiley was a member and officer of the Eastern Star Arkansas Jurisdiction, served as a national officer of the United Brothers of Fellowship, Women's Division, was an active member of the Eighth Street Baptist Church of Pine Bluff, and served as Vice President for Arkansas of the Women's National Committee of the National Baptist Convention. Obituary of Effa L. Stuart Wiley, newspaper and date unknown (copy on file with author).

134. Louis Martin, an adviser to President Kennedy, stated that he, Harris Wofford (Kennedy's 1960 campaign manager and, later, his aide on civil rights), and a few others in the Justice Department came up with the idea and convinced private foundations to fund it, but were sworn to secrecy so that the project would not be known as a "tool" of the Democratic Party. Interview by Michael L. Gillette with Louis Martin (June 12, 1986), Transcript, Louis Martin Oral History Interview II, Internet Copy, LBJ Library 59–60 (on file with author). In a study of the Congress on Racial Equality's activities during that period, authors August Meier and Elliott Rudwick stated "[t]he proposal actually emerged out of informal discussions between Burke Marshall, Assistant Attorney-General for Civil Rights, and Harold Fleming, head of the newly-established Potomac Institute and former director of the SRC." MEIER & RUDWICK, *supra* note 4, at 173. Both assertions could be accurate.

135. The Voter Education Project, A Concise History, 1962–1979, 2 (undated) (on file with author). The Southern Regional Council was created in 1919 after a series of race riots swept the country following World War I. LEWIS & D'ORSO, *supra* note 4, at 398. It had long been active in the fight against Southern segregation laws, including the "white primary" and restrictions on voter registration. *Id.* The Southern Regional Council was interracial and primarily a research group that collected and disseminated statistics on various forms of racial discrimination. LAWSON, *supra* note 1, at 261–62.

136. BRAUER, *supra* note 88, at 112–13 (noting that the prospect of additional votes for the President also was considered); LAWSON, *supra* note 1, at 261. The underlying goal was well understood by the youngest of the civil rights leaders. As SNCC member John Lewis commented, the Kennedys' "priorities at that point were keeping the peace, quelling crises, positioning the President politically, both in the South and abroad." LEWIS & D'ORSO, *supra* note 4, at 178.

increasing the number of voters in the South through funding grants to groups willing to work on voter registration and education at a local level.[137] Although the project officially was concerned with all voters, the grants focused on black voter registration efforts.

At several meetings in June 1961, administration officials (including Attorney General Robert Kennedy) promoted the VEP idea with the Southern Regional Council (SRC) and representatives of the Ford, Field, and Taconic Foundations who were to provide the money, and with leaders of the major civil rights groups: Roy Wilkins of the NAACP, Martin Luther King, Jr. of the Southern Christian Leadership Conference (SCLC), James Foreman of CORE, Whitney Young of the National Urban League (NUL), and representatives of the Student Nonviolent Coordinating Committee (SNCC).[138] Before the idea could become reality, however, a number of hurdles had to be overcome.

Most of the resistance to the idea came from the civil rights groups. First, they were suspicious of joint ventures.[139] The files of the NAACP, for example, indicate concern that participation would lead to loss of its seniority position among the organizations and its independence in the movement.[140] SNCC, the most militant group present at those meetings, was reluctant to change its focus from sit-ins to voter registration efforts that seemed relatively tame.[141] Second, they all were concerned about potential white violence against those working at the local level. The NAACP, in

137. WAB 1987 Interview, *supra* note 25.

138. MEIER & RUDWICK, *supra* note 4, at 173–74.

139. The competition among the groups was legendary. *See, e.g.*, Margaret Long, *The Unity of the Rifting Negro Movement*, THE PROGRESSIVE, Feb. 1964, at 10 (exhibiting a biting humor in her description of the rivalries); PAT WATTERS & REESE CLEGHORN, CLIMBING JACOB'S LADDER, THE ARRIVAL OF NEGROES IN SOUTHERN POLITICS, 48 (1967) (noting, while describing the challenges that awaited the VEP director, that "competition among Negro organizations of any kind is a phenomenon that impresses the most casual observer").

140. Letter from Leslie W. Dunbar, Executive Director, Southern Regional Council (SRC) to Roy Wilkins, Executive Secretary (Sept. 13, 1961), *in* PAPERS OF THE NAACP, Part III, A271, Register and Vote–Taconic Foundation, VEP 1961 (on file with the Library of Congress); Letter from Roy Wilkins, Executive Secretary, NAACP, to Leslie W. Dunbar, Executive Director, SRC (Oct. 17, 1961) *in* PAPERS OF THE NAACP, Part III, A271, Register and Vote–Taconic Foundation, VEP 1961 (on file with the Library of Congress); Letter from Leslie W. Dunbar, Executive Director, SRC, to Roy Wilkins, Executive Secretary, NAACP (Nov. 10, 1961) *in* PAPERS OF THE NAACP, Part III, A271, Register and Vote–Taconic Foundation, VEP 1961 (on file with the Library of Congress) (on file with the Library of Congress).

141. LEWIS & D'ORSO, *supra* note 4, at 178–79. The group was to learn that the experience would be anything but tame. Congressman John Lewis, one of those involved, later reflected, "[w]e would learn almost immediately that voter registration was as threatening to the entrenched white establishment in the South as sit-ins or Freedom Rides, and that it would prompt the same violent response." *Id.* at 180–81.

particular, had long experience with white resistance to voter registration efforts by Blacks.[142]

The VEP promoters' response to the first concern was to explicitly acknowledge in the project's structure that the participating groups retained total independence in their goals and activities.[143] Each could decide whether or not to submit any of its programs for VEP funding. If a program were funded, however, they agreed to comply with VEP requirements of reporting and accounting. The VEP also would maintain a low profile, allowing the groups to generate their own publicity.[144] The second concern about violence was satisfied, the civil rights groups thought, by a promise of needed help from administration officials.[145] In the end, the groups also were won over by the prospect of fresh funding.[146]

Caution about the VEP idea was not limited to the civil rights groups. The Southern Regional Council, too, was quite concerned that its tax-exempt status not be affected by the project. In his letter to the civil rights leaders describing the proposed project, Executive Director Leslie Dunbar was careful to include prominent mention of Southern Regional Council's interest in statistical data.[147] Dunbar emphasized this point again in a second

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142. The NAACP first began its voting rights work in 1915 when it filed an amicus brief in *Guinn v. United States*, 238 U.S. 347 (1915). KENNETH W. GOINES, THE NAACP COMES OF AGE: THE DEFEAT OF JUDGE JOHN J. PARKER, at 13 (1990); *see also supra* notes 17–21 and accompanying text.

143. Letter from Leslie W. Dunbar, Executive Director, SRC, to Roy Wilkins, Executive Secretary, *supra* note 140.

144. BRANCH 1, *supra* note 4, at 579 (1988) (commenting that "[t]he early successes of the registration drive [were secret even] from activists in the civil rights movement"). After some time, this reticence disappeared and the VEP began issuing its own press releases. *See, e.g.*, Press Release, Voter Education Project (Mar. 1, 1963) *in* PAPERS OF THE NAACP, Part III, A271, file "Register & Vote, Taconic Foundation, VEP 1963–64" (on file with the Library of Congress).

145. STEVEN F. LAWSON, RUNNING FOR FREEDOM, CIVIL RIGHTS AND BLACK POLITICS IN AMERICA SINCE 1941, 83 (1991) (commenting that federal responses were "ambiguous"). When violence occurred, and the workers turned to the DOJ, the government response was limited to increased efforts at "gentlemanly persuasion" of local officials. LAWSON, *supra* note 1, at 267. Most of the participants in those initial discussions believed that the administration had reneged on a promise to provide support should there be local resistance to their activities. MEIER & RUDWICK, *supra* note 4, at 174.

146. WATTERS & CLEGHORN, *supra* note 139, at 48; *see also* Letter from John M. Brooks, National Voter Registration Chair for the NAACP, to Roy Williams, Executive Secretary (Sept. 22, 1961), *in* PAPERS OF THE NAACP, Part III, A271, Register and Voter, Taconic Foundation-VEP 1961 (on file with the Library of Congress).

147. Letter from Leslie W. Dunbar, Executive Director, SRC, to Messrs. James Farmer (CORE), Roy Wilkins (NAACP), Whitney M. Young (NUL), Charles McDew (Chair, Executive Committee, SNCC), Timothy L. Jenkins (National Affairs Vice President, National Student Association), and the Rev. Wyatt Tee Walker (Executive Director, SCLC) (Sept. 13, 1961), *in* PAPERS OF THE NAACP, Part III, A271, Register and Vote-Taconic Foundation, VEP 1961 (on file with Library of Congress) (stating that the Southern Regional Council was

letter to Roy Wilkins that stated "[w]e are not an action group . . . we can enter into voter registration work only if it serves our research interest."[148] The low profile to be taken by the VEP would serve the Southern Regional Council's interests, as well, especially when it learned later that some VEP money was being used "to feed hungry families cut off from jobs because of attempts to register to vote."[149]

Once an appropriate compromise was reached among the parties, the VEP needed substance. The man who headed the operation had to be widely respected, trusted, and knowledgeable about conditions in the South.[150] He also had to establish office procedures and records systems that would meet the Southern Regional Council's need for data, and assure that those systems were maintained.[151] Finally, given the civil rights groups' suspicions that the VEP might interfere with their autonomy; he had to run a gauntlet of approval by the most important civil rights leaders of the day, who each had very different ideas about what should be done.[152]

Promoters quickly focused on Wiley Branton as having the experience and skill needed. Burke Marshall and Robert F. Kennedy met with Branton to discuss the voter project and asked him to help as its director.[153] His appointment was announced by Leslie Dunbar to the civil rights leaders in January 1962.[154] Branton himself wrote to the civil rights leaders on February 22, assuring them that he would begin work as soon as the IRS agreed that the Southern Regional Council's tax status would not be affected by its involvement with the VEP.[155] Branton was given "semi-autonomous" status

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"prepared to accept the responsibility of [sponsorship] in order that, by empirical evaluation of the results accruing from the programs which you will carry on . . . Southern Regional Council can subsequently draw publishable conclusions").

148. Letter from Leslie W. Dunbar, Executive Director, SRC, to Mr. Roy Wilkins, Executive Secretary, *supra* note 140.

149. WATTERS & CLEGHORN, *supra* note 139, at 54. On this point, also see BRANCH 1, *supra* note 4, at 714–15.

150. WATTERS & CLEGHORN, *supra* note 139, at 48 (noting that he had to be "a powerful man . . . in whom all . . . had confidence . . . [a]nd possessed of broad and minute knowledge of the Negro South, its over-all psychology and its state-by-state, town-by-town variations").

151. LAWSON, *supra* note 1, at 264–65. The failure of workers to actually register most of those they contacted led to an unusual use of narrative reporting from the field, which resulted in poignant vignettes of the difficulties being faced. WATTERS & CLEGHORN, *supra* note 139, at 72–73 n.9.

152. LAWSON, *supra* note 1, at 174–75.

153. WAB 1969 Interview, *supra* note 31, at 30–31.

154. *See* Letter from Leslie W. Dunbar, SRC to Roy Wilkins, NAACP (Jan. 2, 1961), *in* PAPERS OF THE NAACP, Part III, Box A271 (on file with the Library of Congress) (noting copies to the other civil rights organization leaders).

155. Letter from Wiley Branton to Roy Wilkins, Whitney Young, Martin Luther King, Jr., James Foreman, and James Farmer (Feb. 22, 1962), *in* PAPERS OF THE NAACP, Part III, Box A271 (on file with the Library of Congress).

in operating the VEP,[156] and quickly assembled a staff that included Randolph Blackwell as field director and Frank Minnis as research director.[157]

B. The Voter Education Project in Action

The VEP was a "moderate" effort. Its financial support was limited, with only $870,371 available during the two-and-a-half-year period of the program.[158] This sum was to be distributed among applicants across eleven southern states. Hard decisions had to be made: What proposals had a chance of working? Which organizers understood the tax limitations on use of the money? Who would comply with the documentation requirements that would allow study of the Project's effectiveness? Where would small amounts of money achieve the most success?

While waiting for the opening of the VEP's office, civil rights groups began planning their participation in the voter registration push, training members and allocating resources that would be put to those purposes.[159] Branton made an effort to avoid duplication of effort by encouraging cooperation among groups operating in the same areas.[160] Despite their decision to participate in the VEP, however, the civil rights groups remained highly competitive. Branton learned that he must assign the different groups to separate territories.[161]

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156. WAB 1987 Interview, *supra* note 25, at 31.

157. Letter from Michael A. Cooke to Wiley A. Branton (Oct. 21, 1985) (on file with author).

158. MEIER & RUDWICK, *supra* note 4, at 175; WATTERS & CLEGHORN, *supra* note 139, at 49.

159. LEWIS & D'ORSO, *supra* note 4, at 181 (recalling that "[b]y that fall [1961], SNCC memorandums were going out labeling voter registration as our top priority . . . . A plan was taking shape to send 'field secretaries' into communities throughout the South, ... Small handfuls of organizers were already out in the field that fall, ahead of the voter registration machinery still taking shape back at the offices of SNCC and CORE and the SCLC and the NAACP").

160. MEIER & RUDWICK, *supra* note 4, at 175.

161. *Id.* at 175–76. As the distribution evolved, the NAACP and Urban League worked in states where they had active branches already, which tended to be states that were less resistant (e.g., Tennessee, Virginia, North Carolina and Florida), while CORE, SNCC and SCLC wound up in the very resistant areas of "northern Louisiana, rural South Carolina, southwest Georgia, and Mississippi." LAWSON, *supra* note 1, at 264–65. This was not a deliberate slighting of the younger civil rights groups, but more the result of successful efforts in those states to eliminate the NAACP. For example, Arkansas's Attorney General Bruce had championed statutes in the 1950s that harassed local NAACP chapters and intimidated their members. REED, *supra* note 40, at 245; KIRK, *supra* note 22, at 158. After 18 months Branton also found that it was easiest to work with the local workers than with their national offices. WAB 1969 Interview, *supra* note 31, at 40.

The exception to this practice was in the state of Mississippi, where true coordination among the different groups had been established in 1961. The Council of Federated Organizations (COFO) included all national, state, and local protest groups operating in Mississippi.[162] The extremely hostile environment in which the Mississippi civil rights workers operated made their organizational differences seem irrelevant.[163] Wiley Branton decided to funnel the VEP's grants for Mississippi work through COFO, avoiding the need to pick and choose among the individual organizations.[164]

After a year, the VEP could report on numerous efforts across the South. Success in registering voters varied significantly. In the few areas where there was little white opposition, workers had to overcome residents' suspicion of government and convince Blacks that voting had the potential for improving their lives.[165] In other areas, violence and intimidation meant civil rights workers paid a heavy price for each successful effort to register. For example, the Rev. Charles Sherrod wrote in 1962 from Georgia's "Black Belt" of "the church burnings, jailings, physical attacks, and economic reprisals in southwest Georgia during voter registration efforts [and stating] '[o]ur criterion for success is not how many people we register, but how many people we can get to begin initiating decisions solely on the basis of their personal opinion.'"[166]

The state of Mississippi was the worst. Few new voters were being registered and violence stalked the workers.[167] In February 1963 the depressing accumulation of negative data from Mississippi gave Branton misgivings about continuing to put money into the state, and "[h]e sent his VEP

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162. DITTMER, *supra* note 73, at 119–20 (1994); MEIER & RUDWICK, *supra* note 4, at 269 (calling COFO "a unique phenomenon in the history of the civil rights movement").

163. MEIER & RUDWICK, *supra* note 4, at 269 (suggesting that "unity [was] imperative if the movement was to survive and accomplish anything").

164. Letter from Wiley A. Branton to All Participating VEP Agencies (Oct. 9, 1962), *in* PAPERS OF THE NAACP, Part VI, I-3, Voter Education Project, Staff, Branton, Wiley A., 1962–64 (1 of 3) (on file with the Library of Congress); WATTERS & CLEGHORN, *supra* note 139, at 63; BRANCH 1, *supra* note 4, at 635 (noting "[i]t was a sophisticated piece of political work").

165. Report, The Voter Education Project, A Concise History, 1962–1979, 4–5 (undated) (on file with author).

166. WATTERS & CLEGHORN, *supra* note 139, at 7. Looking back on the effort, two observers commented that there was "no Negro registration to amount to anything in any place where whites seriously resisted it." *Id.* at 50.

167. In March 1963 the VEP would report "64 acts of violence and intimidation against Negroes in Mississippi [alone] since 1961," most of which were a result of registration efforts." News Release, Voter Education Project, *in* PAPERS OF THE NAACP, Part III, A271, file "Register & Vote, Taconic Foundation-VEP 1963–64" (on file with Library of Congress). John Lewis, one of those workers, remembered "[b]eatings, arrests and deaths [began in fall 1961], and things would get much worse before they would begin to get better." LEWIS & D'ORSO, *supra* note 4, at 182.

field director, Randolph Blackwell, to investigate."[168] On February 28, while Blackwell was riding in a car with two other civil rights workers after leaving a meeting near Greenwood, Mississippi, shots were fired from another car that pulled alongside. The driver, James Travis, was seriously injured, and the car was damaged.[169]

That event, along with Branton's frustration and that of the civil rights groups, precipitated an all-out assault on Greenwood, Mississippi.[170] The avoidance of publicity ended. Branton announced to the media that the VEP would begin a "saturation campaign."[171] A telegram sent to Attorney General Kennedy announced the push and stated "[y]ou must anticipate that this campaign will be met by violence and other harassment. We are notifying you in advance so that you can provide the necessary federal protection to prevent violence and other forms of intimidation against registration workers and applicants."[172]

Predictably, racist reaction increased in Greenwood. Police dogs were used to intimidate meetings and inhibit marches to the court house to register.[173] Toward the end of March, Bob Moses, one of COFO's leaders, James Forman (SNCC), and seven others who were promoting the registration efforts, were arrested.[174] Wiley Branton flew in to counsel and represent the jailed workers.[175] All were convicted and given a four-month jail sentence, which they decided to serve rather than appeal, believing this would pressure the DOJ to act.[176]

On April 30, the Justice Department, for the first time, "went into federal court . . . [to seek] protection of the right to register and vote, but demanded also that the local officials 'release eight Negro voter registration workers from prison, refrain from further interference with a registration

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168. BRANCH 1, *supra* note 4, at 714–15.

169. WATTERS & CLEGHORN, *supra* note 139, at 59.

170. LAWSON, *supra* note 1, at 276.

171. Press Release, Voter Education Project (Mar. 1, 1963), *in* PAPERS OF THE NAACP, Part VI, I-3, Voter Education Project Staff, Branton, Wiley A., 1962–64 (1 of 3) (on file with the Library of Congress); *see also* WATTERS & CLEGHORN, *supra* note 139, at 59; HOWARD ZINN, SNCC, THE NEW ABOLITIONSTS 90 (1964).

172. LAWSON, *supra* note 1, at 276; WATTERS & CLEGHORN, *supra* note 139, at 59.

173. Claude Sitton, *Police Loose a Dog On Negroes' Group; Minister Is Bitten*, N.Y. TIMES, Mar. 29, 1963, at 1; *see also* ZINN, *supra* note 171, at 91–93. In a bit of theatre, Branton was able to "answer[] whites' charges that he was an outside agitator by informing them that his great-grandfather was Greenwood Leflore, a person of some historical importance to the area!" DITTMER, *supra* note 73, at 147–48. In response, some white Greenwood residents "are said to have responded, '[That nigger] ought not to be talking about things like that.'" WATTERS & CLEGHORN, *supra* note 139, at 60.

174. Claude Sitton, *8 Negroes Jailed In Mississippi*, N.Y. TIMES, Mar. 30, 1962, at 8; WATTERS & CLEGHORN, *supra* note 139, at 61.

175. BRANCH 1, *supra* note 4, at 721.

176. *Id.*

campaign and those taking part in it, and *permit Negroes to exercise their constitutional right to assemble for peaceful protest demonstrations and protect them from whites who might object.*" [177]

Unfortunately, the strong rhetoric didn't stop the government from later compromising with Greenwood officials. It agreed to drop its request for an injunction if the local officials would release "the eight jailed workers and stay execution of their sentences pending a full hearing in late October."[178] None of the others who had been arrested were released and no promises to stop violence against the civil rights workers were made by the Greenwood hierarchy.[179] The city, which had terminated government food distribution programs to the poor as a further deterrent to voter registration, agreed to resume them, "but only after the government agreed to pay for the cost of the program."[180]

The Justice Department's failure to pursue a full settlement of the civil wrongs occurring in Greenwood shocked many.[181] The government lawyers clearly had not discussed the deal with Wiley Branton, who publicly "blamed the Justice Department for not getting any meaningful decrees from any of the voter suits which have been filed in Mississippi."[182]

Despite the tremendous effort that COFO and the VEP put together in Mississippi, registration results there were minimal. By way of comparison, the VEP spent $51,345 in Mississippi and $52,958 in Georgia during the same time period, April 1, 1962 to December 31, 1963. The new voters

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177. WATTERS & CLEGHORN, *supra* note 139, at 61–62.

178. DITTMER, *supra* note 73, at 155–56 (stating that "Doar told Branton that the Justice Department was afraid it would lose its case in district courts; but the department usually lost in the lower courts only to have those decisions reversed in the Fifth Circuit Court of Appeals, as had been the case with James Meredith. A more plausible explanation is that the Kennedys feared a race war in Greenwood and that the injunction, if approved, would put the U.S. Army in the city's streets").

179. *Id.* at 155

180. *Id.* at 156.

181. LAWSON, *supra* note 1, at 278–79. Opinions whether the government should step in with a police force action were expressed pro and con by politicians, law professors, lawyers, and others. *Id.* at 279–82. This was the point when some civil rights workers began to believe that the federal government was part of the "enemy," and where the DOJ's legal approach was furthest from being understood by those in the field. *Id.* at 278–79.

182. *Id.* at 285 (quoting from a letter Branton sent to Aaron Henry and Robert Moses on November 12, 1963). Branton also blamed Martin Luther King, Jr. for launching a protest in Birmingham that resulted in his being jailed and diverted national attention from Mississippi. BRANCH 1, *supra* note 4, at 725. The Justice Department was not any happier with its work. Fifty-eight cases had yielded little change in southern attitudes or compliance with the 1957 and 1960 Civil Rights Acts. Claude Sitton, *Negro Queue in Mississippi Is Symbol of Frustration in Voter Registration Drive*, *in* BLACK PROTEST IN THE SIXTIES 58–59 (August Meier, John Bracey, Jr. and the late Elliott Rudwick, eds., 1991).

added in Mississippi totaled only 3,228 while they totaled 46,347 in Georgia.[183]

In October 1963 Branton gave up on Mississippi. Branton's letter to COFO's officers stated that the VEP would not continue funding projects in Mississippi and explained that the government's failure to obtain favorable court decrees or to protect civil rights workers from violence meant that resident Blacks would remain afraid to register and the number of voters would not increase by much.[184]

Given Branton's reaction to the February 28 shooting,[185] his subsequent devotion of VEP funds to voter registration efforts in Mississippi, and his personal involvement in representing the civil rights workers there, the decision to end grants to COFO probably was a bitter pill to swallow. Branton had rarely failed in any action he began and he was not a quitter. However, as the caretaker of an organization with responsibility for funding registration efforts in ten other states, he had to look at the long view. In 1965 testimony during hearings by the United States Civil Rights Commission, held in Mississippi, Branton stated his belief that the registration efforts in Mississippi had at least somewhat reduced the "climate of fear."[186]

Branton's frustration about this decision may have been mollified by his involvement in a new organization made up of the leaders of the major civil rights organizations, the Council for United Civil Rights Leadership (CUCRL). CUCRL began in June of 1963 and was not limited, as was the VEP, in the type of funding it could provide.[187] Civil rights leaders, im-

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183. Sitton, *supra* note 181, at 58–59; *see also* HARRY S. ASHMORE, CIVIL RIGHTS AND WRONGS 172 (1994).

184. WATTERS & CLEGHORN, *supra* note 139, at 213, 264–65; MEIER & RUDWICK, *supra* note 4, at 260; NICOLAUS MILLS, LIKE A HOLY CRUSADE, MISSISSIPPI 1964–THE TURNING OF THE CIVIL RIGHTS MOVEMENT IN AMERICA 57 (1992).

185. *See supra* note 169 and accompanying text.

186. Hearings Before the United States Commission on Civil Rights, Vol. 1, Voting, 186.

187. WEISS, *supra* note 4, at 114 (describing it as the idea of white philanthropist Stephen Currier, who hoped to focus the various civil rights groups by providing additional resources through his own foundation and those of other men he knew).

Currier was a wealthy man and his wife was an heir to the Mellon steel fortune. Reese Cleghorn, *The Angels Are White, Who Pays the Bills for Civil Rights?*, NEW REPUBLIC, Aug. 17, 1963, at 12. Currier had created the Taconic Foundation as an outlet for his interest in civil rights, and Taconic provided much of VEP's funding. WATTERS & CLEGHORN, *supra* note 139, at 49.

The organization's members included Roy Wilkins, James Farmer, Jack Greenberg of the NAACP Legal Defense and Education Fund, Dorothy Height of the National Council of Negro Women, Martin Luther King, Jr., William Trent, Whitney Young, and C. Eric Lincoln. Letter from Stephen R. Currier to Roy Wilkins (Feb. 4, 1987), *in* PAPERS OF THE NAACP, Part III, A271, Register and Vote, Taconic Foundation-VEP 1963–64 (on file with Library of Congress). On June 19, 1963 they all met with Currier and "96 corporation and foundation" heads in New York to discuss the monetary needs of the Movement. Cleghorn, *supra*, at 12. As a result of their presentations at that meeting, more than $500,000 was

pressed with the fairness of Branton's work in distributing VEP funds, asked him to become the executive director. With the consent of the Southern Regional Council, Branton agreed.[188] CUCRL met regularly, almost once a month,[189] and Branton spent the remainder of his time with the VEP shuttling back and forth between the two positions.[190] To manage this, he had the help of a young Vernon Jordan, who was assigned by the Southern Regional Council to assist Branton with VEP business.[191] Branton, through CUCRL, was able to provide some funding to Mississippi projects in 1964.[192] During this period, Branton cemented his relations with the leaders

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pledged to the cause. WEISS, *supra* note 4, at 114. Another $300,000 came soon thereafter. *Id.* at 117. A two-part legal structure, CUCRL and the Committee for Welfare, Education and Legal Defense (WELD) was created to handle the money. *Co-ordinator Post Assigned To Branton*, ARK. GAZETTE, Aug. 21, 1963, at 10B.

CUCRL survived until January 1967. WEISS, *supra* note 4, at 118. It was never able to become a power in its own right. Donations subsided after the first rush of offerings and, despite several efforts, it could not become self-supporting. In its short life, however, CUCRL had experimented with a novel method of coordinating the civil rights protest agenda. It existed and worked successfully to provide focus during an extremely active and difficult period in civil rights efforts. "John Lewis credited CUCRL with heading off major misunderstandings among the organizations; it 'kept us together,' he said, and gave the movement 'that sense of unity and focus that it needed during that time.'" *Id.* Unfortunately, it could not endure. "Differences in style, a desire for complete autonomy, and concerns over publicity made it difficult to sustain such coalitions." MEIER & RUDWICK, *supra* note 4, at 224.

188. *7 Civil Rights Groups Choose Coordinator to Bolster Activity*, N.Y. TIMES, Aug. 16, 1963; WEISS, *supra* note 4, at 116.

189. List of Meetings (Apr. 28, 1965) (unpublished manuscript, on file with author).

190. Letter from Wiley A. Branton, to Jay Goodlette-Bass (Apr. 30, 1965) (on file with author) (stating that his resignation was accepted at CUCRL meeting of Apr. 28, 1965).

191. Memorandum from Wiley A. Branton, to All Participating Agencies (Sept. 18, 1963) (on file with author). Jordan performed this job while he remained Leslie Dunbar's executive assistant at the Southern Regional Council. JORDAN, JR. & GORDON-REED, *supra* note 57, at 176 (2001).

192. WAB 1970 Interview, supra note 23, at 61. For example, CUCRL made a grant directly to COFO of $6,000 in July 1964. Council for United Civil Rights Leadership Transactions, Financial Statements (on file with author). A grant of $5,000 was made to COFO's "Henry for Governor" "mock election" campaign in late October 1963. Council for United Civil Rights Leadership, Cash Report-8/'63 to 12/2/'63, Financial Statements (on file with author). COFO sponsored the mock election to demonstrate the ability of Mississippi Blacks to learn the fundamentals of voting and their interest in doing so. MEIER & RUDWICK, *supra* note 4, at 272–73. COFO contributed to the creation of the Mississippi Democratic Freedom Party, which sent representatives to challenge the regular electors at the National Democratic Convention in August 1964. *Id.* at 279–81. In addition, COFO coordinated planning for a second massive registration effort during the summer of 1964, using the energies of thousands of white college students from across the country. *Id.* at 278. "Freedom Summer" led to more violent reactions from whites. LEWIS & D'ORSO, *supra* note 4, at 274 (recalling that "[b]etween June 15 and September 15 our people reported more than 450 'incidents,' ranging from phone threats to drive-by shootings. There were more than a thousand arrests. There were eighty beatings. There were thirty-five shootings. There were thirty-five church burn-

of the major civil rights organizations. He noted, in a later speech, that part of his job was to know where each of the members could be located in an emergency,[193] which required constant communication with them.

C. Civil Rights in the Kennedy/Johnson Administration, 1963–1964

As the VEP and civil rights groups were concentrating on registration efforts in Mississippi from March to October 1963, civil rights matters also were coming to a head within the Kennedy administration. Pressured by the newspapers headlines about white violence against Blacks and by congressional liberals' efforts to move civil rights legislation without his help, President Kennedy had sent a voting rights bill to Congress in February 1963.[194] Liberal leaders within and outside Congress thought the bill was too limited[195] and were disappointed by Kennedy's decision not to participate himself in the legislative effort.[196]

Thereafter, however, two events seem to have quickened Kennedy's interest in civil rights legislation. The first was white reaction to Martin Luther King's protests in Birmingham, Alabama.[197] The violence by local officials and the use of police dogs against demonstrators was shown on national television.[198] The national public took notice. The second event was Alabama Governor George Wallace's opposition to the admission of two black students to the University of Alabama.[199] Shocked by Wallace's conduct during negotiations with the DOJ and himself, Kennedy appeared "on

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ings. There were thirty bombings.").

193. Wiley A. Branton, Speech for United Planning Organization's Martin Luther King Breakfast (Jan. 20, 1986) (on file with author).

194. MANN, *supra* note 74, at 341–42. Kennedy's proposed legislation would have: (1) provided federal referees in counties where voting rights suits were pending if fewer than fifteen percent of eligible residents were registered; (2) put voting rights suits on a fast track in the courts; (3) required equal application of voter eligibility tests by the states; (4) made a sixth grade education evidence of literacy; (5) given the Department of Education power to provide local assistance toward school desegregation; and (6) both extended for four years the Civil Rights Commission and gave it power to respond to requests for help from local communities. BRAUER, *supra* note 88, at 221.

195. MANN, *supra* note 74, at 339 (noting that "NAACP leader Roy Wilkins was one of many civil rights leaders who worried that Kennedy's 'obeisance' to Southern senators hindered the civil rights movement"); *see also* BRAUER, *supra* note 88, at 223.

196. BRAUER, *supra* note 88, at 222–23. Senator Hubert H. Humphrey told Kennedy "[t]he leadership for civil rights either has to take place in the White House or it is going to take place in the streets." MANN, *supra* note 74, at 343.

197. MANN, *supra* note 74, at 344 (stating that King was disappointed by the government's lack of support and came to believe that only the sight of white violence against Black demons9trators would gain national attention).

198. BRAUER, *supra* note 88, at 234.

199. *Id.* at 252–59.

national television, announcing his intention to send to Congress the most sweeping civil rights bill in the nation's history."[200]

After his June 11 speech, Kennedy modified his February legislative proposal, adding provisions for a cut-off of federal funds to eliminate discrimination in state programs, a ban on discrimination in public facilities and accommodations, and education and training programs for the underprivileged and unemployed.[201] He also issued executive orders relating to fair employment practices and the creation of a Community Relations Service that would replace the DOJ in mediating local civil rights disputes.[202]

Kennedy was concerned that ongoing civil rights demonstrations would interfere with his legislation and, on June 22, 1963, he met with civil rights leaders at the White House to urge a moratorium on their activities, including a proposed march on Washington, D.C.[203] Wiley Branton was invited to attend that meeting.[204] Kennedy was not successful with his plea. The demonstrations, and white reactions to them, continued and escalated. "Justice Department figures showed nearly eight hundred demonstrations in almost two hundred cities in the ten weeks following President Kennedy's announcement that he planned to send a civil rights bill to Congress. During that ten-week period alone there were 20,000 arrests and ten deaths."[205]

Liberal legislators added even stronger provisions to Kennedy's revised proposal, resurrecting the Title III provision eliminated from Eisenhower's 1957 bill to give the DOJ power to bring suits on its own initiative.[206] The administration did not support this stronger version of the bill, perhaps because it precipitated a dramatic drop in the President's favorable ratings in the South.[207] On October 15, 1963, Robert Kennedy testified before the House Judiciary Committee urging adoption of "the more moderate initial administration version" of a civil rights bill.[208]

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200. LEWIS & D'ORSO, *supra* note 4, at 198; BRAUER, *supra* note 88, at 259–62.

201. BRAUER, *supra* note 88, at 266–67.

202. *Id.* at 267.

203. LEWIS & D'ORSO, *supra* note 4, at 202–03; MANN, *supra* note 74, at 371. Kennedy was wrong about the March's effect. It "gave voice to the growing public support for Kennedy's civil rights program." MANN, *supra* note 74, at 372.

204. Telegram from John F. Kennedy to Wiley A. Branton (June 15, 1963) (on file with author).

205. LEWIS & D'ORSO, *supra* note 4, at 203. On Sunday, September 15, the Sixteenth Street Baptist Church in Birmingham was bombed, killing four young girls. BRAUER, *supra* note 88, at 295.

206. BRAUER, *supra* note 88, at 303–04. *See supra* notes 81–90 and accompanying text.

207. *Id.* at 298.

208. Joseph L. Rauh, Jr., *The Role of the Leadership Conference on Civil Rights in the Civil Rights Struggle of 1963–1964*, *in* THE CIVIL RIGHTS ACT OF 1964, THE PASSAGE OF THE LAW THAT ENDED RACIAL SEGREGATION 49, 59 (Robert D. Loevy, ed., 1997).

The President's assassination in Dallas on November 3 changed the government's approach dramatically. When Lyndon Johnson succeeded Kennedy as President after the assassination, he took up the challenge of civil rights and made passage of the stronger bill a memorial to President Kennedy.[209] Johnson used his political expertise to create a group of aides, elected and appointed officials, and private citizens that would act in concert to prevent the anticipated Southern filibuster and assure the bill's passage.[210] Johnson also included the civil rights leaders in his planning.[211] The Civil Rights Act of 1964 passed the Congress and was signed into law on July 2, 1964.[212] At a private meeting immediately after the signing ceremony, Johnson met with Black leaders at the White House in an effort to obtain their cooperation with a careful implementation of the Civil Rights Act.[213]

D. Branton as Lawyer

Wiley Branton could not ignore his legal skills while he managed the VEP. As he put it, "I frequently went to the rescue because I knew about the incidents first and there was no one else to call on."[214] There still were very few Southern lawyers to represent civil rights workers and demonstrators.[215] As Branton put it in testimony before the United States Civil Rights Commission in 1965, he often was called because he was so well-known, even though it was not part of his VEP responsibilities.[216] Branton's Arkansas background and legal practice had given him an understanding of how rural law operated. He also had a couple of qualifications not shared by the few

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209. BRAUER, *supra* note 88, at 314.

210. MANN, *supra* note 74, at 398 (noting "[t]he civil rights forces were organized as never before.")

211. White House records indicate telephone calls to Roy Wilkins and Whitney Young soon after Johnson came to the presidency, and regular conversations and meetings throughout his administration. MICHAEL R. BESCHLOSS, TAKING CHARGE, THE JOHNSON WHITE HOUSE TAPES, 1963–1964 28, 30, 37 (1997) (indicating calls on November 24 and 25, 1963).

212. 88 P.L. 352, 78 Stats. 241; BESCHLOSS, *supra* note 211, at 450 n.5. The law provided for elimination of discrimination in public accommodation and termination of federal funding to programs that were discriminatory. Robert D. Loevy, *The Impact and Aftermath of the Civil Rights Act of 1964*, *in* THE CIVIL RIGHTS ACT OF 1964, THE PASSAGE OF THE LAW THAT ENDED RACIAL SEGREGATION 333 (Robert D. Loevy, ed., 1997).

213. Memorandum from Lee C. White to The Files, titled "Meeting with Negro Leadership following Signing Ceremony," (July 6, 1964) (WHCF, President's Appointment File [Diary Backup], Box 7, LBJ Library).

214. WATTERS & CLEGHORN, *supra* note 139, at 100.

215. *Id.* at 99–100 (noting that "[w]hen the rights movement swept over Mississippi in 1963, only four Negro lawyers were practicing in the state . . . at one point, three of the four active Negro lawyers were heavily involved in rights cases").

216. Hearings Before the United States Commission on Civil Rights, Vol. 1, Voting, 184.

other Black lawyers around: his accent was not identifiably "Black,"[217] and in appearance he could be easily mistaken for white.[218] These attributes would prove useful on numerous occasions. To illustrate the extent of his legal representation during his time with the VEP, consider the examples that follow.

On two occasions, Branton was called to represent James Forman, later head of SNCC, against charges brought in Mississippi. The first, in late August 1962, involved charges of loitering after Forman left a Clarksdale, Mississippi, COFO meeting. Wiley Branton was required to argue that one could not loiter in a moving car.[219] The second occurred on March 29, 1963, after Forman had been arrested with seven others for refusing to disperse during a march to the Courthouse in Greenwood, Mississippi.[220]

On another occasion, Branton successfully obtained the release of David Dennis, a CORE worker arrested in Clarksdale, Mississippi, in 1962 or 1963 for refusing to say "sir" to a policeman who had stopped him for questioning and called him "nigger."[221]

On June 10, 1963 Branton was able to obtain the release of a number of activists by telephone. Fannie Lou Hamer, Annelle Ponder, Rosemary Freeman, Elvester Morris, and June Johnson were arrested in Winona, Mississippi, on their way back to Greenwood from a citizenship workshop.[222] A SNCC worker sent to bail them out also disappeared.[223] Martin Luther King, Jr. asked Andrew Young to see if he could get them all out of jail.[224] When Young arrived, he and a companion hesitated to come to the point with the

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217. YOUNG, *supra* note 5, at 257.

218. WATTERS & CLEGHORN, *supra* note 139, at 111, n 19. The file on Branton created by the Mississippi Sovereignty Commission also testifies to these facts. Mr. A. L. Hopkins, reporting on the trial of 27 Freedom Riders in Jackson, Mississippi, on May 29, 1961, stated "The Defense Attorneys were . . . ; Wiley Branton, colored, male, Pine Bluff, Arkansas. (Branton appears to be a white man; however, I have been informed by Chief M.B. Pierce that he is a Negro.)." Mississippi State Sovereignty Commission Records, SCR ID # 2-55-2-99-1-1-1, Mississippi Department of Archives and History, p.1.

219. BRANCH 1, *supra* note 4, at 635–36 (noting that Branton paid the resulting fine "out of VEP funds"). In testifying about the event before the United States Civil Rights Commission in 1965, Branton commented "I had practiced law for about eleven years, . . . and I must admit I never heard of [a charge like that]." WATTERS & CLEGHORN, *supra* note 139, at 64.

220. Report of Tom Scarbrough, Investigator, Mississippi Sovereignty Commission, (Mar. 25–Apr. 3, 1963), Mississippi State Sovereignty Commission Records, SCR ID #2-45-1-71-4-1-1, Mississippi Department of Archives and History, pp. 3–4; *see also supra* notes 174–76 and accompanying text.

221. MEIER & RUDWICK, *supra* note 4, at 179.

222. YOUNG, *supra* note 5, at 253.

223. *Id.*

224. *Id.* at 254.

sheriff, but Wiley Branton telephoned the sheriff's office while Young was there and cajoled the sheriff into releasing the prisoners on bail.[225]

In June 1963 Jack Pratt, a lawyer for the Commission on Religion and Race of the National Council of Churches, attempted to obtain the release of Mississippi movement people who had disappeared from sight.[226] Pratt needed the help of James Forman (CORE) and Wiley Branton to work his way through the maze of the state's criminal justice system.[227]

Branton described his experience in representing a number of civil rights workers accused of various misfeasances in Indianola, Mississippi (precise date unknown), to the United States Civil Rights Commission in 1965. On that occasion, without hindrance from the chief of police or remonstrance from the judge, a white man sprayed Branton and his clients in the face with an insecticide, stating loudly, "I have got to de-niggarize this."[228]

In April 1964 John Due, a VEP field worker, was arrested while gathering affidavits throughout Mississippi for submission to the U.S. Commission on Civil Rights.[229] The statements were confiscated along with his other identification and documents.[230] Due paid a bond and was let go but ordered to return for trial. He contacted Branton for advice on how to proceed.[231]

As a final example, when two young voter registration workers were jailed in one of the plantation counties of south Georgia, Branton called the sheriff, put on his best drawl and "good-old-boy" informality, and greeted him like an old friend. After quickly convincing the sheriff they knew each other, Branton was able to bail out the workers.[232]

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225. *Id.* at 256–57 (stating that "Wiley . . . was one of the most important and effective black civil rights attorneys during the Southern movement"). This was a time when Branton's white-sounding accent was useful.

226. BRANCH 2, *supra* note 4, at 128.

227. *Id.*

228. Hearings Before the United States Commission on Civil Rights, Vol. 1, Voting, 184.

229. WATTERS & CLEGHORN, *supra* note 139, at 199.

230. *Id.*

231. *Id.* at 202 (stating "[u]pon the advice of Mr. Wiley Branton, I asked Mr. [Courtney] Siceloff [United States Commission on Civil Rights] to be a witness or ascertain whether a member of the FBI would be present").

232. *Id.* at 111 n.19 (stating that Branton justified his interest to the sheriff by claiming that the mother of one of the young men worked for him and was too upset to do a good job). Branton told that story during a speech in 1988, stating that it was the only time he was willing to devalue the life of a Black man as compared with a white one, because it meant a lower fine. WAB Access 2000 Speech, *supra* note 27, at 12–13.

E. Winding Up

Establishing and directing the VEP's operations was a complicated business. Branton had to push the registration efforts forward while demanding that the workers take time to provide the detailed reports that would justify their funding.[233] He also had to avoid bruising egos or otherwise offending the civil rights leadership in determining which programs would receive VEP grants. The psychological demands of the job on Branton should not be overlooked, either.

The juxtaposition of extreme violence with the mundane irritations of bureaucracy were constant. One example was the aftermath of the February 1963 shooting in Mississippi.[234] The car in which the three men were riding happened to be a rental from Hertz. The company charged the VEP a $112 insurance deductible for damage to its car and $12.50 in towing costs. Branton objected to the charges, arguing that "the total damage to the vehicle consisted of that caused by bullets," for which the car's occupants were not responsible. He suggested the damage should be covered by general comprehensive insurance because it resulted from "malicious mischief or vandalism." The towing charge, he said, was incurred when the police confiscated the car from the hospital parking lot; again, not through any action of the occupants.[235] Branton's protest was successful. A Hertz employee's response dated June 5 agreed with Branton's conclusions and stated "[n]eedless to say, we regret the circumstances under which this transaction took place, and we certainly hope that there will be no further repetition."[236]

A second example of the combination of violence and good business practice can be seen in the VEP's budget planning. When it began in 1962,

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233. In addition to eliminating VEP grants to COFO, described earlier, Branton was required to cut funding temporarily from Martin Luther King, Jr.'s, Southern Christian Leadership Conference when reports were not submitted after several requests. WAB 1970 Interview, *supra* note 23, at 33. Similar temporary cuts were made to NAACP funding. *See, e.g.*, letter from Wiley A. Branton to Mr. Fred D. Alexander 5 (Dec. 31, 1964), *in* PAPERS OF THE NAACP, Part VI, I-3, Voter Education Project, Staff, Branton, Wiley A., 1962–64 (3 of 3) (on file with the Library of Congress); Letter from John A. Morsell, Assistant Executive Director, NAACP, to Vernon Jordan, VEP (Dec. 31, 1965), *in* PAPERS OF THE NAACP, Part III, Box A212, Administration-General Office File, "Leagues & Organizations, SRC, Inc. general 1961–65" (on file with the Library of Congress) (admitting that its involvement with the first VEP "was marked occasionally by misunderstanding and by certain problems we faced in complying with the financial requirements").

234. *See supra* note 169 and accompanying text.

235. Letter from Wiley A. Branton to Hertz System, Inc. (May 2, 1963) (on file with the Southern Regional Council Papers, Reel 173, Auburn Avenue Research Library, Atlanta-Fulton Public Library System, Atlanta, Georgia).

236. Letter from R.E. Perrine, Hertz System Inc., to Wiley A. Branton (June 5, 1963) (on file with the Southern Regional Council Papers, Reel 173, Auburn Avenue Research Library, Atlanta-Fulton Public Library System, Atlanta, Georgia).

VEP's budget looked like that of any other organization, containing categories for salaries, taxes, travel, rent, benefits, and the like.[237] After the first year, when almost $500.00 was spent on payments to various small town courts for bail or fines and to repair damage caused by white violence, a category for "harassment" was added to the budget.[238] Harassment continued to be a problem and was included as a line item in succeeding budgets.[239]

The original VEP ended its prescribed period of operation in fall 1964.[240] In its two-and-one-half years of operation, 688,000 Black voters had been added to the rolls of the eleven Southern states.[241] To put that number in context, it was more than half the total number of southern Blacks registered—1,226,200—in the twenty years since the *Smith v. Allwright* decision.[242] While this number is impressive, it still represented only 40.8% of eligible Black voters in those states.[243]

The total registration number could have been much higher had southern officials not illegally prevented civil rights workers from bringing new voters to register and had registrars not been able to evade the law with tactics like closing the offices when Blacks lined up to register,[244] using unfair

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237. VEP Budget Comparison (May 8, 1063) (on file with the Southern Regional Council Papers, Reel 173, Auburn Avenue Research Library, Atlanta-Fulton Public Library System, Atlanta, Georgia).

238. Memorandum from Jean Levine to Wiley A. Branton (May 6, 1963) (on file with the Southern Regional Council Papers, Reel 173, Auburn Avenue Research Library, Atlanta-Fulton Public Library System, Atlanta, Georgia) (noting that no provision for it had been included in the first year's budget and that VEP had spent $472.56 "for harassment reasons during the first year alone").

239. *See, e.g.*, "Voter Education Project Budget 1964–1965" in which $500 was allocated (Southern Regional Council Papers, Reel 173, Auburn Avenue Research Library, Atlanta-Fulton Public Library System, Atlanta, Georgia).

240. WATTERS & CLEGHORN, *supra* note 139, at 46.

241. WATTERS & CLEGHORN, *supra* note 139, at 69–70. The VEP had provided grant funds to organizations that registered 327,588 of that total, and provided other types of assistance to voter registration groups. "The Voter Education Project, A Concise History, 1962–1979," 6.

242. WATTERS & CLEGHORN, *supra* note 139 at 26–27.

243. WATTERS & CLEGHORN, *supra* note 139, at Appendix II. While the problems encountered by Wiley Branton during the first VEP did not disappear entirely during subsequent VEP operations, they diminished significantly where federal registrars were appointed under the 1965 Act. *Id.* at 181. After the 1965 Voting Rights Act was passed, a new VEP emerged, with Vernon Jordan at its head. JORDAN & GORDON-REED, supra note 57, at 179. In one year, total registration passed 50% of eligible Blacks. WATTERS & CLEGHORN, *supra* note 139, at 69–70. John Lewis took Jordan's place in 1970. LEWIS & D'ORSO, *supra* note 4, at 434. By that time, VEP was bringing Black elected officials into Black neighborhoods and towns, to illustrate the accomplishments of voting. *Id.* at 435. During its existence, VEP received no federal funding and was supported completely through private money. Letter from Wiley A. Branton to Editor, WASH. POST, May 19, 1987 (on file with author).

244. MEIER & RUDWICK, *supra* note 4, at 266.

literacy tests and poll taxes,[245] and refusing to designate or canceling authorized registration sites in Black communities.[246]

On February 17, 1965 Wiley Branton testified before the United States Commission on Civil Rights, which held hearings in Jackson, Mississippi, on voter registration activities.[247] When asked what he would do to improve the situation in Mississippi, Branton suggested that the full weight of the President's office should put pressure on states and, if that effort did not change the situation within a short period of time, then the stationing of federal troops "or the appointment of a military government" should occur.[248]

Despite having to make decisions that upset and angered various people,[249] Wiley Branton "emerged from the [VEP] job with his prestige in the movement intact."[250] The integrity and wide range of skills that he brought to the job had allowed him to administer a unique program successfully. Between February 1962 and April 1965, Branton's contacts in both the Black and white communities of the South expanded exponentially. The publicity that followed the voter registration effort displayed his skills to the nation. Branton became known as someone who could get things done. His name was well-known in Washington, D.C. through his frequent communications with the Department of Justice.

IV. THE PRESIDENT'S COUNCIL ON EQUAL OPPORTUNITY, 1965

When his work with the VEP ended, Wiley Branton looked around for other challenges. Although he initially intended to return to private practice in Arkansas,[251] he also applied for the position of Southeast Regional Director of a United States Office of Economic Opportunity branch and was receiving favorable consideration.[252] Suddenly, Vice President Hubert H. Humphrey asked him to move to Washington, D.C., and aid in government

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245. QUIET REVOLUTION IN THE SOUTH, THE IMPACT OF THE VOTING RIGHTS ACT, 1965–1990, 30, 32 (Chandler Davidson & Bernard Grofman, eds., 1994).

246. *Id.* at 76. Twenty years later Wiley Branton recalled that "in 1963 some counties in Virginia gave a printed voter registration form to whites and a blank sheet to blacks. If black registrants could not fill out the form in the exact order of the printed sheet, they were disqualified from voting." Jacqueline Trescott, *The Voting Struggle; Marking 20 Years of Ballot Rights Battles*, WASH. POST, Sept. 27, 1988 at C1.

247. Hearings Before the United States Commission on Civil Rights, Vol. 1, Voting, 176.

248. *Id.* at 188.

249. *See supra* notes 184, 233 and accompanying text.

250. WATTERS & CLEGHORN, *supra* note 139, at 48.

251. WAB 1970 Interview, *supra* note 23, at 44.

252. Memorandum from Sargent Shriver to John W. Macy, Jr., (Apr. 6, 1965) (on file with WHCF, Office Files of John Macy, Box 58, LBJ Library) (noting Branton was "regional director material").

efforts to enforce the Civil Rights Act of 1964 by working with the President's Council on Equal Opportunity.[253]

This opportunity was powerfully attractive to Branton. While directing the VEP, Branton had learned in graphic ways the importance of federal support for civil rights efforts.[254] President Lyndon Johnson had vowed to use his administration to push a civil rights agenda.[255] The President's Council position offered Branton the chance to continue his civil rights work with access to the highest federal authority.[256] In a memo dated April 30, 1965, Humphrey informed President Lyndon B. Johnson that Wiley Branton had been hired as executive director of the Council, noting that "[h]e has the respect and confidence of both the leaders of major civil rights groups and of the white Southern moderates."[257]

Presidential Councils already had a venerable civil rights history. In 1946 President Truman appointed the Presidential Committee on Civil Rights to recommend steps "to secure racial justice in the [southern] region."[258] The Committee's October 1947 report, "*To Secure These Rights*", was a sweeping indictment of the South's racial order."[259] It led President Truman to send "the first civil rights legislative package [] to Congress since Reconstruction."[260] Unfortunately, that bill failed to pass, and Truman's efforts led Southern Democrats to leave the Party and to challenge him in the next election.[261]

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253. WAB 1970 Interview, *supra* note 23, at 44.

254. WAB 1969 Interview, *supra* note 31, at 60–61.

255. BRAUER, *supra* note 88, at 314.

256. WAB 1969 Interview, *supra* note 31, at 60.

257. Memorandum from HHH to LBJ (Apr. 30, 1965) (on file with the Hubert H. Humphrey: Vice Presidential Files: Civil and Human Rights Files, Box 826, Minnesota Historical Society). Humphrey concluded, "[h]e comes most highly recommended and will, I am sure, do an outstanding job." *Id.* An internal memorandum relating to Branton's appointment indicates that Johnson did not want to create a permanent position with the Council. Memorandum from GER [George E. Reedy, Johnson's Press Secretary] to the President (May 3, 1965) (on file with the WHCF Name File—BRANTLEYA, Box 428, LBJ Library) (containing Johnson's handwritten notes stating "don't want to be permanent—time limit—with letter—last about 3 mo").

258. JOHN A. SALMOND, MY MIND SET ON FREEDOM, A HISTORY OF THE CIVIL RIGHTS MOVEMENT, 1954–1968, 19 (1997); LAWSON, *supra* note 1, at 78.

259. SALMOND, *supra* note 258, at 19; WILKINS & MATHEWS, *supra* note 4, at 200 (noting that the report contained 35 specific recommendations that the NAACP used as a guide over the "next two decades"). The Committee's recommendations "comprised a bold blueprint for racial change: a federal antilynching law, the abolition of the poll tax, an end to segregation on interstate transportation and in the nation's capitol, the withdrawal of federal funds from institutions practicing segregation, and the establishment of a permanent civil rights section within the Department of Justice." SALMOND, *supra* note 258, 19–20.

260. SALMOND, *supra* note 258, at 20; LAWSON, *supra* note 1, at 78.

261. *Id.* at 20.

Dwight D. Eisenhower appointed the President's Committee on Equal Employment Opportunity,[262] which worked quietly to persuade federal contractors to increase hiring of minorities by requiring them to "search aggressively for qualified minority applicants" who would then compete with others on an equal footing.[263]

Soon after Lyndon Johnson's 1964 election, he asked Vice President Humphrey to suggest means by which the civil rights functions of federal agencies could be coordinated.[264] On January 4, 1965, Humphrey suggested the creation of a President's Council on Equal Opportunity that would have no "operational responsibilities," but would "perform planning, evaluative, advisory, and coordinating functions."[265] Humphrey's memo listed more than eleven different government entities that had specific responsibilities under the 1964 Act and noted that other offices also were given similar responsibilities.[266] Coordination clearly was needed.

Humphrey proposed that the new President's Council be small and flexible and have authority to obtain regular reports from all agencies on their civil rights activities to focus on particular problems and to request resources, personnel, and expertise from the various agencies and offices.[267] The "particular problems" on which he suggested the Council could focus were "employment, Title VI [school desegregation] implementation, procedures for filing complaints, and education [of the various agencies as to what each was doing]."[268]

Johnson approved the plan and issued Executive Order 11197, creating the Council on February 5, 1965.[269] Humphrey was chair; other members were cabinet officers and agency heads with major civil rights responsibilities.[270] The Council was charged with "coordinating the many and diverse civil rights activities presently being undertaken by the departments and agencies of the Federal Government."[271] Humphrey himself was asked to

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262. Nicholas Lamann, *Taking Affirmative Action Apart*, N.Y. TIMES, June 11, 1965, § 6, at 36, Col. 1.

263. *Id.*

264. Letter from Hubert H. Humphrey to President Lyndon B. Johnson (Jan. 4, 1965) (on file with author).

265. *Id.*

266. Report to the President, On the Coordination of Civil Rights Activities in the Federal Government, Submitted by the Vice President-Elect (Jan. 4, 1965).

267. *Id.* at 25.

268. *Id.*

269. White House Press Release, "The White House Made Public Today the Following Letter from The President to The Vice President" and attaching Executive Order "Establishing the President's Council on Equal Opportunity" (Feb. 9, 1965).

270. *Id.* at 2.

271. *Id.* at 1.

"make such suggestions and recommendations for changes and improvements as occur to you."[272]

Humphrey lost little time in implementing Johnson's Order. In his first meeting with Council members, on March 3, 1965,[273] Humphrey stressed the fact that the Committee was not to become a new bureaucracy. All operational responsibility for civil rights enforcement would remain with the separate agencies. The Council would provide communication between those agencies, with the purpose of reducing duplication, enforcing consistency in response, and assuring that the concerns of local entities—state governors, mayors, and private groups—would be heard and receive prompt attention.[274]

Three task forces were created at that initial meeting, one each to focus on: (1) anticipated violence in urban areas during the summer,[275] (2) employment discrimination,[276] and (3) discrimination in education.[277] The Council's most important duties would be to channel complaints by citizens and civil rights groups quickly to the appropriate office for action and to maintain contact with complainants until some final response was made.[278]

The order creating the Council also provided for an Executive Secretary to "assist the chairman and the Council" and "perform such functions as the chairman or the Council may assign or delegate to him."[279] Wiley Branton began work in April and was formally introduced to Council members at a second meeting on May 19, 1965.[280] His appointment was considered by many as a coup for the administration.[281]

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272. *Id.*

273. Minutes of Organizational Meeting, Wednesday, March 3, 1965, President's Council on Equal Opportunity, at 1 (Personal Papers of Ramsey Clark, Box 74, LBJ Library).

274. *Id.*

275. *Id.* at 4. Former Governor LeRoy Collins, Director of the Community Relations Service, was to work with the mayors of major cities to direct federal programs that might alleviate some of the problems that led to riots. *Id.*; *see also* Memorandum from Collins to The President (Apr. 12, 1965) (WHCF, EX FG-155-18, Community Relations Service, 11/23/63-8/23/65, Box 229, LBJ Library) (responding to complaints from Chicago Mayor Richard Daley about Collins' efforts to meet with several mayors of large cities).

276. Minutes of Organizational Meeting, Wednesday, March 3, 1965, President's Council on Equal Opportunity at 4 (Personal Papers of Ramsey Clark, Box 74, LBJ Library). Former Governor David L. Lawrence, Chair of the President's Committee on Equal Opportunity in Housing, would work to eliminate overlapping jurisdiction and conflicting policy within the government and interact with local community groups to educate citizenry on the new laws. *Id.*

277. *Id.* Commissioner of Education Francis Keppell would attempt to coordinate the approach to implementing the 1964 Act within relevant government offices and to provide information to schools affected by the Act. *Id.*

278. *Id.* at 1.

279. Exec. Order No. 11197, 30 Fed. Reg. 1721 (Feb. 9, 1965) (establishing the President's Council on Equal Opportunity, Section 3).

280. Memorandum from Wiley Austin Branton to Members of the President's Council on

Branton's primary duty was channeling information to the Vice President. Soon after his appointment, Branton, as intermediary for communications within the Council, was writing weekly memos to Humphrey reporting on the activities of Council staff, its various committees, and Council members.[282] Portions of these memos were sent virtually unchanged by the Vice President to the President.[283]

Branton's background and contacts made him particularly useful in dealing with private civil rights groups,[284] so he advised Humphrey on nuances of Black-white relations in local communities where the Vice President was scheduled to speak.[285] He kept abreast of many of the smallest

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Equal Opportunity, Their Alternates and other attending the Council Meeting, May 19, 1965 (May 28, 1965) (on file with author) (attaching three-page "Minutes of Second Meeting") (Hubert H. Humphrey: Vice Presidential Files: Civil and Human Rights Files, Box 826, Minnesota Historical Society).

281. *See, e.g.*, Editorial, *In Line*, PINE BLUFF COMMERCIAL, May 4, 1965, at 4 (stating that Wiley Branton "has a reputation for inspiring confidence beyond any one circle of public opinion"). The *Commercial* editorial continued, "[h]e is an individual whose forthright manner and quiet assurance lead one to think of him, and deal with him, first as a man and only secondarily as a representative of any one race, region or state . . . his talents as a lawyer and counselor have attained a national scope." *Id.*

The Rev. Martin Luther King, Jr., sent a congratulatory telegram to Branton, stating "[i]t goes without saying that this is a most significant appointment and I can think of no one who could do the job more competently and superbly as you. Your unswerving devotion [sic] to the cause of civil rights, your tremendous effective ability to work with all civil rights groups and your great talents uniquely equip you to do this job. We are all very proud of you." Telegram from Rev. Martin Luther King, Jr. to Wiley Austin Branton (May 3, 1965) (attached to Wiley Austin Branton's May 28, 1965 response).

For the Black press, Wiley Austin Branton "became the new 'wonder man' in the LBJ Administration in Washington, . . . [assigned] 'to put flesh on the skeleton' [of the Council]." *Ark. Atty. Gets Top U.S. Rights Post*, JET, June 10, 1965 (predicting that Branton would "not only will become a major advisor to Vice President Humphrey but the President will look to him for immediate action on coordination of a huge government program which touches school integration, housing, the anti-poverty set-up and the employment programs").

282. *See, e.g.*, Memoranda from Wiley Austin Branton to The Vice President (May 28, 1965; June 4, 1965; June 12, 1965; June 25, 1965; July 12, 1965; July 23, 1965; Aug. 6, 1965; Aug. 13, 1965; Aug. 20, 1965; Aug. 28, 1965; Sept. 13, 1965; Sept. 20, 1965) (on file with the Hubert H. Humphrey: Vice Presidential Files: Civil and Human Rights Files, Box 826, Minnesota Historical Society).

283. *See, e.g.*, Memoranda from The Vice President to The President (June 8, 1965; June 15, 1965; June 29, 1965; July 8, 1965; Aug. 2, 1965) (on file with the Hubert H. Humphrey: Vice Presidential Files: Civil and Human Rights Files, Box 826, Minnesota Historical Society).

284. Memorandum from Wiley Austin Branton to the Vice President (June 14, 1965) (on file with author) (notifying Humphrey that Branton would be attending two meetings of civil rights organizations and leaders "in order to maintain continued communication with the top leadership").

285. Memorandum from Wiley Austin Branton to William Connell (June 14, 1965) (on file with author) (providing background information on conditions in Bluefield, West Virginia).

details relating to the government's civil rights efforts, using his personal knowledge of local communities to contribute to that work.[286] Branton also occasionally provided background information and analysis on civil rights relations for members of the President's staff.[287]

For many Blacks with complaints about discrimination, Branton *was* the federal government. To him fell responsibility for receiving complaints, directing them to the appropriate government office, and maintaining contact until a resolution was developed. His files are replete with requests and complaints from individuals across the country. Branton reviewed the complaints he received and forwarded those having merit to government officials and employees who could investigate and resolve them.[288] For example, he worked with members of the Department of Health, Education & Welfare to investigate and resolve complaints arising out of the systematic firing of Black teachers in the South following desegregation of schools under Title VI regulations.[289]

Branton also provided effective public relations for the administration's civil rights work. As noted earlier, Branton's appointment to the job itself had been "news."[290] The appointment and his existing reputation resulted in numerous invitations to speak before various groups on government efforts to implement the 1964 Act.[291] "In both public speeches and

286. For example, in July 1965, he wrote to the Acting Director of the Community Relations Service suggesting that the list of names proposed as members of a National Citizens Committee did not include one Black person among the thirteen from Arkansas and that consideration should be given to establishing good relations in the Black community in case the Community Relations Service wanted to become active there later on. Letter from Wiley Austin Branton to Calvin Kytle, Acting Director, Community Relations Service (July 8, 1965) (on file with author).

287. Memorandum from Wiley Austin Branton to Lee C. White, Special Counsel to the President (June 22, 1965) (on file with author) (interpreting motives behind telegram to President from DC Branch of NAACP regarding a meeting to discuss appointments to EEOC (believing only whites were being hired)).

288. *See, e.g.*, Letter from Wiley Austin Branton to Frederick D. Williams, Philadelphia, PA, (July 26, 1965) (on file with author) (reporting on Branton's investigation of William's complaints against the Internal Revenue Service and stating that the facts of his (Williams) treatment did not demonstrate illegal discrimination); *see also* Letter from Wiley Austin Branton to Mrs. Zeola Vaughn, DeKalb, TX (Sept. 22, 1965) (on file with author) (asking for more information so he could be more specific in his advice); memorandum from Wiley Austin Branton to Samuel F. Yette, Office of Economic Opportunity (Sept. 22, 1965) (asking whether there was an agency in Mrs. Vaughn's area).

289. Letter from Wiley Austin Branton to James M. Quigley, Assistant Secretary, Department HEW (June 1965) (on file with author).

290. *See supra* note 281 and accompanying text.

291. Between May 28 and August 16, 1965, Branton spoke before Community Relations Service consultants, youth program attendees at the annual NAACP convention, EEOC compliance officers in training, a group of African students attending American colleges, an HEW regional conference, the Delta Sigma Theta Sorority, and the annual convention of the Postal Alliance. *See* Memoranda from Wiley Austin Branton to the Vice President (May 28,

private conversations, he [explained] the function of the Council and the Government's civil rights program and [asked] the civil rights leaders for their suggestions and opinions."[292]

Branton believed that the Council's efforts encouraged federal entities to give civil rights issues the importance demanded by the President. In a 1969 interview, he recalled that the Council was "going great guns. We had agencies really jumping and moving trying to do something about civil rights, ..."[293]

With the Council providing a steady focus for implementation of the 1964 Civil Rights Act, Johnson initially decided to limit his 1965 legislative activity to passage of the numerous poverty programs he had submitted to Congress.[294] However, after seeing voting statistics from the 1964 election, Johnson approved plans to strengthen the Democratic Party presented by Louis Martin, Chair of the Democratic National Committee,[295] that included new voting rights legislation.[296] In his January 1965 State of the Union address, President Johnson pledged "that he would call on Congress to eliminate 'all barriers to the right to vote.'"[297]

Not much work had been put into drafting a new bill when a series of voting rights demonstrations in Selma, Alabama, led by Martin Luther King, Jr., occurred.[298] Alabama state troopers used "clubs, with horses, with whips, and with tear gas" to quell a March 9 march from Selma to Montgomery.[299] The extreme violence exhibited by state authorities in Selma, resulting in three deaths, was seen on television and shocked the nation.[300]

1965; July 2, 1965; July 12, 1965; July 16, 1965; July 16, 1965; July 23, 1965; Aug. 13, 1965) (on file with the Hubert H. Humphrey: Vice Presidential Files: Civil and Human Rights Files, Box 826, Minnesota Historical Society) (copies on file with author).

292. Undated memorandum from Betsy (Costle) to Dave (Filvaroff) and Wiley [Branton], at 2. For example, in a talk at the Annual Convention of the National Association of Intergroup Relations Officials on Oct. 20, 1965 at 7, Branton described the Council as "a clearing house for ideas . . . that could be put into action to facilitate the National commitment [to civil rights]."

293. WAB 1969 Interview, *supra* note 31, at 61.

294. JOHN A. ANDREW, III, LYNDON JOHNSON AND THE GREAT SOCIETY 34 (1998); *see also* SALMOND, *supra* note 258, at 127 (suggesting that some part of Johnson's decision was based on anger and pique at the popularity of Dr. Martin L. King, Jr.).

295. ANDREW, *supra* note 294, at 33–34.

296. *Id.* (noting that "[p]arty politics, perhaps more than civil rights, called the shots").

297. Loevy, *supra* note 212, at 335–36.

298. MICHAEL BESCHLOSS, REACHING FOR GLORY, LYNDON JOHNSON'S SECRET WHITE HOUSE TAPES, 1964–1965 172 (2001); ANDREW, *supra* note 294, at 34.

299. WATTERS & CLEGHORN, *supra* note 139, at 253.

300. QUIET REVOLUTION IN THE SOUTH, THE IMPACT OF THE VOTING RIGHTS ACT, 1965–1990, *supra* note 246, at 30 (1994); BESCHLOSS, *supra* note 298, at 216 (noting the event would be termed "Bloody Sunday"). "On Saturday, March 20, [Johnson] federalized 1,800 Alabama National Guardsmen and appointed Ramsey Clark to coordinate the march to Montgomery." *Id.* at 236.

The President soon announced that he would send a voting rights bill to Congress.[301] Even Republicans were aroused.[302] Reaction to Selma from both Congress and the public resulted in a swift "'consensus' on the provisions of the bill . . . ."[303]

Once submitted, the Voting Rights Bill moved swiftly through Congress. By August 6, it was ready for Johnson's signature.[304] The Voting Rights Act of 1965 prohibited all the restrictions, standards, tests, and other devices that had been used to prevent Blacks from voting in federal, state, and local elections and gave federal officials the power to ensure that those who wished to vote could do so.[305] The Act singled out those "states and counties where fewer than fifty percent of all adults had gone to the polls in 1964 . . . [and] authorized the attorney general to send federal examiners into the South to enroll voters and observe registration practices."[306] The Act also required officials in those selected counties to submit any changes in their election procedures to the Department of Justice (DOJ) for approval and authorized the DOJ to use litigation to challenge the "poll" tax in all states.[307] The only prerequisite for DOJ action was that "the attorney general certif[y] to the U.S Civil Service Commission that voting rights violations existed."[308] Once the Act was signed, the Justice Department moved quickly to assign voting examiners to more than thirty counties in four states."[309]

During this period Branton's VEP experience had become quite valuable and he was consulted by many of those planning for post-enactment implementation.[310] William L. Taylor of the United States Commission on

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301. BESCHLOSS, *supra* note 298, at 171–72.

302. LAWSON, *supra* note 1, at 309 (stating "Senate Minority Leader Dirksen . . . told Katzenbach that he was prepared for a 'revolutionary' bill if necessary").

303. Loevy, *supra* note 212, at 337.

304. 111 Cong. Rec. 19649-19650 (1965). Branton was invited to attend the signing of the Voting Rights Act [August 6, 1965] by President Johnson. Telegram from Lawrence F. O'Brien, Special Assistant to the President, to Wiley Austin Branton (July 5, 1965) (on file with author).

305. Paul Good, *Odyssey of a Man—and a Movement*, *in* BLACK PROTEST IN THE SIXTIES 272 (August Meier, John Bracey, Jr. and the late Elliott Rudwick, eds., 1991).

306. ALEXANDER KEYSSAR, THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES 263 (2000).

307. *Id.* at 264.

308. MANN, *supra* note 74, at 459–60.

309. KEYSSAR, *supra* note 306, at 264.

310. *See, e.g.*, Memorandum from John Stewart to The Vice President (May 14, 1965) (on file with Hubert H. Humphrey, Vice Presidential Files: Civil and Human Rights Files, Box 826, Minnesota Historical Society). Vice President Humphrey urged John W. Macy, Jr., Chair of the U.S. Civil Service Commission, to work with Branton on Voting Rights Act issues. Macy responded that he already was in communication with Branton. He noted "[w]e are well aware of the wealth of knowledge and experience which Mr. Branton has gained in the field of civil rights, and you may be sure that we will avail ourselves of the opportunity of obtaining his counsel and advice on any problems which we may encounter in this field."

Civil Rights even suggested to President Johnson that the Council was the appropriate agency to coordinate and implement programs to disseminate voting information and provide voter education as an aid to implementing the Act.[311] These activities put Branton right in the middle of the federal government's latest civil rights action. By the end of September, however, there were major changes.

Apparently, President Johnson had become more and more dissatisfied with Humphrey's involvement in civil rights. Some observers suggested that he resented anyone but himself getting credit for civil rights successes.[312] Others believed that Humphrey's disagreement with Johnson on Vietnam created a gulf between the two.[313] As early as May 14, Johnson complained about "leaks" to the press that he blamed on Humphrey and told his aides that Humphrey was not to do anything without White House instructions.[314]

Humphrey was not oblivious to the cold shoulder he was getting from the President's office. Toward the end of August 1965, Humphrey complained that some of the Council's efforts were being duplicated and upstaged by activities of the President's staff, although he blamed the problems on "inadequate communication . . . between the White House staff and the Council" rather than on the President.[315]

Whatever the cause, by August, Johnson had asked his aide, Joseph Califano, Jr., and Attorney General Nicholas Katzenbach to "recommend a more effective way to organize the government's civil rights efforts."[316] Without Humphrey's knowledge, an entirely new approach was conceived. The plan totally eliminated the Vice President's involvement in civil rights and put Katzenbach in charge of the government's efforts.[317] Individual departments and agencies were given responsibility for "programs within their jurisdiction."[318] In other words, things were back where they had been

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Letter from John W. Macy, Jr., Chair, U.S. Civil Service Commission, to The Vice President, United States Senate (Sept. 8, 1965) (on file with author).

311. Memorandum from Taylor to Lee C. White, Special Counsel to the President (Aug. 27, 1965) (on file with author)

312. JOSEPH A. CALIFANO, JR., THE TRIUMPH & TRAGEDY OF LYNDON JOHNSON, THE WHITE HOUSE YEARS 65 (1991); MANN, *supra* note 74, at 484.

313. CARL SOLBERG, HUBERT HUMPHREY: A BIOGRAPHY 271 (1984).

314. BESCHLOSS, *supra* note 298, at 322.

315. Memorandum from The Vice President to Marvin Watson (Aug. 26, 1965) (on file with the Hubert H. Humphrey: Vice Presidential Files: Civil and Human Rights Files, Box 826, Minnesota Historical Society).

316. CALIFANO, *supra* note 312, at 65. Journalist Nicholas Lamann suggests that Branton's presence as director made the Council more high-profile than Johnson liked. Lamann, *supra* note 262, at § 6, p. 36, Col. 1.

317. CALIFANO, *supra* note 312, at 66.

318. *Id.* at 66; *see also* Attachment to Memorandum from Marvin Watson to The President (Sept. 20, 1965) (on file with the WHCF, Ex FG731, file: President's Committee on

at the beginning of the year. On September 22 Humphrey was invited to a meeting and sandbagged with the proposed changes.[319]

On September 24 President Johnson announced the government's civil rights reorganization that included abolishing the President's Council on Equal Opportunity.[320] Reaction was negative. Humphrey had a long record of innovative civil rights activism, while Katzenbach was known to "pursue a methodical, legalistic approach."[321] The Attorney General did not seem the best choice for advancing enforcement of civil rights laws. Newspaper reports noted that civil rights groups believed the change presaged a lessening of governmental effort.[322]

In its short life, the President's Council apparently had only two full meetings, on March 3, 1965 and May 19, 1965.[323] This was a deliberate decision, as Humphrey felt that the work could be performed most efficiently at lower levels of Council management by acting as "watchdog, cajoler, coordinator, and advisor on most major civil rights decisions and programs of the government."[324] The Council's staff members all had diverse experience relevant to promotion of a civil rights agenda and could move quickly to assure changes in the operations of a federal agency.[325] As noted earlier, Branton's position was key to the communication efforts.

The Council's elimination might have left Branton stranded, particularly in the aftermath of a miscommunication that put him unfavorably in the national headlines.[326] The incident died down quickly, but Branton was

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Equal Employment Opportunity 1/1/65–__," Box 403, LBJ Library).

319. CALIFANO, *supra* note 312, at 66–67.

320. *Rights Units Are Shuffled*, WASH., D.C. EVENING STAR, Sept. 24, 1965.

321. *See, e.g.*, Steven F. Lawson, *Civil Rights in* EXPLORING THE JOHNSON YEARS 113 (Robert A. Divine, ed., 1981) (noting "the subsequent enforcement arrangement devised by Johnson, Califano, and other White House and Justice Department officials was far from exemplary"), *see e.g.*; MANN, *supra* note 74, at 485. Other entities were orphaned. *Id.* (commenting that "the President's Committee for Equal Opportunity in Housing, the Community Relations Service, and the U.S. Civil Rights Commission all fell into various states of disuse or outright irrelevance").

322. *Rights Groups Fear Easing of U.S. Enforcement Role*, N.Y. TIMES, Oct. 17, 1965 (stating that some of those to whom civil rights responsibilities devolved learned of the changes only minutes before they were announced).

323. Memorandum from Betsy (Costle), to Dave (Filvaroff) and Wiley [Branton] 3 (1965) (on file with author).

324. *Id.* at 4.

325. *Id.*

326. Only a day before the President's September 22 meeting with Humphrey, there was an informal dinner meeting aboard the presidential yacht, "Honey Fitz," attended by Humphrey and many civil rights leaders. Larry Still, *Humphrey Sees Rights Leaders Aboard Yacht*, WASH., D.C. EVENING STAR, Sept. 23, 1965 (stating that it allowed an "'off the record' discussion on civil rights problems in a relaxed atmosphere"). Those attending included the Vice President, Branton, and other staff from the Council; the Rev. Martin Luther King, Jr., and Andrew Young (SCLC); Jack Greenberg (NAACP Legal Defense and Educa-

hurt by the accusations.[327] However, the negative headlines did not affect his prestige or value in the administration's eyes. Attorney General Katzenbach had concluded a September 20 memo to President Johnson with the statements: "If the Equal Opportunity Council is terminated . . . [t]his could cause a political problem unless another important assignment is found for Wiley Branton."[328] Johnson apparently agreed. On September 24, two days after he informed Humphrey that the Council would be abolished, and the same day he signed Executive Order 11246 transferring civil rights responsibilities to various government entities,[329] Johnson met with Wiley Branton in the White House.[330] Later that day, Johnson announced that Branton would move over to the DOJ as a Special Assistant to the Attorney General.[331]

In his position with the Council, Branton had acted as a facilitator, conduit, and promoter for the Johnson administration. The credibility he had developed with Black Americans throughout his career and, particularly, with the VEP, gave luster to his statements about what President Johnson was doing with civil rights. Katzenbach's anticipation that firing Branton

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tion Fund); Clarence Mitchell (NAACP's D.C. office); Whitney Young, Jr. (National Urban League); Stephen Currier (Taconic Foundation); Rev. Walter Fauntroy and Floyd McKissick (SNCC); Louis Martin (National Democratic Committee); and Lloyd Garrison (civil rights attorney). List, "Persons Who Have Been Invited To Meet With The Vice President on the Honey Fitz on September 21, 1965, from 7:00 PM to 9:00 PM" (Sept. 21, 1965) (on file with author).

A "frank" discussion became heated. Branton later was accused in print of having said that the civil rights organizations were not helping the voter registration situation by their complaints. *Humphrey's Negro Aide Hits Rights Agitation, Irks Leaders*, JET, Oct. 7, 1965, at 8–10 (stating that Branton said "Negroes should be thankful and grateful for the extraordinary gains of the Johnson administration . . . [and] should take stock of the advances and solidify them rather than continue agitation."). The controversy generated a letter denying the accusations and clarifying Branton's remarks from some attendees to John H. Johnson, editor and publisher of JET Magazine. Letter from Whitney M. Young, Jr., Jack Greenberg, Floyd B. McKissick, Martin Luther King, Jr., and Stephen R. Currier to John H. Johnson (Oct. 4, 1965) (on file with author).

327. In a note to a friend, he referred to a story about the incident in the October 7 issue of JET magazine, denied the statements attributed to him, and called it an "attempt to discredit [him] . . ." Letter from Wiley Austin Branton to Dr. Geraldine E. Wood, President, Delta Sigma Theta Sorority, Wash. D.C. (Sept. 30, 1965) (on file with author). Branton's files contain many similar letters written during this period. He took every opportunity to "clear his name" with other blacks and clearly saw the negative statements as part of the perennial competition within the civil rights movement.

328. Attachment to memorandum from Marvin Watson, to The President 4 (Sept. 20, 1965) (on file with the WHCF, Ex FG731 file: President's Committee on Equal Employment Opportunity 1/1/65-__," Box 403, LBJ Library).

329. Lamann, *supra* note 262, at § 6, at 36, Col. 1.

330. Papers of LBJ, President, 1963–1969, The President's Daily Diary, 5/1/65–9/30/65, Box 4, LBJ Library.

331. Robert E. Baker, *Branton to Step Up Vote Pace*, WASH. POST, Sept. 25, 1965.

would be a bad move for the administration probably was accurate. Branton's name recognition and reputation remained strong with Blacks across the South. In less than five months, he had enhanced his skills in a new arena. The intermediary role he played within the Council gave him an intimate understanding of the inner workings of government departments and introduced him to many of the people who performed that work.

Branton was ambivalent about remaining with the government.[332] He was "reported to be willing to try the Justice Department job and see if he is permitted to put some of his ideas into effect."[333] Branton knew from his VEP experience that the DOJ's civil rights approach was a far cry from his own ideas about what was needed.

V. SPECIAL ASSISTANT TO THE ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, 1965–1967

When President Johnson appointed Wiley Branton as Special Assistant to Attorney General Nicholas Katzenbach on September 24, 1965, it was a quick way out of a dilemma. Branton was too well-known among a constituency that Johnson had courted assiduously simply to fire him after the President's Council was abolished. Yet the reorganization of civil rights responsibilities left no obvious place for Branton.[334] Johnson told the media that Branton would focus on voting rights, conducting a "'full and vigorous and swift' program of voter registration for Negroes in the South."[335]

The day after the announcement of Branton's transfer to the DOJ, White House Press Secretary Bill D. Moyers was quoted as saying "[t]he

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332. Letter from Wiley Austin Branton to R.A. (Reggie) Eilbott, Jr., Esq, Reinberger, Eilbott, Smith and Staten (Sept. 30, 1965) (on file with author) (stating, "I have not physically moved to the Department of Justice yet, as I want to take a good, long, hard look at everything involved before making that move and this includes some serious consideration as to whether or not I want to return to the active practice of law which I am really beginning to miss.").

333. *Rights Groups Fear Easing of U.S. Enforcement Role*, N.Y. TIMES, Oct. 17, 1965.

334. An "after-the-fact" job description makes it seem that Branton alone would carry on the work of the Council. It stated the appointee:

> would "provide assistance to the Federal departments and agencies in coordinating their program and activities . . . with respect to enforcement of Title VI of the Civil Rights Act of 1964. Coordinates special working or study groups established among the Federal departments and agencies. Ensures that such groups are aware of the scope and the policy considerations surrounding their work and provides guidance in resolving problems encountered by such groups."

Fact Sheet on Non-Presidential-Appointive Policy and Supporting Positions, Dec. 23, 1965 (on file with the WHCF, Office Files of John Macy, file: "Branton, Wiley A.," Box 58, LBJ Library).

335. *Bias Roles Shift*, WASH. DAILY NEWS, Sept. 24, 1965; *Rights Units Are Shuffled*, WASH. EVENING STAR, Sept. 24, 1965.

President told Branton that he considered voter registration 'the paramount concern of the Federal Government at the present time.'"[336] It is likely that Branton's transfer to Katzenbach's bailiwick was intended to avoid charges that the President was slowing down on civil rights efforts.[337]

Despite the grandiose descriptions of Branton's new responsibilities, it never was made any more clear just what he would do and how he was to perform. Others, too, were uncertain about how Branton's experience and ideas would be used in the DOJ. Newspaper reports commented that Branton's philosophy as to the government's role in assuring voting rights differed significantly from that of Katzenbach with regard to federal intervention.[338] Branton believed that federal intervention was appropriate, while Katzenbach believed in federal restraint.

In August Branton had said "[t]he government encourages people to drive safely and do other things all the time. There is nothing improper about encouraging [them] to vote and aiming the encouragement toward areas where large numbers are not registered."[339] Katzenbach, on the other hand, believed that local community efforts, rather than "exertions of the federal government," were the answer and that federal "examiners . . . were not the crucial factor."[340]

Civil rights leaders were said to be "cautiously optimistic" about the changes.[341] On the other hand, Whitney Young decried President Johnson's decision to abolish the Council on Equal Opportunity and showed skepticism of the notion that DOJ and the individual agencies that were dividing responsibility for civil rights would continue the kind of pressure that had

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336. Carrol Kilpatrick, *Federal Rights Setup Revamped by President*, WASH. POST, Sept. 25, 1965.

337. John Herbes, *Rights Groups Fear Easing of U.S. Enforcement Role*, N.Y. TIMES, Oct. 17, 1965 (noting that the appointment came "after several weeks of criticism by civil rights leaders that Negroes are still being blocked from registering in many counties in the South and that the Justice Department is moving too slowly").

338. *Id.*

339. *Branton Says Job Is to Encourage Negroes in South to Register to Vote*, ARK. GAZETTE, Aug. 26, 1965; *Using the Registrars*, WASH. STAR, Oct. 9, 1965 (stating that Branton was "armed with presidential instructions to conduct a full, vigorous and swift campaign to get every eligible person, including the illiterates, registered and ready to vote").

340. WATTERS & CLEGHORN, *supra* note 139, at 265–66.

> A study later in the year by the second VEP produced findings that differed from the Attorney General's. Registration results were best, it said, in counties which had both an organized voter registration drive in action *and* federal examiners. They were second best in counties with examiners alone, third in counties with a drive alone, and worst, of course, in counties with neither.

Id. (citing The Effects of Federal Examiners and Organized Registration Campaigns on Negro Voter Registration, A Special Report of the Voter Education Project of the Southern Regional Council, July 1966).

341. *Rights Leaders Wait to See Effect of New Federal Moves*, WASH. STAR, Sept. 26, 1965.

been exhibited by Vice President Humphrey and the Council.[342] An African-American newspaper editorial commented that communication between President Johnson and Attorney General Katzenbach would need clarification before Branton would be able to do what President Johnson said he was to do.[343] Others were suspicious of Johnson's motives, believing he had caved in to Congressional racists and economic conservatives and that the dilution of responsibility would dissolve the cohesiveness of the Executive's civil rights work.[344] The Arkansas *Gazette* soon reported that the Attorney General had rejected Branton's proposal for a federal registration drive,[345] a charge refuted by Branton in a letter to the editor.[346]

Working against both Branton and Johnson at this time were changes occurring in Black attitudes toward the government and white society, particularly among the young.[347] These changes may have been a result of the movement's successes,[348] or come out of the disillusionment and outrage that followed the Mississippi Freedom Democratic Party's abortive efforts to have its delegates seated at the National Convention in Atlantic City.[349] John Lewis saw the experiences of thousands of young men and women during the 1964 Freedom Summer in Mississippi as catalysts for "a crisis of spirit [and] faith in the fundamental promises and premises of the American system, ..."[350] He blamed the Atlantic City controversy for creating a deep mistrust of the value of traditional politics in the struggle for equal-

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342. Whitney Young, *To Be Equal: LBJs agency switch examined*," THE AFRO-AMERICAN, Nov. 2, 1965 (citing Katzenbach's statements that he hoped the switch would reduce the number of suits and increase conciliation efforts as evidence that such pressure would not continue).

343. *Puzzler For Katzenbach*, THE AFRO-AMERICAN, Oct. 19, 1965.

344. Christopher Pyle & Richard Morgan, *Johnson's Civil Rights Shake Up*, THE NEW LEADER, Oct. 11, 1965, at 3 (commenting that the moves gave Congress the right to inspect budgets and control the expenses of equal employment opportunity investigations); *see also* Rowland Evans and Robert Novak, *The Cautions Reconstruction*, WASH. POST, Oct. 28, 1965 (blaming Katzenbach's cautious implementation style for increasing suspicions of the civil rights groups).

345. *Testing the Voting Law*, ARK. GAZETTE, Oct. 23, 1965.

346. Wiley A. Branton, *The Negro Vote*, ARK. GAZETTE, Oct. 23, 1965, at Letters to the Editor.

347. *See, e.g.*, WATTERS & CLEGHORN, *supra* note 139, at 255–57 (describing conflicts behind the scenes of the Selma demonstrations in February and March 1965); *id.* at 271 (reporting "visible inter-organizational rivalry, and the first public display of racist tendencies in the radical wing of the movement—the 'black power' debate"); MEIER & RUDWICK, *supra* note 4, at 329.

348. LAWSON, *supra* note 145, at 117 (1991) (citing the dignity "restored" during the success of the Montgomery, Alabama, bus boycott).

349. *Id.* (assigning the blame to "[t]he failure of the federal government to protect civil rights workers and the willingness of liberal whites to compromise the Mississippi Freedom Democratic Party's convention challenge in 1964").

350. LEWIS & D'ORSO, *supra* note 4, at 282.

ity.[351] Sheer exhaustion, with little real prospect of relief, may have embittered many of the civil rights workers.[352]

Whether or not there was a specific event that turned away supporters or merely a clash between rising expectations and the slow progress of legislative implementation, as some others have said,[353] the civil rights arena was changing at the time Branton joined the DOJ. Soon, the accumulating number of riots in the Black ghettos would turn Congress, and a large part of society, against additional government efforts in civil rights.[354] As of September 1965, however, no one anticipated such a turn of events.

Once relieved of all Council obligations, Branton focused on his new job. In a memorandum dated November 16, he reminded Katzenbach that his Council duties would end on the 19th "and I will then be available full-time to assist you in whatever duties you see fit to assign me."[355] Branton continued, "I would appreciate word from you about this as soon as it is convenient for you to let me know what your plans are."[356] As far as can be determined, Branton never was given specific responsibilities. Rather, it appears that he attempted to "fit in" to the existing program in his own way.[357] This awkward situation was apparent to some outsiders.[358] As Bran-

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351. *Id.* at 291.

352. MEIER & RUDWICK, *supra* note 4, at 277–78 (describing a eulogy by David Dennis at the funeral of James Chaney that began with the words "I'm sick and tired of going to the funerals of black men who have been murdered by white men").

353. *See, e.g.*, Lawson, *supra* note 321, at 116 (1981). Lawson quotes presidential aide Harry McPherson as saying, "[w]e thought that if we could be a sort of super YMCA saying 'You can go to school with us, we'll educate you, train you, will get better housing' and all that sort of stuff. But we haven't really fixed it at the base which is money, security, families holding together, some power that is given to them by money." *Id.* at 116–17. At least one of Johnson's aides believed that the President anticipated this would happen. CALIFANO, *supra* note 311, at 11 (stating "[Johnson] was always in a hurry because he feared that once black Americans sensed the prospect of a better life, their acceptance of discrimination would turn to impatience and dissatisfaction with progress however real, and they would subvert their own cause.").

354. Riots began occurring in 1965 and became a constant concern for Johnson. "Although the administration tried to defuse potential trouble spots before they exploded and to keep the lines of communication open, presidential advisers admitted that 'a lot of this is essentially uncontrollable. It will happen no matter what the federal government does.'" THE JOHNSON YEARS, VOLUME THREE, LBJ AT HOME AND ABROAD 97 (Robert A. Devine, ed. 1994); *see also infra* notes 404–07 and accompanying text.

355. Memorandum from Wiley Austin Branton, to The Attorney General, (Nov. 16, 1965).

356. *Id.*

357. WAB 1970 Interview, *supra* note 23, at 45 (commenting that he had Katzenbach's approval for his decision to focus on voting rights issues).

358. *See, e.g.*, *Rights Coalition—Fractions, Fragmented*, WASH. POST, Jan. 16, 1967 (analyzing the state of the civil rights movement and noting that, after elimination of the President's Council "its energetic Negro director, Wiley Branton, was also dispatched to a quiet office in Justice, . . . [where] telephone operators didn't have his extension for a while

ton later described it, his "operations were primarily of a lone wolf nature; in that while I was technically *in* the Civil Rights Division, I was not *of* the Civil Rights Division."[359]

Soon Branton was performing similar functions to those he had had with the Council. Instead of reporting to the Vice President, he reported to Attorney General Katzenbach. He quickly began the first of numerous speaking engagements and visits to communities across the country.[360] There were complaints about the DOJ's slow action on enforcing the Voting Rights Act; Branton attempted to convey the facts. [361] During speaking engagements, he charted the government's progress in implementing both the 1964 and 1965 Acts and gathered feedback on how government action was being received locally.[362] He acted as liaison between the DOJ and the Leadership Conference on Civil Rights[363] and individual civil rights organizations.[364] He also continued a relationship as informal counsel for the

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and [] he has been given little to do").

359. WAB 1969 Interview, *supra* note 31, at 63 (emphasis added).

360. *U.S. Official Defends Voting Act Enforcement*, THE WASHINGTON, DC, *EVENING STAR*, Nov. 1, 1965 (describing Branton's speech at the Virginia state conference of the NAACP in Roanoke, Virginia). On December 14, 1965, Branton spoke before YWCA leaders in Atlanta. Letter from Martha Reines (for Miss Dorothy Height) to Wiley Austin Branton (Dec. 10, 1965). On December 28 he spoke to the Boston chapter of Kappa Alpha Psi Fraternity in Boston. Letter from Elmer W. Henderson to Wiley Austin Branton (Dec. 22, 1965).

361. When Branton joined the DOJ, nineteen counties in Mississippi, Alabama and Louisiana had been assigned federal registrars by the Justice Department under the Voting Rights Act. *Rights Units Are Shuffled*, WASH. *EVENING STAR*, Nov. 24, 1965. However, those states were refusing to add the lists of names registered by the federal employees to the official state voter lists. *Testing the Voting Law*, ARK. GAZETTE, Oct. 23, 1965. The DOJ had gone to the United States Supreme Court for an expedited ruling on the Act's constitutionality and that had slowed the assignment of additional registrars. *Id.*

362. Wiley A. Branton, My Responsibilities in the Area of Civil Rights (stating, "I travel through the south frequently where I confer with local Negro leaders on voter registration problems and civil rights generally. I consult with and advise the Attorney General on matters dealing with the implementation of the Voting Rights Act and [convey to] the Civil Rights Division any civil rights problems brought to my attention through my travels or contracts.")

For example, in November, Branton said that "every Negro should sleep a little better every night because Lyndon Johnson is in the White House" and that the President intended to "see that every eligible person has every opportunity to vote." *U.S. Official Defends Voting Act Enforcement*, WASH. *EVENING STAR*, Nov. 1, 1965.

363. Branton worked with the Leadership Conference to perform a survey on the effectiveness of the Voting Rights Act in 1966. Letter from J. Francis Pohlhaus, Special Consultant; Roy Wilkins, Chair; and Joseph L. Rauh, Jr., Counsel, to Wiley Austin Branton (July 15, 1966).

364. Branton wrote to CORE, suggesting that its next Legal Conference put "Civil Rights Uses of Anti-poverty Legal Programs" at the top of its list. Letter from Wiley Austin Branton to Carl Rachlin, Esq., General Counsel, CORE Legal Department (Oct. 25, 1965) (noting that he "detect[s] a growing concern and interest . . . with reference to the manner in which

Southern Regional Council's second VEP, headed by Vernon Jordan.[365] When Black leaders in Mobile, Alabama, threatened to "go fishing" rather than vote in the next election, Branton traveled with the Attorney General to Mobile, where Katzenbach promised increased voter registration efforts, more examiners where necessary, and swift, sure federal action against intimidation and terror."[366]

Within the office, Branton "would raise hell about things, trying to prod people to make decisions or to send in examiners or observers, or this, that and the other. Sometimes I won my point; sometimes, I didn't."[367] Branton continued to act as an intermediary for ordinary citizens, receiving individual requests for help with discrimination problems and channeling them to the persons and departments that might be able to help.[368] More than most of the Blacks with whom the Attorney General had contact, Branton knew what was going on in the South. That knowledge allowed him to act as a screen for speaking requests to the Attorney General, as he had for Vice President Humphrey. Branton could, as he did on April 21, 1966, warn Katzenbach against accepting an invitation to speak that would put him in the middle of a local political quagmire.[369]

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their local anti-poverty programs are being operated"). *Id.*

365. Letter from Wiley Austin Branton to Vernon Jordan, Jr. (Feb. 23, 1966) (in response to Jordan's letters of Jan. 25, 1966 (attached) asking for comments on draft guidelines for agencies anticipating grants).

366. Larry A. Still, *Katzenbach Finds Problems*, WASH. STAR, Jan. 4, 1966 (noting that the state NAACP president was pressured by the national office to attend the meeting, after he called the trip an effort to cover up "lack of enforcement of the Voting Rights Act while seeking voluntary compliance by reluctant local officials."); WATTERS & CLEGHORN, *supra* note 139, at 265. Branton was the only Black aide in Katzenbach's entourage and, because of his light skin, was mistakenly listed as white by some news reports. Charles McWilliams, *Katzenbach And Gallalee Views Clash*, THE MOBILE REGISTER, Jan. 4, 1965, at 1, 7.

367. WAB 1969 Interview, *supra* note 31, at 64.

368. *See, e.g.*, letter from James C. Evans, to Wiley Austin Branton (Dec. 10, 1965), and from James C. Evans to Wiley Austin Branton (Dec. 21, 1965); letter from Wiley Austin Branton, to James C. Evans, Office of the Assistant Secretary of Defense (Jan. 5, 1966) (concerning violence against Negro military personnel); letters from M.F. Jackson, Jr., to Wiley Austin Branton (Mar. 24, 1966), and letter from Wiley Austin Branton, to M.F. Jackson, Jr. (Mar. 29, 1966) (concerning Georgia registrar's use of different colored registration cards for Blacks and whites); letter from Beth Livezey, to Wiley Austin Branton (Apr. 18, 1966) (enclosing copy of letter dated Apr. 1, 1966, from the Citizen Improvement League, Voter's League of Etowah County, Alabama, to Mrs. Frank Moon, Chairman, Board of Registrars; letter from Wiley Austin Branton, to Beth Livezey (Apr. 21, 1966) (regarding Alabama registrar's limited hours and decision that those registered in February and March 1966 would not be eligible to vote until February 1967)); letter from Lacy J. Kennedy, to Mr. A.L. Whitten, Superintendent, Marianna Public Schools, copy to Wiley Austin Branton (May 24, 1966) (asking reconsideration of his refusal to transfer her daughter from a segregated to a white high school and threatening legal action if the transfer again was denied).

369. Memorandum from Wiley Austin Branton to James F. Flug, DOJ (Apr. 21, 1966). Attached to the memo were three drafts of a letter refusing an invitation to speak in Duval

In a May 1966 interview in Little Rock, Branton described the job as "work[ing] . . . as a sort of liaison between the Justice Department and private groups and other government agencies in an effort to assist in the implementation of the Voting Rights Act."[370] When the first of the southern primaries occurred in Alabama, Branton was an observer of the poll conditions facing Black voters.[371] He was optimistic about the elections, as is indicated by his joking, when asked about voting conditions in Arkansas, "I know Arkansas, I don't think we're going to have any problems about voter registration. We may have problems on the honesty of elections, but I wouldn't regard it as a racial matter."[372] He also produced a conference on the Voting Rights Act in May, inviting local voter registration activists across the South to learn from attorneys in the Civil Rights Division about the intricacies of the Act.[373]

Branton's time inside the DOJ also may have caused him to rethink the quality of the federal government's actions in support of civil rights. He commented as early as February 1966 that the federal government was doing what it should with regard to supporting Negro registration efforts, although he had not thought so earlier.[374] A news article noted that Branton "spends most of his time traveling in the South, checking into motels, introducing himself to local Negro leaders and asking them what they are doing to interest Negroes in registering to vote."[375]

Whether Branton was convinced of Katzenbach's position or not, he was a loyal employee. In March 1966, he objected to an article stating that he disagreed with the DOJ's methods of implementing the voting rights law and had unsuccessfully demanded change.[376] Instead, he said:

> I subscribe to the basic policy which the Department of Justice follows in implementing this program. I would be naïve if I said that I agree with everything that was done at all times; however, I would consider it a breach of ethics to be critical in public of an agency which I work with. I have found Attorney General Katzenbach to be very cooperative in con-

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County (Fla.). The one that appears to have been used was the most formal.

370. *Alabama to Let Negroes Vote, Branton Feels*, ARK. GAZETTE, May 1, 1966.

371. *Id.* (commenting that he thought "for the most part [Negroes] will be allowed to vote").

372. *Id.*

373. Memorandum from John Doar, Assistant Attorney General, Civil Rights Division, to Mr. Pollak, Mr. Owen, Mr. Hubbard, Mr. Dunbaugh, Mr. Jones, Mr. Ross, and Mr. Gabel (May 13, 1966).

374. Robert E. Baker, *Branton Is Veteran Of Rights Struggles*, WASH. POST, Feb. 7, 1966, at A2 (concluding "'Overall,' he said, 'things are moving well. In the spring, I expect a great turnout of Negroes to register in the South. . . . You can already see the changes there.'").

375. *Id.*

376. Letter from Wiley Austin Branton, to Editor, S. COURIER (Mar. 3, 1966).

> sidering any recommendations which I make to him regarding the voting rights program.[377]

In fact, however, Branton was an anomaly within the DOJ. He did not fit into the Department's hierarchy and lines of authority. His experience and background far exceeded that of the usual young Assistant United States Attorney who performed ordinary legal duties within the department. Former Attorney General Ramsey Clark believes that Branton's background would have made him a viable candidate for the Attorney General's job, or as a Deputy Attorney General, but all those positions were taken at the time.[378] Wiley Branton had detailed knowledge about civil rights activities in the South, both its people and communities, that was valuable at the higher levels of the DOJ where strategic decisions were made. As a special assistant, he had a certain access to power, but lacked the type of real authority he had exercised at the VEP or even on the President's Council.

Branton could point out to government officials where matters needed attention, but he could not order any action. His frustration was apparent even years later when he told an interviewer that he had "recommended time and again that action be taken" without result.[379] To another interviewer, Branton acknowledged that his relations within the DOJ were strained, ascribing it to the fact that his presence had been thrust upon Katzenbach.[380]

When Katzenbach was appointed Undersecretary of State in September 1966,[381] Wiley Branton viewed it as an opportunity to leave the Justice Department. On October 3, 1966 he wrote to President Johnson's aide, Joseph Califano, stating that he believed his job for the President was completed.[382] Branton noted that the President had requested such notice and asked that Califano call him to discuss what would happen next.[383] Branton was satisfied with what he had done, "I think that my efforts have contributed to a lot of the registration . . . , although I realize that there are still thousands of unregistered people in the South."[384]

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377. *Id.*

378. Interview with Ramsey Clark 11 (April 13, 2004) (transcript and tape on file with author).

379. WAB 1970 Interview, *supra* note 23, at 47.

380. WAB 1969 Interview, *supra* note 31, at 65.

381. Interview with Ramsey Clark 6 (April 13, 2004) (transcript and tape on file with author).

382. Memorandum from Wiley Austin Branton, to Joseph A. Califano, Special Assistant to the President (Oct. 31, 1966) (commenting, "I feel I have made most of the suggestions which I have felt appropriate for the implementation of the Voting Rights Act").

383. *Id.*

384. *Id.*

In turn, Califano sent a memorandum to President Johnson on November 8.[385] After reminding Johnson that Branton had been appointed to the DOJ because the President had wanted someone in the Attorney General's office "devoted solely to voter registration," Califano described Branton's belief that his usefulness to the Justice Department was ended.[386] Califano noted that Katzenbach and Ramsey Clark, the Assistant Attorney General, both felt that Branton had done well and had continued usefulness "in the right slot."[387] Califano forestalled any suspicion that Branton's resignation was a ploy for advancement. Rather, he stated "[i]f Branton is not so used, he would probably return to private practice in Georgia, . . . without any bitterness."[388] President Johnson responded that Califano should explore job possibilities for Branton.[389]

There is no indication of precisely what ensued following these exchanges. Branton did meet with Ramsey Clark, who became Acting Attorney General, on October 10.[390] Given Branton's character and his personal investment in civil rights, he may have been intrigued by Clark's plans to appoint more federal registrars and to move more aggressively in civil rights than had Katzenbach.[391] Vice President Humphrey wrote to Branton on December 2, stating that there was still much to do in civil rights and that [Branton's] knowledge and contacts were too valuable to lose.[392] A plea to "duty" from the Vice President when they met on December 14 also was likely to have been successful.[393] In any event, Branton remained with the DOJ for another year, working in the same capacity for the new Attorney General, Ramsey Clark.

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385. Memorandum from Califano, to The President (Nov. 8, 1966) (WHCF Name File, BRANTLEYA, Box 428, LBJ Library).

386. *Id.* (continuing that Louis Martin said Branton was interested in a judgeship or some other government post "that will challenge him . . .").

387. *Id.* (noting that they suggested Branton be appointed to the Equal Employment Opportunity Commission or as its general counsel).

388. *Id.*

389. *Id.* (containing LBJ's handwritten response).

390. Wiley Austin Branton 1966 Calendar (Dec. 10, 1966) (photocopy of page in author's possession).

391. Interview with Ramsey Clark 7 (Apr. 13, 2004). Clark's opinions were closer to those held by Branton, and offered a chance to do more effective voting rights work.

392. Letter from Hubert H. Humphrey, to Wiley Austin Branton (Dec. 2, 1966) (stating "[n]ot knowing what your plans are for the future, may I ask that, before you make any definite plans, we have the chance to visit"). In a memorandum to one of his aides, Humphrey wrote "Wiley is an important figure. We should not let him leave Washington. There must be a place found for him worthy of his talents. . . . I want to keep Wiley in our set-up." Memorandum from the Vice President, to Bill Welsh (Dec. 2, 1966) (noting that he had heard Branton was "a bit unhappy" at the DOJ).

393. Wiley Austin Branton 1966 Calendar (Dec. 14, 1966).

As far as can be determined by his correspondence, Branton's activities did not change in 1967. He continued to speak to groups about the government's efforts at securing voting rights and in developing social programs that would make those rights more meaningful.[394] He continued to represent the government at local strategy sessions on continuing voter registration efforts,[395] and he continued to act as intermediary between local activists and the federal government.[396] Branton was one of a group of government employees and private individuals who met in May and June 1967 with Attorney General Ramsey Clark to exchange updates on what the government was doing in civil rights and to strategize about legislative action on proposed "Great Society" bills.[397] Clark believes that Branton's contribution to those sessions was invaluable.[398] Branton's reputation with Black leaders continued to reflect positively on the administration. On June 2, 1967, when President Johnson met with Black elected officials attending a Democratic conference in Washington,[399] Branton was among those present.[400]

Wiley Branton wrote another letter directly to President Johnson on October 12, 1967 stating that he had completed all his assignments with the Justice Department.[401] Forestalling any further efforts to keep him with the administration, his letter also announced that he was leaving to become Executive Director of the United Planning Organization of the District of Columbia as of October 20.[402] The President invited him to the White House "for a thank you for a job well done" on October 18, 1967.[403]

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394. In a speech to the National Newspaper Publishers Association on January 12, 1967, Branton highlighted the effect that an increased numbers of Black voters in the southern states had had on the 1966 elections, and said "this year of 1967 promises to be an extremely exciting year in . . . Mississippi and Louisiana, [where] you will have all of your local elections . . . from the governor on down." Wiley A. Branton, speech at the 27th Annual Midwinter Workshop of the National Newspaper Publishers Association 10 (Jan. 12, 1967).

395. Letter from Vernon E. Jordan, Jr., to Wiley Austin Branton (Feb. 13, 1967) (confirming his attendance at a meeting of VEP staff and field consultants).

396. *See, e.g.*, exchange of letters between Wiley Austin Branton and Emmett A. Mays, Jr., Shreveport, Louisiana (June 26, 1967 and June 30, 1967) (concerning difficulties Mays was having with white officials in establishing an OEO Headstart Program and Branton's intervention with the OEO head office).

397. Memoranda Ramsey Clark (May 26, 1967; Apr. 20, 1967; June 23, 1967) (Box 63, file "Civil Rights Leadership—Meetings," LBJ Library).

398. Interview with Ramsey Clark 8, 9, 12 (Apr. 13, 2004).

399. WHCF, The President's Daily Diary, 4/16/67–6/30/67, Box 11; WHCF, The President's Appointment File [Diary Backup], 6/1/67–6/7/67, Box 67, LBJ Library.

400. "White House supplemental list," WHCF, The President's Appointment File [Diary Backup], 6/1/67–6/7/67, Box 67, LBJ Library.

401. Letter from Wiley Austin Branton to The President (Oct. 12, 1967) (WHCF Name File, BRANTLEYA, Box 428, LBJ Library).

402. *Id.* In fact, Branton used his accumulated leave time to begin his UPO work on October 16, 1967. Letter from Wiley Austin Branton, to Hon. Warren Christopher, Deputy

By the time Branton left government service, the tenor of civil rights activism had changed dramatically.[404] The murmurings of 1965 had hardened into the alienation of many young Blacks from the rest of society and had resulted in the rise of the "Black Power" movement and riots in communities across the country.[405] The traditional civil rights leaders were helpless. When President Johnson met with Roy Wilkins and Whitney Young in 1967 to warn that negative congressional reactions to riots were bad news for new legislation, "[t]he two moderate black leaders seemed at a loss. Young said they were concerned about 'the whole pattern, . . .' and that they could not control the 'young people.'"[406]

For Johnson and the civil rights elders and Branton, the vote and legislative processes had long been the means by which a repressed group would take its place with others in society.[407] They did not know how to respond to

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Attorney General (Oct. 6, 1967). Perhaps to forestall additional importunings from federal officials and making it impossible to remain with the DOJ, Branton had begun communicating with those who would select the UPO's director in August. Letter from Wiley Austin Branton, to Frederick B. Lee, Vice President, Olin Mathieson Chemical Corp. (Aug. 28, 1967) (attaching copy of Wiley Austin Branton's resume).

403. WHCF, The President's Daily Diary, 10/1/67–12/31/67, Box 13, and WHCF, The President's Appointment File [Diary Backup], 10/10/67–10/19/67, Box 79, LBJ Library.

404. As early as 1962, John Lewis noticed the beginning of a breakdown in "unity and mutual respect" among workers in SNCC's activities. LEWIS & D'ORSO, *supra* note 4, at 193. Lewis believed the signing of the Voting Rights Act heralded "the last act for the movement as I knew it." *Id.* at 361. Thereafter, the [Black Power] movement took over SNCC and separatism and violence were the order of the day. *Id.* at 368–69. CORE had ousted most of its white members by mid-1965, citing the need to appeal to local Black communities. MEIER & RUDWICK, *supra* note 4, at 382–86. The exclusion of whites was made official policy in 1968. *Id.* at 420. The media, used to dealing with a few leaders of major civil rights organizations, kept looking for those who could explain what was happening. Vernon Jordan mentioned efforts of the media to anoint him as the Black "leader" when he was named to succeed Whitney Young at the National Urban League. JORDAN & GORDON-REED *supra* note 57, at 230–31.

405. "Black Power" had become the slogan for both SNCC and CORE by the summer of 1966. MEIER & RUDWICK, *supra* note 4, at 412–14. However, both organizations ultimately were replaced by other, more locally-based, groups. *Id.* at 425. In July 1967 President Johnson appointed an Advisory Commission to investigate and report on the causes of racial disorders in cities across the country. Report of the National Advisory Commission on Civil Disorders 19 (1968). The Commission's extensive report (407 pages) revealed a trend toward increased violence from 1963 through 1967, with the worst riots occurring in Newark and Detroit. *See generally*, *id.* at 19–61.

406. CALIFANO, *supra* note 312, at 210–11 (commenting "[t]he nation was at flash point with pent-up frustration and anger, and these leaders seemed bewildered by the rush of events").

407. THE JOHNSON YEARS, VOLUME THREE, LBJ AT HOME AND ABROAD, *supra* note 354, at 104 (noting "[a]mid a turbulent racial revolution, [Johnson] steadfastly attempted to direct social change along conventional lines, and the black leaders most closely associated with him did little to shift him off course. No more than he did they control the new outrage and militancy that fueled the ghetto upheavals and the movement toward black nationalism").

people who did not accept that belief. While Branton's outgoing personality allowed him to get along with just about anyone, Branton, too, soon would have his own difficulties with this new militancy.[408]

VI. CONCLUSION

When Wiley Branton left government service and relinquished his focus on voting rights in late 1967, he ended his role in a twenty-year continuing effort that had achieved momentous change. From 1948, when Branton first became involved in voter registration efforts, to the end of 1967, the number of Black voters increased from five percent of those eligible to over fifty percent in the South alone.[409] These new votes changed the look of government, especially at the local level. The number of elected Black officials in the South increased after passage of the 1965 Voting Rights Act, from fewer than 100 to 385 following the 1968 elections.[410] Although it was now clear that voting rights alone were not enough to change circumstances for thousands of Black Americans, Branton could, and did, feel proud of his part in the accomplishment.

Branton himself had moved from a small town law practice limited to African-American clients to positions where his advice was valued by the President and Vice President of the United States. He had impressed Roy Wilkins, longtime executive director of the NAACP and "Dean" of the civil rights movement, who believed that Branton was the person to follow him in guiding that organization.[411] Wiley Branton would spend another four years working with social action entities to improve the lives and bargaining power of the poor[412] before returning to the private practice of law in Wash-

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408. During his term with the anti-poverty program, United Planning Organization, Branton would make efforts to reorganize the program. Betty James, *Neighborhood Services Plan To Direct Poverty Centers*, WASH. STAR, JAN. 19, 1968, at B4. His plans included centralizing operations, which some employees viewed as antithetical to the goal of neighborhood control. *See* Resignation Letters from Joan Cole to Wiley Branton (Apr. 22, 1968), and from Patricia Saltonstall, to Hal Witt (May 9, 1968) (on file with author). The internal tensions led to a work stoppage and acrimonious confrontations. *Id.*

409. WATTERS & CLEGHORN, *supra* note 139, at 245–47.

410. Press Release, Voter Education Project, Inc. (Feb. 16, 1972) (on file with author). The number of Black elected officials had increased to 873 by 1972. *Id.*

411. Letter from Roy Wilkins, to Wiley Austin Branton (July 14, 1975) (on file with author).

412. Branton remained with the UPO until June 14, 1969. Letter from Wiley Austin Branton, to Frederick B. Lee, President, Board of Trustees, United Planning Organization (May 12, 1969) (on file with author). He then joined forces with labor leader Walter B. Reuther in July 1969 when he was appointed Executive Director of the Committee on Community and Social Action of the Alliance for Labor Action. *Branton Joins New Labor Alliance*, WASH. POST, July 15, 1969, at C3. He was with the organization, where he worked with community action groups, until August 14, 1971, when his two-year commitment to

ington, D.C. in 1971.[413] In 1977 Branton was chosen as Dean of the Howard University School of Law.[414] In September 1982 he left that position to join the firm of Sidley & Austin (now Sidley Austin Brown & Wood) where he became a partner in 1985.[415] His achievements have not been forgotten. Sidley Austin Brown & Wood honored his memory with a yearly luncheon and scholarships at Howard University School of Law until 2004. In 2004 the event will become an annual symposium. A lecture is named in his honor at the National Bar Association's annual conferences. Scholarships in Branton's name are awarded at his college alma mater, the University of Arkansas at Pine Bluff (formerly Arkansas A. M. & N.). Wiley Austin Branton died in 1988 at the age of 65, having devoted most of his life in service to the public.

Reuther ended. Memorandum from Wiley Austin Branton to All ALA Community Unions and Participating Social Action Programs (Aug. 2, 1971) (on file with author).

413. Letter from Wiley Austin Branton, to West Publishing Company (Feb. 17, 1972) (on file with author) (noting formal name change of new firm).

414. Letter from James E. Cheek, President, Howard University, to Wiley Austin Branton (Nov. 30, 1977) (on file with author).

415. *The Profession; On the Move*, *supra* note 46, at 3.