If Black played Shakespeare's Polonius at times among his extended family, he remained Hamlet on the issue of joining the Ku Klux. In early 1923, friends and acquaintances pressed Black to join the Klan. Decades later, after leaving Alabama, he remembered privately that he resisted because he was troubled by the Klan exclusion of Jews and their possible involvement in lawlessness. Standing alone, this recollection was made at a time when the Klan's hooded image had become America's universal cultural symbol of racial hatred and violence, and it is a recollection that has always seemed self-serving. In fact, nothing survives to corroborate his memory about this rare moment of indecision.

Yet, bearing in mind the relationships and notions he held dear, Black probably was ruled by serious doubts. On a personal level, Black could not ignore the Klan's potential for "parting friends, sowing discord, dissension and hatred," as LeRoy Percy of Mississippi charged, "making man . . . wonder whether his neighbor is his friend or his secret enemy." In this respect, the Klan defied Black's small-town ideals of community and his "strong ties of personal loyalty" that framed his pursuit of an ethical life.

Outside the hooded order were two Birmingham men who had exerted early influences on Black: Herman Beck and Frank White. Beck had been more a father to Hugo than anyone else, but as a Jew was excluded from and ridiculed by the Klan. In considering the matter, Black may have remembered a Methodist minister who served with Beck as a Pythian officer in 1910. Black had reminded the minister that, according to many Protestants' beliefs, their grand chancellor could not go to heaven since he was a Jew who did not believe that Jesus Christ was his personal savior and the Son of God. Stunned for a moment by this possibility, the old minister looked Black in the eye and chose God's worldly grace over man's theology. "I would not want to go to a Heaven," the Methodist preacher declared, "that would not let Herman Beck in." In 1923, it was likely that Hugo Black would not want to join an organization, especially one ranking far below heaven on earth, if it would not let Herman Beck in.

In addition, Frank White's opposition to the Klan raised a related consideration. White had been law partner to Black's departed patron, A. O. Lane, whose own style of leadership would not have easily countenanced the Klan. Black was put off by White's bombastic style, but Black had often traveled along White's path in matters relating to the Baptist church, prohibition, labor unions, and opposition to convict leasing. White vocally opposed the

Klan because he saw no emergency conditions that justified the "law leagues" he had joined in the 1870s to end Reconstruction. Also, White's role in prosecuting "whitecapping" crimes in the late 1890s convinced him that people often misused secret groups to undertake violence for personal revenge—not public service.

Already inside the Klan, however, were Black's law partner Crampton Harris, his former roommate Walter Brower, and many other lawyers and friends—as well as a host of Protestant leaders and preachers with whom Black worked on moral and economic issues. Pompous and promiscuous, Harris was a brilliant man who helped Black get the only job he thought he never really earned—artillery captain. In 1915–16, Brower had worked tirelessly with Black to stop the law's abuse of African Americans. Judge William Fort, who helped Black draft his announcement to run for county prosecutor, and other local judges had probably joined the Klan by the middle of 1923. Black knew these friends and others did not tolerate or endorse group violence. Quite the opposite.

In a remembrance a half century after the fact, Black admitted that he also was concerned that if he failed to join the Klan he would hurt his chances in winning cases before juries. "I was trying a lot of cases against corporations, jury cases," he remembered, "and I found out that all the corporation lawyers were in the Klan. A lot of the jurors were, too, so I figured I'd better even up." Black had mentioned much the same concern earlier to his second son. "I wanted to know as many possible jurors as I could," he explained decades after the fact. Black didn't want to jeopardize his extravagant courtroom success, his family's very comfortable income, and the claims of his clients—black and white, Jew, Catholic, and Protestant.

Birmingham's lawyers and public figures were apparently joining the Klan at this time in large numbers. In March 1922, two months before Dowling's flogging, U.S. Steel's Roy Percy wrote to his uncle in the Mississippi Delta to congratulate him on a speech challenging the Klan and to lament that "such constructive leadership" could not be found in Birmingham even among its best citizens. Surveying the local growth of the True Americans and the Klan, Percy observed: "Every jack-legged politician that comes along has to join one of these things. I believe I am the only man in Jefferson County who does not belong to anything."

If they weren't signed up in early 1922, local attorneys had added incentive to join the Klan by June 1923, after the trial of Dowling's accused floggers.

Evidence in the case suggested that the public health officer's attempt to regulate dairies had angered several farmers who did not meet sanitary standards. The defendants were among those whose dairies were affected. Dowling identified one defendant as his assailant. According to Dr. Thomas Parke, the evidence seemed "plain and sharp" against the accused, although the prosecution had real problems. The jury quickly acquitted the defendant who was rumored to be a Kluxer. Away from public clamor, Parke concluded in his diary that the trial "looks very suspiciously like the Ku Klux methods."

Black had been asked, perhaps by the Klan, to represent the Dowling defendants. "So far, I have managed to successfully evade defending two or three of the defendants," Black informed Alabama's Attorney General Harwell Davis a couple of weeks before trial, although Black said he might still "get roped in on" one case. On behalf of Dowling's friends, Dr. B. L. Wyman of the Birmingham Medical Society wrote Davis and Alabama's new governor, W. W. "Bill" Brandon, asking for the "appointment of Hugo Black as special prosecuting attorney in these cases" to assure convictions.

On May 10, Davis wrote Black that "there is no lawyer at the Birmingham Bar that I would rather have represent the State in this matter" and asked about his fee for prosecuting the Dowling case. Black responded four days later. "I would want to be free as though I were acting as the duly selected solicitor," Black wrote, "or in identically the same position you would be, should you come to Birmingham to take charge (not of the prosecution of any particular individual) of an investigation into the entire situation." Black doubted if anyone could convict the defendants on existing evidence and believed it would be "a long hard struggle before any convictions are obtained in the cases." He wanted a fee of $5,000 since he would conduct an open-ended investigation, taking long hours for several months before he could assure conviction of the guilty.

Black knew his terms were unusual and prohibitive. It was less than two weeks before trial and Alabama's assistant attorneys general weren't paid $5,000 dollars in salary over two years, much less for one case. Yet, Black was adamant. He would accept nothing less. "I am heartily in favor of sending whoever did the floggings to the penitentiary," Black said, but he had "no yearning desire to be connected with the case on either side."

After the defendants were freed, Black joined other members of the Birmingham Bar's executive committee asking for an immediate state investiga-

tion into possible "criminal and unethical practices" by lawyers and others, although the group's resolution made no direct mention of the Dowling case or the defendants' lawyer. In the summer of 1923, Black was carefully navigating his independence and integrity as he struggled to reconcile competing calls for selfless, public duty and secret, self-serving alliances.

When his old friend Herman Beck urged him to join the Klan, Black made up his mind. "Hugo, if good men like you don't join the Klan," Beck advised, "it will be left to some of the rough necks." Beck counseled Harwell Davis to join, too. "We want some level-headed fellows on the inside," Beck reiterated, "to keep it from hurting Jews too much." Black also recalled department store owner Louis Pizitz echoing Beck's sentiments, and he got much the same advice from a well-to-do Protestant businessman down the street: "Join, if you want to do some good." Frank White's counsel on the matter was no longer available; he had died unexpectedly a few months earlier.

In the fall of 1923, Hugo Black gave the Ku Klux $10. According to Black, he arranged for Klan member John Anderson, chief justice of Alabama's Supreme Court, to sign him up.[20]

Despite confessions of reluctance and uncertainty, Black did not consider his Klan membership an ignoble or immoral compromise—or a personal endorsement of racial and religious hatred. For almost a half century, Black sporadically gave sketchy explanations about joining the Kluxers, often to young white Southerners trying to undo the Klan conundrum, trying to understand how one of America's foremost liberal democrats at the middle of the twentieth century could have been a member of the secret order of hate a few decades earlier.

Black never spoke fully on the subject to anyone. His silence was at times convenient, at other times embarrassing, even costly, and it forever veiled the topic with mystery, intrigue, and misunderstandings. The Klan connection was a very uncomfortable subject for a man who was ever vigilant about avoiding inconsistencies, one of his father's chief failings.

A full explanation from Black would have required more than simply an honest, soul-searching rendering of what was in his heart and head in 1923, a Hamlet-like introspection that was contrary to his outward-looking nature. It would have necessitated an exposition of that time and that place, of their puzzling prologue, of different factions, interests, motives, and beliefs at work in a story as complex and authentically strange as any Flannery O'Connor or

William Faulkner contributed to Southern literature—and as intermixed as the crazy quilt of social, economic, and political issues that stitched together the nature of the city Black adopted as home. Personally for Black, the Klan became a nagging subject without reward, always eluding conclusive proof. Years afterwards, discussions of his Klan connection opened up Judge Black to searching questions of character that never were and never would be settled definitively. It became the one case Black knew he could not argue successfully.

Under the circumstances, Black relied upon a series of one-liners and enigmatic remarks to friends, associates, young law clerks, and, finally, to posterity when asked about his ten-dollar Ku Klux membership. "If there'd been a B'nai B'rith," he once informed a young Jewish lawyer from the South, "I'd join that too." In another conversation with a young researcher, Judge Black said, "I would have joined the Knights of Columbus if they had let me!"

In discussing the Klan, Black repeatedly made the point that he was a joiner of almost every white fraternal group in Birmingham. "I was joining everything then," he reiterated decades later. In fact, he joined every large lodge except the Elks, who were known to serve liquor at their private functions. This was a simple fact, but one more complex and meaningful than what a person's membership cards ordinarily indicate today. Like many of Birmingham's salesmen, retailers, suppliers, politicians, and small business owners, Black had used lodges as much for promoting his business as enjoying fraternity. "I made friends in all these organizations," Black stated. They were the venues where he generated clients and income and where he made contact with the men most often serving on Birmingham's juries. Black once admitted that his fabulous success in the Birmingham courtroom was, in part, due to his ability to know the people sitting in the jury box. "I didn't draw a jury that I didn't know at least one person," Black observed. Fraternal lodges, men's associations, churches, and labor unions—all afforded Black opportunities to know, understand, and win his juries.

In addition, lodges were where Black made and matured friends and associations who helped him further his political ambitions. White men who forked over five or ten dollars for lodge dues were likely to pay poll taxes and vote. They also were often salesmen, union officers, and merchants who dealt regularly with a wider circle of potential voters. "I was running for office and looking for a position," Black explained to a friend (and a seasoned political operative), "and like every young man, I joined every organization that might

help me in some way." At another time, Black admitted: "I would have joined any group if it helped me get votes."

In the middle of 1923, Black was only "looking for a position" in politics. He still held a lifelong ambition to run for a statewide office, but he didn't know which position or when to run. He knew fraternal memberships, like Jefferson's wildly growing Klan, were essential to future political success, but Black was not aiming or running for any specific office when he bought his Klan card. He was building a base of potential support for a future, undefined campaign, not preparing a real one.

In 1923, moreover, the Klan in Birmingham and Alabama had not yet proven significant political strength. Contrary to accepted wisdom, the Ku Klux had not yet become a powerful political force in any local or state election when Hugo Black joined. In late 1921, Birmingham voters had defeated rabidly anti-Catholic incumbents and replaced them with more moderate commissioners. An early Klan member, Bibb Graves lost Jefferson County to W. W. Brandon by a margin of six to one in the governor's race in August 1922. In local legislative races, Walter Brower, a Klansman, had won election to the state senate, but without winning a majority of the votes, and no Klan slate won Jefferson's legislative delegation. Press reports credited local labor unions in the middle of a railroad strike with a decisive role in local elections, and it was labor's political influence in Jefferson County that continued to worry Forney Johnston and other supporters of Senator Underwood.

The rapidly growing Klan's potential influence in Birmingham elections was apparent to all, including Black, in 1923 but its real impact wasn't proven until October 1925, when Klan-backed candidates won two of three posts on the city commission. Across the state, Kluxers had visible chapters in a dozen communities in the summer of 1923 but no extensive statewide organization. The Klan was still trying to sell itself across rural Alabama and meeting strong opposition in the state's other major cities. In May, Montgomery voters elected a slate of anti-Klan candidates to city offices, and the city enforced an anti-Klan parade law. In Mobile, Kluxers had no political influence.

For these reasons, looking back on his decision to join the Klan, Hugo Black could honestly tell newspaper editors decades later: "People think it was politics, but it wasn't politics." Certainly not just politics. Instead, it was a decision of an ambitious lawyer whose own poverty was only five years removed. It was the decision of a successful trial attorney who wanted to protect and

promote *his own*—his own enormous, escalating income from jury verdicts, his own family's financial security, his own role as the generous, young patriarch in an extended family, and his own financial and practical means for gaining a future high office in Alabama.

It was equally the decision of a deeply self-confident man who saw himself as both an insider and an outsider, as both a part of and apart from the many groups and associations he maintained. During his sixteen years in Birmingham, Black had associated with all types of people, in all walks of life. He did so purposefully. "He knew Birmingham inside out and upside down—poor folks, rich folks, black folks, white folks, labor folks," recalled Virginia Foster Durr. In the courtroom, Black had represented and prosecuted Protestants, Jews, Catholics, immigrants, blacks, and whites. He appeared in court on behalf of a black convict or a poor white mother and, around home, he chatted with wealthy neighbors and the Fosters' friends from Birmingham's social elite. In fraternal orders, he joined laborers, merchants, clerks, professionals, farmers, and a few Republicans. On a typical day in 1922–23, Black might confer with an injured black convict or free miner, attend a Civitan luncheon with salesmen and small businessmen, meet with the Bar Association's executive committee of plaintiff's and corporate lawyers, visit Negro occupants in one of his three rental houses, join white Baptists at a church function, stop to chat with a Jewish friend, confer with union leaders, attend a lodge meeting of merchants, clerks, salesmen, and laborers, and go to dinner at the country club among the city's corporate managers.

Black's practice followed the patterns of his Clay County boyhood when he tried to navigate across conflicts of position, politics, and prayer dividing his mother and father, their families, and his community, but its inspiration came from his mentors, A. O. Lane and Herman Beck. As lawyer, judge, mayor, and city commissioner, Lane had interacted with all parts of Old Birmingham but was beholden to no group or faction. As a Jewish businessman, Herman Beck operated similarly in a Protestant world where he helped enliven Comerism and led several thousand of Alabama's largely Protestant Pythian members—at least one of whom was willing to take hell over heaven if Beck couldn't join him at the Pearly Gates.

In building a career along this style of leadership, Black possessed absolutely no doubt that he could always influence others while keeping himself free of undue influence, always maintain his individual core of fairness and

independence when joining others of differing views. The same self-assurance led him to believe that he could win over almost any local jury in any case and prompted his detractors to refer to him as "Ego." Black believed that he kept free moral agency by being associated with many of Birmingham's different factions, by joining virtually all white organizations and lodges. He once explained that because he belonged to so many groups in Birmingham, he "never felt the slightest political debt to any one."[21]

However, the Ku Klux Klan was not, even in eyes of its own members, just another fraternal organization. It was not merely a lodge of white men conducting weird ceremonies or raising money for scholarships or charity. It was an organization accused of fostering violence and lawlessness across the nation, Alabama, and Birmingham. Often its representatives spewed the ugliest language of hate and exclusion, and many thought Kluxers acted in the dark of night with whips and guns to back up their vile words. In 1923, however, Hugo Black believed the Klan *as a group* was a law-abiding organization, even if all of its members were not. "The Klan in those days was not what it became later," Black explained. "There were a few extremists in it, but most of the people were the cream of Birmingham's middle class."

Surviving records of Klan activities and members for this specific period largely verify the gist of Black's recollections. Alabama and Birmingham Klans probably had a broad-based membership among tradesmen, craftsmen, skilled workers, and the middle class, as did many of the nation's growing klaverns. A Birmingham editor wrote in July 1922 that Kluxers included "some of the most prominent citizens." Nearly all surviving records of Klan officers in the Birmingham area for these years reveal professional men, small businessmen, skilled workers or craftsmen, and sole proprietors. Railroad men in the Alabama Black Belt were often Klan members, and in Talladega almost half the town's professionals and businessmen, including a bank president, were members.

Klan records elsewhere in the South vouch for a pattern of middle class and working class membership, including "nearly all the preachers," as Black once observed. A thoughtful, contemporary observer in Birmingham reached the same general conclusion. After a massive Klan rally in Tuskegee, Alabama, on July 4th, 1923—a protest against the hiring of black doctors instead of white physicians for a federal medical center there—Dr. Thomas Parke concluded that Kluxers were no longer a lower-class movement, if ever they were. Considering the hundreds of men from across Alabama who had traveled to Tuskegee for

the Klan demonstration, Parke observed, "It means that the men with financial ability enough to permit going that far in train and auto are concerned in the movement. It means that the Ku Klux movement is not confined to the least financial classes of the community."[22] Wizard Simmons had made the same point several months earlier.

Far more important, no one mustered any real evidence, much less conclusive proof, that the Birmingham KKK was responsible for the city's clandestine gang violence in the years and months before Black joined the Klan. The rash of floggings and organized violence that plagued the city in 1922–23 occurred as the Klan swelled in numbers, but no one in Birmingham demonstrated that the Klan was responsible for any act of violence. Despite its modern image as the cultural synonym for lynchings and floggings, the Klan's documented history of terror was not evident or proven in Birmingham at this time.

The bulk of the city's reported incidents of organized violence was actually related to labor disputes and strikes around the rail yards. These violent attacks were most likely the work of striking union members fighting scabs and company informants—not Klan work. Other acts of group violence arose out of personal disputes over whiskey and sex. Dr. Dowling's own flogging appears from court testimony to have been a private act of personal revenge by a few disgruntled dairy farmers, although they may have used Kluxer membership as a passport to escape punishment.

In personal recollections of this particular period, Birmingham Jews and Catholics do not record a reign of subterranean violence and terror by the Klan against people of their faith. Life was tense and belittling, and possibilities of senseless danger were real for Birmingham's Jews and Catholics. Yet, Irving Engel, a young Jewish lawyer who moved to New York because of Birmingham's Klan domination in late 1924, did not remember a single incident in which a Birmingham Jew was targeted by Kluxers for physical harassment or harm before he left the city. Other Jews who lived through these years also could not recall "anything about mistreatment of Jewish people." In fact, "Cousin Joe" Denaburg's pawnshop was a favorite place for Klansmen to buy guns and white sheets for robes. Well aware that the proprietor was Jewish, Kluxers often yelled the brotherhood's secret greeting to "Cousin Joe" as they entered the store and offered him the secret Kluxer handshake. Always ready for a smile and a sale, Denaburg inevitably replied in kind.

In Birmingham's Little Italy, the Klan frequently marched or patrolled the

streets during the city's crime waves, but their concern was not so much Catholics as it was illegal whiskey dealers. "The KKK was after the bootleggers," recalled one woman living with her family on the Italian community's main street. She and her children often hid under their beds as the Klan cars passed. "When they went out there at night," she recalled, "we'd hear them coming—the swish of all those cars going by late at night . . . We were scared."

These surviving remembrances may not tell the whole story. "We don't know how many men were run out of a shop . . . how many people suffered harm," observed a Birmingham Jewish leader. "Some were afraid to make a complaint."[23]

In 1922–23, many in Birmingham were gripped by fear, violent crime, joblessness, poverty, and utter deprivation. If the city had a "reign of terror," its targets were primarily economic, not ethnic. Since late 1920, Birmingham had endured three long, violent labor strikes with repeated conditions of martial law suspending civil liberties and spasmodic, deadly clashes between labor and capital. When the last strike ended in September 1922, labor disputes had left Birmingham with scores of workers dead or permanently injured and thousands of destitute workers with no jobs or prospects.

In 1923, Birmingham's Klan critics could only repeat Frank White's accusation: nighttime floggings started only after the Klan became viable in Birmingham and, therefore, Kluxers were responsible for committing or encouraging lawlessness. Yet, this charge presupposed that the Klan created a lawless climate by committing or sanctioning violence when, in large part, the Klan drew its strength and support from developments, fears, and violence that had other sources and a far longer lineage.

The origins and societal habits of Birmingham's violence and lawlessness were too deep, pervasive, and invidious in 1923 to be blamed on any one organization, no matter how evil or corrupt its general role in history. Birmingham had earned an early reputation as "Bad Birmingham." Crime was commonplace. It had been, perhaps, the most violent Southern town in the most violent region of a violent nation.

The city also had a frightful history of vigilantism and clandestine group violence. The ancestry of group violence belonged to a variety of white groups in Birmingham—primarily industrialists and unions, governors and special company guards, whiskey runners and fellow whitecappers. The toll was astonishingly large. In strikes from 1894 through 1922, more than twenty people

were killed, and scores were wounded by black and white strikers, company guards, and state soldiers. Bridges and homes were blown up. Deputies became gunslingers on the payroll of mining companies. Thousands of children and their families were forced from their homes by company guards armed with guns and eviction notices. The state militia used rifles and bayonets to destroy the tents of unarmed families and to ban strikers' assemblies, pickets, boycotts, and speech. In one case, Alabama soldiers lynched a white union man.

In Birmingham's other labor disputes, group violence and intimidation were equally common. During most industrial strikes, state soldiers supplemented armed guards who surreptitiously patrolled the strike zones. In 1918, during labor efforts to organize Birmingham's steel workers, a vigilante group tarred and feathered a black union organizer. In the 1922 railroad strike, machine guns and armed state troops stood guard in Birmingham along rail tracks after a string of floggings, gunfire, and dynamite blasts.

For longer than Birmingham had been a city, the fight over liquor in the surrounding areas had been ruthless and violent. As a young attorney in the 1890s, Frank White prosecuted gangs of "whitecappers" who flogged and murdered to keep the government from interfering with their production and consumption of moonshine. When the 1894 miners' strike broke out, Governor Jones recalled the state soldiers who were on patrol across Alabama due to a rash of whiskey whitecappings. This tradition of violence escalated whenever the number of prohibition arrests increased, as they did in the 1920s after national prohibition.

Alabama's state and local governments also operated with statutory lawlessness and violence for more than fifty years. Long before Hugo Black's term as county solicitor, thousands of African Americans were arrested to enrich a local official and then convicted to provide mines, lumber camps, mills, and plantations with cheap forced labor. Languishing in places like the Bessemer jail and the Montevallo mine, thousands of convicts had been brutally mistreated. As Bessemer city fathers said in 1915, these practices were commonplace.

This institutional violence was cumulatively massive. During Birmingham's early years, death rates among convict miners were reported to range from 10 to 40 percent. As late as 1919, life expectancy in the convict mines was only seven years. In 1922-23, more than fifty convicts were killed annually from mining conditions and accidents in a system where one in four convicts were imprisoned for petty crimes or liquor violations. Another hundred convict

miners, like Henry Lewis, were crippled for life each year. Therefore, over Birmingham's first half century, as many as eight thousand convict miners died and a much larger number was permanently crippled doing dangerous, forced labor, often for petty or victimless crimes.

These estimates of official, coerced death and violence amount to a governmental pogrom. And they do not calculate the innumerable brutal floggings that occurred in mining camps over the years (due to severe lashings or whippings, more than thirty convict miners were in the state prison infirmary on a single day in 1919 when a legislative committee visited). Such massive, routine human cruelty, primarily against African Americans, constitutes a toll far exceeding the numbers of recorded lynchings throughout the state's entire history. Convict leasing in Alabama was an official system of violence and terror that possessed, in the words of the state's white woman of conscience and the nation's foremost black historian/sociologist, the "worst evils of slavery."

Of course, the Ku Klux added to this violent tradition its own heritage of terrorism and death, remembered and repackaged with romantic nobility through the imagery of the popular film *Birth of a Nation,* which ends, lest we forget, with the triumphal castration of a black man. The original KKK's violence after the Civil War was real, brutal, and effective in several parts of the state, and its aftermath lingered in Alabama's Black Belt where former slaves were intimidated into voting against the insurgent farmers of Clay County and north Alabama. Yet, despite the resemblance, the Klan in the 1920s did not arise from the same conditions nor did it have the same Old South violence. The original Klan used intimidation and brute force, as well as bluff and banter, to overturn a social movement for black political and economic power during Reconstruction. In the early 1920s, the second Klan mimicked its forebears' racist heroics, but it did not arise to arrest a mass African American movement for protest or power in Alabama, Birmingham, or the South.

After the race riots in 1919, Southern whites often worried that "Yankee-ized" labor organizers, labor agents, and rabble rousers might stir up trouble among local Negroes, and in Birmingham volatile white fear of black crime had escalated like a plague. But few if any whites in Birmingham in 1923 feared a rising tide of organized liberation among the South's own black population. Most whites, like Birmingham's bank officer, considered the city's Negro population to be "helpless and dependent on the white man."

This white perception of the race relations of the time is underscored by

trends in lynchings, the common barometer of racial violence. Lynchings declined as the Klan rapidly emerged in Birmingham in 1922–23. In Alabama, lynchings reached their lowest levels between 1922 and 1924, a fact Kluxer leaders used later to defend the group's conduct and role. The Ku Klux deserved no credit for the decline, nor did the trend reflect an overall improvement in race relations. Yet, Klan violence in 1922–23 did not expand or sustain the number of lynchings in the state, including the Birmingham area.

There were mass migrations among African Americans in the South and Birmingham at this time. As agents of their own history, Southern blacks protested with their feet, their livelihoods, and their lives. More than six hundred thousand Negroes left the South during the first fifty years of Birmingham's history. More than half had moved since 1910. Yet, the overall number of blacks in the Magic City had grown steadily because of the attraction of industrial jobs and vigilant efforts to banish Northern labor agents.

In Birmingham's brief history, massive black protest arose in 1908 and 1920–21, when thousands of African Americans and their families refused to obey their white employers, and, joining with white union brothers, tried closing down the white man's mines and furnaces. It was the violence and intimidation of industrialists and their allies, not of Klansmen, that defeated those efforts for "equal justice to all." It was the industrialists' company guards, company-paid lawmen, and the governor's state militia—not Kluxers—who used a campaign of intimidation and brute force to prevent the return of Reconstruction and the horrors seen in the flickering surreality of D. W. Griffith's silent movie. By the middle of 1923, because of the acts of industrialists, prospects for another uprising among Birmingham's African Americans were beyond the immediate human horizon.

In the city's black community, more routine methods of survival and resistance followed the spirit of Booker T. Washington who had preached economic and moral self-help within accepted segregation. Birmingham's Penny Savings Bank, community supported schools, numerous black churches and black fraternal lodges (especially the black Knights of Pythias), and an active commercial district were black institutions quietly building for betterment and a better day.

There may have been occasional moments of violent group resistance from within the black community. One explanation for the unsolved "alley murders" was that a local African American group, possibly militant black nationalists,

was reacting to the racial hypocrisy of self-righteous, sex-seeking white men. By whatever motive, these were unconventional, violent acts that notified the white community that, even in a rigid social order of white supremacy, the powerless are not always harmless.[24]

The Klan's extralegal activities—those falling short of actual violence but creating an intimidating presence—had many precedents in and around Birmingham. Night riding, anonymous secret patrols, and jury stacking were not new phenomena. Birmingham industrialists and corporate leaders had used quite similar methods for their own purposes in the past. Like the Klan, Birmingham's coal and iron operators preferred at moments to do their own work in secrecy. U.S. Steel kept secret informants within labor unions after the 1908 miners' strike. The Alabama Protective League, run by the president of Birmingham's Chamber of Commerce, did its work through anonymous actions to keep the war for democracy from agitating a black workforce. There was also the secret network which industrialist Key Milner and others spearheaded, with cooperation from at least two governors, to undertake clandestine activities to supplement law enforcement. In 1922, corporate leaders also created a semi-secret law enforcement committee to counter the Klan's own growth. While its members did not don robes and hoods, it proposed to operate with the same methods as the Klan, under the control of citizens who had the confidence of Birmingham's industrial and civic leaders.

Even Ku Klux methods with juries had a precedent. Jury rigging in Alabama had a long history, as Populists in Clay County and elsewhere knew decades before. According to the editor of the *Labor Advocate,* as late as 1920 Jefferson's jury commission had rigged the process by calling only those "men who were known to be favorable to the corporations" for jury duty. "No jury that returned a verdict for just damages would ever get the same chance again, and no man who was known to be fair was ever called upon to serve his county on a jury," charged the skilled unionists' paper. As a result, the *Advocate* believed that soon it could be "nearly impossible to win a damage suit against any of the large corporations."

At least one Klan opponent in the early 1920s saw basic parallels and precedents for Ku Klux methods. After listening to a lecture by Dr. Henry Edmonds, who condemned the Klan as a small band of anti-democratic men while praising the sons of Birmingham's "best citizens" as God-chosen leaders, Dr. Thomas Parke worried that both groups of self-deluded men were working

to override "the capacity of democracy to function in progress." On another occasion, Parke concluded that Klan methods were similar to the past work of Black Belt planters "who held that false swearing and bulldozing at the polls were needed years ago" to stop the Populist movement.

Accurately assigning responsibility for specific, anonymous vigilantism and violence in 1923 was, in fact, a task beyond Birmingham's practical and moral capacity. Although local daily newspapers alertly reported such crimes, they ran no investigative stories on how and why they happened—because, in part, no one in 1923 was able or willing to pierce the veil of secrecy surrounding the Klan and other clandestine groups. In addition, Birmingham's white press, police, and public seldom saw good reason to pursue justice for an individual victim, "if he happens to belong to a certain group or race." In a racialized city chronically troubled by high levels of random crime, riotous labor disputes, murderous liquor fighting, systematic, legalized violence, and now Kluxers and other nativistic groups, the blame for violence was rarely based on a finding of fact.

The job of Klan exposé across the region was left to a few out-of-state Southern dailies and the Northern press which started running occasional series and features in 1921. These reports dug up frightful details and patterns, which Birmingham papers often reran, but the reports suffered from sensationalism and a blatant Yankee bias. These stories seemed to suggest that any shadowy violence came about as a directive of the Klan Empire, anything lawless or threatening in the night was a Klansman, any unlawful injury was a deadly Klan sign, and any white Protestant not allied with the region's industrialists was a demagogue or a vigilante. In 1923, for example, the *New York Times* looked South and declared in an editorial that "every Klansman, everywhere, is a potential lyncher and a public enemy." Of course, Southern reality begged for simplistic exaggeration and caricature, and Northern editors saw little else, especially as condemning Klan atrocities in the South became a beaten path to a coveted Pulitzer prize.

Hugo Black wouldn't buy it. He held his own exaggerated notion about the conspiring, biased tendencies of Yankee papers, industrialists, and the Republican party, and he was healthily skeptical of reports in Alabama's own dailies. Indeed, on the question of Klan violence, Black would have been among the last in Birmingham to blame local beatings on the Klan organization without real evidence. "There were a few extremists," he admitted, but the entire group

could not be blamed for the independent acts of a few members.[25]

In every major labor strike in Birmingham, industrialists and their allies had accused unions of organizing violence and intimidation. In early 1921, for example, coal operators published a long list of beatings, armed attacks, and explosions (which exceeded all reports of violence in 1922–23) for which they blamed the United Mine Workers as an organization—not individual members. As a union attorney, Black had fought since 1908 against this industrialist strategy to create guilt by association, and in 1921 he went to court to show that the interracial UMW was the victim, not the perpetrator, of lawlessness and violence. In the 1922 rail strike, Black represented unions accused of organizing lawlessness and murder. In 1923, Black was unwilling to consider the Klan as an organization of violence simply because individual members might have committed acts of violence against people who were the object of the group's scorn.

Black's perspective was understandable, even reasonable at that moment in Birmingham's history, but it was a judgment made possible only by his money, standing, and white skin. Birmingham's black citizens had no such protection or privilege. They had no reason to care, much less wonder about how many different avenging angels of violence Birmingham's fractious whites could release into their midst. They knew the KKK's emergence as a societal force in the early 1920s was an undeniable symbol of how the region's worst nature and practices of hatred and violence lingered more than seventy years after emancipation. It did not, could not, matter to them in 1923 that the traditions of violence in the South's largest industrial city did not have their origins or even their primary malefactors in the Klan. It made life no more bearable, no less unjust even if the moment of original sin begetting Birmingham's lawlessness and brute force happened long before James Esdale adroitly masterminded the Klansmen's rise. And long before Hugo Black decided to give the Ku Klux his $10.

If this human evil had different white faces and different motives, it did not lessen its current horror nor remove its deadly yoke from the black bodies of the oppressed nor the souls of the white oppressor. In 1923 in Birmingham, the Klan stood as a self-evident symbol of a recurring cycle of pervasive racial bigotry and lawless violence within a racist social order. If Hugo Black did not knowingly, willingly join a band of masked, masquerading criminals, he nonetheless did help sustain an evil in the larger society by embracing the Klan's villainous purposes as his own, by helping the worst traditions of white

society as it entered another chapter of insane behavior. Like all of his enemies and detractors and almost all of his white friends and neighbors, Hugo Black in 1923 could not bring himself to look carefully to the bottom of the evil.

In remembering the Klan he joined, Judge Black attempted later in his life to recast the Kluxers' mission beyond that of human hatred and white male superiority. "It was a fraternal organization, really," Black told the editors of the *New York Times* who agreed not to publish his words until after his death. "It wasn't anti-Catholic, anti-Jewish, or anti-Negro," he insisted.

Black must have forgotten that he was not before a jury of Southern white men in the segregated South. No one can support the proposition that Birmingham's Klan in the middle of 1923 was *not* "anti-Catholic, anti-Jewish, and anti-Negro" even if it also championed other moral principles, such as prohibition, and did not pursue its prejudice through organized, violent methods. On this point, Judge Black crudely misstated the facts.

The Klan's bias and ugly hatred permeated much of the public rhetoric and printed words of its leaders. It possessed the South's premiere, historical symbol of violent, white male supremacy, and its activities against Jews and Catholics were patterned after the Southern common man's view of race relations. An Alabama white man of this era often professed he knew and liked an individual "good" Negro, but he disliked the black race as potentially dangerous and inferior in mind and morals. A Birmingham Klan leader, for example, informed young Irving Engel in 1923 that he was not the kind of Jew against whom the Klan was preaching, at a time when the secret order was working to exclude Jews, Catholics, and African Americans from any influence or benefit in Birmingham society. As a group, Birmingham's Kluxers worked to have family, society, and government run by Protestant Anglo-Saxon men for Protestant Anglo-Saxon men.

In May 1923, the Klan ignited a large cross on the crest of Red Mountain, clearly visible from Hugo Black's neighborhood. With their fiery symbol ablaze and visible throughout Old Birmingham, a three-hundred car caravan of fully garbed Kluxers slowly and silently paraded through downtown. Klansmen on foot distributed handbills opposing the local school board's recent decision to spend a sizeable amount of their reduced budget on an industrial school for black children. Asking "Is the Birmingham News Fair?" Klan literature took issue with *News* publisher Victor Hanson and a Pratt Mining official who