

## ‘ . . . For Better, for Worse . . . ’

### A UNION OF OPPOSITES

**N**ine or ten miles beyond Jones Valley, northwest of the blazing pig iron furnaces in Birmingham’s suburbs, scars of piled, blackened rocks often marked the timbered shafts that reached downward into catacombs where much of the city’s industrial fortunes were unearthed by workers as dark as the coal they dug. In the infancy of Alabama coal mining after the Civil War, Jefferson County’s African American population had been insignificant, but, as industrial hunger for raw materials and fuel grew, blacks migrated into the area—some by choice and some by force—to fill the jobs considered too dangerous or too dirty or too low-paying for whites. By 1920, 40 percent of the county’s population was black, and of the twenty-three thousand miners working for private companies around Birmingham, almost seven of ten were black men. In the more hazardous, unproductive mines, another couple of thousand black convicts picked at coal because they had been leased to mine operators by the state.

For more than a generation, black men had brought their families and meager worldly possessions to these scars of cleared earth, hidden almost from the sight of God, seeking to emancipate themselves and their heirs from the doom of agricultural servitude. Many found simply a different form of bondage. Miners usually lived at the mine’s lip in colonies owned, maintained, and supervised by the coal companies. Often only a rail track and primitive paths connected the villages to the nearest town, seldom closer than five or six miles. The color line divided company towns into white and black sections. Miners and their families occupied wood cabins or shanties unevenly placed in crowded, rows along the ravines where wagon ruts and machine tracks led underground. In some villages, such as those owned by U.S. Steel, houses were

built on dirt streets with running water and electricity. Most mine operators, however, did not provide indoor plumbing or electrical wiring, and most cabins were heated in the winter by potbelly stoves of burning wood or coal that the company supplied—at a price.

Usually, the only place within miles to buy goods was the company-owned store, whose monopoly was usually reflected in higher prices. Mining companies paid their workers in “commissary checks” or scrip, a company-issued currency which could be redeemed at full value only at the company store. The company store also gave miners’ families credit between checks, with the predictable result that many miners, in the words of a popular song, owed their “soul to the company store.” Some scrip was accepted at Birmingham banks two weeks after payday or redeemed sooner at much less than face value by Birmingham speculators.

Mining families often grew small vegetable gardens although the hilly, rocky terrain was poor for crops, and several companies preferred their residents to “beautify” homes with flower gardens. In company towns where labor relations were tense, supervisors didn’t permit crops such as corn, since high stalks obscured surveillance by company guards who served as village police and informants. Where there was no running water in the houses, women washed their husbands’ filthy coveralls daily at communal spigots or in streams serving the whole town. Children too young to work were provided a school building, usually in poor or dilapidated condition in 1920, for no more than an elementary education. On Sunday, the whole family could attend the company-owned church to hear a company-paid preacher deliver the message of the company’s own God.

The largest mining enterprises, owned by DeBardeleben, U.S. Steel, and Woodward, provided “social services” to their towns’ occupants. To stabilize the workforce, U.S. Steel’s local president George Crawford in 1909 had begun a major program of establishing new schools, kindergartens, home economics classes, and community gardens in the company towns, as well as “beautification competitions”—with prizes for the mining villages with the cleanest yards, best flower gardens, or finest quilting. Company doctors, dentists, and hygienists were also hired for miners and their families. Other companies imitated parts of U.S. Steel’s welfare capitalism, including company-sponsored picnics on summer holidays, village ball games, and visits by welfare workers.

The cost of providing necessities and services was “divided between the

company and the employees,” Crawford explained, “which is fair, as both derive benefit from it.” The compulsory costs were deducted from miners’ commissary checks. Housing deductions were \$7 to \$15 a month (several companies increased the rent deduction whenever they had to increase workers’ pay). Paychecks also were docked \$2.50 to \$6 for social welfare services and access to the company doctor. With average pay of \$75 to \$80 a month, miners often got only half their paycheck after all company deductions.<sup>1</sup>

Alabama miners worked in the nation’s most dangerous mines. Beyond the deadly effects of what years later would be called “black-lung” disease, hundreds of men died and thousands were injured in mining accidents and explosions. During a fifteen-year period beginning in 1910, 542 men died in Alabama mines while only 380 died in Pennsylvania, although the Northern state employed eight times as many miners. For their hazardous duty, Alabama’s non-convict workers were paid according to the amount of coal they dug. At the beginning of 1920, a miner received around eighty-five cents for each ton of coal he picked and loaded into the train hopper. White supervisors were paid according to the tonnage their crews produced.

Negroes had become the workers of choice for mining companies in the emerging industrial South. “The salvation of the South depends upon its industrial welfare,” observed a DeBardeleben Coal Company’s vice-president, “and the chief factor in our industrial welfare is the negro.” His labor was inexpensive. His numbers were vast, and his ability to withhold his own work was severely limited. As the more manageable group, black workers also were a check on the demands and pay of more independent white workers. In mining and related industries, lower wages for blacks helped to assure low wages for whites since coal operators maintained the option of hiring additional blacks at lesser pay or of contracting for convict labor at minimal cost. If free miners made collective demands, operators also could bring black “scabs” from rural south Alabama to annul the effects of a strike. “We have a low grade of iron and . . . coal,” explained a Birmingham businessman discussing Alabama’s strategy for competing with Northern coalfields. “And one of the advantages that we have had is the immunity from these labor disturbances, our cheap docile negro labor.”

In the harsh, complex realities of white supremacy, this exploitation had some relative advantages for free blacks. In trying to keep black workers cheap, loyal, and docile, Birmingham industrialists actually provided many African

Americans with better conditions than they had ever enjoyed in the South. Jim Crow did not lurk everywhere in the bowels of Alabama's earth, where eternal night and coal's soot blackened every face. By sweat and muscle, black miners could make as much or *more* money than whites since pay was based solely on a worker's production. And because there were white miners, the miners' pay scale was not outrageously cheap by historical standards.

By design, company towns resembled an industrial version of the Old South's plantation where masters could supervise black slaves' entire life, but mining methods for keeping blacks under control were better than many alternatives. Mining villages were segregated, but some companies like U.S. Steel provided equal housing regardless of race. Welfare programs were paternalistic, but some were useful. Because they were available to both races, the companies' services constituted a partial recognition that blacks had *human* needs just like whites. Also, to deliver their programs to town residents, mining companies employed a fair number of blacks, including preachers, nurses, and social workers who helped to sustain Birmingham's slight black middle class.

The industrialists' practices won the support of Birmingham's black ministers and black leaders, including newspaper editor Oscar Adams, who vocally opposed Negroes joining unions, and they received the excessive praise of Yankee visitors concerned with improving Southern race relations. After a visit to company towns in 1918, one Northern businessman proclaimed that U.S. Steel's handling of the "racial lines" was a "contribution to the so called race problem" that would prove more useful than Negro education.

These material and psychological benefits were considerable for black workers at a time and place where even small kindnesses from the other race were rare, but they were not the blessings of American freedom or the recognition of full personhood. They were fruits of semi-captivity or precarious byproducts of shifting industrial warfare between Southern white workers and white capitalists on both sides of the Mason & Dixon line. Black folks' bounty existed so long as neither white faction won the industrial war, so long as white unions couldn't eliminate black workers from the urban workplace and white capitalists couldn't yoke African Americans as industrial slaves.

In the final measure, the New South industrialist could be as much—and as little—of the Negro's ally and protector as was the Old South planter, a conclusion confirmed in the mining strike of 1908 when labor organizers tried to unite black and white miners. Mining executives unleashed the demigods

of racialism, accusing miners of seeking social equality, a state of the Southern white mind apparently where black men could command, touch, and copulate white women.<sup>2</sup>

While Birmingham labor relations were usually unsettled, Alabama's coal-fields had been comparatively quiet since that bloody strike of 1908 when Hugo Black was tutored in the ways of Southern industrialism. In the strike's aftermath, the United Mine Workers (UMW) in Alabama fell into shambles and by 1914 had fewer than thirty dues-paying members. Within two years, however, Alabama miners were again beseeching the UMW to help combat the "company devil." A black operative for DeBardeleben Coal warned his white boss that "the Negro labor of the Alabama mining district is an incoherent mass, united in nothing save the conviction that Capital has the 'cards marked and stacked' against it." In the spring of 1917, the UMW began rebuilding an Alabama union. World War I vastly enlarged demand and prices for coal and placed the nation's mines under government regulation, including labor standards, to assure essential fuels for military production and support. At the insistence of the Woodrow Wilson administration, Alabama coal operators reluctantly signed an agreement with the UMW during the war. The accord included national pay rates recommended by the government, an eight-hour workday, workers' right to unionize without reprisal, a bar against "blacklisting" miners for union involvement, and possible UMW committees to address grievances and disputes.

Only the seduction of consistently high war profits and the threat of a hostile government wartime takeover had coerced Birmingham's industrialists into agreeing to terms they had never entertained before. This uneasy truce ended soon after the last shot was fired in France. Washington could no longer bully coal operators into conciliation. Three weeks after Hugo Black secured the first verdict in the Miniard trial, UMW president John L. Lewis called a national strike including Alabama mines. After a federal court's injunction, Lewis grudgingly halted the work stoppage and resumed negotiations. In the end, the UMW and the nation's large coal companies agreed to a 14 percent wage increase. The vast majority of Alabama coal operators, however, refused any agreement and, for good measure, discharged many union members who had walked off the job during Lewis's earlier strike. In vain, local UMW president Jacob R. Kennamer asked Washington to intervene.

Many Alabama politicians also abandoned all signs of tolerance and coop-

eration with organized labor. In September 1919, the prohibitionist legislature made it a criminal offense for workers to enter into “a combination or agreement to interfere” with Alabama industry for any purpose. Governor Thomas E. Kilby diplomatically pocket-vetoed the legislation since anti-picketing and anti-boycott statutes were already on the books. Lawyers and lobbyists for Birmingham’s corporations, led by Forney Johnston and Borden Burr, packed the state capitol to convince the legislature to gut Kilby’s bill improving workers’ compensation for on-the-job injuries. Instead, the legislature passed a stingy pro-industrialist bill. In turn, Kilby estranged Alabama labor leaders during the UMW’s short national strike by calling out the state militia to protect mine companies’ property, although there were no indications of labor violence or unrest.<sup>3</sup>

In Washington, as soon as he was elected to the U.S. Senate in 1914, Alabama’s Oscar W. Underwood deserted a pro-labor voting record earned as Birmingham’s Congressman. Using Forney Johnston’s massive intellect and his own statesmanship, Underwood began in late 1919 shaping legislation to reorganize the nation’s postwar railroads with a key provision effectively banning rail strikes. Johnston said the bill protected railroads investors from “the direct assaults of Labor which knows very well what it wants and is willing to double its fists to get it.” Underwood called his legislation morally “right.” But the law was a double-fisted assault against labor unions, according to the Brotherhood of Railway Trainmen, whose Birmingham local retained Hugo Black for legal work in late 1919. Underwood proposed a national labor board to regulate rail workers’ wages, working conditions, and right to strike. Birmingham’s *Labor Advocate* said the law swung “a big stick at labor and a toy balloon at the railroads.” As a result, president of the American Federation of Labor (AFL) Samuel Gompers declared Underwood was one of the six worst U.S. Senators.

To counter growing hostility, Alabama labor leaders rallied members into politics. In 1918, state AFL president Bill Harrison was elected as one of Jefferson County’s state legislators. Around Birmingham and other centers of unionism—Jasper, Gadsden, and Anniston—labor leaders conducted voter registration drives and helped pay members’ poll taxes. In Jefferson, labor officials estimated the number of union voters had quadrupled, helping to enlarge county voter rolls from eighteen thousand in 1918 to near thirty thousand in 1920. In February, as Senator Underwood prepared to launch his campaign

for reelection, state labor leaders announced: "For the first time in Alabama, all branches of organized labor . . . have recommended to their people . . . one candidate for a high office." The unions, including the UMW, were supporting L. B. "Breck" Musgrove to defeat Underwood.

Musgrove was an unconventional candidate for labor's crucial test of political strength. A millionaire who owned or operated eight small mining companies (all recognizing the UMW) north of Jefferson, Musgrove was a lifelong bachelor who enjoyed lavish entertainment, good whiskey, and rough politics. Some years he kept a suite at New York's Waldorf-Astoria Hotel for business and pleasure and once he shipped ten possums, a treasure of Alabama fruits and vegetables, and his own Alabama cook to New York's Hotel Marlborough to expose prominent Yankees to a seven-course meal of Southern delicacies. Richer than most Birmingham managers and many local industrialists, Musgrove associated himself politically with prohibitionists, war heroes, Protestant ministers, and labor leaders. He helped to build most of the churches in his hometown, although he wasn't a member of any. He was probably the largest financial supporter of the Alabama Anti-Saloon League, but he rarely practiced prohibition.

Six years earlier, Musgrove had been Richmond Hobson's campaign manager when he matched frenzied invective with Forney Johnston who was running Underwood's campaign. Unaccustomed to defeat, Musgrove seemed hardly able to wait until 1920 to mount another challenge—this time as the candidate. All of Alabama, including Senator Underwood, knew Musgrove would use both his own wealth and wicked tongue to make the campaign a tough race.<sup>4</sup>

The strategy to defeat Underwood was simple. "There has been started in Alabama a union between farmers, union labor, and the prohibition forces," Musgrove declared, "that will drive into the ocean from the Atlantic to the Pacific all standpatters," including the "fossiliferous old asses of reaction" like Underwood. Because of a sharp decline in agricultural prices, Alabama farmers were restless. The state Farmers Union endorsed Musgrove, and during the past year "the union labor people have been working on the farmers," according to an Underwood supporter, "in an effort to get them to stand with union or organized labor in a political way."

The Anti-Saloon League also squarely backed Musgrove. In late 1919, the Eighteenth Amendment requiring national prohibition had become law, but Alabama League president Breck Lawrence wanted to unseat Underwood as

“the leader of the liquor interest in the United States.” Dry activists feared Underwood would frustrate national enforcement as vigorously as he opposed prohibition. Alabama’s suffrage leaders also worked against Underwood. The senator had spoken against “Susie’s Amendment” as an encroachment on the states’ right to control suffrage, an elemental power for preserving white political supremacy, and he viscerally disliked “that horde of women” who crowded the capitol for suffrage.

Underwood’s reelection plans were to run as a statesman. Shortly before the campaign, he became the Democratic leader of the U.S. Senate, the first person to lead a political party in both the U.S. House and Senate since Henry Clay. Alabama’s business leaders, daily newspaper editors, and Black Belt planters were solidly behind the senator, and many of his political friends were already assembled in a ready-made organization. His campaign chairman was Lloyd Hooper, former head of the state’s Council of Defense, and most of Underwood’s county contacts were businessmen and corporate attorneys who had been local leaders in the Defense Council and its shadow, the Alabama Protective League (APL). In a show of loyalty, Birmingham’s Chamber of Commerce president (formerly state APL chief) evicted the Farmers Union from its building after the group endorsed Musgrove.

During three intense months of what Forney Johnston planned as a “short and snappy” campaign, Underwood and Musgrove engaged in a bitter, scurrilous exchange that often appealed to the worst of human nature. Musgrove’s stump speakers, like Anniston editor Harry Ayres and William Jennings Bryan, the eternal flame of agrarian Populism, took the high road by condemning Underwood as the stooge of “booze and business.” On the low road, Musgrove and his weekly newspaper crowned Underwood as Pope “Leo Oscar . . . truckling to any foreign sinister element.” Anonymous handbills, entitled “Shall the People or the Pope Rule America,” alleged that Underwood had “stooped to kiss the ring of the Pope,” a shameless distortion of an event in 1917 when the senator knelt publicly in homage to New York’s Catholic Cardinal on St. Patrick’s Day. These “dodgers” attempted to stir up word-of-mouth rumors that Underwood, an Episcopalian for more than thirty years, was really a closet Catholic. Birmingham’s Society of True Americans may have believed it. The TAs endorsed Musgrove at a secret meeting.

In April, following Johnston’s counsel, Senator Underwood launched his own barrage of words, aimed primarily at making the “assaults of Labor” the

campaign's prime issue. After promising Alabama voters that he supported enforcing prohibition as long as it was law, Underwood charged he was the victim of a national labor conspiracy led by AFL president Samuel Gompers. "This is the issue," Underwood stated repeatedly. "A man not of this state, sitting in his office in Washington, gives orders to defeat me because I did not let him dictate to me how to vote . . . I am blacklisted because I represented you in the Senate and not this labor leader." In Mobile, Underwood warned that Bolsheviks of the Russian Workers' Revolution were at work close to home. "Europe is afire," he exclaimed. "The sparks are flying here . . . Our government is in danger."

The *Birmingham News* plainly stated what Senator Underwood, a poor stump speaker, had only implied about Musgrove. "He boldly advocates the array of classes against classes. A rich man himself," the paper noted, Musgrove "adds fuel to the radical flames of the day in advocacy of the union of the farmers and of the mine and factory workers for crushing capital and establishing a government of part of the people . . . That is not only demogogy, but dangerous demogogy." Throughout rural Alabama, Underwood supporters echoed the attacks upon "bolshevists," "foreign agitators," and "Union Labor" who were conspiring against Underwood to take over the state.<sup>5</sup>

As the campaign developed, Underwood and his advisors received various reports on how "Musgrove's managers" were working "hand-in-glove" with UMW agitators around Birmingham. In one report, Jefferson County's former APL chief Key Milner supplied Underwood and Forney Johnston with confidential information that he considered vital to the campaign. Milner prepared the document as head of a new state intelligence unit that Governor Kilby had secretly authorized—in keeping with recommendations made by the Council of Defense when it met with Underwood at the end of the war. Immediately, the senator asked Johnston and Lloyd Hooper to devise the best way "to visualize this situation to the people of the State."

Ten days before the election, Johnston and Hooper had found the best way. Sparrow Advertising, a public relations firm used by Birmingham industrialists, was preparing a special political ad to be published in the state's newspapers near election day. Plates were being set at daily newspaper plants in Mobile, Montgomery, and Birmingham. The ad's content frightened Musgrove's managers and Alabama labor leaders after they learned of the material, apparently from a newspaper typesetter.

At eleven o'clock on a Saturday night, Jefferson County's Circuit Judge Horace Wilkinson awoke at home to loud, persistent knocking. On his doorstep stood Hugo Black with an apology and a bundle of papers. The hour was late and the courthouse was locked, but Black was there on behalf of Alabama's labor unions to ask the judge to issue an immediate court injunction, without hearing from anyone else, to prevent the Underwood campaign and three of the state's largest newspapers from distributing or publishing Sparrow's ads.

In the petition, Black represented state AFL president Bill Harrison, his "organization of laboring men . . . of approximately forty thousand," the Birmingham Trade Council, the Brotherhood of Railway Trainmen, the Farmers Union, and the United Mine Workers and its president Jacob R. Kennamer. These men and unions represented the "best and most cherished ideals of *Alabama citizenship*," Black claimed, but feared "incalculable damage and injury" if the advertisement was published. Defendants, Black alleged, "have conspired together to publish and distribute" this ad in all parts of the state "in order that there shall not be time and opportunity to reply to the insidious statements . . . until after the primary election."

According to Black, the advertisement was nothing more than "a cleverly concealed attempt . . . to attack and disrupt" Alabama's labor unions. It was "a secret attempt to undermine the trust and confidence of the public" in organized labor. The ad was a "malicious and libelous document" with "slandorous imputations." It alleged that Alabama labor unions and their leaders "were in favor of organizing negro miners into the same union with white members, and . . . believing in marriage between white people and negroes, and . . . in political and social familiarity between the white race and the negro race."

Black contended that the "whole effect and purpose of the publication . . . is to engender friction and discord between the white and black races in the state, to stir up race prejudice, and foment ill will and hatred on the part of one race for the other." His legal theory was less dramatic, although rather novel. Simply, the property rights of labor unions—their right to do business in Alabama—would be permanently damaged if the newspapers and others exercised their rights of free speech and free press as a part of this conspiracy to destroy Alabama's labor unions. In summary, Black charged that "the distribution of this document of defamatory matter . . . will destroy the prestige of said organizations in Alabama and will tear down the work and struggle of years, and its insidious poison could not be eradicated in all the years to come."

Governor Kilby had appointed Judge Wilkinson recently to the state circuit court as a reward for his service as a special attorney prosecuting corrupt local sheriffs and lynching cases involving white victims. Wilkinson was an ambitious, mercurial politician facing his own election. He was aware that unions now had a large bloc of Jefferson County's organized voters, although he had shown very little interest in labor's cause. Wilkinson also possessed the highest regard for his own wisdom and a fierce reputation as a menacing prosecutor among the state's sheriffs—just the kind of local judge who might use his authority without delay to enjoin defendants throughout the state. The judge, however, was unwilling to issue a midnight decree for Black's clients.

Throughout most of Sunday, Wilkinson studied Black's documents and consulted with the circuit's presiding judge to affirm the reach of his civil jurisdiction. Although he deliberated throughout the day, Wilkinson did not notify defendants to give them a chance to respond to Black's *ex parte* petition. By Sunday night, Judge Wilkinson summoned the court's register to a largely darkened courthouse and enrolled his decree and opinion in the official minutes, issuing to all Alabama sheriffs an injunction prohibiting the *Birmingham Age-Herald*, *Montgomery Advertiser*, *Mobile Register*, Lloyd Hooper, and other Underwood supporters from publishing or circulating any ad suggesting that Black's clients "employ, advocate, encourage, or recognize social equality between the white and black races in the State of Alabama, or racial amalgamation, intermarriage, or political and racial familiarity."

In a written opinion, taken at times word for word from Black's petition and brief, Wilkinson cited only two prior cases: an opinion by Judge Somerville, Black's old law professor, holding that the right to do business was an important "property right" which courts could protect by injunction, and another case stating that it was libelous in Alabama to charge falsely that someone advocated social equality between the races. "The constitutional right of an individual freely to express his sentiments upon any subject is as much entitled to the protections of the court as any other constitutional right," the opinion stated. "But . . . courts are not impairing or infringing this right of free speech by enjoining publications which are incidental to or in aid of an unlawful conspiracy to injure the business of another."

Judge Wilkinson also repeated Black's language on the issue of race. "The people of Alabama will not knowingly tolerate any body of men or organizations that advocate or seek to bring about social and business equality between

the negro and the white man . . . But remaining socially separate, it is not contended . . . that the colored man, or any other man no matter what the color of his skin may be, is not entitled to equal rights before the law.”<sup>6</sup>

By Monday morning, the Underwood ad had been stopped, and the state’s newspapers contained no such material. In the afternoon issue of the *Birmingham News*, however, a front-page story reprinted the complete text of the ad that the court had enjoined. Complying with the court order, the newspaper did not run or circulate the ad, but, in covering the day’s news, it published the ad’s full text charging unions with promoting social equality, interracial marriage, and black political power. Carefully avoiding a breach of the court decree, the *News* and Alabama’s wire services trumpeted the Underwood campaign’s allegations as front-page news across the state a few days before election.

The Musgrove camp had intended to use the ad as a campaign issue within Birmingham and actually advertised in both the *Age-Herald* and the *News* on Sunday—before Judge Wilkinson had enrolled and issued his opinion—inviting supporters to a Capitol Park rally on Monday night to learn of the “Unbelievable Political Trickery” of “Underwood’s Mud-Slingers.” In Monday’s papers, Musgrove managers promised to reveal the real details of the “unlawful conspiracy” at the rally, while their large ads on the *News*’ second page responded to each allegation of the banned advertisement.

Underwood’s Jefferson County campaign manager (Forney Johnston’s law partner) told reporters he knew nothing about the ad which the court had enjoined him from circulating. In sworn statements, however, the Sparrow agency and the *Age-Herald* admitted that they were on the verge of publishing and circulating the material for Underwood. The *Mobile Register* publisher averred that he wasn’t aware of unions promoting social equality but he did know that at a Mobile meeting in May 1919 the Alabama AFL convention entertained a resolution asking that “the negro be allowed the use of the ballot as in other states.” The convention passed a resolution endorsing the goal of making “every man a legal voter in the State of Alabama.” The *News* and others printed the publisher’s statement.

In rural south Alabama, Underwood supporters were ecstatic. News coverage of Wilkinson’s injunction was more useful than paid ads in spreading word about Alabama labor’s interracialism. A Black Belt factory owner (a former local APL chief) informed Underwood that the injunction “has proven a very great asset to your campaign.” In Birmingham, local candidates without union

support played up the issue. A candidate for coroner, for instance, advertised that “the people of Jefferson County do not want their candidates . . . selected by persons who sit in convention halls with negro delegates.” Explaining why he received no union endorsement, the candidate stated: “There were FIVE NEGRO DELEGATES who were suppose to EXAMINE ALL WHITE CANDIDATES” in the screening process.

In his last speeches, Breck Musgrove told Alabama that he would rather “wear the union label than that of the stock gamblers of New York.” In a feeble effort, he tried to shift racial slander with a wornout allegation. Musgrove recalled that Underwood had voted for a bill to enfranchise Negroes in the District of Columbia. Yet, at this final rally, Musgrove seemed beset by the better spirits of the past. He recalled the great promise of the Populist movement of the 1890s when “the same alliance” of plain white people was attacked by the same giant forces he now called his enemies. In defiance, the millionaire proclaimed, “I will not be tied to their interests.”

After votes were counted, the rural counties gave Underwood a statewide victory of 54 percent of the white electorate. The large industrial counties, including Underwood’s own Jefferson, went for Musgrove. Forney Johnston saw the returns as a worrisome sign of the class cleavage, but his senator refused to fret. In Washington, Underwood portrayed himself as a principled statesman victimized by hate mongers. He wrote that “the effort made by the Musgrove crowd against me because I am not willing to condemn the Catholics of Alabama . . . is a contemptible piece of demagoguery.”

From Mississippi’s Delta, the elder LeRoy Percy told Underwood that his defeat would have required all “courageous, conservative men to retire from public office” since the “road to public office was only open to those who truckle to the labor vote and prohibition vote and all the other ‘ism’ of the day.” Mobile businessman Frank Boykin, forever ingratiating himself with a winner, telegraphed his joyful obituary of the Musgrove alliance: “With all their money, their Bryans, Unions, and Breck Lawrences, they never had a chance.”<sup>7</sup>

As in all elections, it was a victor’s moment when one’s own misadventures disappear and the words and deeds of the vanquished are retold self-righteously for their indecency or lame effect. Yet, Breck Musgrove seemed touched by the muse of history when at the campaign’s last moment he recalled Alabama’s earlier Populists who also never prevailed in a statewide election. In 1920, religious intolerance had become a sharp weapon in political warfare, but as

in the days of Fayette Black and the Democratic and Conservative Party of Alabama, racialism's destructive powers remained the surest force to enable another's defeat.

The 1920 election was not one of Alabama's worst examples of racial demagoguery. Quite the contrary, it was fairly routine. Mindless, repetitive, and ordinary, racialism had become year after year the endowed character of white politics, defining a moral existence by the certainty that everyone would lose it. No one's credentials and credibility in Alabama politics protected him from becoming the victim—or the vessel—of racialism. Both Breck Musgrove and Oscar Underwood had lived, led, and prospered in Alabama for decades by the color line. Both had always done his public service to sustain white supremacy. Musgrove had become rich from the toil of black miners, and the family wealth of Underwood's wife was built from Birmingham's Woodward mines where black men dug up white profits.

Yet, neither man felt really safe from racialism in politics. Nor were they. No matter how many times a man had sworn faith to white supremacy or praised its name, the next day he could discover that he had failed somehow to pay proper homage. Everyone knew how to summon this potentially annihilating force, how easy it was to win if only racialism would take hold and color the other's character. This constant temptation to victimize—and constant fear of becoming a victim—created a self-devouring cycle by which each political oblation to racialism strengthened its force and enlarged a candidate's tendency to beckon or fear its presence in the next election.

As leader of the Democratic party in the U.S. Senate, Oscar Underwood might have won his reelection without conjuring racialism as a last, unanswerable attack upon Musgrove. Obviously, the Underwood camp feared that he would not win, and a fairly narrow margin of victory—dependent on the rural counties where the Sparrow ad was aimed—suggests that the election could have gone the other way. But of course, Musgrove was the more vulnerable, for in 1920 he linked his political fortunes openly with organized labor whose extensive grassroots work at voter registration could not overcome the stain of too much “racial familiarity.” Most unions in the Alabama AFL were racially segregated, and many union members in Birmingham and elsewhere had led “white only” efforts. Yet, in one of Alabama's most important industries, one union included both black and white workers who stood together at moments in common destiny.

“The United Mine Workers are not preaching social equality,” Jacob R. Kennamer told white workers during the senatorial campaign, “but they are preaching industrial equality because of the fact that they know that unless the colored man is brought up to the standard of the white man he will carry the white man down to his standard.” Speaking in the third person about his own union, Kennamer added: “So they say, ‘Let us have an equal justice to all.’” As an interracial effort, the Alabama miners’ union was by definition a creature of “racial familiarity” which the Southern white mind knew was one step away from Negro men marrying white women and other images of biracial Reconstruction rule.

Nothing could work its demonic effect better than Underwood’s last minute tactics, and nothing could protect Musgrove from racialism’s wrath. Even Musgrove’s countering whispering campaign of anti-Catholicism, in an era of rabid, growing religious intolerance, could not trump Underwood’s use of the color line, thus reaffirming in Alabama politics what Hugo Black had stated in his emergency complaint before the circuit court—an “appeal to the instincts of the people of Alabama for the preservation of the supremacy of the white race will work an irreparable injury.”

This episode also may have been the earliest defining moment for the lawyer who would become the nation’s most ardent advocate of an absolute right of a free press to publish. No other juncture in Black’s life demonstrated earlier or more clearly the folly and futility of suppressing the right to publish and speak. At best, an injunction to stop the publication of the ad was an attempt to control damage, without any real hope that its message could be effectively banned from the public. At worst, it was a misguided ploy in which Black and the unions tried to use the industrialists’ methods of suppression, which had strangled past labor strikes. By whatever design, labor’s effort to gain politically by limiting the speech of others had failed miserably.

Forty-six years later, Judge Black of Alabama would tell the nation that the First Amendment meant that no law and no court could ban a newspaper from publishing opinions at the last moment of an election. He wrote in another Birmingham newspaper case (involving the *Post-Herald*, successor to the *Age-Herald*), one where litigants justified their attempts to bar eleventh hour “electioneering” as necessary to “protect the public from confusive last minute charges.” In upholding the newspaper’s right to publish, Judge Black would note as a matter of fact that even if such censorship efforts were constitu-

tional, they would never succeed.<sup>8</sup> He knew. In the summer of 1920, however, Hugo Black and Alabama's labor leaders knew only that they had been fatally wounded with an “invidious poison.” They were desperate men. After years of quietly rebuilding the unions and their white members' political strength, the all-consuming power of white supremacy threatened quickly to destroy labor's struggles in politics and the workplace. While gladly compromising the right of free speech in an attempt to control the devastation of racialism, these men now knew that, following their defeat at the polls, lingering problems in Birmingham's coal fields might soon turn Hugo Black's prophesy of doom into the obituary for all of Alabama's labor movement.

IN THE EARLY FALL OF 1920, challenged by belligerent coal operators seeking to bust unionism, Birmingham's miners began a series of local wildcat strikes with demands for better pay and union recognition. At midnight on September 7, Alabama UMW president Jacob Kennamer led thousands of workers out of the mines to shut down the state's entire industry. Above all else, the UMW sought recognition as the workers' union, but coal companies wanted to destroy the “U.M.W. of America . . . an oligarchy of agitators” who they said had a history of violence and “of associating the black man on terms of perfect equality with the white man.” Industrialists attributed the walkout to the fact that 80 percent of the union members were black, easily misled by “foreign” influences. As local operator Frank Nelson stated, “This will mean . . . enslaving of 23,000 loyal coal miners . . . dominated by a few whites and Yankeeized negro agitators.”

Mine owners confidently predicted the strike would fail and began to ship into Birmingham several thousand new workers, mostly black field hands from south Alabama. “Scab” workers were less efficient, but mines could afford to operate less productively since owners had stored reserves and coal demand had declined after the war. In addition, mines operating with convict labor were unaffected by the strike.

Alabama law was clearly on the side of the owners. Sweeping anti-strike statutes made it a crime for anyone to loiter near a place of business with the intent of influencing another not to work. If two or more people did so, it was an illegal conspiracy. In effect, all picketing was outlawed. Also, Alabama law forbade the printing, publishing, or circulating of any notice of such a “boycott or ban.” Using company-town guards, often sworn as deputy sher-