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'The Humblest Son of the Humblest Citizen'

The Dry-Protestant-Progressive Voters Elect a U.S. Senator

The first part of 1925 was as an uncharacteristic time of political indecision and revision for Hugo Black. Long accustomed to sharpening his wits and improving his fortune amid the conflict of people, ideas, and ideals, Black seemed unable for once to reconcile the competing forces of personal ambition and family responsibility, of political risk and financial safety. A decade after the giants of Alabama's nineteenth-century politics had departed, Black was struggling to decide if being the son of a rural merchant, the state's most aggressive dry prosecutor, a card-carrying Klansman, an attorney for biracial unions, the Pythias' past grand chancellor, and the trial lawyer for poor black and white workers—any or all of these public personalities—gave him a chance to become one of the state's new political leaders.

Like many politicians, Black revealed his ambitions even before he knew his own mind. In early 1925, Black informed his sister Daisy that he was going to run for governor, "but you can't tell anybody." A few weeks afterwards, he amended his intentions. "I'm running for senator," he told her. Later, Black told a south Alabama cousin that he had decided *not* to run for the U.S. Senate. After reviewing possibilities with a small circle of friends, Black decided to forgo running for any office in 1926.

While his fame swelled momentarily after each publicized trial, Hugo Black was still not a household name in Alabama. In the last ten years, Black's courtroom advocacy of prohibition, organized labor, anti-convict leasing, and ordinary white folk—along with leadership in several statewide fraternities—had earned him publicity, friends, and admirers across Alabama. Yet, his record of

public service looked puny in the eyes of many, including some friends, when compared with thirty years of Congressional service by the incumbent. "Senator Underwood is the 'biggest' man the South has in Congress," declared Horace Turner, Black's stalwart friend, who insisted the senator deserved reelection without opposition.

Similarly, Underwood's main opposition did not encourage Black. Organized labor and hard-shell prohibitionists, who narrowed Underwood's margin of victory in the last senatorial election, had weakened since 1920. Even with the fast-growing Ku Klux, anti-Underwood votes would splinter between Black and at least two other unofficial candidates, Governor Thomas E. Kilby and Breck Musgrove, Underwood's persistent antagonist. Kilby had a strong public record on prohibition, and, although Birmingham unions had not forgiven him for ending the 1921 miners' strike, some of Black's friends believed the former governor "had a pull with KK and labor forces" in south Alabama. Musgrove always seemed on friendly terms with labor unions, was a generous contributor to the Anti-Saloon League and temperance unions, and had run as the Klan candidate against Underwood in the state's presidential primary. Both businessmen were millionaire "free spenders in political races," observed one reporter, "and both have a very definite following in the state."

Because of Alabama's "no run-off" election law, passed ironically in 1916 to help prohibition candidates, Black and other challengers were destined to split opposition votes and leave Underwood, a local-optionist, with a plurality victory. Under all probable scenarios, Black's chances of winning a Senate race appeared marginal at best.

A campaign would be costly. Black's candidacy was sure to take him away from Josephine (and now two little boys) for several months and, without his law practice, Black would have to support his family on savings. If elected, Black's yearly income would drop from around $40,000 to $10,000. "It would be a great financial sacrifice!" confided Black.

Another personal consideration was Josephine, whom Hugo always tried to protect from life's rigors and unpleasantries. The common tools of Alabama politics were scandalous rumors and vicious, anonymous circulars, used often at the last minute in whispering campaigns to distort a person's character or inflame prejudices. Despite worldly radiance and Southern charm, Josephine was by nature the opposite of her husband. She suffered when facing friction, criticism, or personal attacks. Try as he might, Black knew he could not save his

wife from the hostilities and harshness of real politics, especially in a contest that would be pitting James Esdale's Kluxers against Forney Johnston's senator.[1]

As events unfolded, Black's decision not to run for the U.S. Senate survived hardly a month. In early May, longstanding rumors of Senator Underwood's retirement were reborn when his office confirmed that the senator's family had purchased a country estate with a hundred and twenty acres and a Georgian house of twenty-two rooms near Mt. Vernon—in those days, sixteen long miles south of Washington.

Afflicted with lingering despair over his defeat at Madison Square Garden, Underwood's lack of commitment no longer sounded like a statesman's formalities. "There has been grave doubt in my mind for some time as to whether I will run for the Senate," Underwood stated. In private, he was more frank. "I am very much disposed not to be a candidate. Kilby and Musgrove intend to run. I think this would make the campaign less difficult for me," observed Underwood, fully aware that a divided opposition would permit his plurality victory, "but, on the other hand, both of them will probably spend a lot of money." Underwood said he didn't want to be forced to violate Alabama's 1916 law limiting campaign expenditures in order to assure victory. In truth, he had lost his political drive and dream. He had no energy for another campaign fighting Kluxers, or for another term amid what Forney Johnston condemned as the Senate's "pickpocket statesmanship." Underwood concluded that "it looks to me like it is a good time to quit."

Without waiting for Underwood's formal announcement, Kilby and Musgrove immediately confirmed their candidacies. Friends of attorney John Bankhead, who recently sold his Jasper mining company for $1 million, affirmed his intentions to follow his father's career. Former state supreme court justice James J. Mayfield of Tuscaloosa also was mentioned as a fitting successor. And, by the first of June, Hugo Black had changed his mind again. "Judge Black will announce his candidacy upon a progressive platform," his statement read, "that will appeal to the forward-thinking citizenship of Alabama and will be in line with the ideals exemplified by his private and public life."

"I am definitely and finally in the race," Black assured a friend. Black was now totally convinced he could win. His announcement, however, "came as somewhat of a surprise to political observers who were unaware that the former county solicitor entertained political aspirations," noted one reporter. Clay County's newspaper was more generous to a native son, whom the editor

declared "an easy winner" who "would wear the senatorial toga with honor and distinction."

Black was confident, but not cocky. "I'm a novice in State politics," he admitted to Hugh Grant, an Auburn University professor volunteering to help a fellow Baptist, "and the only method I know how to use is to work and let people know what I stand for." The candidate who drew the largest plurality would win, and with Underwood out, no candidate began with a substantial lead. If Black divided up a coalition of anti-Underwood voters with Kilby and Musgrove, Bankhead and Mayfield also would split conservative, wet voters. As an Underwood loyalist later saw it: "John Bankhead or Judge Mayfield can be elected provided either one runs but not if both runs." The situation was right for a political novice.

Without a ready-made record or deep pockets, Black exhibited his instinct for turning a liability into an asset. "This office must not be purchased," Black warned his three millionaire opponents in a qualifying statement. "We will, therefore, conduct our campaign well within the expenditures allowed by law," he said. "This campaign will be conducted on our part entirely by volunteer workers and carried directly to the people."[2]

When Underwood announced his retirement on July 2, Black already was mailing dozens of letters to friends and family in every part of the state. Included were distant relatives; fellow members of the Knights of Pythias, American Legion, and Masons; boyhood friends; members of his University class of 1905; and, of course, Baptists and prohibitionists. Later, Black also made a special appeal to jurors in Mobile's whiskey trials. In Alabama, Black explained, "a man must depend upon his friends when he enters into a political campaign."

Both Kilby and Black assured reporters that they had no intention of commencing a campaign one year before the election, and both were the most active candidates from the beginning. Harry Ayers, editor of Kilby's hometown *Anniston Star,* made an early state tour to gather support from other editors. Even before Underwood's exit, Kilby had opened his purse. "I have understood," Black told a south Alabama publisher, "that one of my opponents is sending out letters to various weekly papers inferentially suggesting that it would be to their financial advantage to assist him."

Black turned most of his court cases over to a new law partner, William E. Fort, who had retired from the circuit court bench, and transformed his law

office into campaign headquarters. Black bought a Whippet, an inexpensive car smaller and somewhat less reliable than Ford's Model T. Over the next five months, Black traveled the state, attending fraternal conventions, meeting friends and friends of friends, and visiting towns and crossroads where candidates for statewide office had seldom been seen. "He wouldn't make a political speech," recalled Clifford Durr, who in 1925 was engaged to Josephine's sister, Virginia. Mapping out the ground rules of Black's early nonpolitical campaigning, Durr recalled: "He might make a 'Mother's Day' speech at the Baptist church somewhere—he would do that—or a '4th of July' speech, but nothing on politics."

Before departing for his first tour to the state's American Legion convention, Black made a shorter trip four flights down from his new ninth-floor offices in Birmingham's First National Bank building. He went to see the Klan's James Esdale. Eight days after Underwood's announced retirement, Black wrote a very brief, handwritten letter of resignation to the local klavern secretary on the grand dragon's KKK stationary and signed it, "Yours ITSUB" (In The Sacred, Unfailing Bond). "Give me a letter of resignation," Esdale recalled telling Black, "and I'll keep it in my safe against the day when you'll need to say you're not a Klan member."

Without Underwood in the race, the Ku Klux was not likely to become a central, political issue, especially if no Klansman was a candidate. Apparently, Black and Esdale agreed that Black as a candidate would gain nothing by remaining a Kluxer. Yet, Black did not write the letter to prove in the future that he wasn't a Kluxer. To critics of Ku Kluxism, such proof of nonmembership would be like a burglar listing past crimes to prove his current innocence. These two men were too savvy in politics not to realize that such a letter on Esdale's own stationary, ending with the Klan pledge of loyalty, would be ridiculed as a shabby ploy by Black's opponents and anti-Klan editors like *Montgomery Advertiser's* Grover Hall.

If anything, the letter was designed only for Kluxers' eyes. Were Black as a candidate ever required to deny that he was Ku Klux, the letter could speak for itself in informing Klansmen that Black had resigned with Esdale's cooperation *after* the Underwood forces surrendered their fight against the Klan. In this way, Klansmen might understand Black's denial of membership not as abandonment, but merely as a strategy undertaken by the candidate and the grand dragon.[3] Ironically, while Black's decision to join the Klan was not an

act of political expediency, his resignation from the Klan was.

After contriving with Esdale for the best of both worlds, Black seemed doubly determined to act independently of the Klan, to reaffirm that no group, affiliation, or grand dragon dictated his honest convictions. At Birmingham's Woodlawn klavern, Black confronted KKK leaders who claimed he was too friendly to "nigras and Jews." "I'm soft," admitted Black in his talk, "only to the extent that they are citizens . . . all citizens have rights. . .[and] rights are the glory of citizenship." The speech "kept them quiet," according to Black. In Alabama's second largest industrial center, Black also spoke out publicly against floggings and Klan raids only a week after armed Kluxers in Gadsden had captured a whiskey runner. This was only the latest incident over the past two years in a long series of floggings and nightriding resembling Birmingham's experience.

As featured speaker at a Pythian Convention, Black declared, "the need of the hour is observance of the laws of the country." Black went further. "He pleaded enforcement of the law," reported a Gadsden newsman, "by the constituted authorities only. He said that if people would only support the courts and their officers a much better condition would be brought about."

This plea for law enforcement "by constituted authorities only" was a public rebuke of anyone who had assumed the role of law officer or law breaker, even for the common good, but it was not an attack by name on the Klan as a group or its members. As in the past, Black followed William Jennings Bryan's course of recognizing the "honesty" of most Klansmen and "teaching them" the right when they were wrong. Black assailed misdeeds associated with the Klan, but not Klan members and not the Klan. To make clear that his own independence should not be mistaken for hostility, Judge Black also spoke in Gadsden at the induction ceremonies of a Junior Klan chapter. A new member, decades later, remembered Black's speech as an inspiring call to "do right." "It was almost like going to Sunday School . . . It wasn't one of those brimstone, hell-fire sermons," A. B. Stutts remembered. It wasn't about hate, race, or religion. "This was just a beautiful story . . . and a beautiful ceremony."[4]

Throughout the fall of 1925, Black spent most of his time driving across the state in his Whippet or negotiating train schedules to take him to Pythian meetings, KKK klaverns, Bible classes, Legionnaire conventions, or school functions. On several klavern visits, Esdale accompanied Black. Whatever the occasion, Black tried to stay in the local area for two or three days. "I not only

expect to come to Camden for the purpose of making a speech," he told a supporter, "but I hope to be there . . . simply to meet the people . . . I expect so far as possible to carry my campaign directly to the people." At every stop, Black avoided the political custom of visiting only a few local influential leaders, men known thirty years earlier in Ashland as "Ring" leaders.

This new style of campaigning gave Black an enlarging circle of friends and neighbors and an opportunity to sound out people's views on public issues. "Hugo knew what he stood for and he'd throw out his idea and get an adverse reaction," Cliff Durr remembered. "But this was just a private conversation . . . Then he'd go down the road to the next crossroads and he'd throw out the same idea with a little different approach," Durr continued. "I would test myself," Black explained, "to see if I could honestly agree with them about their needs and their wants." By trial and error, Black said, "I schooled myself for the job."

Soon after beginning his speaking tours, Black organized his own political thoughts on paper. His initial efforts were surprisingly inarticulate, and his draft statements were vague and formalistic. In calling for increased federal revenues to address local needs, for instance, Black wrote of his "support of measures looking towards improvements in . . . public education, good roads, and rural free [mail] delivery." Having declared his candidacy on principles of Alabama citizenship—not good citizenship or American citizenship, Black's early draft proclaimed his "opposition to any abandonment of the cloture rule," the Senate rule enabling Southerners to filibuster national civil rights legislation to death. Horace Turner pointed out, however, that "the average voter does not even know what the 'Cloture rule' is," and Black dropped it.

Motoring across the state, Black learned first-hand about the need for improving roads. The entire state had less than fifteen thousand miles of surfaced roads, and on several trips Black lost his way on rough, unmarked roads, especially when trying to figure out detours that took him into cow paths. On one trip Black had to ditch his Whippet, only to be stranded later when a borrowed car's tires were punctured on sharp rocks. In other places, Black turned back because gravel roads, considered "surfaced" by government statistics, had been washed away by hard rains.

At home, Black faced unexpected roadblocks. On a swing through Birmingham to answer mail and pick up a fresh stack of pressed clothes, Black discovered that the Internal Revenue Service wanted several hundred dollars

for back taxes and penalties. Black protested that he absolutely, positively did not owe one brown penny to the federal government. But, he agreed to pay. "I cannot spare the time from my campaign," he told the IRS agent. Since Black had never employed a bookkeeper, no one else could contest the government's claim on his behalf. In addition, Black stated, "I cannot afford, while making the race for the United States Senate, to give my opponents any talking point as to my income."

One of Black's opponents, Breck Musgrove, was very eager to talk privately to Black about his income. The Jasper businessman wanted to buy Black's withdrawal from the race and sent more than one emissary with offers. Musgrove knew that the two men drew from the same political well, and he probably realized early that Esdale was supporting Black. "I have no remote idea of withdrawing from this race," Black replied to each offer. Tell Musgrove, he informed one messenger, "There is not enough money in the United States to get me to do so."

Offers of money were the apples of Alabama political Eden, but they only motivated Black to work harder. He told students and old friends at opening day of Clay County schools that "Knowledge is power . . . when called into action by the heroic deeds of men with great souls and great passions for service" and "WORK is the key to knowledge." Using a Longfellow poem, Black projected his own strategy for using a "God-given opportunity" to succeed in the heart of Dixie:

> The heights by great men reached and kept,
> Were not attained by sudden flight,
> But they, while their companion slept,
> Were toiling upward in the night.

While employing hard work as the means, Black usually chose temperance and prohibition as his message during the last few months of 1925. "I am now, have always been, and always shall be in favor of the complete destruction of the liquor traffic," the candidate told a group of ministers. "I've taken an aggressive part in every fight for prohibition and its enforcement since I was a boy," Black proudly exclaimed. To distinguish himself from all the other candidates, Black declared throughout the campaign, "I have never in my life tasted whiskey." In Bible classes throughout the state, Black championed

abstinence. In Albertville on World Temperance Sunday, Black reminded churchgoers that "the saloon is the deadly enemy of the home," and, with the help of the International Sunday School Lessons guide, Black miraculously discovered a text for the sins of whiskey in the poetic verses of love, hope, and charity from 1 Corinthians 13:13.

In early November, Black sent a special circular on his prohibition record to the state's Baptist ministers as prelude to his appearance at the Alabama Baptist Convention. Persisting on the theme of law and order, Judge Black spoke to several hundred delegates assembled in the Selma High School auditorium. America had become "the most lawless nation on the globe," Black proclaimed. He insisted that prohibition was the nation's true test of law and order and charged that "the question should not be should the Eighteenth Amendment be enforced, but how it can be enforced . . . Either a man is a patriot and obeys the laws or he is not a patriot and disobeys them."

"Americans have no right to complain of the Eighteenth Amendment and ignore its observance and turn to the Fifth Amendment [the right to remain silent] for protection," Black declared to loud applause. "The country's strength is embodied in her highest laws," he continued, "and Communism and Bolshevism present us no threat so long as the people appreciate that safety lies for America in the constitution as it stands *in its entirety* . . . Mothers should croon in their lullabies; schools should teach in their classrooms and churches from their pulpits the practice of obedience to law," proclaimed Black the Baptist.[5]

"Magnificent in its oratorial effects!" exclaimed the local editor. "Judge Hugo L. Black of Birmingham, and a candidate for the seat of Oscar Underwood . . . called forth a tremendous response from hundreds," he reported. The speech motivated several Baptist leaders and ministers to get busy on Black's behalf. Shortly after the state convention, a Baptist minister arranged for Black to speak before both Baptist and Methodist Bible classes in his town. "This will give you a chance to get before most of the people," the preacher told Brother Black. "Of course, . . . I think it best that there be no mention of politics. However, by these meetings we hope to foster your campaign in our city."

Editors in Birmingham's newsrooms did not share this Baptist enthusiasm for Black's candidacy. The *News* failed to mention Black's speech in Selma but gave excellent coverage to John Bankhead's address in neighboring Wilcox County. According to Black's information, the newspaper vastly exaggerated Bankhead's

audience, and the article stated that only three candidates had announced for the Senate, Bankhead, Mayfield, and Kilby. As the first candidate to legally qualify, Black reacted with disgust to the news report "carefully prepared long before Mr. Bankhead delivered his speech 'to hundreds of Wilcox County citizens gathered to hear him.'" Black didn't expect the *Birmingham News* or any daily paper to endorse him, since he believed "they usually go with the man who has the most money." But he was disturbed that Victor Hanson's newspaper was so grossly unfair. "The method . . . ," he wrote the *News* publisher, "appears to be but a part of the plan of the old line politicians who have run Alabama politics for a long time, to attempt to ignore my candidacy." To keep an eye on such methods, Black subscribed to all state newspapers during the campaign's last six months.

By Christmas of 1925, Black had visited fifty of the state's sixty-seven counties and was planning to travel through eight more before February, if rain and snow didn't make country roads impassable. Robert Lee Black's son, Hollis, was now working in his uncle's office, writing letters and running them off on a mimeograph machine, the newest tool of direct campaigning. The letters were tailored to fit the specific concerns of Black's different friends, who took a stack and sent them out to their friends under their own signature. No printed campaign brochure had been prepared, but Black's secretary typed a constant stream of personal letters following up Black's visits and arranging others.

When Black assessed the first six months of unofficial campaigning, he was pleased. "My hopes . . . rest on the Dry-Protestant-Progressive Voters of the State," he informed a former Ashland teacher. Collecting his thoughts, Black foresaw the Senate race as a fight between money and morality. "The liquor forces and the big corporations will be almost solidly against me," he declared. On one side, he said, was the man who had represented several labor unions, fought liquor all his life, taught Alabama's largest Sunday school class, and had been a Baptist deacon for fifteen years. On the other side were three millionaires and a corporation lawyer, two of whom, Bankhead and Mayfield, represented an increasingly powerful private utility, the Alabama Power Company. "I am personally of the opinion," Black said, "that there has been so many millionaires and corporation lawyers in the United States Senate, that people rarely ever have a real representative."

Despite his Populist rhetoric, Black continued to see himself as a public servant standing for justice between society's warring factions. He stood in the

middle ground between extremes, as "one who does not stand that labor has the right to use dynamite, and who is equally critical of the capitalistic Bolshevik who believes that the rich should be made richer and the poor should be made poorer." His opponents, Black admitted, were already calling him a "Bolshevik," only because "there is no corporation lawyer in all of Alabama who is supporting me." "I might also add," Black wrote, "that I am accused by *the opposition* of being a candidate of the Ku Klux Klan." The accusation pleased him. Breck Musgrove's stock in trade for campaigning was rumors and accusations about an opponent's papal tendencies, and public charges of a Klan connection, Black observed, "will further show that I am not amenable to Catholic influence."

As the campaign moved towards a new year and candidates began unwrapping their overtly political rhetoric for the August election, Black showed none of the uncertainty with which he began the political season. Now, he held no doubt about his future and the means to reach it. He was ready to rush forward with the same self confidence and same identity he had possessed since childhood, as a strong-willed person standing on his own terms between the clash of hostile factions, judging each issue on the basis of "justice for all, special favors for none." Yet, in the reality of politics, Black also had become a candidate whose values and abilities were being defined by the friends and the enemies he kept.[6] For the moment, at least, Black savored both identities as the marks of a victor.

AT THE START OF 1926, Black wasn't Alabama's only political renegade. Bibb Graves, former adjutant general of the state militia, was running for governor against the "railroad lawyers and wet politicians" and without support of any daily newspaper. Although he counted two of Alabama's early governors among his ancestors, Graves's grandfather reared him in Texas outside Montgomery's political and social circles. He also was educated outside the state with a degree in civil engineering and a law degree from Yale University, but his real interests led to the military where he associated with men from all ranks and walks of life.

Over the last ten years, Graves had emerged episodically in Alabama's political spotlight. In 1916, he became chairman of the state Democratic Executive Committee. He was a founding member of the state's American Legion after service in France during World War I. In 1922, he barely received a fifth of