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A 42-year rush to justice

The legal case for indicting a former Alabama trooper in the 1965 slaying of a black man appears flimsy.

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LAST WEEK'S murder indictment of a former Alabama state trooper for the 1965 shooting of a young black voting-rights demonstrator is one more Deep South prosecution of a long-forgotten white defendant who ended up on the wrong side of the civil rights revolution.

It's one of many. In recent years, prosecutors have won convictions in connection with, among others, the 1963 church bombing in Birmingham, Ala., and the killings of three civil rights workers near Philadelphia, Miss., in 1964. In many of these cases, credible eyewitness testimony -- from survivors, co-conspirators and even close relatives -- has proved crucial in winning solid convictions in connection with decades-old race crimes.

But this indictment may be different. At first glance, the charges filed against 73-year-old James Bonard Fowler seem straightforward. Fowler was one of about 50 Alabama troopers dispatched to the small Perry County town of Marion on Feb. 18, 1965, to break up a nonviolent demonstration that was part of the Rev. Martin Luther King Jr.'s nascent voting-rights campaign, centered in nearby Selma. One of King's aides had been jailed in Marion earlier that day, and the after-dark protest march in the town square was blocked by the lawmen, who then set upon the 400 marchers with nightsticks. Onlooking journalists were attacked by local whites, and as some of the marchers fled the square, troopers pursued them.

Jimmie Lee Jackson, 26, ran into nearby Mack's Cafe along with his mother, Viola. Shortly after, four troopers entered. Written statements given later by three troopers say that bottles were thrown at them from the cafe and that more bottles met them when they burst in. Fowler's declaration and that of another still-living former trooper, Robert C. Andrews, describe a tussle over a bottle between a black woman -- probably the late Viola Jackson -- and a third trooper, who then was assaulted by two black men.

Fowler grabbed one of those men, Jimmie Lee Jackson, whom he says struck him with a bottle several times while simultaneously attempting to remove his gun from its holster. Both men lost their balance, Fowler wrote, and "on the next blow which struck my hand the gun fired."

But that's where the story starts to get slightly murkier. Andrews' statement is different from Fowler's account. He describes seeing Fowler shove Jackson aside and says that when Jackson

"again advanced toward Corporal Fowler, he drew his revolver and fired." When Fowler himself recalled the incident in his first-ever public interview in 2005 with the Anniston Star, he told Editor John Fleming that during the tussle "my hand was on the trigger then and I pulled the trigger." He added that "I don't remember how many times I pulled the trigger, but I think I just pulled it once, but I might have pulled it three times."

In recent comments to reporters, after it became clear that he might indeed face charges, Fowler reverted to his 1965 account, saying, "we both had our hands on my gun, and the forced motion caused the gun to fire."

Jackson suffered two gunshot wounds to the stomach and died eight days later from a massive infection. A hospital administrator told the New York Times on the day Jackson died that "there were powder burns on Mr. Jackson's stomach," indicating he had been shot at close range. The Times also reported that before his death, Jackson gave a statement to a lawyer, in the presence of two FBI agents -- a statement that has never been made public and whose current whereabouts or existence is unknown.

Like other, similar cases, no serious investigation of the shooting occurred at the time, and even the shooter's full identity remained shrouded until Fowler spoke expansively to Fleming in early 2005. In that interview, Fowler revealed that a year later, in May 1966, he shot another black man, a prisoner who took a "billy club and hit me across the head right here. I pulled my gun and shot him. I shot him three times.... I killed him." Fowler faced no charges for that shooting either.

Fowler was discharged from the state police in 1968 after physically assaulting a superior officer. He joined the military, winning two Silver Stars in Vietnam, before returning to Alabama.

After Fleming's story was published in March 2005, the Alabama Legislative Black Caucus called for Fowler's prosecution. Dist. Atty. Michael Jackson (no relation to Jimmie Lee), who had been elected in 2004 as the first black prosecutor for Perry and four other Selma-area counties, also took an interest in the case, and, in late April, he announced his upcoming grand jury presentation to an audience at Harvard University. "This case is going to attract a lot of attention," he accurately proclaimed.

Although it's true that there are elements of the story that certainly don't look good for Fowler -- such as the fact that he killed another black man a year later -- it's not so clear that the case itself has been terribly well thought out or that the evidence amounts to all that much.

The murder indictment Jackson obtained on Wednesday came from a grand jury that heard a sum total of only two hours of testimony, none of which came from anyone who actually saw the shooting, according to the Associated Press and other reports. Instead, several witnesses described the troopers' earlier assault on the column of marchers, which seems hardly germane. Another witness, Vera Jenkins Booker, a former hospital nurse, recalled her memories from 42 years ago of what Jimmie Lee Jackson said about the shooting before he died. Under Alabama law, such "deathbed declarations" can be used at trial, and the District Attorney sees this testimony as the key to his case.

But is this a credible record on which to indict someone for murder, or is it instead an indicator of headline-hunting excess, an occupational weakness of popularly elected prosecutors?

Indeed, Fowler and Andrews may very well be the only surviving firsthand witnesses. And if Fowler's lawyers choose not to have him testify (which is not improbable given his varying accounts of how the gun went off), the only eyewitness account would come from Andrews, who presumably (based on his own recent interview with the Anniston Star) can be expected to testify that Fowler fired in self-defense at someone who was attempting to take his gun while he was trying to protect a fellow officer.

Perhaps the nurse's testimony, plus accounts from other victims of that night's brutality, which could be heart-rending, will be enough to win prosecutor Jackson a murder conviction from a local jury in majority-black Perry County. But perhaps not.

Historically, it's an unquestionable, absolute truth that Alabama's troopers were guilty time and again of outrageously gratuitous brutality against unarmed black demonstrators. But that historical verdict does not justify pursuing a murder conviction if the standard for criminal guilt -- "beyond a reasonable doubt" -- cannot be honestly attained. Given the lack of a meaningful investigation in 1965, the passage of time and the absence of surviving witnesses, will that burden really be met?

I suspect the answer is no. Sometimes history's verdict is not only distinct from a jury's but downright superior. When a prosecution looks as strained and flimsy as does this indictment of Fowler, it's time to admit that history's verdict is preferable to a judicial one that can be attained only by methods that make a mockery of the fundamental fairness that every individual -- even former Alabama troopers -- should always be guaranteed.

**GRAPHIC: PHOTO: THE ACCUSED:** The indictment of former Alabama state trooper James Bonard Fowler raises questions about evidence and memory, history and justice.

**PHOTOGRAPHER:** Rob Carr Associated Press **PHOTO: THE VICTIM:** The circumstances surrounding the shooting death of Jimmie Lee Jackson in Perry County, Ala., are murky.

**PHOTOGRAPHER:** Associated Press