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by Jeffrey Cole and Joseph A. Greenaway

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Judge Constance Baker Motley and the Struggle for Equal Justice

by Jeffrey Cole and Joseph A. Greenaway

Constance Baker Motley joined Thurgood Marshall's legal team at the NAACP Legal Defense and Education Fund in 1945 while still a student at Columbia Law School. Women lawyers were uncommon then, and black women lawyers even rarer still. For the next 20 years, she was at the epicenter of the civil rights movement, suffering through its greatest agonies and participating in its greatest court victories both before and after Brown v. Board of Education. She was James Meredith's lawyer and Medgar Evers's friend and was a leader in the struggle against the South's massive resistance to the implementation of Brown.

By the mid-1960s, she was Borough President of Manhattan and was slated by Senator Robert Kennedy for the federal bench until she refused to support his candidate in the New York State Senate. Lyndon Johnson, ever wily and ever watchful, saw the perfect opportunity to personally appoint the first African-American woman to the federal bench and at the same time put one over on Kennedy. In 1966, Johnson nominated her to be a district judge in the Southern District of New York. After months of delay by the Judiciary Committee, she was confirmed over a firestorm of opposition.

Constance Baker Motley is one of the few remaining members of that band of committed men and women who changed the soul of the nation and who can speak with an authoritative voice about the great and tumultuous events that constitute what she has described as the "second American revolution." In her interview, she recounts the dramatic events that shaped her life and the civil rights movement and expresses her concern that we are in danger of repeating in this century the "mistakes" made in the last.

Note: Readers may also be interested in Judge Motley's book, Equal Justice Under Law: An Autobiography (1999).

Jeffrey Cole is the editor-in-chief of Litigation and is with Cole & Staes in Chicago, Illinois. Joseph A. Greenaway is a U.S. District Judge in Newark, New Jersey.

JC: Your parents came from Nevis in the West Indies and settled in New Haven, Connecticut in 1906, becoming United States citizens in 1921?

A: Yes.

JC: What was it like growing up in New Haven in the 1920s?

A: Well, now that I can look back at it, I was very fortunate, frankly. New Haven was a relatively small town. There were only 2,000 blacks in New Haven then. There must be 60,000 now. I went to a decent public school.

JC: Was it integrated?

A: Yes, but only about 2 percent of the school was black. So, in all my classes there were very few blacks. Yet, I never experienced any discrimination at all, except once when we went to a private beach in Milford. Other than that, I just didn't ... even in housing, you could live anywhere. Interestingly, my father couldn't stand American blacks. He thought they were lazy, no good, this, that, and the other thing. So we didn't live in the Dixiel area where most blacks traditionally lived; we lived at Chapel and Bay streets and Garden street. You couldn't give him a free rent in a black neighborhood. He was a very proud man, a Republican who wouldn't vote for Roosevelt.

JC: You decided you weren't going to marry a man like your dad.

A: That's right.

JC: Why?

A: Well, his background was European. In other words, the man was the head of the house. He was a chef, so he bought all the food; he would give my mother a dollar a day when he left in the morning. In those days, you could buy a loaf of bread for a nickel, so that was all the

money she had. He couldn't eat her cooking, so he would buy the meat and cook it. He would always cook for the holidays—so did all the West Indian men, that's what they did. My father was initially a boot maker in Nevis, where he learned English. Unlike the Americans, when the slaves were freed, the men in Nevis had to learn a trade; they had to go to school. So his trade was making boots. When he came to the States, the Italians had that filled up, and the only job he could get was in food service at Yale. When I was growing up, everyone I knew worked at Yale as a chef or dishwasher, potato peeler, or whatever.

JC: So your experience as a young girl in New Haven was not one of discrimination?

A: No. Although race was a defining reality, people in New Haven didn't discuss it much. Blacks were not a problem to the whites because there were too few. The people discriminated against were the Irish and the Italians because they were Catholic and this was a Protestant community.

JC: You have said that you attribute much of your own success to the fact that you had a loving and intact family.

A: Yes. When I was a kid in New Haven, most kids had intact families. When we got to World War II, we got a new population that came up the east coast from South Carolina and Florida, which was employing a lot of people who stayed on, and that's why New Haven now has a black population of 60 percent. When I was growing up in New Haven, blacks were a small percent of the population. There were two or three black kids in my class from the time I was in kindergarten all through high school. Let me see, we had maybe 12 blacks who graduated with me in high school. Some went to Boardman Trade to become plumbers and electricians and so forth, but still we had very few. If you wanted to be a secretary, you would go to the commercial high school, and most of the women wanted to be secretaries in those days.

JC: You wanted to be a lawyer from a very early age?

A: Well, by the time I was 15, I was a voracious reader, and I went to the New Haven Public Library and got a book by Abraham Lincoln in which he said that he thought the legal profession was the most difficult. It turns out that I am the type of person who accepts challenges. So, I wanted to be a lawyer by the time I was in my mid-teens.

JC: Your mom wanted you to be a hairdresser?

A: Yes, one of her nieces was a hairdresser and doing pretty well, and she thought I ought to do that. They had no conception of a woman wanting to be lawyer. My good fortune was that we had a wealthy man in my hometown, Clarence Blakeslee, who was white and very charitable. One thing he did with his money was educate people, black and white. He believed in public education; he was the richest man in town, but his kids went to public school. He had two grandsons who were

in my high school graduating class, so that says something about him. His people were Abolitionists. Two of his ancestors attended the Abolitionists convention in Connecticut in 1837, and that's why he had an interest in blacks—not just because he had money, but because he came from people who believed in aiding blacks. That's what he did. He was at my graduation and knew that I was graduating with honors. He asked me to come and see him.

JC: He heard you speak at the Dixel Community House.

A: Yes. He had built the community house. Blacks weren't really utilizing it, and he wanted to know why. I was a brash young person, and I said I thought it wasn't being utilized because black people weren't really involved; everybody on the board was from Yale. We had a black lawyer who was horrified at my brashness, but anyway the next day he asked me to the community center, and he had meetings to find out why it wasn't being utilized to its fullest. He had the director send me to his office, which wasn't far from where I lived. He was on the board of the Yale Corporation, he had all this money, and he educated white boys in New Haven whose parents didn't have enough money. Again, what he did was check their high school records to make sure that they were capable of going to college. I wasn't the only person he educated.

JC: He offered you a blank check for law school and for college, didn't he?

A: Yes, when I went to see him, he said, "What do you want to do?" I said, "Well, I want to be a lawyer." With his bushy eyebrows up in the air, he said, "I don't know much about women in the law, but if that's what you want to do, then I will be glad to pay for it as long as you want to go." He was at my graduation from Columbia Law School. So he was somebody who took an interest—he didn't write a check to get a tax exemption. I sometimes wonder if we still have people like that; I guess we do. He died in 1954 in his early 90s.

JC: What did your parents say when you told them about his offer?

A: They didn't believe me. They didn't know what to think; they never heard of anything like that.

JC: Tell us about the WPA mural of the Amistad case that was in your high school.

A: I went to Augusta Louis Troop Junior High School, which was about three or four years old when I got there, and when you entered the front door of the school, the wall facing the front door had this picture in sepia of a young man with a staff in his hand next to what looked like a Viking ship. The reason I say that, we had to draw Viking ships in fourth grade or something like that. Nobody ever told us what that picture was.

JC: You couldn't tell whether the mural depicted a black man or a white man?

A: No, we couldn't. We thought it was a black man

because it was sepia, but nobody knew. None of the teachers ever said, “Do you see that guy, that’s the Amistad,” and so forth. The teachers probably didn’t know it was a WPA project. I never knew until years later or what the significance of the mural was.

JC: When did you begin to first experience real discrimination—was it when you went off to college?

A: Well, yes. I went to Fisk University because of the kind of community I came from. When I got to high school, I discovered James Waldon Johnson and people like that. And then, when I was 15, I really started reading as much as I could, especially history books. I was the only child who didn’t read the funny pages; can you believe that?

JC: Was your interest in reading stimulated by your mother and father, or did you have an innate desire to read?

A: It was probably innate, although I had a sister—who is still living, she is 91, 10 years older than I am—and when I was a kid, she would read to me and my sister at night when my mother was ironing or something. I guess that’s as much as I got in the way of reading. My father didn’t read to us, and my mother didn’t. Neither one of them had time or interest, I guess. Yet, while a

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lot of black kids dropped out of school in the eighth grade, we knew we could not. My father and mother didn’t have to say so—we knew when we came home after school, we had to be in the house, and we better be reading a book when my father came home.

JC: There were real expectations of you?

A: Yes. As I say, their background was different. In Nevis, where they grew up, the British saw to it that they got an education. My parents were foreigners, and we had a lot of foreigners—the Italians, the Irish. The Italians couldn’t speak the language, but my parents could. They were brought up in a British colony, so they knew the language and they knew the culture; those were the main things.

JC: In addition to your parents, you were influenced by three white women who were mentors to you: Lena Halpern, Genevieve Thompson, and Alice Marsten-White.

A: Lena Halpern was a Jewish doctor who later married a prominent black man. She worked in New Haven for a while. She was probably the first woman I met who

was a professional and married. When I was young, a woman who wasn’t married became maybe a doctor or maybe a lawyer or certainly a schoolteacher. So, generally, I thought women were schoolteachers, but she was the first one I met who was married and a professional. Genevieve Thompson was a social worker, and Alice was a teacher and writer. They were very meaningful to me.

JC: You were quite active in a number of social groups as a young woman.

A: We began to get all of these organizations like the American Youth Council, the Connecticut Council on Youth, Connecticut Council on Unemployment, and others. I remember we used to go up to the state legislature and try to meet with legislators and things like that. I was president of the Youth Council, so I went to all of these gatherings.

JC: When you graduated from high school, did you go right to college?

A: No. It was not for about one and a half years after graduation that I began at Fisk. Later I transferred to N.Y.U.

JC: You had your first real exposure to discrimination on your way to Fisk?

A: It was my first encounter with Jim Crow, per se. You had to transfer trains in Ohio to continue south. I took a train from New York to Cincinnati, where I got on another train going to Nashville. When we crossed into Tennessee, the conductor directed me to the first car behind the engine; that was the Jim Crow car. That was my first ride in the Jim Crow car.

JC: What was your reaction?

A: It made me feel frightened and humiliated for the first time in my life. I had not encountered this before. I had read about it and heard about it, people talked about it incessantly, but I had never actually come face to face with it. I understood for the first time what motivated the followers of Marcus Garvey.

JC: Were your parents concerned with your going down there?

A: No. But my father never went South. I had a sister who went to St. Augustus College. When my mother went to her graduation, my father wouldn’t go because it was the South.

JC: After you graduated from N.Y.U., you lived in Harlem. What was Harlem like in those days?

A: Well, Harlem, I think, was better then than it is now. Harlem deteriorated over the years, beginning in the ’40s when blacks began to move from Harlem to Brooklyn.

JC: After N.Y.U., you went on to Columbia Law School?

A: Yes.

JC: Were there any black students at Columbia when you were there?

A: Yes. There were about two in every class. I was probably the second black woman there. Elrita Alexander from North Carolina was the first. Carmen Taylor was from Virginia; there was a black man from New York City whose father was the first black architect in New York City. Then there were a couple of other women who came in the next year from the Virgin Islands. So, there were about eight of us altogether.

JC: Of course, there were no affirmative action programs at Columbia when you went there.

A: No. Nobody heard of affirmative action until 1964. The word had not even been invented. I got in based on my record at N.Y.U. I graduated with honors, so I didn't have any problem. Otherwise, you had to take a test.

JC: When you were at Columbia, did you experience any kind of discrimination, or was it a relatively smooth passage for you?

A: At the law school level, things were the way they were at graduate school. I don't think anyone encountered race discrimination, but I will tell you this: The dean and all the faculty members were from the South. And it's worth noting that *Plessy v. Ferguson* was not taught in any of our classes. But it wasn't bad at all. The most difficult part of law school for me, like everyone else, was the hard work involved.

JC: Did you have any aspirations to work at one of the large Wall Street firms?

A: No. You did not go to Wall Street if you were black or Jewish. A brilliant fellow in our class was supposed to clerk for Justice Stone on the Supreme Court; that's how good he was, and I bet he was number one in our class. Stone died on him ... he couldn't get a job on Wall Street because they weren't hiring Jews on Wall Street at that time.

JC: Mr. Blakeslee offered to help you get a job at Simpson and Thatcher?

A: Oh, yes. He said, "I have a friend whose name is Mr. Thatcher, and I am going to talk to him." I said, "Mr. Blakeslee, I already have a job."

JC: You were clerking at the NAACP?

A: For Thurgood Marshall, yes.

JC: How did you get that job?

A: Evan Taylor had it. He had a master's in business administration before he went to law school, and while he was in law school, he had three jobs. He had a wife and three children back in Virginia. He worked in the library, he worked for Thurgood Marshall, and he waited tables at night in the faculty club, while he went to school. When he was leaving, he said to me, "Don't you want this job with Thurgood Marshall?" I said sure and went down there, and they were hiring anybody they could hire in those days.

JC: So involvement in the NAACP wasn't some burning

desire you had; it was just a job opportunity?

A: Oh well, I expected to certainly do something. My original thought was that I might go back to New Haven because I had been active in the community affairs up there, and there were two black lawyers in New Haven, one of whom was very successful. He was the corporation counsel for the city of Waterbury and he went to Yale Law School and finished in 1901, so I knew there were people who were black in the law who had succeeded, you know, and that being black was not a barrier.

JC: You have said in your autobiography that you thought that William Henry Hastie was the preeminent black lawyer of the time, not Thurgood Marshall.

A: Yes, that's true, and Thurgood would have been the first one to tell you that. Hastie was his professor at Harvard Law School. Thurgood never argued a case before the Supreme Court without having discussed the argument with him, and he used to have these moot courts before the argument; when he got to the Court, there wasn't a question that he didn't know the answer to.

JAG: Did Charles Houston have the reverence in the mid-'40s that Thurgood Marshall enjoyed leading up to and after the *Brown* decision in 1954?

A: Yes. He was one of the ablest lawyers I have ever met, white or black. Houston went to Amherst and finished Harvard in about 1923. He was on the law review. Hastie was younger and did the same thing. Neither one of them could get a job when they finished. Houston went to work for his father, who was a lawyer. Hastie I think went to Howard as a dean or assistant dean. Later, President Truman sent him to the Virgin Islands; he was briefly governor there.

JAG: At the NAACP Legal Defense and Education Fund, you were working on Supreme Court case after Supreme Court case, taking cases from the district court through the courts of appeals to the Supreme Court. Was that the best job you have ever had?

A: Yes. Plus, we were like a family. I tried a lot of cases before I came on the bench, which is probably more exciting. But, you see, I coincided with history as I see it now. [In] the '40s, when I came out of Columbia Law School, as I often say when I speak to the alumni now, no one would have bet 25 cents that I would have succeeded in the legal profession. If you ask anybody, "Do you know anybody in the class of '46?" they might remember Judge Motley, but no other student from that class. Bella Abzug was two years ahead of me; she was very prominent. But no, all the others probably went to big firms. As I said, if you were Jewish, you could not get into the big firms.

JAG: When you were working on those cases, did you realize you were making history?

- A: We were conscious of the fact that the *Brown* case had historical meaning. I remember vividly being there at the oral argument in the Supreme Court. John W. Davis argued for the Board of Education in the *Brown* case. Bob Carter and Thurgood were our lawyers. Davis wore his cutaway coat and fine silk hat and all the rest of the formal attire.
- JC: You say in your autobiography that when Marshall heard that Davis was going to argue the case, his knees buckled, and he had to be propped up, not physically but emotionally.
- A: That's true. Davis was reputed to be the greatest appellate lawyer of the day. But his argument in *Brown* was totally offensive. He was chastising us black people—he said that we were like the dog who had a bone and wasn't satisfied with that, so he went to the pool or the pond and saw another dog with a bone and jumped in there. He said that in the Supreme Court! He thought his argument in *Brown* was his finest hour. Can you imagine? Thurgood couldn't tolerate the slightest degree of criticism, personal or professional. I don't think he could have emotionally survived defeat had the case gone the other way. But it must be said that Thurgood Marshall justifiably received the major credit for the monumental legal achievement that was *Brown v. Board of Education*.
- JC: Did you anticipate the result in *Brown*?
- A: We thought we might come out with five to four, but when it was unanimous, we were flabbergasted. In fact we also thought we might even lose. We never thought it would be unanimous. Earl Warren did that. He understood, having been a politician, that you had to have unanimity because if you had a divided court, the Southerners would still be at it. But if you had a unanimous decision, they knew it was over. What we did not anticipate was the massive resistance to *Brown* in the South.
- JAG: Earl Warren later in life publicly wrote of his regret for his involvement in the Japanese internment in World War II. Is there any sense that you have thinking back on it that his regret may have influenced his handling of the *Brown* case?
- A: Perhaps. But I can't be sure. I suspect that there was much more behind the role he played in *Brown*.
- JC: What was your strategy to implement *Brown*?
- A: We said we would start with one student going into a college or graduate school; nobody would mind that. Well, we coincided with history again. We got to Birmingham in January 1956, and Rosa Parks and Martin Luther King had marched in Montgomery the month before. Birmingham was aflame, they cut down the NAACP, the membership list and everything. We were in the second civil war, really. I remember recently, in September, I was at the University of Mis-

issippi for the 40th anniversary of James Meredith, and they had most of the ceremonies in the Lyceum Building and they had just painted it. When we came out, the dean of the law school or the president said to me, "You see when we painted it, we left a bullet hole up there, that's where the troops came in and started firing at that building." I said, "That was the second civil war or the last battle of the Civil War?" He didn't like that at all. He said, "No." I said, "Well, you have a bullet hole to prove it. They put the bullet hole there and didn't realize it would boomerang." I said, "You have the bullet hole right there to prove it, that was the last battle of the Civil War." He didn't want to hear that.

- JC: There is a certain irony that so much of the judicial support for civil rights came from the Eisenhower appointees, first Warren and then the reconstituted Fifth Circuit with Judge Elbert Tuttle, while the Kennedy appointees in the South were hostile to the civil rights movement and to you personally.
- A: You are absolutely right. The Fifth Circuit was perhaps the major battleground in the aftermath of *Brown v. Board of Education*. The Kennedy appointees in the South were segregationists, at least many of them were. Eisenhower appointed Republicans; that's what you do when you are president, you appoint federal judges of your party in the main, and that's what he did: Tuttle, Wisdom, Brown, and Reed from Montgomery, Alabama. There was an extraordinary man, Reed; he never went to law school. They said he read law in somebody's office, and yet he was one of the greatest judges there. He suffered perhaps the most direct reprisal. He had a son who was buried in Montgomery, and they went there and desecrated his grave. He was an old man, but he ruled with us every time. I don't know how you get a Southerner like that; to this day I don't know.

The fact simply is that prior to *Brown*, we could not win a desegregation case in the Fifth Circuit. After Eisenhower's election, the ideological composition of the court changed, starting in 1959 when Richard Rives became the chief judge. Eisenhower appointed pro-integration Republicans without whom implementation of *Brown* might have been retarded for many years. And without the appointment of Earl Warren as chief justice in 1953, who knows how history would have unfolded.

- JC: Judge Tuttle was instrumental in many of the victories?
- A: Yes, he certainly was. He later was the chief judge of the Fifth Circuit and a genuine hero of the 20th century. He and his brother had been the only white students in their high school. He saw service in both world wars, was actually wounded, and achieved the rank of brigadier general. But he wasn't a Southerner; he was from California. Wisdom was a Southerner from Louisiana; Brown was from Texas. Those were the four horsemen, as they came to be known.

JC: You suffered terrible insults at the hands of not only many judges but also lawyers during the 1960s. How did you deal with the insults?

A: Only really in Mississippi. We couldn't even buy fruit at the local market. During the James Meredith case, we took depositions of the registrar. The assistant attorney general representing the state always addressed me as Constance. I said to him, "If you can't address me as Mrs. Motley, don't address me at all." One day I got mad at him. So in the courtroom, when we appeared before the judge, he just addressed me as "she" and pointed his finger. He never called me Mrs. Motley; he just called me "she" when he got in the courtroom.

JC: Were you always in control of your temper?

A: No. As I said, I told the lawyer, if you can't address me as Mrs. Motley, don't you address me at all.

JC: That's pretty tame.

A: Today, it might be different. We have a new language in America. Most words begin with "f."

JC: You had the same experience in 1949 in the Mississippi teachers' equal pay case?

A: The local Jackson newspaper wouldn't address me as Mrs. Motley; it referred to me as "the Motley woman in the gray sack dress."

JC: Could you tell the story of your conversation with Judge Tuttle when Harold Carswell was nominated to the Supreme Court?

A: Tuttle was convinced that he and three or four of the judges with him on the Fifth Circuit could, as they put it, "bring Carswell along"; he was a new judge and young man. He was the youngest judge ever appointed to the federal court at the time. He was 36 years old. He went to the court of appeals, and Tuttle was convinced that he and the others could bring him along. The Legal Defense Fund was opposing him, the NAACP was certainly opposing him. Tuttle called me and asked me to try to get them to lay off of Carswell. I said, "Judge Tuttle, quite aside from that I think that this man is completely unqualified, I think that the American Bar Association should rise up and say, 'Not him, he is not qualified.'" That's what I said. I mean, quite aside from the fact that he's not very good on race, that man is unqualified, and the American Bar Association should oppose him. Tuttle said, "Oh, I didn't know you felt that way." I said, "I think he is completely unqualified."

I remember saying that the first time I appeared before him. We met in chambers. He had a big desk like mine. He put his feet up on the desk and said, "You know, I don't know anything about the Fourteenth Amendment." I was stunned. Here was a man appointed to the federal bench who doesn't know anything about the Fourteenth Amendment and seemed proud of it or perhaps was just being honest.

JC: The massive resistance you talked about after *Brown* really came as much from the state legislature as from the Southern federal judges, didn't it?

A: Yes, sure. There were a lot that were pretty bad. We had underestimated the reaction that we would get. The first cases filed after *Brown* were in Kentucky, Tennessee, and the District of Columbia. We chose border states because we thought there would be less resistance, but there was massive resistance that we had not fully anticipated. So we were swamped with things like closing down the NAACP, banning membership, and stuff like that.

JC: What did the legislative resistance consist of?

A: First, many state legislatures passed laws reaffirming segregation and everything else. Some states demanded the NAACP's membership list. In Arkansas they closed down the NAACP and the Legal Defense Fund. The NAACP was out of Alabama for at least a decade. There was a case where Virginia passed all these laws making it illegal for a lawyer to bring a case where somebody else paid the lawyer, and not his client, so we had to go to court on that. In other words, we got dragged off of enforcing *Brown* to defending ourselves against the reactionists trying to put us out of business.

JC: Perhaps the degree to which the courts were resistant to *Brown* is illustrated by the opinion of Judge Terrell of the Florida Supreme Court in *Hill v. Florida*, in which he says that segregation is created by God.

A: This opinion came in the case of a suit to open the University of Florida Law School to black students. The suit was filed as an original mandamus action in the Florida Supreme Court. Not surprisingly, the Florida court held for the university. The U.S. Supreme Court reversed for reconsideration in light of *Brown*. This was in 1954, one week after *Brown* was decided. Five months later, I argued the case in the Florida Supreme Court, unsuccessfully. Judge Terrell's concurrence must be read to be believed. It illustrates perfectly the incredible resistance to *Brown*:

[I]f "equitable principles characterized by practicable flexibility" is to be the guide, does desegregation mean that attendance at these institutions is to be scrambled and one of them abandoned and the other enlarged at great expense in order that white and Negroes may attend the new school? A negative answer to this question would appear to be evident. I might venture to point out ... that segregation is not a new philosophy generated by the states that practice it. It is and has always been the unvarying law of the animal kingdom. The dove and the quail, the turkey and the turkey buzzard, the chicken and the guinea, it matters not where they are found, are segregated; place the horse, the cow, the sheep, the goat, and the pig in the same

pasture and they instinctively segregate; the fish in the sea segregate into “schools” of their kind; when the goose and duck arise from the Canadian marshes and take off for the Gulf of Mexico and other points in the south, they are always found segregated; and when God created man, he allotted each race to his own continent according to color, Europe to the white man, Asia to the yellow man, Africa to the black man, and America to the red man, but we are now advised that God’s plan was in error and must be reversed despite the fact that gregariousness has been the law of the various species of the animal kingdom.

JC: Were you disappointed when you didn’t succeed Thurgood Marshall as head of the NAACP Legal Defense Fund?

A: Well, not really, because women in those days were having a hard time, you see. I am sure Thurgood thought, “I am going to have all kinds of trouble if I put her up there.” Women just didn’t have the status that we

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now have in the field.

JC: So Jack Greenberg got the job?

A: Jack Greenberg got it.

JC: He was a man, he was white, and he was Jewish.

A: Yes. And his appointment as Thurgood’s successor in 1961 was frankly one of the more stunning—if I may use that word with full awareness of its implications—developments in the civil rights community. He had never prepared himself for the job, and I don’t know if he ever wanted to assume the role as the spokesman for the black community. Be that as it may, he got and took the job.

JC: How did Marshall select him? Didn’t Roy Wilkins want the job?

A: Wilkins, I think, felt he was the heir apparent. He was a most capable man and was in my opinion the most articulate voice the NAACP ever had. Unlike Thurgood, who couldn’t brook any kind of criticism, personal or professional, Roy was always reasonable and possessed perfect equanimity. But Jack had been there, and Thurgood didn’t go outside and get someone. I was named associate counsel, which was a position newly created.

JC: But there were many highly accomplished and qualified black lawyers.

A: Well, yes, that much is true, but they were not on the staff—people like Bill Coleman, who clerked for Justice Frankfurter after graduating from Harvard Law School in 1945, Bob May, and others. But Bill Coleman didn’t want to give up his million-dollar income.

JC: Wasn’t there an element of “payback” by Marshall because he felt some of these people had conspired to move him out?

A: Yes, that element certainly did exist, as I explained in my book. Bob Carter wanted to get back to and run the Legal Defense Fund because that’s where all of the big cases were. He wrote Hastie a letter suggesting this, and I think Hastie took it up with Marshall, and that’s how Bob Carter got denied the position. He had been Marshall’s first assistant; I wasn’t. I was third or fourth on the staff, and so he was two lawyers ahead of me. So, that’s what happened. It was very unfortunate, but I don’t know why Hastie did it; I could never figure it out.

JC: What role did Anthony Amsterdam play in the student sit-in cases in Greensboro in 1960?

A: Well, he was absolutely brilliant. He was the chief theoretician in those cases. The sit-in cases were difficult for a number of reasons. The kids were acting on their own, and the whole thing was not part of our organized civil rights strategy—in fact, it was contrary to it. The cases sent shock waves throughout our ranks.

But let me get back to your question: When Amsterdam started working on a legal problem, he would work on it without sleeping for three days at a time. Can you stay awake for three days? Nobody understood how he did it. He got started on something, he didn’t want to break to sleep, he was working until he finished. On those student cases, his theory was the statutes were void for vagueness, a theory that he knew better than anyone, if you recall his famous article on the subject written while still a student at Penn. After we had meetings, he would jump in the pool with all his clothes on, his watch, everything. The contributions he made to the sit-in cases were invaluable.

JC: When you were traveling back and forth from the South in connection with all of the cases both before and after *Brown*, were you frightened?

A: Well, probably in Mississippi more than any other place because it was a frightening state. We were often followed by the state police, and at points we were really frightened.

JC: It’s very different now.

A: Well, you saw how Medgar Evers ended up.

JC: You warned him about potential harm?

A: Yes. I had stayed in a house diagonally across from

Medgar's from time to time when I was involved in cases in Mississippi or meeting with Medgar, and we would sit in the living room looking over at Medgar's house, and I would say, "Medgar, when you come home at night, watch that bush near the house." It was the perfect spot for someone to hide behind. He said, "Oh, yeah, I always stop for a while and pause before I come in; I'm very careful." I can hear and see him as though it were yesterday.

JC: What was your reaction when you heard he had been killed?

A: Well, when the phone rang, it was 3 am. It was Robert Smith, who owned the grocery store. You know when your phone rings at 3 am, it's going to be bad news. I picked up the phone, and he said, "This is Robert—they just got Medgar." I broke down and cried; my husband was there, and he took the phone. My father-in-

Dr. King was unhesitatingly prepared to die for the cause in which he so passionately and profoundly believed.

law was there, and he said, "Go and lie down." That same thing happened when Bobby Kennedy was killed. We went to King's funeral and went to King's house where his widow was, and coming out of the house was Bobby Kennedy; and there he was next ... he was right, he thought that was going to happen to him. Sure enough, it did. I was shocked. Even though I thought it could happen to Martin Luther King, you are still shocked when it happens.

JC: Dr. King really understood that there was a real chance he could get killed, didn't he?

A: Absolutely. And he was unhesitatingly prepared to die for the cause in which he so passionately and profoundly believed.

JC: Were you on the podium for the "I have a dream" speech?

A: Yes, in Washington in 1963, yes. You could feel that something had happened in the country, that march on Washington. First of all, I didn't think anybody was coming; we were up in Boston on Cape Cod for vacation, and it was getting closer to the day of the march, and my husband kept saying to me, "Are you going to Washington?" I said, "Well, I don't want to go, but I guess I ought to go because nobody is going to show up there." I was wrong as I could be. That's when you realized that something had really changed. My son was

with me on the podium. It was the most extraordinary experience of my life. We all sat in awe with tears in our eyes as he delivered that speech. The march and the whole thing was, in my view, America's finest hour.

JC: Without that march and that speech, do you think there would have been the Civil Rights Act of 1964 or the Voting Rights Act of 1965?

A: Absolutely not. The King-led march from Selma to Montgomery in March 1965 was also crucial to the Voting Rights Act. And, of course, his final legacy was the 1968 Fair Housing Act, passed shortly after he was assassinated in 1968 in Memphis.

JC: Thurgood Marshall was somewhat resentful of Dr. King, wasn't he?

A: Yes. He initially viewed Martin as an upstart. But he never said so publicly. Indeed, he never criticized any black leader publicly. Ultimately, he came to realize King's contribution to the ending of segregation and the unique role he played in the civil rights movement. Dr. King was willing to subject himself to unlimited personal suffering, to public vilification, and even to die for what he knew was right. He was truly a leader of epic proportions.

JAG: Was becoming a federal judge something you coveted?

A: Yes, I think so ... well, yes. I had spent the major part of my career before federal judges out of the South; I was in 11 Southern states and the District of Columbia in federal courts. Thurgood had come to the Second Circuit by then. I knew the system—I tried cases so I didn't have to learn the procedure, I knew it. I guess I am the oldest, in terms of service, on this court. I am certainly the oldest woman in the system. When I came on, only four other women in the country were federal judges. So, yes, I realized it was a unique opportunity.

JC: Tell us about James Meredith. You were his lawyer in 1961 when he applied to the University of Mississippi. How did that come about?

A: Well, James Meredith wrote an impassioned letter in January 1961, saying that he wanted to be a student at or that he had made application to the University of Mississippi. Medgar Evers sent the letter to Thurgood, who came into my office, threw it on the table, and said, "This man is crazy." He meant it, and it was true. James Meredith knew you had to be crazy to go to the University of Mississippi. But he had, I guess, what some people call a messiah complex. He wanted to do something in response to or help with the Civil Rights movement, which he knew had taken hold in the country because he was in the service for nine years.

As the evidence at the trial showed, every time something racially inflammatory or disturbing happened in the country, he would get a sick stomach or

a nervous stomach and would go to the psychiatrist and try to get some medicine. He desperately wanted to be involved and contribute to the amelioration of the country's ills. He knew exactly what he was doing and how dangerous it was. He expected to be killed, but he was willing to risk it. His personal theory was that one on one, you are not going to kill me, white man. Maybe that's right. So he was willing to do it. He knew there had never been anybody else who successfully attempted what he was about to do. There was one guy whom they shot or sent to prison on trumped-up charges when he applied to the University of Mississippi. Despite that, he was willing to do it. He was willing to die, I am sure.

JC: So, you got the case?

A: Well, as I said, Thurgood gave it to me. Thurgood's theory was, in the South they don't bother black women because they all have mammies.

JC: Was he serious?

A: I think so. I do think so. You never heard of a black woman being lynched. I think in the South, black women have or at least had a special position in the society—they are women and they help my mother clean our house and cook our food, you see? So they don't bother black women.

JC: What did you do?

A: Like a fool I went there and filed the lawsuit. It went to Judge Mize. The Freedom Riders coincided with us, and when I walked into Judge Mize's court and the Freedom Riders were there and all of this hullabaloo, he said to me, "Why did you have to come now?" We went into his chambers. I said "Judge Mize, we don't pick our clients, and we have this application." He knew; he just gave up. He is a civilized man; he addressed me as "Ms. Motley"—he couldn't say "Mrs." to save his life. He was the first person I ever heard say it. I had been there on the teachers' salary case in 1949, so I knew Judge Mize from then. He just said, "Why did you have to come now?" He knew that this was it; there would be hell to pay. He was shaken.

JC: What did he do?

A: He ruled against us; the Fifth Circuit reversed. We then moved to cite the governor for contempt because the state said, "He's not going there." So the Fifth Circuit ordered that motion for contempt filed in the court of appeals. The state went into the court of appeals on the theory that it was the court of appeals that he was in contempt of and not the district court. It was heard, and the governor was tried in the court of appeals. It was the first time there has ever been a trial in the court of appeals in the history of the country. It was a revolution, a war that we were in. Ultimately, Meredith was admitted with all the furor that you would expect.

JC: After Meredith got admitted, wasn't there a concern that he was going to flunk out because he was not studying because he was so emotionally distraught?

A: Yes, I was concerned because after he went in the first semester, I knew that he couldn't have had a chance to study. U.S. marshals had to sleep in the room with him. How are you going to study with marshals with guns? So, we arranged for him to go up to Yale. Lou Pollack was the dean of the Yale Law School (he is now a federal judge in Philadelphia); he arranged for a group of professors to tutor him. I remember driving up there with him. He got an apartment. The professors were all lined up to tutor him, and at 3 am about three or four days later, our doorbell rang. Again, it was like the Medgar Evers call: When you get a call at 3 am, you know that's trouble. So I peeped through the hole and there was James Meredith. I said, "Meredith, what are you doing here?" He said, "I have been over at the Small's Paradise, you know, Small's on Seventh Avenue." I said, "What were you doing there?" He said, "I just wanted to hear some music and dance, and I just want to stay here a few hours, and then I am going to Chicago to see Dick Gregory, and then I am going to Jackson." I said, "Meredith, you can't do that, you can't go back."

You know, he would get killed driving alone. So, the next morning he got up, he left, and as he was going to Chicago, I called Lou Pollack and said, "Let's give up, and let's admit that it's all over." So Meredith went back to Jackson, and he stayed there the whole time and then went back to the University of Mississippi. He drove himself from Jackson in his little Volkswagen. He went back to school and finished. The U.S. marshals continued to stay with him the whole time. He really put us through a lot.

JAG: When you started at the NAACP, did you have any thoughts of becoming involved in politics?

A: No, that was quite by accident. I was living at Western and 103rd Street in Manhattan. James Watson, who became a judge in the court of claims, the customs court—it is now called the Court of International Trade—was a state senator from where I was living on Western Avenue. He said he met me at the teachers union's annual luncheon, where I was one of the speakers, "I am going to civil court in New York." His father was the first black, along with one other who is a judge in New York City here, so he wanted to follow in his father's footsteps. He said, "Why don't you run for my seat in the Senate?" and I said, "Oh, I can't be bothered with that."

Watson told Ray Jones, who was the chairman of the Democratic County Commission for Manhattan, "There is your candidate right there." Two women lawyers I knew also came over and urged me to run because the local Democratic club there, Congressman Ryan's club, was going to run a black man who

had a dry cleaning shop and was considered by many not to be qualified. Ray Jones wouldn't support unqualified blacks. That's how I got involved. I was then elected to the Senate, and the next year Ed Dudley, the former borough president, had become a judge in New York, so they needed a black candidate for borough president of Manhattan. Ray Jones backed me.

JC: A particular vote of yours angered Senator Kennedy and may have delayed your appointment to the federal bench?

A: Well, let's see. In 1964 when Lyndon Johnson ran for president, it was a landslide, certainly in New York. Every Democrat running for office got carried into office with Johnson at the head of the ticket. Bobby Kennedy had just been elected senator from New York in that landslide. The Democrats captured the New York state legislature for the first time in 30 years. They controlled the assembly but not the Senate. So, the question was, who was going to be the majority leader in the Senate? Bobby Kennedy, having just been elected, thought he was supposed to run New York state politics. Wagner, who was looking to follow his father to the Senate, thought he was the leader.

Ray Jones was with Wagner, and anyway we Democrats met in caucus and Bobby Kennedy was pushing some guy from Albany who we thought was a reactionary. For example, he opposed the fair housing bill for New York state. As a result of eight of us from the city withholding our votes from Kennedy's man, he didn't make it as leader. It tied up the New York state senate for six weeks. Kennedy kept coming up with one candidate after the other, and he couldn't get the Senate organized to get enough of the votes.

JC: Unbeknownst to you, Bobby Kennedy had submitted your name to Lyndon Johnson for a seat on the federal bench.

A: During that fight, I got this call from a guy named Joe Dolan, who was one of Kennedy's henchmen. He said to me, "You know, the senator wants to submit your name for a seat on the district court, but you have to fill out this form." I said, "Send me the form."

JC: Did you want the job?

A: Of course! So, they sent me this form. I filled it out, but it disappeared into the void because we supported the compromise candidate, and Kennedy's man lost out. So Kennedy wasn't pushing my name. I mentioned this to Ray Jones, who was one of the Democratic Party leaders, and Joe said, "Don't worry about that; do you want to go to the court?" and I said yes. He said he would call Lyndon Johnson. At the Democratic Party convention, I think it was Los Angeles in 1960, Jones was the only Democrat from New York who voted for Johnson to be the candidate.

JC: So he bypassed Kennedy?

A: Oh, yeah. So I get invited to the White House, but they didn't tell me what was going to happen; they just told me to be prepared.

JC: In your new Lord & Taylor hat and your best black dress?

A: That's exactly right. They told me to be at the East Gate in Washington at 10 am on January 26, 1966, I think it was. They didn't tell me what was going to happen, they just said be there. So I was, and that's when Johnson said he would appoint me to the bench, and I said, "Today?" He said, "You don't want it now; we could do it another day." I said, "No, no, I didn't mean it; I didn't know it was today." So he said, "Yes, I am going to appoint you to the bench, and, by the way, my wife is having a women's day party or something out there, and I want you to go out and meet these women."

JC: Then he called Kennedy?

A: Yes. He said, "Listen, before we go out to meet these women, I am going to call Bobby Kennedy." So he rings the bell and tells his secretary to get Bobby on the phone. The secretary calls, and he said, "Bobby, I have Judge Motley here"—relishing the emphasis on the word—"I thought you might want to be the first to congratulate her," and he slams the phone against my ear. I said, "Thank you, Senator"—well, what could he say? I don't even think he answered. Bobby Kennedy

We will fight the same battles again. People who don't know their own history are bound to repeat it.

wasn't all that good at talking, and so I don't know if he said anything. Anyway, that's what happened, and then we go and meet these women, and one of them was Mayor Lindsay's wife. I told her that I had just been appointed to the bench, and she said, "You were just elected borough president in November." I had just been elected in November to serve a four-year term. I said, "Not now."

JC: Senator Eastland, chairman of the Judiciary Committee, tried to block your nomination?

A: He accused me of being a communist among a lot of other things, and he held it up for seven months. He wouldn't let my name out of committee, so Johnson decided that the way to get him to take my name out was to refuse to put in any of the other senators' candidates.

As you can imagine, that didn't sit well with Eastland's colleagues, and they got him to get my name out because they wanted their people on the federal bench in their states. They didn't care about me; they just wanted to let those names come out, so that's what happened.

JC: Initially, President Johnson wanted to put you on the Second Circuit, didn't he?

A: Yes.

JC: There was a great deal of opposition?

A: Totally.

JC: Why and from whom?

A: From all the judges there; they didn't want any women. Thurgood Marshall had been there, and they didn't like him that much—I'll tell you about that in a minute. They didn't want any women. It was not so much that I was black, but I was a woman, and there were very few women lawyers in those days who had managed to do anything. So that was the problem.

JC: What was their ostensible reason, or did they come right out and say what their feelings really were? After all, you had argued 10 cases in the Supreme Court.

A: The first case I argued was in 1961 after Thurgood had been nominated to the Second Circuit. Nine more cases followed. Justice [William] Douglas in his autobiography *The Court Years* compared me to Charles Houston and said that the quality of the arguments would place me in the top 10 of any group of advocates at the appellate level. This was the highest compliment. In addition, I had participated either as trial or appellate counsel or on the briefs or on cert. petitions in 57 cases in the Supreme Court and 82 cases in the courts of appeals in the Fourth, Fifth, Sixth, and Eighth Circuits. But it didn't make any difference; I wasn't wanted on the Second Circuit. I don't think they gave any reason that I know of. This was all in *The New York Times*. I remember the article said that Johnson withdrew my name and submitted it for the district court because Bobby Kennedy—and his shenanigans to get my vote in the New York Senate—had submitted my nomination for the district court. So he just took up Bobby Kennedy's nomination for the district court, so that's how that happened.

I was talking about Thurgood Marshall. Of course, you know his record before he went to the Court; he argued *Brown v. Board of Education* and everything else. When he was appointed to the court of appeals, Edward Lumbard, who was the chief judge, sent him to Albany to try cases in the district court. That was terrible duty. I was in the New York Senate then, and one morning I went into the dining room where the senators ate in the Capitol Building, and there was Thurgood Marshall. I said, "What are you doing here?" He said, "Well, they sent me up to Albany to try cases." That's the way he treated Thurgood Marshall.

JC: Judge Lumbard didn't treat you very well either, did he?

A: He could not stand the sight of me. Because I was a woman first of all, I guess, and being black didn't help.

JC: He was that open and notorious in his rejection? You said in your autobiography that you sat at the judges' table with him and he wouldn't talk to you?

A: That's right. The custom was that when you came on the court, you sat at the chief judge of the circuit's table at certain judicial functions. I had to sit there, and he didn't say a word to me. He hated women; there was no question about that. In fact, years after I came on, only a few of Lumbard's judges—Frankel, Van Pelt, Bryan, and perhaps two or three others—hired women.

JC: Of course, that's not so today, and there seem to be more women than men serving as judicial clerks.

A: Because the women do so much better. Somebody explained that right out of law school they were selected—the ablest women got to go to law school, so when the judge got to an application, he was looking at someone from the top of the class. So that's how you got a lot of women up there. But it had to be approaching the '80s before things began to change.

JAG: It's interesting you say that because the same phenomenon is occurring among minority applicants; for every one black male applicant, for instance, I get five black females who apply.

A: I am glad you raised that because I think that is a serious problem now. I can't get a black male; I have two white males now. I get a lot of women.

JC: Why is that, Judge?

A: Ask him.

JAG: The theory, at least as it has been articulated to me, is that a lot of black males are interested in going out into big firms or, now, investment firms; they are open to blacks where they weren't before. They don't want to sacrifice the money. But also part of it is that, in absolute numbers, there are more black women in law school now than there are black men. When I was coming up, the numbers were about equal. That's no longer true. Columbia went beyond 49 percent last year.

JC: I take it you are not sorry you weren't elevated to the Second Circuit?

A: Well, I think if you ask anybody who knows the system, it is better to clerk here or be a judge here than on the court of appeals. On the district court you are dealing with lawyers and the public. On the court of appeals you are just reading briefs. I think it's boring up there, and I think there is more camaraderie on our court than in the court of appeals.

JC: What does the future hold, Judge Motley, for the civil

rights movement?

A: I think we will repeat the same thing in the 21st century that we did in the 20th because people who don't know their own history are bound to repeat it. Now why do I say that? On the 25th anniversary of *Brown*, I was invited to speak at University of Montevallo, which is about 25 miles out of Birmingham. They were having a civil rights conference. They put on a play where they imitated Thurgood Marshall and Bob Carter before the Supreme Court. The school is completely integrated, boys and girls; it used to be the Alabama College for Women, and it has the most beautiful campus I have ever seen.

They had this young fellow, and his job was to pick

me up from the airport in Birmingham, drive me 25 miles south to Montevallo, and then take me back to the airport. As we are going back to the airport, three or four days later, he says to me, "Judge Motley, what is that case you said you were here on, what was the conference about?" I said, "The *Brown* case." He said to me, "What was that?" Then I knew it was all over. We are going to fight the same battles in this century that we fought in the last. The reason is, if you don't know your own history, you are bound to repeat it. He is 18 years old, and he didn't know what *Brown* was. He would have been seven when the Court decided it. He didn't know. He was in Alabama, and he never heard of *Brown v. Board of Education*. So that's where we are, I am sad to say. ☐