

thousand gray veterans and almost twenty thousand other marchers from across the South lasted two and one-half hours as Birmingham greeted them with shouts, applause, and tears of respect and longing. Hearing the bands strike up an antebellum tune, the old veterans danced the Virginia Reel in enthusiastic, if not quite masterful style.

The crowds along the streets warmly received more than fifty “old-time” Negroes, several with roosters for cockfighting tucked under their arms, as they followed their old masters dressed in gray. Henry Walthall, the Birmingham native who played a Confederate star in *Birth of a Nation*, wore a slouch hat in the style of an old Southern gentleman. He rode a dark bay horse alongside the actual officers of the old Confederacy as they paraded before the sitting governors of Alabama and Georgia. Hundreds of “beautiful, charming, gracious, and good” Southern white women threw kisses, danced, and flirted with the old men parading through Birmingham streets gaily bedecked with the “Stars and Bars” as well as other flags of the Old South. The Confederate navy, an orphans’ brigade, and robed members of the newly revived Knights of the Ku Klux Klan also received loud applause as they passed through the streets.

As in all great pageantry, there were moments of sadness. “Each year their parade shall grow smaller,” one reporter noted, “each month the grim reaper pauses long enough to sound the last call of Taps. As they fought, so shall they die, bravely, honorably. . . . And their memory shall be wafted gently throughout this broad universe . . . never to die.”

As self-made heirs of the Old South’s legacy, Klansmen attended *en banc* the evening performance of *Birth of a Nation*. William J. Simmons, the salesman who had been inspired by the D. W. Griffith film to revive the KKK, came from Atlanta to inaugurate a Birmingham chapter. With robes fluttering under the electric fans of the Jefferson Theater, twenty-five Klansmen watched gallant white figures, like themselves, returning from another era to protect their families from “bad negroes” and to uphold the region’s tenacious notion of righteousness in secret brotherhood. “A Klan has been organized in Birmingham,” noted a reporter, “and they seek only the best citizens, who are closely affiliated with the Confederacy.”⁴

WHILE THE SPECIAL TRAINS pulled into the Birmingham rail terminal, bringing old veterans and an assortment of state dignitaries to the Confederate reunion, twenty-two men had begun to assemble in a passenger car attached

to an idling L&N engine a hundred miles south in the Montgomery rail yard. These armed confederates were also brought together by a secret order and were preparing for a civic battle that would unexpectedly prompt newspapers and newsreels to project Hugo Black's words, deeds, and image across Alabama and America for the first time.

The rail car's shades were drawn in a seemingly unoccupied compartment although inside there was a slight murmur of restrained voices. Near midnight, a restless local reporter working the depot for stories of petty crimes happened to notice shadows and furtive movements along the rail yard. When he investigated, the assembled men unceremoniously dragged him into the car where he was held incommunicado.

Shortly after 2:00 AM on this Wednesday, the train began an unscheduled journey ninety miles to the east across the state line. The one-car train passed through pastures, crossroads, and small towns such as Girard, a little cotton mill community on the Alabama border. Across the Chattahoochee River into Columbus, a growing Georgia town on the river's other side, the train slowed, and passengers swung off the back steps in pairs, walking casually in different directions. When the train reached the Columbus terminal, it was practically empty.

The Montgomery passengers drifted about the Georgia town, as inconspicuously as possible, and some took breakfast at local restaurants. By 7:00 AM, Alabama time, they had rendezvoused at the Rankin Hotel located at the river's edge. In a mezzanine room, men checked their guns, maps, and papers. A former detective for Atlanta's Southern Railway, M. S. Baughn reviewed the movements he had assigned each group of four or five men. One group also commandeered a telephone booth on the hotel's second floor. As the Girard town clock struck eight times, the Montgomery lawmen quickened their pace across the two bridges connecting Alabama and Georgia. At this hour, Alabama law permitted the execution of search warrants. As the lawmen arrived in Girard, the aroma of whiskey was so pervasive that the special deputies could smell the locations of liquor from the streets. Their warrants already identified prime locations.

At the first building near the riverfront, an officer attempted to open the door. "Is the key to the door in keeping of anyone in the sound of my voice?" he shouted. No answer. Promptly, he kicked open the door and discovered small quantities of beer—and more stoutly locked doors. After two officers

arrived from a blacksmith shop with sledgehammers, the doors fell, revealing stacks and stacks of hard liquor.

As the search spread, storerooms and blind tigers yielded hundreds of cases of whiskey and rum. In other places, such as the Metropolitan Club, smaller quantities were in open view. By late morning, twenty deputies from a nearby dry county had joined in, and the fruits of the massive search filled almost two boxcars. The contraband was to be transported forty miles northwest to dry Opelika for safekeeping.

The Montgomery lawmen also met resistance. Girard's mayor deputized friends and neighbors to protect the property of local citizens against the invading force. Two owners of seized liquor were disarmed of Winchesters. The local sheriff moved ahead of the state lawmen with his own search warrants claiming that he, not they, would examine buildings. When confronted by state deputies, the sheriff grudgingly stepped aside.⁵

In Montgomery, Attorney General William Logan Martin, responsible for the entire operation, waited in his office for frequent reports from his special assistant, Mr. Baughn, sitting in the Columbus hotel phone booth. Although Baughn's local informants—mostly Baptist and Methodist preachers—had worked with Martin for months in gathering detailed information, the raid's final plans had been made hurriedly. Only five days earlier, on Friday afternoon, Martin had met with Governor Henderson at the governor's insistence. Weeks before, Henderson had approved expenses for Martin to pay Baughn as a "spy" to gather information on Girard's liquor, and Henderson wanted to know Martin's information and plans. The attorney general had no intention of being completely open and frank with the governor, the state's chief opponent of prohibition.

Through inheritance, the two men were political enemies. From south Alabama's Black Belt, "wet" in habit and business, Henderson was a self-described local optionist. Earlier, Henderson had been appointed by Governor B. B. Comer as the president of the State Railroad Commission, an opportunity Henderson used to join political forces with the corporations he regulated in order to defeat Comer in 1914. By family tradition, Logan Martin was a Comer man. His father came from the politically dry hills of northeast Alabama and had been attorney general in the 1890s. Comer picked the senior Martin in 1903 as Alabama's Speaker of the House, although Martin died the same year. Logan followed his father's footsteps to run for attorney general in

1914 on a political dry platform. He received key support from his father's old allies, men like Birmingham's Frank White and Samuel Weakley, and from corporate attorneys who were friends of his older brother Thomas Martin, vice president of the Alabama Power Company. Short and thin-boned, with black bean-shaped eyes slightly too large for his slender, delicate face, Logan Martin was hampered by Henderson almost from inauguration day. During this era, Alabama's governor had no paid legal advisors on his staff, and the attorney general was considered the governor's lawyer. Therefore, Henderson controlled practically all funds for the attorney general—outside of salaries for Martin, a stenographer, and two other lawyers. The prohibitionist legislature attempted to evade Henderson's control by providing Martin's office with an adequate budget for enforcing prohibition, but the governor vetoed the bill claiming it violated a constitutional relationship between the two offices. A legislative compromise permitted Martin to employ special personnel for enforcing prohibition, *with* the governor's prior approval, and authorized the attorney general to enlist any of the state's locally elected solicitors to assist him. Martin also had used private funds from Alabama citizens to do prohibition work, but the money proved inadequate.

Suspicious of Martin, Henderson used the powers of the purse to try to find out how much Martin knew and what he was doing to enforce prohibition. The meeting on Friday afternoon—five days before the raid—was for this purpose. It had been a terse, acrimonious exchange. Martin presented Henderson with only a rough sketch of his information about Girard, although the governor forced him to supply the names of some actual locations where illegal liquor had been discovered before he would approve vouchers for Baughn's past work. The attorney general asked Henderson to make the state militia available for a future Girard raid, but the bearish Henderson flatly refused. The governor said he had no authority to call out the militia for such purposes, although he did agree to cover the expenses of thirty special deputies to go to Girard if and when circumstances justified a liquor raid.

The governor and his assistants left for Birmingham's Confederate reunion under the impression that his office would get advance knowledge of any Girard raid since he had to approve specific expenses. With Henderson's general commitment, however, Martin quickly hired special deputies from Montgomery and Opelika for the secret dawn raid.

Now, five days later, as cases of liquor were stacking up in Girard, Martin

received ominous reports from his special assistant. With so few men to serve warrants and guard the contraband in a town of six thousand, Baughn feared local hostility would escalate into violence, especially after mill hands left their shifts in the middle of the afternoon. The situation called for the state militia. Faced with no other choice, Martin reached Governor Henderson by telephone in Birmingham and asked him to call out the militia to quell a potential civil outbreak in Girard.

Henderson was furious. He shouted into the phone that the attorney general had created this crisis on his own. Now, he was asking the governor to take steps he had earlier said were outside his powers. After a heated, bitter exchange, the governor reluctantly agreed to Martin's request. With the advice of others at the reunion, including railroad lawyers and Judge J. S. Williams, a circuit judge from the Girard area, Henderson fashioned an executive order giving Martin the militia but stalling other parts of Martin's plans. The governor instructed the militia to take charge of the confiscated liquor and to store it in one of Girard's vacant buildings. The rail cars in which Martin had planned to transport the liquor to the safety of a politically dry county were now useless.⁶

The governor's order did not impede the seizure of liquor, which continued over several days. Lawmen discovered trapdoors leading to concrete storerooms containing hundreds of whiskey cases. Liquor was found in wells, open fields, high bushes, tall grass, potato patches, an abandoned church, and an outhouse. A second visit to the Manhattan Club revealed forty-five barrels beneath the cellar. Dozens of large corks floating down the muddy Chattahoochee turned out to be more than fishing lines. Bubbles tipped officers to the fact that the corks were the tops of one-gallon bottles of whiskey strung together. Further investigation located several cases of whiskey floating downstream.

The concealment of illegal substances was so universal that the county's two banks felt duty-bound to request publicly a search of their premises to get an official clean bill of health. Local public officials were not so lucky. State lawmen uncovered more than a hundred bottles of beer and several quarts of whiskey on Russell County Sheriff Pal Daniel's property. A state legislator's land held several stacks of liquor, and most members of the Girard city council expressed surprise when state deputies confiscated large quantities of liquor at their homes or businesses. Lawmen discovered six wagonloads of whiskey, stacked neatly in an old stable behind the residence of Girard Mayor Ed Morgan.

The mayor's own problems frustrated a second counter-tactic that local politicians had initiated for their own protection. As *ex officio* justice of the peace, Morgan was issuing arrest warrants against local townspeople for violating prohibition laws. While he appeared to join the cleanup, the mayor was allowing local men to plead guilty so that he could give them light fines and no imprisonment for their transgressions, thus shielding friends from jail and heavy fines at the hands of more impartial, law-enforcing judges. If the state later attempted to move against the already-convicted defendants, they could claim a violation of double jeopardy. But when the mayor became preoccupied with protecting his own liberty and property, this stratagem fell apart, and most liquor owners fled across the state line.

For weeks, lawmen continued to uncover new caches of whiskey as martial law was declared in Girard. Soldiers were posted throughout the town and especially at the bridges leading to Georgia. No one was permitted to loiter during the first week, and anyone found sitting on public property was required to walk or go to jail. All cars and wagons crossing between Girard and Columbus were stopped and searched. If "drivers do not stop and allow the militia to look through the cars, the tires will be punctured by shooting into them," warned the military captain. The movement of people and possessions underground also concerned lawmen. The city was "honeycombed with subterranean passages leading to gambling dens and storage places as deep as thirty-five feet under ground."

Estimated values of the contraband ranged from \$300,000 to \$1 million, a sum larger in 1916 than the state government's balance sheet at the end of the year. Never in Southern prohibition had lawmen seized such a large quantity of illegal liquor. The little mill town of Girard had been the shipping yard of whiskey for both Alabama and Georgia, or, as Governor Henderson reluctantly admitted, "the concentration camp of the immoral element of two States."⁷ In Montgomery, Henderson explained his position to the press: "I have concluded that the liquor at Girard should be . . . held there until disposed of by an order of the court." The governor's decision worried the attorney general. Although he had no way to foresee all the governor's maneuvering, Martin did understand that his entire work could be gutted easily if Sheriff Pal Daniel remained in office in Russell County.

If the governor gave Daniel custody of the illegal liquor in Girard, the foxes would be guarding the hen house. While the sheriff claimed that he enforced

prohibition laws, he had done little more than arrest itinerant peddlers who competed with local saloons and liquor dealers. Martin worried that the illegal contraband might disappear if Daniel took over its protection.

Accusing the sheriff of high crimes of omission, Martin asked Henderson to authorize impeachment proceedings in the Alabama Supreme Court. The governor refused. Instead, he called upon his friend, Judge J. S. Williams, to convene a special Russell County grand jury to consider impeaching the sheriff. The attorney general knew this approach would take months in trial and appeals, while the sheriff remained in office. It was also risky since Judge Williams was a wet.

Martin snubbed the governor's wishes and filed impeachment proceedings on behalf of more than fifty Russell County prohibitionists before the Supreme Court, whose opinions over the last year had begun to show strict adherence to the legislature's prohibitionist intent. Promptly after hearing the case, the Supreme Court found Sheriff Daniel guilty of neglect of duty and removed him from office.⁸

Next, Martin moved to litigate the legality of the massive seizure so that the last appeals could be exhausted before the governor sent the state militia home. The new sheriff was friendly to prohibition, but his handful of deputies was no match for scores of liquor owners and their agents who would be constantly looking for the opportunity to steal back their contraband. Martin was equally eager to indict and convict the whiskey owners in criminal court and to impeach local officials.

Yet Martin's plans weren't easily implemented. In the first session of circuit court called in July 1916, Judge Williams charged the grand jury to indict the guilty as "the eyes of the nation look on," but he did not charge them to investigate the misconduct of local officials or allow Martin to question prospective jurors on their willingness to convict for violations of prohibition laws. Unable to assure a favorable jury or to go after local officials, the attorney general declined to proceed. The special session ended a week after it began.

The attorney general conferred with Chief Justice John Anderson to develop a new strategy. Anderson had pledged to enforce strict prohibition according to the dry legislature's exact intent, in part as penance for drunkenly falling into his predecessor's grave during burial services several months earlier. The judge explained after his fall from grace that he drank whiskey to sooth his deep sorrow over the passing of an old friend on the court, and, unaccustomed to

liquor's vile effects, he lost his balance and fell on top of the casket of the former chief justice. Now, literally having arisen from the dead, Anderson was eager to prove that he would faithfully uphold Alabama's dry laws. Martin requested the chief justice to use his authority, recently provided by the prohibitionist legislature, to order a special session of court in Russell County with a special judge who would help enforce dry laws.

Martin also needed extra lawyers. His two assistants were overloaded with providing everyday opinions to the different state departments and handling appeals from local circuits. Governor Henderson would not authorize Martin to hire private lawyers. That battle had been fought and lost. Martin's only option was to use a new state statute to order—or, realistically, to convince—one or two local solicitors to help. His choices were limited. Perhaps as many as half of the state's local solicitors were wet. Others were Martin's political enemies. In addition, state law be damned, many solicitors simply would not take an assignment that encroached on their private practice of law. Girard's work carried no extra pay and no assurance even that the governor would approve basic expenses.

Martin's first choice was predictable. Centerville Circuit Solicitor Fritz Thompson was a prohibitionist, a friend, and an experienced criminal lawyer. The second choice was far more doubtful: Hugo Black of Birmingham. True, no Alabama solicitor had been more aggressive in enforcing prohibition laws, and Birmingham men whom Martin trusted admired Black's abilities and devotion to prohibition. Black also was available since he was a full-time prosecutor without a private practice. On the other hand, Black's past private practice and public positions were hostile to regulated corporations like Thomas Martin's Alabama Power Company. And, Black had a reputation as egotistical, ambitious, and independent.

In announcing the special criminal court for Russell County, by order of the chief justice, the attorney general stated that Judge A. H. Alston had been assigned as presiding officer and Fritz Thompson and Hugo Black were to act as special assistant attorneys general. In the announcement, Black was erroneously referred to as "solicitor for the Birmingham *City* Court"—an unintended slight that indicated his secondary role in Girard. Martin and Thompson were to handle the grand jury, where the important work would be undertaken, and Black was to try criminal cases when and if any defendants could be found.⁹

HUGO BLACK HAD AMPLE REASON to doubt the wisdom of accepting his new assignment. Despite some reductions, Birmingham's backlog of criminal cases remained large and demanding. The controversial Walton case was docketed for trial again in September, and Judge Fort wanted the next grand jury to investigate continuing problems at Jefferson's jail. Also, Black had to forego his usual month-long trip to the West at a time when he needed rest and an old friend needed him.

In late June, Black had rushed to Colorado with a tragic mission. His old friend Barney Whatley had shot and killed his own father. On a cool June night at his Breckenridge ranch, Whatley intervened when his father threatened to whip a grandchild. The old man erupted in a violent rage, pulled a gun, and ran cursing his son. Shots were fired, and on the back porch Wilburn Whatley lay dead from a bullet of his son's gun. Barney was arrested and tried for the killing. Without being asked, Black went immediately to Colorado and took charge of the defense. He helped to persuade a coroner's inquest to find his friend's actions justifiable, and at trial Black's "eloquent address" in closing arguments overcame a local judge's hostile jury charge. Barney was found not guilty. Yet local newspaper headlines proclaimed, "Curtain Lifted on Family Skeleton." At trial, Barney and his family had to recount in open court the details of Wilburn Whatley's long history of erratic, violent behavior. The Whatleys and their attorney were careful not to mention one word about Wilburn's shameful theft of Confederate pensions, which had made him an Alabama fugitive.

Now almost thirty years old, after eighteen years of devoted friendship, Hugo and Barney did not talk to one another—or to anyone else—about the agony that their fathers had caused them and their families. Both knew, but it was not a subject for discussion. They were not men given to self-doubt or self-analysis. Yet, these men's lives were woven together by shared experiences, tragedies, and ambitions. Starting from the same small town, both wanted to be lawyers. Both were now local prosecutors. Both by nature were joiners who genuinely enjoyed the company of other men. And both equipped their lives through hard work and personal optimism.

In addition, both men were shaped often by the sins of their fathers. Just as Hugo's father's cardinal vice, whiskey, had killed W. L. Black, Wilburn Whatley's chief character flaw, a penchant for violence, had led to his own death. Hugo and Barney were their families' youngest boys, but both had

taken their fathers' places in front of older brothers. From boyhood, both had observed the unspoken terms of their shared notion of friendship: be there for your friend in time of need whenever it came. "He came when I needed him," Barney said of his old friend.

Less than two months after he pulled the trigger killing his father, Whatley now faced a tough campaign for reelection as district attorney amid "unworthy" rumors springing from the tragedy of that June night. In 1914, Barney had returned to Alabama to help Hugo win his election as prosecutor. He came without being asked. Now, Black was *not* on his way to Colorado. Instead, he was on a train traveling for prohibition to lower Alabama. It was the journey of a man who had more than one good reason to be elsewhere.

Accompanied by assistant Morris Allen, Black arrived late at Seale, a community the size of Ashland where the Russell County courthouse stood on a commanding hill overlooking the railroad station. By mid-afternoon, Judge A. H. Alston had charged the grand jury in open court: "The enormity of the amounts of liquor seized at Girard, Alabama, leads to the reports of complicity of officials," the judge stated in a unwavering voice. "Gentlemen, investigate these matters. If an official has violated his duty, the law gives you the means to remove him . . . hew the line and let the chips fall where they may."

Every seat in the courtroom was taken, with "the aisles jammed and many standing around the walls and in the ante-chambers . . . balancing forward to catch every word that was spoken," according to a reporter. Judge Alston also told the jury to investigate reports of election fraud, gambling, and general lawlessness. In the opinion of local old-timers, "it was the strongest, most unusual charge ever delivered in the county." Promptly, the grand jury was escorted to a corner room of the courthouse's second floor where it heard evidence presented by the attorney general late into the evening.¹⁰

On the following day, Black conducted the first criminal trials. In most cases, Black declared the state ready for trial, and no defendant appeared. Judge Alston afterwards ordered a forfeiture of the defendant's appearance bond and his arrest, if possible. The new sheriff found it difficult and finally impossible to locate any criminal defendants. A certain "fine of \$2,500 with a pen sentence staring them in the face . . . proved too strong a dose for those indicted," observed a reporter. Defendants were reportedly away on fishing trips, bird-watching expeditions, and extended vacations in Georgia and Florida.

By Wednesday night, August 9, Logan Martin departed for Montgomery

to ask the governor to extradite a host of missing defendants and to request the chief justice to extend the special session. Fritz Thompson was left in charge of the grand jury, and Black was left to call the cases of missing defendants.¹¹ In a routine review of pending appeals, Black discovered no evidence that an appeal bond had been posted in six civil cases that had been tried in the first special session before Judge Williams. The defendants had filed notices of appeal but no appeal bonds, according to the circuit clerk.

The meaning of this discovery quickly dawned on the solicitor. Until September 1915, the law did not require defendants in civil suits to post a bond covering the costs of an appeal from circuit court; however, as Black knew, the state legislature decided to require bonds to make it more difficult for liquor owners to postpone the destruction of their contraband simply by appealing.

That night in Seale, Black dined with Fritz Thompson and Morris Allen. By 9:00 PM, Black had a plan. He instructed the circuit clerk to contact Frank DeGraffenried, who represented most defendants, and to ask the lawyer for copies of all official documents filed in circuit court on behalf of his six clients who did not show up for their criminal trials during the last three days. Next, Black and his old classmate retired to Hugo's room in the Dudley Hotel where Black drafted a motion.

"Comes the State of Alabama by Hugo L. Black . . . and shows the Court that . . . on the 13th day of July, 1916 an order was made by the Honorable J. S. Williams . . . condemning and forfeiting to the State of Alabama all prohibited liquors . . . and that . . . the Sheriff of Russell County . . . should publicly destroy the said prohibited liquor." Black's motion claimed that each defendant was a "fugitive from justice, and . . . cannot be found, and that as such . . . he is in contempt of this Court and has no standing in this Court, nor any right to be heard by himself or counsel." Therefore, the motion asked the court to "issue an order commanding the Sheriff to destroy all of said prohibited liquors."

With document in hand, Black and Allen transformed the modest hotel room into the Russell County courtroom. The bed served as judge. For three hours the two men went over the imagined proceedings. "Each point to destroy the liquor was made by the solicitor and his assistant, taking the part of the defendant attorney, attempted to stop the order." Black also rehearsed the timing and wording of his arguments and responses, just as he had on those

occasions when he and Barney Whatley had practiced in their office. In the hotel room, the two men simulated the case all the way through appeals to the Alabama Supreme Court. Long after midnight, the mock trial ended. Black had won. In a few hours, he would discover if he could achieve the same result in a real courtroom.¹²

At 8:30 next morning, August 10, Black entered a courtroom sparsely occupied by the “unescorted ladies” wearing small white ribbons on their shirt-waists, badges of the local Women’s Christian Temperance Union. They sat in the same seats each day “to see for one of the first times in Alabama the liquor traffic getting what they have wanted it to get all the time.” Black stepped to the bench and handed Judge Alston his one-page motion. As it was read aloud, the audience literally gasped with surprise. Black explained that Judge Williams’s orders to destroy the liquor could only be stayed by an appeal bond but that no such bonds had been posted. Therefore, Black had filed his motion against six defendants who had not shown up for their criminal trials. Black made it clear that he was not filing a motion against any liquor owners who were sitting in the Russell County jail. Only the six owners who had failed to show up for trial were the subject of this motion to destroy confiscated liquor.

In solemn tones and melodramatic gestures, Black declared the six were “fugitives from justice . . . in contempt of this Court” with “no standing in this Court . . . nor any right to be heard by themselves or counsel.” The liquor of these fugitives can and must be destroyed *now*, Black insisted.

Judge Alston glanced inquiringly at Frank DeGraffenried who had walked forward from the back of the courtroom. Black’s plan hung in the balance, but when DeGraffenried launched into a broadside against the solicitor’s motion, Black smiled and settled back in his chair. Fritz Thompson came from the grand jury room and chuckled. Growing by the minute, the audience seemed confused. Appearing “as general counsel for the said defendant claimants,” DeGraffenried proclaimed that his clients were fully entitled to be heard by the Court—despite Mr. Black’s claims to the contrary—and that he wished to speak to the motion. Judge Alston replied, “The Court would be glad to hear you.”

The attorney argued that no appeal bonds were necessary since the appeals had not yet been perfected. He also said that the court had no jurisdiction in the matter since the chief justice had authorized it only for criminal cases and the cases in question were civil in nature. By now, the courtroom was packed

as townspeople gathered, and the grand jury recessed to observe Black's dramatic offensive.

Noting that counsel adequately represented the defendants, Black stated that he wanted to argue fully the merits of his motion. A "light dawned and Mr. DeGraffenried urgently requested that everything he'd said be withdrawn and expunged" from the record. "Mr. Black moved that this not be granted. Judge Alston ruled with him," observed a reporter.

The circuit clerk verified that, after the six defendants had lost their civil cases in July, Judge Williams had ordered their liquor destroyed and the defendants had failed to file appeal bonds. The sheriff testified that he was unable to find any of these defendants to stand trial on pending criminal charges, and, when Black asked the sheriff if Mr. DeGraffenried had been seen in Girard recently, he replied "Yes."

DeGraffenried was furious, demanding to know what Black implied by such a question. Black replied that he simply wanted to evidence that the defendants' attorney had an opportunity to inform his clients that their criminal cases had been called for trial. DeGraffenried assured the court that he did not know where his clients were and, had he known, he would have done his duty to bring them before the court. The liquor lawyer asked for a recess so that he could prepare a full response to the pending motion. The court agreed and adjourned until one-thirty in the afternoon.

With a clearer head, DeGraffenried might have pressed the court on the issue of jurisdiction. For all his careful, cagey planning, Black had failed to realize the importance of the jurisdictional questions. Judge Alston's jurisdiction was exclusively over criminal cases, and the condemnation of illegal liquor had occurred in civil court.¹³ During recess, Black met with Judge Alston and Logan Martin, who arrived from Montgomery as surprised as everyone else by the swift turn of events. Black discovered that the attorney general had an order from the chief justice extending the jurisdiction of Judge Alston's court, but it did not alter the Court's exclusively criminal jurisdiction. By telephone, Martin apparently reached the chief justice and outlined developments. Judge Anderson agreed to alter his recent order and to provide Judge Alston's court with authority for "all orders civil or *quasi* civil as may be executive to the enforcement of the criminal laws." He dated his letter of amendment "August 10th, 1:00 P.M." and mailed it to the attorney general. Black assigned Morris Allen to type Judge Anderson's revised order as an original document.

Thirty minutes later, DeGraffenried returned to the courtroom with a copy of Judge Anderson's original order prescribing the court's authority only over criminal cases. He argued that Black's motion addressed a civil matter which was beyond Judge Alston's powers. In response, Black handed the judge a copy of the chief justice's second order, composed by phone minutes earlier, and Judge Alston overruled the defendants' motion to quash. Next, DeGraffenried offered to file appeal bonds for his clients, but Black quickly, loudly objected. "It's too late. Your clients are not before the court. They are fugitives from justice," Black protested. Judge Alston observed that DeGraffenried could not file appeal bonds on behalf of fugitives from justice whose whereabouts were unknown to him.

The magnitude of the proposed destruction was worth a good fight. From only one of the six defendants, the seized liquor had totaled 1,000 cases, 37 barrels, 5 drums, 110 loose gallons, 1,300 quarts, as well as 2,591 loose pints. The liquor of all six clients probably represented more than half of Girard's entire seized whiskey, beer, and wine, a fabulous supply exceeding the combined contraband of all other liquor raids in Alabama since the start of state prohibition. Shortly after 2 PM, DeGraffenried exhausted his pleas, and Judge Alston ordered the sheriff to destroy the six defendants' liquor. The Court adjourned, and the state's lawyers rushed to waiting automobiles, already hand-cranked, and sped away towards the whiskey warehouse.¹⁴

The intoxicating news crossed the county and the Chattahoochee River like a tidal wave. Within a few hours, more than four thousand people arrived by foot, wagon, and automobile at the state-controlled warehouse. Within the hour, the state's lawyers and the sheriff gathered in front of the first stack of liquor for photographs by newspapermen. Black stood in the middle between Logan Martin and the sheriff. Fixing a large satisfied smile on his face, Black pushed back a fashionable white flat-brimmed straw hat that would resemble a halo when many of the state's prohibitionists saw the picture on the front pages. The sheriff christened the new era by removing and breaking a bottle of Magnolia beer. Logan Martin destroyed a bottle of whiskey with exaggerated style, and then it was Black's turn. "Black was on the job for some time," noted one reporter. "His specialty was cracking E. W. Harper. He had a good swing, and seemed to understand what he was about."

For the rest of the day, liquor destruction became a melodrama of religious worship and pagan ritual, as gallons upon gallons of flowing liquids, rich in

color, foam, and odor were offered in sacrifice to a vengeful Protestant dry God. Among thousands who assembled were church groups clicking their Kodaks to preserve the moment for posterity and other congregations of true believers who wished to behold the sight of this miraculous, righteous triumph. Finally, Lord, finally, it was good over evil.

Seventy-plus black laborers were hired to bring out barrels and cases of liquor, as the white sheriff, deputies, and militiamen hammered open spewing, gurgling liquor. When the contents of five thousand emptied bottles created pools of liquor that trickled down the streets, the sheriff moved the destruction to the banks of a ravine leading into the Chattahoochee. Soon there was a crowd of blacks “who like many whites were thirsting amazedly at the wholesale waste of the fiery fluid for which some of them might have given . . . their last pennies over bread for the families,” wrote a local reporter.

Someone touched a match to the meandering whiskey, and it burst into “an almost invisible and treacherous blue flame . . . giving off an unbearable heat and odor.” The fire was extinguished, and the ritual continued until nightfall.

Next morning, when the destruction began again, attorney Frank DeGraffenried was frantically seeking a court order to save the remainder of his clients’ property. After Judge Alston’s order, he had gone directly to Judge Williams in Union Springs. The anti-prohibitionist judge was sympathetic but unhelpful. He had no judicial power to stop the destruction. DeGraffenried returned to Seale and requested Judge Alston to enjoin his own order. The judge refused. By telephone, the attorney tried to reach Chief Justice Anderson. Near midnight, he spoke to another state Supreme Court justice who said he could not give advice. DeGraffenried must file a proper petition before the court before a justice could consider the matter.

Thursday morning, the Russell County lawyer was on his way to Montgomery in search of any judge who would listen. He visited a federal judge who declined to consider the issues. DeGraffenried waited, to no avail, for the chief justice’s return from an out-of-town funeral (where Anderson was sober and upright). The lawyer then departed Montgomery on a fifty-mile trip to Tuskegee to see Oscar Lewis, chancellery court judge. Lewis was an ardent anti-prohibitionist. As a legislator, he had been Governor Henderson’s unsuccessful candidate for state senate president *pro tempore* in a bold maneuver to take the power to appoint all committees from prohibitionist Lieutenant

Governor Thomas E. Kilby. After the plot failed, Henderson appointed Lewis as chancellor judge.

Reaching Tuskegee, DeGraffenried found Lewis was in Montgomery. The lawyer turned around and returned to the state capital. By 11:00 PM, DeGraffenried reached the city to discover that Chief Justice Anderson was at home. The justice, however, refused to sign an order stopping the liquor's destruction on grounds that the Supreme Court acts only by appeal from a lower court.¹⁵ At 6:00 AM on the following day, a ruffled DeGraffenried pounded on the door of a guest room in Montgomery's fashionable Gay Teague Hotel. Judge Lewis opened the door and soon gave DeGraffenried what he wanted—an injunction to stop the liquor's destruction. The order was telegraphed to Sheriff Lindsey in Girard, and the Russell County lawyer drove home with a sigh of relief.

After arriving in Girard, DeGraffenried learned that demolition had not stopped. At Seale, he demanded that Judge Alston and Hugo Black cease the liquor destruction. Alston reminded the liquor lawyer that the chancellor court had no authority to overturn a decision of a circuit court in civil matters. Only a higher court could reverse Judge Alston's ruling.

Beleaguered and confused, DeGraffenried returned to Montgomery and Chief Justice Anderson with an appeal. In a written order, Anderson stated that no injunction was necessary or proper since DeGraffenried's clients had an adequate, available remedy in the circuit court—by filing appeal bonds properly signed and executed by his clients.

DeGraffenried must have been paralyzed momentarily. For two and a half days he had traveled hundreds of miles with little sleep in order to end the liquor's destruction. Now, Anderson told him that he had an easy remedy: file proper appeal bonds with the signatures of your clients in circuit court. It was that simple. By next morning, the attorney-in-travel had located two clients and hurriedly filed signed appeal bonds. Black was at the courthouse to greet him. The solicitor served the circuit clerk with an injunction requiring DeGraffenried to prove the bonds were valid. At a hearing, Black questioned each signature's authenticity. In fact, one bond had not been signed by the defendant but, according to the liquor lawyer, by a manager of his client's property. The other signature belonged to the second defendant, but neither had risked arrest to appear in person to sign the bonds.

Black launched an extensive debate with DeGraffenried over the validity of the manager's signature. The solicitor was incredibly long winded. Finally,

Judge Alston telephoned the manager to determine if it truly was his signature on the bond. Suddenly, Black agreed to an order stopping the destruction of the two defendants' whiskey. When the order reached Girard, however, all liquor belonging to the two defendants had been poured out. Their whiskey had become top priority as of Saturday morning, and Black's courtroom filibuster had given lawmen just enough time to break the last bottle before the stop order arrived.¹⁶

Throughout the weekend, workers continued to build large mounds of broken glass and wooden fragments from other whiskey owners' smashed liquor. The ravine of alcohol remained a local tourist attraction, although some spectators fainted from the stench. One wag suggested that the stream of whiskey flowing into the Chattahoochee would create a peculiar world of sober men and drunken fish. Another proposed a sign for the ravine: "For Sale—sand and gravel, pickled in alcohol. Fine for club house plaster." Cameramen from Universal Pictures captured newsreel scenes for silent screens around the country as Alabama whiskey became national news.

On Monday, five days after Black had joined in destroying the first liquor bottles, Frank DeGraffenried filed appeal bonds for his four remaining clients. It now appeared the moment of prohibition's triumph was over. Not so, protested Black. The solicitor summoned to the grand jury a young lawyer who had produced one of the bonds. "You are a lawyer and you know you don't have to answer" a self-incriminating question, Black stated. But the prosecutor wanted to know how the young lawyer knew where to find DeGraffenried's client, a fugitive from justice, to secure a signature. "I was told he was there," vaguely sputtered the lawyer. The witness could not swear that the person who signed the document was, in fact, an owner of the confiscated whiskey.

Black persisted, but by late morning, without any startling revelations, Judge Alston signed an order stopping destruction of the liquor until higher courts had acted. Black's grand jury probe had given deputies two or three extra hours to swing the axes of dry vengeance, but the massive, glorious destruction of the demon liquor had now ended.

Cleaning up began. The liquor ravine dried out, and the grand jury issued more than thirty-five additional indictments. Judge Alston gave maximum jail terms to the three men convicted on the first day of trial. Girard's police chief resigned, as did the entire city council after agreeing to the appointment of a slate of prohibitionists in their place.

SITTING IN A COLUMBUS HOTEL THE NEXT DAY, “the father of the moment for the destruction of the liquors,” Hugo Black talked to reporters about recent events. “The birds have flown, and it now appears that Russell County has a nice collection of non-residents,” Black cattily observed. The solicitor predicted similar clean-up efforts elsewhere in Alabama following what reporters now called “one of the greatest legal battles ever won” for prohibition. When asked about the direction of the prohibition movement, Black became blunt and evangelical. “We believe in putting the liquor in the gutters rather than the people,” Black declared. “The state of Alabama is going to enforce its laws.”¹⁷

Birmingham newspapers extensively covered Black’s adventures at Girard, and on his first day back in his office, Saturday, August 19, Jefferson’s county solicitor gave another interview to local reporters about his self-styled “vacation.” “Oh, we had a great deal of fun down there,” Black asserted. “Many of the prominent citizens of Girard are now in jail or fugitives from justice . . . Nearly all the confiscated liquor was destroyed,” he said. “It was estimated that about \$500,000 worth of liquor was thrown into the Chattahoochee River.”

A reporter wanted to know how Black managed to pull off such a coup. “That’s a very funny thing,” smiled Black. “The first day I got there we tried three, and the juries gave them the limit. That scared the other culprits . . . the other defendants decamped for friendlier climates. We fooled around . . . and then it came to my ears that the fugitives had not filed appeal bonds on the confiscated liquor.” Warming to his own story, Black explained, “It seems the attorney for the defendants had slipped up.”

“I made a motion to destroy the liquors at once and orated at length on the fact that defendants were fugitives of justice, which did not have a thing to do with the case except to deceive the opposition,” Black laughed. “Well, it deceived the enemy, I guess, for instead of filing immediate appeal bonds which could have been done in about two hours, the attorney of the defendants hurried about the state seeking injunctions while we went merrily on our task of throwing the confiscated liquor in the sewers.”¹⁸

Now Alabamians knew. Prohibition’s greatest victory had been achieved by a bit of legal acumen and a lot of courtroom bluff. More than legal talent, Black’s histrionics and bravado had carried the day.

Of course, Black conveniently failed to outline for reporters the essential role of two friendly judges. His strategy would have collapsed if the chief justice had been unwilling to postdate his revised order. Without a change in Judge

Alston's jurisdiction, accomplished over the phone during court recess, Black would have failed. Nor did Black remember for reporters the crucial moment in the Russell County courtroom when DeGraffenried, exhausted of all other arguments, offered to post appeal bonds immediately for his clients. It was, in fact, exactly what he had a right to do to prevent the whiskey's destruction. Carefully, cunningly, Black had shouted, "It's too late." He proclaimed that DeGraffenried's clients were "fugitives from justice." He orated at length in order to give the impression that the defendants had no right to file a bond *because* they were fugitives from justice. In literal truth, he stated that because "you don't know where they are," it was too late for DeGraffenried's clients to sign a bond.

It was a subtle, deceitful, and critical difference of meaning in plain words. Judge Alston also was an essential accomplice in this ruse. His response to DeGraffenried's offer to post the bonds was equally deceptive. In essence, Judge Alston stated that DeGraffenried could not file signed appeal bonds on behalf of clients whose whereabouts were unknown. Distracted by Black's bombast, DeGraffenried thought the judge's statement sustained what he thought Black was arguing—that his clients, as fugitives, had no legal right to file an appeal bond.

Theatrical talent, luck, and like-minded judges were necessary for Black to take simple words with ordinary meaning and use them deceptively to allow the greatest legal moment that dry Alabama had ever enjoyed. And, in a lawyer's delight, Black achieved this prohibitionist glory by enforcing the original order of Judge Williams, Governor Henderson's friend and ardent anti-prohibitionist.

Concluding the reporters' interview, doused in abundant self-satisfaction, Black turned to his desk and plans for a demanding September criminal docket. In the excitement of the last three weeks, Black probably did not notice a small report out of Montgomery, announced on the same day as his courtroom victory in Girard. Governor Henderson had once again paroled E. M. Gibson, the fellow Black had convicted twice for handing out liquor leaflets. Claiming once more that Gibson had converted to bone-dry law and order, Henderson paroled him a second time.¹⁹ Jefferson's county solicitor wasn't the only one who could get results by using simple words with duplicity. For Black, this little twist of justice would prove to be a more accurate omen of the events to come than was the sweet aftertaste of his celebrated, dry victory at Girard.

BIRMINGHAM REPORTERS APPARENTLY EXPECTED to find the county solicitor in his office on a Saturday afternoon. Black's entire life was focused on his job of fighting serious crime and illegal liquor, and he worked late at the courthouse almost every night and most weekends. His furnished apartment on the seventh floor of the new Ridgely was conveniently within six blocks of his office, as was the First Baptist Church where he continued to teach the men's Sunday school class. Many fraternal lodge halls, like the Pythians, were almost as near. Other than occasional business trips to Montgomery or Russell County, Black seldom moved outside his small orbit of work, lodges, and church. It was an existence reproducing the scale of daily living that Black had sustained since his boyhood when he seldom went beyond sight of Ashland's county courthouse.

What little time Black took from the solicitor's job was more often spent in self-education than on a social life. Although the Ridgely was occupied by singles, including a large number of female teachers, Black often stayed in his rooms reading books of history, economics, or politics—always nonfiction, never fiction—while roommate Walter Brower and other bachelors went downstairs to weekly dances and other social events in the courtyard gardens.

Black occasionally joined Albert Lee Smith and a regular group of bachelors for dinner at a restaurant atop one of the city's tallest buildings across from the courthouse. On these occasions, Black relaxed in a friendly, manly atmosphere of rivalry and practical jokes. One common prank was, in the language of a solicitor, theft by taking. "Damn fellows would swipe the other fellows' pie," recalled Smith, delighting in the memory of old days. When another man wasn't looking, somebody would "reach over and cut a piece" of his desert and proclaim, "Just kidding!" as he gulped down the stolen bite. Black was far more often a victim rather than a perpetrator of this crime.

Even in relaxation Black proved his shrewdness. One night, puzzling everyone at the table, the solicitor ordered his dessert to be brought first. When his cake arrived, Black leaned over, took a deep breath, and—"bluuuuuuuuuuuuuu"—blew his wet breath all over the dessert. No one wanted to get near it. While nearby diners might have questioned the table manners of their county's thirty-year-old chief prosecutor, Hugo's male friends weren't surprised. They knew Black always tried to have his cake and eat it too.

On a few free weekends, Albert Lee and Hugo escaped for a quick visit to Atlanta or the country club for golf or tennis. Unlike his performances in the courtroom, Black was usually patient and workmanlike on the tennis court.

He seldom went for a slam but tried to keep the ball in play until the other player made a mistake. Yet, Black's personal motto of "all things [except liquor] in moderation" did not govern his days as prosecutor. None of his other Alabama years was as busy, demanding, and pressure-cooked. A long-undiagnosed thyroid problem gave Black a vast store of restless energy and a slim physique that suggested good health, but the solicitor often pushed himself to the point of exhaustion. Because of his aggressive prosecutions, Black received death threats. Someone fired gunshots into his apartment.²⁰

But Black would not be deterred or slowed. His time, emotions, and energies were entirely devoted to achieving law, order, and civic righteousness in his own city and home state.

IN GREEK MYTHOLOGY "ambrosia" was the nourishment of Zeus and other gods about whom Black read during quiet evenings at Ridgely Apartments, but Jefferson's county prosecutor was hell-bent on preventing its consumption by mere mortals in Birmingham. From the beginning of his solicitor's term, Black had been vexed by the sale of "near beers," nonalcoholic drinks that looked, smelled, and tasted like real beer. As consumption of liquor slowed, sales of near-beer and especially a beverage known as "Fehr's Ambrosia" began to boom. Prohibitionists, including Black, considered the substance as threatening as the real stuff since near beer made it difficult for police to identify real, illegal beer. For this reason, Alabama's prohibition law specifically outlawed "near beer," and Hugo Black intended to enforce the law.

Before departing earlier to Girard, Black had authorized a raid on Birmingham's L&N depot, which was storing almost a thousand gallons of ambrosia from a Kentucky brewery, and enlisted Judge Samuel Weakley to defend the sheriff's confiscation in the face of strenuous objections from railroad lawyers. "The sale of such beverages is objectionable," argued Weakley, "because . . . it affords for subterfuge and evasion." If ambrosia is sold, the author of Alabama's prohibition laws stated, the police would not be able to enforce the state's dry laws.

This seizure was problematic, however. The railroad's lawyers, former Governor Emmet O'Neal and Senator Oscar Underwood's chief advisor Forney Johnston, argued that the state had no evidence that Fehr's products were intended for sale in Alabama and the U.S. Constitution barred the local prosecutor from interfering with their interstate shipments. For more than a