

Testimony of

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CONSTITUTIONAL PEOPLE  
WRITTEN TESTIMONY SUBMITTED  
TO THE UNITED STATES SENATE JUDICIARY COMMITTEE  
BY ROBERT P. MOSES  
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In 1749, A West African boy, nine years old and captured, sailed the middle passage to Virginia and survived. In August of that year, a Scottish born merchant slave trader, twenty-four years old and up and coming, peered into the pluck of that nine year old and bought him. Stewart took Somerset as his personal slave.

Twenty years passed, and twenty-nine year old Somerset accompanied Stewart to London to help care for his sister's family when her husband died. Two years passed and Somerset, while running errands everywhere for his master, meeting blacks on the streets, in the stores, along the docks, crafted a way out of slavery and bondage. He arranged to be baptized as James Somerset, acquired two English Godparents, Thomas Walkin and Elizabeth Cade, and flowed into the "IRS," London's stream of Insurgent Runaway Slaves. Stewart, feeling "betrayed and publicly insulted", posted notices and on Nov. 26, 1771, slave catchers delivered Somerset to a ship bound for Jamaica. Seven days later, Somerset's Godmother, petitioned the oldest and highest common law court in England, for a writ of Habeas Corpus to release James Somerset.

Lord Mansfield, the Chief Justice of King's Court, issued the writ and six days later, on December 9th, 1771, James Somerset appeared before the bench where a Captain Knowles declared:

Charles Stewart, a colonial from America, deposited his slave, Somerset, aboard the Ann and Mary, to be sold in Jamaica. (1)

Lord Mansfield released Somerset pending a hearing.

On June 22nd, 1772, the clerk called the case of "James Somerset, a Negro on Habeas Corpus" and Lord Mansfield mounted the bench, bewigged, and delivered his judgment:

The state of slavery is of such a nature, that it is incapable of being introduced on any reasons, moral or political ... it's so odious, that nothing can be suffered to support it but positive law. Whatever inconveniences, therefore, may follow from the decision, I cannot say this case is allowed or approved by the law of England; and therefore the black must be discharged. (2)

The issue reached across the Atlantic into Colonial Revolutionary America, where colonialists who could not imagine their slaves as Constitutional people would require an explicit declaration of "positive law" to protect the Nation to be.

There is a 'Somerset clause' (3) in the Nation's Constitution: Article IV, Section 2, paragraph 3. At the 1787 Constitutional Convention discriminating men, determined to establish a "workable government", peered through the cataracts on their imaginations to brand the IRS as Constitutional Property:

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor is due. (4)

The IRS with their insurgencies of independence and freedom shadowed the colonialists with their declarations of independence and freedom into the Constitutional Nation; insurgencies which, over the ensuing decades, sabotaged the "workable government", helping to induce its destabilization into Civil War.

In 1787, after the Revolutionary War, leaders at the Constitutional Convention established a "workable government" that assumed slavery, but floundered in the mud of Civil War. In 1877, the traditional mid-point of the Nation's history, leaders of the National Democratic and Republican political parties established a "workable government" that would assume Jim Crow:

Jim Crow laws, unlike feudal laws, did not assign the subordinate group a fixed status in society ... They were constantly pushing the Negro farther down ... Its spirit is that of an allabsorbing autocracy of race, an animus of aggrandizement which makes, in the imagination of the white man, an absolute identification of the stronger race with the very being of the state. (5)

When the Mississippi legislature failed to ratify the Fourteenth Amendment, which welcomed freed slaves all at once as citizens of the Nation and of their respective States, the Republican U.S. Congress placed it in the Fourth Military district under brevet major general Adelbert Ames.

In 1870 the U.S. Congress passed the Fifteenth Amendment establishing the right of citizens of the United States to vote and in 1873, Adelbert Ames was elected governor of Mississippi. But by then the massacre of the Negroes of Colfax Louisiana on April 13, 1873, along the banks of the Red River pointed to the direction the South would lead and the Nation would follow.

The Colfax violence against black elected officials spread into Mississippi in the municipal elections of 1874 in Vicksburg.

In February 1875, a Congressional committee reported on its investigations into the election in Vicksburg in 1874. The minority report filed by Democrats noted:

A little learning is a dangerous thing in its application to Negroes. The educated among them are the most dangerous class in the community, as they exercise a malign and blighting influence over the future prospects of their race. (13) (6)

The majority report, filed by Republicans challenged the Nation directly:

by the exercise of all its power, if needed, secure to every man, black and white, the free exercise of the elective franchise, and punish, sternly and promptly, all who violently invade those rights; (7)a

In 1875, the Democrats took over the State legislature. The following summer the Senate select committee came to Mississippi and took testimony all over the state and issued the Boutwell Report. A quarter of a century later, in his memoirs, Senator George Boutwell of Massachusetts remarked:

"For myself I had no doubt that the election of 1875 was carried by the Democrats by a preconceived plan of riots and assassinations." (15) (8)

What followed was the national political compromise of 1877:

...the Democrats agreed to let Hayes (The Republican Governor of Ohio) become president and the Republicans agreed in return to remove the remaining federal troops from the South. Reconstruction, which had wound up

producing a lower-intensity continuation of the Civil War was over. The South had won. And the events in Mississippi in 1875 had been the decisive battle. (19) (8)

Three decades later, in 1907, Senator Benjamin Ryan "Pitchfork Ben" Tillman of South Carolina took the floor of the Senate to memorialize the execution of Mississippi's plan

It was then that 'we shot them'; it was then that 'we killed them'; it was then that 'we stuffed ballot boxes'; it was a fight between barbarism and civilization, between the African and the Caucasian, for mastery. (16) (9)

In the early darkness of a winter evening in February 1963, Jimmy Travis slipped behind the wheel and Randolph Blackwell crowded me beside him in a Snick Chevy in front of the Voter Registration Office in Greenwood Mississippi to take off for Greenville on U.S. 82 straight across the Delta. Jimmy zigzagged out of town to escape an unmarked car, but as we headed west on 82 it trailed us and swept past near the turn off for Valley State University, firing automatic weapons pitting the Chevy with bullets. Jimmy cried out and slumped; I reached over to grab the wheel and fumbled for the brakes as we glided off 82 into the ditch, our windows blown out, a bullet caught in Jimmy's neck.

After Jimmy caught that bullet in his neck, Snick regrouped to converge on Greenwood and black sharecroppers lined up at the Court House to demand their right to vote. When Snick field secretaries were arrested, Burke Marshall, the assistant attorney general for Civil Rights under Robert Kennedy, removed our cases to the Federal District Court in Greenville and sent John Doar to be our lawyer. From the witness stand I looked out at a courtroom packed with black sharecroppers from Greenwood, hushed along its walls, packed onto its benches, and attended to the question put by Federal District Judge Clayton: "Why are you taking illiterates down to register to vote?" To whom had he put his question? The sharecroppers? Perhaps. But perhaps it was his own silent observation dressed as a rhetorical question:

Constitutional strangers are pressing against the Constitutional gate.

The 1957 Civil Rights act provided the Constitutional space within which we did our work. Mississippi could lock us up, but it couldn't throw the key away. I understand now that we were working in a context of Constitutional permissiveness:

SNCC was permitted to work on Voter Registration Terrorists were permitted to gun us down Mississippi was permitted to lock us up The Civil Rights Division of the Department of Justice was permitted to set us free. None of the above was required by the Constitution, or for that matter, forbidden.

Burke passed in the summer of 2004 and his family asked if I would say something at the memorial for him at the Yale Law School that fall. I tracked down a book he published in the summer of 1964, "Federalism and Civil Rights". In it Burke quotes a Lincoln County Judge who described Mississippi's constitutional condition in a speech to the state's 1890 Constitutional Convention:

"Sir, it is no secret that there has not been a full vote and a fair count in Mississippi since 1875, that we have been preserving the ascendancy of white people by revolutionary methods. In plain words, we have been stuffing ballot boxes, permitting perjury here and there in the state, carrying elections by fraud and violence until the whole machinery for elections was about to rot down." (12) (10)

At the Delta town of Indianola, in the spring of 1955, in the aftermath of the 1954 Supreme Court School desegregation decision, Brown vs the Board of Education, Mississippi launched its second plan: The White Citizens Councils launched the doctrine of massive resistance to the Court's decision. However, a few years later, in 1960, their plan to maintain Jim Crow met its "nemesis":

1960 was the year of the massive awakening for the Negroes of the South - indeed Negro Americans generally ... On 1 February of that year four Negro college boys, freshmen at the Agricultural and Technical College in Greensboro, North Carolina, asked politely for coffee at Woolworth's lunch counter and continued to sit in silent protest when refused. The 'sit-in' nemesis of Jim Crow was born. (8) (11)

At a meeting on the campus of Shaw University in North Carolina, Ella Baker helped fashion a space for untapped sit-in insurgents to think for themselves, to make their own plans, to execute their own strategies:

In April the SNCC (Student Nonviolent Coordinating Committee) was formed - small, militant, very youthful, largely Negro, and Negro-led ... Negroes were in charge of their own movement now and youth was in the vanguard. (9) (12)

That summer, Jane Stenbridge and Ella sent me on a scouting trip through Alabama, Mississippi and Louisiana. I met Fred Shuttlesworth in Birmingham, Aaron Henry in Clarksdale, Medgar Evers in Jackson and Dr. Gilbert Mason in Biloxi, but it was Amzie Moore in the Mississippi Delta who was waiting with a plan to channel the energy of the Snick insurgents and turn Mississippi around: No one in Mississippi understood Jim Crow better than Amzie.

Amzie's world was to become my world, but first I had one year to go to complete a three-year contract teaching middle school math at the Horace Mann school. I saved my money and returned to the Delta a "Freedom Rider". John Lewis, Diane Nash and the Nashville student sit-in movement had carried the sit-in energy into Mississippi on a Greyhound bus and every black hued kid on a dusty Mississippi street could spot a "Freedom Rider" a block away. "Freedom fighters" burned a Greyhound bus carrying sit-in insurgents in Anniston Alabama in the Spring of 1961 and with its measured response the sit-in insurgency created "Freedom Riders", interstate travelers into terror who landed, of all places, in the Delta at Parchman, Mississippi's State Penitentiary, just a few miles from Cleveland, Amzie's home town.

Byron De La Beckwith's murder of Medgar Evers jolted Allard Lowenstein and Robert Spike into Mississippi. They were both shocked into action. Al eventually led the first delegations of white college students into the state for the 1963 freedom vote in which COFO sponsored Aaron Henry and Ed King as Governor and Lieutenant Governor in a Freedom campaign, thereby introducing the concept which led to Freedom Summer in 1964. Robert Spike brought the resources of the National Council of Churches into the orbit of the Mississippi movement to support Freedom Summer and direct crucial lobbying efforts in mid-west Republican congressional districts to help pass the Civil Rights bill of 1964. Beckwith may have planned Medgar's murder, but he, and all sat in complicit silence, could not have imagined how quickly events would move because of it. Neither could we, who gathered on Farish street for Medgar's funeral and watched John Doar, his back to an arsenal of Mississippi's law enforcement troops, convince Ida Mae Holland from Greenwood, and all those with her, not to walk into "sure gun-fire", into "things fall apart", "into a national disaster". We were all navigating our rafts in the rapids of history's currents and couldn't quite imagine how "things come together":

Hollis Watkins and Curtis Hayes, from Summit just North of McComb; Emma Bell from McComb; Charles McLaurin, James Jones, Jessie Harris, Jimmy Travis, Lavaughn Brown, Colia Lidell, from Jackson; Lawrence Guyot from Pascagoula; Dave Dennis from Shreveport Louisiana; Dorie and Joyce Ladner, Mattie Bivens and Fred Anderson from Hattiesburg; Anne Moody from Wilkerson county; Sam Block and James Bevel from Itta Bena; George Raymond, and Matteo "Flukie" Suarez from New Orleans; myself; Willie Peacock from Charleston; Anelle Ponder from Georgia; Chuck McDew, James Chaney from Meridian; Diane Nash from Chicago; Freddie and George Green, Euvester Simpson, Mary Lane, June Johnson and Ida Mae Holland from Greenwood, Lafayette Surney from Ruleville, MacArthur Cotton from Koziesko; Charlie Cobb from Washington D.C.; Frank Smith from rural Georgia.

Thirty plus black high school graduates and college students came together in that pressured space-time to work twenty-four seven, to get knocked down and get back up, to steady watch the Feds turn that jail house key; invisible to the Nation at large to this day, ours was the SNCC sit-in energy translated into Amzie's world; we carved out the larger space in which Mickey and Rita Schwerner could operate in Meridian; it was we who called forth that remarkable net-work of black Mississippi matured women: Victoria Adams from Hattiesburg, Fannie Lou Hamer from Ruleville, Annie Devine from Canton, Hazel Palmer from Jackson and Unita Blackwell from the Delta who carried the Mississippi Freedom Democratic Party (MFDP) into the 1964 Democratic Convention in Atlantic City and broke the back of 89 years of white only Mississippi Democrat Party power, clearing the way for the voting rights legislation of 1965 to enable white and black history making Mississippi voters to jointly represent their state at the 1968 National Democratic Convention in Chicago. As the New York times wrote in an editorial on August 27, 1964:

The Freedom Democrats proved that a moral argument, if powerful enough and presented with dramatic force, can cut through the cynicism and frivolity that usually prevail in a convention atmosphere ... The day of the lily-white

delegations from the South is over. The Democrats from the rest of the country have finally lost patience with the exclusion of Negroes from party affairs in the South. (35) (13)

Snick was the "heart and soul" of the sit-in insurgency against Jim Crow, and these few dozen, the heart and soul of the Mississippi insurgency, came together and earned the right in 1964 to call on the whole country's common humanity to join Freedom Summer and bring Jim Crow Mississippi down.

Did the Fifteenth Amendment establish for blacks the same rights to the vote as had been established for whites? Or, was the Nation's system of federalism protected since 1875 "by non-recognition of federally guaranteed rights"? (31) (14)

We answered Judge Clayton's question to the 1963 Greenville courtroom packed with sharecroppers: "Why are you taking illiterates down to register to vote?"

We told him, in effect, that the country couldn't have its cake and eat it too. It couldn't deny a whole people access to education and literacy and then turn around and deny them access to politics because they were illiterate. Sharecropper education was the subtext of the struggle in Mississippi for the right to vote.

The voting rights act of 1965 did not include literacy restrictions and John Doar has a picture in his office of himself accompanying Attorney General Nicholas Katzenbach and Thurgood Marshall to defend the literacy provisions of the Voting Rights Act before the Supreme Court, which agreed with decisions by the Fifth Circuit:

The enforcement clause of the fifteenth Amendment gives Congress full remedial powers to prevent racial discrimination in voting. The Voting Rights Act is a legitimate response to the insidious and pervasive evil which has denied blacks the right to vote since the adoption of the fifteenth Amendment in 1870. (33) (15)

All of which set the stage for the twenty first century, and our current national divide over education and the fourteenth Amendment.

On Friday June 29, 2007, the New York Times spread pictures of all nine Supreme Court Justices on the front page to alert the Nation of the "Bitter Division" at the Court over "Brown and the 14th Amendment". In the words of Harvard law professor Laurence H. Tribe:

There is a historic clash between two dramatically different visions not only of Brown, but also the meaning of the Constitution. (38) (16)

Chief Justice Roberts, a protégé of president Ronald Reagan, 'brilliantly' argued in his decision that just because of that history the Court, if not the Nation, must be scrupulous in looking (let alone moving) into its post Jim Crow future, and recognize 'non-recognition' of Jim Crow as the principled path for the Court's decisions on public schools and the education of the Nation's children:

Tent Lott is watching the results of Mississippi's third plan for the Nation, which he set in motion at the Neshoba County Fair, Reagan's first stop on his way to the presidency in the summer of 1980, which turned out to be Roberts' first stop on his way to becoming the Supreme Court's chief justice. (41) (17)

Lott left Mississippi for Washington in '68, to serve on the congressional staff of William Colmer, a Democrat, who decided to retire in '72; Lott won his open seat and in 1980 launched Ronald Reagan's post convention presidential campaign at the Neshoba County Fair in Philadelphia Mississippi, where Mickey Schwerner, Andrew Goodman and James Chaney were lynched with the help of the Sheriff.

The visual statement on television the next day was a sea of white faces at the Neshoba Fair with Reagan's words floating above them ... he would reorder priorities and 'restore to states and local governments the power that properly belongs to them'. (45) (18)

President Reagan, who had opposed both the Civil Rights and the Voting Rights acts attracted the attention and became the personal hero of John Roberts who joined the Reagan administration in 1981 where he worked to curtail all programs intended to bring minorities into settings where they were once shut out and who, as chief justice, crafted this crafty sentence:

The way to stop discrimination on the basis of race is to stop discriminating on the basis of race. (19)

At first I thought the chief justice was mimicking a tautology: "The way to do x is to do x." Then I looked up "discrimination": Unfavorable treatment based on prejudice. Next I looked up "discriminating": Observe distinctions carefully; have good judgment. Now our chief justice is nothing if not one who observes distinctions carefully, so what is he telling the Nation to do about its educational caste system? The way to stop unfavorable treatment based on prejudice is to stop observing carefully and having good judgment on the basis of race?

Tent Lott and I are contemporaries. I was sitting in the SNCC office in Greenwood on September 30th of 1962 and Lott was a senior at Ole Miss when the pitched battle of "Redeemers" led by Governor Ross Barnett against U.S. Marshalls and President Kennedy, over the admission of James Meredith, took place. . In 1997, Senator Lott told Time magazine:

The main thing was, I felt the federal government had no business sending in troops to tell the state what to do. (44) (20)

Lucky for Lott and the entire Nation whole troops of Constitutional people worked a strategy from 1961 to 1965 that dismantled Jim Crow in Mississippi without any other 'federal troops'.

Amzie Moore, Medgar Evers and NAACP 'race men', John Lewis, Diane Nash and Freedom Riders, President John F. Kennedy and Attorney General Robert Kennedy, Judge Wisdom and the fifth Circuit Court of Appeals, Snick and the sit-in energy for the right to vote, Dave Dennis and The Congress of Racial Equality (CORE), black Masons and the Council of Federated Organizations (COFO), Larry Still from Jet Magazine, Sharecroppers and the Mississippi Freedom Democratic Party (MFDP), Dr. Beitel and Tougaloo college, Allard Lowenstein and 800 white college students from across the country, Robert Spike and the National Council of Churches, Claude Sitton from the New York Times, Burke Marshall, John Doar and the Civil Rights Division of the Department of Justice, Karl Fleming from Newsweek Magazine, Carl Holman and the United States Commission for Civil Rights, Martin Luther King and the Southern Christian Leadership Conference (SCLC), Dorothy Height and the National Council of Negro Women, Drs. Alvin Poussaint, Bob Smith and James Anderson and the Medical Committee for Human Rights, Marion Wright and the Legal Defense Fund, Bill Minor from the New Orleans Times-Picayune, Arthur Kinoy and William Kunstler and the National Lawyers Guild, Stephen Currier and the Taconic Foundation, Lloyed K. Garrison the N.Y. Field Foundation,

And here's to the following forty who fell, insurgents in the Civil Rights movement,

Rev. George Lee, Lamar Smith, Emmett Louis Till, John Earl Reese, Willie Edwards Jr., Mack Charles Parker, Herbert Lee, Louis Allen, Cpl Roman Ducksworth Jr. Paul Guilard, William Lewis Moore, Medgar Evers, Addie Mae Collins, Denise McNair, Carole Robertson, Cynthia Wesley, Virgil Lamar Ware, Rev. Bruce Klunder, Henry Hezekiah Dee, Charles Eddie Moore, James Chaney, Andrew Goodman, Michael Schwerner, Lt. Col. Lemuel Penn, Jimmie Lee Jackson, Rev. James Reeb, Viola Gregg Liuzzo, Oneal Moore, Willie Wallace Brewster, Jonathan Daniels, Samuel Younge Jr., Vernon Dahmer, Ben Chester White, Clarence Triggs, Wharlest Jackson, Benjamin Brown, Samuel Hammond Jr., Delano Middleton, Henry Smith, Dr. Martin Luther King Jr. (27) (21)

Endnotes:

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