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EMMETT TILL UNSOLVED CIVIL RIGHTS CRIME ACT

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Mr. LEAHY, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany S. 535]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to which was referred the bill (S. 535), to establish an Unsolved Crimes Section in the Civil Rights Division of the Department of Justice, and an Unsolved Civil Rights Crime Investigative Office in the Civil Rights Unit of the Federal Bureau of Investigation, and for other purposes, reports favorably thereon, with an amendment in the nature of a substitute and recommends that the bill, as amended do pass.

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I. PURPOSE OF THE EMMETT TILL UNSOLVED CIVIL RIGHTS CRIME ACT

A. SUMMARY

As recent cases confirm, unsolved murders pose some of the most important and vexing law enforcement challenges facing our nation. For far too long, racially motivated violence divided communities and intimidated American citizens.

These violent and discriminatory crimes tear at the fabric of our democracy. The Fourteenth Amendment guarantees equal protection of the laws. The Federal Government, in particular, has traditionally been the guardian of last resort for our nation's most vulnerable inhabitants. Yet, African-American citizens were not protected for much of our history. Countless African Americans and civil rights workers involved in the struggle for equality were murdered or randomly killed in deliberate acts of racial intimidation.

The brutal murder of Emmett Till was one of the most infamous acts of racial violence in American history, yet his killers were never punished. Like Emmett Till, hundreds of other Americans of this era suffered a similar fate. According to the Southern Poverty Law Center, "The killers in most of the cases have not been prosecuted or convicted, and today, there are many cases that still cry out for justice."¹

The Emmett Till Unsolved Civil Rights Crime Act (Till bill) seeks to address racial injustices before they become permanent scars on our democracy. Passage of this legislation will provide for a sustained, well-coordinated, and well-funded effort to investigate and prosecute racially motivated murders that occurred on or before December 31, 1969. This bill designates an official within the U.S. Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI), respectively, with the responsibility to coordinate the investigation and prosecution of civil rights violations that occurred prior to 1970 and that resulted in a death. Congress recognizes the urgent need for this measure. Given the advanced age of defendants and potential witnesses, only a small window of opportunity exists to investigate and prosecute these crimes. It will soon be too late to right these wrongs and to ensure equal justice in our criminal justice system.

The bill also includes the Missing Child Cold Case Review Act, which was sponsored by Chairman Leahy in the 109th Congress. This measure allows inspectors general of federal law enforcement agencies to authorize staff to assist the National Center for Missing and Exploited Children (NCMEC) by conducting reviews of inactive case files and developing recommendations for further investigation. Inspectors general are eager to provide this assistance, and NCMEC needs this help. We believe this cooperation will bolster efforts to solve these heart-wrenching cases.

B. PURPOSE AND NEED FOR BILL

i. Background

In the summer of 1955, a fourteen-year-old African-American teenager from Chicago named Emmett Till traveled to the Mississippi Delta to visit relatives. On the evening of Wednesday, August 24, 1955, Emmett Till walked into Bryant's Grocery and Meat Market in Money, Mississippi to purchase some candy, and allegedly flirted with the white female shopkeeper.

Four days later, two white men came to the house of Emmett Till's relatives in the middle of the night, abducted Emmett Till,

¹The Emmett Till Unsolved Civil Rights Crime Act: Joint Hearing on H.R. 923 Before the H. Subcomm. on the Constitution, Civil Rights, and Civil Liberties and the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary, 110th Cong. (2007) (statement of J. Richard Cohen, President of the S. Poverty Law Ctr.).

and informed his grandfather: “if you cause any trouble you’ll never live to be sixty-five.”² His corpse was found in the Tallahatchie River, with a seventy-pound gin-mill fan tied to his neck with barbed wire. Emmett’s mother, Mamie Bradley, insisted that his body be shipped back to Chicago, where it was displayed in an open coffin for four days.

No one was ever punished. J.W. Milam and Roy Bryant were tried for Emmett Till’s murder and acquitted by an all-white jury after only 67 minutes of deliberation.³ They later gave a full confession to writer William Bradford Huie for \$4,000. In a January 1956 *Look* magazine article, entitled “The Shocking Story of Approved Killing in Mississippi,” the two men confessed to killing Emmett Till, and reported that they committed the murder because they “decided it was time a few people got put on notice.”⁴

Emmett Till’s death left an indelible mark on America. The public images of his mutilated body in an open casket, and the fact that no convictions occurred, stirred our nation’s conscience. The racial violence commonplace in the American South became known to the world, and generated a widespread public outcry across America.

Emmett Till’s murder also inspired the modern civil rights movement. Just three months after the Till murder trial, Rosa Parks was arrested for protesting segregation laws. In the next twenty years, Americans of all races, genders, and ages would risk their lives fighting for civil rights.

ii. A legacy of widespread racially motivated violence

Emmett Till’s murder did not stand in isolation. Historically, anti-civil rights violence was widespread throughout the nation. According to legal historians more than 100 violent incidents in the South connected to civil rights activity occurred between January 1, 1955 and May 1, 1958.⁵ The majority of this violence occurred in the form of bombing of homes, schools, and churches. In the city of Birmingham, Alabama, between 1955 and 1963 local African Americans were targets of twenty-one bombings, all of which went unsolved.⁶

Racial violence led many civil rights activists to pay the ultimate price for freedom. For example, on June 12, 1963, Medgar Evers, the first NAACP Field Secretary for Mississippi, was killed by a white supremacist’s bullet outside his home for advocating non-violent means to dismantle racial segregation.⁷ On June 21, 1964, three civil rights workers—James Chaney, Michael Schwerner, and Andrew Goodman—were murdered by Klansmen while they were returning from investigating a church bombing in Neshoba County,

² Steven Kasher, *The Civil Rights Movement, A Photographic History, 1954–68* 22 (1996).

³ Natasha Korecki, *Family Sees Till Case Closed*, *The Chicago Sun-Times*, March 30, 2007, at 2. Milam and Bryant admitted to kidnapping and beating Emmett Till but claimed they left him alive. *Id.* In May 2004, the DOJ announced it was renewing the investigation into the murder, but the prosecutor failed to obtain an indictment from a grand jury in 2007. Allen G. Breed, *Controversy Visits Till Case—Again*, *The Washington Post*, March 11, 2007, at A03.

⁴ David Rubel, *The Coming Free: The Struggle for African American Equality* 69 (2005).

⁵ Michael J. Klarman, *From Jim Crow to Civil Rights: the Supreme Court and the Struggle for Racial Equality* 425 (2004).

⁶ *Id.*

⁷ S. Poverty Law Ctr., *Free At Last: A History of the Civil Rights Movement & Those Who Died in the Struggle* 54–55 (2005).

Mississippi during “Freedom Summer.”⁸ In February 1965, Jimmie Lee Jackson, a young black civil rights activist, was shot and killed by a state trooper at a voting rights march in Marion, Alabama.⁹ A month later in that same year, Viola Gregg Liuzzo, a thirty-nine-year-old white homemaker and activist from Detroit, was shot to death on the Alabama highway during the Selma-to-Montgomery march for voting rights.¹⁰ On January 10, 1966, Vernon Dahmer, an African American who offered to collect poll taxes for his neighbors so they would not have to go to the courthouse in town, died from scorched lungs when Klansmen firebombed his house.¹¹

Non-activists were also targets of racial violence aimed at intimidating citizens from exercising basic rights of citizenship or resisting the social mores of Jim Crow segregation. African Americans lost their lives while exercising basic rights such as riding a bus across state lines. In April 1962, Army Cpl. Roman Ducksworth, Jr., exhausted from a 950-mile bus ride from Fort Ritchie, Maryland to his hometown of Taylorsville, Mississippi was shot by a police officer who mistakenly assumed he was a Freedom Rider.¹² On June 10, 1966, Ben Chester White, a 67-year-old caretaker who had never participated in the civil rights movement, nor even ever cast a vote, was killed by Klansmen seeking to lure Dr. Martin Luther King, Jr. to Natchez, Mississippi to assassinate him.¹³ And, as mentioned above, Emmett Till was killed for violating the Jim Crow customs which prohibited African Americans from touching or flirting with white women.

iii. The continuing problem of unsolved civil rights crimes

The exact number of unsolved racially motivated murder cases that occurred before the 1970s remains unknown. The Southern Poverty Law Center has estimated that 114 race-related killings occurred between 1952 and 1968.¹⁴ Many of these killings were never fully investigated, and in some cases, law enforcement officials were involved in the killings or subsequent cover-ups. In many cases, such as the murder of Emmett Till, suspects were brought to trial only to be set free by sympathetic white juries.

The FBI is currently investigating or considering investigating 102 killings that occurred before the 1970s.¹⁵ Of these, 94% (96 incidents) are in the Southeast, 4% (4 incidents) are in the West, and 2% (2 incidents) are in the Northeast.¹⁶ Mississippi comprises the most significant percentage of unsolved civil rights cases at 42% (43 incidents). Of the remaining states with investigations or assessments for investigations 17% (17 incidents) are in Alabama, 13% (14 incidents) are in Georgia, 7% (7 incidents) are in Louisiana, 4% (4 incidents) are in Texas, 12% (3% for each state, with

⁸Id. at 64–65.

⁹Id. at 70–71.

¹⁰Id. at 74–75.

¹¹Id. at 84–85.

¹²Id. at 48–49.

¹³Id.

¹⁴Hearing, *supra* note 1 (statement of J. Richard Cohen) (explaining that the Southern Poverty Law Center’s research has discovered 40 people whose cases fit the criteria they were looking for and an additional 74 persons who died violently between 1952 and 1968 under circumstances suggesting that they were victims of racial violence).

¹⁵E-mail from Nancy Scott Finan, Legis. Aide, U.S. Dep’t of Justice, Office of Legis. Affairs, to the S. Comm. on the Judiciary (June 8, 2007) (compiling statistics) (on file with the S. Comm. on the Judiciary).

¹⁶Id.

each state having 3 incidents each) are in North Carolina, South Carolina, Florida, and Tennessee, 2% (2 incidents) are in Arkansas, and 3% (1% for each state, with each state having 1 incident) are in Ohio, Kentucky and New York.¹⁷

In recent years, law enforcement officials at the federal, state and local level have made sporadic efforts to solve some of the crimes that were ignored at the time by law enforcement officials. According to press reports, since 1989, 29 pre-1970s racially motivated cases have been reopened, leading to 29 arrests and 23 convictions.¹⁸ In 1994, Byron De La Beckwith was convicted in Mississippi for the 1963 murder of civil rights leader Medgar Evers.¹⁹ In 1998, Sam Bowers was convicted for the murder of Vernon Dahmer, NAACP president in Hattiesburg, Mississippi.²⁰ In 2001, Thomas Blanton was convicted for the murder of four black girls in the 1963 church bombing in Birmingham, Alabama.²¹ The following year, Bobby Frank Cherry was convicted over the same bombing.²² In 2003, Ernest Avants was sentenced to life in prison by a federal district court in Mississippi for the 1966 murder of Ben White, an elderly Black farm worker.²³ In 2005, Edgar Ray Killen was convicted of manslaughter in Mississippi State Court and received three 20 year sentences for his role in 1964 death of three civil rights workers in Mississippi.²⁴ On May 9, 2007, an Alabama grand jury indicted former state trooper James Bonard Fowler on a charge of murder in the shooting death of Jimmie Lee Jackson in 1965.²⁵ Most recently, on June, 14, 2007, 71-year-old James Ford Seale was convicted in federal court in Mississippi for the 1964 abductions and slayings of Charles Eddie Moore and Henry Dees.²⁶

Despite these recent prosecutions and convictions, much work remains to be done. The Southern Poverty Law Center has provided this Committee with a list of 74 “forgotten persons” who were vic-

¹⁷ Id.

¹⁸ Jerry Mitchell, Trial Set to Begin in Mississippi Civil Rights-Era Case, USA Today, May 24, 2007, at 9A. On June 14, 2007, James Ford Seale was convicted for the murders of Henry Hezekiah Dee and Charles Eddie Moore, bringing the number of convictions to 23. Jerry Mitchell, Guilty on All Counts, The Clarion-Ledger, June 15, 2007, at 1A.

¹⁹ Beckwith's conviction was affirmed by the Supreme Court of Mississippi on December 27, 1997. *Beckwith v. State*, 707 So. 2d 547 (Miss. 1997), reh'g denied, March 26, 1998, cert. denied, *Beckwith v. Mississippi*, 525 U.S. 880 (1998). A federal district court denied Beckwith's petition for writ of habeas corpus in 2000. *Beckwith v. Anderson*, 89 F. Supp.2d 788 (S.D. Miss. 2000).

²⁰ Margaret Russell, Cleansing Moments and Retrospective Justice, 101 Mich. L. Rev. 1141, 1161 (2003) (“In 1998, again following public disclosure of Mississippi Sovereignty Commission evidence, prosecutors re-indicted Bowers. A third Mississippi trial court convicted Bowers and sentenced him to life imprisonment.”).

²¹ *Blanton v. State*, 886 So. 2d 850 (Ala. Crim. App. 2003), cert. denied, 886 So. 2d 886 (Ala. 2004), cert. denied, 543 U.S. 878 (2004).

²² The Alabama Criminal Court of Appeals affirmed Cherry's conviction in 2004. *Cherry v. State*, 933 So. 2d 377 (Ala. Crim. App. 2004), cert. denied, *Cherry v. State*, 933 So. 2d 393 (Ala. 2006).

²³ Avants' 2000 acquittal was reversed and remanded by the Fifth Circuit Court of Appeals on January 7, 2002. *United States v. Avants*, 278 F.3d 510, 522 (5th Cir. 2002) (holding that federal and state murder prosecutions, although identical in their respective elements, were separate offenses for purposes of the Sixth Amendment because they were violations of the laws of two separate sovereigns). On remand, the district court found Avants guilty and sentenced him to life in prison in 2003; the Fifth Circuit affirmed the judgment in 2004. *United States v. Avants*, 367 F.3d 433, 449 (5th Cir. 2004) (holding that the conviction was not a manifest miscarriage of justice).

²⁴ Killen's conviction was affirmed by the Mississippi Supreme court on April 12, 2007. *Killen v. State*, No. 2005-KA-01393-SCT., 2007 WL 1080391, at *19 (Miss. Apr. 12, 2007) (holding that 41-year delay bringing indictment for murder did not violate defendant's due process rights).

²⁵ Jenny Jarvie, Ex Cop Indicted in Civil Rights Era Case, The Chicago Tribune, May 10, 2007 at 3.

²⁶ Mitchell, Guilty on All Counts, supra note 18.

tims of racially motivated violence prior to the 1970s, and 23 of the deaths commemorated on the Civil Rights Memorial in Montgomery, Alabama have not been brought to justice.²⁷ We attached the list of 74 “forgotten persons” as an appendix to this report.

iv. Purpose and imperative for the bill

The purpose of the Till bill is to provide the families of victims murdered prior to the 1970s for racially motivated reasons with long awaited justice.

The perpetrators of these crimes have remained at liberty into old age, “sometimes gloating publicly about the murders.”²⁸ Meanwhile, hundreds of families that reported their child missing more than a year ago are still waiting for their cases to be solved.²⁹ Although some civil rights-era murderers have been prosecuted and convicted since 1989,³⁰ no prior legislation has provided the federal and state governments with the necessary resources to find most of the perpetrators of these crimes and bring them to justice.³¹ Doing so becomes increasingly difficult with the passage of time as sources of new evidence dry up, witnesses age, and memories fade. The window of time to render justice in these cases is quickly closing. It is imperative to bring murderers to justice, even if several years or decades have passed since these heinous crimes were committed. Doing so brings truth, closure, healing, and reconciliation to the affected families, friends, communities, and our nation as a whole.³² Although it is painful for families to revisit the nightmares of the past, many families of victims have been instrumental in generating momentum to re-open investigations.

Investigating and prosecuting old civil rights cases also serves a broader societal purpose. Many of these horrendous crimes were not just the results of criminal acts of private individuals but were a consequence of government actors who were complicit in the misconduct.³³ The states and federal government also bear responsibility for the racial climate that allowed individual racially motivated hate crimes to flourish. Investigating and prosecuting these cases vindicates the state interest in the equal protection of criminal and civil rights law and restores the legitimacy of the criminal justice system upon which our democracy depends.

Although the FBI has recently played an important role in investigating and successfully prosecuting civil rights-era murders, in

²⁷Hearing, *supra* note 1 (statement of J. Richard Cohen) (“In 13 of the 40 deaths noted on the Civil Rights Memorial, no one has ever been brought to trial. In 10 of the 40 deaths, defendants were either acquitted by all-white juries or served only token prison sentences.”).

²⁸Russell, *supra* note 20, at 1226.

²⁹Letter from Ernie Allen, President and CEO of NCMEC, to Senator Patrick Leahy, Chairman of the S. Comm. on the Judiciary (June 5, 2007) (stating that NCMEC had only 3 full-time employees currently working 846 long-term cases) (letter on file with the S. Comm. on the Judiciary).

³⁰See Mitchell, *supra* note 18, at 9A.

³¹See *id.*; see also Allen, *supra* note 29 (suggesting that three full-time staff is inadequate to successfully investigate 846 cases).

³²Hearing, *supra* note 1 (statement of Myrlie B. Evers) (urging Congress not “[to] forget that family members of the persons murdered are also victims. They are human beings who must survive the loss of their loved ones—and all that that [entails] * * * the emotional Hell that never completely disappears; the nightmare of the bloody crime scene; the sounds of terror; the firebombs; the sound of gunfire; missing that person’s love, care and guidance; the loss of financial support and so much more.”).

³³See *e.g.*, *Beckwith v. Anderson*, 89 F. Supp. 2d 788, 798 (citing *Beckwith v. State*, 707 So. 2d at 567) (acknowledging that the state-sponsored State Sovereignty Commission—a state organized spy agency designed to thwart integration—had a hand in delaying Beckwith’s trial for the murder of Medgar Evers by tampering with the jury selection and aiding his defense during his two trials in 1964); see also Russell, *supra* note 20, at 1239 (documenting state involvement).

the past it withheld files from the press and state authorities.³⁴ FBI Director Robert Mueller has acknowledged that, “[m]any murders during the civil rights era were not fully investigated, were covered up or were misidentified as accidental death or disappearance.”³⁵ For example, the FBI had investigated the church bombing at the Sixteenth Street Baptist Church extensively at the time it occurred in 1963 and had focused its attention on four local Klansmen with long histories of violence. Despite possessing secret tape recordings that implicated the suspects, FBI Director J. Edgar Hoover closed the case in 1968 without bringing charges.³⁶

The case remained closed until U.S. Attorney Doug Jones reopened it in the mid-1990s. Mr. Jones discovered that there was significant evidence that the FBI had not shared with Mr. Baxley during the Chambliss prosecution, including recordings made by a listening device placed near Blanton’s kitchen sink as well as tapes secretly recorded by Klan informant Mitchell Burns during drinking binges with Cherry and Blanton.³⁷ Armed with this evidence, Mr. Jones secured convictions for Blanton in 2001 and Cherry in 2002.

The Committee also intends for this bill to demonstrate our national commitment to restorative justice. During the era of massive resistance, racial extremists used racial violence to deny African Americans the basic rights of citizenship, including the right to vote, to obtain an education, to obtain a job, and to enjoy access to public accommodations. Rita Bender, the widow of Michael Schwerner, acutely explained in her statement before Congress the effect that a culture of impunity had on society:

For decades * * * Americans lived out their lives in the towns and cities where the crimes occurred, often engaging in the small exchanges of life with the perpetrators. For some, that continual interaction with persons who they knew had committed heinous acts must have been a constant source of intimidation, even if nothing was said directly. For others, knowledge of the crime and the failure of communal action to impose consequences on the actors was the denial of the seriousness of the event, a diminishment of civil society.³⁸

In other words, these crimes were committed not just against the victims, but against our society. This bill will serve as a tool for communities to confront past wrongs, determine guilt, seek to acknowledge responsibility, and impose a penalty commensurate with

³⁴In an opinion piece, John Fleming argues that the release of FBI files to state and local authorities as well as the press is crucial to resolving racially motivated crimes. See John Fleming, 42 Years Later, The Release of Civil Rights-Era FBI Files Might Hold Key to Unsolved Cases, June 2, 2007, available at <http://www.annistonstar.com/opinion/2007/as-insight-0603-jflemingcol-7f02s0207.htm>. He states that in 2004 the FBI denied his FOIA request for a file on James Fowler regarding the 1965 murder of Jimmie Lee Jackson on the grounds that the file did not exist, when there in fact was a file which had been released to a film-maker in 1979. Id. The filmmaker made the file available to the journalist, who subsequently made it available to the prosecution and the defense after Fowler was indicted for the murder in May, 2007. Id.

³⁵Robert S. Mueller III, Director of the FBI, Remarks at the News Conference on the Civil Rights Cold Case Initiative, U.S. Department of Justice, Washington, DC, (Feb. 27, 2007) available at <http://www.fbi.gov/pressrel/speeches/mueller022707.htm>.

³⁶Hearing, supra note 1 (statement of J. Richard Cohen); see also id. (statement of G. Douglas Jones).

³⁷Id. (statement of J. Douglas Jones).

³⁸Hearing, supra note 1 (statement of Rita Bender).

the wrongdoing. With such acts comes the possibility of healing and restorative justice.³⁹

In furtherance of the legislation’s goal of bringing the perpetrators of racially motivated murders to justice, the Committee finds that the DOJ and state and local law enforcement should consider—but not be limited to—victims who fit at least one of four criteria: (1) persons murdered because they were active in the civil rights movement; (2) persons killed by organized hate groups as acts of terror aimed at intimidating blacks and civil rights activists; (3) persons whose deaths, like the death of Emmett Till, helped to galvanize the movement by demonstrating the brutality faced by African Americans in the South;⁴⁰ or, as a catchall, (4) persons who died violently before 1970 under circumstances suggesting that they were victims of racial violence.⁴¹

v. Constitutional, jurisdictional, and evidentiary limitations

Due to the vast lapse of time in many of these cases certain prosecutions may raise constitutional, jurisdictional, and evidentiary concerns. The DOJ raised concerns that the Ex Post Facto Clause and statute of limitation concerns limit the available tools the government can use to prosecute historic cold cases.⁴² Some legal scholars have also noted that criminal defendants are likely to raise potential defenses to prosecution, including the Fifth Amendment’s Double Jeopardy Clause, the Sixth Amendment’s Speedy Trial Clause, and the Fifth and Fourteenth Amendments’ Due Process Clauses.⁴³ However, on appeal in several recent cases, some of those concerns have been addressed by the state supreme courts or the Circuit Courts of Appeals. The drafters of the bill have therefore taken every precaution to ensure that the bill is consistent with the Constitution, and to provide methods of achieving effective enforcement without infringing on the aforementioned concerns.

Retroactive application of the current criminal civil rights statutes to prosecute historical cases covered by this legislation may invoke the Ex Post Facto Clause. S. 535 charges the Department to investigate “violations of criminal civil rights statutes * * * result[ing] in death” that “occurred no later than December 31, 1969.” The two principal federal hate crime statutes for prosecuting racially motivated homicides, 18 U.S.C. §245 (interference with federally protected activities) and 42 U.S.C. §1A3631 (interference with housing rights), were not enacted until 1968. Therefore, the Ex Post Facto Clause bars use of §1A245 and 3631 for crimes that occurred prior to 1968.⁴⁴

³⁹ See *id.*

⁴⁰ The Southern Poverty Law Center used these criteria in researching unsolved civil rights murders and submitted these criteria to Congress. See Hearing, *supra* note 1 (statement of J. Richard Cohen). These criteria were considered when determining the Till bill’s standard: a violation of a civil rights statute that occurred prior to January 1, 1970 and resulted in death.

⁴¹ The Southern Poverty Law Center used this criterion in compiling its list of “The Forgotten” which has been attached as an appendix at the end of this report. Appendix; see also Hearing, *supra* note 1 (statement of J. Richard Cohen).

⁴² Letter from William E. Moschella, Assistant Attorney General, to then-Senator James Talent (June 27, 2006) (noting that “the Constitution bars [the bill] from retroactively conferring Federal jurisdiction to prosecute such civil rights crimes,” that 18 U.S.C. §245 and 42 U.S.C. §3631 were not enacted until 1968, and that all Federal criminal civil rights statutes carried a five year statute of limitations) (on file with the S. Comm. on the Judiciary).

⁴³ See, e.g., Russell, *supra* note 20, at 1255–62.

⁴⁴ But see *Avants*, 278 F.3d at 514 (finding federal jurisdiction under 18 U.S.C. §§1111 and 1112 and holding that federal and state murder prosecutions, although identical in their respec-

The statutes of limitation bar federal prosecution of many of these offenses. Prior to 1994, federal criminal civil rights violations were not capital offenses, thereby subjecting them to a five-year statute of limitations. In 1994, some of these civil rights statutes were amended to provide the death penalty for violations resulting in death, thereby eliminating the statute of limitations. However, the Ex Post Facto Clause prevents the retroactive application of the 1994 increase in penalties, and the resultant change in the statute of limitations.

As a result, this Committee finds that state and local law enforcement agencies will continue to play a primary role in the investigation and prosecution of all types of hate crimes. We expect the federal government to partner with state and local law enforcement, with state and local prosecutors taking the lead in most cases. Concurrent federal jurisdiction is necessary only to permit joint state-federal investigations and to authorize federal prosecution in those instances in which state and local officials are either unable or unwilling to pursue cases that adequately address the federal interest in fighting bias crime.

This Committee nevertheless expects the federal government to still play a vital role in these prosecutions. First, in terms of investigations, in 2006 the FBI began a comprehensive effort to identify and investigate racially-motivated murders committed during the 1950s and 1960s. The FBI has already started to accumulate information from outside organizations and to follow those leads. We expect this initiative to continue and to expand.

Second, in terms of prosecution, not all of the federal statutes at the Department's disposal have statute of limitations or ex post facto concerns. For example, the Department has brought a prosecution involving first degree murder committed in the special maritime and territorial jurisdiction of the United States, 18 U.S.C. § 1111, as well as a prosecution involving kidnapping resulting in death, 18 U.S.C. § 1201. Neither of these non-civil rights statutes have statutes of limitations that could bar successful prosecutions.

Third, in terms of resources, the federal government has the resources and expertise to provide valuable assistance to state and local entities pursuing state prosecutions. In the Emmett Till case, although no federal jurisdiction was present, the Department conducted an investigation into a local matter because Till had traveled from out-of-state into the state in which he was murdered. The FBI reported the results of its extensive investigation to the District Attorney for Greenville, Mississippi. We expect such cooperation and assistance to continue and to expand into other scenarios. While maintaining the primary role of state and local governments in the investigation and prosecution of violent hate crimes, the bill would authorize the federal government to work in partnership with state and local law enforcement officials and to serve an important backstop function with regard to a wider range of hate-motivated violence than federal law currently permits. The Till bill would provide the resources to federal and state governments, but it does not dictate which so called "cold cases" should be re-opened.

tive elements, were separate offenses for purposes of the Sixth Amendment because they were violations of the laws of two separate sovereigns).

Fourth, defendants' constitutional challenges to their convictions on appeal have been dismissed by both state and federal courts.⁴⁵ For example, Beckwith challenged his conviction on the Double Jeopardy Clause, the Speedy Trial Clause and the Due Process Clause in the Supreme Court of Mississippi.⁴⁶ The court held that the 26-year delay between the second mistrial and return of the second indictment did not violate defendant's right to a speedy trial⁴⁷ and that an entry of nolle prosequi does not bar another prosecution for the same offense.⁴⁸ According to Supreme Court precedent set in *United States v. Scott*⁴⁹ and *United States v. Wilson*,⁵⁰ the Double Jeopardy clause only bars criminal prosecution for the same offense for which the defendant has already been acquitted, convicted, or pardoned.⁵¹ The mere passage of time does not render a prosecution unprosecutable under the Due Process Clause.⁵² Therefore, prosecutions which resulted in mistrials and hung juries, such as Beckwith's, can be re-prosecuted in compliance with the Constitution.

In addition, the dual sovereignty doctrine has allowed for the re-prosecution of a defendant whose alleged act violates both federal and state law, even if the state acquitted the defendant for the same crime.⁵³ For example, the district court found jurisdiction over Avant's murder of Ben White under Federal statute because the murder had taken place on a national forest, even though the state court acquitted him. The Fifth Circuit affirmed the conviction.⁵⁴

vi. The continuing problem of unsolved missing children cases

The National Center for Missing and Exploited Children (NCMEC) serves as a clearinghouse of information about missing and exploited children. As a national resource center for child protection, NCMEC spearheads national efforts to locate and recover missing children.

Established in 1984, NCMEC is a private, nonprofit organization that operates under a congressional mandate and works in cooperation with DOJ's Office of Juvenile Justice and Delinquency Prevention to coordinate "the efforts of law enforcement, social service agencies, elected officials, judges, prosecutors, educators, and the public and private sectors to break the cycle of violence that historically has perpetuated [] needless crimes committed against children."⁵⁵

Among its many vital functions, it operates a cold case unit to resolve missing-child cases. This unit assists law enforcement, medical examiners, and coroners with cases involving long-term

⁴⁵ See generally, Russell, *supra* note 20, at 1256–61.

⁴⁶ *Beckwith*, 707 So. 2d at 565–71.

⁴⁷ *Id.* at 565, 568–89 (holding that defendant did not show "intentional delay for tactical purposes" and citing *Stoner v. Graddick*, 751 F.2d 1535 (11th Cir. 1985)).

⁴⁸ *Id.* at 566.

⁴⁹ 437 U.S. 82, 87 (1978).

⁵⁰ 420 U.S. 332, 340 (1975).

⁵¹ Russell, *supra* note 20, at 1256 (citing cases).

⁵² *Id.* at 1260–61.

⁵³ *Id.* at 1257. Russell warns that this interpretation is controversial. *Id.* at 1259. Therefore, she suggests that the most viable approach would be to focus re-prosecutions following mistrials and hung juries (such as the Beckwith case), and initial prosecutions of individuals (such as the Blanton and Cherry trials). *Id.*

⁵⁴ See *supra* note 23 and accompanying explanation.

⁵⁵ See National Center for Missing and Exploited Children, General Information and Publications, available at http://www.missingkids.com/en_US/publications/NC21.pdf.

missing and unidentified children. The unit develops strategies for investigative agencies, works with medical examiners to provide identification assistance, and establishes review processes for long-term cases.⁵⁶ Since the unit was established in 2001, 307 cold cases have been successfully resolved.⁵⁷

Despite these accomplishments, the numbers of missing and exploited children remain unacceptably high. A 2006 study released by DOJ found that, in a one year period, 797,500 children were reported missing each day. That is an average of 2,100 children reported missing each day. The study also found that, in a one year period, 1,682,900 children ran away or were abandoned, 203,900 children were abducted by family members, 198,000 children were involuntarily missing, lost or injured, and 58,200 children were abducted by non-family members.⁵⁸ NCMEC has been instrumental in improving the recovery rate of missing children from 62 percent in 1990 to 96 percent today.

Despite these successes, young victims continue to fall through the cracks. Nationally, 4 percent of missing children cases remain unsolved each year. The haphazard response to child abduction, especially prior to the Amber alert, means that no one knows exactly how many unsolved missing children cases exist. For example, in 2001 The Hartford Courant reviewed 59 unsolved child-abduction cases in New England over the last 30 years, and found that authorities sometimes fail to immediately investigate such cases, fail to share critical information and overlook systems put in place to help solve these crimes.⁶⁰ The newspaper found that older cases, in particular, tend to fade into oblivion unless an investigator takes a personal stake in one.⁶¹ Thus, the numbers of missing children cold cases are likely higher than current estimates.

NCMEC's own records are often incomplete. For example, police departments are encouraged to notify NCMEC of old cases, as well as new ones. Nevertheless, federal law does not require state or local police officials to report to NCMEC or avail themselves of its resources. As a result, NCMEC's records may likely underreport the numbers of missing child cold cases that exist nationwide.

Even when cold cases are identified by NCMEC, solving these cases requires overcoming the burden of insufficient resources. According to a recent letter from NCMEC, its cold case unit has handled more than 1,800 long-term missing and unidentified children cases over the past six years.⁶² Of those, nearly 1,000 have been resolved in some manner, through recovery, identification, or administrative means. The remaining 846 cases are continually reviewed on a semi-annual basis by three full-time employees.⁶³ Support from the inspectors general, who are eager to provide assistance, would augment the important efforts already underway at NCMEC. We would do well to facilitate cooperation between our

⁵⁶ National Center for Missing and Exploited Children, Annual Report 2006, at 12, available at http://www.missingkids.com/en_US/publications/NC92part1.pdf.

⁵⁷ Id.

⁵⁸ Department of Justice, Offenders and Victims: 2006 National Report, at 26, available at <http://ojjdp.ncjrs.org/ojstatbb/nr2006/downloads/chapter3.pdf>.

⁵⁹ Id.

⁶⁰ Dave Altimari, *Why Are They Still Missing?; Indifference, Delays and Haphazard Reporting*; 59 *Stolen Hearts*, Hartford Courant, April 15, 2001, at A1.

⁶¹ Id.

⁶² See Allen, *supra* note 29.

⁶³ Id.

Nation's top resource for child protection and the diverse and talented investigators in the offices of our inspectors general. This cooperation will bolster efforts to solve these heart-wrenching cases.

Section 8 of the Till bill would authorize the staff of an inspector general to assist NCMEC by conducting reviews of inactive case files to develop recommendations for further investigations. This provision has been added to the Till bill because, similar to families of victims from decades old racially motivated murders, families of missing children deserve closure after many years of waiting for these cases to be resolved.

II. HISTORY OF THE BILL AND COMMITTEE CONSIDERATION

A. HEARING

i. June 12, 2007

On June 12, 2007, the House Judiciary Committee's Subcommittee on the Constitution, Civil Rights, and Civil Liberties and Subcommittee on Crime, Terrorism, and Homeland Security held a joint legislative hearing on "H.R. 923—the Emmett Till Unsolved Civil Rights Crime Act." This hearing examined the urgency and need for the federal government to provide additional financial assistance and resources to assist in solving these crimes.

The following witnesses testified at this hearing: Grace Chung Becker, Deputy Assistant Attorney General, Civil Rights Division, United States Department of Justice; Myrlie Evers Williams, widow of slain civil rights activist Medgar Evers (d. 1963), Founder of the Medgar Evers Institute, and Chairman Emeritus of the National Association for the Advancement of Colored People; Douglas Jones, Esq., former United States Attorney for the Northern District of Alabama; Richard Cohen, Esq., President and CEO of the Southern Poverty Law Center; Rita L. Bender, Esq., widow of slain civil rights worker Michael Schwerner (d. 1964).

B. LEGISLATION

i. Legislative history of Till bill

Senator Chris Dodd and Chairman Patrick Leahy introduced the Emmett Till Unsolved Civil Rights Crime Act, S. 535, on February 8, 2007. This bipartisan bill is cosponsored by, in alphabetical order, Senators Alexander, Biden, Cardin, Cornyn, Durbin, Hatch, Kennedy, Landrieu, McCaskill, Schumer, Specter, and Whitehouse.

This legislation is similar to the Unsolved Civil Rights Crime Act, S. 2679, which then-Senator Jim Talent and Senator Dodd introduced on April 27, 2006. The Judiciary Committee favorably reported that legislation on August 3, 2006, by voice vote, with an amendment in the nature of a substitute, which included the Missing Child Cold Case Review Act. At the close of the 109th Congress, the bill's sponsors sought to pass the bill by a unanimous consent agreement. They were unable to secure the agreement and the bill did not pass.

On June 7, 2007, S. 535 was placed on the Judiciary Committee's agenda. The Committee considered this legislation on June 14, 2007.

During the Committee's consideration of S. 535, one amendment to the bill was offered by Chairman Leahy and it was adopted by

the Committee by unanimous consent. The Leahy amendment revised the structural changes at the DOJ and the FBI originally envisioned by the bill by assigning a Deputy Chief in the Criminal Section of the Civil Rights Division of the DOJ and a Special Investigatory Agent in the Civil Rights Unit of the FBI to coordinate, investigate, and prosecute racially motivated cold cases on or before December 31, 1969. It maintained strong reporting requirements while avoiding hurdles that could have a detrimental impact on pending investigations such as requiring the DOJ to report the case names of open investigations. It allowed the DOJ to issue grants to state and local law enforcement agencies for investigation and prosecution of violations of state and local laws similar to federal criminal civil rights statutes. Finally, it made technical changes to the remainder of the bill to ensure consistency.

The Leahy amendment in the form of a complete substitute mirrors the companion bill that was referred to the full House Judiciary Committee, H.R. 923.

The Committee favorably reported S. 535, as amended by the Leahy amendment in the form of a complete substitute, by unanimous consent.

ii. Legislative history of the Missing Child Cold Case Review Act

Senator Patrick Leahy introduced the original Missing Child Cold Case Review Act (S. 2435) on May 18, 2004, with Senator Grassley. Senators Lincoln and Hatch were also cosponsors. It was discharged from the Judiciary Committee and passed the Senate by Unanimous Consent on October 1, 2004. The bill was then referred to the House Committee on Government Reform, Subcommittee on Government Efficiency and Financial Management. The bill languished in the House Subcommittee through the end of the 108th Congress.

Senator Leahy and Senator Hatch also included the Missing Child Cold Case Review Act in the Department of Justice Appropriations Authorization Act, fiscal years 2005 through 2007 (S. 2863, 108th Congress), which was introduced on September 24, 2004. That bill was referred to the Senate Judiciary Committee where it never saw further action.

In the 109th Congress, at a Judiciary Committee Executive Business Meeting on August 3, 2006, Senator Leahy offered, and the Judiciary Committee adopted by voice vote a substitute amendment to the Unsolved Civil Rights Crime Act (S. 2679), which included the Missing Child Cold Case Review Act. The Unsolved Civil Rights Crime Act (S. 2679), as amended, was reported out of the Judiciary Committee by voice vote. At the close of the 109th Congress, the bill's sponsors sought a unanimous consent agreement to pass the bill, but were unable to secure the agreement and the bill did not pass.

On August 3, 2006, the Missing Child Cold Case Review Act was included in the Unsolved Civil Rights Crime Act as a Leahy-Cornyn as an amendment in the form of a complete substitute.

C. LETTERS OF SUPPORT

The Emmett Till Unsolved Civil Rights Crime Act is intended to investigate and prosecute violations of civil rights statutes that occurred prior to 1970 and resulted in death. Although these delayed

prosecutions cannot right the wrongs of the past, they are a step towards providing equality in the American criminal justice system. Recognizing that there is a small window of time to investigate and prosecute these crimes, the Act increases the financial and human resources available for the aggressive investigation and prosecution of these crimes. This legislation is supported by a wide range of governmental and non-governmental agencies including The U.S. Department of Justice,⁶⁴ The National Center for Missing and Exploited Children,⁶⁵ The Fraternal Order of Police,⁶⁶ The Southern Poverty Law Center,⁶⁷ and The National Association for the Advancement of Colored People,⁶⁸ The American Civil Liberties Union,⁶⁹ The Leadership Conference on Civil Rights,⁷⁰ and the Lawyers Committee for Civil Rights.⁷¹

III. SECTION-BY-SECTION SUMMARY OF THE TILL BILL

Section 1—Short title

The Act may be cited as the “Emmett Till Unsolved Civil Rights Crime Act.”

Section 2—Sense of the Congress

Section 2 expresses the sense of the Senate that, as each year passes, the window of opportunity to solve these crimes becomes smaller because potential witnesses are getting older. In order to capitalize on the presence of both witnesses and evidence, it is important to aggressively investigate the pre-1970 civil rights crimes that resulted in a death in order to efficiently solve the cases.

Section 2(2) expresses the sense of Congress that time, resources, and personnel should be devoted to investigating pre-1970 Civil Rights murders.

⁶⁴ Moschella, *supra* note 42, (stating that DOJ “strongly supports the important legislative goals of the bill”).

⁶⁵ Allen, *supra* note 29 (stating that “Section 8 of this Act will allow the Inspectors General to provide much-needed assistance to NCMEC in reviewing cases of long-term missing children.”).

⁶⁶ Letter from Chuck Caterbury, National President of the Fraternal Order of Police, to Senator Patrick Leahy, Chairman of the S. Comm. on the Judiciary (June 6, 2007) (supporting section 8 of the bill in particular and referring to the strong support for the bill in the Inspector General community) (letter on file with the S. Comm. on the Judiciary).

⁶⁷ Letter from Richard Cohen, CEO of The Southern Poverty Law Center, to Senator Patrick Leahy, Chairman of the S. Comm. on the Judiciary (June 1, 2007) (claiming that “investigating and prosecuting the unsolved slayings [that were racially motivated and occurred pre-1970s] * * * is a crucial step toward healing the wounds of racial division that still afflict our nation.”) (letter on file with the S. Comm. on the Judiciary).

⁶⁸ Letter from Hilary Shelton, Director of the NAACP, to Senator Patrick Leahy, Chairman of the S. Comm. on the Judiciary (June 4, 2007) (urging senators to support the bill because “it is imperative to bring murderers of early civil rights activists to justice, to show the victims’ families, as well as the Nation, that their sacrifices continue to outrage our Nation.”).

⁶⁹ Letter from Caroline Frederickson, Director of the ACLU, to Senator Patrick Leahy, Chairman of the S. Comm. on the Judiciary (June 12, 2007) (applauding the legislation’s goals and urging members to support it).

⁷⁰ Letter from Wade Henderson, President and CEO of the Leadership Conference on Civil Rights, to Senator Patrick Leahy, Chairman of the S. Comm. on the Judiciary (June 4, 2007) (claiming “it is imperative to put resources behind investigating and prosecuting those individuals * * * who committed heinous crimes against civil rights activists and individual African Americans.”).

⁷¹ Letter from John G. Brittain, Chief Counsel of the Lawyers Committee for Civil Rights Under Law, to Speaker of the House Nancy Pelosi (June 19, 2007) (supporting the bill and urging the Speaker to schedule a floor vote on H.R. 923—the companion to S. 535—during the week of June 18, 2007, to mark the 43rd anniversary of the deaths of Michael Schwerner, Andrew Goodman, and James Chaney (June 21, 1964)).

Section 3—Deputy Chief in the Criminal Section of the Civil Rights Division

Section 3(a) requires the Attorney General to designate a Deputy Chief in the Criminal Section of the Civil Rights Division of the DOJ.

Section 3(b)(1) defines the post of Deputy Chief in the DOJ. The Deputy Chief is responsible for investigating, prosecuting, and coordinating both investigative and prosecutorial actions in cases where there is an alleged violation of a criminal civil rights statute no later than December 31, 1969 that resulted in a death.

Section 3(b)(2) allows the Deputy Chief to coordinate investigative activities with state and local officials. While this coordination is not required, the fact that most of these cases will lack federal jurisdiction underscores the importance of state and local participation in the investigations in order to bring about efficient and accurate results.

Section 3(c) describes the study and report to be conducted by the Attorney General.

Section 3(c)(1)(A) mandates that the Attorney General must annually report the number of open and ongoing investigations conducted by the DOJ.

Section 3(c)(1)(B) requires that the Attorney General annually report the number of cases and investigations that were opened pursuant to the enactment of S. 535 and after the previous report.

Section 3(c)(1)(C) mandates that the Attorney General annually report the number of unsealed Federal cases, as well as the case names and jurisdictions that the cases occurred in.

Section 3(c)(1)(D)(i) mandates that the Attorney General annually report the number of cases that the DOJ referred to a state or local law enforcement agency, as well as the number of these cases that resulted in the filing of state or local charges. The Attorney General must also provide the jurisdiction in which the charges were filed and the dates the charges were filed.

Section 3(c)(1)(D)(ii) mandates that the Attorney General annually report the case names of any unsealed Federal cases in which the state or local government did not file charges or prosecute. As such, the Attorney General must also report the decisions by federal officials not to coordinate investigations with the state or local officials.

Section 3(c)(1)(E) mandates that the Attorney General annually report the cases that were closed without federal prosecution. If the cases are unsealed, then the Attorney General must provide the names of the un-prosecuted cases, the dates these cases were closed, and any relevant federal statutes that led to the closure of these cases.

Section 3(c)(1)(F) mandates that the Attorney General annually report the number of attorneys who worked on any of these cases.

Section 3(c)(1)(G) mandates that the Attorney General annually report the number of applications for grants that are made by state and local law enforcement officials (as provided for in Section 5). This report must include the reasons why the grant amounts were given.

Section 3(c)(2) mandates that the Attorney General prepare and submit a report of these results to Congress six months after the enactment of this legislation, and each year after that, until 2017.

Section 4—Supervisory Special Agent in the Civil Rights Unit of the Federal Bureau of Investigation

Section 4(a) requires that the Attorney General designate a Supervisory Special Agent (SSA) in the Civil Rights Unit of the FBI. The SSA is tasked with investigating violations described in 3(b)(1).

Section 4(b)(2)(A) states that the SSA may coordinate investigative activities with State and local law enforcement officials. As such, this section recognizes the essential nature of State and local law enforcement officials in the successful investigation of the pre-1970 civil rights crimes. However, it does not require coordination, giving discretion not to coordinate in a case where state and local law enforcement is hostile to the investigation of civil rights cold cases.

Section 5—Grants to State and local law enforcement

Section 5(a) authorizes the Attorney General to award grants to State and local law enforcement agencies for expenses incurred in investigating and prosecuting violations of State or local laws similar to the Federal criminal civil rights statutes detailed in Section 7.

Section 5(b) authorizes \$2 million to be appropriated for each of fiscal years 2008 through 2017 to carry out Section 5(a).

Section 6—Authorization of appropriations

Section 6(a) authorizes the appropriation of \$10,000,000 annually for FY 2008 through FY 2017 to be shared by the Deputy Chief created by Section 3 and the Supervisory Special Agent created by Section 4 to advance the goals of this Act. This section also specifies that the amounts appropriated for this purpose of carrying out Sections 3 and 4 are in addition to any other amounts appropriated for the investigation of racially motivated murders.

Section 6(b) provides for \$1,500,000 to be appropriated to the Community Relations Service of the DOJ each year. This money is to aid in the investigations of pre-1970 civil rights crimes that resulted in a death. This money is used to enable the Service, which was created under 42 U.S.C. 2000g to provide for appointment and authorization of personnel by a Director to carry out the duties of a particular office or unit. This money will therefore be used to enable 4(b), which provides for the prosecution of pre-1970s civil rights crimes, for the coordination of racially motivated unsolved civil rights murders with the State or local officials, and for the referral of crimes that do not meet the criteria of 3(b)(1) to other divisions.

Section 7—Definitions

Section 7 defines “civil rights statutes.” The unit must determine if the following statutes were violated: 18 U.S.C. 241, 242, 245, 1581 and 1584, and 901 of the Fair Housing Act (42 U.S.C. 3631). If one of these criminal civil rights statutes was not violated, then the crime is not investigated or prosecuted under this Act.

18 U.S.C. 241 provides for punishment of individuals for conspiring to deprive another individual of his or her free exercise or enjoyment of any right or privilege. Conspiring is deemed to be when two or more individuals work together to injure, oppress,

threaten, or intimidate any person in any state. 18 U.S.C. 241. Additionally, other crimes committed during a conspiracy against rights shall be further punished.

18 U.S.C. 242 provides for punishment of individuals who act under color of law of any law, statute, ordinance, regulation, or custom in order to deprive another of any rights, privileges, or immunities that are secured by the Constitution or by other laws. This means that if an individual is working in his or her state-granted capacity while committing a crime then that crime is punishable by law. This would apply to persons such as police officers, government officials, etc.

18 U.S.C. 245 provides for punishment of individuals who interfere with another's right to engage in a federally protected activity, such as voting or enrolling in a public college or school 18 U.S.C. 1581 and 1584 provide for punishment of people who hold or try to hold an individual with the intent of placing him or returning him to peonage or servitude.

§ 901 of the Fair Housing Act (42 U.S.C. 3631) makes it illegal for a person to discriminate against and interfere with an individual based on race, color, religion, sex, handicap, familial status, or national origin, when the individual is attempting to purchase, rent, or sell housing.

Section 3(2)(F)(i) ensures that laws that were in effect prior to 1970, but may not be in effect now, can still be enforced by the Emmett Till Unsolved Civil Rights Crime Act.

Section 3(2)(F)(ii) ensures that the federal laws the Criminal Section of the Civil Rights Division of the DOJ regularly enforced prior to the enactment of the Act will be enforced for the purposes of this Act. If the DOJ does not regularly enforce certain federal laws after the enactment of the Act, but did before, then those laws must continue to be enforced for the purposes of this Act.

Section 8—Sunset

Section 8 limits the execution of this Act until the year 2017.

Section 9—Authority of Inspectors General

Section 9 amends the Crime Control Act of 1990 (42 U.S.C. 5779 et seq.). 42 U.S.C. 5779 requires that Federal, State, and local law enforcement officials report cases of missing children under the age of 21 to the National Crime Information Center of the DOJ.

Section 9(a) amends the Crime Control Act of 1990 to specify that an Inspector General may authorize staff to assist the National Center for Missing and Exploited Children by conducting reviews of inactive case files and developing recommendations for further investigations. This will bolster the expertise available to review missing children cold cases.

Section 9(b)(1) provides that an Inspector General may not allow staff to engage in the activities described in subsection (a) if they will interfere with the other duties incumbent upon an Inspector General.

Section 9(b)(2) provides that no additional money is appropriated to carry out these tasks.

Together, the provisions of section 9 ensure that no preexisting function or duty of an Inspector General's office will be compromised by any provisions in this legislation.

IV. COST ESTIMATE

JUNE 19, 2007.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 535, the Emmett Till Unsolved Civil Rights Crime Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Daniel Hoople.

Sincerely,

PETER R. ORSZAG.

Enclosure.

S. 533—Emmett Till Unsolved Civil Rights Crime Act

Summary: S. 535 would authorize the appropriation of \$10 million a year over the 2008–2017 period for the Department of Justice (DOJ) to investigate and prosecute certain unsolved homicides committed prior to 1970. The bill would also authorize the appropriation of \$3.5 million annually over the 2008–2017 period to provide technical assistance to state and local law enforcement agencies, as well as make grants to those agencies for expenses related to the investigation and prosecution of such crimes. CBO estimates that implementing S. 535 would cost \$10 million in 2008 and \$63 million over the 2008–2012 period, subject to appropriation of the authorized amounts. Enacting this legislation would not affect direct spending or revenues.

S. 535 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no cost on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 535 is shown in the following table. The cost of this legislation falls within budget function 750 (administration of justice).

Basis of estimate: For this estimate, CBO assumes that S. 535 would be enacted near the end of fiscal year 2007 and that the authorized amounts will be appropriated for each year. We estimate that implementing S. 535 would cost a total of \$10 million in 2008 and \$63 million over the 2008–2012 period.

| | By fiscal year, in millions of dollars— | | | | |
|---|---|------|------|------|------|
| | 2008— | 2009 | 2010 | 2011 | 2012 |
| CHANGES IN SPENDING SUBJECT TO APPROPRIATION | | | | | |
| Investigation and Prosecution of Unsolved Crimes: | | | | | |
| Authorization Level | 10 | 10 | 10 | 10 | 10 |
| Estimated Outlays | 9 | 10 | 10 | 10 | 10 |
| Grants to State and Local Law Enforcement: | | | | | |
| Authorization Level | 2 | 2 | 2 | 2 | 2 |
| Estimated Outlays | 0 | 1 | 1 | 2 | 2 |
| Community Relations Service: | | | | | |
| Authorization Level | 2 | 2 | 2 | 2 | 2 |
| Estimated Outlays | 1 | 1 | 2 | 2 | 2 |
| Total Changes: | | | | | |
| Authorization Level | 14 | 14 | 14 | 14 | 14 |
| Estimated Outlays | 10 | 12 | 13 | 14 | 14 |

Investigation and prosecution of unsolved crimes

S. 535 would authorize the appropriation of \$10 million a year over the 2008–2017 period for the investigation and prosecution of civil rights violations involving homicides committed before 1970. The legislation would direct the Attorney General to designate a Deputy Chief in the Civil Rights Division of DOJ to coordinate with a newly created Supervisory Special Agent in the Civil Rights Unit of the Federal Bureau of Investigation to carry out those responsibilities. Based on the spending patterns for similar DOJ activities, CBO estimates that implementing this provision would cost \$9 million in 2008 and \$49 million over the 2008–2012 period.

Grants to state and local law enforcement

S. 535 would authorize the appropriation of \$2 million annually over the 2008–2017 period for DOJ to make grants to state and local law enforcement agencies to investigate and prosecute certain civil rights cases. CBO estimates that implementing this provision would cost \$6 million over the 2008–2012 period.

Community relations service

S. 535 would authorize the appropriation of \$1.5 million a year over the 2008–2017 period for the Community Relations Service of DOJ to aid in investigating and prosecuting those unsolved civil rights cases. Costs would include technical assistance and other expenses related to the coordination of law enforcement officials and affected communities with DOJ. CBO estimates that this provision would cost \$1 million in 2008 and nearly \$8 million over the 2008–2012 period.

Intergovernmental and private-sector impact: S. 535 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Previous CBO estimate: On June 19, 2007, CBO transmitted a cost estimate for H.R. 923, the Emmett Till Unsolved Civil Rights Crime Act of 2007, as ordered reported by the House Committee on the Judiciary on June 13, 2007. The two bills are very similar, and the CBO cost estimates are identical.

Estimate prepared by: Federal Costs: Daniel Hoople and Mark Grabowicz; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

V. REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b)(1), rule XXVI of the Standing Rules of the Senate, the Committee, after due consideration, concludes that S.535 will not have significant regulatory impact.

VI. CONCLUSION

Passage and enactment of the Emmett Till Unsolved Civil Rights Crime Act, S. 535, is long overdue. This bipartisan legislation strengthens and expands the federal government's ability to investigate and prosecute unsolved and decades-old racially motivated hate crimes and long-term missing children cases. To that end, it provides much needed resources and tools to the DOJ and the FBI

to investigate and prosecute such cases. In addition, the bill authorizes the Inspectors General to assist NCMEC in their investigations. This recognizes the urgency in resolving these cases so that the victims' families, and this Nation, can attain justice.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 535, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**TITLE XXXVII OF THE CRIME CONTROL ACT
OF 1990, PL 101-647, (42 U.S.C. 5779 ET SEQ.)—
ADDING A NEW SECTION**

3703. AUTHORITY OF INSPECTORS GENERAL.

(a) *IN GENERAL.*—*An Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.) may authorize staff to assist the National Center for Missing and Exploited Children—*

(1) *by conducting reviews of inactive case files to develop recommendations for further investigations; and*

(2) *by engaging in similar activities.*

(b) *LIMITATIONS—*

(1) *PRIORITY.*—*An Inspector General may not permit staff to engage in activities described in subsection (a) if such activities will interfere with the duties of the Inspector General under the Inspector General Act of 1978 (5 U.S.C. App.).*

(2) *FUNDING.*—*No additional funds are authorized to be appropriated to carry out this section.*

VIII. APPENDIX
SOUTHERN POVERTY LAW CENTER
THE "FORGOTTEN"

These are the names of 74 men and women who died between 1952 and 1968 under circumstances suggesting they were the victims of racially motivated violence. The information below was gathered by the Southern Poverty Law Center as it planned a timeline of killings for the Civil Rights Memorial. The Memorial, dedicated in 1989, includes the names of 40 civil rights martyrs who were slain during that era. The names below were not inscribed on the Memorial because there was insufficient information about their deaths at the time the Memorial was created. They are, however, identified in a display at the Civil Rights Memorial Center as "The Forgotten."

- Anderson, Andrew Lee—Marion, Ark., 1963. Anderson was slain by a group of whites and sheriff's deputies after a white woman said he had molested her 8-year-old daughter. A coroner's jury ruled justifiable homicide, and no arrests were made.
- Andrews, Frank—Lisman, Ala., 1964. Andrews was shot in the back by a white sheriff's deputy. The county solicitor said the victim was attacking another deputy, and no arrests were made.
- Banks, Isadore—Marion, Ark., 1954. Banks' charred corpse was found chained to a tree. Black press reports speculated he was killed by whites who wanted his land. His property was later rented by white farmers.
- Bolden, Larry—Chattanooga, Tenn., 1958. Bolden, 15, was shot by a white policeman. No arrests were made.
- Brazier, James—Dawson, Ga., 1958. Brazier was beaten to death in front of his wife and children by two police officers. County Sheriff Z.T. Matthews was later quoted in the Washington Post saying, "There's nothing like fear to keep niggers in line."
- Brewer, Thomas—Columbus, Ga., 1956. Brewer was instrumental in forming a local chapter of the NAACP in 1937. He was shot seven times outside his office by white politician Lucio Flowers. A grand jury failed to indict.
- Brooks, Hilliard—Montgomery, Ala., 1952. Brooks was shot by a police officer after initially refusing to get off a city bus when the driver claimed he had not paid his fare. A coroner said the murder was justified because Brooks resisted arrest.
- Brown, Charles—Yazoo City, Miss., 1957. A white man shot Brown, who was visiting the white man's sister. The Justice Department handed the case over to the state.

- Brown, Jessie—Winona, Miss., 1965. The 1965 NAACP annual report claimed white farmer R.M. Gibson killed Brown.
- Brumfield, Carrie—Franklinton, La., 1967. Brumfield was found shot to death in his car on a rural road. He was shot once in the chest with a .22-caliber revolver.
- Brumfield, Eli—McComb, Miss., 1961. Police officer B.F. Elmore alleged self-defense after shooting Brumfield. Police claimed Brumfield jumped from his car with a pocket knife after police pulled him over for speeding.
- Caston, Silas (Ernest)—Jackson, Miss., 1964. Caston was shot by a local police officer. CORE and NAACP filed a civil suit against Deputy Sheriff Herbert Sullivan. The result of that suit is unknown.
- Cloninger, Clarence—Gaston, N.C., 1960. Cloninger died while incarcerated. Authorities denied him medical attention after he suffered a heart attack.
- Countryman, Willie—Dawson, Ga., 1958. Police officer W.B. Cherry was cleared of murder charges after police said he shot Countryman “in self defense in the line of duty.”
- Dahmon, Vincent—Natchez, Miss., 1966. Dahmon, 65, was shot in the head around the time of a march in support of James Meredith.
- Daniels, Woodrow Wilson—Water Valley, Miss., 1958. Sheriff Buster Treloar, identified by four witnesses as the man who beat Daniels to death in a prison, was freed after 23 minutes of deliberation by an all-white jury. “By God,” Treloar said after the trial. “Now I can get back to rounding up bootleggers and damn niggers.”
- Dumas, Joseph Hill—Perry, Fla., 1962. Florida Governor Farris Bryant suspended constable Henry Sauls in connection with the shooting of 19-year-old Dumas. Sauls was indicted by a federal grand jury. The result of indictment is unclear.
- Evans, Pheld—Canton, Miss., 1964. Medgar Evers identified Evans as having been killed under mysterious circumstances.
- Evanston, J.E.—Long Lake, Miss., 1955. Evanston’s body is fished out of Long Lake in December. Evanston was a teacher in the local elementary school.
- Greene, Mattie—Ringgold, Ga., 1960. Greene is killed when a bomb explodes under her house.
- Greenwood, Jasper—Vicksburg, Miss., 1964. Greenwood was found shot to death near his car on a rural road. Police said the slaying was not racially motivated.
- Griffin, Jimmie Lee—Sturgis, Miss., 1965. Griffin was killed in a hit-and-run accident. A coroner’s report revealed Griffin was run over at least twice.
- Hall, A.C.—Macon, Ga., 1962. Hall was shot and killed after a white woman claimed he stole a pistol from her car. He was shot by police as he ran away.
- Hamilton, Rogers—Lowndes County, Ala., 1957. Hamilton, 19, was taken from his home by a group of white men and shot to death. Hamilton was allegedly warned to stay away from black girls in the town of Hayneville. No charges were brought in the case.

- Hampton, Collie—Winchester, Ky., 1966. Hampton was shot by police officers after allegedly threatening a police officer.
- Harris, Alphonso—Albany, Ga., 1966. Harris, a member of SCLC, died after allegedly organizing a walkout by black students at a school in Grenada, Miss. He was killed in Georgia in response to previous civil rights activity there.
- Henry, Izell—Greensburg, La., 1954. Henry was brutally beaten a day after voting. He suffered permanent brain damage and died five years later.
- Hill, Arthur James—Villa Rica, Ga., 1965. Hill was shot during an argument with whites. One suspect was held on voluntary manslaughter charge.
- Hunter, Ernest—St. Mary's, Ga., 1958. Hunter was shot and killed while in jail following an arrest on charges he was interfering with an officer.
- Jackson, Luther—Philadelphia, Miss., 1959. Jackson was killed by police after he and his girlfriend were found talking in their car, which was stalled in a ditch. Police claim Jackson attacked them.
- Jells, Ernest—Clarksdale, Miss., 1964. Jells was accused of stealing a banana from a grocery and pointing a rifle at pursuing police officers. The officers were exonerated.
- Jeter, Joe Franklin—Atlanta, Ga., 1958. Jeter was killed by police in front of his family, who were also arrested and convicted in connection with a gathering that police said turned into a melee. A grand jury found the slaying was justified.
- Lee, John—Goshen Springs, Miss., 1965. Lee's body was found beaten on a country road.
- Lee, Willie Henry—Rankin County, Miss., 1965. Lee, who was known to have attended civil rights meetings, was found beaten on a country road. An autopsy revealed he died by strangulation from gas.
- Lillard, Richard—Nashville, Tenn., 1958. Lillard died after a beating from three white guards at a local workhouse. All three were acquitted of murder charges.
- Love, George—Indianola, Miss., 1958. Love was killed in a gun battle with police who believed he was responsible for a murder and arson. He was later cleared of any connection to the murder.
- Mahone, Maybelle—Molena, Ga., 1956. Mahone was killed by a white man for "sassing" him. The man was initially found guilty, but later found not guilty by reason of insanity.
- Maxwell, Sylvester—Canton, Miss., 1963. Maxwell's castrated and mutilated body was found by his brother-in-law less than 500 yards from the home of a white family.
- McNair, Robert—Pelahatchie, Miss., 1965. McNair was killed by a town constable.
- Melton, Clinton—Sumner, Miss., 1956. Elmer Otis Kimbell was cleared in Melton's death. Kimbell claimed Melton fired at him three times before he returned fire with a shotgun. No gun was found in Melton's car or on his body.
- Miller, James Andrew—Jackson, Ga., 1964. Miller was shot by whites a few days after being beaten. A suspect was cleared after the coroner ruled he fired in self-defense.

- Mixon, Booker T.—Clarksdale, Miss., 1959. Mixon's body was found lying on the side of the road, completely nude. Police claimed it was a hit-and-run, though family members cited his naked body and the extensive amount of flesh torn from his body as evidence of murder.
- Montgomery, Nehemiah—Merigold, Miss., 1964. Montgomery, 60, was shot by police after allegedly refusing to pay for gas. Police were acquitted, and the shooting was called justifiable homicide.
- Morris, Frank—Ferriday, La., 1964. Morris, who owned a shoe store, was killed when a gas stove exploded during an arson. Morris, who lived in a room adjoining the store, was ordered to return to his room by the men who started the fire. An extensive Justice Department investigation was conducted, but the outcome is unclear.
- Motley, James Earl—Wetumpka, Ala., 1967. Elmore County Deputy Sheriff Harvey Conner was cleared in the death of Motley, who died in prison after suffering three severe blows to the head.
- O'Quinn, Sam—Centreville, Miss., 1959. O'Quinn, derided by some local whites for being "uppity," was shot after joining the NAACP.
- Orsby, Hubert—Pickens, Miss., 1964. Orsby's body was found in the Black River. It was reported that he was wearing a t-shirt with "CORE," written on it, representing the Congress of Racial Equality.
- Payne, Larry—Memphis, Tenn., 1968. Payne, 16, was killed by a shotgun blast fired by a patrolman as he emerged from a basement in a housing development.
- Pickett, C.H.—Columbus, Ga., 1957. The part-time minister was beaten to death while in police custody.
- Pitts, Albert
Pitts, David
Johnson, Marshall
- McPharland, Ernest—Monroe, La., 1960. A white employer was arrested and then released in the shooting of five of his employees, four of whom died. The victims were accused of making threats. The employer was never charged.
- Powell, Jimmy—Brooklyn, N.Y., 1964. Powell, 15, was fatally shot by a Brooklyn police officer. The officer's exoneration by a grand jury sparked riots in Harlem.
- Prather, William Roy—Corinth, Miss., 1959. Prather, 15, was killed in an anti-black Halloween prank. One of eight youths involved was indicted on manslaughter charges.
- Queen, Johnny—Fayette, Miss., 1965. A white off-duty constable was named in the pistol slaying of Johnny Queen. The shooting was not connected to any arrest.
- Rasberry, Donald—Okolona, Miss., 1965. Rasberry was shot to death by his plantation boss.
- Robinson, Fred—Edisto Island, S.C., 1960. Robinson's body was found washed ashore on August 5. His eyes were reportedly gouged out and his skull crushed.
- Robinson, Johnny—Birmingham, Ala., 1963. Robinson, 16, was shot in the back by a policeman on the same day as the 16th

- Street Church bombing. Police said the victim had thrown stones at white youths driving through the area.
- Sanford, Willie Joe—Hawkinsville, Ga., 1957. Sanford's naked body was raised from the bottom of a creek where it had been wired to undergrowth in the water. The result of a grand jury investigation is unknown.
- Scott Jr., Marshall—New Orleans, La., 1965. Scott was put into solitary confinement in a New Orleans jail. He died without receiving any medical attention. There were no arrests in the case.
- Shelby, Jessie James—Yazoo City, Miss., 1956. Shelby, 23, was fatally wounded by a police officer who claimed he shot Shelby because he resisted arrest.
- Singleton, W.G.—Shelby, N.C., 1957. Singleton died from third-degree burns suffered in an explosion and fire.
- Smith, Ed—State Line, Miss., 1958. A grand jury refused to indict L.D. Clark in the death of Smith, who was shot in his yard in front of his wife. Clark later reportedly bragged about the killing.
- Stewart, Eddie James—Crystal Springs, Miss., 1966. Stewart was reportedly beaten and shot while in police custody. Police claimed he was shot while trying to escape.
- Taylor, Isaiah—Ruleville, Miss., 1964. Taylor was shot by a police officer after allegedly lunging at him with a knife. The shooting was ruled a justifiable homicide.
- Thomas, Freddie Lee—LeFlore County, Miss., 1965. Federal investigators looked into the death of Thomas, 16. Thomas' brother believed he was murdered as a warning against black voter registration. The result of the investigation is unknown.
- Triggs, Saleam—Hattiesburg, Miss., 1965. The body of Mrs. Triggs was found mysteriously burned to death.
- Varner, Hubert—Atlanta, Ga., 1966. Varner, 16, was killed when a gunman fired into a group of black teenagers. The gunman allegedly believed the teenagers made a comment to his white companion. The result of a federal investigation is unknown.
- Walker, Clifton—Adams County, Miss., 1964. Walker was killed by a shotgun blast at close range. The result of a federal investigation is unknown.
- Waymers, James—Allendale, S.C., 1965. A white man is acquitted in the shooting death of Waymers after entering a plea of self-defense.
- Wilder, John Wesley—Ruston, La., 1965. A white policeman was accused of Wilder's death, and a coroner's jury ruled the slaying was justifiable homicide.
- Williamson, Rodell—Camden, Ala., 1967. Williamson's body was recovered from the Alabama River after it snagged on a fisherman's line. Williamson was active in the Wilcox County branch of the NAACP, but local sheriff P.C. Jenkins said there were no signs of foul play.
- Wooden, Archie—Camden, Ala., 1967. Wooden, 16, bled to death after either jumping or falling onto a sapling in a ditch. The cut sapling severed an artery. A newspaper report said the

Mobile office of the FBI made a civil rights violation inquiry into the incident. The results of that inquiry are unknown.

