THE MYSTERY OF RACE IN AMERICA

Memoir of a Former DOJ Civil Rights Attorney

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"There's going to have to be a coalition of conscience, and we aren't going to be free here in Mississippi and anywhere else in the United States until there is a committed empathy on the part of the white man." Dr. Martin Luther King speech in Yazoo City Mississippi. June 21, 1966, as quoted in King A Life, Jonathan Eig (2023).

"I am your warrior, I am your justice…For those who feel wronged and betrayed, I am your retribution." Donald Trump, Waco, Texas. March 25, 2023.

PROLOGUE

The enduring racial divide in our country will likely get worse, much worse now, that Donald Trump has been elected to a second term as President of the United States. In the space of little over four months since taking office, President Trump and his MAGA warriors led by Elon Musk, the world's richest person, have eviscerated most of the 1960's civil rights laws and enforcement structures long sought by Dr. King by throwing them "into the wood chipper" as Musk described this process. He and President Trump are engaging in a full out assault on DEI "diversity, equity and inclusion" programs claiming they represent discrimination against whites. With the stroke of a pen, Trump eliminated Presidential Executive Order 11246 which was signed into law by President Johnson requiring government contractors to ensure their employment practices were fair and open to all persons regardless of race. As a country, we are allowing racism, both overt and subtle, to surge back into the center of our lives with few legal and social structures left to resist it. Indeed, many prominent MAGA activists now feel free to openly express their racism, particularly towards blacks and immigrants. According to the Wall Street Journal, a 26 year-old member of Elon Musk's young DOGE (Department of Government of Efficiency) tech bros working to root out corruption and inefficiency inside the Treasury Department reportedly said on his social media site "just for the record, I was racist before it was cool "and, "you could not pay me to marry outside my race." He was asked to resign but was reinstated shortly thereafter.

How did we get here? We began to lose control of a rational dialogue on race with the rise of the Tea Party movement after the election in 2008 of our Nation's first black president, Barack Obama, and continued after his reelection in 2012. The Tea Party opposed almost every one of his policies worrying that a black man might lead the country toward socialism. He was pictured as a threat to individual freedoms and our Constitution and many believed he was not even born in the United States, a false meme that Donald Trump seized on to launch his first bid for the presidency. Obama's support for abortion rights, the rights of immigrants and stronger enforcement of our civil rights laws would, in the view of many whites, mean more people of

color and fewer of them to hold back the tide of cultural change. These race-based totems became a central theme of both Trump presidential campaigns.

Why was he so successful? Why have his appeals to race taken hold in the hearts and minds of so many Americans seemingly so quickly? Empathy for the enduring inequities suffered by blacks and people of color in our country, so vital for any consensus on race, seems to have been completely snuffed out by the 2024 Presidential election. During Trump's first administration, nationwide protests over George Floyd's murder in Minneapolis at the hands of a white police officer appeared to galvanize much of the country, particularly young people on college campuses, to speak out against racism not only in police departments but in many other aspects of society as well. It seemed we might yet again turn a corner on racism in our country. Yet, it failed spectacularly They were deemed radicals and traitors on right wing media which had become the main source of information for many Americans. Once caught in that churn, they seemed virtually defenseless.

For me, this is part of the enduring mystery of race and racism. The intent of this memoir is to examine this mystery. I am 82 years old and for virtually my entire life I have witnessed racial fears and hatred up close and personally as a white person. It is from this perspective that I address this issue.

I believe it helpful to first set forth a historical background of civil rights and race relations after the Civil War during the period of the first reconstruction in the nineteenth century, followed by a period of great progress during the period in the mid twentieth century that I refer to as the Second Reconstruction.

I then turn to my life experiences. Racism is a very dark place and it is nothing new to me. I experienced it throughout my life and I first discuss my years growing up in the Deep South and then my years in college and law school. I then turn to the heart of this memoir -- my years as a litigator in the Civil Rights Division of the Department of Justice and with a public interest law group, the Washington Lawyers' Committee for Civil Rights and Urban Affairs. Part of this discussion takes note of the critical role of the federal judiciary.

The discussion of my legal work is divided into separate sections concerning my time in the Employment, Voting and Housing Sections of the Civil Rights Division and then my post Division work. In these sections there is an in depth discussion of the six most important civil rights cases that I litigated. Cases such as these illustrate the depth and multifaceted ways that racism has coursed through the bloodstream of white America, particularly white men. It includes a discussion of the early rise of the Federalist Society inside the Department of Justice in the 1980's while I was there and how, looking back, it surreptitiously began to change the narrative about race relations by casting whites as the victims of reverse discrimination. From there it became a powerful force seeking to turn race into a powerful political wedge issue that reached its zenith in the recent presidential election.

In the Epilogue, I try to look forward and explain a possible way for our country to get out of the current mees we are in. Rekindling a sense of empathy for the disadvantaged is critically important, as Dr. King urged. That will take long, hard work by an engaged citizenry beginning at local levels of our politics that have now become so toxic.

I. HISTORICAL BACKGROUND

- The First Reconstruction

The Union victory in the Civil War resulted in what were supposed to be changes to the established order to protect the rights of freed slaves. Our Constitution was amended - the 13th Amendment abolished slavery, the 14th Amendment purported to provide equal rights for freed slaves, and the 15th Amendment purported to ensure their voting rights. Added to these protections were landmark federal civil rights laws – 42 U.S.C. Sections 1981, 1982, 1983 intended to ensure that these changes to the Constitution would be enforced in courts throughout the United States. In short, Dr. King's vision for America was supposed to have occurred 100 years before his death. However, these fundamental changes to the fabric of our society were met with massive, organized resistance by many whites, not only in the South but other parts of the country as well. In their view, these so-called Reconstruction Laws were direct threats to our Nation's fundamentally Christian culture and white dominance. A return to the old order was necessary to maintain the proper functioning of society. So - it happened.

The First Reconstruction period lasted a little more than a decade and offered a false glimmer of racial progress. African Americans exercised their newly won right to vote by electing blacks to numerous state and local government positions throughout much of the South. They were allowed to freely sell their labor for just wages and began to buy their own land. Federal troops were sent to put down rebellious whites who sought to interfere with the exercise of those rights. The Department of Justice was established as a separate government agency to enjoin the deprivation of their rights in court. But this brief burst of freedom occurred only because the federal government under President Ulysses Grant and the Justice Department used military force and court orders to protect black rights.

Those protections were short-lived. The political will to sustain Reconstruction effectively ended with the Compromise of 1877 in which the disputed election of Republican Rutherford Hayes, President Grant's successor, was allowed to go forward by southern Democrats in return for the withdrawal of federal troops from their states. This effectively crippled the power of the Justice Department to enforce the Reconstruction era civil rights statutes. At the same time, our Nation became distracted by the Industrial Revolution and westward expansion.

The dismantling of Reconstruction was also aided and abetted by the Supreme Court. With the death of Chief Justice Salmon Chase in 1873, who was appointed by President Grant to oversee the legal architecture of Reconstruction, the court was left in the hands of judges who believed strongly in states' rights which the Confederacy had long used to justify slavery. It did not take long for the process of retrenchment to begin. It started with a seemingly benign set

of cases out of Louisiana that reached the Supreme Court in 1873 shortly before Chase's death called The Slaughter House Cases, 86 U.S. 36 (1873). They involved groups of animal slaughter houses in New Orleans who complained that a recently enacted city ordinance requiring all animal slaughtering occur at one location and by one company located outside the city violated their constitutional rights. The ordinance was intended to protect city residents from the many diseases which were rampant at that time caused by animal slaughters. There is an old axiom among lawyers that "bad facts make bad law." However, that would trivialize the immense tragedy for Reconstruction that followed the court's decision in these cases.

In the Slaughter House cases the companies argued that the recently enacted Fourteenth Amendment that purported to protect "the privileges or immunities" of United States citizens from the denial of due process or equal protection of the laws protected them because the slaughter house laws were passed without regard to their rights under the amendment. On its face this appeared to be an odd claim to raise under an amendment intended to protect the rights of freed slaves. To avoid that anomaly the court engaged in a type of textualism all too familiar to critics of today's conservative Supreme Court. In a 5-4 decision with Justice Chase in dissent, the court separated the privilege and immunities of United States citizens from the due process and equal protection clause of the amendment. The rights of United States citizens were limited to those unique to federal citizenship such as being protected from arbitrary infringement of their rights by foreign governments. Their rights to due process and equal protection of the laws were to be determined under state law. As such, the slaughter houses claims did not warrant protection under the Constitution according to the Court majority.

Once the rights to due process and equal protection of the laws were decoupled from the rights of U.S. citizenship, the door was forced wide open for some of the most egregious violations of the rights of freed slaves imaginable, all done under the banner of state sovereignty. Just three years later in United States v, Cruikshank, 92 U.S. 542 (1876), another 5-4 decision coming out of the state of Louisiana, the Supreme Court vacated the convictions of members of a white mob who slaughtered dozens of blacks and several whites who were guarding a courthouse in the town of Colfax in Grant Parish after a contested gubernatorial election. Later that night another 50 blacks were killed after being detained by the mob. It became known as the Colfax Massacre which the historian Eric Foner has described as one of the worst during the Reconstruction period. Seven white members of the mob were charged and convicted of violating the Enforcement Act of 1870 aka the KU Klux Klan Act, which made it a federal crime under the Fourteenth Amendment to engage in acts of violence against blacks. Citing the Slaughter House cases, the court held that the due process and equal protection clauses of the Fourteenth Amendment which the Enforcement Act sought to establish applied only to state actions and not the actions of individuals.

Shortly thereafter in the Civil Rights Cases 109 U.S. 3 (1883), the court essentially eviscerated the protections afforded black Americans under the Civil Rights Act of 1875 which was intended to protect their rights as citizens to freely access all places of public accommodation, such as hotels, restaurants and rail cars. Following Slaughter House and

Cruikshank, the court held the denial of those rights were merely “private wrongs” that did not involve direct state action and, as such, were beyond the control of Congress.

Now given free reign by the Supreme Court, white vigilante groups such as the Ku Klux Klan were emboldened to seek a return to white supremacy though violence and intimidation of freed slaves. Middle-and upper- class whites consisting of doctors, lawyers, teachers, and business interests formed White Citizens Councils to ensure that the races would remain segregated in all walks of life. Black voting rights were significantly curtailed by clever maneuvers such as all white primaries, poll taxes, literacy tests, and at large elections which negated the ability of black voters to elect their preferred candidates. The courts at that time did not views these actions as intentionally directed at free slaves but were rather motivated by good government concerns. Efforts by blacks to gain equal access to jobs, schools, housing, public accommodations, and transportation were met by white resistance at every turn. A system of rigid widespread racial segregation enforced through the infamous Black Codes took hold throughout the South and began to take root in many northern cities as well in response to black migration. In Plessy v. Ferguson 163 U.S. 537 (1896) the Supreme Court drove the final nail into the promise of Reconstruction by enshrining the Black Codes into law under the “separate but equal” doctrine. Southern politicians called this their Redemption. It lasted over 70 years encompassing multiple generations including the one I was born into in 1943.

In the eyes of much of white America at that time, this was our country as it was intended to be since its founding. Lynchings and other shocking acts of violence directed at African Americans in their homes and their communities were simply tolerated as the price for retaining white supremacy. The more genteel white citizens councils simply looked the other way and no one suggested any fundamental changes to the social order. Indeed, many whites viewed the Black Codes as an ideal situation for blacks since they could have their own schools, stores, churches, newspapers, and railroad cars. This was life as the Founders intended. Negroes could hardly have lived better in Africa anyway. How could this possibly be racist?

- The Second Reconstruction

> “Freedom is not enough. You do not wipe away the scars of centuries by saying: Now you are free to go where you want, and do as you desire, and choose the leaders you please. You do not take a person who, for years, has been hobbled by chains and liberate him, bring him to the starting line of a race and then say, ‘you are free to compete with all the others’ and still believe that you have been completely fair.” Former President Lyndon Johnson commencement address at Howard University. June 4, 1965

The civil rights movement of the 1960’s led by Dr. King spurred the conscience of our Nation and, for a brief period, we came to recognize the wrongs and the view of an inferior status of black Americans that had plagued our country since the Civil War. Both Democrats and Republicans came together in that moment to address this problem, a union that seems almost inconceivable today. As a Nation we enacted the first civil rights laws since the Civil War to redress the grievances of black Americans in employment, education, housing, public

accommodations, policing and other areas that had existed since slavery. Much of our country seemed to recognize that the time had come for drastic change in how not only racial minorities but also women were adversely viewed and treated in the private and public sectors of our economy.

And we made tremendous progress largely as a result of what I call the “Second Reconstruction.” That period stemmed from the passage of the Civil Rights Acts of the 1960’s through the 1970’s and the beginning of the Reagan administration in 1980. It was led by the Justice Department’s Civil Rights Division where I worked along with the Equal Employment Opportunity Commission (EEOC) and the Department of Labor - agencies now under attack for that work by the current Administration. Civil rights organizations such as the NAACP Legal Defense Fund, the Washington Lawyers Committee, and the ACLU joined those efforts along with many private law firms, particularly newly emergent predominantly black law firms such as Ferguson, Chamber, and Sumpter. Julius Chambers became a role model for civil rights litigators. Those sustained efforts yielded the obvious changes we see today. Just about every commercial on broadcast television and other media today shows African Americans and mixed-race couples enjoying every imaginable good or service that our economy produces. Minorities and women now play starring roles in movie, television, and internet streaming programs and have made significant strides climbing ladders of employment opportunities in government and the private sector.

They have been elected to public office in numbers that would have seemed unimaginable when the Voting Rights Act was passed in 1965. The 1954 decision in Brown v. Board of Education ended de jure segregation of schools and two important Supreme Court decisions in 1968 and 1971 spurred significant racial integration of our public schools. Many whites got to know black people in individual social settings such as civic and volunteer associations, at restaurants, and even golf courses.

In view of this progress, one would think that by now we would have gotten beyond our racial divide. So why do so many whites appear to remain viscerally upset with race relations in our country and why has there been so much backsliding in our race relations? Signs of retrenchment were evident from the beginning. Shortly before his assassination in March 1968, Dr King gave a sobering, soul searching interview to NBC news on the state of race relations in America. He said the passage of the Civil Rights Acts of 1964 and 1965 provided African Americans with some basic sense of human dignity. The challenge ahead, he said with a sense of dread, was to ensure that whites saw them the same way. Shortly after that interview he traveled to the city of Memphis to support striking garbage workers, who were virtually all black because of historic racial segregation. They were demanding increased pay and better working conditions. In other words, to be treated with some basic human dignity and empathy. Many whites did not see it that way and Dr. King was met by a white supremacist, James Earl Ray, who killed him while he was standing on the balcony of his motel.

As explained in this memoir, the struggle for empathy to overcome hate in race relations is still with us and has only gotten worse since the Second Reconstruction of the 1960’s and

1970's. Dr. King admonished us in his 1966 Yazoo City Mississippi address that whites can only remove that stain of racism through a full understanding of the black experience. That is what North Charleston's first black police chief, Reggie Burgess, said in 2023 following the murder eight years earlier of Walter Scott, an unarmed black man who a white city police officer shot in the back following a stop for having a defective tail light. "I am trying to change the perception of the [police department] and part of that is getting my force to see the humanity in our community and to imagine what it might feel like for a community member to be mistreated." New York Times, March 17, 2023.

That is the ultimate goal of this memoir and to understand my efforts in this struggle, I now turn to my personal life and experiences as a civil rights attorney.

II. MY EARLY LIFE EXPERIENCES WITH RACISM

In June 1957 I was living a cloistered, middle -class life in Indianapolis, Indiana. I had just graduated from the Immaculate Heart of Mary Catholic grammar school near where we lived in an all-white neighborhood on the northside of the city. My father came home one evening from his sales job at a paper distributer and announced that our family would be moving to Tuscaloosa, Alabama in two weeks. He had been offered a job as Vice President of Sales at Gulf States Paper Company, the largest private employer in the city at that time and owned by a politically powerful and prominent white family. It would result in a significant salary increase so it was not a hard decision to make from that standpoint. My dad had already arranged for a house for us to live in, and we began to pack immediately.

When we arrived in Tuscaloosa, the first thing I noticed was the powerful stench emanating from the enormous Gulf States mill situated along- side the Warrior River just outside the city. When there was little breeze, the smell of hydrogen sulfide became suffocating and an ominous warning that living here would be much different than where we had come from.in Indiana. Tuscaloosa was a small town then with everything packed in closely to the University of Alabama. As in many small southern towns, railroad tracks separated black neighborhoods from white neighborhoods but they were both physically close to each other with blacks constituting close to 30% of the population at that time. It was also perfectly suited for gossip, especially on matters of race. I was about to enter high school, but since there were no Catholic high schools in Tuscaloosa, my father arranged for me to attend a Catholic boarding school in New Orleans, Louisiana. I would leave for school in about eight weeks.

My parents, Fred, and Mary Ritter, were immediately immersed in the Tuscaloosa social scene given my father's high-profile job at the mill. I and my two younger brothers and sister were often introduced at the beginning of dinner parties at our home for the husbands and wives of Gulf States executives in the hope that it would help my parents become accepted among the elite. Afterwards, my mother was not shy about telling us what she was hearing about life in Tuscaloosa. The biggest topic of conversation was the NAACP's threats to integrate the University of Alabama, whose main campus was in Tuscaloosa, following the Supreme Court's 1954 decision in Brown v. Board of Education outlawing racial segregation in public schools.

This was the first time I heard the name Thurgood Marshall who had argued the Brown case before the Supreme Court on behalf of the NAACP. He was seen in Tuscaloosa as a great Satan who would lead the NAACP to destroy racial segregation and the way of life that had existed in the city for as long as anyone could remember. Fifteen months earlier Dr Martin Luther King gained national attention by leading the Mongomery bus boycott and many feared Birmingham and Tuscaloosa were next.

At our family's first dinner party my mother made the mistake of explaining how our house was newly repainted. The wife of a company executive asked her who had painted the house. My mother said a "Mr. Jackson" had painted the house in only two days and did a wonderful job. Just about everyone else in attendance looked at each other in bewilderment as to who this person could be. My mother said it was the Negro man who lived less than a mile from our home across the proverbial railroad tracks. One of the wives looked at my mother somewhat in bewilderment and smiling said in her unmistakable Southern accent: "Maary – you tickle me to death! You mean nigger John Jackson. We all know him, but you will soon learn that down here we refer to Negroes by their first name. It's so confusing anyway, to have to remember two names instead of one."

I tried to make friends with teens in my neighborhood. For "fun," many of them would meet at a drive-in restaurant to launch forays into black neighborhoods. From the packed seats of their parents' convertibles and, shouting racial epithets, they threw rotten eggs at black families sitting on their porches to avoid the summer heat. It was if they were monkeys in a zoo. This practice was breezily called "eggin" as in "let's go eggin tonight." There was not the slightest sense of guilt or remorse over this behavior and obviously no empathy for those black families. After all, their parents had probably done the same things. I know, I sat in one of those cars. I did not throw eggs. I did not say anything while others yelled "raise hell baby" at a black family on the porch. I sat frozen in the back seat as I watched the father of the family rise from his chair with a clenched fist while his wife rushed to grab their kids sitting on a porch step. I knew I could not mention this to my parents. It was as if I had watched a dirty movie. These things become indelibly embedded in the memory of a 14-year-old boy.

This depravity was matched by the University of Alabama's efforts in 1956 to block African Americans from attending school there. Two young African American women, Autherine Lucy and Pollie Ann Myers, had sought admission to become the first black students at the University. Represented by Thurgood Marshall and after years of litigation that went to the US Supreme Court, they obtained a court order requiring that they be considered for admission as graduate students, both having completed their undergraduate work at historically black colleges. On the eve of their registration, Ms. Myers was rejected for admission allegedly because of her "conduct and marital record." She purportedly had a child out of wedlock.

The University hoped that Ms. Myers' rejection would discourage Ms. Lucy from following through with her registration. It did not. When she arrived on campus, she was not allowed to eat in the dining hall or sleep in the dormitories. On the third day of her classes, she was confronted by a white mob that tried to prevent her from entering a building to attend class.

They burned crosses and shouted “Keep Bama white!” and “Let’s kill her.” They also threw eggs at her. That evening the University suspended her claiming it could not provide for her safety. Several days later the University expelled her after her lawyers accused it of condoning the protests. A lawsuit seeking to order her reinstatement was unsuccessful.

It took another seven years for African Americans to again seek to break the color line at Alabama. In 1963 Vivian Malone and James Hood were escorted by federal marshals and the Deputy Attorney General of the United States to the steps of the University in Tuscaloosa to enforce a court order requiring their enrollment. They were confronted by Alabama Governor George Wallace in the infamous faceoff over what he claimed were “states’ rights.” Wallace had vowed that racial segregation would continue in Alabama “now and forever.” Wallace stepped aside and both were admitted without further incident. After graduation, Ms. Malone went to work in the Civil Rights Division of the Justice Department.

In September 1957 I began my attendance at Holy Cross High School, an all- white, male Catholic High School situated on the banks of the Mississippi River in New Orleans’ Ninth Ward. This historic building and campus, built in the late 1800’s, was destroyed during Hurricane Katrina but still sits there today abandoned like a grotesque testament to its roots in racial segregation. Most of the students when I was there only attended daily classes (day hops) but there were one hundred or so boarding students of which I was one.

I found race relations in New Orleans as bad as or worse than what I experienced in Tuscaloosa. This was a big city where racism was raw and edgy. Just about all facets of life in this major southern city were racially segregated, even Catholic churches where African Americans were not allowed to take communion until all white parishioners had been served. The Catholic Archdiocese of New Orleans did not permit African Americans to attend its elementary and secondary schools until 1962. Current Supreme Court Justice Amy Coney Barret’s all female high school, St. Mary’s Dominican, like mine, did not admit black students. See, John Alberts, Black Catholic Schools: The Josephite Parishes of New Orleans During the Jim Crow Era. Catholic University Press 1994. In 1960, a six- year- old black girl, Ruby Bridges, attempted to enroll in an all- white public elementary school just blocks from where I went to school. She was met by taunts and racial epithets as U S Marchall’s escorted her to school. White parents pulled their children out and teachers refused to work there. For the entire school year Ms. Bridges was taught alone in the otherwise abandoned school building by a white teacher from Massachusetts. Tulane University was all white and did not admit its first African American student until 1963, and then only after court litigation. Housing and jobs both public and private were for the most part racially segregated. Many stores and restaurants would not serve African Americans including some on famed Bourbon Street.

The first time I got on a bus I made the mistake of going to the back as was my habit when I rode busses in Indianapolis because they were warmer in winter time. I was sternly reminded by the driver along with glares from white passengers that I should have noticed the sign in the middle of the bus saying the back was “For Our Colored Patrons Only.” This was enforced notwithstanding the Supreme Court’s recent ruling in Browder v. Gale that such

segregation was unconstitutional in response to Rosa Park's famous defiance of these practices.

The Ninth Ward was already undergoing racial transition with blacks moving into shotgun houses built before World War II, some near my school. I vividly recall during my first month on campus going to a convenience store a block away. While I was there a young African American boy, probably no more than 10 years old, came in. After meekly opening his hand to reveal a quarter, he asked to buy a soda. The store was owned and operated by what appeared to be a family of white southern European immigrants. The woman behind the counter grabbed a broom stick and, shouting racial epithets, attempted to flog him. I remember her black hair and blazing coal - like eyes as she chased him out the door yelling that he should never set foot in her store again. The sudden violence of this encounter had a profound effect on me that haunts me to this day. I can still see the fright in that boy's face as he dropped his quarter and ran from the store. Writing as a white person about these experiences so long ago still leaves me feeling somewhat exposed, out on a limb so to speak. Who am I to purport to write what it was like as a black person during those times. The short answer is I don't. I am writing a memoir of what I felt.

My parents knew I was unhappy at Holy Cross and, after my sophomore year, decided to place me in a much smaller Catholic all male boarding school in Bardstown, Kentucky - Saint Joseph Preparatory School. Bardstown was and remains best known for its whiskey distillery along with some old colonial history. It was the flip side of Holy Cross with almost all its 200 or so students full time boarders along with a few "day hops", several of which were African Americans. So, I guess you could say this was not a racially segregated school. I studied hard, played football, basketball, baseball and ran track. I was class Salutatorian.

III. THE 1960'S – COLLEGE AND LAW SCHOOL

The election of John F. Kennedy as president in 1960 marked the beginning of my transformation from a young boy struggling with the emotional turmoil of race relations, boarding school life, and prolonged absences from my parents to a young man deeply curious about my place in life. The most memorable line for me in President Kennedy's 1961 inaugural address was "Ask not what your country can do for you - ask what you can do for your country." Those words seem quaint now, almost naïve, amidst the cynicism of modern - day America.

Father Theodore Hesburgh was the president of Notre Dame when I enrolled there in 1961. It was immediately clear to all of us as first year students that Notre Dame was a place where open discussion about race and tolerance for different political viewpoints would be both accepted and encouraged. Notre Dame had enrolled its first black student, Frazier Thompson, in 1947 and there was a small, but not insignificant, number of African American students when I enrolled there. Regrettably, it remained all male until 1972.

My years at Notre Dame (1961-1965) encompassed the gut -wrenching assassination of President Kennedy and coincided with some of the most tumultuous years of the civil rights movement led by Dr. King. The image of Father Hesburgh linking arms with Dr. King was

captured in an iconic 1964 photograph of the two before 75,000 people at a civil rights demonstration at Soldiers Field in Chicago. That picture is indelibly linked in my mind and heart, a marker of what it means to be a good, emphatic citizen. Father Hesburgh also invited George Wallace to speak at Notre Dame challenging us to listen to all sides in the civil rights struggles of our time.

Father Ted, as he affectionately was called by us, became a vocal and active supporter of the need for expanded civil rights legislation. He was awarded the Presidential Medal of Freedom by President Johnson in 1964 because of his work on civil rights and he subsequently chaired the United States Commission on Civil Rights. He was fired from that position by President Nixon in 1972 because he opposed ending school bussing to integrate public schools. His Catholic teachings, indeed his very identity, was linked to compassion and empathy for the poorer, forgotten parts of our country and our world.

Sadly, Notre Dame today has become enmeshed in the religious right and Federalist Society movements that have penetrated its law school, some of its think tanks, and many of its affluent doners. Supreme Court Justice Amy Coney Barrett, who like me, attended Catholic high schools in New Orleans, graduated from Notre Dame law school and, after a clerkship with then Supreme Court Justice Antonin Scalia, became a highly regarded Federalist Society member and teacher at the school. Her views on civil rights and abortion were also highly controversial and she became the first Justice in 150 years to be confirmed (52-48) without any support from the minority party. The role of the Federalist Society in curtailing, almost to the point of extinction, hard won civil rights remedies achieved in cases such as those I worked on is central to the discussion in this memoir.

I graduated from Notre Dame in 1965 but, before then, I knew I wanted to go to law school. I was accepted to Georgetown Law School in Washington DC just blocks away from the Department of Justice. After graduation I worked for approximately a year at the Equal Employment Opportunity Commission (EECC) in Washington D.C while awaiting orders to go on active duty in the United Sates Army Reserves. After completion of active - duty training at Fort Leanard Wood Missouri as a combat engineer (a glorified name for a heavy equipment operator), and with five years remaining in the reserves, I became a trial attorney in the Civil Rights Division of the Department of Justice in March 1971 under the Nixon Administration.

IV. MY CIVIL RIGHTS EXPERIENCES

From 1971-1994 I worked in Civil Rights Division. It was and remains divided into sections with teams of lawyers in each section assigned to bring pattern or practices lawsuits in specific subject areas - employment, housing, education, voting, and a special litigation section which was authorized to sue law enforcement agencies and prisons for abusive practices that deprived persons of their civil rights. When I arrived at DOJ in March 1971, I was first assigned to the Employment Section where most of the work focused on enforcement of Title VI and Title VII of the recently passed Civil Rights Act of 1964. This began my life-long effort to dig down and expose the roots of racism in the crucibles of our Nations's courtrooms. In the late 1980s I

transferred to the Voting Section and then in 1991 to the Housing Section. I left the division in 1994 and then worked with the Washington Lawyers Committee for Civil Rights.

Below is a description of my work in each of these positions. The primary focus in each section is on the most important cases that I litigated. One of the best ways to understand how racism in all its complexities operate in modern day America is through extensive discussions of actual court cases. Here facts matter and personal opinions mean nothing. It is the foundation of this memoir and I have selected six such cases. These cases were so called "pattern or practice" cases where evidence of hard- core, systemic race discrimination was presented to federal district courts often through harrowing eye witness testimony and the defendants' own admissions and records.

I have selected two cases that I worked on during my years in the Employment Section – an employment discrimination lawsuit against a large interstate trucking company in Oklahoma City, Lee Way Motor Freight; and another employment discrimination lawsuit against the City of Birmingham Alabama, the Jefferson County Alabama Personnel Board and 12 municipalities within the county. In the discussion of my work in the Voting Section, the focus is on a voting rights lawsuit against Washington County, Mississippi in the heart of the state's Black Belt. My work in the Housing Section concerned fair lending and sets forth a detailed discussion of the Justice Department's first redlining lawsuit against a mortgage lender – Decatur Federal Savings & Loan in Atlanta, Georgia. My fair lending work continued after I left the Department and in the section about my post Division work, I discuss a "reverse redlining" lawsuit against a racist predatory lender in the Washington DC area, Capital City Mortgage Corporation. Finally, after I moved to South Carolina I worked on a series of 13 race discrimination lawsuits brought over the course 10 years by the NAACP and individual black plaintiffs in Myrtle Beach, South Carolina against the city's police department and area businesses challenging acts of racism during a predominantly black motor cycle rally called Black Bike Week.

These six cases reveal a variety of overt and subtle racial biases by white Americans seen through a prism that goes back generations. They illustrate the depth and multifaceted ways that racism has coursed through the bloodstream of white America, particularly white men. This is not to suggest America is hopelessly racist. To the contrary, there are many whites today, if not a majority although some perhaps grudgingly, who acknowledge that racism continues to be a problem in the United States although they would quickly point out, rightly, that we have made tremendous progress on race relations since the 1960's. They are also not devoid of empathy for the disadvantaged if they could better understand the need for it and the government's rightful role in fostering it.

1. EMPLOYMENT SECTION

As noted above, my first assignment in the Civil Rights Division was to the Employment Section. During my first several weeks on the job, I was stunned to see from DOJ legal filings and research the vast and deeply entrenched racial segregation that existed in virtually all aspects of life in America at that time. It was as if the Black Codes still haunted the country,

particularly in the South, and in our national psyche. The Civil Rights Movement and Dr. King's marches led to the enactment of the landmark 1960's civil rights laws. But, as former President Johnson rightly observed in his Howard University speech, the task ahead for us at DOJ was to remove all obstacles to the full enjoyment by black Americans of their constitutional rights which, as seen above had been snatched from them after the First Reconstruction that followed the Civil War

We were tasked to begin a Second Reconstruction through "pattern or practice" lawsuits, that as noted above, are lawsuits that challenge a defendant's entire operations and not just on behalf of specific individuals. Those lawsuits targeted public and private employers on a vast scale including school districts, municipalities, real estate companies, railroads, textile companies, steel makers, public utilities, airlines, and labor unions, not just in the south but in many other parts of the country as well.

Perhaps as surprising to me when I first arrived at DOJ was the degree to which women were segregated into what were called "traditionally female" occupations. For example, in Birmingham, Alabama the police department only employed women in jobs called "meter maids" – they issued parking tickets. It would not be an exaggeration to say there were de facto systems that approached racial and sexual apartheid in many sectors of the workplace almost seven years after the passage of the 1964 Civil Rights Act. Their existence is amply demonstrated by the statistics in the Justice Department's hundreds of pattern or practice complaints filed during this period. Systemic racism and sexism were under attack in courtrooms throughout the country.

These systems undeniably granted special privileges to white males by insulating them, as they had for generations, from having to compete with African Americans or women for their jobs. Most cynically, it insulated their employers from any political or moral pressures to change their business models. No need for empathy from them. Unfortunately, as we will see, deep resentments by whites over DOJ's civil rights enforcement program led to the birth of the Federalist Society and the first organized legal pushback to our efforts. As with the first Reconstruction, the Second did not last long as the Federalist Society's prodigious fund -raising efforts, judicial think tanks, and ever- expanding group of zealous, well- trained lawyers mounted a massive assault on the Second Reconstruction. With the reelection of Donald Trump and his handpicked conservative majority on the Supreme we now see they have been successful beyond their wildest imaginations. How they came to power is part of this narrative.

I joined a team of approximately 30 lawyers in the Employment Section. We were assigned to various industries in the private sector such as trucking, steel, textile mills, labor unions etc. and state and municipal employers in the public sector. We were all relatively young, in our late 20's and early 30's, and worked under the supervision of a deputy section chief who reported to the Section Chief which at that time was David L. Rose. He became a legend in the Division and a mentor to all of us. He passed away in 2023.

Looking back, the pattern or practice lawsuits brought by our Section in the 1960's and 1970's were stunning in their number, range, and depth, as well as the legal precedents they established in the early years of Title VII. Those lawsuits challenged entrenched discrimination in the building trades (plumbers, electricians, carpenters, bricklayers, and the like), railroads, public utilities, steel, trucking, airlines, telecommunication, textile industries, paper mills like the one my father worked at, and even Las Vegas casinos. State and local governments in both the north and the south were sued for excluding blacks and, in some cases, Hispanics and women, from much of their workforces, particularly police officer and fire fighter jobs. We became the tip of the spear for epic efforts by the federal government to address the unfulfilled promise of Reconstruction. It would be aided by a newly energized set of voters and attorneys – women.

Allied with our efforts were those of lawyers at the EEOC, led by David Copus and Randy Speck, who used the power and prestige of that agency to convince courts of the role of statistical evidence in proving racial intent and the need for and powers of the courts to adopt affirmative action remedies. The Labor Department was responsible for enforcing President's Johnson's Executive Order 11246 which not only prohibited federal contractors from engaging in unlawful discrimination but imposed an affirmative obligation that they not do so. Weldon Rougeau led that agency in the 1970's and was well known for his aggressive enforcement of the Order that survived numerous legal challenges. It could not survive Donald Trump who rescinded the order in January 2025 only weeks after his inauguration.

The courts were asked to meet the challenge laid down by Lyndon Johnson to equal the playing field for minorities and women and many did. New legal theories and doctrines were required to address complex practices that operated to their disadvantage. For example, shortly after the passage of Title VII many employers adopted seemingly race neutral qualification requirements for newly hired employees, such as passage of written tests or minimum education requirements, that screened out large numbers of African American applicants. Similar requirements were also imposed for promotions. Many police and fire departments adopted new, more demanding physical agility tests or minimum height requirements that had similarly adverse consequences on women applicants. The employers claimed they were meeting the requirements of the Civil Rights Acts by treating all applicants the same without regard to race or sex. But were they really? Was Lyndon Johnson misguided and naïve on what it would take to level the playing field?

Most trial courts understood the racial context in which these requirements were imposed.. They have consistently followed a principle first established in 1971 in the seminal Supreme Court case Griggs v. Duke Power Co. 401 U.S. 424 (1971) which held that facially neutral employment practices in terms of intent nonetheless violated Title VII of the 1964 by perpetuating the effects of past discrimination or posing arbitrary, work- related barriers to the ability of minorities and women to compete on an equal footing with white males. In Griggs written employment tests that screened out disproportionate numbers of black applicants were not necessary to perform low skill entry level jobs and perpetuated the effects of past discrimination..

Similar arguments were raised against the adverse effects of union seniority systems and workforce lines of progression. Prior to the passage of the Civil Rights Act of 1964, most of the African Americans employed in the industries mentioned above were in low level service or maintenance occupations often represented by separate unions or under different union contracts than white employees. The same situation existed for women in some industries such as textiles. If these blacks or women attempted to transfer into a traditionally white or male job for which they were qualified but had been excluded because of their race or sex, they had to go the bottom of the seniority list in that job and thus be the first to be laid off. Affected minority workers and women called that "seniority suicide" if they attempted transfers. White male workers claimed that abandoning those rules constituted "reverse discrimination." Left out of the discussion was the fact the white male workers never had to compete with minorities or women when they were hired and began accruing their seniority. The courts revised the operation of these seniority systems finding they perpetuated the effects of past discrimination.

Similarly, in the case of lines of progression within segregated workforces, whites hired before or even after the passage of the 1964 Civil Rights Act when class-wide race and sex discrimination was condoned by the employer, whites hired during the period of segregation were allowed after training in their entry level jobs to use their seniority in that department to bid on higher paying jobs within that line. After formal segregation was abolished, racial minorities and/or women at the plant who wished to bid on jobs in the white line of progression could not use their seniority at the plant for bidding purposes. The courts found these impediments also perpetuated the effects of past discrimination and therefore violated Title VII.

Finally, there was the issue of affirmative action for minorities and women who had no prior contact with the employer during the period of overt discrimination but who, as new applicants for hiring or promotion faced the hurdles of written tests, minimum education requirements or other selection criteria that posed arbitrary barriers to their employment. If allowed to stand they would significantly impede workforce integration on the level necessary to correct for the effects of past discrimination. In many instances, these tests were first imposed either shortly before or after the passage of Title VI and Title VII and remained in place for years The questions posed to us as litigators in the Civil Rights Division were whether these employment procedures were adopted in good faith and, if so, were they valid predictors of who would be best qualified for these jobs.

Court challenges to these selection criteria frequently devolved into a battle of experts on test validation with lower court decisions varied and muddled. The Department of Justice, led by Employment Section Chief David Rose, with the approval of the Attorney General, the EEOC, and the Labor Department, sought to bring the best experts in the field of employment tests together in Washington for deliberations over whether there could be a consensus on standards for test validation in the context of employment discrimination. This resulted in the Uniform Guidelines on Employee Selection Procedures first adopted in 1978 by the federal government enforcement agencies. Not surprisingly, the application of the Uniform Guidelines became a battleground of future Title VII litigation as we will see in the discussion of one of my cases in Jefferson County Alabama, discussed below.

DOJ consent decrees during this Second Reconstruction period almost always contained hiring and promotion “goals” for minorities and women even if they themselves could not show they were victims of past discrimination by the employer. Without such affirmative action it would take years, if not generations, to fully correct for the effects of entrenched racial discrimination which, as this Memoir points out, has haunted our country from the time of the First Reconstruction. Critics of the affirmative action provisions of DOJ consent decrees, as well as affirmative action plans enforced more broadly by the federal government, called these remedial actions “racial or sex quotas”, but that was a mischaracterization, particularly as related to DOJ consent decrees. They were goals to be met in periodic steps over the limited life of the consent decrees usually 5-7 years. Most importantly, they never required that someone be hired or promoted who was not qualified for the job. While highly controversial, these remedies were sanctioned by the Supreme Court as necessary to correct for the effects of past discrimination. United Steel Workers v. Weber, 443 U.S 193 (1979).

These consent decrees and court rulings stirred deep resentments among white male workers and many of their employers and unions. They seemed to undermine the established order of working life not unlike the changes brought about during the First Reconstruction. As discussed later, beginning in the 1980’s their grievances were picked up by the Federalist Society and other conservative organizations and used as a cudgel to dismantle the Second Reconstruction. They were successful beyond their wildest dreams as we see today. Under the Trump Administration, even the most benign programs to encourage racial tolerance and understanding of the black experience or those of other marginalized groups can subject employers, educational institutions, hospitals and other service providers to potential lawsuits under Title VI of the Civil Rights Act of 1964. The Trump Department of Justice joined by conservative legal foundations allege these DEI programs “stigmatize” whites or otherwise impede their access to benefits because of their race.

There is nothing in the extensive legislative histories or subsequent amendments to Title VI or Title VII that show any intent by Congress to prohibit the kinds of diversity, equity and inclusion (DEI) practices now challenged as discriminatory towards whites. Recently, my alma mater, the University of Notre Dame, was notified by the U S Department of Education that it is subject to a Title VI investigation over some of its DEI programs that could result in the loss of federal funding. The University has denied the allegations. Recently, President Trump’s spokesperson, Karoline Leavitt said ominously what awaits these institutions. “If you go woke-you go broke.”

In retrospect, the political pressures on judges in the 1960’s,1970’s and 1980’s to address and remedy civil rights violations towards blacks and others were just as profound as they appear today where we now see frequent calls by MAGA people to impeach “woke” judges. The judges of that time had the courage to step up and meet the challenge laid down by former president Lyndon Johnson that the role of the courts was to eradicate unlawful discrimination against black people root and branch. That challenge more broadly remains today as this memoir attempts to point out. Discrimination against whites is, in most instances, a

canard advanced by the Federalist Society and similar advocates that, as we will see in the Jefferson County litigation, has motivated them since the time of Ronald Reagan.

Included in my honor roll of courageous judges during the Second Reconstruction are Sam Pointer in Alabama before whom I tried the Jefferson County race discrimination cases, and William Wayne Justice in Texas for his role in school desegregation cases. They became icons in the Civil Rights movement. Also included are judges on the then Fifth Circuit Court of Appeals, such as Richard Rives, Elbert Tuttle, J. Minor Wisdom, and John Robert Brown who overruled district court judges who failed to find discrimination where it obviously existed or implement remedies such as those discussed above that were necessary to correct for the effects of past discrimination. These judges endured withering attacks on their competency, integrity, and personal safety similar to those levied against judges today. One such Judge, Robert Vance, was assassinated in 1989 while in office. At that time the Fifth Circuit encompassed the states of Texas, Louisiana, Mississippi, Alabama, Georgia, and Florida. – most of the Old Confederacy.

The United States Supreme Court also stood tall placing its final imprimatur on many of these rulings. This country's advances in civil rights, as much as they are under attack today by a radically different Supreme Court, would not have occurred without historic rulings from Chief Justices Earl Warren and Warren Burger, along with Justices Thurgood Marshall, William Brennan, Hugo Black, William Douglas, and John Harlan. What was a distinguishing characteristic of these judges? In my view, empathy. Empathy for the poor and disadvantaged and deep awareness that the country faced huge challenges in achieving social justice for minorities and women, the unfulfilled promise of Dr. King. They also believed in the words of Lyndon Johnson that the black man can never be truly free until the shackles of slavery are fully removed. To a degree, Johnson dreaded the political outcomes of these efforts. He said ominously that the implementation of the 1960's civil rights acts would probably lose the South for his party for a generation. As we now see, he was off by several generations.

Nevertheless, the court system carried on with its responsibilities. The Judges identified above saw our Nation's civil rights laws as part of a living Constitution intended by the Founders to meet the challenges of an ever- evolving landscape of people and ideas and not a cramped, hidebound document to be read literally wherever possible, usually to the advantage of whites. In contrast, in the eyes of today's current six- member conservative majority on the Supreme Court, the only important decision dealing with race was Brown v. Board Education where the badges of slavery were, in their view, forever removed constitutionally and everyone was expected to operate in a color -blind country. There was no need for a Second Reconstruction or at least not the one that was carried out by so called liberal activist lawyers and judges.

United States v. Lee Way Motor Freight, Inc. (W.D. Okla 1972)

Many of DOJ's early pattern or practice lawsuits resulted in consent decrees - sometimes early on, others after significant discovery and trial preparation. A few, such as the Lee Way Motor Fright case filed in June 1972 in Oklahoma City, became long, grueling, hard-fought cases almost

literally to financial ruin – Lee Way sold the company after eight years of virtually non-stop litigation and while the case was on appeal to the Tenth Circuit Court of Appeals. It lost on all its appellate issues and the United States was successful on most if its cross appeals. The District Court's opinion is reported at 20 Fair Employment Practices Cases 1345 and the Tenth Circuit's opinion at 625 F2d 918 (1979). The Teamsters' Union was also a defendant in the case.

I became the lead on attorney on this case during pre-trial discovery after the former lead lawyer, Stuart Herman, unexpectedly left for private practice in California. All DOJ employment discrimination cases at that time were tried before federal district court judges because only injunctive relief including back pay could be sought rather than money damages which would trigger a right to trial before a jury. I had no prior trial experience, but before he left Stu helped me and my associates, Nathaniel Baccus and Savannah Potter, both talented African American lawyers, conduct extensive depositions of company officials and so we all felt comfortable taking over the case. A Deputy Section Chief, Bill Fenton, and the First Assistant US Attorney in Oklahoma City, John Green, helped us through a six- week trial in 1973 before Federal District Court Judge Luther Eubanks. Attorney Green told us that Judge Eubanks was a conservative judge who once headed the Republican Party in Oklahoma but was very fair. To a large degree, he was right.

On December 27, 1973 Judge Eubanks entered a 100 - page opinion finding widespread racial discrimination throughout the company's operations in 16 states ranging from Pittsburg to Cleveland to Houston and Los Angeles. 20 Fair Employment Practice Cases 1345, 7 EPD 6461 December 27, 1973. Its headquarters were in Oklahoma City where 900 plus over-the-road aka line drivers were domiciled, most driving two person "sleeper runs" to system terminals.

The trial evidence showed a virtually all-white workforce throughout Lee Way's terminals until at least mid-1968. The passage of the Civil Rights Act of 1964 had virtually no meaningful impact on its operations when DOJ filed its complaint in June 1972. Indeed, its racial profile was virtually the same as when it was founded by the family patriarch, Whit Lee, in the 1930's. The only jobs open to blacks were in the service department where they worked as janitors or porters otherwise known as "greasers." All other jobs including dock workers, mechanics, city drivers, line drivers, office workers and managers were white.

We called over 50 black trial witnesses who unsuccessfully applied for, or sought as service workers, traditionally white jobs at the company, including line driver, some as recently as the eve of trial. All testified that they met or often vastly exceeded the company's minimum qualifications for the job. The evidence showed there were jobs available at the times they applied, all filled by whites, some of whom did not meet the company's minimum job standards. Many witnesses recounted racially insulting and degrading experiences reflecting the Jim Crow era when they sought these jobs. A black who applied for a dock job was told in the 1950's that "what the colored do out here is service work." Another applied for a tire man job and was told Lee Way "didn't hire colored tire men." Others were told as recently as 1964 that Lee Way still "didn't hire colored on the dock"

In 1966 Lee Way officials were clearly aware of their obligations not to engage in race discrimination under the 1964 Civil Rights Act. They held a mass meeting with its line drivers in Oklahoma City and asked how they would react to the company's hiring a black line driver. Virtually all objected and dreaded having to share a bunk in the cab with blacks on long haul trips. Many walked out of the meeting. None were disciplined. The company's executive vice president who presided over the meeting admitted in his deposition that "this was an issue the company would not push at that time."

In 1968 the company hired its first African American road drivers in Oklahoma City. They were hired as a pair and always had to ride together on their trips. They did so while knowing their Teamsters Union would likely not punish white drivers who refused to ride with them. As the court found, "Lee Way grudgingly admitted [it] had a right under the collective bargaining agreements with the Union, to fire any white employee who refused to work alongside a black, but the Union equivocated as to whether it would defend a union member discharged for refusing to ride with a black by stating that the discharge could be based upon the uncleanliness of the fellow driver rather than the pigmentation of his skin" Finding 102.

That same year the company hired its first black dock worker in Oklahoma City, Albert Scott. Lee Way had been under pressure from the US Postal Service with whom it had government contracts to begin desegregating its workforce. The court found that Mr. Scott's treatment was "typical of the plan, scheme, and design on the part of Lee Way to systematically exclude blacks from employment." Finding 71. Mr. Scott had worked for many years at the Oklahoma City Sanitation Department driving trucks and doing dock work. He had applied at Lee Way on numerous occasions for a city driver or dock position and was always told the company was not hiring which the court found was not true.

On or about May 5, 1968 Mr. Scott applied for a city driver or dock position and was again told the company was not hiring. Later that day Mr. Scott saw an ad in the local newspaper from the Oklahoma Human Rights Commission saying Lee Way needed dock workers and to apply at the terminal. Mr. Scott immediately called the Human Rights Commission and said he had just been to the terminal asking about dock work and was told the company was not hiring. The official at the Commission told him to go back out to the company and apply again. He did so and became the first African American ever to work on the dock.

The court's findings of fact are replete with many other examples of the nefarious ways in which Lee Way kept blacks out of its traditionally white jobs such as rigidly applying its stated minimum qualifications for those jobs towards black applicants while making numerous exceptions for whites. To the court's astonishment, Lee Way also sabotaged the trucks given to some black line driver applicants for their preemployment road tests. Finding 153.

This mounting evidence clearly struck a chord with Judge Eubanks and triggered an obvious sense of empathy for black workers at Lee Way, as recounted his finding 78.:

> "In a few months I will have served as a trial judge for over twenty years, and during this whole time I can remember only four or five witnesses who were as impressive, believable, and totally honest as was the witness Cleophus Frost called by the Government in this case. He was hired by Lee Way in July of 1955 as a porter. He was looking for any kind of work he could get and knew better than to ask for anything better than a porter's job. He is an excellent worker and although he would have preferred advancement, he knew that at Lee Way blacks could not work at any job except that of porter 'so I wasn't going to say anything about anything.' During his long years of employment, he learned many skills, including that of truck driver and mechanic but he remained in the classification of porter. To support his wife and eight children, he had a second job as a truck driver for a contractor with the United States Post Office that delivered mail from the railroad stations to the distribution center at the main Post Office. And since his off-days at Lee Way were Sunday and Monday and his off days at the post office were Saturday and Sunday he was able to work sixteen hours per day, five days a week and work only eight hours on Saturdays and Mondays and be always off on Sundays. During his years at Lee Way in steam cleaning diesel engines and in watching mechanics at their work and while assisting them when they needed help, he acquired much knowledge about diesel engines and on many occasions, if any apprentice mechanic was absent, he would actually pitch in and do mechanic work. The overall excellence of the work done by Mr. Frost in his janitorial job together with his eagerness to learn additional skill impressed his supervisors.
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> One day in 1966 or 1967 a white superior was bragging on Frost for being such a good worker, whereupon Frost said to this superior, 'If I could work so good, why don't you let me come in the parts workroom where the pay is better.' The superior abruptly turned away and did not say anything. Prior to this occasion, Frost requested a transfer to the position of road driver, but was told 'The onlyest way I would drive a truck for Lee Way was, I pull it myself." Although still dreaming of a road driver position, Frost resigned himself to being a porter. 'Because I see to the fact they wasn't going to let anyone black drive a truck, so I didn't want any trouble, so I didn't ask anymore."

After the court entered its devastating findings of fact and conclusions of law on December 27, 1973, we all thought Lee Way would agree to a consent decree with the standard DOJ affirmative action requirements and back pay with remedial seniority for persons the government identified as victims of discrimination. The company refused to even discuss settlement and informed the court it wanted a special master to decide who was entitled to back pay and a job offer prior to the entry of a final judgment. The court granted Lee Way's request. We decided not to file an interlocutory appeal hoping the special master would expedite these proceedings in part because the court ruled Lee way would have the burden of proving claimants were not qualified for the jobs they were seeking. We were wrong.

The company insisted it had a constitutional right to fully contest any black person's qualifications for a traditionally white job with remedial seniority and back pay notwithstanding it had the burden to prove that. A professor at the Oklahoma City University Law School, Richard Coulson, was appointed Special Master and thus began an arduous process that spanned

approximately three years. Keep in mind that trial in this case occurred in 1973 when the development of Title VII law was still in its infancy so we had little guidance on how courts should treat cases such as this. The company insisted on sworn written statements of claim from each of the approximately 50 persons the government had identified as trial witnesses and victims of discrimination. The judge refused to allow us to add any additional claimants on the erroneous assumption that the Attorney General with his vast resources, including the FBI, must have known who they were by the time of trial.

Preparation of the claims was exhausting for our staff but I had an infusion of new lawyers including John Gadzichowski who would later become chief of the Employment Section. At Lee Way's insistence, the special master ruled that the claimants must show what they had done to mitigate their damages after being rejected for a job citing then existing NLRB precedent because there was no existing precedent under Title VII. This was before the era of word processing technology and the internet so each claim required extensive phone interviews with claims transcribed by pen on yellow pads by attorneys to be typed by secretaries. The claims then had to be sent to the claimants for signature. Lee Way issued subpoenas to the employers of some black road driver applicants asking for written verification of their employment and experience. This prompted objections from those employers with some moving to quash the subpoenas. The Special Master finally took control of this mess and decided that his decisions would be based on sworn notarized claim statements and any rebuttal by the company from its files. Getting the claims drafted and notarized was complicated and time consuming.

In February 1977, the Special Master issued a 200-page report finding in favor of 47 of them. Back pay awards exceeded $1million and all received remedial seniority. Both sides appealed various rulings of the Special Master to Judge Eubanks who entered a final judgment in June 1977, almost five years after the complaint was filed. Lee Way and the Teamsters Union promptly filed notices of appeal to the Tenth Circuit and we cross appealed some of the Special Master and District Court rulings. While the appeal was pending, the Lee family sold the company to Pepsico.

I argued the appeal before the Tenth Circuit and, in an opinion entered on September 21,1979, it upheld the district court's findings of Lee Way's pattern or practice race discrimination. 625 F.2d. 918 (10th Cir. 1979.) The Court noted:

> "This is not a close case. The violations on the part of Lee Way are palpable. This is not a case that had to be determined on the basis of statistics and inferences flowing from them. Here there was evidence of express discrimination. It was pervasive and palpable."

The circuit court rejected all of Lee Way's appeals from the Special Master's findings and granted our appeals on some back pay issues. Most importantly, the Circuit Court ruled Judge Eubanks erred in not considering an affirmative action plan at Lee Way to fully correct for the effects of its past discrimination. This was an important victory for DOJ because, as we will

see in the Birmingham litigation, it directly undercut arguments subsequently made by Federalist Society lawyers that affirmative action can never be used as a remedy, especially when, as here, identified victims of past discrimination have already been compensated.

So why did Lee Way fight like this? Its racially discriminatory practices were not materially different from those pursued by other trucking companies who settled with DOJ prior to trial or companies and unions in other industries that were targeted for pattern or practice litigation. The outrageous stereotyping of black workers was a common phenomenon in these cases as well. For example, the head of a local electrical workers union sued by DOJ was asked why there were no black union members. He responded "blacks don't like working around electricity."

Looking back, it appears to me the owners of Lee Way were obsessed with what they viewed as the federal government's unwarranted efforts to undermine their way of life and their freedom to hire the workers they wanted. This intrusion on their business freedoms had to be fought at all costs even if it ultimately resulted in the demise of the company. It was as if the Civil War had to be fought again, although this time within the genteel confines of a federal courtroom. This possible tie to attitudes prevalent in the 1860's is important because, as discussed below, they continued to exist, at least at this company, right up to the time of Ronald Reagan's election as president in November 1980. As we will see, his election resulted in the infiltration of DOJ by young Federalist Society lawyers like John Roberts intent on rolling back these and other gains in civil rights enforcement. The beginning of the end of the Second Reconstruction was about to occur just 17 years after passage of the Civil Rights Act of 1964. History has an ominous way of repeating itself.

United States v. Jefferson County, Alabama (N.D. Ala. 1975)

> " Birmingham is probably the most segregated city in the United States. Its ugly record of police brutality is known in every section of this country. Its unjust treatment of Negroes in the courts is a notorious reality. There have been more unsolved bombings of Negro homes and churches in Birmingham than in any other city in the nation. These are hard, brutal, and unbelievable facts. On the basis of them, Negro leaders sought in good faith to negotiate with the city fathers. But the political leaders consistently refused to engage in good faith negotiations." Martin Luther King. Letter From a Birmingham Jail, August 1963.

This is the second major employment case that I worked on during my time in the Employment Section. In 1974 a black man, John Martin and the Ensley Branch of the NAACP brought separate class actions against the City of Birmingham, Alabama, home to the legendary racist police chief Theophilus "Bull" Connor, and the Jefferson County Personnel Board. They alleged widespread discrimination against blacks, particularly in the city's police and fire departments, in violation of Title VII and the 1866 Civil Rights Act, 42 U.S.C 1981. In 1975, the Justice Department filed a pattern or practice lawsuit under Title VII against the same defendants but also included the 12 other municipalities in the county served by the Personnel

Board, including Bessemer, Mountain Brook, Garden City and others. DOJ's lawsuit also included sex discrimination claims focused on the police and fire departments in the city and adjoining municipalities.

These cases were consolidated and assigned to federal district court judge Sam Pointer Jr., a Nixon appointee. Like other judges in the South during that time, he was asked to take on highly contentious civil rights cases and he stepped up to the plate. His desegregation orders against the Birmingham school board included controversial busing remedies that riled whites who strongly believed in George Wallace's maxim of "segregation today, segregation tomorrow." Judge pointer was also a brilliant statistician more than capable of handling what turned out to be the primary focus of the first rounds of litigation in these consolidated employment discrimination cases – challenges to over 14 written tests administered by the Jefferson County Personnel Board that screened out disproportionate numbers of blacks for traditionally all-white classified civil service jobs throughout the jurisdictions in the county including police officer and firefighter. DOJ took the lead in trying these claims. The private plaintiffs took the lead in presenting evidence of the city's long history of discrimination against blacks in the city which has been fertile ground for many historians. As in the Lee Way case, most of Birmingham's black employees worked as janitors and maintenance workers in the unclassified service with few benefits and were prohibited because of their race from advancing into the classified service. Up until the eve of trial, racially segregated bathrooms continued to exist in these municipalities where blacks worked along- side whites.

Many of the Personnel Board's written tests for the classified service were not imposed until shortly before the passage of Title VII in 1964 suggesting a racially discriminatory purpose. Prior to that time, the Personnel Board had "whites only" requirements for many of those jobs. DOJ also challenged the exclusion of women from police officer and firefighter jobs for which the Personnel Board included "male only" requirements in its job announcements. After those were removed it continued to impose physical agility tests that very few women could pass and were not related to the duties performed in those jobs.

Judge Pointer and the parties agreed to bifurcate this very complex case into several stages, the first of which was to decide whether the Personnel Board's written entry level tests for police officer and firefighter were racially discriminatory under Title VII. That would be followed by trials over the Personnel Board remaining written tests including its written tests for promotion in the police and fire departments and the physical agility tests and their impact on women The third trial would focus on historic discrimination in the classified service that resulted in blacks being assigned to janitor and labor positions without regard to their qualifications for classified jobs. Judge Pointer presciently saw that the key to cracking the litigation was to decide whether the Personnel Board's entry level police and firefighter tests were racially discriminatory.

The first trial took place in 1976 and involved a battle of experts on job testing standards and how they applied to entry level police and firefighter jobs. The Personnel Board had testing experts on its staff and retained several outside experts who contended that the tests were not

racially discriminatory and validly predicted who would best perform on the job. At this time, the Uniform Guidelines on Testing Procedures mentioned above had yet to be adopted under Title VII, although the American Psychological Association (APA) had general guidelines on test validation. The government's experts testified that the written tests had severe adverse impact on blacks and did not predict who would best perform on the job. They also testified that scores on these tests were not used appropriately to rank order applicants for the job and the pass/fail cut-off scores were arbitrary and not job related. The expert testimony from both sides in this case would be mind boggling to many judges. But not Judge Pointer.

He ruled in an opinion laden with complex concepts for test validation that the police and fire tests had significant adverse impacts on black applicants, were not job related, and thus violated Title VII. The defendants appealed that part of the case and while it was under submission to the Fifth Circuit, I was assigned to try the second stage of the litigation which involved challenges to 12 other written tests administered by the Personnel Board including office and clerical jobs as well as construction jobs such as truck driver and heavy equipment operator. That stage also involved challenges to written tests for promotion in the police and fire departments such as sergeant, lieutenant, and captain, and the physical agility tests and their impact on female applicants. I had four junior lawyers assigned to assist me in this trial – Steve Rosenbaum, Ted Merritt, Keri Weisel, and Toso Himel. We bonded as a team and Steve went on to long, distinguished career as a chief of several sections in the Division. He retired in 2024.

The trial occurred in July 1979 and lasted two weeks as we all awaited the Fifth Circuit's ruling on the appeal of the first round of litigation. In June 1980 the Fifth Circuit upheld Judge Pointer's findings and conclusions of law that the Personnel Board's entry level tests for police and firefighter jobs violated Title VII. While still waiting for Judge Pointer's findings and rulings in our trial, the City of Birmingham elected its first black mayor, Richard Arrington, in November 1980. He contacted the Department and counsel for the private plaintiffs and expressed a desire to settle the cases at least on behalf of the city. Shortly thereafter, the Jefferson County Personnel Board asked to join the settlement discussions. Plaintiffs reached a settlement of their claims with both defendants in the Spring of 1981 and two separate consent decrees were presented by the parties to Judge Pointer for his review and approval, one on behalf of the city and the other on behalf of the Personnel Board. This obviated any need for Judge Pointer to rule on the issues presented at the second trial and the remaining litigation against the other municipalities since those focused on the personnel board's tests for their classified service jobs.

A 30- day notice to the public of the terms of settlements was issued followed by a fairness hearing before Judge Pointer in July 1981 at which he would hear any objections from interested parties. Lawyers for the Birmingham police and fire department unions appeared unannounced at the hearing to voice their objections to the affirmative action provisions of the settlement. Those provisions were to last for five years and required that at least 50% of all new hires in the police and fire departments be African American and a 25% goal was set for women. 50% goals were set for promotions of African Americans in the police and fire departments. Similar Personnel Board certification goals were set for classified service jobs

under its consent decree. Those decrees did not require the certification, hiring, or promotion of anyone who was not qualified for the job. I argued on behalf of the United States at the fairness hearing that these remedies were lawful and constitutional under then existing Supreme Court and Circuit Court precedents. My arguments were approved and fully supported by the leadership of the Civil Rights Division at that time.

The lawyer for the firefighters' union, Ray Fitzpatrick, was particularly vocal at the fairness hearing over the objections of his clients to the promotion goals in the fire department arguing there were likely to be many more whites on the promotion eligibility lists than blacks and the city would inevitably have to promote blacks over them to meet its goals. Everyone on those lists was ranked according to a composite of their scores on a written promotional examination, which the plaintiffs had just contested during the second trial, along with scores from oral interviews. One point for each year of seniority in the department was also added to their scores to reach their final eligibility ranking. Thus, the promotion eligibility lists were inherently suspect because new, properly validated tests had yet to be developed and the seniority points at that time favored many whites hired during the time blacks were not considered for firefighter jobs. However, under the proposed consent decrees, even if new validated tests were developed the promotion goals would remain in effect to correct for the effects of past discrimination.

Shortly after the fairness hearing in August 1981, Judge Pointer denied the firefighter objections as untimely given their failure to file them with the court in compliance with the notice requirements. The court concluded the hiring and promotion goals and other affirmative action measures in the decrees were lawful and Constitutional adopting DOJ and the private plaintiffs' arguments and legal precedents to support of them. Judge Pointer also denied the firefighters' motion to intervene in the case. The next day seven individual white firefighters, represented by Fitzpatrick, filed a separate lawsuit alleging they were ahead of blacks on the promotion lists for fire lieutenant and captain positions and that the consent decree would inevitably violate their constitutional rights, a so-called "reverse discrimination" claim. Judge Pointer subsequently dismissed their claims finding they constituted unlawful collateral attacks on the consent decrees he had approved. The Firefighters then appealed both of these orders.

Their appeal was filed at about the time that the Reagan Administration leadership in the Civil Rights Division took charge which had a major effect on the case. In 1982 then Attorney General William French Smith announced that the Reagan Justice Department would no longer support race preferences in the settlement of employment discrimination lawsuits. This was the beginning shot of a long war initiated by conservative legal scholars, such as those in the Federalist Society, against affirmative action that culminated in the Supreme Court's recent decision in Students for Fair Admissions v. Harvard College, 600 U.S. 181 (2023) finding the school's affirmative action plan for college admission unlawful under Title VI.

Attorney General French Smith's speech came as a shock to the Washington establishment, much of the nation, and particularly litigators like me in the Civil Rights Division.

We had no forewarning of this dramatic change of position on affirmative action when I argued, as part of the Reagan Administration, in support of the consent decrees before Judge Pointer in July 1981. Having learned of the French Smith speech, Ray Fitzpatrick, the lawyer for the firefighters' union, asked in 1982 to meet with the leadership of the Civil Rights Division to discuss its possibly changing sides in his appeal of Judge Pointer's dismissal of their lawsuit. By that time William Bradford Reynolds had been appointed and confirmed as the new Assistant Attorney General for the Civil Rights Division. With no notice to any of us in the Employment Litigation Section, Reynolds, along with newly arrived special assistants Charles Cooper and Michael Carvin, met with Mr. Fitzpatrick and agreed in principle to switch sides and support his client's reverse discrimination claims. This agreement was reached notwithstanding the Justice Department's obligation under Paragraph 3 of the consent decree to defend it against any challenge "by other persons." How did this happen?

■ Federalist Society Infiltration of DOJ

In the Spring of 1982, an assembly of over 200 lawyers and law students descended on Yale Law School to plot ways to combat what they saw as a takeover of the judiciary and federal government agencies by liberal activists who wanted to change the cultural dynamics of the country and undermine the Constitution. In my view, this was an outgrowth of long- standing conservative opposition to former President Franklin Roosevelt's New Deal legislation and court decisions through which, in their view, judges and lawyers imposed their personal views on the proper ordering of society to the detriment of individual freedoms and states' rights. However, the meeting at Yale was no soft gathering of curious intellectuals who wanted to debate the merits of federalism and outgrowths of the New Deal. The atmosphere was combative and marked by symposiums on how to cultivate an army of lawyers dedicated to deconstructing the liberal state root and branch. They called themselves "movement conservatives:" It was Woodstock with an edge, and those at the gathering agreed to identify their movement as "The Federalist Society." See "The Weekend at Yale that Changed American Politics." Michael Kruse. The Friday Cover- September/October 2018.

Ed Meese was in the White House at that time as Councilor to the President. He would lead the way in getting these so called "movement conservatives" into the Justice Department and other federal agencies. Among the early DOJ entrants were John Roberts, Charles Cooper, and Michael Carvin. Cooper and Carvin were assigned to the Civil Rights Division, Roberts to the Solicitor General's office. Samuel Alito came several years later. Meese would become Attorney General in February 1985 despite vigorous opposition in the Senate that included a report by Archibold Cox on Meese's "lack of ethical sensitivity" and "blindness to abuse of position." New York Times December 19, 1984.

Brad Reynolds became Assistant Attorney General in charge of the Civil Rights Division in late 1981 which was after final approval of the Jefferson County consent decrees. When Reynolds met with Ray Fitzpatrick in 1982 along with Mr. Cooper and Mr. Carvin, Reynolds had become committed to the Federalist Society agenda that included staunch opposition to any form of race consciousness to remedy past discrimination, even where such discrimination had

been proven by an extensive record before a federal district court judge as in Jefferson County. After the meeting, Reynolds was confronted with how to deal with Fitzpatrick's appeal of his clients' reverse discrimination claims which were now before the newly formed 11th Circuit Court of Appeals. The date for oral argument had been set, and I had been selected to argue on behalf of the United States. Our brief supported the district court rulings.

At a meeting with Reynolds to discuss the appeal were, Cooper, Carvin, myself, and Mark Gross, a lawyer from our appellate section. Reynolds suggested that no one from DOJ show up for the argument and let the private plaintiffs make the arguments in support of the consent decrees and judge Pointer's rulings. Mr. Gross responded that this would set a very bad precedent as DOJ almost always had its lawyers personally appear before appellate courts in cases in which it was a party. It was then decided that I would appear as counsel for the United States, but would make no arguments until after the private plaintiffs made theirs and simply say we agreed with the district court's application of the collateral attack doctrine and say nothing about the remedies in the consent decree. The plan hatched at this meeting was to leave room for the United States to switch sides later on and support the firefighter plaintiffs' claims in their lawsuit that the operation of the consent drees violated their constitutional rights.

The Eleventh Circuit affirmed Judge Pointer's decision to reject the white firefighters' efforts to intervene in the case, as I had argued on behalf of the United States, but it created a giant hole for these firefighters to continue their litigation, which was the goal of the Cooper, Carvin, Reynolds team. The court ruled that even though the white firefighters could not intervene in the ongoing litigation, they could, as the Fitzpatrick putative intervenors argued, bring their own lawsuit challenging individual promotions under the consent decree as a violation of their constitutional rights which would not constitute a collateral attack on the consent decrees. This was an early indication of how Federalist Society advocates would begin to maneuver inside the Justice Department to radically change civil rights enforcement and by doing so protect and stoke white grievances. It only got worse from there.

Shortly after my court of appeals appearance, I was quietly removed as DOJ lead attorney on the case and Chuck Cooper became DOJ's prime conduit for coordinating legal strategies with Fitzpatrick's plaintiffs. Thereafter, committed Federalist Society attorneys newly hired in the Division were asked to fill out the team. The first step was to seek to intervene on behalf of the white plaintiffs in a collection of new lawsuits filed against the city of Birmingham challenging individual promotions in the Fire Department. They initially were called the "In Re Reverse Discrimination Cases" but later became captioned under the name of the lead firefighter plaintiff Robert Wilks. The black plaintiffs and the City of Birmingham vigorously opposed the move claiming DOJ was in breach of its contractual commitments to defend the decrees. It later filed a motion for contempt against the United States.

The Cooper team tried to wiggle out of this predicament by claiming the city had no right to make the challenged promotions even under the consent decree as written. This is where Federalist Society legal sophistry, a hallmark of its jurisprudence, became jarringly apparent. It focused on a provision in the Consent Decree that the city had insisted on during negotiations to

protect it from challenges by the black plaintiffs in instances where the city had a clearly superior white candidate and wanted, for special reasons, to hire or promote that person to a certain job over a putatively less qualified black candidate. During negotiations DOJ and private plaintiffs had no quarrel with that since the hiring and promotion percentages in the decree were never viewed as quotas that had to be met in each selection, but goals to be achieved over the life of the degree. Accordingly, the following language was included in paragraph 2 of the decree:

> "Nothing herein shall be interpreted as requiring the city to hire unnecessary personnel, or to hire, transfer, or promote a person who is not qualified, or to hire transfer, or promote a person who is demonstrably better qualified based upon the results of a job -related selection procedure." Paragraph 2. (emphasis added).

The Cooper team interpreted that language as effectively prohibiting the promotion of any African American firefighter who placed below a white on the eligibility list on the premise that such person was demonstrably less qualified. To do otherwise would violate the constitutional rights of the higher ranked white applicant and by this time the Personnel Board had devised new tests for that job. However, the very next paragraph, which was standard in DOJ consent decrees, stated that:

> "Remedial actions and practices required by the terms of or necessary to carry out the purposes of this Consent Decree shall not be discriminatory within the meaning … of Title VII." Paragraph 3. (emphasis added).

The meaning and interplay of these paragraphs were explained to Judge Pointer at the fairness hearing before he approved the settlement. The Cooper team did not formally seek further clarification of these provisions with the parties or the court after it met with Mr. Fitzpatrick and decided to support his lawsuit. Instead, it began to mount a subtle pressure campaign on me to come around to their reading of these paragraphs in case DOJ was called upon to justify its newly formulated views of them. As part of that effort, I was asked to accompany Chuck Cooper to a hearing before Federal District Court Judge William Acker in Birmingham who had been initially assigned to several newly filed reverse discrimination cases. Since I was still formally on the pleadings as lead attorney for the United States, Cooper wanted me there as the proverbial "non- speaking potted plant." Cooper argued that the United States did not support the challenged promotions based on its cramped reading of paragraph 2. I said nothing at the hearing. Judge Acker decided to transfer the cases to Judge Pointer.

■ Clarence Thomas Before Clarence Thomas

The Cooper-Carvin reeducation effort continued when they invited me to attend a meeting in 1983 with Clarence Thomas, then Chair of the Equal Employment Opportunity Commission, to discuss affirmative action remedies in a private class action race discrimination lawsuit against the New Orleans police department. Williams et al. v. New Orleans Police Department. Those remedies closely tracked the ones in Birmingham. The case was before the

full Fifth Circuit en banc after a 2-1 majority of the three- judge panel that heard the case ruled for the city and black plaintiffs. The Department had filed a motion to intervene in that case at the appellate level to challenge on constitutional grounds the affirmative action remedies before the court. DOJ's amicus brief opposing those remedies had yet to be filed and it wanted EEOC's views on them at a meeting at DOJ. I was asked to attend the meeting which was highly unusual as line attorney participation on appellate matters affecting private litigation were normally handled by our Appellate Section.

It turned out Thomas had become a complete pain in the ass for DOJ because of his very public dispute with the Department over its change of position on affirmative action and participation in the Williams case. Thomas was incensed by the Department's efforts to intervene in that case and argue against affirmative action without consulting the EEOC. This new position, Thomas alleged, was obviously at odds with the position the Department had taken in when it argued in support of the consent decrees.

In 1983 Thomas sent a series of letters to then Attorney General William French Smith stating the Department's new positions on affirmative action and participation in the Williams case were "unacceptable" noting they constituted "not only a sharp departure from acceptable standards of inter-agency protocol but was an action taken in derogation of this agencies statutory designation as the chief interpreter of Title VII of the Civil Rights Act of 1964, as amended." The letters are at Hearings before the Subcommittee on Employment Opportunities, Committee on Education and Labor, December 14, 1984 pp. 60-65.

Thomas then goes on the make, in hindsight, the stunning assertion that the Department's new position that "Title VII flatly prohibits courts from awarding any affirmative action relief which benefits individuals who were not specific victims of discrimination" is directly contrary to the views of the EEOC and the remedial purposes of Title VII. "This interpretation of Title VII is the direct opposite of the interpretations previously urged by both the Department of Justice and Equal Employment Opportunity Commission. If this position is adopted by the courts, it could seriously affect our ability to enforce many existing judgments, consent decrees and settlement agreements entered into between this agency and employers over the last 11 years."

In an April 5, 1983 letter to DOJ, Thomas reiterated the Commission's opposition to the position the Department was likely to articulate in its amicus brief in Williams, and attached the Commission's own analysis of the issues before the court. The purpose of the meeting I attended was to discuss that analysis.

As an African American Republican, Clarence Thomas enjoyed a meteoric rise within the government after Reagan's election in 1980, moving from an obscure Senate staffer to head the Office of Civil Rights in the Department of Education. He spent less than a year there before his appointment to the EEOC in March 1982. Thomas was relaxed and well prepared for the meeting I attended. He was trim and seemed quite young, even though I was only four years older than him. William Bradford Reynolds, Assistant Attorney General for the Civil Rights

Division, chaired the meeting with Cooper, Carvin, myself, and my section chief, Dave Rose on one side. Thomas and two staffers sat across the table.

Thomas began to provide an overview of the Commission's materials on affirmative action but he was quickly interrupted by Reynolds who said they had reviewed them and the Department was not going to change or modify its position on affirmative action in its Williams amicus brief. Before Thomas could say anything further, Reynolds said in so many words that the EEOC "should get with the program." To me, it seemed humiliating for Chairman Thomas to be treated that way. He did not put up much resistance to Reynolds demands other than to try to explain that the other commission members were mostly Democrats and he felt compelled to reflect their thinking. He hardly resembled the combative nominee to the Supreme Court who during his confirmation hearings claimed he was an independent black man who would not "kowtow to an old order." The meeting with Thomas did not last long. I heard that after the meeting he was scheduled to meet with White House counsel Ed Meese. The EEOC decided not to file an amicus brief in Williams.

■ The Reckoning

Meanwhile, the reverse discrimination cases before Judge Pointer had devolved into trench warfare with DOJ and the private plaintiffs demanding extensive discovery of fire department personnel files, records from the Jefferson County personnel board on its written and oral firefighter promotion examinations, and depositions going up the Fire Department leadership chain and then to mayor Arrington. The now defendant black private plaintiffs and the city engaged in extensive discovery of their own including a notice to take my deposition accompanied by a motion to hold DOJ in contempt of its obligations to defend the consent decree. That was put in abeyance by Judge Pointer until the end of discovery which did not occur until 1985. When the city renewed its contempt motion, DOJ and the white plaintiffs moved for a protective order to preclude the deposition. Judge Pointer denied the motion and my deposition was scheduled for July 1985.

The night before the deposition I was asked to meet with Chuck Cooper, Mike Carvin and Mary Mann, another Federalist Society lawyer assigned to the case, to prepare me for my deposition. Bob Moore, a career section deputy chief, sat by my side. Bob had reviewed all of my trial work in the case including the arguments made at the fairness hearing defending the affirmative action remedies of the consent decrees. The meeting started off by Cooper playing the role of good cop. He asked if I was prepared to at least acknowledge that the wording of the infamous Paragraph Two was ambiguous and could be subject to different interpretations including the straight jacketed one (a so-called "tie breaker theory") advanced by the Department in the reverse discrimination cases. This meant race could only be used to break a tie in promotion candidate qualifications. I could not go that far given my recollection of the drafting and meaning of that paragraph as accounted above.

Mike Carvin adopted the bad cop role suggesting that I could not possibly endorse language that would result in the deprivation of the white firefighters' Constitutional rights.

Efforts to find a way to blunt the effect of my testimony on DOJ's position in the litigation proved fruitless. At one point, the discussions became heated with Bob Moore shouting that he agreed with my interpretation of the consent decree language and that they should stop trying to pressure me. The meeting ended shortly thereafter around 5 pm.

I went back to my office and Chuck Cooper stopped by to say he understood the pressures I was under and that the deposition preparation was not intended in any way to suggest I should not testify truthfully. He seemed sincere. At around that time Chuck had become the Assistant Attorney General for DOJ's Office of Legal Policy and Sam Alito was his deputy. John Roberts worked in the Solicitor General's Office and presumably was aware of the Birmingham reverse discrimination litigation.

My deposition started the next day (August 2, 1985) under questioning by Robert Joffe, a renowned trial lawyer with the New York law firm Cravath, Swain & Moore representing the black private plaintiff class. After describing the history of DOJ's settlement negotiations, I was asked about my understanding of the city's affirmative action obligations under the decree, and specifically my understanding of the intent of paragraphs two and three. I gave the answers that so unsettled Reynolds, Cooper and Carvin the evening before. At the lunch break, Mary Mann, who sat next to me defending the deposition, notified Chuck Cooper of my testimony, and was instructed to seek an emergency order from the federal court in Birmingham to place my deposition under seal, meaning it could not be made public.

The motion was granted by Judge James Hancock because Judge Pointer was out of the country. However, that did not prevent my testimony from being leaked to the New York Times which published an article about it two days later. See Robert Pear, "Lawyers Deposition in Rights Case Sealed." New York Times, August 4, 1985. It said my testimony directly contradicted the position taken by the Justice Department in the Birmingham reverse discrimination cases, and that civil rights lawyers [private plaintiffs] said the Reagan Administration was trying to "cover up this inconsistency by having the deposition sealed. "

Thereafter, I tried to explain the difficult circumstances I had been put under by the deposition in a memo signed my Section Chief to AAG Reynolds, but it was blocked by the Deputy Assistant Attorney General who noted cryptically that it should be sent to Brad "when they call the role up yonder." Brad Reynolds died on September 19, 2019 at his home on Seabrook Island SC not far from where I live on Hilton Head.

■ Supreme Court Intervention

After I left the Employment Section in the late 1980s, the reverse discrimination litigation continued to plow forward before Judge Pointer with the sanctions motion held in abeyance. After trial Judge Pointer found that the promotions challenged by the white plaintiffs were mandated by the consent decree and thus did not violate their constitutional rights. While not admitted into evidence, the court obviously had the benefit of my deposition testimony. The judge's decision was again appealed to the Eleventh Circuit which this time held that he erred in

not considering the plaintiffs' claims wholly apart from the consent decree because they were never bound by it. This "Alice in Wonderland" reasoning by a circuit court that had become increasingly conservative found a receptive audience in the Supreme Court. In Martin v. Wilks, 490 U.S. 755 (1989) Chief Justice Rehnquist writing for a 5-4 majority posed the question before the court as follows:

"Petitioners argue that because respondents failed to intervene in the initial stage of the proceedings, their current challenge to actions under the consent decree constitutes an impermissible 'collateral attack.' They argue that respondents were aware that the underlying suit might affect them and if they chose to pass up the opportunity to intervene, they should not be permitted to later litigate the issues in the new action. The position has sufficient appeal to have commanded the approval of the great majority of Federal Courts of Appeal, but we agree with the contrary view." (emphasis added)

Rejecting 20- year-old Supreme Court precedents, Judge Rehnquist word smithed a Federal Rule of Civil Procedure (Rule 12) dealing with the joinder of parties to litigation to hold that the only persons who can be bound by a judgment are the actual parties to the case. It does not matter if there are people outside the litigation who may be unhappy with the result and had an opportunity to intervene in the case to protect their rights, such as the Wilks plaintiffs. They can come forward at any time to litigate their claims if they believe their constitutional rights are being violated by the operations of consent decrees or settlement agreements. This was textualism run amuck and has since become a hallmark of Federalist Society jurisprudence. This solicitousness toward white grievances in the context of civil rights litigation has only grown over the years and now commands a six -person majority on the Supreme Court.

Employers were obviously angered by this decision as it made it almost impossible for them to finally resolve discrimination complaints with any form of affirmative action remedies. They found a listening ear in Congress. In 1991 Congress still had reasonable Republican members in the House and Senate led by Bob Dole. They were able to include an amendment to the Civil Rights Act of 1991 that effectively overruled the Wilks decision and restored the law to what it was on the preclusive effect of employment discrimination settlements. But this did little to deter the Federalist Society's relentless crusade to dismantle civil rights laws and cater to white grievances. No one at that time saw the coming of the Trump MAGA movement. Indeed, I do not believe that even Chuck Cooper or Mike Carvin, both of whom I respect and have gone on to distinguished careers in the Federalist Society movement, would subscribe to some of the extreme views on civil rights coming out of the Pam Bondi led Department of Justice.

2. VOTING SECTION

After my deposition testimony in the Birminham case, I knew my advancement within the Employment Section was probably limited. So, shortly thereafter, I transferred to the Voting Section. I did so because I loved my work at DOJ and wanted to carry on with my service

as a civil rights advocate for the government. Voting Section attorneys were then located outside the DOJ Main Building and subject to a different line of review within the Division. This turned out to be a blessing because it gave me an opportunity to understand how the phenomenon of race discrimination played out in other spheres of civil rights enforcement, thus contributing to this memoir.

My life in the Voting Section was rejuvenating as it greatly expanded my understanding of the historical context of civil rights law. A defining feature of the Civil Rights movement of the 1960's was the passage of the Civil Rights Act of 1965 that contained what is popularly known as the Voting Rights Act. The history of this Act has been well mined by scholars, but my experience handling litigation under both Sections 5 and 2 of the Act demonstrated to me another central aspect of racism, fear among whites of being dominated by blacks. Section 5 was most threatening because it required political jurisdictions, primarily in the South, to "preclear" with the Justice Department any changes to their method of elections before they could be implemented. This sweeping authority was deemed necessary by Congress to avoid any possibility of backsliding by jurisdictions with long histories of voting rights violations. Thus, all voting changes had to be precleared by DOJ before they could take effect, including changes to voter eligibility and registration, precinct boundaries, poll locations, ballot languages, methods of voting and most importantly election district boundaries -. the so-called gerrymander problem. The legal standard for review under Section 5 was whether any of such changes were "retrogressive," that is, made racial minorities worse off than they were under the old systems. If preclearance was denied, the electoral jurisdiction could appeal to a three- judge federal court in Washington D.C. and thereafter the Supreme Court. These standards and procedures were endorsed multiple times by Congress when it amended the Voting Rights Act to either extend its reach or over rule adverse Supreme Court decisions.

What is making voting rights litigation so contentious today? Similar to its longstanding attack on affirmative action, the Federalist Society has made an ongoing effort to gut the Voting Rights Act. As many know, in 2013 the Supreme Court in a 5-4 opinion by then Chief Justice John Roberts held Section 5, the heart of the Voting Rights Act since its passage, unconstitutional in Shelby County v. Holder. 570 U.S. 529 (2013). This was an especially mortal blow to the Second Reconstruction and only the beginning of many efforts by the Federal Society influenced Supreme Court to dismantle the Voting Rights Act.

After Shelby, Section 2 of the Act remained the core provision used in the Voting Section to challenge two kinds of voting laws: redistricting plans that diluted minority voting rights and voter suppression laws which limited access to voting by minorities. Court decisions invalidating these practices were the next target of the Federalist Society and in two recent Supreme Court decisions, these attacks further gutted the Act. Eight years after Shelby County, the court decided Brnovich v. Democratic National Committee, 594 U.S. (2021). In this case the court of appeals had found that two restrictive Arizona voting laws concerning out- of-precinct voting and ballot collection practices violated Section 2. In another 5-4 decision, this one written by Justice Samuel Alito, a former DOJ colleague of Chief Justice Roberts, the Supreme Court reversed the appellate court decision and upheld these restrictive laws. This opinion sets out an analytical

structure for deciding challenges to restrictive voter suppression laws that make it extremely difficult, if not impossible, to find such laws violate Section 2.

The attack on vote dilution cases has also met with success, although it has not yet completely gutted such cases. The analytical structure for such cases had been in place for almost four decades and had been upheld in numerous Supreme Court decisions. In Allen v. Milligan 599 U.S. 1 (2023) the court again upheld this line of cases when in a 5-4 decision it rejected an attack on a lower court decision that found an Alabama redistricting plan diluted minority voting strength in violation of Section 2. In affirming the lower court decision, the majority opinion applied the decades long method of analysis for such cases, emphasizing the importance of stare decisis.

But this positive vote dilution case was significantly undercut last term by court's decision in Alexander v. South Carolina State Conference of the NAACP. In this case plaintiffs claimed that the South Carolina Congressional redistricting plan resulted in racial gerrymanders in several districts and diluted electoral power of the state's black voters in violation of both the 14th Amendment's Equal Protection Clause and Section 2 of the Voting Rights Act. The major focus of the case was on Congressional District One in Charleston, the district in which I currently reside. A unanimous three judge court made extensive and carefully crafted findings of fact proving the State's plan predominantly used race to draw District One which unlawfully diluted the black vote in violation of the Equal Protection Clause and Section 2.

But the Supreme Court reversed this decision in an opinion by Justice Alito in which he ignored the deference courts have traditionally given to lower court findings of fact, and instead essentially drafted his own factual findings in holding the district court's findings clearly erroneous. He then proceeded to reverse the lower court's holding that race had predominated in drawing Congressional districts in violation of the Fourteenth Amendment and approved the State's plan. While the Court did remand the plaintiffs' Section 2 claim to the district court, this standard set for Equal Protection claims is likely to adversely affect such claims in the future. More on this later, but, needless- to- say, it reflects the "take no prisoners" approach of movement conservatives to muscle the courts to adhere to their ideology.

United States v. Washington County, Mississippi (N.D. Miss. 1986)

This was my major case in the Voting Section, a Section 2 case challenging the at-large method of electing the five member Washington County, Mississippi Board of Supervisors in which I was the lead attorney. Historic Greenville was the county seat and sits astride the Mississippi river in the "black belt" of the Mississippi delta. At the time of our lawsuit, only one African American was a member of the Board even though African Americans constituted over 70% of the total population. At the time of the Civil War, blacks constituted over 92% of the total population. Virtually all were enslaved. The African American member of the Board at the time of our lawsuit had only recently been elected and he had the backing of the white community in a misguided belief that having a black member of the board would insulate it from liability under the Voting Rights Act.

The legislative history of Section 2 as enacted by Congress made clear that at large election systems, such as this one, diluted black voting rights by canceling their ability to elect candidates of their choices. Voting in past elections became key to show that candidates preferred by the black community almost never obtained sufficient votes in at large elections to overcome resistance by white voters, a phenomenon called racial block voting. Congress also recognized that in addition to examining the results of past elections, courts should engage in searching inquiries into the history of racial discrimination in the jurisdiction including discriminatory voter registration practices, educational disparities, employers' pressures to restrain their voting and outright violence in proving historic reluctance by whites to relinquish their voting power. Proving violations of Section 2 in this way was endorsed by the Supreme Court in Thornburgh v. Gingles 478 U.S. 30 (1986).

Efforts to bar blacks from voting after the 1860 Reconstruction era became particularly important in Deep South voting rights cases where blacks were systematically intimidated from registering to vote. Our section 2 cases frequently required testimony from historians who, as in Washington County, recounted the continuance of slave like conditions after Reconstruction in all aspects of life in Washington County, not just voting. Racial segregation in schools, jobs, access to public accommodations each became relevant to the litigation because they adversely impacted the ability African Americans to participate in the political process. Long time black residents of the county recounted frequent and sustained acts of intimidation by whites to keep them from registering to vote. This became some of the most heart wrenching aspects of my work on this case. At the time of our lawsuit whites still outnumbered blacks in voter registration even though they constituted only 30% of the population.

The over- arching theme of the litigation was that white residents of Washington County were deeply afraid of ceding control of the county to African Americans and that chaos would result if they did. We had a rich source of reporting on this problem thanks to the local newspaper, the Delta Democrat Times. Its legendary editor, Hodding ("Big Hod") Carter II reported on the blatant disenfranchisement of blacks both before and after the passage of the Voting Rights Act in 1965, and the prevalence of Klan activity throughout the Mississippi delta in the modern era. His son, Hodding III, became the press officer of the State Department under President Jimmy Carter.

After extensive discovery, the county agreed to settle the case by adopting a single member district plan where African Americans constituted a majority of the voting age population in three of the five districts. At the next election, and after a sustained voter registration drive, African Americans won control of the Board. Today, four of the five members of the Board are African American.

A similar result occurred ten years later when, during the last days of the Clinton Administration, DOJ filed a Section 2 lawsuit against the Charleston County SC Board of Supervisors. As in in Washington County, Mississippi, DOJ successfully challenged the at large method of electing its board which consisted of nine members in a county where blacks

constituted one-third of the county's voting age population. United States v. Charleston County, 318 F. Supp 2d 302 (2002). All were white except for Tim Scott, the candidate preferred by the white community, who received less than 2% of the black vote when he ran for that office. He decided not to run for election in his then new majority black district under a court-ordered single member district plan. He later successfully ran for an open seat in a majority white SC House of Representatives legislative district. From there, he was appointed by SC Governor Nikki Haley to fill the unexpired term of SC Senator Jim DeMint where he remains today.

As more at large election systems became successfully challenged under the Voting Rights Act and released from white control through single member districts, majority white state and local governments turned to skewing the boundaries of the election districts to maintain their dominance. The term "racial gerrymandering" was coined for these tactics which focused on techniques known as" cracking" and "packing." With the advent of computer-generated mapping and now artificial intelligence, it is possible for demographers to find the best ways to shift black and minority voters into ("packing)" and out of ("cracking") district boundaries to ensure effective white control of a legislative body. Since African Americans and, to a somewhat lesser extent Hispanics, historically have preferred Democratic candidates, it is easier to camouflage racial intent by claiming the district boundaries were drawn for political reasons and not race. Courts consistently found that political affiliation was simply a proxy for race since historically African Americans voted overwhelmingly for Democratic candidates at least since the time of Lyndon Johnson.

As discussed earlier, this seemingly self- evident proposition was rejected this year by the six-member conservative majority on the Supreme Court in Alexander v. NAACP, No.22-807, May 23, 2024. The author of the opinion, Justice Alito, turned racial gerrymandering into an impossible Rubik's Cube by positing a new legal standard for vote dilution cases. Legislatures, according to Alito, are presumed to act out of political considerations and not race when they draw legislative boundaries. It is thus the burden of the plaintiffs to disentangle race from politics. John Roberts and his Federalist Society cohorts on the court have managed to effectively turn longstanding voting rights principles on their head with legal sophistry similar to that used in interpreting the consent decree Jefferson County Alabama. The Washington County case and virtually every successful vote dilution case brought by DOJ and private plaintiffs since the inception of the Act disprove any basis for this presumption. It's simply not true.

Now, plaintiffs in Voting Rights cases no longer have a level playing field on which to advance any racial gerrymander claims in court. Instead, they must first overcome a presumption that the district lines were drawn without racial intent, the exact opposite of the Section 5 standard which the Roberts court threw out as unfairly delineated. Having effectively eliminated Section 5 of the Voting Rights Act where the presumption was that legislatures with long histories of voting rights discrimination considered race in changing their voting procedures, the six- member conservative majority on the court has imposed Section 5 like standards on plaintiffs across the country seeking to challenge racial gerrymandering under Section 2. A presumption of politics and not race. With affirmative action in employment now on

the chopping block, all to the delight of white Republican voting majorities, the courts are left with vanishing power to correct racial injustices.

3. HOUSING SECTION

Our Nation's long and sad history of race discrimination has had other profound adverse effects on African Americans beyond those illustrated by the civil rights cases discussed so far. By denying blacks the opportunity to better their lives not just in employment and voting but also in housing, education, and access to credit, they have suffered disadvantages in family life and wealth creation that continue to handicap many of them to this day. Thus, it should not come as a surprise that some, if not many, black persons and families, particularly younger African Americans, harbor deep resentments about these past wrongs and injustices that occurred during my lifetime and those of my parents, grandparents, and earlier generations. They are cynically branded by MAGA people as part of a "woke" or "cancel culture" movement that tries to demonstrate that whites bear responsibility for their perceived racial inequities. I hope by this memoir they take a good look in the mirror.

In March 1991 the brutal beating of Rodney King by a band of white Simi Valley police officers received nationwide attention. The recording of that beating prompted a DOJ investigation into possible federal civil rights violations. While that investigation was underway, four white officers involved in the beating were charged with state law violations. Their acquittal in 1992 by an all - white Simi Valley jury sparked wide spread rioting in Los Angeles and other cities across the country. The intensity of the rioting and looting was broadcast throughout the Nation foreshadowing what was to come after George Floyd"s death at hands of white police officers in Minneapolis in 2020. For the first time in our Nation's history, United States Marines were sent to Los Angeles by President Bush at the request of Republican Governor Pete Wilson to assist local law enforcement in curtailing the rioting. The Bush Justice Department later prosecuted these white officers for violations of criminal federal civil rights laws, and successfully convicted them in April 1993 during the early years of the Clinton Administration.

After the King beating, complaints from black communities snowballed over police practices in black neighborhoods but many pointed out that the black rage was directed not so much at the police but the ghettoization of the black community in our major cities so aptly captured in Spike Lee's 1989 film "Do the Right Thing." Bank redlining was a major part of that problem.

Prior to the King beating, President George H. W. Bush, to his credit, had requested that then Attorney General William Barr investigate bank redlining because of recent news reports about it. The King incident pushed that investigation into over drive. After my work in the Voting Section, I followed a Deputy Chief in that section, Paul Hancock, to the Housing Section where he had been named the Section Chief. Paul asked that I take the bank redlining investigation.

This was new ground for the Housing Section. Historically, it had focused its work on housing discrimination. A prime example was a high-profile 1973 Fair Housing Act case

brought against Donald Trump for racist rental housing practices in the New York area in which he had instructed his rental agents to mark black applications with a “c” for “colored” and placed in a separate drawer where they were no longer considered. In keeping with his flamboyant persona, he filed a $1million counterclaim against DOJ through his infamous lawyer Roy Cohn that was quickly dismissed. After two years of fighting, he settled with, what else – a consent decree.

Even though bank redlining was a new area of fair housing and fair lending law for the Department, Paul was adamant that we conduct a thorough investigation leaving no stone unturned. Under his guidance, we used investigative techniques similar to those used in Section 2 voting cases to prove racial intent.

United States v. Decatur Federal Savings & Loan (N.D.Ga.1992)

In 1988 and 1989 The Atlanta Journal Constitution published a Pulitzer Prize winning series titled “The Color of Money.” It chronicled the history of redlining by Atlanta’s major banks and savings & loan institutions. Using newly available computer mapping, the authors of the articles led by Bill Dedmon showed how these lenders deftly and with almost surgical precision avoided making loans in predominantly black neighborhoods, including those with relatively high incomes, while lending freely in predominantly white areas including low - income neighborhoods. This occurred despite a 1977 law enacted by Congress during the Carter Administration called the Community Reinvestment Act (CRA) that required bank realtors, such as the Federal Reserve Board and Office of Thrift Supervision, to ensure that the lenders they regulated were meeting the credit need of all persons in their service area including those in low- and moderate- income neighborhoods. Unfortunately, there was no specific racial component attached to these obligations.

Following the Atlanta Journal articles, DOJ sent letters to 64 home mortgage lenders in the Atlanta area asking for information about their mortgage lending practices and policies including how they delineated their services areas under the CRA. Detailed Information about specific loans and loan applicants including their race, loan amount, and census tract of the loan was submitted along with other reports of their lending activities required under a federal law called the Home Mortgage Disclosure Act (HMDA) first enacted in 1975. After extensive data analysis by our team, Decatur Federal stood out as most in need of fair lending scrutiny under two federal laws that prohibited race discrimination in mortgage lending – the federal Fair Housing Act of 1968 and the Equal Credit Opportunity Act of 1972.

We had very little in established case law under those Acts to guide us in the investigation other than we had to prove that race was a motivating factor driving Decatur Federal’s lending practices. To meet front office approval under the Bush Administration, we could not rely on the much lighter “disparate impact” test first established, as noted above, in Griggs v. Duke Power Co. 401 U.S. 424 (1971), an employment discrimination case. The disparate racial impact of Decatur Federal’s lending practices was obvious from their reports to its federal regulator – the Office of Thrift Supervision (OTS. They showed it made many loans in

middle and low- income white neighborhoods and few, if any, in black neighborhoods regardless of income. Under the disparate impact test this would have been enough to shift the burden to Decatur Federal to justify those practices.

This is where Paul Hancock's leadership and deep knowledge of litigating Section 2 voting rights lawsuits came into prominence. Paul believed that in many cases where adverse racial impact is shown, a deeper investigation into the defendant's practices would, in many cases, show they were the result of racial animus. To investigate that proposition, we relied on a series of Supreme Court decisions that established guidelines for proving racial purpose in civil rights cases. Rodgers v. Lodge (1982) (voting); Columbus Board of Education v. Penick (1979) (schools), Village of Arlington Heights v. Metropolitan Housing Authority (1977) (housing) and Teamsters v. United States (1976) (employment). These cases endorsed searching inquiries into the history and background of the defendant's practices, its adverse racial impact on minorities and residents of minority areas, the defendant's adherence to those practices over time notwithstanding knowledge of their adverse racial impacts, and adverse treatment of individual minorities. What we found in the Decatur Federal investigation was startling but not surprising.

■ Back to Reconstruction

This investigation, like many other civil rights cases I worked on, pulled us back to the post Reconstruction period of the 1860's in search for the root causes of these disparities. After the Civil War freed slaves were viewed by many whites as incapable of leading productive lives with the same competency as them. After the demise of the Freedmen's Bureau, private banks and creditors simply refused to extend credit to them except under the most onerous of terms. As such, they became prey to unscrupulous money lenders, frequently losing their homes and possessions in the process. In 1934 Congress, under the Roosevelt Administration, passed the National Housing Act to make housing and mortgages more affordable for low to middle income Americans during the Great Depression. It created the Federal Housing Administration (FHA) and the Federal Savings and Loan Insurance Program (FISLIC) to manage that effort. Since the Black Codes were still in effect in many southern states and in the nation more broadly these programs were considered for "whites only." As we found in our investigation, these programs became tantamount to a "state sponsored system of segregation" with new housing for blacks mainly confined to public housing authorities or self -financed home purchases. There were some minority - owned banks, but their loans were only a trickle in the housing stream.

We also discovered historic, overt racism in the appraisal industry, a critical component of the private housing market. One of the founding fathers of that industry, Frederick Babcock, in his famous 1932 treatise "The Valuation of Real Estate" wrote that there is "one difference in people, namely race, which can result in very rapid (housing) decline." He went on to note that such declines can best be avoided by housing segregation.

Stunningly, these race- based appraisal practices espoused by Babcock and others did not end until 1976 when the Justice Department sued the appraisal industry to have such

references removed from appraisal texts and practices. United States v. American Institute of Real Estate Appraisers, et al. C.A. No. 76 C 1448 (N.D. Ill 1976). During this era of entrenched race discrimination in housing, African Americans frequently had to rely on “contract purchases” from white real estate speculators who bought homes in minority neighborhoods at distressed prices and resold them at inflated prices to minority purchasers. These predators frequently financed the loans at exorbitant interest rates and retained title to the property until the purchasers fully paid off their loans. One missed payment and the purchasers would be evicted. This resulted in widespread blighted housing in minority neighborhoods that continues to this day. See, “The Case for Reparations. Ninety Years of Jim Crow. Sixty Years of Separate but Equal. Thirty-Nine Years of Racist Housing Policy.” Ta-Nehisi Coates, The Atlantic, June 2014. Mr. Coates is frequently tagged pejoratively as a “critical race theorists” by MAGA folks intent on stoking white racial grievances. They are badly misinformed. As we will see in the Capital City “reverse redlining” case discussed below, these predators have continued to ravage black neighborhoods well into the 21st century. They need to be held to account.

After World War II returning veterans became eligible for low downpayment, low interest rate home loans insured by the FHA. Unfortunately, this in effect became a whites only program through FHA underwriting guidelines that discouraged the mixing of races as bad for property values and ranked blacks at the bottom of a scale for judging creditworthiness. As noted above, the appraisal industry was complicit in this stereotyping. Many bank and savings & loan underwriters were trained under these guidelines and that culture continued into the 1960’s and 1970’s and beyond. The 1977 Community Reinvestment Act was supposed to impact their decisions, but without a racial component it did little to alter their underwriting behavior toward African Americans and other minorities. Everyone assumed that the broad prohibitions against racial discrimination in the Fair Housing Act and Equal Credit Opportunity Act would be sufficient to restrain such behavior. They were not.

■ Building the Case Against Decatur

This was the real estate playing field we encountered when we began our Decatur Federal investigation. It included a careful analysis of how Decatur Federal defined its lending and service territory under the Community Reinvestment Act. As an experienced voting rights attorney, I knew how to spot a racial gerrymander of district boundaries and this one was almost comically obvious. The territory boundaries followed the tracks of a railroad that had historically separated white and black residents of Atlanta. The white areas north of the tracks were included in its lending and service territory, the black areas south of the tracks were excluded. Under the CRA, lenders were allowed to choose between two methods for selecting their CRA lending and service areas. One was called the “political boundary method” where the lender would elect city or county boundaries to delineate that area. The other was its “effective lending and service” territory which was defined as where it made most of its loans. Decatur Federal chose both. It used county boundaries to define it lending and service territory in white areas to ensure expansion of its mortgage lending opportunities, and effective lending and service territory in areas south of the railroad tracks that encompassed only a few black neighborhoods where it made loans.

Over its history Decatur Federal had opened 43 branches and 8 mortgage offices. Only one was opened in a black neighborhood. That branch (Kirkwood) was a corporate response to the 1968 riots following the assassination of Dr. King. It was an action the company said was driven by social concerns and not profit. Nonetheless, Decatur closed the branch only three years later allegedly because the branch was losing money. However, our investigation showed that it was not unusual for Decatur's newly opened branches to lose money in their first years of operation. Indeed, several branches that were opened in white neighborhoods in the 1970's remained open after losing considerably more money than the short - lived Kirkwood branch. The only other full-service branch Decatur Federal had ever closed in its history was a branch (Glendale) that was opened in the 1950's when the area was predominantly white and was closed in the mid - 1980's after the area had become predominantly black.

At the time of our investigation, mortgage lending was heavily reliant on referrals from real estate agents and builders. Decatur Federal maintained "preferred call lists" which contained the names of approximately 600 real estate agents and builders in the Atlanta area. Only one of these agents and builders was a member of the local association of black realtors and only four had addresses in black neighborhoods. Interviews with Atlanta-area real estate agents confirmed that Decatur Federal's sales staff (account executives) made solicitations almost exclusively to realtors in white neighborhoods.

One real estate agent, who was African American, said that when she worked at a real estate agency in predominantly white north Fulton County, she was called constantly by Decatur Federal's account executives, but when she then went to work for another company in mostly black south Fulton County the contacts stopped. A former Decatur Federal account executive told DOJ investigators that she was specifically instructed by the company not to solicit loans south of Interstate 20, an area that included many of Atlanta's black neighborhoods.

We also examined Decatur's advertising practices and found that it never used black-owned or minority-owned radio stations or newspapers which were widely recognized at the time as a primary means of reaching the black community. Indeed, such targeted advertising was a chief recommendation of an Atlanta mayoral commission formed after the "Color of Money" series. Decatur Federal rejected that recommendation claiming its advertising in the Atlanta Journal Constitution was enough. Under the current Trump Justice Department, such racial targeting would be grounds for a reverse discrimination lawsuit!

The ads Decatur Federal did place in the Atlanta Journal Constitution sought conventional mortgage loans but never mentioned the availability of FHA or VA loans who's low downpayments and underwriting standards were geared to low - and moderate - income borrowers, the major impetus behind the Community Reinvestment Act. By this time those loans had become quite popular in black neighborhoods and despite being an FHA/VA approved lender endorsed by federal Department of Housing & Urban Development, Decatur Federal received few applications for those loans, and those were mostly from whites.

Finally, examination of Decatur Federal's personnel records showed that few blacks or other minorities were employed in the key jobs of mortgage solicitation and underwriting. In our view at that time, the absence of minorities in these key jobs could inhibit the lender's ability to reach out and fairly assess the credit worthiness of African Americans, particularly in light of the sordid history of racial bias in the industry recounted above. Mortgage underwriting at that time was still a largely subjective process with underwriters allowed to use their discretion to approve or disapprove loans based on their evaluations of an applicant's credit history, liquid assets, and downpayment abilities. Not surprisingly, DOJ found that among the relatively small number of black applicants Decatur Federal did receive for mortgage loans, it applied its underwriting standards more harshly toward them than similarly situated white applicants leading to significant racial disparities in loan approvals.

The case was settled by a court ordered consent decree that contained 44 paragraphs of detailed requirements the lender had to adopt to correct the effects of its past redlining practices including branch locations, advertising, mortgage solicitations, and underwriting standards. The Decree provided $1,000,000 to 48 African Americans found to have been denied mortgage loans for racially discriminatory reasons. The full text of the decree can be found at Goering and Wienk, "Mortgage Lending, Racial Discrimination and Federal Policy (1996) pp.427-445. It also includes an article by me about the case from which most of this discussion is based.

I received the John Marshall award from then Attorney General William Barr for my work on this case, the Department's highest for litigation achievement. One might ask how that was possible after the Federalist Society takeover of the Department discussed earlier under the Reagan Administration? The short answer is we had a new President, George H.W. Bush. He brought in a new, less ideological team into the White House and Ed Meese was replaced as Attorney General by Richard Thornburgh, a moderate Republican, and former Governor of Pennsylvania. He was not a "movement conservative." John Dunne, a Republican lawyer from New York replaced William Bradford Reynolds as Assistant Attorney General of the Civil Rights Division. Although known as a conservative Republican, he respected the work and judgment of DOJ's line attorneys and career Section Chiefs such as Paul Hancock. While other line attorneys at that time may have had issues with the Bush Administration's civil rights policies, working for John Dunne was a breath of fresh air for me compared to what I had experienced under the Reagan Administration.

By this time, Federalist Society acolytes like John Roberts, Sam Alito, Chuck Cooper, and Michael Carvin moved on to more influential positions in the federal court system and private law firms that became breeding grounds for newly minted Federalist Society lawyers such as Leonard Leo. Clarence Thomas became a federal appeals court judge and who then, as with Roberts and Alito, moved on to the Supreme Court. Little did we know then that they, along with the newly emerging stars of the Federalist Society movement, such a Mr. Leo, were about to tap deep pocketed conservative donors for a revolution in our court system that would obliterate the Second Reconstruction. It was as if the court decisions of the 1960's and 1970's never existed as precedent for anything.

Their onslaught has become so complete that affirmative action as a remedial concept for past discrimination is now on death row. After the Supreme Court ‘s recent decision finding the affirmative action programs at Harvard and the University of North Carolina unconstitutional, these right-wing law firms are now targeting what is left of meager “diversity, equity, and inclusion (DEI) programs in private industries, universities, and local governments. The Birmingham reverse discrimination cases are now antiques in the movement conservative Hall of Fame.

■ Racial Redlining After Decatur Federal

After the Decatur case, Janet Reno became the Attorney General during the Clinton administration and Deval Patrick, the future governor of Massachusetts and presidential candidate, became Assistant Attorney General for the Civil Rights Division. If there was any hope of regenerating the Second Reconstruction it would be through them. Both were extremely committed to civil rights enforcement and remain to this day role models for the civil rights movement. Under their leadership our mortgage redlining program expanded and became more aggressive with Paul Hancock remaining as Housing Section Chief.

Our team developed several new high - profile redlining lawsuits that included Chevy Chase Federal Savings & Loan in suburban Maryland owned by a renowned banker B. F. Saul. Chevy Chase was represented by Robert Bennett, who also defended then President Clinton in the Paula Jones sexual harassment lawsuit. There were some awkward moments. We also developed the first “reverse redlining” case against a lender in Vicksburg, Mississippi, First National Bank of Vicksburg. It made high interest rate, high fee short term loans targeted to residents of black neighborhoods in the area. Both cases were settled with court ordered consent decrees and monetary recoveries for victims.

I also led a trial team in DOJ’s J’s first redlining lawsuit against a home insurance company - the American Family Insurance Company in Milwaukee, Wisconsin. The claims were similar to Decatur Federal in that the company sold few full replacement-cost policies in black neighborhoods that resulted in their overwhelmingly receiving high priced, lower coverage repair cost policies. Branch locations, underwriting procedures, and advertising were all encompassed in the complaint, tracking the Decatur Federal model. It too resulted in a court ordered consent decree with monetary recoveries for victims.

4. POST DOJ WORK

By the time of these cases, DOJ had a robust civil rights enforcement program under Attorney General Reno but she had to contend with increasingly well- funded Federalist Society advocacy groups that used the courts to attack her initiatives and question her judgment in cases such as the siege of the Branch Davidian compound in Waco Texas and the return of Elian Gonzalez to his parents in Cuba. I had just completed an exhausting time as DOJ’s representative on a fair lending mortgage task force that included all the federal banking

regulators and HUD. We developed interagency guidelines on fair lending procedures. They were adopted and remain in place with enforcement largely dependent on which political party is in power.

Around this time, I was approached by John Relman, then staff director of fair housing at the Washington Lawyers" Committee for Civil Rights & Urban Affairs and asked if I would be interested in advising the Committee on getting some of the top area law firms interested and trained to bring mortgage and insurance redlining private class action lawsuits. I knew DOJ's Civil Rights Division was in good hands, but by this time I also knew that it would only take a change of administrations to pull back on these initiatives. I could see the developing ripples in the water. The Second Reconstruction had affectively ended. It was time to move on. The Federalist Society think tank sharks were already starting to swim in these waters. See, Say Uncle -When the Feds Accuse You of Discrimination It Can Be a Lose-Lose Situation, Chevy Chase Decided Not to Fight. Kim Isler Washingtonian Magazine July 1995 pp.47-53. Private enforcement of civil rights laws now seemed more important than ever.

The Washington Lawyers Committee was then led by the legendary Roderick Boggs who had been head of the organization for over 30 years and had deep ties with the top law firms in the DC area interested in pro bono civil rights work. His selfless dedication to advancing the cause of civil rights remains a guidepost for all of us. I know he must be greatly distressed to see pro bono work by these firms turned on its head by the current Trump administration. They are now being pressured to advance the cause of MAGA warriors under the guise of pro bono work to completely dismantle what is left of the civil rights movement as we knew it. However, Rod's legacy remains and through his efforts we found many top DC law firms willing to step up and litigate redlining and reverse redlining cases. One was a class action against NationsBank (now Wells Fargo) and it too was represented by Robert Bennett. We settled that case.

At the Washington Lawyers Committee, getting advice and assistance from litigators at top DC law firms relieved much of the perhaps self- imposed job pressures I felt at DOJ and I had fleeting thoughts of retirement. But there was still too much more to do and so I reached an agreement with Rod Boggs and John Relman that I could move to Hilton Head SC and continue my work for the Committee. My mother had moved to Hilton Head after my dad died of a sudden heart attack in Cincinnati at age 59. My mother died there at age 68. I worried I had their genes. So, although now in South Carolina, I continued my work through this agreement with the Committee.

Subprime Lending

I remember speaking as a DOJ representative at a mortgage banker trade association conference shortly after Decatur Federal became front page news, particularly in trade publications. I recall trying to explain how the Decatur Federal case was put together, much as explained above, and the operation of the consent decree. One of the organizers of the conference came up after I spoke and thanked me for the presentation but was afraid it might

have been too detailed for the attendees most of whom were high ranking bank executives. He said all they want to know is what they needed to do ”to keep you guys from coming after them.” The word among the industry was just to make more loans to blacks to keep out of trouble

The lending industry was rapidly changing at that time with underwriting frequently done through computer assisted credit scoring models and the burgeoning internet became a key component of mortgage marketing strategies. Today, the use of artificial intelligence systems based on millions of prior loan underwriting and loan performance data are now the rage among underwriters raising new problems that they may be infected by racial bias in the input data. This problem is well beyond the scope of this memoir. What is relevant is how lenders reacted to the Decatur Federal case in the 1990’s and early 2000’s. It is a lesson on how profit can overcome conscience and empathy for credit scarred borrowers in the lending industry

While leaders in industries such as mortgage lending often must answer to their shareholders or credit sources, and with a constant eye on stock prices, they are human beings like all of us who grew up with issues of race frequently in the backgrounds of their lives like mine was. I am sure they live hectic and complicated lives with the background noise of right-wing media and subtle race baiting by conservate politicians making their jobs seem much more complicated. The unfortunate understanding of many lenders that the best way to avoid fair lending lawsuits was to make more loans to blacks, Hispanics and other minorities was terribly misguided. This seemed at first like a simple puzzle to solve given the rise of new mortgage instruments that would fund low interest FHA/VA loans or similar products geared for low-income, predominantly minority borrowers.

To get “CRA credit” for these loans and, hopefully, avoid DOJ scrutiny, they set up mortgage company subsidiaries within their corporate structure to make these low or no downpayment loans but also decided to make them hugely profitable. These so called “subprime” loans required little to no underwriting or time delays in originations. They also found a wildly expanding secondary credit market for these loans that now included pension funds and private investors in addition to the so-called “government sponsored enterprises” (GSE’s) such as Fannie Mae and Freddie Mac that traditionally purchased and insured these loans. As we all know, the market became a wild west of speculation leading to the collapse of many banks and funding institutions amidst the Great Recession of 2008. Those most hurt by this were African American and Hispanic families, a consequence none of us at DOJ ever intended by our redlining lawsuits. We expected and the consent decrees appeared to require that all loans be subject to widely accepted, objective, race neutral underwriting standards. We expected the increase in minority lending to come through normal lending channels with underwriting standards endorsed by the GSE’s.

What happened all too frequently was a new form of race discrimination at an intermediate point between redlining and reverse redlining. It was called “reverse racial steering” where black and Hispanic borrowers were steered by mortgage company sales staff into higher priced subprime loans while white borrowers with similar qualifications were steered into lower cost, less onerous conventional loans. Reverse redlining occurs when lenders target minority

neighborhoods for predatory high fee, high- interest rate subprime loans that result in widespread foreclosures. Commenting on the 2008 housing collapse, former Federal Reserve Board Chairman Ben Bernanke said it effectively erased “most or all of the hard-won gains in homeownership made by low-income minority communities in the past 15 years or so.”See,www.federalreserve.gov/newsevent/speech/bernanke2012115a.htm.

Hargraves et al., v. Capital City Mortgage Corporation, (D.D.C. 1998)

This was the first case to challenge reverse redlining. In 1996, before my move to Hilton Head, the Washington Post ran a series of articles on an outrageous reverse redlining scheme by a little- known Washington DC area lender, Capital City Mortgage Corporation headed by Thomas Nash. It caught our attention at the Washington Lawyers’ Committee and I was asked by John Relman to investigate it.

Nash and his associates targeted predominantly black neighborhoods in DC and nearby Prince Georges County, Maryland for exorbitantly high- priced short-term loans with interest rates as high as 24% and other onerous terms that were designed to force borrowers into default. At foreclosure sales, Nash was usually be the sole bidder whereby he would get title to the properties at substantial discounts and thus begin the cycle over again with new unsuspecting black borrowers. At that time the District of Columbia had no rules protecting borrowers from predatory foreclosures.

I include this case in my memoir because it illustrates a defining and unsettling feature of the mystery of race in America – cynicism and disinterest by whites in the economic disadvantages of black Americans. This creates a perfect mindset for profiteering.

As we saw with the Decatur Federal redlining case, many areas across the country, including the District of Columbia, had dual lending markets, one for whites, one for blacks. These markets had their roots in post - Civil War racial segregation. As a result of discriminatory appraisal and lending practices from the 1940’s through the 1970’s discussed above, African Americans could only purchase homes with cash, high interest seller financing or on contract. In the late 1960’s inner city speculators – with the cooperation and financial support from a handful of savings and loan associations charged huge interest rate markups to thousands of black home buyers who had no place else to go because they were black.

After the 1967-1969 race riots following the assassination of Dr. King, the federal government started inundating minority and transitional communities with FHA and VA loans because of their low downpayment requirements and favorable underwriting terms. This had the unintended effect of reinforcing the dual lending market as mortgage companies specializing in government-insured loans increased their already dominant share of lending in minority neighborhoods and that dominance often resulted in loans that were poorly underwritten resulting in more frequent foreclosures. That was true in the Washington D.C. area along with many other urban areas throughout the country. This created conditions for profiteers to target

largely African American borrowers for predatory high interest rate, short term loans to pay off their defaulted mortgage loans and other debts.

Enter Thomas Nash. He was the president and sole owner of Capital City Mortgage Corporation. Its main office was in DC just blocks from the Justice Department and near my office at the Washington Lawyers' Committee. Nash was the son of a wealthy father, Donald Nash, who had made a fortune in DC real estate and owned a lavish estate called Locust Grove in Brookeville Maryland. That is where his son Tom grew up and became an avid polo player. He went to Georgetown Law School and later began his mortgage company not far from the law school. The Nash family was intimately familiar with the changing racial dynamics of the Washington area and how to hold onto and expand their real estate portfolios in areas that had become predominantly black as a result of white flight to the expanding suburbs in Virginia and Maryland. In other words, Tom Nash and his family knew how to play the play the race card.

The entrance to Capital City's office contained large pictures of Rev Jesse Jackson, former DC mayor Marion Berry, and well known African American city council member Arrington Dixson. This was intended "to convey the message that Nash could be trusted." Hargraves v. Capital City Mortgage Corp. 140 F. Supp. 2d 7 (D.D.C. 2000). Nash had over the years cultivated a cadre of black real estate brokers and street hustlers called "runners" to bring him black borrowers, often elderly, many of whom had gotten into financial trouble and needed to pay off existing delinquent loans. Nash also specialized in making loans to black churches that had historically been shut out of traditional credit markets. In other words, Nash had a completely captive market and he knew it. He could do what he wanted. He was known in the trade as a "hard money lender."

In 1995 Rev Clyde Hargraves was the pastor of the Greater Little Ark Baptist Church in DC that needed a $70,000 loan to pay off a delinquent debt and finance renovations to the property. One of Nash's runners, Leonard Walker, contacted Rev. Hargraves and said he had heard the church was in financial difficulty and he could get the church a loan from a lender he did not identify. Hargraves agreed to go forward and Walker subsequently presented him with a loan application from Capital City that had been filled in by Walker. The application requested a $160,000 five-year loan at 18% interest with monthly payments of $3,000. At that time the church's gross monthly income was $4,000. Hargraves said the church did not need that much money and was concerned about the interest rate and monthly payments. Waker told him Capital City would not make loans for less than $160,000 and the church could easily refinance that loan at a lower rate once it paid off its delinquent loans because the church was worth over $400,000. Walker also falsely told the church that the monthly payments were for principal and interest and did not disclose that the church would be liable for a balloon payment of the entire loan amount if it sought to refinance the loan.

Rev. Hargraves signed a Capital City note and deed of trust given to him by Walker with many of the key loan terms left blank such as interest rate, monthly payments, and duration of the loan. The Capital City loan file showed no underwriting of the Church's financial condition including its income, debts, or ability to repay the loan. Settlement occurred a week after Rev.

Hargraves and the church elders were provided the loan documents. They discovered for the first time that the loan had a 16% loan origination fee totaling $26,000 of which $12,800 went to Leonard Walker. They also discovered the interest rate had been increased without their knowledge or approval from 18% to 25% with $3,200 in monthly payments and in the final year of the loan the interest rate would increase to 30%. Finally, the documents revealed the monthly payments were for interest only.

It is important to note that the only persons at settlement were the church representatives and a notary public. Walker was nowhere to be found. Thus, when fully confronted with the loan terms, or so they thought, they felt they had no alternative but to sign the documents rather than face uncertain legal consequences if they refused to abide by the loan contract. But Nash had more predatory actions up his sleeve.

At settlement, the notary refused to give to give Hargraves either a check for the loan proceeds or a copy of the loan documents. When Hargraves called Capital City the next day to complain he was told the check would arrive within five days. When Hargraves continued to complain he was told “if you want the loan, you either wait or else.” Shortly thereafter, Hargraves called Walker to complain and learned his line had been disconnected. The church never received a coupon book as promised but started making its regular monthly payments. As time went on, Capital City arbitrarily and fraudulently demanded higher payments. After two years struggling to meet these payment demands, Rev. Hargraves asked that the loan be extended beyond five years to lower the monthly payments. He also offered to pay off some of the fees and other demands. Nash refused and forced Greater Little Ark into bankruptcy. He foreclosed on the property and obtained it at auction for $235,000. Little Ark was evicted and Nash sold the church to another African American congregation for $450,000.

This story and seven others like it were set forth in the reverse redlining complaint against Capital City that I and John Relman worked on with the Washington Lawyers’ Committee. We were joined by a top DC law firm, Baach, Robinson & Lewis. One of its partners, Jeffrey Robinson, took the lead. I will never forget the videotaped deposition he took of Tom Nash in October 1999 where he confronted Nash and asked him to explain his actions against Rev. Hargraves and Greater Little Ark along with those against our other plaintiffs. Seeing Nash sit across the table from a highly skilled African American attorney and essentially admit what he had done to our plaintiffs was both stunning and personally gratifying. The case led to a landmark federal court decision establishing the essential elements of a reverse redlining claim under the Fair Housing Act and Equal Credit Opportunity Act and a novel theory of liability under DC’s Civil Racketeer Influenced and Corrupt Organizations Act (RICO). 18 U.S.C. Sec. 1962 (c) (d) and 1964 (c). Hargraves et al., v. Capital City Mortgage Corporation, supra.

After our complaint was filed, the Federal Trade Commission filed a separate lawsuit against Capital City charging violations of the Truth in Lending Act, the Equal Credit Opportunity Act, and the Fair Debt Collection Practices Act. Both cases were consolidated for discovery which became intense with the court rejecting a motion by Nash to transfer the case to a federal court in Maryland based on his claim he could not get a fair trial in DC.

In December 2000 Nash fell from his horse while playing polo suffering severe brain injuries. He died 17 months later just two days before the scheduled trial on the FTC's claims. Washington Post, April 23, 2002. At a subsequent hearing to discuss rescheduling the trial, the FTC said Nash had made over $8 million from his predatory loans but that it was having trouble finding his assets much of which were deposited in a dizzying array of trusts for his immediate family, relatives, and friends. In 2005 the FTC threw in the towel by settling its lawsuit with a $750,000 victim's fund. Washington Post, February 24, 2005. Rev. Hargraves and our other plaintiffs settled for $225,000 in damages and the forgiveness of their loans.

The behavior of Tom Nash and Capital City sits at the extreme edge of predatory reverse redlining behavior The conduct here was deplorable by any measure. But reverse redlining as a legal theory under the Equal Credit Opportunity Act and Fair Housing Act has been successfully applied in countless other cases across the country by both DOJ and private litigants.

After Hargraves, DOJ's Civil Rights Division, State Attorneys Generals, and private litigants have all played an important role in challenging these practices. In a 2011 precedent setting lawsuit and consent decree with one of the largest mortgage companies in the United States, Countrywide Financial Corporation, DOJ obtained $335 million in compensation for 200,000 black and Hispanic borrowers who were victims of these discriminatory practices from 2004-2008. The Chief of the Housing Section largely responsible for that case was Steve Rosenbaum who had assisted me in trying the Jefferson County employment discrimination case discussed above. John Relman's civil rights firm, Relman & Colfax, has been a leader in the private enforcement effort and has successfully sued lenders who have targeted minorities for abusive loans and this theory has been expanded to related areas such as predatory rental housing arrangements that become eviction mills for unscrupulous investors and landlords.

In September 2014 the New York Attorney General sued Evans Bank for refusing to make mortgage loans in Buffalo's black neighborhoods by engaging in the very same practices the Justice Department challenged in its 1992 lawsuit against Decatur Federal in Atlanta. When banks like Evans concentrate their lending, marketing, and branches almost exclusively in white neighborhoods, credit starved minority neighborhoods only continue to deteriorate. The urban blight that results from these practices is a centerpiece of multiple lawsuits brought recently by the Los Angeles city attorney alleging that some of the Nation's largest banks, including JP Morgan Chase, Wells Fargo, Bank of America, and Citigroup, engaged in both redlining and "reverse redlining" of minority neighborhoods in that city.

Seeing low income African American and minority borrowers and renters as unacceptable credit risks or targets for exploitation remain all too reminiscent of post slavery times and the racial attitudes I witnessed as a boy in Tuscaloosa. They have just been covered by a veneer of legitimacy. Unfortunately, profit and not empathy towards this underserved class remain paramount business strategies at all too many lenders. Last year the Justice Department reached the largest redlining settlement in the Department's history, $31 million, against City

National Bank in Los Angeles who engaged in the very same practices outlined in the Decatur Federal lawsuit over 30 years ago. Part of the mystery of race in America is how difficult it is to change such obviously racist behavior as happened at this bank and how banking regulators continue to struggle with this problem.

I often ask myself whether the leaders of the mortgage lenders that made these loans ever stopped and asked themselves whether what they were doing genuinely benefitted their customers. Could they put themselves in the shoes of the recipients of these loans and ask whether they were good ways to build wealth and provide for their families? Sadly, as we have seen in each of the cases recounted so far, empathy for the historic plight of black Americans is very often hard to find.

More concerning is that these adverse effects are likely to continue to plague minority households for generations to come. Many studies have shown that wealth accumulation by minority households falls far below that of white households, with mean black household wealth more than 13 times lower than mean white household wealth. Similar disparities exist for Hispanics. Neighborhoods in many parts of the country continue to be highly segregated by race and the 2008 Great Recession only exacerbated these income and wealth disparities. It is alarming that after all the efforts by the Justice Department and others like the Washington Lawyers' Committee to combat mortgage redlining, racial steering, and reverse redlining through litigation, residents of minority neighborhoods continue to be victimized by these racially discriminatory lending practices.

NAACP v. City of Myrtle Beach South Carolina et al. (D. SC 2003)

After moving to Hilton Head, I was called by Dave Rose, my old boss in DOJ's Employment Section who had retired and ran a small civil rights law firm with his son in DC. He had recently received complaints from several Baltimore police officers about rampant race discrimination in Myrtle Beach, South Carolina during a predominantly black motor cycle festival called Black Bike Week. It was held annually over the Memorial Day Weekend and attracted as many as 300,000 mostly black visitors to the area. Dave thought I lived near Myrtle Beach (it was a 41/2-hour drive from Hilton Head) and asked if I could attend the rally scheduled for the 2000 Memorial Day weekend. I did and thus began a 20 - year commitment to one of the most remarkable series of cases of my career.

- Context

Donald Trump and his so-called MAGA movement have unabashedly capitalized on white resentment towards blacks and other minorities, particularly immigrants, as threats to Anglo Saxon culture and mores. That is no mystery to many of us. The greatest fear among whites is to be in a situation where blacks/immigrants outnumber them. This has been historically true for blacks whether it is in the classroom, neighborhoods, workspaces, churches, or local and state governments. To me, it is among the most confounding aspects of the mystery of race in America.

We have seen racial bias in various forms play out in the cases discussed so far, but the Myrtle Beach cases are on a different level. When I went to Myrtle Beach in 2000 Black Bike Week was at its peak, drawing crowds of over 300,000 black people to the area. They came not only to ride motor cycles but also to celebrate black culture centered on the historically black town of Atlantic Beach, South Carolina. One can imagine the fearful reaction among white residents and business owners outside the town that resulted from this "black invasion." Many of the area's hotels and restaurants either shut down completely to avoid serving black customers, or restricted access to their properties. Others engaged in exorbitant price gouging. The city police department brought in over 300 outside officers to patrol the event and greatly restricted traffic on its famed Ocean Boulevard long known as a cruising destination for its traditionally white visitors, particularly teenagers. How did all this come about? We once again trek back to the post Reconstruction era to understand this.

Beginning in the late 1800's, as railroad expansion brought increased business activity and white tourism to Myrtle Beach, attention turned to the only beach area in South Carolina where blacks were allowed at that time. This was the Town of Atlantic Beach, a hardscrabble spot of shotgun houses cramped into a 4 - block wide 8 block long area fronting the ocean. Its original inhabitants were descendants of Gullah Geechee slaves from West Africa. Fences were erected that ran along the borders of the town and into the ocean to keep blacks, and particularly black bathers, from intermingling with white beachgoers. There was a perception among many whites that black bathers polluted the ocean waters.

In the 1930's several wealthy black physicians from Atlanta bought the town and turned it into a black tourist destination which became known as "the Black Pearl." Famed black musicians such as Ray Charles and Fats Domino performed there as they were not allowed into the growing number of hotels, restaurants, and nightclubs in predominantly white Myrtle Beach. The Atlantic Beach clubs remained open after hours and became magnets for young whites as well as blacks.

Following the tumultuous and sometimes violent efforts to desegregate public accommodations in Myrtle Beach in the 1960's, some black families and visitors began to filter into Myrtle Beach and North Myrtle Beach for their weekends and holidays. By the late 1970's tourism in Atlantic Beach had declined sharply as more black visitors began to stay at hotels and resorts in Myrtle Beach and North Myrtle Beach. This caused the town's income and tax base to severely contract given its small size. In an effort to counteract that, leaders of the town became interested in a proposal from a black motor cycle club called the Carolina Knight Riders to sponsor a black themed motor cycle rally centered in the town. It became known as "Black Bike Week" aka the Atlantic Beach Bikefest and would be held annually over the Memorial Day weekend.

Attendance was at first slow to develop, but by the mid-1980's crowds spilled into adjoining North Myrtle Beach. By the mid 1990's Black Bike Week crowds had more than

doubled and began to spill into the much larger town of Myrtle Beach. That is when all hell broke loose.

■ Harley Motor Cycles and Spring Breakers

Since the 1940's Myrtle Beach had also been a destination for a large rally of white motor cycle riders. Known as the Harley Davidson Spring Festival, this annual event was centered in Myrtle Beach for 10 days in early to mid-May. By the mid-1980's it had become one of the largest rallies in the country with cruising the city's 10 -mile- long Ocean Boulevard a main attraction. In the Spring the Boulevard was clogged by mostly white high school and college students raising hell for several weeks. Bad behavior, prodigious drinking and traffic congestion were hallmarks of both events. Hotel guests and visitors sat in lawn chairs along the Boulevard to watch the swell of spring breakers and Harley riders with radios going full blast. To them it was entertainment and many found it all amusing. During Harley week it was common for side walk loungers to raise signs asking women riding on the backs of motorcycles to raise their tops and "show them puppies." Myrtle Beach Sun News, May 17,1999. Violence also occurred during the Harley rally. Members of the Hell's Angels, the Pagans, and other biker gangs frequented the event with plain clothe FBI agents tailing their whereabouts. Shootouts occurred including an armed standoff with police in 1983. Sun News, May 9, 1999.

To control unruly behavior at both events, and before the advent of the Black Bike Week crowds, the city appointed a citizen/government task force in the early 1990's to work with Harley and Spring Break sponsors on better police and traffic control measures. It wanted to make these events "more welcome" for everyone and reduce violence and bad behavior. Lights on Ocean Boulevard were timed more efficiently to reduce traffic congestion and more parking was made available for "motor cycles only" along both the boulevard and side streets. Businesses were encouraged to put up "welcome biker" and "welcome spring breaker" signs. While the police footprint on the Boulevard was increased, it became more subtle with additional officers stationed on side streets rather than directly on the Boulevard.

■ Black Bike Week Collision with Myrtle Beach

Mark McBride was a white, young, fiery Myrtle Beach city council member when the Black Bike Week crowds began to pour into the city. With an uncanny resemblance to today's MAGA warriors, he seized control of city council meetings to voice thinly veiled racist attacks on the visitors from Atlantic Beach. He rode those attacks to become Mayor in 1997 and demanded calling up the National Guard to help police the event. "Memorial Day is a large group of misbehaving unruly people, period" he told the city council in 1998. "You arrest as many as you can. They are all here for a reason that is against why we exist. We exist as a resort for people to come enjoy themselves. They are here to party and that's not what we are about." Sun News June 25, 1998.

Monique Burgess, as African American resident of the city, watched McBride's tirade on her local cable broadcast and immediately drove to city hall to confront him while he was still

there. According to a Sun News report, she told him: “as mayor of this town you’re supposed to be a good will ambassador. To me its sounds like [you’re] suggesting harassment. I call that asinine. McBride said he would take that asinine statement and add it to his resume. It was a smart aleck remark. He burns my gut.” Ms. Burgess is quoted as saying.

McBride next decided on a high wire stunt to further stoke anti- black bike sentiment in Myrtle Beach. He got the city council to sign a letter to then Democratic Governor Jim Hodges asking that he call up the National Guard to help police the event. Instead of sending the letter, McBride informed media outlets he was going to drive to Columbia to personally deliver it to the Governor. When he got there amidst the glare of publicity, Governor Hodges summarily rejected the request.

Not surprisingly, the city was barraged by overtly racist complaints from white residents and business owners about the black takeover of the city during the Memorial Day weekend. One business owner complained the city should close its doors to Black Bike Week tourists complaining that not “everything has been done in the past to rid this city of this very ugly and negative tourism” and that the city “must do preemptive things … before an enemy takes control.” Exhibit 10, NAACP February 4, 2005 motion for preliminary Injunction. A restaurant owner informed the city in a letter that Black Bike Week visitors are “a group of racists within themselves” and that; “Before I tolerate the takeover by a group of people such as what we have experienced, I will close my doors and take the loss. Something must be done, but it is going to be difficult with this group being black as they have all the rights in America anymore.” Id. Exhibit 51. A hotel owner complained that “black people had a taste of black power, and I’d expect the crowd to be twice as unruly next year and a full severe riot.” Id. Exhibit 52.

The combined pressure of McBride’s grandstanding and complaints from white residents and business owners forced the city to bring in 500-600 additional police officers from around the state to police Black Bike Week. It also instituted a one-way traffic plan on Ocean Boulevard with most side streets blocked off. This resulted in severe traffic congestion and made Ocean Boulevard unusable as a cruising destination that had been its hall mark for over 40 years. No changes were made to policing during Harley Week and two - way traffic on Ocean Boulevard was permitted. They were allowed to enjoy their bike rally without hindrance. Many businesses remained fully open during the Harley event but were closed for the Memorial Day weekend. The time had come for action by the NAACP.

Rev. H.H Singleton was a giant of a man who had long led the NAACP in civil rights battles and boycotts in the Myrtle Beach area. Tall, lean, with a booming voice, he commanded respect from those who knew him. As president of the nearby Conway SC branch of the NAACP he began to speak up publicly and forcefully against the city’s treatment of Black Bike Week.

Rev. Singleton first came to local and national attention in 1989 when the coach of the Myrtle Beach High School football team selected a white player to become the starting quarterback over a black player who just about everyone agreed was clearly more talented. The coach said the black player was better suited to be a defensive back. Thirty of the team’s black

players, fifteen of them starters, left the team in protest. Rev. Singleton, a Myrtle Beach middle school science teacher at the time, supported and joined the protest. He was subsequently fired from his job sparking an outcry of racism in the black community. Many wore t-shirts in support of the protest reading “NAACP fired up and ready to go,” a phrase later adopted by former President Obama in his election campaigns. On the back it read “Do the Right Thing.” Washington Post September 27, 1989. He was reinstated to his job only after litigation

Rev Singleton and the field director of the NAACP SC State Conference, Nelson Rivers, began a concerted effort to pressure the Myrtle Beach city council and area leaders to stop their efforts to get rid of Black Bike Week and treat Harley and Black Bike Week the same. They and other NAACP members walked Ocean Boulevard during Black Bike for several years fielding complaints from African American visitors that were turned over to the city which did nothing. The Department of Justice also sent a member of its Community Relations Service to monitor the 2000 event. Those efforts seemed to have an effect when the Myrtle Beach city manager, Tom Leath, in consult with the city chief of police Warren Gall, decided to impose a one - way traffic plan during Harley Week as well as Black Bike Week.

The decision was announced shortly before the 2001 Harley event and evoked howls of protest from Harley riders and the event’s sponsors. As one Harley rider complained, the city did not one way traffic during the July4th weekend, the busiest of the year, and “I’ve heard they are afraid of the NAACP crying foul. Well that’s chickenshit. They say (one way traffic) is to control the atmosphere…HELLO…that’s why we go there. I want to ride up and down both ways. I want to sit out there on the sidewalk and watch as others parade on their wonderful machines.” NAACP discovery document MBPD 03716. When Mark McBride learned of the one-way traffic plan, he asked for an emergency meeting of the town council to override the city manager’s decision. He could not get a quorum. However, he got his way the following year when the city returned to two - way traffic on Ocean Boulevard for Harley Week but kept the one- way plan for Black Bike Week. NAACP litigation thus became inevitable.

In May 2003 the NAACP held a press conference in Washington DC to announce the filing of five race discrimination lawsuits stemming from prior Black Bike Weeks. The first was against the city of Myrtle Beach challenging its one- way traffic plan and both the number and tactics of the 600 police officers on the city’s streets, particularly Ocean Boulevard. That lawsuit was brought by the Conway Branch and 10 individual African Americans under the 1866 Civil Rights Acts, 42 U.S.C Sections 1981 and 1983 and under Title VI of the 1964 Civil Rights Act that prohibits race discrimination by recipients of federal funds.

The other class action lawsuits were brought by the Conway Branch and African American individuals against a large oceanfront hotel in the heart of downtown Myrtle Beach – The Yachtsman, and three well known restaurants- Damons Grill, Greg Norman’s Australian Grill, and J Edwards Bar & Grill. The owner of J Edwards was J. Edward Fleming who, as noted above, publicly acknowledged he closed his restaurant to avoid serving black customers. These lawsuits were brought under federal and state laws prohibiting race discrimination in public accommodations, 42 U.S C, Section 1981, Title II of the 1964 Civil Rights Act, and the South

Carolina Public Accommodation Act. S.C. Code 45-9-10. I was the Lawyers Committee's advocate working alongside lawyers from several prominent DC law firms.

As discussed below, the lawsuit against the city challenged its Black Bike Week one way traffic plan and policing of the event. The Yachtsman lawsuit challenged its reservation and guest conduct policies during Black Bike Week which were not applied any other time of the year. They included exorbitant room rates that were higher than any other time of the year including July 4th, full payment 30 days in advance, and draconian guest rules including having to wear wrist bands to enter the hotel, no visitors were allowed in guest rooms after 10 pm, no parties in guestrooms (not defined), no use of stairwells during the weekend, rooms must be kept "neat and orderly" (not defined), no shouting in hallways or balconies, no use of profanities and, perhaps most intimidating – all deposits and half of the guest room payment would be forfeited if any of its guest rules were violated.

Both Damons and Greg Norman's restaurants were closed over the Memorial Day weekend allegedly because of traffic congestion that resulted in lower- than -expected revenues. The NAACP claimed those reasons were a pretext to hide their true motivations, to avoid serving customers during Black Bike Week. Discovery in both cases showed that those restaurants remained open during the 10 - day Harley event as well as during the off season when revenues were obviously low. The decision to close during the Memorial Day weekend when over 300,000 mostly black visitors were in the area seemed obviously based on race, particularly when Harley Week attracted similarly large crowds and traffic congestion.

We settled both cases prior to trial and without extensive litigation. I recall we had a cordial meeting with Mr. Norman and counsel at his office in Jupiter Florida during which we explained that over half of the visitors for Black Bike Week were non-bikers who were there to celebrate the Atlantic Beach festival as a black cultural event and could also be interested in golf. It also attracted big- name entertainers and sports figures, including Michael Jordan, the star basketball player who was also a scratch golfer. These three public accommodation cases resulted in court ordered consent decrees and payment of money damages, the largest being $1.3 million by the Yachtsman.

From 2004 – 2012 the NAACP continued to monitor Black Bike Week. During that time the NAACP filed seven additional race discrimination lawsuits along with 30 complaints with the South Carolina Human Affairs Commission against hotels, restaurants, and convenience stores that engaged in practices like those discussed above. These lawsuits were settled with consent decrees and the Human Affairs Commission complaints were settled by the agency administratively.

Several gas station/convenience stores were sued by the NAACP based on complaints from black customers that they were only allowed inside the stores to pay for gas and barred from the defendants' food sections and indoor bathrooms. The only bathrooms available were outdoor port-o- potties. These cases were also settled with court ordered consent decrees and payment of money damages. Two additional hotels were sued, the Landmark Hotel and

Seahorn Motel, both on Ocean Boulevard that were settled by consent decrees. The Landmark allegations were similar to those in the Yachtsman case. The allegations against the Seahorn, a family- owned motel, were that that it was not only closed to the public closed over the Memorial Day weekend according to its signage, but the owners' allowed friends and relatives to stay there that weekend.

- The Big Enchilada – the City of Myrtle Beach Lawsuit

There was no hope of settling this case brought in 2003 against the City of Myrtle Beach and its police department, at least not anytime soon. Mark McBride castigated the lawsuit as political correctness gone amuck. The city council pretty much fell in line with this narrative, including its only black member, Michael Chestnut. Discovery was intense and extensive with thousands of documents produced and more than 40 depositions. Expert witnesses were designated by both sides. The main issues were whether the city could justify its one- way traffic plan as based on traffic and not race, and whether the 500-600 outside officers brought in to police the event and their arrest tactics were justified by the behavior of the crowds. The NAACP class representative included the Conway Branch and 10 individual Black Bike Week attendees including the several police officers from the City of Baltimore that sparked the investigation.

A detailed discussion of the parties' evidence is beyond the scope of this memoir but much it turned on traffic counts maintained by the city during both Black Bike Week and other busy weekends including Harley and July 4th. Those showed that the number of vehicles including bikes in the city during Black Bike Week were less than during the July 4th weekend and only slightly higher than during Harley Week when cruising the boulevard was the highlight of the weekend. Moreover, the one-way traffic plan dramatically increased traffic congestion on Ocean Boulevard because, with most the side streets blocked off, bikers and motorists were stuck, unable to move for hours. I know, I drove Ocean Boulevard during the 2002 event and it took me over an hour to drive seven blocks. It was like waiting to get out of an NFL game parking lot only worse. This congestion resulted in many motorcycles overheating and was intended to make life so miserable that many Black Bike Week visitors would not come back.

I also observed police officers, mostly white, roaming in packs in the closed off northbound lanes of Ocean Boulevard peering into cars and at bikes stuck in southbound traffic. Pedestrians on the sidewalk were also closely watched. Because of this excessive scrutiny, citations and arrests were much higher during Black Bike Week than Harley and other weekends. Plaintiffs contended that was because of the excess numbers of police officers patrolling Ocean Boulevard and their manner of policing. Many of the citations were for such minor infractions as jay walking, operating defective equipment, loitering, improper turns and the like.

My observations, while obviously not admissible in court, were confirmed by our expert witnesses who were on the ground with me that weekend - Mitch Brown and Willie Wilson, former police chiefs of cities in North Carolina and David B. Clarke, a nationally known traffic

engineer. He testified by deposition that the one -way traffic plan was not justified as a means of facilitating traffic flow, but indeed had the opposite effect. Individual plaintiffs recounted their distressing experiences with the police that we contended were arbitrary and without justification. They also explained how the one way traffic plan made cruising Ocean Boulevard impossible.

Why was the city and the other defendants acting this way? What triggered this racial paranoia? Plaintiffs offered the testimony of another expert, Dr. Charles Gallagher, a sociology professor of race and urban studies at Georgia State University to answer this question. He had walked the city during both Harley and Black Bike Week. He submitted expert reports in both the City of Myrtle Beach and public accommodations cases. I found his report most revealing in answer to the question posed by this memoir.

Dr. Gallagher found that Myrtle Beach was highly segregated by race with whites constituting over 80% of the population and that they lived in highly segregated neighborhoods. This yielded what demographers call a high racial dissimilarity and isolation index. Myrtle Beach was also highly dependent on tourism and local surveys showed that over 90% of those tourists, named “traditional tourists,” were white, but during Black Bike Week over 95% of the visitors were black. Gallagher Report. February 11, 2005, pp. 2-4.

Dr. Gallagher recognized that at the time of his report many whites had come to liberalize their racial attitudes on some social issues such as interracial marriage, integration of public schools, and voting for black politicians. However, even then, according to Dr. Gallagher, racial stereotypes were commonplace including 78% of whites who believed blacks “preferred” to live off welfare when the data showed otherwise (white and black families on welfare were approximately the same). Among whites 62% believed blacks were less hardworking than whites and most believed they were more prone to violence and less intelligent than whites. Research also established that “whites are more fearful of encounters with blacks than those with whites” regardless of the age or gender of blacks. Another study by the National Opinion Research Center found that 43% of white Americans agreed with the statement “blacks should not push themselves where they are not wanted.”

There are fascinating explanations for these fears as explained by Dr. Gallagher. He stated that “According to Harvard researcher Lawrence Bobo, “‘Factors of prejudice begin with the feeling of proprietary claim or first rights to scarce and socially valued goods and resources [such as] access to or control of land, property, jobs and businesses, political decision making, educational institutions and recreational resources.’” The fear of losing these rights grows proportionally as black group size increases. According to Princeton University political scientists Olive and Mendleberg, “the greater the percentage of blacks in an environment the more racially antagonistic whites tend to be.” Gallagher report, p. 8. In the Myrtle Beach case, Dr. Gallagher found that Mark McBride’s unsuccessful efforts to have the South Carolina National Guard called in to police Black Bike Week was a vivid example of this prejudice. These fears are primal and can worm their way into the background of decision making in many aspects of American life, as revealed by the cases in this memoir

The Court's Findings and Aftermath

On February 24, 2005 the plaintiffs moved for a preliminary injunction against the city's decision to implement the one-way traffic plan for the upcoming 2005 Black Bike Week. Defendant filed its response on March 28, 2005. On May 9, 2005, the court (Judge Terry Wooten) ruled in plaintiffs' favor finding they were likely to prevail on their claim that the plan was racially motivated. NAACP v. City of Myrtle Beach, No. 3:03-1712-25TLW, 2006 WL 2038257. With the Harley and Black Bike Weeks less than 30 days away, the city promptly appealed to the Fourth Circuit asking the court to stay the injunction. Judge J. Michael Luttig granted the stay just before the commencement of Harley Week. This put the plaintiffs in a bind because the city said it fully intended to maintain the status quo with a two -way plan for Harley and one way plan for Black Bike Week. Settlement discussions quickly ensued but not before the city decided at the last minute to go back to a one- way traffic plan for both bike weeks to make it appear that, on its own, it was now going to treat the two bike weeks equally. Bikers at both rallies were sent one way down Ocean Boulevard that year

After Black Bike Week ended and, at Judge Wooten's urging, the parties agreed to have two former chief justices of the South Carolina State Supreme Court, Earnest Finney (African American) and David Harwell (white) attempt to mediate the case. The Fourth Circuit was informed of the mediation. It was long and arduous but resulted in a consent decree settling the case in 2005. The plaintiffs gave up their claims for damages and the city agreed to implement a one- way traffic plan for both bike weeks but limited it to the central downtown area with many side streets open to avoid congestion and overheating bikes. Police tactics during both events were to be substantially similar and while the city could call in more officers for Black Bike Week, they were all to undergo special training approved by the plaintiffs and be deployed away from the crowds. The consent decree was to remain in effect until July 30, 2011 or the next six bike weeks.

While both Harley and black Bike Week attendees expressed frustrations with the settlement, its implementation did not result in serious problems for either event. Harley riders called for a boycott of Myrtle Beach but that fizzled out after several years. I personally walked Ocean Boulevard during subsequent bike weeks and noticed how more relaxed the Black Week crowds were than during the earlier years. Traffic, while backed up, still allowed for some cruising. Life finally seemed tolerable for Black Bike Week bikers and visitors - until it was not. This is Myrtle Beach after all.

Gun Violence During the 2014 Black Bike Week - The Backlash Returns

During the 2014 Black Bike Week there were 8 reported shootings all on or near Ocean Boulevard resulting in three homicides related to gang activity. Regrettably, such gun violence was not uncommon in Myrtle Beach at other times of the year and gang activity was long known to be present during Harley Week as discussed above. Nevertheless, this was all the die-hard

opponents of Black Bike Week needed to resurrect massive fears in the white community that the continued domination by blacks in the city that weekend would lead to more explosions of gun violence. The time to end Black Bike Week forever had arrived.

Members of the business community that had long opposed Black Bike Week developed a slanted, heavily edited video of "young people crowding and dancing in the streets and scantily clad women dancing provocatively projected on a screen" Myrtle Beach Sun News, September 18, 2014. Selected police video of the shootings was also included. It was shown to white neighborhood groups in the area to stoke emotional reactions that Black Bike Week was a clear and present danger to the safety and morals of the community.

■ Enter Nikki Haley

That same video was shown to former South Carolina Governor Nikki Haley just days after the event in a meeting with Myrtle Beach area elected officials at her office in Columbia. Tanya Root, Myrtle Beach Sun News, May 30, 2014. After the meeting, according to Ms. Root's reporting, "Nikki Haley bluntly said …that the Atlantic Beach Bike Fest must end." She was fearful that reports of the shootings would hurt tourism and the potential for private industry to relocate to the Myrtle Beach area. She said "Let's make sure what's happening in Atlantic Beach is truly a reflection of South Carolina as a whole, and violence is not a reflection of South Carolina, pollution of South Carolina and disrespect is not a reflection of South Carolina." She said she would personally travel to Atlantic Beach to deliver this message because "this is not something to be proud of. This is not a good weekend…This is no longer a law enforcement issue. Our law enforcement was stellar. We had more than enough people." Id.

Governor Haley met with Atlantic Beach officials in July 2014 saying "she would like to see Atlantic Beach return to what it was like in the 1940's when there were bustling businesses, hotels, and attractions." Maya Prabhu, Myrtle Beach Sun News, July 29, 2014. She noted the state had contributed $1.3 million toward law enforcement for the 2014 event, but added;

> "It's the culture of what this event has created that caused the problems. So, we can go and push this back as much as we need to. But again, what is it doing? They're not respecting what Atlantic Beach is. They're coming to have a party. That's not what I want this to be." Myrtle Beach Sun News, June 1, 2016.

Governor Haley also offered Atlantic Beach additional state funding if it discontinued sponsorship of Black Bike Week. Id.

Atlantic Beach officials met with Governor Haley at her office in July 2014 and told her that ending Black Bike Week would not stop gun violence in the area and that Black Bike Week was too culturally important for the town to give up on. It also generated more than 10% of the town's annual revenues. Governor Haley continued to dig in her heels. In 2015 and 2016 she renewed her requests that the town discontinue its sponsorship of Black Bike Week. Those requests were also rejected.

In late 2014, after Atlantic Beach first rejected Governor Haley's requests to end Black Bike Week, areas leaders, led by the city of Myrtle Beach, established a task force to make recommendations on how get Black Bike Week "under control" and seemingly oblivious to the years of litigation with the NAACP. Representatives from the state highway patrol were members of the task force. The NAACP was not invited.

Its recommendations could not have been more draconian. It devised a 23- mile one way traffic loop beginning at the entrance of North Ocean Boulevard in the city and running throughout the 12 mile stretch of the Boulevard before turning north and heading to the outer rural parts of Horry County before looping around back towards the city and eventually back to North Ocean Boulevard. Normal two- way traffic was allowed during Harley Week. The task force heard from representative of two cities, Atlanta and Daytona Beach, that had implemented one way traffic loops during predominately black college reunion festivals, but neither of those loops exceeded ten miles and required large numbers of additional officers to implement. The representative from Daytona warned the task force that a 23-mile loop would likely require more than 1000 officers. As it turned out, the city called in 800 additional officers to police the 2015 Black Bike Week and North Myrtle Beach called in additional officers as well. The state continued to offer approximately 250 officers from the state highway patrol. The results were catastrophic for those attending Black Bike Week.

In 2013, after the NAACP's 2005 consent decree had ended, the city constructed grassy medians along Ocean Boulevard to facilitate turns off the Boulevard to reach hotels along the beach. This resulted in only one lane in each direction for unobstructed traffic flow. The new traffic configuration effectively required two- way traffic on the boulevard and, accordingly, it was permitted during both Harley and Black Bike Week after the construction. For Black Bike Week only, that ended in 2015 with the 23 -mile traffic loop which funneled all traffic into only one lane south bound. The one- way traffic on Ocean Boulevard began at 6 pm Thursday night and continued through the three-day weekend. The loop was set up at 8 pm each evening and taken down at 6 am.

The NAACP sent monitors for the 2015 Black Week. By that time, I had retired from the Washington Lawyers' Committee but volunteered to assist them. Rev Singleton had died in 2013 and a newly revitalized Myrtle Beach branch of the NAACP took the lead in monitoring the event. One of the police experts in the 2003 NAACP lawsuit, Willie Wilson, also volunteered his time. For me and the monitors it was "deja vue all over again" as Yogi Berra once said, only worse.

Reports from the monitors showed that it took approximately five hours to traverse the loop. Because no exits were allowed off Ocean Boulevard all traffic was forced into the 23- mile loop if anyone wanted to get back to their hotel. This resulted in numerous complaints from both black and white visitors who stayed at those hotels. The NAACP communicated its objections and visitor complaints to the city during the event alleging the traffic loop was racially motivated and totally unnecessary. They were all were ignored

City leaders and members of the task force continued to bar the NAACP from attending its meetings to discuss continuation of the loop for the 2016 Black Bike Week. This resulted in the NAACP sending a team of experts and volunteers to monitor the event in preparation for a possible new round of litigation. I again attended in a pro bono capacity. That year tropical storm Bonnie threated the Myrtle Beach area over the Memorial Day weekend. The NAACP contacted the city on Thursday as the storm approached and asked that it discontinue the traffic loop. It refused to do that but said it would monitor the storm.

The storm fortunately brushed Myrtle Beach but still dropped torrential rain on the city over the weekend. The loop was not called off. I drove the loop on Saturday night during the storm along with NAACP monitors in separate cars. The rain made for extremely hazardous driving conditions particularly when you were routed outside the city and had to follow frequent lane twists to mesh with the loop. Amidst the rain and darkness there were jarring bursts of light from police cars, fire trucks, and high mast lights along the roadways. At times, one lane merged into two and back again. At my age I got so tired and exhausted I had to stop after four hours for my safety and return to my hotel in North Myrtle Beach. My wife, who always accompanied me on these trips to Myrtle Beach, was terrified that I had been trapped in the loop and greatly relieved by my return.

After the 2016 Black Bike Week, the NAACP asked to meet with Governor Nikki Haley to discuss its concerns about the traffic loop and excess policing. In a September 27, 2016 letter to Governor Haley, the South Carolina NAACP State Conference explained that the 23- mile traffic loop was excessive, racially discriminatory and took over five hours to complete. It also set forth a brief history of the prior litigation. The meeting with Governor Haley was held on November 28, 2016 in Governor Haley's office with representatives of the state conference, the Myrtle Beach branch, and the NAACP's general Counsel's office. One of the police experts who attended the 2016 event explained to Governor Haley what it was like to drive the loop

The meeting was cordial according to the NAACP, but Governor Haley was non-committal. She noted that most of the decision making on Black Bike Week was a matter of local control seemingly oblivious to her very loud and persistent efforts to get rid of the event in discussions with the Town of Atlantic Beach. The day after the meeting, Governor Haley sent a letter to the leadership of the SC State Highway Patrol stating that the NAACP had expressed concerns about the traffic loop and excess law enforcement. She asked that they raise these concerns in discussions with Horry County, Myrtle Beach, and North Myrtle Beach. In a subtle swipe at the NAACP, she said "As we move forward in supporting local officials with preparations for Black Bike Week 2017, my hope is that next year's event will be as safe as the past two years events have been for the residents and visitors of the Grand Strand."

The NAACP was concerned about the tone of the meeting with Governor Haley and that her letter did not adequately express its concerns. On December 14, 2016 the NAACP sent a three- page letter to Governor Haley stating that her negative views of Black Bike Week may have been "tainted by slanted information provided to you by the city and local chamber of

commerce following the 2014 event." The letter contained a more detailed account of the long history of racial segregation in Myrtle Beach area and the pervasive racial animus of city leaders towards Black Bike Week. The letter recounted Mark McBride's unsuccessful efforts to convince then Democratic Governor Hodges to end the event and said the following about the traffic loop.

> "As explained at the meeting, we strongly oppose the draconian 23-mile, one way traffic loop implemented by the city for the 2015 and 2016 Black Bike Weeks. Combined with a suffocating police presence, that plan made it virtually impossible for visitors to travel about the city and enjoy the weekend, especially after 10 pm. The loop took over five hours to traverse and tied up visitors in seemingly endless traffic jams that forced them well outside the city before they could return to their hotels and other establishments. We recounted to you the many complaints we received from Black Bike Week visitors over their treatment by the city. These practices were so severe that, in our view, they could only have been intended to make life so unbearable for African Americans attending the event that they would decide not to return to Myrtle Beach over the Memorial Day weekend." Letter dated December 14, 2016 from NAACP Assistant General Counsel Anson Asaka to Governor Nikki Haley.

The NAACP received no response to this letter from the Governor or anyone else in her office. It also resulted in no changes to the traffic loop and policing for future Black Bike Weeks. This forced the NAACP into another round of litigation.

- Round Two

On February 27, 2018 the NAACP filed its second complaint against the City of Myrtle Beach and its police department challenging the traffic loop and policing of the event under the same civil rights laws referenced in the first complaint.

By this time Judge Wooten had retired from the bench and there was no permanent replacement for his seat in the Florence division of the South Carolina judicial district. As such, the case was assigned to visiting judges who would appear part-time in Florence to hear cases in that district. This resulted in significant delays in discovery as responsibility for the case was transferred among three different judges, the last of which, Sherry Lydon, was a recent Trump appointee. She now holds that seat permanently.

The delays also stretched the case into the height of the Covid 19 pandemic in late 2020. After Judge Lydon denied the city's motion for summary judgment, the case was docketed for a jury trial beginning in December 2020. I planned to attend the trial as a pro bono consultant to the DC law firm handling the case for the NAACP, Relman & Colfax, but was advised by my doctor not to because of my age and heightened risks of contracting the virus for which there was then no vaccine. As a consultant I was not a member of the trial team so my absence was by no means critical.

The lead attorney, Reed Colfax, and his team did a highly competent and courageous job handling this case both during a difficult and protracted discovery period and then putting their health at risk by traveling to Florence for the trial. The team also could not obtain the cooperation of several key witnesses either because of Covid or the pressure of testifying in a highly charged civil rights trial during the Trump era. The NAACP trial team, headed by Assistant General Counsel Anson Asaka, who testified in the case, told a compelling story of the history of Black Bike Week of which he was a part for many years. Rev. H.H Singleton could not have been prouder, as I was, to see him there.

The nine-person jury, drawn from the Myrtle Beach area, was majority white but had three African American members. In federal civil jury trials verdicts must be unanimous and plaintiffs must prove their case by a preponderance of the evidence. The jury deliberated for less than five hours and delivered a somewhat confounding mixed verdict. It found that race was a motivating factor in the City's official actions regarding Black Bike Week but the city proved by a preponderance of the evidence that it would have made the same decision if the visitors were predominantly white because of the violence in 2014.

Anyone who has tried civil rights jury trials in hostile atmospheres like Myrtle Beach knows there are always risks in high profiles cases such as this one, particularly where the rampant Covid virus may have spurred the jury to reach a verdict quickly. The city also had a new police chief, Amy Prock, the first female to hold that job and she replaced long time police chief Warren Gall who held that position at the time the traffic loop was adopted. Reports are that she was an effective witness for the city and the jury may have not have wanted to pin any responsibility on her. The mixed verdict forced the parties into another round of court ordered mediation over a final judgment which was entered on April 18, 2021. The parallels to the first litigation never ceased.

The parties agreed that the city would significantly revise its operations plans for Black Bike Week and "other select weekends" including Harley Week using common data collection methods such as traffic counts, crowd size estimates, crime, and related public safety statistics. The city agreed to retain expert consultants to review these data. A city Human Rights and Diversity, Equity and Inclusion (DEI) officer was to be created to review the expert reports and make findings on them. The City of Myrtle Beach Human Rights Commission was authorized to provide feedback on the events and complaints from citizens or visitors. Plaintiffs gave up their claims for damages as it had done in the first lawsuit.

It is probably safe to say that again no one was happy with this agreement, particularly MAGA people who hate the very concept of "diversity equity and inclusion." The good news for the NAACP was that the traffic loop was discontinued beginning with the 2022 Black Bike Week. This planning system was used for the 2023 and 2024 Black Bike Weeks and the traffic loop so far remains a relic of history. Black Bike Week continues and the Town of Atlantic Beach is still hanging in there. Black Bike Week 2024 was considered highly successful for the Black Pearl.

THE MYSTERY OF RACE -- EPILOGUE

We have entered a “Dark Night of the Soul” to quote from a 16th century poem by St. John of the Cross. The recent passing of Pope Francis has taken from us the preeminent conscience for the poor, forgotten and migrants of the world. Our moral conscience as a Nation is eroding under the Trump presidency. Never in my wildest imagination would I have envisioned the complete dismantlement of the Civil Rights Division of the Department of Justice when I began researching and writing this memoir over a year ago. In just a little over three months, President Trump has turned the Division into a breeding ground for litigation on behalf of whites aggrieved by even the most benign programs intended to foster racial “diversity, equity, and inclusion.”

No one and no organization are outside the scope of these attacks. White Christian religious groups including those with white nationalist leanings have become the principal minority groups in need of protection by our civil rights laws. Career Civil Rights Division attorneys have been fired, asked to resign, shunted off into immigration related assignments or drafting responses to citizen mail inquiries. I have managed to take some of these changes into account through recent edits to the text - but I now have a sense that most of what I have to say in this memoir is simply for the historical record. The reflection of one person’s life experiences with racism that will have little relevance for current policy makers in the Justice Department, Republican members of Congress, or much of the broader electorate. My hope is now with a new generation, perhaps not born yet, who will pick up the fallen and downtrodden mantle of Dr. King and resume our journey to the Promised Land. There is hope.

But to bring about significant improvements in race relations from where we are at now will require honest and frank discussions about it in local communities across the country. Top-down directives on race from the federal government or political parties, which since the beginning of the Second Reconstruction have accomplished so much for our country may have run their course. The second Trump presidency and its strident support for the rights of disaffected whites may have unwittingly set the table for this discourse. It is so far off what most Americans would consider our moral center, so devoid of empathy, that perhaps hearts and minds can change on how race is viewed in America. As seen from this memoir, race and racism is a such complicated story that it is important for all of us to more fully understand how it has operated in our country since the time of the Civil War. That requires a willingness to listen and a large degree of humility and self- restraint.

Race has always been right in front of us all the time in our social interactions. The past 150 years has been a constant struggle by whites to overcome perceptions and fears that darker skin color suggests dangers and uncertainties. As we have seen, the freeing of black slaves after the Civil War unleashed a torrent of white reprisals in all aspect of life particularly in the South. Literally almost overnight freed slaves began to occupy spaces previously reserved for whites in stores, on streets, and in local and state governments having been guaranteed the

franchise by Union troops. That First Reconstruction effort was short lived because it relied on the iron fist of the federal government with little, if any, local support among whites. The 13th, 14th and 15th Amendments to the Constitution, and an array of federal civil rights laws passed by Congress designed to ensure that all persons living in the United States, including freed slaves, had rights to due process and the equal protection of our laws were soon eroded and then effectively eliminated by white backlash. The fear of racial dominance by the dark skinned was just too much to bear even for Supreme Court justices of that era. A long dark era of race relations ensued with glimmers of light emerging after whites and blacks fought along -side each other during World War II.

As we all know, and as recounted above, the 1960's brought giant bursts of light on race relations largely through the fearless efforts of ordinary black citizens, many young college students, led by a seemingly most ordinary man, a black minister from Mobile, Alabama named Dr. Martin Luther King. They demanded their rights which had been suppressed for decades by white supremacists. They met in local churches, schools, and public parks throughout the South with communications largely limited to word of mouth, black churches, and black radio stations. This grass roots movement evolved eventually reached the halls of the US Congress and the grudging attention of President Kennedy. It took his tragic assassination and the rise of his courageous Vice President, Lyndon Johnson, to set the stage for the Second Reconstruction recounted in this memoir. As a long time Texas politician, he, more than anyone, knew that much of white America was still not ready to embrace a fully freed black person, particularly in the South. I knew that too as a University of Notre Dame student who had lived in Tuscaloosa Alabama and New Orleans Louisiana.

As explained above, I had the good fortune to live through and participate in the Second Reconstruction as explained above which, like the First, did not last long. The Justice Department's Civil Rights Division and other federal agencies tasked with enforcing the 1960's civil rights laws became easy targets for the white backlash that we all knew and expected would occur. The Reagan era spawned the Federalist Society which made the victimization of whites by civil rights enforcers a centerpiece of its political and legal agendas. That eventually paved the way for the dismantlement of civil rights enforcement by the second Trump administration.

So, we are left to deal with the forces of racism that still exist in our Nation despite the loud and threatening language of reprisals from Trump loyalists for even suggesting such a thing by persons like me. The civil rights cases discussed in this memoir are ones I believe best communicate the complexity of racism in modern day America. They show how racism can be both overt and subtle on multiple levels and become deeply intertwined with the operations of private businesses and local governments, from a large interstate trucking company in Oklahoma, like Lee Way Motor Freight, to the City of Birmingham Alabama and its notorious racist past. These cases include denials of the right of black people to vote in the heart of Mississippi's Black Belt (Washington County), and the subtle ways in which African Americans were denied mortgage loans in Atlanta and exploited with predatory loans in Washington D.C. It ends with the 20- year litigation saga involving the NAACP's fight for dignity and justice for black

visitors to a motor cycle rally in Myrtle Beach, South Carolina. A common theme throughout these cases is fear, sometimes primal, that black people, black culture and persons of color generally pose existential threats to white dominance and the prevailing culture of white Christian Nationalism. Empathy for the black experience, which Dr. king gave his life for, is our only way to arrive at truly beloved communities in our country. We remain a long way from getting there.

Today, dark money interests led by Leonard Leo, an early leader of the Federalist Society, the Heritage Foundation and others have taken complete control over the MAGA agenda as capsuled in the infamous Heritage Foundation's 2025 Report which have been faithfully executed by the second Trump Administration. During Trump's first presidency, these and other conservative groups muscled through Congress three Federalist Society idealogues for seats on the Supreme Court – Neal Gorsuch, Bret Kavanaugh, and Amy Coney Barrett. Through their rulings they have reinforced, perhaps unwittingly, the permission structure for racism that had not existed in this country since I was a teenager in Tuscaloosa. Indeed, look no further than their dismantling of racial gerrymandering by the Supreme Court in Alexander v. NAACP supra. White Citizens' Council's would have hailed this ruling.

It is particularly disheartening to see Justice Amy Coney Barrett join this ruling without comment. She grew up in New Orleans and, like me, attended schools with histories of racial segregation. Like me, she also attended the University of Notre Dame where the memory of Father Hesburgh as a champion for aggressive civil rights enforcement still rings true today. She, more than most on the Court with the exception of Clarence Thomas, should understand how racial politics works in the Deep South. However, in her view it would appear, empathy for the black experience should play no contributing role in how judges decide cases. Thurgood Marshall and Ruth Bader Ginsberg whose seat Justice Barrett filled on the Court respectfully disagreed with her views which they demonstrated over their lifetimes. So did the long line of federal, circuit court and Supreme Court justices listed above who enabled the short-lived Second Reconstruction to take place in America in the 1960's and 1970's.

This six- member Federalist Society Supreme Court majority has turned the language of racism completely on its head by purporting to lay equal claim to the mantle of Dr. King and his fight for racial justice. Chief Justice Roberts famously said "The only way to stop discrimination on the basis of race is to stop discriminating on the basis of race." Parents Involved in Community Schools v. Seattle District No. 1. 551 U.S. 701, 748 (2007). How flippant. He should have ended the quote "stop discriminating against white males" because that was the argument his colleagues at the Justice Department tried to make in the Birmingham Reverse Discrimination cases while he was there in the Solicitor General's office.

It also became the basis for the Supreme Court's recent decision gutting affirmative action in Students for Fair Admission, Inc. v. President and Fellows of Harvard College, No. 1199 slip opinion June 29, 2023. Justice Roberts and the court majority cite possible discrimination against Asian Americans as a by - product of the effort to correct for past racial barriers against African American applicants to Harvard. That just ignores history which is what

opponents of affirmative action always try to skirt. Possible discrimination against Asian Americans was never the central goal of this litigation. It was to protect the cultural advantages of whites no different than the effort to protect their rights in the Birmingham reverse discrimination cases. For opponents of affirmative action, the only remedy going forward is, as in Birmingham, to stop the clock, ignore the past, ignore the continuing need to correct for the effects of past discrimination, and just magically wipe the slate clean going forward for everybody. As George Orwell famously said in his dystopian novel 1984, "He who controls the present controls the past."

Justice Sonia Sotomayor's dissent in Students for Fair Admissions makes this charade crystal clear. "At its core, today's decision exacerbates segregation and diminishes inclusivity of our Nation's institutions in service of superficial neutrality that promotes indifference to inequality and ignores the reality of race." The lead attorney on the Students for Fair Admissions case, Edward Blum, exemplifies this high-jacking of the language of race on his web page:

> 'We believe that the ancient faith that gave birth to our Nation's civil rights laws is the principle that an individual's race should not be used to keep them or harm them in life's endeavors."

Each of the cases reviewed in this memoir shows that "ancient faith" is a mirage and a pretext to avoid racial change. It is grounded, as it always has been, in fears among many whites of becoming a minority in this country. All too many whites worry that rapid cultural change brought about by a new "woke" generation of young people and an influx of immigrants will undo the fabric of our society and thereby undermine our country. Facing up to the undeniable history of racism in our country has now become so emotionally taxing that many white parents want to scrub discussion of it from textbooks offered to school children. These worries trigger primal fears that the white race will lose control over how their children view race. President Trump cynically exploits those fears as part of his MAGA movement. This is why, as noted above, recent polls show many white Americans believe they are victims of reverse discrimination stoked by cultural elites and liberally dominated universities. Discussing issues of race in communities small and large have now become so emotionally taxing under Trump's second presidency that many want to completely tune it out.

How will we ever get out of this vicious loop? Where are charismatic leaders like Dr. King who can get us back on the way to the promised land – a beloved country where love replaces resentment, tolerance over comes hate, empathy provides a path for healing? We need to stop demonizing young people who stand up for change for they are the source of our future leaders who will right this ship. This is the only way to solve the mystery of race in America.

I know much of what I have said in this memoir may seem bleak and harsh. These are only my experiences, and, as I acknowledged at the outset, we have seen tremendous racial progress since my teenage years in Tuscaloosa. But there is still so much more to do to overcome continuing racial inequities in education, health care, voting rights and policing among

many others. I remain hopeful that empathy for the black experience and the disadvantaged will survive these rough waters. It must begin with honest and compassionate dialogues about race, particularly among white men. As noted above, those discussions must occur community by community, school district by school district, city council by city council, and private business by private business. They will require courage to speak out against racial discrimination and empathy to understand the hardships endured by its victims. As Admiral William McCraven, a former Navy SEAL and commander of US Special Forces said in his May 29, 2020 commencement address to graduates of MIT:

> "You must have compassion. You must ache for the poor and disenfranchised. You must fear for the vulnerable. You must weep for the ill and infirm. You must pray for those without hope. You must be kind to the less fortunate."

This memoir is dedicated to my parents, Fred, and Mary Ritter, who gave me the opportunity to be everything I could be in life; to Reverend Theodore Hesburgh, former president of the University of Notre Dame who inspired me to become a civil rights lawyer; to Paul Hancock, former chief of the Housing & Civil Enforcement of the DOJ Civil Rights Division who helped resurrect my career at DOJ; to Joe Rich, former Deputy Chief of the Housing Section who helped me immensely with the editing of this memoir, and finally to my wife, Olga, who endured and supported me through the ups and downs of my civil rights career.

Richard J. Ritter
Hilton Head Island SC
July 30, 2025