

## *Preamble*

### ‘ . . . I am a Southerner . . . ’

#### HOME COMING—1970

**A**mid persisting, thunderous applause, the old man’s head protruded slightly above the podium as he smiled mischievously at one moment, innocently at another. His hazel eyes twinkled brightly, as if they retained a deep, devilish secret which he had no intention of divulging, while from a distance his wrinkled, happy face seemed baby-smooth, almost angelic, brightly lit by the banquet lights that shone about his white hair, white shirt, and white, formal dinner jacket. “I am delighted to be down here,” he murmured with a touch of practiced shyness as the audience’s noises slowly quieted. “It’s always delightful for me to come back to Alabama.”

At eighty-four, Hugo L. Black—senior member of the United States Supreme Court—stood before an overflowing crowd of lawyers, politicians, judges, friends, and family who had assembled in Birmingham to welcome him home, to celebrate his remarkable public career which began in this city at a time when most of the audience had not been born. It was July 1970, a sultry, intolerant time in Alabama, and ironically the venue was the Alabama Bar Association’s annual convention, a meeting that Black rarely, if ever, attended earlier during his twenty-two years as one of the state’s practicing attorneys. Now Judge Black was making the first publicized appearance in his old home since *Brown v. Board of Education of Topeka, Kansas*, the 1954 decision outlawing public school segregation. That case, more than any other single act or event, had propelled America away from government-sanctioned racial discrimination and estranged Black from his homeland.

Black began with a strong, clear voice, trained long before the public use of microphones and honeycombed with an agreeable, distinctively rural accent. The old man had not lived in Alabama for more than forty years, but he

sounded more Southern than most of his audience who still lived in the heart of Dixie. "I recall very vividly," he said, "a few years ago, *our* state legislature, that I love very much, passed a resolution suggesting that they would probably purchase a cemetery lot for me in some *other* state." He paused to let the humor take effect, but ripples of nervous, embarrassed laughter were not loud enough to muffle Dorothy Thomas, wife of a Mobile federal district court judge who sat at a table in front of the dais within earshot of the speaker and across from Black's family.

"That's right, Hugo," Mrs. Thomas hissed. "That's where you need to be, Hugo. *In a cemetery lot.*"

"Needless to say," Black continued, "I did not accept."

"We don't want you here, Hugo. *We don't want you!*" Mrs. Thomas muttered loudly. Three years earlier, Judge Daniel Holcombe Thomas had informed Black that he was "one of Alabama's most distinguished sons" and later would tell one of Black's relatives about the "warm reception" that his "friend" Hugo had received at the bar association. Now, however, Thomas sat stone silent allowing his wife's indiscretion, which he usually hushed, to have full range.<sup>1</sup>

"I had a telegram from some people *down* in one of the Southern states," Black remembered. After sixteen years of self-imposed exile, Black was at long last telling one of his favorite stories publicly "*down*" in one of the Southern states, in his own beloved Alabama. "At my home [in suburban Washington] there was at one time a colored family that lived right behind my house. As a matter of fact, they were in speaking distance. More than speaking distance. They *were on part of the original lot* on which my house is occupied," Black said. The telegram was from a group "down in the neighboring state of Florida—their 'affection' for me had extended all the way down to the state of Florida." The group wanted Judge Black to live with the "horrible" racial integration that *Brown* mandated. So, they "had taken up a collection in order to buy" a house and "put a colored family close to me."

"I wrote them," the Judge continued, "and told them I appreciated the favor, but I'd rather they just send me the money . . . because I already had a colored neighbor right behind me!"

Laughter and applause erupted from the audience, including a handful of African Americans who appeared unconcerned that during this time of America's black power and black pride movements the Judge spoke about the "colored," a term of identity replaced two decades earlier by "Negro" and more recently

by “black” in respectful public discourse. In Washington, Black’s law clerks had changed his draft opinions more than once over the years by writing “Negro” in place of their judge’s references to “colored.” And, when remembering his Alabama years in court chambers across from the nation’s Capitol, Black occasionally had been heard praising a friend for his “Anglo-Saxon courage.”

If Judge Black seemed woefully unaware of his outdated patterns of speech after more than three decades closeted within the small circle of the nation’s highest court, he did know—without benefit of Dorothy Thomas’ outbursts—that his role in placing constitutional law behind the principle of equal rights for all people, regardless of race or color, had earned him the undying hatred of many of the South’s white people and their leaders. Since 1954, tons of mail had told him so. “Come down, Hugo, to Alabama,” taunted one anonymous letter, “you s.o.b.” Another informed Black that white Southerners wanted to “beat your damn brains out” and warned: “should you make a ‘return trip’ to Alabama, it will be your last trip on earth.”

Most Alabama editors were less threatening, but equally hostile. Years after the *Brown* decision, for instance, the *Greensboro Watchman* still fumed: “Hugo Black is a great lawyer,” its editor admitted, “but he is more than that. He is an apostate, a turncoat, a quisling. He is any other thing as long as it is an opprobrious term meant to describe a man who used his people—his benefactors—for all they are worth and then turned on them.”

In past years, Judge Black had worried that this hatred might endanger the safety and welfare of his law clerks, who were mostly from Alabama and the South, if they returned home to practice law. Black’s own son, Hugo Jr., was a lawyer who left Alabama after years of enduring anonymous phone calls condemning his daddy as a “nigger-lover.” Massive, white anger made it impossible for anyone named Hugo Black to win a jury verdict before Birmingham’s all-white juries. In turn, Black’s law clerks and family had dreaded invitations for him to appear publicly in Alabama or the Deep South. To their relief, Black refused all invitations after 1954 because he knew that either danger or embarrassment would befall him and his Court if he made a publicized visit in Dixie.

Though the intervening years had dampened the hostility, Judge Black remained a man who inspired vitriolic hatred among whites of every rank. “I wouldn’t walk two steps to see that old scalawag,” proclaimed a taxi driver as he ferried guests from the airport to the Parliament House, then Birmingham’s

poshest, modern hotel where the marquee openly welcomed Justice Black. Many whites in Alabama—from judges and their spouses to rural editors to working people on the margin—remained unwilling to forgive or forget, as if their own sense of Southern honor, perhaps their own identity depended on a lingering loathing. “He’s done more to tear down white men,” proclaimed the cabbie, “than any other white man in the world.”<sup>2</sup>

By the summer of 1970, after years of resistance, white Alabama had been forced by the Supreme Court to live with the end of legal segregation: integrated lunch counters, blacks on civil and criminal juries, and the votes of thousands of African American citizens. In fact, the growing presence of black voters had produced an emerging, fragile style of biracial, statewide politics for the first time since the 1890s. This development accounted for the fact that among the hundreds of lawyers and dignitaries standing to applaud Judge Black were Governor Albert P. Brewer and Alabama Supreme Court Chief Justice Howell Heflin.

A month earlier, the state’s senior U.S. Senator, John J. Sparkman, had conspired with Black’s former clerks to assure that the Judge would attend the event. The senator asked Black to accompany him personally in a meeting with the nation’s new chief justice on the pretext that Sparkman needed Black’s help in convincing Warren E. Burger to travel to the Alabama Bar Association’s meeting. For Black it was a puzzling, rare request, the first time since 1954 that an Alabama member of Congress had sought his counsel and assistance. Sparkman had entered politics supporting an incumbent Senator Hugo Black in the 1930s, but he and every other Alabama politician had kept their political distance after *Brown*. Until now.

Overshadowing this remarkable public endorsement was the harsh, complex reality of Alabama and its politics. Despite promises of change, Alabama was obsessed and manipulated by massive racial fears and hatred. A month before the bar meeting, white Alabama voters had defeated Albert Brewer, a New South moderate, and once more elected George Wallace who employed a simple run-off campaign: “Promise them the moon and holler nigger,” Wallace said.

Needing the governor’s chair to sustain a planned run for president in 1972, Wallace had attacked Brewer as a “sissy” and the “tool of black militants.” Earlier in the summer, Wallace’s radio ads had asked white men to suppose “your wife is driving home at eleven o’clock at night. She is stopped by a highway patrolman. He turns out to be black. Think about it . . . Elect George C. Wallace.”

His campaign flyers showed an innocent, unsuspecting little white girl in her bathing suit surrounded closely by seven gleeful, half-clad black youth. “This Could Be Alabama Four Years From Now,” the ad warned, “BLACKS VOW TO TAKE OVER ALABAMA.” As Wallace said to a local white official, “If I don’t win, niggers are going to control this state.” Conjuring up the sullen, awesome powers of a long racist tradition, Wallace won.

Now, within the campaign’s echoes, Hugo Black had returned home to a state that still could not accept his Court’s principle of simple justice and to the welcoming admiration of a coterie of public officials who, for the most part, were victims of Wallaceism. Howell Heflin, an oversized, beguiling judge with a courtly, grandfatherly manner, followed in time Hugo Black and his own fanatically racist uncle, “Cotton Tom” Heflin, to serve cautiously, but honorably, in the U.S. Senate; however, the other state politicians involved in Black’s homecoming were Alabama’s walking wounded—moderate, timid leaders bludgeoned by the revival of racist demagoguery and now congregating like baleful Irishmen whose memory of a victorious time long ago offered the only solace.

To deflect public criticism or embarrassment, this homecoming had been publicized as an occasion for Alabama lawyers to meet Warren Burger, who had not visited the state since becoming U.S. chief justice. This ruse, too, had complications. Burger had been appointed by President Richard M. Nixon—whom Black greatly distrusted—in hopes that the Midwestern jurist would lead the Supreme Court to curtail many of the judicial decisions which Black had written or joined. Yet, Justice Black loved his Court more than anything else—other than the U.S. Constitution, the South, and Alabama—and he readily agreed to accompany the chief justice to the state. Until “about five minutes before” he entered the hotel’s banquet hall, Black did not realize the occasion’s true purpose.<sup>3</sup>

Black’s former clerks had kept the event’s true purpose a secret because they feared that, without a pretext, Black would decline another invitation to appear publicly in the state. They knew that while the risk of embarrassment, misunderstandings, and danger lingered, this convocation might be the last opportunity to celebrate their judge in his own home as one of Alabama’s few living prophets.

Even without knowing he would be guest of honor, Justice Black was deeply affected by the prospects of any type of public appearance in the state

that twice elected him to the U.S. Senate. Weeks before the trip, he awoke in the middle of the night, worried about how to manage a public reunion with friends, politicians, former clerks, and family. Now, however, as he stood before the huge crowd in Birmingham, Hugo Black glowed with confidence, ebullience, and genuine, boundless joy.

“I do want to just say this,” Black stated after promising to be brief, “it is a great pleasure to be back in Alabama.” Like a lost survivor unable to realize that he had returned to the Promised Land, Black dwelled on what was obvious to everyone around him. “I love Alabama. I love the South . . . So far as I know not a single ancestor that I ever had settled north of the Mason & Dixon line. They were all Southerners. And so, *I am a Southerner.*”

It was, of course, this very fact that had unleashed the deep, widespread hatred of Judge Black. Many white Southerners believed Black had betrayed his own people, his own friends by forcing the South to dismantle its social customs and, in the words of innumerable Alabama politicians, by destroying “the very foundation of Southern civilization.” In truth, he had done a great deal more. Hugo Black stands among a small number of Southerners who had a profound influence in shaping America and American government in the twentieth century. Beginning in the 1930s in Washington as a U.S. senator, he helped the nation out of the Great Depression, prompted a vast reorganization of the nation’s airline and utility industries, developed the first federal statute limiting Congressional lobbying, and authored America’s first minimum wage law.

As a member of the U.S. Supreme Court, Black was the earliest prophet of America’s judicial revolution that radically transformed the nation’s governing system, requiring by the 1960s that all agents of government respect an individual citizen’s basic liberties regardless of race, religion, region, or income. Because of Justice Black’s rulings, American citizens on both sides of the Mason & Dixon line, for the first time in the nation’s history, enjoyed entitlements of the Bill of Rights—individual freedoms specifically mentioned in the Constitution that no government official at any level, in any county or hamlet, could lawfully ignore. Judge Black had written hundreds of opinions—many now the law of the land—expanding the rights of free speech to those whom society considered unpopular, weak, poor, zealous, or hated. During the bleak years of McCarthyism, few, if any, Americans provided a steadier moral force to fight against the nation’s self-consuming hysteria about disloyalty and

communism than Judge Black. In the 1960s he authored the Court's decree giving every poor American facing serious imprisonment a right to a lawyer. He joined his brethren in forcing the South to grant the right to vote to black citizens and in requiring all state legislatures to reapportion fairly. In addition, he wrote the Court's opinion that banned religious prayers from the nation's public schools.

These contributions to American life and law were unique for a white Southerner and prompted people of good will throughout the nation (primarily outside the South) to admire and honor him. But, no less impressive and fascinating was Hugo Black's own mysterious, personal journey from obscure, rural Alabama in the nineteenth century to a rare national prominence in the late twentieth century. Indeed, few public figures in modern American history and among the South's own in national political life appear by modern standards to embody so many contradictions and ironies, as rich and poignant as any cultivated in Southern literature. Some of Black's contradictions were known by legal scholars, critics, and many of the people before whom Black now stood. Some were within memory of only a few friends who, like Black, had survived from another century. Others Hugo Black had kept to himself or his family out of shame.

Together, these incongruities seemed legion—between Black's early days in Alabama and later years on the Supreme Court; between his national, judicial pronouncements and his Southern, political role; between his public persona and his actual person. Often they arose as a natural, innocent consequence of his having endured with a strong, vivid personality through the different fashions and fickleness of several eras, but in other cases the differences appeared on their face as products of purely opportunistic or morally indefensible conduct.

Here, for example, stood a man who never completed high school, never attended a liberal arts college, but who became one of the leading intellectuals of American jurisprudence. The son of a deeply conservative, rural merchant who opposed the Populist movement in the nineteenth century, Hugo Black became one of the first U.S. senators from the South in the twentieth century to propose radical economic reform in America. As a practicing lawyer, Black never wanted to try a case in federal court, although once on the federal bench he became one of the nation's earliest advocates for the federal courts' duty to protect any and all citizens from violations of fundamental Constitutional rights.

In Washington, Black was the author of the U.S. Supreme Court's opinion banning Christian prayers in America's public schools, and in Birmingham he was for twenty years a Baptist Sunday school teacher whose Bible classes in the 1920s were larger than most preachers' congregations. In the course of one lifetime, few people seemingly exceeded Hugo Black in his distrust of most newspapers and news media. And no one outranked him in America as the judicial defender of the press to print whatever they pleased, without restraint whatsoever. A man of strict, prudish morals—a genuine “juris-prude”—Black stood virtually alone in the history of the American judiciary in his constitutional belief that pornography could never be censored.

On the Court, Hugo Black made it particularly more difficult to arrest and convict people of crimes, while in Alabama he worked tirelessly as an aggressive prosecutor who complained often about too many rights for criminal defendants. One of the U.S. Senate's most aggressive and successful investigators, often accused of overriding sacred liberties in the 1930s, Justice Black became the century's foremost judicial critic of unchecked, damaging Senate investigations in the 1950s. On the Supreme Court, Black was the steady advocate for equal rights and an opponent of racial injustice, but as a lawyer in Alabama he was a card-carrying member of the Ku Klux Klan. And, finally, no one loved the South and its white people more deeply and was hated by them more vehemently than Hugo Black.<sup>4</sup>

Almost all in the crowd at the Parliament House on July 17, 1970, were eager on this occasion to forego any recognition of the enigmas and problems of their prophet's past, but, as an old man whose life held many yesterdays and few tomorrows, Hugo Black seemed bound by his own internal compass to return to that mysterious past, as if he could not speak of the present without searching backward. “My mother's people came from the state of South Carolina . . . Others of her people came from Virginia . . . Our people . . . were Irish,” recalled the Judge vaguely. “As a matter of fact, the family tradition says that they left that country of Ireland in order to escape being hung,” the Judge declared. “They were said to be related to Robert Emmet who was executed in Ireland” for attempting to overthrow English rule. “As a boy I was brought up on Robert Emmet's speech on the gallows and it was magnificent—magnificent then and magnificent now,” Black proclaimed.

“My friend Frank Johnson here, I don't know if he is Irish,” Black wondered aloud, as he looked across to the federal district judge from Montgomery, “but

he does have some of the same traits that made Robert Emmet famous.” Since his appointment to the federal bench by President Dwight Eisenhower, Frank M. Johnson had faithfully followed the sentiments and direction of Black’s Supreme Court and now rivaled Hugo Black for distinction as the most hated white man of Alabama. After years of publicly criticizing the district judge as an “integrating, scalawagging, carpet-bagging, race-mixing bald-faced liar,” George Wallace later suggested that Johnson deserved not a hanging, but a “barbed wire enema.” His old friend Frank, Black now observed, was “a fighter for the things he believes in. And that was true of Robert Emmet.” And, of course, that was true of Hugo Black.

Reminiscences now cascaded through Black’s mind, as he remembered past decades. “This is very familiar ground to me,” he continued, “because I had an accident right out in front of this Parliament House back in nineteen hundred and three. At that time, I was a student at the Birmingham Medical College,” he recalled. Although his young hands and head were studying medicine, Black’s heart was captured by the law, and he had been on his way downtown to the Metropolitan Hotel’s lobby to listen to Birmingham lawyers swap stories of their courtroom triumphs.

Rambling through flashes of memory, as the audience sat in complete silence, Black seemed caught in a turnstile of time. Over the decades, Black’s personal memory of his Alabama years had become very selective, often recalling the best and forgetting the worst. It was the natural habits of old age—and self-protection. If depicted without context or content, Black’s worst moments in Birmingham easily would portray him as godfather to George Wallace, an egotistical demagogue gladly using bigotry to advance personal ambitions. The images that no one in July 1970 would recall included:

- Black standing before an all white jury ridiculing a “crazy nigger woman” and “nigger” men who traveled on a train from Chicago to Birmingham as news boys’ screamed “Read All About Race Riot” outside the Birmingham courthouse.
- Black standing in another Birmingham courtroom adjusting window blinds to assure that an all-white jury saw a hostile Puerto Rican witness as a black-skinned “negro” or “dago” in an effort to free a fundamentalist Protestant preacher who killed an unarmed Catholic priest.
- Black parading solemnly in a white hood and full, flowing regalia with other masked members of Birmingham’s Ku Klux Klan as they formed a

massive human symbol of the fiery cross crackling before them.

- Black standing next to the Ku Klux grand dragon as he smiled at the packed assembly of Klansmen indulgently cheering his acceptance of a lifetime, gold membership card in the brotherhood whose members recently had helped elect him as Alabama's newest U.S. senator.<sup>5</sup>

NOW SPEAKING WITHIN TEN BLOCKS of that erstwhile Klan hall where he accepted the gold Kluxer card, recalling the years of an innocent, young medical student's arrival in Birmingham, Black betrayed no outward signs of envisioning his own worst images. In truth, it did not matter. Disappearing years and contemporary symbols of popular culture had surpassed the meaning of his past choices and conduct. A full, honest portrait of this complex man, his nature, and his living principles, one surviving throughout three tenses of time, would require a detailed accounting of the events, currents, and human choices of each era through which he lived.

Black's complicated past in Alabama, including both his best and worst moments, involved far more than one person's journey in one Southern state. By birthright, Black seemed destined to navigate his life along the lodestars of America's struggles for freedom, prosperity, justice, citizenship, diversity, and unity. In 1886, when Hugo Black's father christened his arrival on earth with a curse, distant events and voices across America were foreshadowing the persistent, pivotal themes that would shape his life and the life of his nation.

After immigrant families contributed thousands of pennies for its construction near Ellis Island, the Statue of Liberty arose in New York's harbor in 1886. The statute became the nation's premiere beacon of hope as Americans fought over the ideals and reality of democratic inclusion. In the same year, union leaders established the nation's largest, enduring labor organization, the American Federation of Labor (AFL), and in Chicago suffered one of its deepest historic tragedies, the Haymarket Trials of 1886, where eight editors of a union newspaper were convicted of murder and, afterwards, four were hung entirely because of their words and association—not their actions or deeds. The evidence at trial proved only that the union editors advocated in writing "armed resistance against capitalistic aggression" and spoke on the day of a deadly bombing about the need for workers to arm themselves. In law, the Haymarket Trials stand perhaps as the American legal system's deadliest punishment of the exercise of free speech and association, and, in labor history,

they mark the beginning of America's onerous struggle to create an industrial, democratic society.

In 1886 in the nation's capitol, the U.S. Supreme Court issued a landmark case on American citizenship. Three years after striking down federal laws prohibiting racial discrimination—effectively removing freed slaves and their descendants from the practical protections of the U.S. Constitution—the nation's highest court held that the American corporation (a relatively new creature) was a “person” under the Constitution and entitled to the full protections of due process of law. Thereafter, for three-quarters of a century, the Supreme Court barred the federal government from protecting African American citizens against rabid racialism while, in effect, vigorously requiring state and federal governments to protect corporations as full citizens.

In the same year, two decades after the end of the Civil War, *Atlanta Constitution* editor Henry Grady proclaimed the arrival of a “New South,” as he recalled before Northern capitalists the words of a born-again Southern secessionist: “There was a South of slavery and secession—that South is dead. There is a South of union and freedom—that South, thank God, is living, breathing, growing every hour.” Grady's notion of a region where everyone puts “business above politics” captivated the imagination of the nation's businessmen and politicians who used the South's oppressive white supremacy and biracial poverty to expand Northern industry, while creating a social mirage of a New South. Into the twenty-first century, the New South would persist as both the hope and a myth of racial progress and define the vague ambitions of a region and nation too busy creating the future to reconcile the past.<sup>6</sup>

Yes, from birth Hugo Black seemed marked by the currents of destiny to chronicle America's struggles for democracy in a new, modern world. Yet, destiny is only the future once interred to the past. Only in reference to that past, only by remembering his own history, could Hugo Black speak of himself in the present tense. And only there—in those past years that had disappeared largely from public memory and recognition—would anyone find the true measure of Black's achievements and, finally, discover the rhyme and reasoning of his riddled life.