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The Courage of Civil Rights Lawyers: Fred Gray and His Colleagues

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THE COURAGE OF CIVIL RIGHTS LAWYERS: FRED GRAY AND HIS COLLEAGUES

Leonard S. Rubinowitz[†]

“You taught us courage—to be brave enough to do what we believe is right—to know that fear is natural, but not to let it stop us from doing what we must.”¹

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1. HELEN SHORES LEE & BARBARA S. SHORES, *THE GENTLE GIANT OF DYNAMITE HILL: THE UNTOLD STORY OF ARTHUR SHORES AND HIS FAMILY’S FIGHT FOR CIVIL RIGHTS* 11 (2012). Helen Shores Lee and Barbara Sylvia Shores, the daughters of Arthur Shores, wrote this in a tribute to their father, an Alabama Civil Rights lawyer. *Id.* Arthur Shores’s contributions to the Civil Rights Movement are discussed *infra* Section I.B.

INTRODUCTION

The modern Civil Rights Movement played out on a very public stage, usually in the form of non-violent direct action in places such as the streets and highways, lunch counters, buses and bus stations, and even the Lincoln Memorial. Similarly, much of the opposition to non-violent direct action took place in those public settings. That made it obvious that civil rights leaders and activists had great courage to confront the system of Jim Crow. The courage of Civil Rights leaders and their followers is well known. They faced dangers up to and including death at the hands of segregationists seeking to preserve white supremacy.

In contrast, civil rights lawyers operated largely behind the scenes, in the much less public confines of the federal and state courts. They are known mostly for their successes in the judicial arena.² They rarely participated in demonstrations, sit-ins, freedom rides, or marches, so they did not encounter the fire hoses, attacking police dogs, tear gas, and other tactics leveled at direct action activists.

Nevertheless, the lawyers' lesser visibility did not protect them from the many dangers of doing civil rights work. Segregationists recognized that the lawyers posed a threat to the racially discriminatory system. So, they included the lawyers in their counter-movement, seeking to eliminate the lawyers, in hopes of undermining and defeating the Civil Rights Movement.³ As a result, the lawyers and their families also faced

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2. See generally Leonard S. Rubinowitz, Michelle Shaw & Michal Crowder, *A "Notorious Litigant" and "Frequenter Of Jails": Martin Luther King, Jr., His Lawyers, and the Legal System*, 10 NW. J. L. & SOC. POL'Y 494, 566 (2016) ("Starting in the 1930s, one of the prominent strands of civil rights work was constitutional litigation challenging state-imposed segregation laws in the South."); FRED D. GRAY, *BUS RIDE TO JUSTICE* 360 (rev. ed. 2013) ("In the final analysis, it was the lawsuits which really changed conditions in the South and in this Nation."); JACK GREENBERG, *CRUSADERS IN THE COURTS: LEGAL BATTLES OF THE CIVIL RIGHTS MOVEMENT* 553 (Twelve Tables Press 2004) ("[The NAACP Legal Defense and Educational Fund] brought court decisions to the people and plugged the current of moral and legal authority into the transactions of everyday life."); JOHN A. SALMOND, *THE CONSCIENCE OF A LAWYER: CLIFFORD J. DURR AND AMERICAN CIVIL LIBERTIES, 1899-1975* (1990); LEE & SHORES, *supra* note 1, at 137 (describing the landmark *Brown v. Board of Education* decision).
 3. See Leonard S. Rubinowitz, *Martin Luther King Jr.'s Perjury Trial: A Potential Turning Point and a Footnote to History*, 5 IND. J.L. & SOC. EQUALITY 237, 240-41 (2017) ("As a lawyer, [Gov. John Patterson] relied heavily on the legal system to accomplish his goal [to undermine and defeat the Civil Rights movement in Alabama]."); Darlene Clark Hine, Jonathan L. Entin & Leonard Rubinowitz, *Session III: A Conversation About Fred Gray: Rosa Parks' Lawyer and Dr. King's First Lawyer*, 10 NW. J. L. &

significant risks. Their roles called for great courage.⁴ This Article brings that aspect of the lawyers' participation center stage.

This symposium pays richly deserved tribute to Alabama's Fred Gray, one of the most important lawyers of the modern Civil Rights Movement.⁵ Fred Gray and his colleagues demonstrated exceptional courage in the challenges they faced, the risks they endured, and the costs they and their families paid to do the critical work to advance the cause. For present purposes, that courage can be divided into two kinds.⁶ Professional courage involves the willingness and ability to navigate a racist state legal system run by segregationists deeply committed to protecting and sustaining the pervasive racial segregation and discrimination—including the police, opposing counsel such as prosecutors, judges, and all-white juries.⁷ Civil rights lawyers represented their clients in high-stakes matters, with a system stacked against them and

SOC. POL'Y 640, 647 (2016) (quoting John Patterson saying “how obstructionist Fred Gray had been as a lawyer, and if they could have gotten rid of him, then they could have won this like they could have won the Civil Rights Movement.”); Darlene Clark Hine, *Foreword to FRED GRAY, BUS RIDE TO JUSTICE* xiii (1995) (“Ex-Alabama governor and ardent segregationist John Patterson confided in an interview that if any of the state-sanctioned maneuvers to remove Fred Gray from the city had worked then, the movement for desegregation perhaps could have been stalled or put on hold for a generation or more.”).

4. Even the lawyers themselves referred to the courage required. GRAY, *supra* note 2, at 347; Arthur D. Shores, *The Negro at the Bar: The South*, 2 NAT'L B.J. 266 (1944).
5. See Hine, *supra* note 2, at xii (“[Fred Gray] was one of the chief architects of the strategies that sustained the Montgomery Bus Protest and represented Rosa Parks and Martin Luther King Jr. as well as other movement principals in those tumultuous early years.”); Rubinowitz, *supra* note 2, at 507–08, 512–13, 544–49 (discussing Fred Gray's extensive involvement in the Civil Rights movement); Jonathan L. Entin, *'Destroying Everything Segregated I Could Find': Fred Gray and Integration in Alabama*, 7 CRITICAL REV. INT'L SOC. & POL. PHIL. 252 (2004).
6. U. W. Clemon & Bryan K. Fair, *Making Bricks Without Straw: The NAACP Legal Defense Fund and the Development of Civil Rights Law in Alabama, 1940–1980*, 52 ALA. L. REV. 1121, 1127 (2001).
7. That system was often referred to as the “southern way of life.” See generally Wilma Dykeman, *What is the Southern Way of Life*, 44 SOUTHWEST REV. 163 (1959). See also GRAY, *supra* note 2, at 12, 75.

In many instances, the federal courts presented a similar challenge because of the appointment of segregationist district judges. TAYLOR BRANCH, PARTING THE WATERS: AMERICA IN THE KING YEARS 1954–63, at 699–700 (1988); see, e.g., SHELDON GOLDMAN, PICKING FEDERAL JUDGES: LOWER COURT SELECTION FROM ROOSEVELT THROUGH REGAN 167 (1997).

their clients.⁸ This was particularly the case during the modern Civil Rights Movement in the South.⁹ Professional courage went along with the representation of those unpopular activists and unpopular causes.

However, the focus here will be on the personal courage that the lawyers exhibited outside their work within the legal system. It is one thing to face a racist system in court, the traditional setting for resolving legal disputes. It is quite another to encounter and withstand extraordinary extra-legal and legal attempts to remove them from the arena. Alabama of the 1950s and the following decades is a case in point. Civil rights lawyers on the frontlines had great dedication and commitment to the movement there. They stayed the course even though they and their families—spouses, children, and other family members—faced a multitude of efforts to terminate their involvement in the movement.¹⁰ They faced physical dangers that included house

8. See generally Charles Morgan, Jr., *Segregated Justice*, in SOUTHERN JUSTICE 155–64 (Leon Friedman ed., 1965); Rubinowitz, *supra* note 3 (discussing the perjury prosecution of King initiated by John Patterson).

9. Judges routinely disrespected the Black lawyers, some even turning their backs or closing their eyes when the lawyers spoke. See, e.g., MAURICE C. DANIELS, *SAVING THE SOUL OF GEORGIA: DONALD L. HOLLOWELL AND THE STRUGGLE FOR CIVIL RIGHTS* 122 (2013) (describing an instance where a trial judge spun around and turned his back as soon as Donald Hollowell got up to speak); Randall Kennedy, *Martin Luther King's Constitution: A Legal History of the Montgomery Bus Boycott*, 98 YALE L. J. 999, 1031 (1989) (describing an instance where a trial judge refused to allow the NAACP general counsel to examine a witness). Opposing counsel demeaned and disrespected them, and all-white juries made decisions that had little to do with the law or the evidence and much to do with the race of their client. See generally Rubinowitz, *supra* note 3, at 257 (“That the conviction had no basis in evidence reinforced Doctor King’s perception that any prosecution of a Black defendant, especially a leader like him, would lead to a guilty verdict from an all-white jury.”).

“Black” is capitalized wherever it refers to Black people, to indicate that Blacks, or African Americans, are a specific cultural group with its own history, traditions, experience, and identity—not just people of a particular color. Using the uppercase letter signifies recognition of the culture, as it does with Latinos, Asian Americans, or Native Americans. See generally MARTHA BIONDI, *TO STAND AND FIGHT: THE STRUGGLE FOR CIVIL RIGHTS IN POSTWAR NEW YORK CITY* (2003); Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation in Anti-Discrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2 (1988) (“When using ‘Black,’ I shall use an upper-case ‘B’ to reflect my view that Blacks, like Asians, Latinos, and other ‘minorities,’ constitute a specific cultural group and, as such, require denotation as a proper noun.”).

10. Other ideas of courage that fit with what these lawyers exemplified include:

1. Grace under pressure. DOUGLAS O. LINDER & NANCY LEVIT, *THE GOOD LAWYER: SEEKING QUALITY IN THE PRACTICE OF LAW* 50 (2014).

bombings and shots fired at their homes, as well as death threats. Also, officials used legal and administrative strategies designed to remove lawyers from the arena, including prosecutions for barratry and an effort to draft one lawyer into the military. Moreover, lawyers in private practice encountered two kinds of economic pressures—loss of clients that threatened the sustainability of their practice and efforts to get them to forego civil rights work in return for profitable legal business. The lawyers and their families also endured social costs, which included both ostracism and enforced isolation for their own protection. Finally, their work had psychological tolls, which included anger, fear and anxiety, and grief and sadness. Some incidents and experiences were quite traumatic, especially for family members, and required great resilience to overcome them.¹¹

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2. “Courage . . . is voluntary, requires judgment, and involves acts undertaken in the presence of some form of danger, risk, loss, or personal cost.” *Id.* at 52.
 3. “Maya Angelou, called courage ‘the most important of all the virtues, because without courage you can’t practice any other virtue consistently.’” *Id.* at 38, 301 n.3.
 4. “Courage, involving the exercise of will in the face of challenges . . .” *Id.* at 65.
11. One accepted definition of individual trauma explains that it is “trauma from an event, series of events, or set of circumstances, that is experienced by an individual as physically or emotionally harmful or life threatening and has lasting adverse effects on the individual’s functioning and mental, physical, social, emotional, or spiritual well-being.” SAMHSA’S TRAUMA & JUSTICE STRATEGIC INITIATIVE, SAMHSA’S CONCEPT OF TRAUMA AND GUIDANCE FOR A TRAUMA-INFORMED APPROACH (July 2014), <http://store.samhsa.gov/shin/content/SMA14-4884/SMA14-4884.pdf> [<https://perma.cc/B5SS-KF5P>]; see also Gene Griffin & Sarah Sallen, *Considering Child Trauma Issues in Juvenile Court Sentencing*, 34 CHILD. LEGAL RTS. J. 1, 6 (2013) (noting that the essential components of trauma include events, experiences, and effects). Certain events the lawyers faced would clearly qualify as adverse events that could cause trauma, specifically the many physical dangers and the social isolation the lawyers and their families faced. See E-mail from Eugene Griffin, J.D., Ph.D., former Dir. of Research, Child Trauma Acad., to author (Dec. 7, 2017, 3:57 PM) (on file with author); *infra* Parts II.A (discussing the physical danger to Civil Rights lawyers) and II.D (discussing the social costs faced by Civil Rights lawyers).

Similarly, some of the lawyers described experiencing events as physically or emotionally harmful. See *infra* Section II.E (discussing the psychological burdens of racially targeted violence); note 170 (feeling visibly shaken and perhaps scared); note 280 (recounting the most horrendous experience of my life). Finally, many of the lawyers or their family members also showed effects at the time of the event, including fight, flight, or freeze responses. See *infra* note 158 (discussing Shores’s daughter getting a gun); note 274 (discussing Shores’s wife urging family to move); note 208 (recounting Motley freezing in the car); see Griffin E-mail, *supra*. Fortunately, the lawyers were very resilient, and coped with these events by taking steps to protect themselves both

Like the activists, the lawyers continued to bring their talent and their commitment to the movement notwithstanding the toll it took on them and their families.¹² They showed the courage and resilience to stay on track despite their adversaries' best efforts to undermine them. Their challenges came from the public sector—elected officials, prosecutors, and the police—as well as private individuals and white supremacist organizations like the Ku Klux Klan.

This Article focuses on the courage of Fred Gray and his colleagues in Alabama during the modern Civil Rights Movement. Gray was born and raised in the state and returned there after law school to “destroy everything segregated [he] could find.”¹³ He made the state his permanent home.¹⁴ His civil rights career provides the context for this examination of the courageous aspects of this coterie of distinguished lawyers. Gray and the several colleagues discussed here faced more severe personal challenges than the larger group of colleagues. In that sense, they are not representative of that larger group. The lawyers discussed were particularly prominent, persistent, and visible from early in the movement. They represented a particular threat to the racial status quo in Alabama, and they paid a heavy price for that. But none of those efforts to remove Fred Gray or his colleagues succeeded.

Part I introduces Fred Gray and the several key colleagues whose careers included many personal challenges and displays of great courage in response to them. Those lawyers include Arthur Shores (Birmingham), Clifford Durr (Montgomery), Robert Carter (New York: NAACP

physically and emotionally. *See infra* notes 181 and 143 (armed guard's fast car); notes 261 and 299 (discussing supportive families). *See* Griffin E-mail, *supra*.

12. The impact on the lawyers' families is captured in the sub-title of a biography of Arthur Shores, one of Fred Gray's close colleagues: “The Untold Story of Arthur Shores and his Family's Fight for Civil Rights.” LEE & SHORES, *supra* note 1. The book is a loving, admiring, and respectful account of their father's life and work by his two daughters (along with a professional writer); but they also provide a straightforward and quite detailed picture of the toll that their father's civil rights lawyering took on his wife, and on them as they were growing up. *Id.* *See infra* Part II (discussing the physical, legal, economic, social, and psychological challenges faced by the Civil Rights lawyers).

13. GRAY, *supra* note 2, at 5.

14. When Martin Luther King moved back to his hometown of Atlanta at the end of 1959, he invited Fred Gray to go with him and serve the Atlanta-based Southern Christian Leadership Conference (SCLC), which Dr. King headed. *Id.* at 145. Gray declined the invitation because of his commitment to ending all forms of segregation in Alabama. *Id.*

For background on Alabama during this period, see E. CULPEPPER CLARK, THE SCHOOLHOUSE DOOR: SEGREGATION'S LAST STAND AT THE UNIVERSITY OF ALABAMA xi–xii (1993).

Legal Defense Fund and NAACP), and Constance Baker Motley (New York: NAACP Legal Defense Fund). This is a diverse group, by race, gender and location—local lawyers in Alabama, as well as those who came down from the North to challenge the Jim Crow system in the state. They were all prominent lawyers who worked extensively with Fred Gray, often becoming personal friends as well as important professional colleagues.¹⁵ The small group of lawyers highlighted here stands in for a number of other lawyers who worked with Fred Gray over the years.¹⁶

Part II identifies the personal challenges those lawyers faced and provides accounts of specific incidents they encountered.¹⁷ The dangers were generally greater for the local lawyers, who were more visible, more accessible, and more vulnerable than those coming from the North. The most serious challenges involved physical dangers to both persons and property. Rarely does representing clients, even unpopular ones, call for physical courage; but these lawyers needed and displayed exceptional amounts of it.¹⁸ Other challenges to them and their families included legal, economic, social, and psychological ones. Often these kinds of risks interacted with each other. Bombings caused great fear and anxiety. Ostracism sometimes led to depression. The diversity of the lawyers also led to some differences in the challenges. Local lawyers, especially Arthur Shores, faced bombings and shootings, while northern lawyers faced anger and hostility as “outside agitators.”¹⁹

The Conclusion relates that history to the dangers facing civil rights lawyers in the 21st century. It suggests that the need for personal courage continues, as the lawyers still encounter significant challenges and threats.

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15. As such, the dangers they faced and the courage they exhibited often exceeded the experiences of other colleagues of Fred Gray. *See infra* Part II (discussing the physical, legal, economic, social, and psychological challenges faced by the Civil Rights lawyers).
 16. To supplement the discussion of the selected Alabama lawyers, footnote references will include experiences of other Civil Rights lawyers in Alabama and elsewhere.
 17. As Linder and Levit suggest, “Courage is a virtue best understood in the context of stories” LINDER & LEVIT, *supra* note 10, at 57.
 18. “In a lawyer, courage is a muscle. You develop courage by exercising it. Sitting on the fence is not practice for standing up.” *Id.* at 36 (quoting Professor Pamela S. Karlan).
 19. For segregationists, the appearance of northern lawyers was reminiscent of the hated “carpetbaggers” that came South during the period of Reconstruction after the Civil War. *See generally* BRUCE E. BAKER, WHAT RECONSTRUCTION MEANT: HISTORICAL MEMORY IN THE AMERICAN SOUTH 69 (2007) (“The historical memory of . . . carpetbaggers as meddling and manipulative.”).

I. FRED GRAY AND HIS COLLEAGUES

In addition to Fred Gray himself, this Part introduces several lawyers who worked with him on civil rights matters in Alabama. These lawyers stand in for the larger numbers of Gray's colleagues. They are among the most prominent lawyers among the larger group. They also suggest the diversity of Gray's colleagues—in race, gender, and location. Moreover, they each worked with Fred Gray extensively, over a number of years. Finally, they were among those who faced the most difficult challenges and therefore demonstrated the greatest personal courage.²⁰

Fred Gray was such a central figure in Alabama that his colleagues included virtually all the civil rights lawyers in the state as well as those who came there from the North.²¹ On the rare occasion that Gray was not actively involved in an Alabama movement, his colleagues were.²² This examination of Fred Gray and his colleagues considers lawyers who faced personal challenges, showed the courage to overcome them, and played a critical role in the modern Civil Rights Movement in Alabama.

A. Fred Gray

Fred Gray was born and raised in Montgomery and graduated from its historically Black Alabama State College.²³ Gray would have attended law school in Alabama, but the University of Alabama still did not admit Blacks in the early 1950s.²⁴ When Gray left to attend

20. Other colleagues of Fred Gray are introduced briefly in the footnotes to this section.

21. This is largely due to Gray following the advice of a law professor to “always seek assistance and never be afraid to share a fee with an older lawyer who has more experience.” GRAY, *supra* note 2, at 17.

The northern lawyers included both those who worked with Gray on a recurring basis as well as those involved on a single occasion. *See, e.g., id.* at 72–73, 149 (discussing various northern colleagues, including: Robert Carter, Thurgood Marshall, Hubert Delaney, and Robert Ming).

22. *See* Rubinowitz, *supra* note 2, at 590–92, 598–604; J. MILLS THORNTON III, *DIVIDING LINES: MUNICIPAL POLITICS AND THE STRUGGLE FOR CIVIL RIGHTS IN MONTGOMERY, BIRMINGHAM, AND SELMA* 141–379 (2002); BRANCH, *supra* note 7, at 688–810; GLENN T. ESKEW, *BUT FOR BIRMINGHAM: THE LOCAL AND NATIONAL MOVEMENTS IN THE CIVIL RIGHTS STRUGGLE* (1997).

23. GRAY, *supra* note 2, at 6, 10–12. The college is now Alabama State University. *Id.* at 10; *see also* *149 Years of Leadership*, ALA. ST. U., <http://www.alasu.edu/about-asu/history--tradition/149-years-of-leadership/index.aspx> [<https://perma.cc/LGW2-A9Y7>] (last visited March 15, 2016).

24. *See* GRAY, *supra* note 2, at 13–15; Entin, *supra* note 5, at 253; Bill Lubinger, *A Legal Legend*, THINK MAG. (2004), <http://case.edu/think/fall2014/fred-gray.html> [<https://perma.cc/4E7L-MYTE>]. Even though the U.S. Supreme Court held in 1950 that it was unconstitutional for state law schools to

Cleveland's Western Reserve Law School, he made a secret vow to return to his home state and use his legal training to "destroy everything segregated [he] could find."²⁵ That mission began with the Montgomery Bus Boycott, when Gray was just twenty-four years old.²⁶

1. The Montgomery Bus Boycott (1955)

When Gray opened his law office in Montgomery in 1954, he had difficulty finding clients.²⁷ In order to build a network for his practice, Gray became active in the local branch of the NAACP, through which he became friends with Rosa Parks.²⁸ That led to his serving as her defense counsel after she refused to give up her bus seat, which led to him becoming the lawyer for the Montgomery Bus Boycott and the Montgomery Improvement Association (MIA).²⁹ That also gave Gray the distinction of being Martin Luther King Jr.'s first lawyer.³⁰

Rosa Parks's case triggered the Montgomery Bus Boycott, a year-long protest that helped bring about the end of segregation on the city's bus system.³¹ During the boycott, Fred Gray filed a lawsuit in federal

exclude applicants because of their race, see *Sweatt v. Painter*, 339 U.S. 629 (1950) (holding exclusion of an applicant to the University of Texas Law School because of his race unconstitutional under the Fourteenth Amendment's Equal Protection Clause because no equivalent law school existed for Blacks), the University of Alabama continued its racially discriminatory policy. See GRAY, *supra* note 2, at 14–15 (explaining how the university imposed strategic financial barriers to entry designed to keep Black students out).

25. GRAY, *supra* note 2, at 13. The university is now Case Western Reserve University. See *History*, CASE W. RES. U., <http://www.case.edu/about/history> [<https://perma.cc/LG8N-2Q97>] (last visited Dec. 20, 2016); C.H. CRAMER, CASE WESTERN RESERVE: A HISTORY OF THE UNIVERSITY, 1826–1976, at 281 (1976).
26. GRAY, *supra* note 2, at 6.
27. Entin, *supra* note 5, at 255; GRAY, *supra* note 2, at 28–31.
28. GRAY, *supra* note 2, at 31.
29. *Id.* at 50, 53. With the activities leading to the beginning of the bus boycott, Gray recognized that his "days of having little to do in [his] fledgling law practice were over." *Id.* at 52; accord Kennedy, *supra* note 9, at 1030 n.198 (noting that Gray's legal career changed dramatically after he represented Rosa Parks).
30. As Gray said, "I feel honored and proud that I was Dr. King's first lawyer in the civil rights movement. . . . Martin was to have many other lawyers on other occasions, but I was his first." GRAY, *supra* note 2, at 145.
31. See BRANCH, *supra* note 7, at 131–207 (1988); DAYBREAK OF FREEDOM: THE MONTGOMERY BUS BOYCOTT (Stewart Burns ed., 1997); THORNTON, *supra* note 22, at 20–140. See also Christopher Coleman, Laurence D. Nee & Leonard S. Rubinowitz, *Social Movements and Social-Change Litigation: Synergy in the Montgomery Bus Protest*, 30 LAW & SOC. INQUIRY 663, 684 (2005). When Blacks returned to the buses in December 1956, the bus

court challenging the constitutionality of the local and state laws requiring segregation on city buses.³² The three-judge district court held

company ceased the long-standing humiliating treatment and enforced segregation that had brought about the movement. *Id.* at 697–98.

During the boycott, Gray and his colleagues also represented Dr. King and eighty-nine others arrested under an Anti-Boycott Statute. Only Dr. King was prosecuted, and he was found guilty, even though the prosecution had presented no evidence to show that Dr. King used violence or intimidation to enforce the boycott, as required by the state supreme court's interpretation of the statute. *Lash v. State*, 244 Ala. 48 (Ala. 1943); GRAY, *supra* note 2, at 84, 88–89; THORNTON, *supra* note 22, at 89. Gray appealed, but the appeal was dismissed on a technicality. *King v. State*, 98 So. 2d 443, 444 (Ala. Ct. App. 1957); GRAY, *supra* note 2, at 89.

32. See GRAY, *supra* note 2, at 71–73, 77; THORNTON, *supra* note 22, at 71; *Gayle v. Browder*, 352 U.S. 903 (per curiam), *aff'd* 142 F. Supp. 707 (M.D. Ala. 1956).

Other Alabama lawyers worked with Gray, including Orzell Billingsley, Peter Hall, and Charles Langford. All three were involved with Dr. King's movements early on, working with Gray on *Browder v. Gayle*, as well as representing those charged with violating the anti-boycott statute. See GREENBERG, *supra* note 2, at 225–26; GRAY, *supra* note 2, at 72, 88. Orzell Billingsley graduated from Howard University Law School in 1950, and became one of the first Black lawyers in Alabama. *Bravery and Vision: Black Firsts in Birmingham*, BIRMINGHAM PUB. LIBR., <http://www.bplonline.org/resources/BlackBirmingham.aspx> [<https://perma.cc/DJF9-MTSN>] (last updated Jan. 23, 2014); see also GREENBERG, *supra* note 2, at 38. Billingsley defended Gray in his barratry case, and worked with Gray on *Alabama v. Anderson*. *Id.* at 213. He was heavily involved in voter registration efforts as a legal advisor to the NAACP, as well as active in other civil rights cases in Alabama. See 3 THE PAPERS OF MARTIN LUTHER KING, JR.: BIRTH OF A NEW AGE, DECEMBER 1955–DECEMBER 1956, at 184 n.4 (Clayborne Carson et. al. eds., 1997) (“An NAACP legal advisor, [Billingsley] was active in voter registration and . . . repeatedly challenged the exclusion of African Americans from Alabama juries.”); Sherrel Wheeler Stewart, *Civil Rights Lawyer Orzell Billingsley Dead at 77*, BIRMINGHAM NEWS, Dec. 19, 2001, at 1C (noting Billingsley's efforts in support of Civil Rights in Alabama).

Peter Hall was one of the first Black lawyers in Birmingham, where he worked in private practice with Arthur Shores and Orzell Billingsley. See MIGNETTE Y. PATRICK DORSEY, SPEAK TRUTH TO POWER 53 (2010); Jon Solomon, *Pete Hall: Son of Birmingham's First Black Judge Gains History Lesson About his Dad*, AL.COM (Feb. 21 2013, 8:00 AM), http://blog.al.com/spotnews/2013/02/pete_hall_son_of_birminghams_f.html [<https://perma.cc/QWW4-AAXP>]. He also served as the NAACP Legal Defense Fund (LDF)'s local counsel in Birmingham. 3 THE PAPERS OF MARTIN LUTHER KING, JR.: BIRTH OF A NEW AGE, DECEMBER 1955–DECEMBER 1956, at 184 (Clayborne Carson et. al. eds., 1997). Hall defended Gray in his barratry case, and worked with Gray on *Alabama v. Anderson*. See *infra* note 70. In 1965, Hall joined Gray and others in protecting the Selma-to-Montgomery march for voting rights. See *infra* notes 66–69 and accompanying text. He was a founding member of the Alabama Black Lawyers Association, and secured significant victories in several civil rights

that the segregation laws were unconstitutional as a denial of equal protection, and the Supreme Court summarily affirmed the decision in *Gayle v. Browder*.³³

2. *NAACP v. Alabama*³⁴

Gray assisted on another major case in 1956, when John Patterson, Alabama Attorney General, sued the NAACP in an attempt to remove the organization from the state.³⁵ He argued that the NAACP was a foreign corporation not qualified to do business in Alabama.³⁶ He obtained an order compelling the NAACP to provide its membership list as part of the state's assessment of the organization.³⁷ The organization refused to comply because of the harm that would cause both the individual members and the NAACP itself.³⁸ The U.S. Supreme Court found that the state could not constitutionally compel the

cases before becoming Birmingham's first Black judge in 1972. Rubowitz, *supra* note 2, at 514.

Charles Langford was the only Black lawyer in Montgomery until Fred Gray joined him. Langford was known as the "Dean of African American Lawyers in Montgomery." GRAY, *supra* note 2, at 26, 322. Langford defended Gray in his barratry case, and later became Fred Gray's law partner. 3 THE PAPERS OF MARTIN LUTHER KING, JR.: BIRTH OF A NEW AGE, DECEMBER 1955–DECEMBER 1956, at 70 n.9 (Clayborne Carson et al. eds., 1997). In addition to his legal contributions to the Civil Rights Movement, Langford had a distinguished political career. He was elected to the Alabama legislature in 1978, serving two terms in the Alabama House of Representatives and then five terms in the Alabama Senate before retiring in 2002. *Alabama Senator Charles Langford; Rosa Parks's Lawyer*, WASH. POST, Feb. 13, 2007, at B7.

33. See generally Kennedy, *supra* note 9, at 1050–51 (discussing the district court's decision). Local officials sought review by the Supreme Court, which accepted the case, but did not schedule oral arguments. *Gayle*, 352 U.S. at 903 ("The motion to affirm is granted and the judgment is affirmed.").
34. 357 U.S. 449 (1958).
35. GRAY, *supra* note 2, at 105; *NAACP*, 357 U.S. at 449.
36. GRAY, *supra* note 2, at 105.
37. GENE HOWARD, *PATTERSON FOR ALABAMA: THE LIFE AND CAREER OF JOHN PATTERSON* 100–02 (2008); Alan Edwin Grady, *The Campaign for Decency: John Patterson as Alabama Attorney General, 1955–1959*: A Thesis, 116 (Dec. 1992) (unpublished M.A. thesis, University of Alabama) (on file with M. Louis Salmon Library, University of Alabama); BRANCH, *supra* note 7, at 186–87.
38. Joseph Mark Bagley, *School Desegregation, Law and Order, and Litigating Social Justice in Alabama, 1954–1973*, 110 (Jan. 5, 2014) (unpublished Ph.D. dissertation, Georgia State University), http://scholarworks.gsu.edu/history_diss/37 [<https://perma.cc/7P43-V6E6>]; GILBERT JONAS, *FREEDOM'S SWORD: THE NAACP AND THE STRUGGLE AGAINST RACISM IN AMERICA, 1909–1969*, at 162–64 (2005) (discussing the frequency with which NAACP

provision of the membership list, but the state managed to prolong the litigation and keep the NAACP from operating in the state for eight years.³⁹

3. *Gomillion v. Lightfoot* (1960)

Also in the late 1950s, Fred Gray challenged the constitutionality of an Alabama statute that changed the city limits of Tuskegee from a square to a “25 sided sea dragon.”⁴⁰ The legislation was clearly intended to exclude nearly all Black voters, while keeping all white voters in the city.⁴¹ In *Gomillion v. Lightfoot*,⁴² Gray argued that the redrawing of the city’s boundaries was unconstitutional under the Fourteenth and Fifteenth amendments.⁴³ In a unanimous decision, the Supreme Court struck down the statute as racially discriminatory, restoring the city to its original square shape.⁴⁴

leaders and other Black activists lost their jobs, livelihoods, or were violently attacked and even killed as a result of their activism).

39. GRAY, *supra* note 2, at 106. Patterson originally filed a lawsuit seeking an injunction on NAACP activities in the state, which the segregationist circuit judge granted. When the NAACP appealed the injunction, Patterson asked the court to first order the production of NAACP records, including a member list. The NAACP refused to comply with the order, and thus was held in contempt and unable to litigate the injunction. The NAACP appealed to the Supreme Court, which in 1958 reversed and remanded the contempt citation. The Alabama Supreme Court held the organization in contempt for a different reason and maintained the injunction. In 1959, the U.S. Supreme Court again reversed the contempt order and ordered the state to hear the case, and the state court simply did not do so. Next, NAACP attorneys sued in federal court seeking an injunction against the next Governor of Alabama. The Court again ordered the Alabama Supreme Court to hear the case, which they did, and found in favor of the state. When the NAACP appealed that ruling, the U.S. Supreme Court held the state court judgment unconstitutional and ordered the state to finally lift the ban on NAACP operations in the state. See Bagley, *supra* note 38, at 104–12; NAACP v. Ala. *ex rel.* Patterson, 357 U.S. 449 (1958); NAACP v. Ala. *ex rel.* Patterson, 360 U.S. 240 (1959), NAACP v. Gallion, 368 U.S. 16 (1961); NAACP v. Ala. *ex rel.* Flowers, 377 U.S. 288 (1964).
40. GRAY, *supra* note 2, at 113.
41. GRAY, *supra* note 2, at 113–14.
42. 364 U.S. 339 (1960).
43. *Id.* (holding that the creation of electoral district boundaries in order to disenfranchise Blacks violated the 15th Amendment); GRAY, *supra* note 2, at 115.
44. In order to show that there could be no reasonable (non-discriminatory) purpose to the new borders, Gray commissioned a large map, which he displayed during oral argument in the Supreme Court. Justice Frankfurter quickly acknowledged the map, and asked Gray to show him where Tuskegee Institute was located on the map. Gray replied that Tuskegee Institute was no longer in the city of Tuskegee. Gray believed that the map played a large

4. Dr. King's Perjury Trial (1960)

In 1960, Gray served on the defense team for what was perhaps Dr. King's most important trial.⁴⁵ The state of Alabama indicted Dr. King

role in the decision, which restored the Tuskegee city boundaries to their original position. The Supreme Court declared Alabama Act 140 to be unconstitutional and barred officials from enforcing it. *Gomillion*, 364 U.S. at 339; GRAY, *supra* note 2, at 115–19.

After Tuskegee, Gray argued other voting discrimination cases, including *Sellers v. Trussell*, 253 F. Supp. 915 (M.D. Ala. 1966) (declaring unconstitutional an Alabama Act designed to delay an election and extend the terms of incumbent white commissioners, whose challengers were Black), and *Smith v. Paris*, 386 F.2d 979 (5th Cir. 1967) (holding unconstitutional a resolution clearly designed to dilute the newly increased Black vote). *See also* GRAY, *supra* note 2, at 245–53.

45. GRAY, *supra* note 2, at 155; *see generally* Rubinowitz, *supra* note 3; Edgar Dyer, A "Triumph of Justice" in Alabama: The 1960 Perjury Trial of Martin Luther King, Jr., 88 J. AFR. AM. HIST. 245, 260 (2003). By this time, Dr. King had moved back to his home town of Atlanta. The reasons for his relocation included enabling him to focus on his work as President of the Southern Christian Leadership Conference, which was based there. ADAM FAIRCLOUGH, TO REDEEM THE SOUL OF AMERICA: THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE AND MARTIN LUTHER KING, JR. 51 (1987) (discussing SCLC work needs in Atlanta and the region); DAVID J. GARROW, BEARING THE CROSS: MARTIN LUTHER KING, JR., AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE 123–24 (Perennial Classics, 1986) (stressing that the move was due to increasing demand for SCLC leadership in the region, as well as Atlanta).

The all-Black defense team included a half dozen lawyers. *See* GRAY, *supra* note 2, at 149 (naming Hubert Delany, William Ming, Arthur Shores, Solomon Seay Jr., and himself as the lawyers selected to represent Dr. King, and stating that Ming added Chauncey Eskridge as a tax expert); CLARENCE B. JONES & JOEL ENGEL, WHAT WOULD MARTIN SAY? 6–7, 10–16 (2008) (naming Clarence Jones as part of Dr. King's perjury defense team); Dyer, *supra*, at 251 (describing the defense team's organization and preparation).

William Robert Ming and Hubert Delany were the two lead attorneys. Ming was a Black Civil Rights lawyer from Chicago. James McElhatton, *Standing on the Shoulders of Bob Ming*, WASH. TIMES (Dec. 7, 2008), <http://www.washingtontimes.com/news/2008/dec/7/standing-on-the-shoulders-of-bob-ming/> [<https://perma.cc/L7TJ-NPCG>]. While not of record in the case, Ming also worked with Gray and the rest of the legal team to help prepare them for oral arguments in *Gomillion v. Lightfoot*. 364 U.S. 339 (1960). GRAY, *supra* note 2, at 117. Ming worked on numerous Supreme Court cases throughout his career, including *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954). *See supra* McElhatton ("Mr. Ming worked with Supreme Court Justice-to-be Marshall in *Brown*."). He also taught at Howard Law School and later at the University of Chicago Law School. *Id.*

Hubert Delany was a Black lawyer who served as a justice in Domestic Relations Court in New York from 1942 to 1955, after which he engaged in private practice for many years. George James, *Hubert T. Delany, 89, Ex-Judge and Civil Rights Advocate, Dies*, N.Y. TIMES (Dec. 31, 1990), <http://>

for perjury, alleging that he falsified his 1956 and 1958 state income tax returns.⁴⁶ The prosecution accused Dr. King of under-reporting his income in those years, which was normally viewed as the misdemeanor of tax evasion.⁴⁷ Instead, the state charged Dr. King with perjury, a

www.nytimes.com/1990/12/31/obituaries/hubert-t-delany-89-ex-judge-and-civil-rights-advocate-dies.html [<https://perma.cc/QR8E-WCPW>]. He was an early civil rights advocate, serving on the boards of the NAACP and LDF for many years. *Id.*

Solomon Seay Jr. also served on the defense team. After graduating from Howard Law in 1957, he returned home to join the civil rights struggle as the third Black lawyer in Montgomery. *Selma to Montgomery March Profiles*, NAACP LDF (Mar. 7, 2015), <http://www.naacpldf.org/press-release/selma-montgomery-march-profiles-ldf-co-counsel-charles-stephen-ralston-fred-d-gray-and> [<https://perma.cc/NH4Y-6Z59>]. Seay devoted his career to “challenging segregation and discrimination across the State of Alabama,” and it is therefore fitting that he became law partners with Fred Gray. GRAY, *supra* note 2, at 28; *LDF Mourns Passing of Legendary Civil Rights Attorney Solomon Seay Jr.*, NAACP LDF (Sept. 12, 2015), <http://www.naacpldf.org/press-release/ldf-mourns-passing-legendary-civil-rights-attorney-solomon-seay-jr/> [<https://perma.cc/ZH3R-P2AE>] [hereinafter *LDF Release*].

Early on in their partnership, Seay worked with Gray as both a member of Dr. King’s defense team for the 1960 Alabama perjury trial and then in representing the four Black ministers, including his father, in the related *New York Times Co. v. Sullivan* libel litigation. GRAY, *supra* note 2, at 149, 156–57; Donald T. Ferron, Notes on MIA Executive Board Meeting (Jan. 30, 1956), in 3 *THE PAPERS OF MARTIN LUTHER KING, JR.: BIRTH OF A NEW AGE, DECEMBER 1955–DECEMBER 1956*, *supra* note 32, at 109, 111 n.6. See *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 257 (1964). See *infra* Section I.A.5 (discussing *N.Y. Times Co. v. Sullivan*). He also worked with Gray on a number of cases involving school desegregation and voter discrimination, including *Lee v. Macon County Board of Education*, *Alabama State Teachers Ass’n v. Alabama Public School and College Authority*, *Carr v. Montgomery Board of Education*, and *Smith v. Paris*. GRAY, *supra* note 2, at 204, 209; see *infra* note 61 and accompanying text (discussing *Smith v. Paris*); see also *infra* Section I.A.6 (discussing the school desegregation cases).

Additionally, in 1971, Seay worked with Fred Gray on *Strain v. Philpot*, a case which dealt with Auburn University’s discriminatory treatment of their employees. 331 F. Supp. 836 (M.D. Ala. 1971); GRAY, *supra* note 2, at 197–98. In 1991, Seay went to court again on that same case, this time partnering with Fred Gray, Jr. *Id.* at 199. Other cases Seay and Fred Gray partnered on included protecting Freedom Riders and other civil rights demonstrators, discrimination in farm programs, and the Tuskegee Syphilis Study case. *Id.* at 175–78, 125–28, 128–32, 281–90. See *infra* notes 68, 70 (discussing the cases *Williams v. Wallace*, *Henderson v. ASCS*, and *Pollard v. U.S.*).

46. See BRANCH, *supra* note 7, at 276–311; GARROW, *supra* note 45, at 129–37; GRAY, *supra* note 2, at 146; Dyer, *supra* note 45, at 248; Rubinowitz, *supra* note 3.

47. Dyer, *supra* note 45, at 248; GRAY, *supra* note 2, at 147; Rubinowitz, *supra* note 3.

felony subject to a possible total ten-year prison sentence.⁴⁸ Much to Dr. King's and his lawyers' surprise, the all-white jury acquitted him.⁴⁹

5. *New York Times Co. v. Sullivan* (1960)

In the lead-up to Dr. King's perjury trial, his supporters took out a full-page advertisement in the *New York Times* to raise money needed for his legal defense and other civil rights activities.⁵⁰ The ad made general claims about pervasive segregation and discrimination in Alabama, and included the names of four Black Montgomery ministers as supporting those claims.⁵¹ Several Montgomery public officials, citing factual errors in describing alleged incidents of racial discrimination, sued the *New York Times* and the four Black ministers for libel, each seeking \$500,000 in damages from each defendant.⁵² Fred Gray served on the four ministers' defense team.⁵³ The ministers had not given permission to use their names, nor were they even aware of the advertisement.⁵⁴ Nevertheless, the jury found for the plaintiffs, and awarded the full amount of damages requested.⁵⁵ Eventually, the Supreme Court overturned the state court decision in the landmark libel case of *New York Times v. Sullivan*.⁵⁶

48. Dyer, *supra* note 45, at 254, 258; Rubinowitz, *supra* note 3, at 239.

49. See Dyer, *supra* note 45, at 258; GRAY, *supra* note 2, at 154.

Gray stated in his autobiography that this was the first time in his career that an all-white jury returned a verdict in favor of a Black person. GRAY, *supra* note 2, at 154. For a discussion of possible reasons for the jury's verdict, see Rubinowitz, *supra* note 3, at 253–74.

50. GRAY, *supra* note 2, at 148; see ANTHONY LEWIS, *MAKE NO LAW: THE SULLIVAN CASE AND THE FIRST AMENDMENT* (1991).

51. See *Heed Their Rising Voices*, N.Y. TIMES, Mar. 29, 1960, at L25, reprinted in LEWIS, *supra* note 50, at 2–3.

52. GRAY, *supra* note 2, at 156; LEWIS, *supra* note 50, at 33. BRANCH, *supra* note 7, at 289.

Governor John Patterson filed a separate libel suit, including Dr. King as a defendant and seeking one million dollars in damages. *Id.* at 312; LEWIS, *supra* note 50, at 13.

53. GRAY, *supra* note 2, at 156.

54. N.Y. Times Co. v. Sullivan, 376 U.S. 254, 257 (1964); Fred D. Gray, *The Sullivan Case: A Direct Product of the Civil Rights Movement*, 42 CASE W. RES. L. REV. 1223, 1226 (1992). Gray's work on the case was limited to the local trial. GRAY, *supra* note 2, at 162.

55. Gray, *supra* note 2, at 159–61; LEWIS, *supra* note 50, at 33.

56. GRAY, *supra* note 2, at 163–64; see LEWIS, *supra* note 50, at 140–52. The Court held that a libel suit by public officials required proof of actual malice, and that the evidence presented was constitutionally insufficient to support the judgment against the defendants. *Sullivan*, 376 U.S. at 279–80, 285–88.

6. School Desegregation Litigation

Later, Fred Gray worked on a number of school desegregation cases throughout Alabama.⁵⁷ In 1962, he represented two Black students attempting to enroll at the University of Alabama.⁵⁸ The district court ordered the students admitted to the university.⁵⁹

In 1963, Gray filed *Lee v. Macon County Board of Education*,⁶⁰ which quickly led to a court order to desegregate the schools in Macon County, the county surrounding Tuskegee.⁶¹ Blacks and whites were

57. *See, e.g.*, Carr v. Montgomery Cty. Bd. of Educ., 232 F. Supp. 705 (1964) (holding that schools in Montgomery must be desegregated); Ala. State Teachers Ass'n v. Ala. Pub. Sch. and Coll. Auth., 289 F. Supp. 784 (M.D. Ala. 1968), *aff'd per curiam*, 393 U.S. 400 (1969) (holding constitutional the creation of a new university in Montgomery where it was clearly an attempt to maintain the dual race education system); Franklin v. Parker, 223 F. Supp. 724 (M.D. Ala. 1963) (holding that Auburn University requiring graduation from an accredited institution for admission to graduate school, where there are no accredited institutions open to Blacks, violates equal protection, and the student must be admitted); GRAY, *supra* note 2, at 191–92, 200–03, 285–90.

58. GRAY, *supra* note 2, at 187. Earlier, the courts had ordered Black applicant Autherine Lucy to be admitted to the University of Alabama, only to have the university's trustees expel her because of the violent resistance to her presence on campus. *See* Lucy v. Adams, 350 U.S. 1 (1955) (ordering the desegregation of the University of Alabama); GLENN T. ESKEW, BUT FOR BIRMINGHAM: THE LOCAL AND NATIONAL MOVEMENTS IN THE CIVIL RIGHTS STRUGGLE 72 (1997) (noting Autherine Lucy's desegregation case against the University of Alabama).

59. GRAY, *supra* note 2, at 187. The two students, Vivian Malone and James Hood, both enrolled at the University of Alabama, though Hood later withdrew for personal reasons. *Id.*

60. 231 F. Supp. 743 (M.D. Ala. 1964).

61. GRAY, *supra* note 2, at 204–05. In 1964, the district court ordered the state not to interfere with school districts that were choosing to desegregate. *Lee*, 231 F. Supp. at 743; GRAY, *supra* note 2, at 209. When the state failed to follow that order, the district court entered a detailed order with a plan for the desegregation of all school districts in Alabama not already under a desegregation order. *Lee v. Macon Cty. Sch. Bd. of Educ.*, 267 F. Supp. 458 (M.D. Ala. 1967); GRAY, *supra* note 2, at 209–10. This included not just primary schools, but also junior colleges, trade schools, etc., if under state control. GRAY, *supra* note 2, at 210. The *Lee v. Macon County* cases were still active in the courts well into the 21st century. GRAY, *supra* note 2, at 212–13.

Jack Greenberg also worked on the case, as well as others involving school desegregation. Jack Greenberg was a white, Jewish attorney who worked for LDF for thirty-five years. GREENBERG, *supra* note 2, at xviii, 46. During that time, Greenberg argued forty cases before the U.S. Supreme Court and hundreds more in the lower courts, in areas such as school desegregation, employment discrimination, and the death penalty. *Id.* at xviii. Greenberg worked on multiple cases alongside Gray, on issues from discrimination in

moving towards peaceful desegregation when Governor George Wallace sent state troopers to prevent the desegregation, and ordered the Tuskegee public schools closed.⁶² Fred Gray realized that if Wallace had the power to close a single district's public schools to prevent desegregation, then he also had the power to enforce desegregation throughout the state.⁶³ Gray filed paperwork to convert the local case to a state-wide one.⁶⁴ In 1967, the district court ordered the governor and the State Board of Education to desegregate all of Alabama's public schools.⁶⁵

7. Selma Voting Rights Movement (1965)

In another important case, Gray worked to protect the rights of activists fighting for the right to vote. After the infamous "Bloody Sunday" attack by state troopers on peaceful marchers leaving Selma on the highway for the state capitol in Montgomery fifty miles away, protesters planned another march on that route to demand the constitutional right to vote.⁶⁶ Fred Gray filed *Williams v. Wallace*,⁶⁷ seeking the district court's permission to carry out the march and require state protection for the marchers.⁶⁸ The court granted an injunction preventing state officials from interfering with the march and held that the marchers were entitled to police protection along the route.⁶⁹

farm programs to seeking protection for civil rights demonstrators. *See infra* Sections I.A.7–8 (analyzing two cases, *Henderson v. ASCS* and *Williams v. Wallace*). They mostly worked together on school desegregation and voter discrimination cases, such as *Carr v. Montgomery County Board of Education*, *Alabama State Teachers Ass'n v. Alabama Public School and College Authority*, *Sellers v. Trussell*, and *Smith v. Paris*. *See supra* Section I.A.3 (discussing *Gomillion v. Lightfoot*); GRAY, *supra* note 2, at 200–03, 245–53, 285–90. Greenberg left LDF in 1984 to become Dean of Columbia College, and later became a professor at Columbia Law School. GREENBERG, *supra* note 2, at xviii.

62. GRAY, *supra* note 2, at 205–06.

63. GRAY, *supra* note 2, at 206–07. Gray said the realization hit him "like the burning bush speaking to Moses," and his team prepared the new court documents that same night. *Id.* at 207.

64. GRAY, *supra* note 2, at 207–08.

65. GRAY, *supra* note 2, at 208–10; *Lee v. Macon Cty. Sch. Bd. of Educ.*, 267 F. Supp. 458 (M.D. Ala. 1967).

66. GRAY, *supra* note 2, at 216.

67. 240 F. Supp. 100 (M.D. Ala. 1965).

68. GRAY, *supra* note 2, at 216; *Williams*, 240 F. Supp. at 100 (holding that civil rights demonstrators were entitled to protection from violence along the march).

69. GRAY, *supra* note 2, at 216–17; *Williams*, 240 F. Supp. at 100.

8. Tuskegee Syphilis Study (1973)

In 1973, Fred Gray filed suit against the federal government relating to the infamous Tuskegee Syphilis study.⁷⁰ Beginning in 1932, more than 600 Black men were studied to observe the effects of untreated syphilis.⁷¹ The participants did not know what was being studied, did not know they had syphilis, and did not consent to or even know they were being studied.⁷² They did not learn until 1972, from media reports, that there even was such a study.⁷³ Gray eventually settled the suit, and all the participants, or their heirs, received some form of payment.⁷⁴ Gray believed that this study never would have happened with white participants, and therefore considered this yet another milestone towards “destroying everything segregated which [he] could find.”⁷⁵

As this chronology suggests, Fred Gray played a central role in the Civil Rights Movement in Alabama for decades. The following sections introduce his colleagues who, along with Gray himself, will serve as the focus of Part II on the challenges and courage of the lawyers. The

70. GRAY, *supra* note 2, at 298. *Pollard v. U.S.*, 384 F. Supp. 304 (M.D. Ala. 1974).

Gray worked on a number of other civil rights cases. *See, e.g.*, *Anderson v. Ala.*, 366 U.S. 208 (1961) (overturning Anderson’s manslaughter conviction for the accidental death of a Black man in a traffic accident, where Anderson was a civil rights activist state officials were hoping to remove, and it was clear that was the purpose of the indictment); *Mitchell v. Johnson*, 250 F. Supp. 117 (M.D. Ala. 1966) (granting an injunction against discrimination in jury selection in Macon County); *Henderson v. ASCS*, 317 F. Supp. 430 (M.D. Ala. 1970) (striking as unconstitutional the racially discriminatory election process for the committees in charge of farm subsidies, conservation grants, and certain agriculture related payments). *See also* GRAY, *supra* note 2, at 102–23, 121–28.

71. GRAY, *supra* note 2, at 294–95. Only poor, rural, Black males were recruited for this study. *Id.* at 295.

72. GRAY, *supra* note 2, at 295.

73. GRAY, *supra* note 2, at 296–97.

74. GRAY, *supra* note 2, at 300. It took almost another twenty years to address the payments, verify heirs, etc. *Id.*

75. GRAY, *supra* note 2, at 301.

Fred Gray also had many accomplishments outside the courtroom, both before and after the Tuskegee Syphilis Study case. After an unsuccessful run in 1966, Gray was elected to the Alabama House of Representatives in 1970, serving one four-year term. GRAY, *supra* note 2, at 260, 264–65. In 1979, President Carter nominated Gray to be a federal district judge in Alabama, though the nomination was ultimately withdrawn. GRAY, *supra* note 2, at 303, 311. In 1985, Gray became the president of the National Bar Association (the Black bar association), and in 2001, Gray was elected president of the Alabama Bar Association, the first Black lawyer to serve in that office. GRAY, *supra* note 2, at 318, 372.

discussion includes Alabama lawyers Arthur Shores and Clifford Durr, and northern lawyers Robert Carter and Constance Baker Motley, as representatives of the larger group of colleagues who worked with Gray during that period.

B. Arthur Shores

Birmingham's Arthur Shores graduated from Chicago's LaSalle University Law School in 1935, and passed the Alabama bar exam in 1937.⁷⁶ He started doing civil rights cases shortly thereafter, filing lawsuits against voter discrimination, employment discrimination, racial zoning ordinances, and police brutality.⁷⁷ During the 1930s and 1940s, Shores was the only civil rights lawyer in Alabama.⁷⁸ Colleagues often referred to him as the Dean of Alabama African-American lawyers.⁷⁹

Shores was a very important mentor to Fred Gray.⁸⁰ Gray described Shores as one of four people who affected his career in extremely important ways.⁸¹ Shores worked with Gray on many of his most important cases, including *Browder v. Gayle* (challenging bus segregation laws), *Alabama v. NAACP* (challenging the exclusion of the NAACP from the state), and *Gomillion v. Lightfoot* (challenging the redrawing of the Tuskegee boundaries that excluded most Blacks from the city).⁸²

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76. LEE & SHORES, *supra* note 1, at 66–68; THORNTON, *supra* note 22, at 154. He attended law school through extension courses, while working as a high school principal in Alabama. After failing the bar exam on his first two tries, a sympathetic judge offered to tutor him in order to help him pass on the third try. LEE & SHORES, *supra* note 1, at 66–68.
77. THORNTON, *supra* note 22, at 154–55; LEE & SHORES, *supra* note 1, at 84–85. *See infra* Section II.A (discussing the physical danger to Civil Rights lawyers).
78. GRAY, *supra* note 2, at 35; THORNTON, *supra* note 22, at 154, 178. Though he did many civil rights cases, Shores opposed direct action, including the Birmingham movement of 1963. He strongly preferred compromise, and only filed suit if necessary. *See* BRANCH, *supra* note 7, at 768, 901.
79. GRAY, *supra* note 2, at 54.
80. *Id.* at 35. He also mentored many other Black lawyers in the state. *Id.*
81. *Id.* at 347–48. Gray said that when he was considering law school he thought “if Arthur Shores could be a Civil Rights lawyer, so can I.” *Id.* at 347. When Gray needed affidavits from attorneys to sit for the bar exam, Shores signed one and helped him collect others. *Id.* During his early career, Shores assisted him on cases “in any capacity requested.” *Id.* When Gray became President of the National Bar Association, he started the Hall of Fame “primarily to honor Shores.” *Id.*
82. *Id.* at 72, 105, 115. He also represented those charged with violating the anti-boycott statute during the Montgomery Bus Boycott. *See id.* at 88; *Gayle v. Browder*, 352 U.S. 903 (1956); *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449 (1958); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960). *See supra* Section I.A.1–3.

Shores also worked on numerous school desegregation cases. Along with Thurgood Marshall, Shores represented Autherine Lucy, who, in 1953, gained admission to the University of Alabama.⁸³ However, she was expelled three days later, after which the University remained segregated for ten more years.⁸⁴ In 1963, Shores, Gray, and Thurgood Marshall won the case that finally desegregated the University of Alabama.⁸⁵

C. Clifford Durr

Clifford Durr was a lawyer from a prominent white Montgomery family.⁸⁶ He was a Rhodes Scholar, and received a law degree from Oxford University in 1922.⁸⁷ After brief stints in law firms in Montgomery, Milwaukee, and Birmingham, Durr moved to Washington D.C.

83. GRAY, *supra* note 2, at 186–87; ESKEW, *supra* note 22, at 22; Lucy v. Adams, 350 U.S. 1 (1955).

Thurgood Marshall, the leading Civil Rights lawyer of his generation, headed the NAACP Legal Defense and Education Fund (LDF) from 1939 to 1961. GREENBERG, *supra* note 2, at 30, 295; William J. Brennan, Jr., *A Tribute to Justice Thurgood Marshall*, 105 HARV. L. REV. 23, 58 (1991). Marshall created the legal strategy of test cases that led to the landmark case of *Brown v. Board of Education*, 347 U.S. 483 (1954). See also RICHARD KLUGER, *SIMPLE JUSTICE* 185–98 (1st Vintage Books ed. 2004). He led the team of lawyers that brought the issue to the Supreme Court, and argued the final case himself before the Court. NAACP LDF, *Landmark: Brown v. Board of Education*, <http://www.naacpldf.org/case/brown-v-board-education> [<https://perma.cc/W7H2-L8WT>] (last visited Dec. 16, 2016).

Fred Gray turned to Marshall and his colleague Robert Carter for assistance early in the Montgomery Bus Boycott because of their experience and expertise in civil rights law. GRAY, *supra* note 2, at 70, 72. See *supra* Section I.A.6 (discussing the school desegregation cases). They co-counselled *Gayle v. Browder*, the Supreme Court decision holding the bus segregation laws unconstitutional. *Gayle v. Browder*, 352 U.S. 903 (1956); GRAY, *supra* note 2, at 72–73. Thurgood Marshall went on to serve on the Second Circuit Court of Appeals from 1961 to 1965 and as Solicitor General from 1965 to 1967. JUAN WILLIAMS, *THURGOOD MARSHALL: AMERICAN REVOLUTIONARY* 296, 317 (2004). In 1967, President Johnson appointed him to the Supreme Court, where he served until 1991. *Id.* at 330–31, 391.

84. GRAY, *supra* note 2, at 187. See *supra* Section I.A.6 (discussing the school desegregation cases).

85. GRAY, *supra* note 2, at 186–87. See *supra* Section I.A.6 (discussing the school desegregation cases).

86. SALMOND, *supra* note 2, at 1–2; GRAY, *supra* note 2, at 44.

87. SALMOND, *supra* note 2, at 18; GRAY, *supra* note 2, at 44.

to work for the federal government.⁸⁸ In 1951, he returned to Montgomery, and started his own law practice.⁸⁹

Durr was the Civil Rights Movement's first white lawyer in Alabama.⁹⁰ In 1955, Durr joined forces with Fred Gray, first in a civil suit representing parents of a young Black boy killed by a speeding white driver.⁹¹ He also worked with Gray in representing Claudette Colvin, a Black teenager arrested for refusing to give up her bus seat when the driver demanded that she do so.⁹² Finally, on December 1, 1955, since Fred Gray was out of town at the time, Clifford Durr provided the first legal advice to Rosa Parks after her arrest for refusing to give up her bus seat.⁹³ Durr worked behind the scenes with Gray on legal matters related to the Montgomery Bus Boycott.⁹⁴ While Durr insisted that he played only a small part in *Browder v. Gayle*, the case challenging the constitutionality of the bus segregation laws, Fred Gray attributed to him the idea of bringing the case.⁹⁵

Gray and Durr also worked together on *NAACP v. Alabama*, involving the state shutting down the NAACP when it refused to supply

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88. SALMOND, *supra* note 2, at 33–34, 37, 46; GRAY, *supra* note 2, at 44. Durr resigned from the Federal Communications Commission because he refused to sign an anticommunist loyalty oath. BURNS, *supra* note 31, at 95.
89. SALMOND, *supra* note 2, at 121–22, 155–56; GRAY, *supra* note 2, at 44.
90. Rubinowitz, *supra* note 2, at 510–11. *See also* GRAY, *supra* note 2, at 55 (noting that Durr and only one or two others would take civil rights cases).
91. SALMOND, *supra* note 2, at 171. This set Durr apart because he both represented a Black client in a suit against a white man, and because he partnered with a Black lawyer to do it. Both of those arrangements were unheard of in Montgomery. *Id.* *See infra* Section II.D (discussing the social costs faced by Civil Rights lawyers).
92. SALMOND, *supra* note 2, at 173; GRAY, *supra* note 2, at 43–44.
93. SARAH HART BROWN, *STANDING AGAINST DRAGONS: THREE SOUTHERN LAWYERS IN AN ERA OF FEAR* 148 (1998); BURNS, *supra* note 31, at 9, 86 (Stewart Burns ed., 1997); GRAY, *supra* note 2, at 50.
94. GRAY, *supra* note 2, at 70. While Fred Gray represented Rosa Parks, Durr helped him, but he was not of record in the case. VIRGINIA DURR, *OUTSIDE THE MAGIC CIRCLE: THE AUTOBIOGRAPHY OF VIRGINIA FOSTER DURR* 181 (1985).
95. BROWN, *supra* note 93, at 149. Gray said that Durr's help was invaluable in developing the legal strategy and in preparing the necessary documents for the case. Durr received no fee for his services. *Id.*; *see also* BRANCH, *supra* note 7, at 122–23, 129; SALMOND, *supra* note 2, at 171–79; *Gayle v. Browder*, 352 U.S. 903 (1956). *See supra* Section I.A.1 (discussing the Montgomery Bus Boycott).

its membership lists, and *Gomillion v. Lightfoot*, the landmark Tuskegee racial gerrymandering case.⁹⁶ Gray characterized Durr as a “silent partner” and adviser on those cases.⁹⁷ Like Arthur Shores, Durr was a very important mentor to Fred Gray, who said that Durr “served as my adviser . . . during the formative years of my career.”⁹⁸ As with Shores, Fred Gray identified Durr as one of four people who affected his professional life in significant ways.⁹⁹

D. Robert Carter

Robert L. Carter graduated from Howard Law School in 1940 and earned an LL.M. from Columbia Law School in 1941.¹⁰⁰ He served in the Army from 1941 to 1944, where he first experienced harsh racism and became determined to end racial discrimination.¹⁰¹ After leaving the Army, Carter joined the NAACP Legal Defense Fund (LDF) in 1944 as Thurgood Marshall’s legal assistant, and then became an assistant special counsel the following year.¹⁰² He played a critical role in the long series of school desegregation cases, including working as a lead attorney in *Sweatt v. Painter*¹⁰³ and *Brown v. Board of Education*.¹⁰⁴

Robert Carter was the first northern lawyer to work closely with Fred Gray. When Gray contacted Thurgood Marshall early in the

96. BROWN, *supra* note 93, at 263; NAACP v. Ala. *ex rel.* Patterson, 357 U.S. 449 (1958); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960). See *supra* Section I.A.2–3 (analyzing these two cases).

97. BROWN, *supra* note 93, at 263.

98. GRAY, *supra* note 2, at 348. Durr was also “the white lawyer upon whom I depended most for advice.” *Id.* at 17.

99. GRAY, *supra* note 2, at 44. Gray spoke of “the close working relationship that existed between the two of us and how he assisted me in developing, not only into a good lawyer, but a good Civil Rights lawyer.” BROWN, *supra* note 93, at 263.

100. *Black History Month Spotlight: Robert L. Carter*, NAACP LDF (Feb. 5, 2014), <http://www.naacpldf.org/press-release/black-history-month-spotlight-robert-l-carter> [<https://perma.cc/28BZ-LH4M>] [hereinafter *Carter Spotlight*].

101. ROBERT L. CARTER, A MATTER OF LAW: A MEMOIR OF STRUGGLE IN THE CAUSE OF EQUAL RIGHTS 36, 49–50 (2005).

102. Roy Reed, *Robert L. Carter, 94, Leading Strategist Against Segregation and U.S. Judge, Dies*, N.Y. TIMES, Jan. 4, 2012, at A17; *Carter Spotlight*, *supra* note 100.

103. 339 U.S. 629, 636 (1950) (holding the University of Texas’s refusal to admit a Black student to its law school because of his race unconstitutional, where a separate facility provided for Blacks was inferior in tangible and intangible respects).

104. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954); *Carter Spotlight*, *supra* note 100; GREENBERG, *supra* note 2, at 166, 180, 422–23.

Montgomery Bus Boycott seeking assistance from the experienced civil rights lawyers at LDF, Marshall assigned Carter to the task.¹⁰⁵ Fred Gray travelled to New York before filing *Browder v. Gayle*, to discuss the case with both Carter and Thurgood Marshall.¹⁰⁶

Carter later asked Gray for assistance on *Alabama v. NAACP*.¹⁰⁷ In turn, Gray asked Carter for help again in *Gomillion v. Lightfoot*, the Tuskegee voting rights case.¹⁰⁸ The two lawyers argued the case together before the Supreme Court.¹⁰⁹

In 1956, Marshall completed a full separation of LDF and the NAACP, and made Robert Carter the NAACP's general counsel.¹¹⁰ During his tenure as a civil rights attorney, Carter argued twenty-two cases before the Supreme Court, winning twenty-one of them.¹¹¹ Carter left the NAACP in 1968.¹¹² In 1972, President Nixon appointed him to the U.S. District Court for the Southern District of New York, where he served until retiring in 2009 as a senior judge.¹¹³

105. See MARK V. TUSHNET, MAKING CIVIL RIGHTS LAW: THURGOOD MARSHALL AND THE SUPREME COURT, 1936–1961, at 302 (1996); Coleman, Nee & Rubinowitz, *supra* note 31, at 682.

106. GRAY, *supra* note 2, at 70, 72. See *supra* Section I.A.1 (discussing the Montgomery Bus Boycott). Carter assisted Gray in *Gayle v. Browder*, and “generally gave advice throughout the movement.” *Gayle v. Browder*, 352 U.S. 903 (1956); GRAY, *supra* note 2, at 73.

107. GRAY, *supra* note 2, at 105. See *supra* Section I.A.2 (discussing *NAACP v. Alabama*). It was of great pride to Gray that he was able to assist in keeping the NAACP active in Alabama, as the organization had been helpful in so many of his cases. GRAY, *supra* note 2, at 108; *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449 (1958).

108. GRAY, *supra* note 2, at 115; *Gomillion v. Lightfoot*, 364 U.S. 339 (1960). See *supra* Section I.A.3 (discussing *Gomillion v. Lightfoot*). Carter originally expressed doubt that this was a winnable case, but after agreeing to look over a draft of the complaint, he agreed to join forces on the case. GRAY, *supra* note 2, at 114–15.

109. GRAY, *supra* note 2, at 117–18.

110. CONSTANCE BAKER MOTLEY, EQUAL JUSTICE UNDER LAW: AN AUTOBIOGRAPHY 150 (1998); TUSHNET, *supra* note 105, at 310.

111. *Carter Spotlight*, *supra* note 100.

112. CARTER, *supra* note 100, at 202. He began a yearlong fellowship at Columbia University, after which he became a partner at a small New York City law firm. *Id.* at 204, 207.

113. Carter died in 2012, at age 94. Dennis McLellan, *Robert L. Carter, 1917–2012; NAACP Attorney Fought Segregation*, L.A. TIMES (Jan. 7, 2012), <http://articles.latimes.com/2012/jan/06/local/la-me-robert-carter-20120106> [<https://perma.cc/2H47-9HED>]; *Carter Spotlight*, *supra* note 100.

E. Constance Baker Motley

Constance Baker Motley interned with Thurgood Marshall at the fledgling NAACP Legal Defense and Education Fund while she attended Columbia Law School.¹¹⁴ She volunteered at LDF between the spring and summer of 1945, and worked there as law clerk from October 1945 until she graduated in June 1946.¹¹⁵ She then became the first female staff attorney at LDF.¹¹⁶

Constance Baker Motley was a staff lawyer at LDF for two decades, and was eventually promoted to associate counsel.¹¹⁷ She was the only female lawyer there for most of that time.¹¹⁸ Motley worked with Fred Gray on a number of school desegregation cases, including the suit to integrate the University of Alabama, *Lee v. Macon County Board of Education*, and a suit to integrate Auburn University.¹¹⁹

In her time at LDF, Motley argued ten cases before the Supreme Court, winning nine of them.¹²⁰ One of her victories involved helping James Meredith gain admission to the University of Mississippi in 1962 as its first Black student.¹²¹ Motley had a distinguished career after her time at LDF as well. In 1964, she became the first Black woman elected to the New York State Senate.¹²² In 1965, she was the first woman

114. MOTLEY, *supra* note 110, at 58–59.

115. *Id.*

116. *See VRA at 50: Day 17*, NAACP LDF, <http://www.naacpldf.org/vra-at-50-day-17> [<https://perma.cc/8U8T-2LNV>] (last visited Mar. 15, 2017); GREENBERG, *supra* note 2, at 32–36; MOTLEY, *supra* note 110, at 151–55.

117. GREENBERG, *supra* note 2, at 33–34. Thurgood Marshall left the organization in the hands of Jack Greenberg, even though Motley had more experience. MOTLEY, *supra* note 110, at 151. Motley believed that Marshall skipped over her because she was a woman. *Id.*

118. *See* Constance Baker Motley, *My Personal Debt to Thurgood Marshall*, 101 YALE L.J. 19 (1991) (“My tribute acknowledges my personal debt to Thurgood Marshall for aiding my career at a time when nobody was hiring women lawyers.”); Dorothy Roberts, *Constance Baker Motley*, in THE YALE BIOGRAPHICAL DICTIONARY OF AMERICAN LAW 394 (Roger K. Newman ed., 2009) (“Upon graduating in 1946, Motley was hired as the only woman on the LDF legal team . . .”). *See generally* GREENBERG, *supra* note 2, at 33–36 (discussing Motley and her colleagues on LDF legal team); MOTLEY, *supra* note 110, at 151–55 (same).

119. *Lucy v. Adams*, 350 U.S. 1 (1955); *Lee v. Macon Cty. Sch. Bd. of Educ.*, 267 F. Supp. 458 (M.D. Ala. 1967); *Franklin v. Parker*, 223 F. Supp. 724 (M.D. Ala. 1963). *See supra* Section I.A.6 (discussing the school desegregation cases).

120. MOTLEY, *supra* note 110, at 193–202.

121. *Id.* at 162–83; *Meredith v. Fair*, 83 S. Ct. 10 (1962).

122. LINN WASHINGTON, *BLACK JUDGES ON JUSTICE* 127 (1994).

elected to the Manhattan (New York) Borough presidency.¹²³ In 1966, President Johnson appointed her as a federal district court judge.¹²⁴ She was the first Black woman appointed to the federal bench.¹²⁵ In 1982, she became the first woman to serve as chief judge of the Southern District of New York, “the largest federal trial bench” in the United States.¹²⁶

These five lawyers demonstrated great skill, commitment, and “professional courage” in their careers. They accomplished path-breaking changes in civil rights law. However, the focus here is on still another dimension—the personal challenges they faced and the courage they demonstrated in the process.

II. THE CHALLENGES AND THE COURAGE

Like the activists they represented, these lawyers required great courage to deal with the many challenges they faced. The most obvious and the most serious ones were physical dangers that they and their families endured. They also had to respond to legal and administrative strategies officials used in an effort to eliminate lawyers from the Civil Rights Movement. Economic risks presented still another obstacle for civil rights lawyers. Moreover, the social tolls they experienced involved ostracism by family, friends, and others in their communities, as well as enforced social isolation. Finally, adversaries’ efforts to undermine the lawyers resulted in psychological burdens, including stress, anxiety, and fear, for both the lawyers and their families.

A. Physical Dangers

The physical attacks and threats involved both persons and property. For the lawyers most targeted, there could be no real safe haven. They could not count on being out of danger anywhere. Risks accompanied them to other towns, on the road, motels, the courthouse, their offices, the kids’ schools and routes back and forth, and even their homes. In some cases, the attacks escalated in seriousness over time, increasing the dangers and harms to the lawyers and their families.

123. Douglas Martin, *Constance Baker Motley, Civil Rights Trailblazer, Dies at 84*, N.Y. TIMES, Sept. 29, 2005, at B10.

124. *Id.*

125. *Id.*

126. MOTLEY, *supra* note 110, at 225; Rachel Christmas Derrick, *A Columbian Ahead of Her Time: Constance Baker Motley*, COLUMBIA MAG., Spring 2005, at 21. She died in 2005 at the age of eighty-four. Martin, *supra* note 123.

Fred Gray characterized the period of the modern Civil Rights Movement as “a time when it was very hostile and dangerous” to practice civil rights law.¹²⁷ As early as the Montgomery Bus Boycott, racists used violence to attempt to undermine and defeat the movement.¹²⁸ Bombs struck a number of places, including Dr. King’s home.¹²⁹ While Fred Gray received bomb threats, he managed to prevent them from being carried out.¹³⁰ His brothers and friends set up a round-the-clock guard to protect against bombings.¹³¹ Still, he received threatening phone calls and hate letters.¹³² He also survived an attempted stabbing.¹³³

During the bus boycott, Gray went to Selma, fifty miles away, to represent a client on an unrelated matter in court.¹³⁴ Since it was dangerous for a Black person to travel there alone, he took a friend with him.¹³⁵ While Fred Gray was in court, the police arrested his companion and gave him a message for Gray.¹³⁶ Four police officials told him to tell Fred Gray to “get out of Selma, . . . by sundown and never be caught there again.”¹³⁷ “Sundown” was both a literal time and a metaphor that has often been used to tell Black people that they are not wanted, and therefore not safe, in a particular place.¹³⁸ Overstaying the

127. GRAY, *supra* note 2, at 376.

128. *See, e.g.*, MARTIN LUTHER KING, JR., *STRIDE TOWARD FREEDOM: THE MONTGOMERY STORY* 151 (1st Perennial Library ed. 1964) (discussing bombings in response to the Civil Rights movement); GARROW, *supra* note 45, at 83 (describing sniper attacks on Black bus riders); BRANCH, *supra* note 7, at 197–201 (1988) (discussing the use of violence against Civil Rights activists).

129. GARROW, *supra* note 45, at 60; BRANCH, *supra* note 7, at 164.

130. GRAY, *supra* note 2, at 77.

131. PEARL GRAY DANIELS, *PORTRAIT OF FRED D. GRAY: MINISTER, CIVIL RIGHTS LAWYER AND ALABAMA REPRESENTATIVE* 66 (1975).

132. GRAY, *supra* note 2, at 77. Gray was not aware of these threatening phone calls, as his family members specifically did not inform him of any calls they received on his behalf. DANIELS, *supra* note 131, at 66–67.

133. GRAY, *supra* note 2, at 77.

134. *Id.* at 97–105.

135. *Id.* at 97.

136. *Id.* at 98–100.

137. The four officials included the police captain. *Id.* at 100. The police also said to “[t]ell all the niggers in Montgomery to stay over there, they don’t have no business at all in Selma, get out and stay out, if you don’t the nigger undertakers are going to have a lot of business.” They were not going to permit the kind of “mess” in Selma that was going on in Montgomery with the bus boycott. *Id.* at 100–01.

138. *See generally* JAMES W. LOEWEN, *SUNDOWN TOWNS: A HIDDEN DIMENSION OF AMERICAN RACISM* (2005) (discussing the violent realities of

time they were permitted in town risked white people resisting their continued presence, up to and including killing them.¹³⁹

Arthur Shores was also exposed to serious danger when he was on the road.¹⁴⁰ His cases sometimes took him to other parts of the state. In one incident, he won a case in a rural community and got into his car to drive back to Birmingham.¹⁴¹ White men chased him, shouting obscenities.¹⁴² Shores outdrove them, negotiating the country roads as fast as he could.¹⁴³

Early in his career, in 1939, Shores represented a Black prisoner in a case against a police officer for brutality.¹⁴⁴ Surprisingly, Shores won and the policeman was suspended for thirty days.¹⁴⁵ Afterwards, a Black police informant approached Shores and tried to punch him in the face.¹⁴⁶ Shores dodged the blow, and his friends and family members rescued him.¹⁴⁷ It turned out that the attacker had been paid to cause a disturbance.¹⁴⁸ The Ku Klux Klan had threatened Shores at the start

“Sundown Towns”). It was a way of saying that the town of Selma was white people’s property. Blacks came into the town only at the sufferance of the whites in power.

139. Whites were entitled to defend their property, a perversion of a traditional criminal law defense. *See generally* Leonard S. Rubinowitz & Imani Perry, *Crimes without Punishment: White Neighbors’ Resistance to Black Entry*, 92 J. CRIM. L. & CRIMINOLOGY 335 (2002) (reviewing STEPHEN GRANT MEYER, *AS LONG AS THEY DON’T MOVE NEXT DOOR: SEGREGATION AND RACIAL CONFLICT IN AMERICAN NEIGHBORHOODS* (2000)).

140. LEE & SHORES, *supra* note 1, at 92.

141. *Id.*

142. *Id.*

143. *Id.* He always drove a fast car after that, for safety. He also carried a loaded gun in the glove compartment. It is not known exactly when this incident occurred, except that it must have been early in Shores’s career, as his daughter remembers him telling the story during her childhood. *See id.*

144. *Id.* at 84–85; Shores, *supra* note 4, at 269.

145. LEE & SHORES, *supra* note 1, at 85; Lynda Dempsey Cochran, Arthur Davis Shores: Advocate for Freedom 39 (Aug. 1977) (unpublished M.A. thesis, Georgia Southern College), http://digitalcommons.georgiasouthern.edu/etd_legacy/210/ [<https://perma.cc/6BQU-WDKX>]; Shores, *supra* note 4, at 269.

146. LEE & SHORES, *supra* note 1, at 85; Cochran, *supra* note 145, at 39; Shores, *supra* note 4, at 270.

147. LEE & SHORES, *supra* note 1, at 85; Cochran, *supra* note 145, at 39; Shores, *supra* note 4, at 270.

148. LEE & SHORES, *supra* note 1, at 86; Cochran, *supra* note 145, at 42; Shores, *supra* note 4, at 270.

of the case, and his victory made him and his family an even greater target for the KKK.¹⁴⁹

In 1953, the Shores family moved to Smithfield, a middle-class Black neighborhood that was known as “Dynamite Hill.”¹⁵⁰ It was one of the most dangerous neighborhoods in a city that itself had so many bombings in mid-century that it came to be known as “Bombingham.”¹⁵¹ The Shores family’s move to Dynamite Hill coincided with an escalation in violence that would continue over the next decade, eventually to the point of multiple bombings.¹⁵²

Very soon after they moved to their new house, the drive-by shootings began.¹⁵³ Racists fired so many bullets through the Shores’s front windows that Arthur Shores had a contractor on retainer to repair them.¹⁵⁴ When Shores called the police about the shootings, the police officer who came to the house treated it as a trivial matter that did not

149. *See id.* at 269 (describing warnings sent from the Ku Klux Klan “ordering me to drop the case or suffer the consequence”); LEE & SHORES, *supra* note 1, at 84 (describing how Shore’s successes made him a target of the Ku Klux Klan).

150. *Id.* at 18. The title of the book suggests the ongoing danger that the family faced. DIANE MCWHORTER, *CARRY ME HOME: BIRMINGHAM, ALABAMA: THE CLIMACTIC BATTLE OF THE CIVIL RIGHTS REVOLUTION* 75 (1st Touchstone ed. 2002); GARROW, *supra* note 45, at 232.

U.W. Clemon, an Alabama Civil Rights lawyer and the state’s first Black federal judge, said that the book “reveals, ever so poignantly, the tolls that those victories [landmark civil rights cases] often exacted on him and his family.” U.W. Clemon, *Praise for LEE & SHORES*, *supra* note 1. Wayne Flynt, Distinguished University Professor of History Emeritus, Auburn University, referred to Shores’s “incredible personal courage.” Wayne Flynt, *Praise for LEE & SHORES*, *supra* note 1.

151. MCWHORTER, *supra* note 150, at 72; GARROW, *supra* note 45, at 232. There were more than fifty unsolved racial bombings in Birmingham from 1947–63. ESKEW, *supra* note 22, at 322.

152. LEE & SHORES, *supra* note 1, at 18–19, 33, 38–39; THORNTON, *supra* note 22, at 337.

153. LEE & SHORES, *supra* note 1, at 18. Helen Shores Lee recounted: “I can still recall the *pinging* sound bullets made when someone in a passing car shot the window in our recreation room. The thick glass usually prevented the window from shattering, but the bullets would pierce through and lodge in our interior walls. Each bullet made its mark—a small hole through the glass—and each bullet brought our mother fresh new fear.” *Id.* at 15.

154. *Id.* at 176. Shores gave the “family drill”: “When someone fires into the house, immediately hit the floor, put your head down, and crawl quickly to a safe place.” *Id.* at 18.

warrant any investigation by law enforcement.¹⁵⁵ It was clear that the police would provide no protection against those attacks.¹⁵⁶

Aside from shootings, the family faced threats and harassment in the neighborhood as well. One night in 1953, a carful of angry white youths drove back and forth past the Shores house shouting racial epithets as the family sat out on the front porch.¹⁵⁷ After the second pass, Shores's daughter Helen got so angry that she went inside, got a gun, and attempted to shoot at the youths as they made their third pass.¹⁵⁸ Her father hit her arm, so the bullet went up in the air rather than possibly hitting one of the young men.¹⁵⁹ He told her that if she had hit someone, she would have gone to jail, possibly for the rest of her life.¹⁶⁰

In addition to not feeling safe within their home, the children faced danger at school as well. One day a white man showed up at Shores's daughter Barbara's school and told her teacher that Mr. Shores wanted his daughter home right away.¹⁶¹ He said that he had come to take her home.¹⁶² The teacher had the presence of mind to call Mr. Shores, who said that the man was lying.¹⁶³ Meanwhile, the man ran out of the building, into his van, and drove off.¹⁶⁴ There is no way of knowing what Shores's daughter's fate would have been if the kidnapping had succeeded.¹⁶⁵

By 1963, Shores was not as active in civil rights cases as he had been in previous decades.¹⁶⁶ To some extent, he had moved on to more lucrative corporate work, and younger Black attorneys had taken over

155. *Id.* at 18–19.

156. *Id.*

157. *Id.* at 20–21.

158. *Id.* at 21.

159. *Id.* See *infra* Section II.E (discussing the psychological burdens of racially targeted violence).

160. LEE & SHORES, *supra* note 1, at 21–22; see *infra* Section II.E.

161. LEE & SHORES, *supra* note 1, at 148. It is unclear exactly what year this attempted kidnapping occurred, but judging by Barbara being school age, it had to be in the 1950s or very early '60s. See *id.* at 90.

162. *Id.* at 148.

163. *Id.*

164. *Id.* There is no indication that Shores reported the incident to the police. Doing so would have been an exercise in futility and potentially even dangerous.

165. *Id.* at 148. Her parents did not talk much about the incident, apparently to avoid adding to their fear, but security measures got tighter in response to it. *Id.*

166. *Id.* at 41.

some of the civil rights litigation load.¹⁶⁷ Shores assumed that this meant the Ku Klux Klan would no longer target him.¹⁶⁸ That assumption proved to be very wrong. On August 20, 1963, attackers set off dynamite that caused more than \$7,200 damage to the Shores's \$40,000 home.¹⁶⁹ The front of the house was demolished, the garage doors were blown open, and the car inside was crushed.¹⁷⁰ No one was hurt, but the blast was so powerful that shards of glass from the windows in one room stuck in the walls. If anyone had been in that room at the time of the blast, they almost certainly would have been killed.¹⁷¹

Shores repaired and reinforced the house.¹⁷² He assumed that the racists had sent their message and there would be no further bombings.¹⁷³ Once again, he underestimated his adversary, which was probably the Ku Klux Klan. The KKK was particularly active and violent in Birmingham at the time.¹⁷⁴ Two weeks after the first blast, another bomb hit the Shores home, while it was still under repair from the first blast.¹⁷⁵ It did less than \$1,200 additional damage.¹⁷⁶ But this time it caused a concussion.¹⁷⁷ Arthur Shores's wife Theodora was knocked out of bed by the tremor.¹⁷⁸

167. Cochran, *supra* note 145, at 103.

168. *Id.* at 104.

169. THORNTON, *supra* note 22, at 337.

170. LEE & SHORES, *supra* note 1, at 33. This was one of the rare occasions when Arthur Shores showed a reaction. Barbara indicated that he was visibly shaken and perhaps scared. *Id.* See *infra* Section II.E.

171. LEE & SHORES, *supra* note 1, at 38–39. See also Cochran, *supra* note 145, at 104.

Klan member Robert Chambliss was known as “Dynamite Bob.” When he heard about the bombing, he said that he hoped that it had killed Arthur Shores. LEE & SHORES, *supra* note 1, at 35. While the family received many supportive letters after the bombing, other writers expressed regret that Shores had survived it. *Id.* at 36–38.

172. *Id.* at 41.

173. *Id.* at 39.

174. See Keith S. Hebert, *Ku Klux Klan in Contemporary America*, THE ENCYCLOPEDIA OF ALA. (Oct. 8, 2014), <http://www.encyclopediaofalabama.org/article/h-3291> [<https://perma.cc/A2P6-CBY8>].

175. LEE & SHORES, *supra* note 1, at 44; THORNTON, *supra* note 22, at 342. Earlier that day, a federal court had ordered the admission of the first five Black students to three previously all-white public schools. BRANCH, *supra* note 7, at 888. That might explain the timing of the blast.

176. THORNTON, *supra* note 22, at 342.

177. LEE & SHORES, *supra* note 1, at 45.

178. *Id.*

FBI investigators later told Shores that his long record of civil rights litigation had made him a continuing symbol among whites as a prominent and hated agitator for racial change.¹⁷⁹ In response to the attack, armed guards volunteered to guard the Shores house at night to prevent further bombings.¹⁸⁰ Attorney Constance Baker Motley described the scene that she saw when she and Thurgood Marshall arrived to stay as guests at “Arthur Shores’s spacious new home on the city’s outskirts” while they were litigating a case in Birmingham: “When Thurgood and I arrived, the garage door was wide open. Inside were six or eight black men with shotguns and machine guns who had been guarding the house since the last bombing.”¹⁸¹

On Sunday, March 21, 1965, voting rights activists began their famous march from Selma, Alabama, to the state capitol in Montgomery.¹⁸² Meanwhile, in Birmingham, there was yet another attempt to bomb the Shores home. This time it was part of a coordinated attack. Several green boxes appeared at Black sites that morning, including a church, a funeral home, a high school, and the Shores property.¹⁸³ The boxes were loaded with dynamite.¹⁸⁴ Fortunately, demolition experts from a nearby army base arrived in time to disable them before they were timed to explode.¹⁸⁵ They disabled the bomb at the Shores home

179. Cochran, *supra* note 145, at 107. Even though Shores was more conservative than some other Black leaders, white supremacists targeted him because of his long history of successful federal cases challenging racial discrimination. THORNTON, *supra* note 22, at 337.

180. LEE & SHORES, *supra* note 1, at 145.

181. MOTLEY, *supra* note 110, at 123. *See infra* Section II.E.

Thurgood Marshall stayed at the Shores house on occasion, including during the Autherine Lucy trial challenging her exclusion from the University of Alabama because of her race. LEE & SHORES, *supra* note 1, at 145. Even though this was before any bombings, the threats of violence were so great during that period that men from the area organized a “neighborhood watch,” armed with shotguns and they patrolled the area from 5:00 P.M. to 8:00 A.M. *Id.* at 145.

182. *Selma to Montgomery March (1965)*, KING ONLINE ENCYCLOPEDIA, http://kingencyclopedia.stanford.edu/encyclopedia/encyclopedia/enc_selma_to_montgomery_march/index.html [<https://perma.cc/7N9J-CRLD>] (last visited Dec. 8, 2016).

183. LEE & SHORES, *supra* note 1, at 222–23; Cochran, *supra* note 145, at 102–03.

184. LEE & SHORES, *supra* note 1, at 222–23.

185. *Id.*

only a minute before noon, when it was set to go off.¹⁸⁶ An expert estimated that there was enough dynamite in the bombs to destroy most of the neighborhood.¹⁸⁷

Finally, like Fred Gray, Arthur Shores received telephone death threats both at home and at his office.¹⁸⁸ He changed his home number regularly to minimize those calls.¹⁸⁹ He kept guns in the house and carried a gun whenever he went out, as did his guards.¹⁹⁰ He once explicitly called the bluff of someone threatening him.¹⁹¹ Shores responded to all of these threats by not backing down, just like his fellow civil rights attorneys who dealt with similar dangers. Shores refused to leave Birmingham or walk away from his civil rights work.¹⁹²

The white Montgomery lawyer Clifford Durr also faced physical dangers. He received death threats for defending a Black man who was accused of propositioning a white woman.¹⁹³ In another incident, Durr loaned his car to a white friend to go to a rally for Freedom Riders at a Black church.¹⁹⁴ Extreme segregationists attacked the car after they saw white people getting out of it outside the church where a rally was taking place.¹⁹⁵ They turned the car over and put a lit match in the gas tank to set it on fire.¹⁹⁶ There was nothing left but the frame of the car.¹⁹⁷

186. *Id.* at 223.

187. *Id.*; Cochran, *supra* note 145, at 103.

188. LEE & SHORES, *supra* note 1, at 118.

189. *Id.* at 19.

190. *Id.* at 17, 145; MOTLEY, *supra* note 110, at 123; Cochran, *supra* note 145, at 107.

191. He told a threatening phone caller exactly when he would be leaving his office and what his route would be. LEE & SHORES, *supra* note 1, at 149. Nothing happened. *Id.*

192. *Id.* at 146. Shores and his wife argued about whether to stay in Birmingham, to the point that their daughter worried that they might be getting a divorce. *Id.* Over time, Theodora became a supporter of her husband and his work, leaving it all in God's hands. *Id.*

193. SALMOND, *supra* note 2, at 184–85.

Robert Carter also received many threats as he litigated, often related to school desegregation cases. CARTER, *supra* note 101, at 133–34.

194. DURR, *supra* note 94, at 300.

195. *Id.* They did not take Durr's advice to park the car a few blocks away from the church and enter through the back. *Id.* See also BROWN, *supra* note 93, at 187 (“Unfortunately, Mitford parked the Durrs’ car near the church, and the crowd overturned and burned it during the disturbance.”).

196. DURR, *supra* note 94, at 301; BROWN, *supra* note 93, at 187.

197. GARROW, *supra* note 45, at 158. DURR, *supra* note 94, at 301. After that, they could not get insurance in Montgomery because their insurance company

The northern lawyers who worked with Fred Gray also faced danger whenever they went South. Segregationists viewed them as “outside agitators” threatening the racial status quo, like the “carpetbaggers” of the 19th century Reconstruction era.¹⁹⁸ When Constance Baker Motley represented Autherine Lucy in her challenge to the all-white University of Alabama, there were great risks for client and lawyers alike.¹⁹⁹ In referring to the courage it took, Supreme Court Justice Stephen Breyer remarked that “people put their lives, their health, their families at risk when they made stands on what were, in that time, in that place, in those days, very unpopular positions. And [Motley] did. She just did it.”²⁰⁰

Northern lawyers like Constance Baker Motley, Robert Carter, and Thurgood Marshall headed into danger every time they journeyed to Alabama for cases they were litigating. Even sleeping had risks. Black lawyers were not allowed to stay in any of the white hotels in Alabama.²⁰¹ So they often stayed with a fellow attorney, most often Fred

blamed them for letting the car be burned. They were able to get insurance in Birmingham. *Id.*

Shores had similar difficulties insuring his house after two bombings. LEE & SHORES, *supra* note 1, at 48.

198. See generally BAKER, *supra* note 19, at 69 (discussing Southern attitudes towards Reconstruction in the 1900s); see also GARROW, *supra* note 45, at 67 (“[A local pastor] pointedly told reporters that the protest was a local movement and not for outside agitators.”).

199. See *supra* Section I.B (discussing Arthur Shores’s involvement in Autherine Lucy’s suit against the University of Alabama); see generally CLARK, *supra* note 14 (discussing the school desegregation cases and the underlying danger to those involved).

200. JUSTICE IS A BLACK WOMAN: THE LIFE AND WORK OF CONSTANCE BAKER MOTLEY (Quinnipiac Univ. 2012) [hereinafter Motley Documentary]. Other judges made similar observations about Constance Baker Motley in the documentary:

She had extraordinary courage and perseverance, and I think that’s a lesson that we can learn in this century—that whatever choice you make, you need to stand up. That was to me the heart of Constance Baker Motley—that if you see a wrong, that you as a lawyer had the power to change it.

Judge Ann C. Williams of the Seventh Circuit Court of Appeals. *Id.*

District Judge Laura Taylor Swain said that “she [Motley] gave people great hope, often at great risk and often at personal danger to herself.” *Id.*

Juan Williams, the narrator, emphasized that “there was no mistaking the danger that Motley constantly faced while traveling and working in the Southern states at the time . . . threats of verbal and physical abuse haunted nearly all the public school and university cases the legal defense fund handled.” *Id.*

201. GRAY, *supra* note 2, at 218.

Gray in Montgomery, or Arthur Shores in Birmingham.²⁰² Alternatively, they could stay at one of the few hotels for Blacks in the South, the Gaston Motel.²⁰³ However, in 1963, racists bombed the Gaston Motel in an attempt to kill Martin Luther King, who was staying there at the time.²⁰⁴

Finally, and ironically, there were problems with the police. In addition to the extra-legal attacks by the KKK and individual segregationists, the police also posed a danger to the lawyers and their families.²⁰⁵ Like civil rights activists engaged in peaceful protests, lawyers and their families had much to fear from the police. In some cases, it was their inaction. They did not provide protection against attacks,

202. *Id.* (“Bernice and I entertained many civil rights leaders and attorneys in our home. Until the mid-1960s, African American attorneys could not stay in white hotels.”); LEE & SHORES, *supra* note 1, at 176.

203. GREENBERG, *supra* note 2, at 334. The Gaston motel was even more rare in that it was Black-owned and actually resembled white lodging in terms of comforts and amenities. *Id.*; McWHORTER, *supra* note 150, at 263 (“[T]he boxy-modern brick Gaston Motel . . . [gave] Negro visitors a ‘nice place’ to stay in Birmingham.”).

204. *Id.* at 429; GREENBERG, *supra* note 2, at 321. The bomb exploded right under the room where Dr. King was supposed to be staying. Luckily, the room was empty at the time. The room below it was also destroyed, but the person staying there miraculously survived. McWHORTER, *supra* note 150, at 430.

Arthur Shores’s daughter Helen suggested, ironically, that Thurgood Marshall stayed at their house when he worked with her father because staying at a hotel was too dangerous. LEE & SHORES, *supra* note 1, at 96.

In discussing LDF lawyers, Jack Greenberg, Thurgood Marshall’s successor in heading the organization, said:

LDF lawyers worked in the vortex and at the edges of violence, but mostly came out unscathed. I can’t think of a single instance of a lawyer refusing to attend a case or meet with clients because of fear of violence, though we did our best to minimize risks. Thurgood used to joke that he had a big yellow stripe down his back. We followed his example . . . and he claimed that he “wrapped his rights in cellophane” and stuck them in his pocket when he went down South.

GREENBERG, *supra* note 2, at 321.

Thurgood Marshall’s wife expressed her fears about the risks he was taking going South to challenge the Jim Crow regime. See *American Experience: Simple Justice* (PBS television broadcast Jan. 18, 1993) (following Thurgood Marshall’s journey from law school at Howard University to the south with Dean Charles Houston to document the effects of segregation and the eventual challenge of segregation in court).

205. THORNTON, *supra* note 22, at 311; GARROW, *supra* note 45, at 74–76; BRANCH, *supra* note 7, at 758–61.

leaving that to the lawyers and their families and friends.²⁰⁶ In other instances, the police joined with private individuals and groups to cause the harm.

When the Shores house was bombed for the second time, a neighbor reported that when he heard the blast there was already a police car parked in his driveway, and police cars had blocked off the street.²⁰⁷ This suggests that, at the very least, the police knew about the planned bombing and chose to do nothing to prevent it. More likely, they were co-conspirators in the attack.

Constance Baker Motley also found law enforcement unreliable as a source of protection. An official of the NAACP commented about her situation: “We couldn’t count unfortunately on the local police to provide the security that she needed, nor in some instances could we count on the local members of the FBI because oft-times they were in cahoots with the local police.”²⁰⁸

206. LEE & SHORES, *supra* note 1, at 18–19.

207. *Id.* at 47.

208. Motley Documentary, *supra* note 200 (quoting Herbert Wright, Former Director and Youth Director at the NAACP).

Much of the danger Motley experienced was in Mississippi, rather than Alabama. Wright pointed out that she was always in danger when she was in the state representing James Meredith, who was seeking to be the first Black student to attend the University of Mississippi. *Id.* Meredith feared, with good reason, that his life was in danger. *Eyes on the Prize: America’s Civil Rights Years (1954–1965): Interview With Constance Baker Motley*, WASH. U. DIGITAL GATEWAYS (Nov. 2, 1985), <http://digital.wustl.edu/e/eop/eopweb/mot0015.0589.074judgeconstancebakermotley.html> [<https://perma.cc/XH8X-Y4P7>]. When Motley, his lawyer, appeared in public with him, she was potentially in harm’s way, as well.

Also, in her autobiography, Motley described an incident when she was traveling with Medgar Evers, Mississippi NAACP leader:

As we were driving outside of Jackson onto a stretch of road through a wooded area, Medgar kept checking the rearview mirror. I was still working on the motion papers. Suddenly, Medgar said, “Don’t look back. Put that yellow pad in The New York Times. We are being followed by the state police.” Medgar, attempting to calm me, explained that he had been followed on many occasions as he criss-crossed the state in connection with his NAACP duties . . . I rode from that point on to Meridian, another twenty-five miles or so away, with my head straight forward and scarcely breathing.

MOTLEY, *supra* note 110, at 180.

Medgar Evers’s assassination in 1963 was extremely traumatic for Motley. See Motley Documentary, *supra* note 200 (“The mental anguish was so great I did not think I would ever get out of bed again. I resolved then and there not to go to the funeral in Jackson, reasoning that it was time to give up on Mississippi. I felt I would not be safe there.”).

While not in Alabama, Thurgood Marshall had a near death experience at the hands of the police. In 1946, having secured the acquittal of several Black defendants in a Tennessee courtroom, white racists and local police joined forces in a plot to lynch him.²⁰⁹ The police arrested him on a bogus charge and took him to a river bank where a lynch mob waited with a rope over a tree.²¹⁰ Marshall's co-counsel helped thwart the scheme and helped Marshall get out of town by using a decoy car as a deception.²¹¹

So, Fred Gray and his colleagues faced very significant risks to their own and their families' lives and property. However, those extra-legal, violent strategies did not succeed in stopping those courageous lawyers. Nor did the other challenges with which their adversaries presented them.

B. Legal Threats

Officials sometimes turned to the legal system in an effort to remove civil rights lawyers from the movement, especially in the case of Fred Gray. In her Foreword to the 1995 edition of Fred Gray's *Bus Ride to Justice*, Professor Darlene Clark Hine suggested that:

Though Gray largely operated behind the scenes, the white governing officials nevertheless knew with whom they were dealing. Ex-Alabama governor and extreme segregationist John Patterson confided in an interview decades later that if any of the state-sanctioned maneuvers to remove Fred Gray from the city had worked then, the movement for desegregation perhaps could have been stalled or put on hold for a generation or more.²¹²

John Patterson served as Alabama Attorney General from 1955 to 1959 and as governor of the state from 1959 to 1963.²¹³ In both offices, he led the effort to defeat the Civil Rights Movement in the state.²¹⁴ As a lawyer, he turned to legal strategies to pursue that objective by trying

209. WILLIAMS, *supra* note 83, at 139–41; *see also* GILBERT KING, *DEVIL IN THE GROVE: THURGOOD MARSHALL, THE GROVELAND BOYS, AND THE DAWN OF A NEW AMERICA* 13–20 (2012) (noting that white racists continually threatened to lynch Thurgood Marshall throughout his time in Tennessee).

210. WILLIAMS, *supra* note 83, at 140.

211. *Id.* at 141.

212. Hine, *supra* note 2, at xiii.

213. HOWARD, *supra* note 37, 48–65, 140–49. *See* Carl Grafton & Anne Permaloff, *John M. Patterson (1959–63)*, *ENCYCLOPEDIA OF ALA.* (Jan. 15, 2008), <http://www.encyclopediaofalabama.org/article/h-1431> [<https://perma.cc/L7MG-NTPE>] (last updated Sept. 30, 2014).

214. Rubinowitz, *supra* note 3, (manuscript at 3–7).

to remove key civil rights actors from the scene.²¹⁵ While it is not clear how much Patterson was involved in the legal strategies designed to remove Fred Gray, he certainly had a direct hand in working against the Civil Rights Movement.

Alabama officials, possibly including Patterson, aggressively used legal and administrative strategies to attempt to remove Fred Gray from the movement. The two main approaches were charging him with barratry—both as a criminal prosecution and an attempted disbarment—and attempting to remove Gray’s ministerial exemption and draft him into military service.²¹⁶

In 1956, during the Montgomery Bus Boycott, Fred Gray faced his first attacks from the state. In an effort to remove Gray from the movement, Alabama officials drew on a tactic that had been successful a decade earlier. In that 1945 incident, Arthur H. Madison, a Black Alabama-born lawyer, lost his license because of his civil rights activities.²¹⁷ On a visit to his home state from New York, he attempted to help Black citizens register to vote.²¹⁸ As a result, he was arrested under a state misdemeanor barratry statute, which prohibited lawyers from representing individuals without their consent.²¹⁹ Madison appealed the denial of the right to vote of eight Blacks; but “five [of the eight Blacks] made affidavits that they had not employed Madison or authorized him to take the appeals.”²²⁰ As a result, Madison was disbarred, left the state, and returned to his law practice in New York.²²¹ Officials had accomplished their purpose of removing a key lawyer from challenging the racial status quo.

215. *Id.* (manuscript at 7–20).

216. Officials’ efforts to remove Gray from the scene are a sign that they viewed him as a key player in sustaining the bus boycott.

217. J. CLAY SMITH, JR., *EMANCIPATION: THE MAKING OF THE BLACK LAWYER, 1844–1944*, at 275 (1993); GRAY, *supra* note 2, at 333; THORNTON, *supra* note 22, at 28, 31, 85, 436, 589 n.15.

Madison had earlier moved to New York, where he had established a lucrative practice. Cochran, *supra* note 145, at 29–30.

218. Cochran, *supra* note 145, at 30.

219. SMITH, *supra* note 217, at 275.

220. *Id.* As with Fred Gray, it is likely that whites’ pressure led those five to sign the affidavits. In this case, they were apparently threatened with being fired from their teaching jobs unless they signed affidavits that they had not retained Madison to represent them. Cochran, *supra* note 145, at 30.

Arthur Shores represented Madison in his appeal. *Id.* at 31.

221. SMITH, *supra* note 217, at 275. He had challenged unsuccessfully the constitutionality of Alabama’s registration law. Alabama Senator Lister Hill was determined to terminate Madison’s efforts to register Blacks and pressured effectively for his disbarment. *Id.*

When Fred Gray filed *Browder v. Gayle* in federal court, challenging Alabama's state and local bus segregation laws, state officials deployed the tactic again. Gray represented a half dozen women who served as plaintiffs in the case.²²² One of those plaintiffs, Jeanetta Reese, was an employee of a high ranking Montgomery police official.²²³ After being interrogated by her employer and other officials, as well as receiving intimidating phone calls and harassment for being a plaintiff in the lawsuit, Mrs. Reese disavowed any knowledge of the lawsuit and any agreement to serve as a plaintiff in it.²²⁴ Opponents of the boycott had pressured her to the point that she thought she would be killed if she did not recant.²²⁵

Local officials used Mrs. Reese's statements as the basis for indicting Fred Gray under Alabama's barratry statute.²²⁶ The state claimed that Gray was representing Mrs. Reese without her permission, which is a misdemeanor.²²⁷ More importantly, a conviction would also be grounds for automatic disbarment.²²⁸

222. GRAY, *supra* note 2, at 75–96, 333–34; *Browder v. Gayle*, 142 F. Supp. 707 (M.D. Ala. 1956).

223. GRAY, *supra* note 2, at 81.

224. *Id.*; Bayard Rustin, *Montgomery Diaries* (Feb. 22, 1956), in *DAYBREAK OF FREEDOM: THE MONTGOMERY BUS BOYCOTT*, *supra* note 31, at 166; Donald T. Ferron, *Report on MIA Mass Meeting* (Feb. 1956), in *DAYBREAK OF FREEDOM: THE MONTGOMERY BUS BOYCOTT*, *supra* note 31, at 175.

225. Rustin, *supra* note 224, at 166; BRANCH, *supra* note 7, at 167, 177.

226. GRAY, *supra* note 2, at 81. Barratry is the practice of stirring up litigation in an attempt to harass. See Randall Kennedy, *Martin Luther King's Constitution: A Legal History of the Montgomery Bus Boycott*, 98 *YALE L.J.* 999, 1028 n.181 (1989) (“Gray was accused of including a woman as a plaintiff in a lawsuit without her authorization.”); LEE & SHORES, *supra* note 1, at 112. David Garrow referred to the case against Fred Gray as a “trumped up charge.” GARROW, *supra* note 45, at 63–64.

During this period, many southern states passed increasingly stringent barratry laws. They attempted to keep organizations like the NAACP and LDF from soliciting clients to facilitate litigation challenging the Jim Crow regime. As a result, a number of Civil Rights lawyers faced the threat of disbarment in southern states. See CARTER, *supra* note 101, 147–48 (2005) (discussing how lawyers employing the NAACP's method of finding clients were operating under the threat of disbarment).

227. GRAY, *supra* note 2, at 81; BRANCH, *supra* note 7, at 167.

228. See GRAY, *supra* note 2, at 81 (“The state statute under which I was indicted called for automatic disbarment upon conviction.”); see also Entin, *supra* note 5, at 257 (“[A] county grand jury indicted him [Gray] for barratry—maliciously stirring up lawsuits—an offence for which he could have been disbarred.”).

Ultimately, the state indictment was dismissed for lack of jurisdiction because the *Browder* case was in federal court.²²⁹ Although it was not necessary to make the showing, Fred Gray demonstrated that the charges were frivolous, since he documented his client's having agreed to serve as a plaintiff in the case.²³⁰ Partially because Clifford Durr had alerted him about the barratry ploy, Gray had obtained written proof of Mrs. Reese retaining him, as well as photos and tape recordings demonstrating her wish to be included in the lawsuit.²³¹

Another effort to remove Gray also began in the immediate aftermath of his filing *Browder v. Gayle*, when Fred Gray's local draft board took action.²³² Gray had been a boy preacher and served as a pastor in a local church while he practiced law in Montgomery.²³³ The Selective Service statute provided an exemption from the draft for ministers, and Gray had always received such an exemption in the past.²³⁴ However,

229. GRAY, *supra* note 2, at 83.

230. *Id.* at 81. Clifford Durr had warned Gray to be careful with his plaintiffs, because officials could put pressure on them to lie about his representing them, thus enabling authorities to bring barratry charges. Durr indicated that he was aware of an earlier prosecution that had driven a Black lawyer from the state, likely referring to the Arthur Madison incident. *See* BRANCH, *supra* note 7, at 158–59.

Gray tried to keep a low profile during the planning process for what became the Montgomery Bus Boycott: "I had been a member of the Bar for just a little over a year, and if my involvement became known, they would probably accuse me of stirring up litigation. They might have disbarred me before I could even get started." Fred D. Gray, *Bus Ride to Justice: A Conversation with Fred Gray (Introduction by Jonathan L. Entin)*, 64 CASE W. RES. L. REV. 733, 745 (2014) [hereinafter Gray Lecture]. Gray also took precautions in his work because he anticipated the possibility of such a problem: "When we started the bus boycott, I wanted to be very careful to be sure that what I did was ethically correct. That way, the Bar would have no excuse to bring any disciplinary action against me." *Id.* at 746.

231. GRAY, *supra* note 2, at 81.

232. *Id.* at 77. Once again, Gray anticipated the challenge:

But I was expecting, at some point along the way, that they might have my draft board change my classification from a minister's classification Every time the draft board required me to make a submission of my work, I told them the religious work I was doing. They were [perfectly] satisfied with it until I filed the lawsuit challenging segregation and became involved in the bus boycott . . . would not have minded going into service, except that this reclassification had been for the purpose of stopping my activities with the Montgomery Bus Boycott.

Gray Lecture, *supra* note 230, at 746–47.

233. GRAY, *supra* note 2, at 77–78.

234. *Id.* at 77.

the local draft board reacted to his role in the bus boycott by revoking his exemption, making him immediately eligible to be drafted by changing his draft status to I-A, and ordering him to report for induction into the military.²³⁵ Gray immediately appealed the local board's decision to Selective Service headquarters in Washington.²³⁶ Agency head General Hershey overruled the local draft board and reinstated his exemption the day before Gray was scheduled to report.²³⁷ Once again, Gray's persistence and dedication enabled him to continue to serve the Civil Rights Movement.

C. Economic Costs

The civil rights lawyers in private practice faced two kinds of economic challenges.²³⁸ For some, civil rights cases risked the loss of paying clients and posed a great threat to the sustainability of their practice. Others received offers from their adversaries of economic benefits if they would forego their participation in the Civil Rights Movement.

Clifford Durr's experience exemplified the first problem. When he moved back home to Montgomery in 1951, he faced serious challenges in building a practice.²³⁹ The obstacles to getting white and Black clients differed, but both were serious. Durr had great difficulty securing and retaining white clients because of his reputation as a liberal and

235. *Id.* at 77–78. Decades later, Gray discovered that the state and county bar associations had also tried to get him drafted. *Id.* at 78–80; BRANCH, *supra* note 7, at 168.

236. GRAY, *supra* note 2, at 78; Gray Lecture, *supra* note 230, at 747.

237. GRAY, *supra* note 2, at 78. It is not clear why he overruled the local draft board. Fred Gray speculated that Hershey had some connection to Tuskegee, Alabama, as did Gray. *See id.* (noting that Gray later discovered Hershey did have a connection to Tuskegee).

The local board was so angered by the decision that it adopted a policy that it would not draft anybody until Gray was inducted. *Id.* They created a new classification, called F-G and said they would use it to exempt everyone until Fred Gray was drafted. *Id.*

238. Gray's northern colleagues were largely exempt from economic pressures. Some had staff positions with civil rights organizations like LDF or the NAACP. *See* Rubinowitz, *supra* note 2, at 529–35 (discussing the formation and functioning of the NAACP and LDF). Others received fees for their service on specific matters, such as some members of Martin Luther King, Jr.'s defense team in his 1960 perjury prosecution. *See* Edgar Dyer, A "Triumph of Justice" in Alabama: The 1960 Perjury Trial of Martin Luther King, Jr., 88 J. AFR. AM. HIST. 245, 251–52 (2003); Rubinowitz, *supra* note 3 (discussing the efforts of Martin Luther King Jr.'s defense team during his perjury trial).

239. SALMOND, *supra* note 2, at 157–58; DURR, *supra* note 94, at 250–53; BROWN, *supra* note 93, at 101.

integrationist and his involvement in civil rights cases.²⁴⁰ He downplayed his role in the bus boycott for several reasons, not the least of which was that if his participation became widely known, his fragile practice could have been ruined.²⁴¹ Although he worked behind the scenes with Fred Gray, white businessmen and professionals came to know of his sympathies with the boycott.²⁴² That also cost him business.²⁴³ Even potential clients who respected his stand on civil rights generally engaged white supremacist lawyers on the assumption that they would fare better in the segregationist courts.²⁴⁴

With respect to Black potential clients, Durr faced two kinds of problems. Relatively affluent Black clients often secured the services of better known white lawyers or the Black lawyers who set up their practice in the city.²⁴⁵ That left Durr with poor Black clients who he wished to serve; but they could not afford standard fees.²⁴⁶ The minimal fees he received reflected their financial situation.²⁴⁷ That made his practice precarious, at best. The typical small city legal business of matters such as wills and deeds “dried up.”²⁴⁸ As a result, he faced major problems in trying to maintain his practice. In November 1964, Durr closed his law office.²⁴⁹

Fred Gray and Arthur Shores faced economic pressures as well; but they came in a different form. When Gray returned to Montgomery after law school, he opened up an office.²⁵⁰ In the year before the bus boycott, Gray had a great challenge in obtaining clients and building a

240. BROWN, *supra* note 93, at 182; SALMOND, *supra* note 2, at 176–77, 181.

241. SALMOND, *supra* note 2, at 176. *See also* BROWN, *supra* note 93, at 149, 263 (Fred Gray discusses Clifford Durr’s role as a “silent partner” in many of his cases).

242. SALMOND, *supra* note 2, at 175–76; *see also supra* Section I.C (discussing Clifford Durr’s involvement).

243. BROWN, *supra* note 93, at 182.

244. *See, e.g., id.* at 151 (“An old friend . . . declined to hire Cliff for his Montgomery business because he needed ‘someone who stood better with the courts’; he ended up employing ‘the town’s best white supremacist lawyer.’”). Durr said that this kind of incident happened repeatedly. *Id.*

245. SALMOND, *supra* note 2, at 186.

246. DURR, *supra* note 94, at 251; BROWN, *supra* note 93, at 182. Those included cases against police for denying the rights of Blacks, thus pitting Durr against the local police. SALMOND, *supra* note 2, at 187; BROWN, *supra* note 93, at 183.

247. While he felt a “sense of duty and purpose” working on these matters, they did not provide the fees or the intellectual stimulation he desired. *Id.* at 182.

248. SALMOND, *supra* note 2, at 177.

249. *Id.* at 196; BROWN, *supra* note 93, at 250.

250. GRAY, *supra* note 2, at 28.

practice.²⁵¹ However, once the boycott began, he received offers of business and clients if he would drop out of civil rights work.²⁵² He was told he would have all the legal cases he could handle if he agreed not to file suits challenging segregation laws.²⁵³ Gray played such a key role from the time of the bus boycott that removing him could have had a very significant impact on the movement. Gray rejected those offers out of hand, since accepting them would have been antithetical to his mission of “destroying everything segregated [he] could find.”²⁵⁴

Similarly, the Ku Klux Klan and other white supremacists tried to “bribe” Arthur Shores to drop out of certain cases.²⁵⁵ Since threats did not work, they tried incentives.²⁵⁶ He too rejected the efforts to undermine his commitment to the cause.²⁵⁷

D. Social Costs

The Alabama lawyers and their families experienced two kinds of social costs—ostracism and enforced isolation. The very few white lawyers had to face widespread ostracism from the white community, including former friends. Fred Gray also encountered some ostracism as a result of his civil rights work. Similarly, in the early part of his career, Arthur Shores was ostracized by the white community.²⁵⁸ His civil rights work presented an unwelcome challenge to the racial status quo.²⁵⁹

Also, some family members experienced an enforced isolation because of the physical threats to them. Ostracism and isolation both fell especially hard on the lawyers’ children.

Social ostracism affected the rare white attorney deeply. Clifford Durr came from a white family that had been prominent in Montgomery for generations.²⁶⁰ The title of his wife Virginia’s autobiography, “Outside the Magic Circle,” captures the ostracism that the Durr family faced because most whites considered him a traitor to the race.²⁶¹

251. Entin, *supra* note 5, at 255; GRAY, *supra* note 2, at 28–31.

252. GRAY, *supra* note 2, at 73–74.

253. *Id.* at 74.

254. *Id.*

255. LEE & SHORES, *supra* note 1, at 144.

256. *Id.*

257. *Id.*

258. Cochran, *supra* note 145, at 131.

259. *Id.*

260. SALMOND, *supra* note 2, at 1–2; DURR, *supra* note 2, at 159.

261. See generally SALMOND, *supra* note 2, at 170–95 (discussing the effect on Durr’s social life and career due to his involvement in the movement); DURR, *supra* note 2, at 241–337 (explaining the effects of Durr’s career on church groups, neighbors, families, and the community). One author suggested that

When Durr agreed to join Fred Gray in representing the Black plaintiffs in the wrongful death suit against a white person, his actions set him apart from his family, his white friends, and the white community.²⁶² He accepted this role notwithstanding the consequences that were likely to follow.²⁶³ While Durr kept his involvement in the bus boycott to himself, he made clear his “sympathy for its aims.”²⁶⁴ That led to the family’s isolation from the white community.²⁶⁵ Boycott movement leader Jo Ann Robinson said that the Durr family became “martyrs to the boycott” who were scorned by the white community and socially ostracized.²⁶⁶

The Durr children suffered especially from the ostracism, as teachers and classmates treated them as children of disloyal parents.²⁶⁷ Since the family faced such hard times financially, they depended on friends’ assistance and scholarships to enable them to send their daughters to out-of-state boarding school so they would not continue to suffer those hardships.²⁶⁸

While ostracism hit the white lawyers hard, enforced social isolation had greater impact on Blacks. Once again, the Shores family had the worst of it. The routines of everyday life took a back seat to the demands of safety and security. Because of the physical dangers discussed

by 1950, Clifford Durr had made a commitment to live “outside the magic circle” of southern society, in which he was born. BROWN, *supra* note 93, at 88.

Fred Gray said that Clifford Durr “and his wife endured public scorn and social ostracism from prominent whites in the city for their sympathetic support and involvement in these [desegregation] lawsuits.” GRAY, *supra* note 2, at 45.

At the same time, Durr’s mother and other members of the extended family remained loyal to Clifford, Virginia, and their children, even though they strongly disagreed with their progressive ideas, especially their stance on race. DURR, *supra* note 2, at 241; BROWN, *supra* note 93, at 100.

262. See *supra* note 91 and accompanying text; SALMOND, *supra* note 2, at 171.

263. SALMOND, *supra* note 2, at 171.

264. *Id.* at 176; see also BROWN, *supra* note 93, at 149, 263 (describing Durr’s approach to his activism).

265. SALMOND, *supra* note 2, at 176.

266. *Id.* Durr later described himself as “a stranger down there among my own people.” BROWN, *supra* note 93, at 252.

267. SALMOND, *supra* note 2, at 176.

268. *Id.* at 177. Durr’s nephew, Nesbitt Elmore, was another one of the very few white lawyers who risked ostracism by supporting civil rights. GRAY, *supra* note 2, at 200. In 1953, he petitioned the school board for admission of some Black students who lived near a white school. *Id.* Gray characterized it as a very courageous act for a white lawyer in Montgomery. *Id.* The Elmore family endured severe criticism and harassment as a result. *Id.*

above, the Shores family took protective measures that isolated their daughters.²⁶⁹ While the girls preferred to walk home from school with their friends, their parents took them to school and picked them up each day.²⁷⁰ The girls could not give their phone number to friends, due to the frequent threatening phone calls.²⁷¹ Moreover, the girls' friends could not visit them freely at their house because of the danger of bombings or shootings.²⁷²

Thus, the Black and white lawyers and their families faced different kinds of social burdens. But none could escape the fact that the lawyers' involvement in civil rights work came at a serious price for their every-day social interactions.

E. Psychological Burdens: Stress, Anxiety, Fear, Grief, and Sadness

Just as the required courage discussed so far was on top of that required to navigate a racist legal system, the psychological tolls considered here were in addition to those that accompanied the legal work of challenging that system. There were many signs of anger and fear, accompanied by feelings of helplessness, anxiety, grief, and sadness that affected the lawyers and especially their family members.

For the Shores family—especially Arthur Shores's wife and daughters—the first bombing brought fears that stayed with them through the years, especially after a second bombing followed within two weeks.²⁷³ At first, Shores's wife Theodora was so frightened that she urged her husband to move the family to Michigan to escape these dangers.²⁷⁴ During the periods when guards protected their house, they left in the morning.²⁷⁵ Shores's wife stayed home alone during the day, and had great fear being by herself.²⁷⁶ Her chronic asthma spells got

269. LEE & SHORES, *supra* note 1, at 94.

270. *Id.* at 20, 147.

271. *Id.* at 19.

272. *Id.*

273. *Id.* at 44–45. For daughter Helen, her anger and fear began with the 1953 confrontation with the youth driving by the house shouting racial epithets. *Id.* That was the first of a number of incidents that “would test and mold my youth and finally drive me far away from Birmingham, Alabama for thirteen long years. Looking back, I now see that I stayed angry for a long time. Anger became the fabric of my life and being.” *Id.* at 22.

274. For years, she tried to persuade her husband to move away from Alabama's Jim Crow laws and the physical violence the family experienced. *Id.* at 16. Shores was born and raised in Alabama, and was committed to working on behalf of Black people there. *Id.*

275. *Id.* at 147.

276. *Id.*

worse, and there were times when she could hardly breathe.²⁷⁷ Moreover, their daughters had trouble sleeping, and one of them was so fearful that she kept a gun hidden in case of an attack during the night.²⁷⁸

When Constance Baker Motley stayed at the Shores' house, she experienced great fear of still another bombing.²⁷⁹ She reflected on the fact that the "house had been bombed on several occasions" and that there were armed men guarding the house:

It was the first time I had ever seen a real shotgun or machine gun. I had bought my son a toy shotgun for Christmas, so I knew what one looked like, but the real thing sent shivers up my spine. Although I tried very hard to do so, that night I could not sleep. Fortunately, when one is young, missing a night's sleep is easy.²⁸⁰

The bombing of the Shores house also caused great grief and sadness. One of the bombs not only killed the daughters' beloved little dog; it exploded the dog into pieces scattered around the yard.²⁸¹ The other family dog was never seen again after the explosion.²⁸²

Aside from the physical dangers, social pressures took a great psychological toll. The ostracism that the Durr family endured in Clifford Durr's home town created great trauma as well. When the

277. *Id.*

278. *Id.* at 19.

279. *Id.* at 23–45. Barbara wrote that "My sister Helen and I lived our childhood in unexpressed fear, always waiting for violence to erupt. Fortunately, we simultaneously felt loved and protected by our parents, friends, and extended family." *Id.* at 27. She also identified times of intense fear of violence, such as the early and mid-1950s when her father, Thurgood Marshall, and Constance Baker Motley challenged the exclusion of Autherine Lucy from the all-white University of Alabama. *Id.* at 27. See *supra* note 57 and accompanying text (discussing Lucy v. Adams).

280. MOTLEY, *supra* note 181, at 123. However, she appeared otherwise to Arthur Shores's daughter Barbara, who said that "Motley was a big woman, quiet, stoic, strong, and courageous. I sensed no fear in her at all" LEE & SHORES, *supra* note 1, at 146.

Motley also experienced great distress when she visited her clients, Dr. King and Ralph Abernathy, in a rural Georgia jail where they occupied a six-foot cell in one hundred degree heat: "The stench was so great I just jumped back out of the door. I finally got up enough courage to go on it I never believed it was possible for things like that to happen and nobody do anything about it." Motley Documentary, *supra* note 200. In her autobiography, Motley described the incident in more detail and concluded: "My visit to the jail was the most horrendous experience of my life." MOTLEY, *supra* note 181, at 159.

281. LEE & SHORES, *supra* note 1, at 34.

282. *Id.* It is assumed that the dog ran away after the bombing. *Id.*

family returned to his home town of Montgomery to live in 1951, Durr tried to build a law practice and keep a low profile so he could fit into the legal profession there.²⁸³ However, within a few years, his sympathies became more apparent.²⁸⁴ Many of the Durr's friends and acquaintances abandoned them when they discovered that the Durrs supported the civil rights activists.²⁸⁵ Their stress and loneliness was mitigated by their having some ongoing relationships, a small group of white friends who shared their sympathies.²⁸⁶

For Durr himself, his deep emotional attachment to the South came in conflict with his views about the Constitution and the immorality of racial discrimination.²⁸⁷ As his wife suggested, "it was a very strange kind of a double life that we lived."²⁸⁸ That added to the toll that the ostracism took on both of them.²⁸⁹

283. BROWN, *supra* note 93, at 103.

284. Durr's passion for justice led him to take on police brutality and loan shark cases on behalf of Black victims. That also alienated him from many of his old friends. DURR, *supra* note 2, at 306.

285. *Id.* at 305.

Durr referred to himself as "an alien" among his fellow southerners in Montgomery. BROWN, *supra* note 93, at 102. As with Arthur Shores's wife, Virginia Durr had times when she wanted to leave Alabama. She thought that she made life miserable for her husband with her efforts to get him to leave, but Clifford Durr considered Alabama his home and did not consider offers from other parts of the country seriously. He loved Alabama and refused to leave. As a result, the ostracism was more painful for Virginia Durr than for her husband. DURR, *supra* note 2, at 288, 335.

When the newspaper reported on his car being burned, their phone rang all night long with nothing but heavy breathing. They did get some sympathetic calls, as well. DURR, *supra* note 196, at 301; BROWN, *supra* note 196, at 187.

286. Clifford Durr maintained his active membership in two dining and debating clubs. And they had a small group of white friends who shared their sympathies, with whom they could relax and be themselves. SALMOND, *supra* note 2, at 179.

287. BROWN, *supra* note 93, at 151.

288. DURR, *supra* note 2, at 324.

289. Perhaps the greatest ostracism occurred as a result of the publication of an article in the *New Yorker* that used false names but revealed the couple's frank opinions about segregation in what they thought was an off the record interview. SALMOND, *supra* note 2, at 180–81. The article also added to the decline of Durr's legal practice. *Id.* at 181.

Virginia Durr said that "Cliff never got bitter, but he did get disappointed and disillusioned." DURR, *supra* note 2, at 324.

Durr even stopped going to the church that his family had attended and sat in the same pew for many generations because church officials barred the doors on Sunday to make sure Black people could not get in. The church experience was extremely hurtful to Durr, because it seemed like such a

The Durrs' youngest two daughters seemed to suffer the most from the ostracism.²⁹⁰ The hostile actions of their classmates and teachers made attending school a very painful experience.²⁹¹ Tilla took the brunt of the hostility, experiencing constant harassment about her dissident family from classmates and teachers: "the boycott made life simply intolerable for her She was desperately unhappy."²⁹² Finally, both girls refused to go to school, and their parents sent them to boarding school in the North.²⁹³

The girls' parents suffered as well. Clifford had times of becoming despondent.²⁹⁴ He was "deeply distressed" by the fact he could not make a living or pay for his daughters' education.²⁹⁵ All of that took a great toll on his pride.²⁹⁶ At the same time, Virginia Durr "was desperately unhappy living among people who disliked her."²⁹⁷

Virginia Durr said "it sometimes seems like a dream that we were once respected, honored and sought after members of society."²⁹⁸ She later reflected on the extreme toll the ostracism took on her family: "I look back on it now and wonder that we stayed sane."²⁹⁹

It is not surprising that all of the dangers and threats would take a psychological toll on the lawyers and their families. While the challenges

repudiation. He never attended another church or joined another one. *Id.* at 295.

290. DURR, *supra* note 2, at 288. Clifford Durr's biography focused on the impact on Tilla, suggesting that Lulah suffered some bad experiences but was too young to have a full appreciation of what was going on. SALMOND, *supra* note 2, at 176–77.

291. SALMOND, *supra* note 2, at 177; DURR, *supra* note 2, at 288.

292. SALMOND, *supra* note 2, at 177. In order to ensure that she would have a normal teenage experience, Clifford and Virginia sent her to a boarding school in Massachusetts. Later, as Lulah faced ostracism as well, they also sent her away to school. *Id.* at 187.

293. DURR, *supra* note 2, at 288. Virginia Durr said that their experience was particularly hard on the children. "They were so miserable." *Id.* at 335.

294. SALMOND, *supra* note 2, at 178–79.

295. *Id.* at 179.

296. *Id.*

297. *Id.* at 187.

298. SALMOND, *supra* note 2, at 179. Virginia Durr chose to rebel against the racist regime of the South. In commenting on her autobiography, Studs Terkel observed that she had abandoned privilege and challenged the way of life: "Ostracism, bruises of all sorts, and defamation would be her lot." DURR, *supra* note 2, at v.

299. DURR, *supra* note 2, at 324. She noted that she and her husband had each other to help get through this period, along with their children—although none were at home—and support from some friends in the North. *Id.* at 324.

were often different for Black and white lawyers, they were all serious and pervasive for all of them and their families.

CONCLUSION

Fast-forwarding several decades to the late 20th century and early 21st century reveals other courageous civil rights lawyers in Alabama. Bryan Stevenson heads the Montgomery-based Equal Justice Initiative (EJI), which challenges racial injustice and advocates for equal treatment in the criminal justice system.³⁰⁰ In his 2014 book “Just Mercy,” he recounted his post-conviction representation of a Black man convicted of killing a white woman and sentenced to death.³⁰¹ His client had numerous alibi witnesses that placed him at his home at a church fundraiser at the time the murder took place, and the only evidence against him was a thoroughly implausible account fabricated by an informant induced by the prosecutor.³⁰²

Stevenson and his colleagues began to hear threats on their lives because angry white people thought that they were trying to help get a murderer out of prison.³⁰³ The organization received multiple bomb threats at the office, and Stevenson received death threats at home.³⁰⁴ It was tempting for Stevenson to ignore those threats; but not long before that time, a Georgia civil rights lawyer was murdered when a bomb sent to his office exploded.³⁰⁵ And other bombs were sent to civil rights offices and judge’s chambers in the South, as well.³⁰⁶ So when a

300. *See About EJI*, EQUAL JUST. INITIATIVE, <http://eji.org/about-eji> [<https://perma.cc/P5R9-WN66>] (last visited Mar. 2, 2017) (describing the history and purpose of the organization).

301. BRYAN STEVENSON, *JUST MERCY: A STORY OF JUSTICE AND REDEMPTION* (2014). In a uniquely cruel move, the police put him on death row shortly after they arrested him. *Id.* at 52–53.

302. *Id.* at 50–52.

303. *Id.* at 146, 185, 203–04.

304. *Id.*

305. *Id.* at 203.

306. *Id.*

Similarly, the older Southern Poverty Law Center (SPLC), also in Montgomery, faced continuing threats of violence. *See Our History*, SOUTHERN POVERTY LAW CTR., <https://www.splcenter.org/our-history> [<https://perma.cc/Z6K8-LXF6>] (last visited Mar. 2, 2017). The organization has focused, among other things, on trying to put white supremacist and other extremist organizations out of business. *Id.* That mission, especially with the organization’s successes in achieving its goal, makes it vulnerable to retaliation. In 1983, three Klansmen firebombed SPLC’s first offices. *See SPLC History: 1980s*, SOUTHERN POVERTY LAW CTR., <https://www.splcenter.org/about-us/our-history/splc-history-1980s> [<https://perma.cc/Z6K8-LXF6>] (last visited Dec. 29, 2016) (providing a detailed timeline of the SPLC throughout

bomb threat came, EJI staff called the police, evacuated the office, and waited outside while the police took bomb sniffing dogs through the building and found no bomb.³⁰⁷ After that, for weeks, the staff took mail packages to the federal courthouse for X-ray screenings before opening them.³⁰⁸

Some scholars suggest that racial progress has been intermittent, historically, and dependent on the confluence of several favorable factors.³⁰⁹ In between, substantial backsliding has occurred.³¹⁰ With periodic renewed polarization around racial issues, civil rights activists risk facing greater dangers as they pursue their goals. That is likely the case for the lawyers that represent them, as well. The courage that the lawyers discussed here demonstrated can provide a model for those that follow in their footsteps. With the uncertain racial implications of the 2016 election, it is clear that the need for courageous lawyers remains. This is not just a story that is safely in the distant past. Fred Gray and his courageous colleagues set a very high bar for their 21st century counterparts.

the 1980s); Solicitation letter from Morris Dees, Founder of SPLC, to Leonard Rubinowitz, author, (Oct. 3, 2016) (on file with author).

Extremists posed an ongoing threat to the SPLC's building and staff. One 2016 threat, among many others, claimed that: "We are going to blow you . . . straight to hell in the near future for all of your lies, propaganda, and hate that you spew out." *Id.* The letter also referred to an FBI warning that an organization was planning on targeting the founder and another employee. Both of them "were forced to take [their] family members to a safe location." *Id.* He also reported that more than two dozen extremists had been jailed because of plots to kill staff or attack the building. The letter was seeking contributions to pay for a high-tech security system and expert security officers. *Id.* As a result, a significant part of the organization's budget went to security for the building and the staff. *Id.*

307. STEVENSON, *supra* note 301, at 203–04.

On one of the calls to the office threatening to bomb the office, the receptionist said to the caller threatening to bomb the office: "Why are you doing this? You're scaring us." The caller responded "I'm doing you a favor. I want y'all to stop what you're doing. My first option is not to kill everybody, so you better get out of there now! Next time there won't be a warning." *Id.*

308. *Id.* at 203.

In a conversation with Montgomery activists Rosa Parks, Johnnie Carr, and Virginia Durr, Ms. Carr responded to Stevenson's explanation of the challenges he faced: "That's why you have to be brave, brave, brave." The need for courage continued just as when Rosa Parks had refused to give up her bus seat decades earlier. *Id.* at 291–93.

309. *See generally* PHILIP A. KLINKNER & ROGERS M. SMITH, *THE UNSTEADY MARCH: THE RISE AND DECLINE OF RACIAL EQUALITY IN AMERICA* (1999) (providing three factors that, when concurred, allows for racial progress).

310. *Id.*