

JUSTICE DELAYED, JUSTICE DELIVERED: THE BIRMINGHAM SIXTEENTH STREET BAPTIST CHURCH BOMBING AND THE LEGACY OF JUDGE FRANK MINIS JOHNSON JR.

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That delayed justice should be avoided in the United States legal system is fundamentally consistent with American aspirations of doing what is morally right. Answering criticism by other clergy of his civil rights activities, in his famed *Letter from a Birmingham Jail*, Dr. Martin Luther King Jr. referenced a jurist in proclaiming that “justice too long delayed is justice denied.”¹ The need for urgency in remedying injustice is clear.

However, similarly important is the idea that even if the delivery of justice is not speedy, one must continue to strive for it until achieved. Indeed, that same letter from Dr. King and his other work testified to the need to continue the struggle against injustice, relying on the deep belief that the world can and must become a more just place.² That journey towards justice is taken on a road paved by courageous individuals. Judge Frank Minis Johnson Jr. of the United States District Court for the Middle District of Alabama and the United States Court of Appeals was one of the most significant and bravest road builders of the last century.

Judge Johnson was born in Winston County, Alabama, in 1918 and served in the United States Army, in private practice, and in the United States Attorney’s Office before his appointment to the bench by President Dwight D. Eisenhower in 1955.³ As a federal judge, in case after case over many years, Judge

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1. See, e.g., “*Letter from a Birmingham Jail [King, Jr.]*,” AFR. STUD. CTR. – U. PENN., https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html (last visited Mar. 17, 2020).

2. See, e.g., *id.*; Martin Luther King, Jr., “*I Have a Dream . . .*,” *Speech by the Rev. Martin Luther King at the March on Washington*, NAT’L ARCHIVES, <https://www.archives.gov/files/press/exhibits/dream-speech.pdf> (last visited Mar. 17, 2020).

3. *Johnson, Frank Minis, Jr.*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/johnson-frank-minis-jr> (last visited Mar. 17, 2020).

Johnson's decisions remedied long-standing injustices, from racial discrimination to the treatment of patients in mental institutions to other wrongs.⁴ While the need for justice in these cases may have predated Judge Johnson's involvement as a jurist and was long overdue, Judge Johnson ensured that justice ultimately was delivered.

To honor Judge Johnson's efforts to deliver justice and his many achievements, the Judge Frank M. Johnson Jr. Centennial Committee helped organize a variety of special events held in January of 2019.⁵ The celebration began with two days of events in Montgomery, Alabama, and concluded with a day-long symposium in Tuscaloosa, Alabama, at The University of Alabama School of Law. Papers from that symposium are published in this issue of the *Alabama Law Review*.

In Montgomery, participants registered for the centennial program at the Freedom Rides Museum, and the events included direct commentary on Judge Johnson's life, as well as other gatherings honoring him.⁶ Bryan Stevenson, the founder of the Equal Justice Initiative, helped commence the celebration by addressing those in attendance at the new National Memorial for Peace and Justice. David Bagwell and Cathy Wright reflected on their time clerking for Judge Johnson at a breakfast held at the Kress Building after being introduced by Judge Susan Russ Walker, another of Judge Johnson's former clerks. United

4. See generally ROBERT F. KENNEDY, JR., JUDGE FRANK M. JOHNSON, JR.: A BIOGRAPHY (1978); Myron H. Thompson, *Measuring a Life: Frank Minis Johnson, Jr.*, 109 YALE L.J. 1257 (2000); The Associated Press, *Judge Johnson Buried in the Alabama Hills*, N.Y. TIMES, Jul. 28, 1999, at C24, <https://www.nytimes.com/1999/07/28/us/judge-johnson-buried-in-the-alabama-hills.html>.

5. For more information on the events, see the invitation from the Judge Frank M. Johnson Jr. Centennial Committee for the Judge Frank M. Johnson Centennial Celebration & Symposium. The committee, co-chaired by two of Judge Johnson's former law clerks, Ms. Debbie Long and Mr. Bobby Segall, also included: Chief Circuit Judge for the Eleventh Circuit Court of Appeals Ed Carnes and Circuit Judge Joel F. Dubina; Chief District Judge for the U.S. District Court for the Middle District of Alabama W. Keith Watkins and District Judges Emily C. Marks, Myron H. Thompson, and W. Harold Albritton; Chief Magistrate Judge Wallace Capel for the U.S. District Court for the Middle District of Alabama and Judges Susan Russ Walker, Gray M. Borden, Stephen M. Doyle, and Charles S. Coody; Mr. Leroy Abrahams; Ms. Anita Archie; Mr. Owen Aronov; Hon. Bill Baxley; Hon. Jere Beasley; Ms. Alexia Borden; Dean Mark Brandon; Ms. Sarah Beatty Buller; Dean Charles Campbell; Judge John Carroll (ret.); Ms. Florence Cauthen; Ms. Kate Cotton; Hon. Elton Dean; Hon. Gerald Dial; Mr. Jim Duff; Dr. Glenn Eskew; Mr. Joe Espy; Ms. Monique Fields; Hon. Louis Franklin; Montgomery County District Judge Monet Gaines; Mr. Bob Geddie; Mr. Lewis Gillis; Mr. Trey Granger; Mr. Fred Gray; Mr. Johnny Green; Montgomery Circuit Judge Sally Greenhaw (ret.); Ms. Debbie Hackett; Rev. Cromwell A. Handy; Mr. Lamar Higgins; Ms. Liz Huntley; Ms. Sidney James; Mr. Johnny Johns; Ms. Vera Jordan; Ms. Jay Lamar; Ms. Vanessa Leonard; Dr. Eric Mackey; Ms. Danielle Ward Mason; Mr. Phillip McCallum; Mr. Mac McLeod; Mr. Ed Mizzell; Dr. Valda Montgomery; Rev. E. Baxter Morris; Chief Justice of the Alabama Supreme Court Drayton Nabers (ret.); Dr. Charles Nash; Ms. Nichelle Nix; Dr. Cathy Randall; Mr. Quentin Riggins; Ms. Sheron Rose; Dr. Quinton Ross; Ms. Kathy Sawyer; Mr. Todd Schmidt; Mr. Lee Sentell; Hon. Todd Strange; Dean Henry C. Strickland III; Chief Justice of the Alabama Supreme Court Lyn Stuart (ret.); Mr. John Turner; Hon. Ronda Walker; and Dr. Laurie Weil.

6. See generally *Judge Frank M. Johnson Jr Centennial Celebration*, ALMD (Feb. 23, 2019), <http://www.almd.uscourts.gov/news/judge-frank-m-johnson-jr-centennial-celebration>.

States District Judge Emily C. Marks welcomed participants to the Dexter Avenue King Memorial Baptist Church, where United States Circuit Judge Joel F. Dubina and others offered a variety of inspirational readings.⁷ Chief United States District Judge W. Keith Watkins welcomed guests to the Frank M. Johnson Jr. U.S. Courthouse Complex, where additional speakers, including former United Nations Ambassador Andrew Young, addressed participants.⁸ In the beautiful courtroom where Judge Johnson once presided over cases that would help shape history, United States District Judge Myron H. Thompson also talked about the new Judge Frank M. Johnson Jr. Institute introduced by Judge Watkins the previous day. The Institute will continue to carry on Judge Johnson's legacy, will explore the link between law and social change, and will provide educational services.⁹

In addition to the previously noted events, the Centennial Celebration also honored Judge Johnson with a program at the Alabama Shakespeare Festival. The program focused on the September 15, 1963, bombing of the Sixteenth Street Baptist Church in Birmingham, Alabama, that resulted in the deaths of Addie Mae Collins, Carol Denise McNair, Carole Robertson, and Cynthia Wesley and on the efforts to deliver justice for these young victims.¹⁰ The horrific event instantly gripped national attention. For instance, the front page of the *New York Times* the following day included the headline, "Birmingham Bomb Kills 4 Negro Girls in Church."¹¹ Another headline on the same front page declared, "Full-Scale FBI Hunt on in Birmingham Bombing."¹² Yet insufficient investigative efforts failed to yield a successful prosecution for many years.¹³

Over a decade later, Alabama's young, new Attorney General Bill Baxley would revisit the investigation into the bombing and secure the conviction of

7. The program at the church where Dr. King preached also included Reverend Cromwell Handy, Laurie Weil, Greta Lambert, Cordelia Anderson, Jack Bass, Rabbi Scott Looper, and the Alabama State University Choir directed by Kristofer Sanchack.

8. Speakers at the courthouse also included Wayne Flynt, Peter Canfield, Howell Raines, and Judge Marks.

9. See The Judge Frank M. Johnson, Jr. Institute, FACEBOOK, <https://www.facebook.com/thejohnsoninstitute/> (last visited Feb. 23, 2020); see also Judge Frank M. Johnson Jr. Centennial, ALA. BICENTENNIAL, <https://alabama200.org/frank-johnson-centennial> (last visited Feb. 23, 2020).

10. The program also featured a performance of a play, *Four Little Girls: Birmingham 1963*.

11. Claude Sitton, *Birmingham Bomb Kills 4 Negro Girls in Church; Riots Flare; 2 Boys Slain*, N.Y. TIMES, Sept. 16, 1963, at 1, <https://www.nytimes.com/1963/09/16/archives/birmingham-bomb-kills-4-negro-girls-in-church-riots-flare-2-boys.html>.

12. *Full-Scale F.B.I. Hunt on in Birmingham Bombing: Full Inquiry Ordered*, N.Y. TIMES, Sept. 16, 1963, at 1, <https://www.nytimes.com/1963/09/16/archives/fullscale-fbi-hunt-on-in-birmingham-bombing-full-inquiry-ordered.html>.

13. See DOUG JONES & GREG TRUMAN, BENDING TOWARD JUSTICE: THE BIRMINGHAM CHURCH BOMBING THAT CHANGED THE COURSE OF CIVIL RIGHTS 33–38 (2019) (describing issues with contemporary investigation).

Robert E. Chambliss for the first-degree murder of Carol Denise McNair.¹⁴ Attorney General Baxley personally argued the case. The trial coincided with McNair's birthday, and as the trial drew to a close, he told the jury, "You twelve have an opportunity to do something no one else can do. You have the opportunity to give her a birthday present."¹⁵ Because of the challenge of gathering and presenting evidence years after relevant events occurred, prosecuting the case so long after the bombing was no easy task. Securing a conviction and delivering justice were harder.¹⁶ Winning a conviction reflected extraordinary lawyering by Attorney General Baxley and his colleagues in the Alabama Attorney General's Office.

Attorney General Baxley and three of his former colleagues from the Attorney General's Office fascinated and inspired the audience at the Alabama Shakespeare Festival with a detailed discussion of work on the case. In addition to Attorney General Baxley, the discussants included Judge Thompson, Chief United States Circuit Judge Ed Carnes, and former Deputy Attorney General of Alabama George Beck.¹⁷ Although justice may have been delayed, they, like Judge Johnson, ensured that justice was delivered. Their powerful description of how they delivered justice follows.¹⁸

14. See *id.* at 44–68; Bill Richards & Andrew Kilpatrick, *Alabamian Is Guilty in 1963 Fatal Bombing*, WASH. POST (Nov. 19, 1977), <https://www.washingtonpost.com/archive/politics/1977/11/19/alabamian-is-guilty-in-1963-fatal-bombing/cc885b43-ed44-44ce-a7c1-c56f91ebff23/>.

15. See Yasmin Moreno, *Bill Baxley Reflects on 16th Street Baptist Church Bombing*, HARV. CRIMSON (Oct. 17, 2013), <https://www.thecrimson.com/article/2013/10/17/bill-baxley-reflects-on-16th-street-baptist-church-bombing/>.

16. The conviction withstood a variety of challenges on appeal as the Alabama Court of Criminal Appeals upheld the conviction. *Chambliss v. State*, 373 So. 2d 1185 (Ala. Crim. App. 1979).

17. After they told their stories, United States Senator and former United States Attorney Doug Jones, who later would conduct his own prosecution related to the church bombing, joined them on stage. See generally JONES & TRUMAN, *supra* note 13. As noted by Attorney General Baxley below, former Alabama Attorney General and current United States Circuit Judge William H. Pryor Jr. deputized then-United States Attorney Jones, allowing him to pursue the matter in state court.

18. The transcript below was edited for accuracy and clarity by the speakers. We thank Risa L. Entreklin for her assistance with the transcription.

PANEL DISCUSSION

IN PURSUIT OF JUSTICE: THE INVESTIGATION, HISTORIC TRIAL AND
CONVICTION OF THE FIRST KLANSMAN FOR THE
SIXTEENTH STREET BAPTIST CHURCH BOMBINGALABAMA SHAKESPEARE FESTIVAL
WEDNESDAY, JANUARY 23, 2019*William J. Baxley,* George L. Beck Jr.,**
Hon. Ed Carnes,*** & Hon. Myron H. Thompson*****

JUDGE THOMPSON: On September 15, 1963, a bomb exploded at the Sixteenth Street Baptist Church. Four little girls were killed: Addie Mae Collins, Cynthia Morris Wesley, Denise McNair, and Carole Robertson.

Later this afternoon you'll hear a play about these girls. But before that play, we would like to present to you a story about the dogged effort led by one person to seek justice, his dogged effort to find out who committed this horrendous crime, and his dogged effort to bring one of the perpetrators to trial.

Joining me here this afternoon is Ed Carnes, who was then assistant attorney general of the State of Alabama. Ed.

Also joining me is George Beck, who was then deputy attorney general of Alabama. George was the second man in charge. He really ran the office.

And finally, joining me here this afternoon is Bill Baxley, former Attorney General of Alabama. Bill.

I do have a cell phone here, because I'm keeping time to make sure that we cover a lot of territory, but I want to say that we really divided this afternoon into four parts. The first part is to give you sort of a background of events leading up to the bombing in 1963. The second part is to give you a story about the decision that was made to reopen the investigation of the bombing—and I emphasize reopen—and pursue a new investigation. The third part is to discuss the trial itself. And finally, the fourth part is to discuss the verdict and the events that followed.

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*** Chief United States Circuit Judge, United States Court of Appeals, Eleventh Circuit.

**** United States District Judge, United States District Court, Middle District of Alabama.

So my first question is really for Bill. Why don't you give us a little history about what it was like back in 1963?

MR. BAXLEY: Judge, thank you.

1963 was probably the most momentous year in the entire Civil Rights struggle, and Alabama was the center of that. In January of '63, Governor [George] Wallace was inaugurated and made the "Segregation Now, Segregation Tomorrow, Segregation Forever" speech at his inaugural. Later that spring over in Mississippi, Medgar Evers was assassinated going into his house. And in June of that year, Governor Wallace stood at the schoolhouse door to bar the court-ordered admission of two black students. And that's Governor Wallace and Nick Katzenbach, the Deputy Attorney General, who was Kennedy's Attorney General sent down on the scene.

Later that summer, quite a few things happened. We had several bombings in Birmingham. The houses of—well, you had the August March on Washington with Dr. King, the "I Have a Dream" speech. You see pictures there. But in Birmingham, you had quite a few bombings that occurred right around that time because a court order had finally played out that had been pending for several years—it finally came down to be final—that some—a very few—handful of black students were going to be admitted to the formerly all-white Birmingham school system.

The picture you just saw of the two little children—if you go back to that picture, if you can—well, that's okay. But that was two of the little children, little Armstrong children. You had also Fred Shuttlesworth, who was leading the parade for them. And the lawyer—one of the lawyers, Oscar Adams, who was trailing there with the hat on, he was the first African-American to ever be elected—appointed to and then elected to the Alabama Supreme Court. But that's what the children saw at every school. That was Phillips High School, and that's what they were met with when the little children were sent to the schools.

But later in August, after that ruling came down, it really escalated in Birmingham. And that's Arthur Shores, who was one of the lawyers also in the cases. His house was bombed twice, once in August and then again in September, about a week before the bomb went off at the church. And there also was a bomb that went off in August, I believe it was—no, in June at A.D. King's house, who was Martin Luther King's brother, who was a pastor in Birmingham. That's his house where the bomb went off.

But then in September—well, earlier; it was culminating in September. You had the demonstrations that became known as the Children's Crusade. And this was important. The center of the demonstrations was the Sixteenth Street Baptist Church. And the minister allowed the church to be used where the young people that were primarily the demonstrators would come in and be schooled on being nonviolent, be taught about how they had to endure whatever taunts came their way and whatever. And they were going to—the plan was to march out of the church and march just several blocks to City Hall and make their

demands. But they never did get to City Hall because when they marched out of the church, they were met with fire hoses, police dogs, and the might—all the might of the Birmingham establishment, the law-enforcement establishment.

And it was because the police commissioner was Bull Connor. And Bull was one of the most, I suppose, vicious racists we had in Alabama on the scene. And Bull had been defeated for mayor, but he refused to vacate his office. And that tank there was a water tank that Bull had especially made. And he rode around in that tank that had a water cannon on it. And it's now in the Civil Rights Institute in Birmingham.

But the children marched out of that church and were met with the fire hoses you just saw and the police dogs. And they were—you can see these pictures went all around the world.

And it was enough to where some business leaders in Birmingham happened to be in Tokyo when these pictures were splattered all over the front pages of the newspapers in Tokyo, and they said something has got to be done. Birmingham is going to be dead if we don't do something.

So the business leaders came back, and they effected a settlement of the grievances that the marchers were marching for. It was a very modest settlement. It didn't do anything much for integration, but it did save the downtown stores. Most of them agreed to hire—each one would hire one black salesperson. And so the kids really won a victory without even getting down to City Hall. But about 3,000 of them were arrested and carried in school buses. They overflowed the jails, and they had to build a stockade out at the fairgrounds, the state fairgrounds, to keep them in.

But then after the children were arrested, when the kids started going to school, then it really exploded after the bombs went off in the ministers' houses. And on the fifteenth of September, as Judge Thompson mentioned, the bomb went off at the headquarters of the marchers, the Sixteenth Street Baptist Church.

JUDGE THOMPSON: Bill, wasn't the city actually known as Bombingham?

MR. BAXLEY: Bombingham?

JUDGE THOMPSON: Right. That's the way it was always talked about.

MR. BAXLEY: There were so many—forty-something bombs went off. And it got the name—nickname or infamous nickname of Bombingham instead of Birmingham.

JUDGE THOMPSON: Right.

MR. BAXLEY: And it turns out that Chambliss was responsible for the vast majority of those forty-something bombs that went off over a course of almost twenty years.

JUDGE THOMPSON: Now, we do have pictures of the actual church destruction after the bomb. Do you want to show them, Bill?

MR. BAXLEY: Sure.

JUDGE THOMPSON: I think you can actually see—I think it's called the crater—where the bomb went off.

MR. BAXLEY: Well, if you notice, there was a—

JUDGE THOMPSON: And then we want to look at the picture in the church.

MR. BAXLEY: Yes. The church—that's the most famous picture. That was a very beautiful stained-glass painting of Christ, the Good Shepherd. And the only damage it really did to that was to blow His face out almost like He couldn't stand to see even the image of it, couldn't see what had gone on.

But if you'll show those pictures of the damage to the church, and you see the blast, the huge blast. And it was placed under the stairs at the back of the church. And it just happened that at the top of the—that was right—those stairs were right by the ladies' restroom. And the little girls were in between Sunday school and church. They were in the restroom. There were five of them in there.

And if you notice that, those cars were blown back almost five feet away from the curb. They had been parked with the tires up on the curb, and they were blown back about five feet.

You see the damage to the buildings across the street there. There are quite a few other pictures of the church. You can run through them and show the damage.

JUDGE THOMPSON: Bill, where were you when this happened?

MR. BAXLEY: I was getting ready to start my senior year in law school at The University of Alabama. And I vividly, vividly remember it. It had been, like we said, a momentous year. But this was, by far, the worst of anything that happened when it came out there were little girls killed in church. And it affected me visibly, and I couldn't eat.

Keep going on with the pictures, if you would. Can I sit?

JUDGE THOMPSON: Yes. Come on. Let's sit down.

MR. BAXLEY: You'll see that is the—the little girl, Denise, the eleven-year-old, was standing at the wash basin there, and one of the other little girls was tying her sash, retying her sash. That's where she was standing when the bomb went off.

JUDGE THOMPSON: Right.

You know, I remember the incident as well. I think as a child, you always think there are two safe places: your home and your church. I grew up in the church. And I guess every child thinks that if you go home, you're safe. And a lot of civil rights people went to the churches for safety. They would gather at the churches for safety. And for a small child, between hearing about these four little girls and hearing about Emmett Till, you sensed that people would come after you if you were black—even if you were a child—and harm you. It was an incredibly traumatic time, I think, not only for the State, but just, I think, for

any child—particularly a black child—who was able to understand what was going on.

MR. BAXLEY: The minister's sermon this day that was publicized was—the subject was “The Love That Forgives.”

JUDGE THOMPSON: All right.

JUDGE CARNES: But Bill, in his closing argument, told the jury he didn't want to pay a whole lot of attention to that. He was more interested in the Old Testament. It was a beautiful thing to hear.

And he told them that Chambliss had not one tinge of sympathy and not to show him any either.

JUDGE THOMPSON: I want you to tell us now about your election as Attorney General. Now, you were elected in 1970 at the age of twenty-eight as Attorney General of Alabama. When had you decided to pursue the perpetrators of this bombing?

MR. BAXLEY: Well, when the bomb went off, as I said, it affected me. And I made a vow to myself that I wanted to try to do something. Now, you've got to understand. What I envisioned at that time being able to do was maybe—I thought and hoped that maybe the FBI, the Justice Department, would make an arrest. And I was going to go volunteer to write briefs; tote briefcases; bring Cokes, hot dogs, cigarettes to the investigators or the lawyers and do—that's what I envisioned being able to do if something were done. And, of course, nothing was done. And in 1968, the Feds closed the case file. They never had an investigation that really was serious at the local or state level.

JUDGE CARNES: It was J. Edgar Hoover that ordered the file be sealed. We later came to suspect it was because the FBI had a number of wiretaps that were less than perfectly kosher in the case.

MR. BECK: I was only a freshman in law school when the bombing occurred. And, you know, it was a real serious thing. You're there to study the law, study about justice, and there something like that happens just, what, sixty miles away, I guess, in Birmingham while you're in Tuscaloosa. But it seemed like after that, after—there were a couple more bombings, and then after that, it kind of died down and quit and the talk about it did. There didn't seem to be, especially when the FBI closed its file, any effort on the city, state, or federal level to seek justice and to investigate the case. And—

JUDGE THOMPSON: In fact, why don't you tell them what the theory of the State of Alabama was as to who perpetrated this act—what the theory was.

MR. BECK: Well, the State, of course—the first thing was that the blacks themselves bombed their own church just to get sympathy. That was a big—a big theme. When we started investigating, we quickly dismissed that. We knew who had the opportunity and the means and the motive to do that, and we worked it up from there.

But when Bill was elected at that age, twenty-eight, he asked me to be the deputy. And he told me that the priority was going to be this case. And I said, "Great." And I was enthused about it, but I didn't have the passion that Bill had about it because we had other things we were doing on corruption and government theft and insurance companies. So we were doing a lot of different things, but Bill kept coming back to that.

And three or four years into that first term, I got a peek at the file. And when I saw the charred remains of those four girls on those coroner slabs, I knew that I had to get passionate about it because you can see the death there but you can hear—you can hear the liveliness. Because just minutes before they were killed, they were giggling. They were having a good time. They were looking forward to Youth Sunday. They were talking about going to a movie after church. And then bam.

And so you had to go home and hug your daughters and know that something's got to be done. So from that time forward, I rededicated myself to helping Bill any way he wanted.

JUDGE THOMPSON: Bill, you actually decided, though, to pursue this case before you were elected.

MR. BAXLEY: Well, when I was running, I knew that if I won—and I hoped I would win—that that was going to be a priority for me. I didn't tell anybody, because if I had told anybody, I never would have got elected. I had—the day before I got sworn in, they gave us a badge and a commission and keys to the office.

JUDGE THOMPSON: Why don't you show them what you're talking about. I think that's the PBX.

MR. BAXLEY: Yeah. This is before the days of the 800 number.

And so they gave us that little card, the officeholders and maybe the higher ranking officials. And that card had a number of the largest cities in the state, and it had a local number for Birmingham and Huntsville and Anniston and whatever—Mobile. And so you could dial that local number, and it would ring at the state switchboard here in Montgomery. And so then you'd say—the little lady would come on, and you'd say, "How about ringing my office? Or ringing the governor's office?" Or if you were in Birmingham, you could call and say, "I need you to ring a number in Mobile for me." So they would hook you in to Mobile. So I knew that I would be using that card quite a bit. And so I wrote down—the day before I took the oath, I wrote down on that card, because I knew I'd be using it—turn to the back, if you would.

JUDGE THOMPSON: It's the next card over. Right. That's it.

MR. BAXLEY: Yes. This is the back of that first card. So I wrote down the numbers one, two, three, four, and I put the names of the little girls, the four little girls. You see that's my handwriting. The one on the top got worn off because I used the card so much. See, I had it in my billfold. But I wanted to be reminded every day that I was—every time I used that card that I wanted to

do something about those little girls if we didn't do anything else. So I used that card every week while I was in office. And it was a constant reminder, we need to keep going, keep going, keep going.

JUDGE THOMPSON: So when did you actually decide to pursue this case after you were elected?

MR. BAXLEY: Oh, within a couple of weeks. We sent over—I first sent over and got files from the state troopers, and then we went to Birmingham and got a copy of the Birmingham file and a copy of the Jefferson County sheriff's file and started working on those. But they weren't much help, because they didn't—

JUDGE THOMPSON: I think you also said most of them showed that they thought the blacks had done this to themselves.

MR. BAXLEY: Yes. Most of the manpower was spent on trying to prove this theory that George mentioned that the blacks had set the bomb themselves to, quote, get sympathy, which it's hard to imagine how anybody could seriously think that.

JUDGE CARNES: When it came time to strike the jury, that informed Bill's decision that he didn't want any white folks over forty years of age on the jury. And, of course, the defense didn't want any black folks over, under, or around the age of forty. So they used all their strikes. And this was way before *Batson*.¹⁹ It was a decade before *Batson*. And they used all their strikes to strike blacks off, and Bill was striking all the older white folks. So the jury, according to one newspaper account—I don't remember—at the time, of course, I'm twenty-seven—everybody looked like they were ancient who was in their forties.

And the newspaper report said the largest representation was white housewives in their forties on the jury.

JUDGE THOMPSON: Now, who was your team?

MR. BAXLEY: Well, the trial team was George and John Yung and myself. The person who was going to handle the appeal, if there was one, was Judge Carnes, Ed Carnes. The investigation was headed up by Jack Shows, former detective—chief of detectives in Montgomery who had solved the bombing in Montgomery of Dr. King's house back in the '50s. And I knew that Jack had solved that and even gotten confessions from the Klan, and the all-male, all-white juries turned them loose. But I decided then I wanted to get to know Shows and became friends with him, and then I hired him when I got elected Attorney General. By then, we had been friends. But the reason I decided I wanted to be friends with him was what he did on solving that case of Dr. King's bombing in Montgomery.

Then we also have John East. I think Tom Ward was an investigator, another retired Montgomery officer. We had other guys that floated in and out of

19. *Batson v. Kentucky*, 476 U.S. 79 (1986).

the investigation. George Royer. Later, I don't want to jump ahead, but when we got access to some of the information the FBI had, then I decided I wanted a new set of eyes looking at it, and I brought Bob Eddy in.

JUDGE THOMPSON: Well, why don't you tell us about how the FBI got involved.

MR. BAXLEY: Okay.

JUDGE THOMPSON: And I want to hear George's view on this and your view, because they're not the same view.

MR. BAXLEY: All right. Our first tip was that the people that had done the bombing was a group out of the Atlanta area, J.B. Stoner and his group, whose assistant was Dr. [Edward] Fields. And is that Stoner?

JUDGE THOMPSON: No. This is—

MR. BAXLEY: Oh, that's Jack Nelson.

JUDGE THOMPSON: That's Jack Nelson. Right.

MR. BAXLEY: So we chased Stoner for the better part of a year, and it turned out he didn't do it. He and his group did a lot of bombings around, and they bombed temples. They bombed Jewish temples in Charlotte, Nashville, Miami, Jacksonville, Atlanta, set a bomb at Temple Beth-El in Birmingham that didn't go off, thank goodness.

But it wasn't a total waste. Even though Stoner and his group—and they were as bad as they came—even though they didn't do that bombing at Sixteenth Street, we did find out that they had set off a bomb earlier, in the '50s, at Reverend Shuttlesworth's church—a very brave man—leader in the Birmingham area. And so we indicted Stoner and later convicted him of bombing Reverend Shuttlesworth's church.

We couldn't—the statute of limitations had run on the church bombing. So everybody thinks we convicted him of that, but we really didn't, because the statute of limitations ran because nobody was injured, thank goodness. But under the Alabama statute—and then this is something that George and Ed and other young guys did. Very creative. They found that the statute in Alabama did not have a limitation on it if a bomb caused injury, death, or an explosive was set off in or dangerously near to an inhabited dwelling.

So these guys went back and—and even though the church was bombed, we didn't charge him with that because the statute of limitations had run. They charged him—they went back and found out who lived in the houses on either side of that church. It was about a—less than a yard away from either side, and they found out who was occupying it in 1957 when the bomb went off. And so we convicted him of setting off explosives dangerously near the such-and-such residence occupied by so-and-so. That's what we convicted him of.

MR. BECK: And then the sideline on that is that even the police force at that time, Bull Connor, was under a little pressure to arrest somebody because, as Bill said, they'd had, by this time, forty-something bombs going off. So they had heard about Stoner and the Confederate underground. So they arranged to

buy him to come over and—pay him \$5,000 to come over and bomb Shuttlesworth’s church. And he agreed to do it. They set it up through undercover detectives, and he was going to—they were going to—agreed to do it on Thursday night. Well, Stoner got wise to it and came over and bombed it on Wednesday night. And, of course, there were no witnesses, so Connor had egg on his face, and they just filed that away. Later we got those documents and got the exact testimony and statement of Stoner and were able to put that case together, which he was later convicted of.

JUDGE THOMPSON: Let’s go back to when you got the FBI records.

MR. BAXLEY: Okay. There’s one other little thing that’s kind of interesting. After we realized Stoner didn’t do it, we next got off on another kind of wild-goose chase, and we heard that the Montgomery Klan had done it.

JUDGE THOMPSON: Right.

MR. BAXLEY: And I should have had enough common sense to know the Birmingham Klan was mean enough. They didn’t need any help from the Montgomery Klan.

We ended up—although our information was wrong and the Montgomery Klan didn’t do that bombing, we did solve a case where the Montgomery Klan had killed a young man whose only crime was being black and being hired by Winn-Dixie to drive one of their trucks. They killed him out here off of a bridge over the river. Made him jump off. And it never did go down as a murder, but we solved that. We weren’t able to bring them to trial, but we did solve the case.

Then we started zeroing in—this is what you asked about.

JUDGE THOMPSON: Yes.

MR. BAXLEY: We finally realized that the people that it looked like had done it was the Chambliss group, a Klan group in Birmingham. And after we got into that, we realized that the FBI had focused on them, on the Chambliss group, from the beginning. Within minutes, practically, of the bomb going off, they knew who did it or who—

JUDGE THOMPSON: You said, if I’m repeating you correctly, the FBI knew who had committed the Sixteenth Street Baptist Church bombing within a few days after it happened.

MR. BAXLEY: Within—less than a few, less than one.

JUDGE THOMPSON: Less than one. The FBI knew this.

MR. BAXLEY: But we knew then that we needed to get help from the FBI and at least coordinate with them, because our people that we were uncovering by then were saying, “We told this to the FBI back when it happened,” blah, blah, blah.

So I was kind of naive, and I thought that I had had a good record of working with the FBI when I was DA in Dothan and as Attorney General. So I sent in through channels where they could cooperate with us because I knew the federal statute had run, so it wasn’t interfering with an active prosecution. And I didn’t hear from them. And time went by and time went by—and I knew

they were going to have to check me out as being a Deep South guy you shouldn't just be sharing your information with. But we didn't hear. And weeks turned to months, and the months turned to years. And by then, several years had passed, and I still hadn't heard.

And so I was in Washington one time, and I can't remember exactly the date except I remember Gerald Ford was President, and a man named Levi was the Attorney General. And so I had a good friend up there named Jack Nelson. That's the man in these pictures.

JUDGE THOMPSON: Yes. That's Jack Nelson.

MR. BAXLEY: And Jack was from Alabama originally, Talladega. But Jack was one of the most famous newsmen—he's passed away now—that we've ever had in the United States. He was, for nearly thirty years, the Washington bureau chief of the *Los Angeles Times*. And so I would see him most of the time when I would go to Washington. And this one night I was up there—and usually we'd go out to eat, or I'd go to his house. And so he said, "Are you still working on that bombing case?" I said, "Yeah, but I think we've reached a dead end because we think we know who did it, but the FBI has got a lot of information on them. They knew who did it. And I thought they'd cooperate." And I explained the whole thing to him.

And Jack said, "Well, if you want me to, I think I might can help you." So he said, "I've got some pretty good clout over at the FBI, and I think I might could help if you want me to try." I said, "Yeah. Absolutely. Please do."

So later I went on back to the hotel. He went home. And early the next morning, he called me and says, "Baxley, you had your coffee yet?" I said, "Yeah. I had two cups." He said, "Well, all right. You sure you still want me to try to get the FBI on that case with you?" I said, "Yeah. Absolutely. We're gone if we don't." He said, "All right. I just wanted to make sure you felt the same way after you had your coffee as you did when you had four or five beers."

I said, "Yeah." So he said, "All right." So it turned out later what he did when he went over there and told the Attorney General that—he says, "My bosses at the *Times* have authorized us to run a front-page story for a week across the top of the headline. It's going to say the FBI and the Justice Department are preventing the lawful authorities in Alabama from prosecuting the Ku Klux Klansmen that murdered the four little girls." Said, "We're going to bring the little girls' relatives up here and take their pictures in front of the FBI. We're going to bring the prosecutors up here and take their pictures in front of the Justice Department. We're going to run it for a full week. Then they're going to syndicate it, and we're going to submit it for a Pulitzer."

And they said, "Give us more time. Give us a little time." So Jack called me and told me, said, "I think you'll be hearing something."

And sure enough, within a reasonable time, I got a call from the special agent in charge of the FBI in Birmingham. And he acted like it was just something that had been on his desk for a week or two. He said, "Mr. Baxley, that

request you've got on working with your office with the bombing case." Said, "We want—we're going to OK that." Said, "What you're going to have to do—we can't let our files out. And you're going to have to send somebody, whoever you want to, up here. We'll make them a space in our office, and we'll cooperate with you, cooperate with them."

And so that's when I got a fresh set of eyes on it. That's when I called Bob Eddy, who hadn't been working on the case.

JUDGE THOMPSON: Bob Eddy had been the sheriff up in Huntsville.

MR. BAXLEY: In Huntsville, Madison County. Bob was a great investigator. All of them were. And I said, "Bob, you haven't been working on this, so you don't have any preconceived notions. I want you to start from the beginning, find out everything there is about our—in our file, in our case. And then you move to Birmingham, get you a hotel room or an apartment—the State will pay for it—and you stay there until you finish this case."

And he went down to the FBI office, and that's when I learned that the FBI's—no, I didn't learn it then. Twenty-five years later I learned that the FBI's definition of cooperation is about daylight and dark from mine. If Bob knew enough to ask for something, they would bring him what they had. He couldn't copy it, but he could make notes. But if he didn't know to ask, they wouldn't tell him they had it.

And so it turned out later when Doug Jones was prosecuting two—I don't want to jump ahead of ourselves—that it turned out they had information in their files that they didn't tell us about. And we didn't know to ask for it, so we could have convicted at least one more when we convicted Chambliss. But that's getting ahead.

JUDGE THOMPSON: I want to ask George about the FBI. Now, you said there was a memo that the FBI sent around—

MR. BECK: Well—

JUDGE THOMPSON: —asking their agents to investigate, but—

MR. BECK: That's right. It was called the Hoover memo. And it was published, I think, in about '63, '64. And it was directed to all their field agents, their special agents in charge, just saying that you could cooperate locally up to a point and you can investigate, but you're not to get heavily involved and not to try to bring the case, you know, in the federal system or state.

I got off a little bit, Bill and I did, between the FBI, because I knew the FBI had a lot of informants. In fact, 1965, we learned after the fact that when they'd have a Klan meeting, if twenty people showed up, half of them were informants paid by the FBI. I know when Ms. [Viola] Liuzzo was killed, you know, the FBI had to burn one of their informants at that time. So I always had the feeling that the FBI had received information, new information, and was holding back information because they didn't want to look bad because they did not want to be put on the spot.

JUDGE THOMPSON: Go ahead, Bill. Go ahead.

MR. BAXLEY: I want to say when I criticize the FBI—and George too—we are not critical of the FBI agents that did the work. They were super.

MR. BECK: No.

MR. BAXLEY: They absolutely were wonderful. It's the decision makers at the FBI level, high level, that we're critical of.

JUDGE CARNES: To put that in perspective, when they finally unsealed the records to the U.S. Attorney's Office in Birmingham, which shared them with the State in 1995, there were 9,000 pages.

MR. BECK: But Bob was so frustrated, and that's what caused alarm because he didn't know—he had to hold his mouth right, like Bill said, to get the information. And even then they would keep some people's name confidential and they would have a stage name or a pseudonym or something, and he wouldn't know who that was. And a lot of times, they wouldn't tell him.

JUDGE THOMPSON: Well, let's move on to the actual investigation that followed after you got this information from the FBI, the witnesses, people you started talking to.

George, why don't you tell us about that.

MR. BECK: Well, of course, one that became very important was Ms. [Kirthus] Glenn. And Jack Shows had gone up to Detroit. She had been visiting on the night of the bombing, and she had gone by and actually seen and identified Mr. Chambliss. She did it to the FBI within days. That's why they knew within days.

JUDGE CARNES: She told the FBI he was out on the street in a car with a dome light on at two in the morning in the black section of Birmingham in an alley behind the church. Two a.m.

JUDGE THOMPSON: And obviously, she thought it was suspicious that two white men would be in a black neighborhood.

MR. BAXLEY: Four white men.

JUDGE THOMPSON: Four white men. Thank you, Bill.

MR. BECK: She couldn't see but two of them, but there were four when she identified the two.

JUDGE THOMPSON: That's right. But Bill—

JUDGE CARNES: Chambliss was on the passenger side. She was driving that way. The dome light was on. So she picked Chambliss out of a photo lineup that had a lot of folks in it with the FBI within two months of the crime.

JUDGE THOMPSON: So the FBI—

MR. BAXLEY: She said that week that Chambliss—she dead-level recognized him, picked his picture out of a big bunch of pictures, and also gave a to-the-T description of Blanton's car that they were riding in. And is that—

JUDGE THOMPSON: Is this her?

JUDGE CARNES: Yes.

MR. BAXLEY: That's Ms. Glenn.

JUDGE THOMPSON: Okay. Why don't you tell us about going to Detroit.

MR. BAXLEY: Okay. So I sent Jack Shows up there and a couple of other investigators to Detroit. They found her in Detroit. And it took a while to find her. And so they went up there and interviewed her and came back. And Jack came to see me and said, "Well, found Ms. Glenn; talked to her." Said, "I've got good news and bad news. Which one do you want to hear first?"

I said, "Well, tell me the good news."

He said, "Ms. Glenn is a very smart person. She's a very nice lady. She's very believable. She's obviously telling the truth. She can put it on Chambliss absolutely. She knows Blanton's car. And she's the kind of person that the jury is going to love."

I said, "Well, what in the world can be bad?"

And he says, "Well, she says she's not ever going to come back to Alabama again."

Back then, you couldn't make a witness from out of state come to state court. Now every state has what they call a reciprocal witness act. You can. But you couldn't back then.

And I said, "Well, you need to go up there and tell her so-and-so and so-and-so, so-and-so and so-and-so."

He said, "We told her all that."

"No. You go back." And I wrote down on a legal pad. "You go back and tell her this."

He says, "We told her."

I said, "Go tell her just like I've got it written down."

So they went back; came back, said, "She won't come."

I said, "All right. Let's try another plan." By then we had already—with Judge Thompson being the first, we had hired quite a few African-American assistant AGs. And we had one guy, Milton Belcher, who lives in Montgomery, that I thought was—no offense, Judge—but the most personable—

JUDGE THOMPSON: I wasn't there. You're not offending me.

MR. BAXLEY: Milton, I thought, was the most personable of the black assistants that we had. He was very outgoing. He was president of the student body at his high school in Elba, which was 99% white. I mean a very outgoing, friendly guy. So I took Milton up there, and Milton—she wouldn't go.

So I said, "I've got to go myself." So I went myself. I said, "I have to do everything that gets done here." So I started—

And she had put out all these goodies for us. And Jack said she had done it from the beginning every time. And tea and cookies and cakes and home-made stuff. And so I started telling her every way I could why she needed to come back to Alabama.

And she said, "Mr. Baxley, you seem like a nice man. All these people you've sent up here are nice people, but I just hate that you've wasted your

time.” Said, “I’ve told them that I am not coming back to Alabama, and I am not going back under any circumstances.” She said, “I wouldn’t even fly over Alabama in an airplane. I wouldn’t even breathe a breath of air that came out of—in fact, if I were deceased, I wouldn’t allow my remains to be carried through Alabama.”

And so I went over there. I was torn between being angry at her and being frustrated and being sad. I went over there to that little tray that she had put out, and I noticed she had a *JET* magazine. And I picked it up, and it fell open to a page that was a—the whole issue was about the Montgomery Bus Boycott. And the page it fell open to had a picture of Rosa Parks and her attorney, Fred Gray. And on the other side it had a picture of Dr. King and Fred Gray.

And so I picked that up and went back over there. And I said—I said, “See this picture of this man right here? That is the lawyer, the man that Dr. King trusted the beginning of the Civil Rights Movement to. When it was born, he trusted this man, Fred Gray, and Fred Gray delivered for him in the U.S. Supreme Court.” And I said, “If the man that Dr. King trusted at the birth of the Civil Rights Movement was to come up here and tell you that you need to go back to Alabama, would you?”

She said, “Well, I’d certainly consider it.”

So I said, “We’re out of here. Let’s go.”

I said, “Go to the first pay phone.” Back then, we had pay phones every other block.

I stopped at a pay phone and called Fred and got him and told him what the—the story. And he said he’d drop everything and come up there. So we stayed in Detroit and sent the state plane back to pick Fred up. He came up the next morning.

Went over there; we went to see her early. She put the goodies out for us again.

Before she let Fred talk, she got up—I mean, she wasn’t one of those wall-flowers. She got up and got that magazine, and thank goodness Fred didn’t age much.

She held it up right there in his face. She looked at him and looked at the picture and looked at him and looked at the picture. And she finally said, “It is you.” So then she let Fred talk. And Fred, thank goodness, did something we couldn’t do. And Fred convinced her she needed to come back. She agreed to come back. She was one of the two best witnesses we had.

JUDGE THOMPSON: Why don’t we move on to the trial itself. One of the reasons we have to keep this moving is because we don’t have but so much time.

We had four little girls. And I want to talk about the little girls themselves, because sometimes we get caught up in the prosecution and the people who perpetrated this heinous attack, but we forget that we are talking about four little girls. And the first one was Addie Mae Collins. And she was considered

rather shy, but people who talked to her and talked to her friends said she was this incredible softball player.

She also had a sister, didn't she, Ed?

JUDGE CARNES: She did. Sarah.

JUDGE THOMPSON: Sarah. And Sarah was in the church at the same time. Why don't you tell us about that.

JUDGE CARNES: She was. She was in the same room.

MR. BECK: Addie Mae's sister?

JUDGE THOMPSON: Yes. That was Addie's twelve-year-old sister. Addie Mae was fourteen.

JUDGE CARNES: Denise was the youngest, was eleven. The other three girls who were killed were each fourteen. In fact, they were born in the same month in the same year. And then Sarah was twelve. And she was in there and was helping one of the other girls and was facing a mirror when the explosion happened. And she had very serious damage. She's sometimes referred to as the fifth victim even though she survived. They took over twenty pieces of glass out of her. And do we have a picture?

JUDGE THOMPSON: That's Addie Mae there.

JUDGE CARNES: That's Addie Mae there. We probably don't have it here but there's a picture taken of Sarah in the hospital with bandages over both eyes. And they thought she was going to be blind. She eventually regained sight in one eye and was the one person in that room who survived and is still alive today.

JUDGE THOMPSON: I think when they found her, she was just calling out, "Addie, Addie, Addie."

The other one is Cynthia Morris Wesley, who is in this picture. She was considered by her teachers to be an incredibly brilliant student. She was a saxophonist and had taken dance lessons. Her biological parents were known as the Morrises, but the Wesleys had taken her in so that she could go to a better school. And she would go home to her biological parents every Sunday.

The next one is Denise McNair. Now, Denise—this is rather interesting, which I have just uncovered. Denise wrote a short story called "The Boy Who Wanted a Pet." And the story—can you imagine, this is from an eleven-year-old girl—was about black and white kids playing together. So even at the age of eleven, she recognized the world as it existed and the world as she wanted it to be. And so her story was about a world in which these black and white kids played together.

And I also find very touching that she holds this doll. I've been curious about the doll. Now, obviously, it's a white doll. That's probably another story. But this doll, according to our court librarian, was called the Chatty Cathy doll, which was a very—I see some people nodding heads out there, I never heard of it—popular doll back then. And it was the first talking doll that you pulled strings on; is that right?

JUDGE CARNES: Yes.

JUDGE THOMPSON: Okay. Oh, you know, huh? The first talking doll.

JUDGE CARNES: I keep hearing the story from my wife. If only she had kept it in the box, it would be worth \$10,000.

JUDGE THOMPSON: Right.

And finally, we have Carole Robertson. And, you know, when I was going through the appellate record in this case, which was a thousand pages, it was really difficult, first of all, to look at these girls. I mean just to look at them was hard because every time you looked at them, you thought about what happened to them.

And I always found Carole's dress rather interesting. I thought maybe she was going to church, but someone tells me she was probably going to a wedding, maybe had a part in a wedding. Then as I got to know about her more, I realized that we had so much in common. For instance, she liked Cole Porter. Her favorite song was "In the Still of the Night." But the really interesting thing I learned about her was that people said that she and her sister, Diane, and their friends would go to movie theaters. And back then, if you were black, you sat in the balcony. And they dropped popcorn on the people below.

And I remember—this drew back this memory, this very deep memory I had—that when I was a kid, my mom would send me and my brother to Nashville to visit my aunt, who had two boys approximately our age as well. And the big thing was to go to the movie theater. And, of course, when we went to the movie theater, we had to sit in the balcony. And my aunt said that one of us, her youngest son, could not go because he had been put out of the theater twice for dropping popcorn on white people below.

JUDGE CARNES: Is that where that popcorn came from?

JUDGE THOMPSON: So once, finally, we convinced my aunt to let us go to the movie theater and to let him go as well. He promised, just religiously promised us, "I will not drop popcorn. I will not do this." Of course, you not only sat in the movie theater, you sat at the front of the movie theater balcony when we were kids. And sure enough, fifteen minutes into the film, the usher goes like this (*indicating*), and my cousin Michael had dropped popcorn right on the white people below.

And so when I see this picture, I just love it because I realize that Carole shared this common memory of dropping popcorn on white people in a dark movie theater.

And she just stole my heart. I have to admit it. I have a feeling that she never would have settled for the status quo. She said, I just know, that "things have to change." And it draws to mind that as a child, there are certain times when the punishment is worth it.

And one of them is dropping popcorn over a balcony in a dark movie theater. So that was Carole.

And this is Sarah, I think, here. Is it, Ed?

JUDGE CARNES: Yes. That's her.

JUDGE THOMPSON: Correct. But anyway, Bill, I want to get back to you because you said you chose McNair to proceed with. So why?

MR. BAXLEY: Well, several reasons. She was an only child at the time.

JUDGE THOMPSON: Right.

MR. BAXLEY: And she was the youngest. And also, her dad at that time had been elected to the legislature and was well thought of and known in the white community as well. And so I felt like it might—we got four different indictments. George can tell more about that. George handled the grand jury. I didn't go to the grand jury. But we had to pick one of the four to try first, and I thought that possibly the combination of Denise being the youngest and being an only child and then some of them—people, even the white jurors, might be familiar with her dad, and he was well thought of at the time. And so that's why I happened to pick her.

If I could digress just a minute, the—when you mentioned Carole Robertson and what might have been, she has a cousin that became a lawyer and is a lawyer in Birmingham right now at one of the big, major defense firms, business firms in Birmingham.

And Cynthia Wesley, after her death, the family that was keeping her missed her so much, they went out and took in another little kid. And that kid that came in—not to replace her, but in a way—came in, followed her footsteps with the Wesley family. And she became a Ph.D.—she passed away about a year ago—and went to Texas and was a very successful educator and highly successful and well thought of. And so that tells you what—you know, you can't replace the losses of what these children might have been, might have done.

JUDGE THOMPSON: But again, so tell us about why Denise.

MR. BECK: Well, for all the reasons Bill said. But then we also realized that if we tried all four at one time and didn't get a conviction, then, you know, the case may be over. And also if we try one, get a conviction or don't get a conviction, then more evidence might break where we can add other Klansmen in the next round of criminal indictments.

MR. BAXLEY: And Judge Carnes says the law made us do it.

JUDGE THOMPSON: Yes. Why don't you tell us about the law.

JUDGE CARNES: I was in charge of making sure that if they got a conviction, there would not be a reversal. I always thought it would have been easier if I had been on the other side and swapped places with them, particularly when I heard Baxley's closing argument at trial.

We should have been able to charge Chambliss with four counts of murder and one count of aggravated assault for the four girls he killed. But at the time Alabama law was clear that only one crime could be prosecuted and only one conviction obtained for a single act, no matter how many people were killed or injured. We were one of only four states that had that rule. Most other states

reasoned that the degree of culpability and punishment should increase with the number of victims who were hurt, which is why they allowed a conviction for every person the defendant harmed. Because Alabama didn't, we had to choose one crime against one victim. And Bill chose to prosecute Chambliss for the murder of Denise McNair.

Incidentally, and fortunately, the law in Alabama changed in 1987. An opinion written for the Alabama Supreme Court by Justice Oscar Adams abandoned the old rule and adopted the majority position on single-act, multiple-victim crimes. That is why when Thomas Blanton was prosecuted for the same bombing in 2001, he could be, and was, charged with and convicted of four counts of murder, one for each of the girls killed in the bombing. Unlike Chambliss, Blanton received four life sentences instead of just one. The law had changed.

JUDGE THOMPSON: Now, Blanton being—

JUDGE CARNES: Oh, I'm sorry. Thomas Blanton, who was another one of Chambliss's gang. They had a small, violent—the Klan wasn't violent enough for them, so they had a small, violent group called the Cahaba River Bridge Boys or Cahaba Bridge Boys for short. And they would meet outside the Klan meeting to plan the really violent stuff away from the informants. And Thomas Blanton was one of them. He was in on—he was in the car. That was his car that night. He was in on the bombing. So was [Bobby Frank] Cherry. So was another guy named [Herman] Cash who got divine capital punishment inflicted on him before he could be tried. A fire truck fell on him, as I recall.

But in any event, Blanton and Cherry were tried in 2001 and 2002 after the 9,000 pages were released by the FBI. And by then, the Alabama Supreme Court had changed that rule so they were able to try four indictments, the murder of each child. You didn't have to pick one and go.

JUDGE THOMPSON: Now, what was the theory that was used? It wasn't really murder.

JUDGE CARNES: No.

JUDGE THOMPSON: They were not charged with just plain murder.

JUDGE CARNES: Our case was—absolutely. We had a little bit of fuss about this. But our case, we could not charge regular, at that time, first-degree premeditated murder. We had to charge first-degree universal malice. Premeditated—malice aforethought, they called it—was you intended to kill one person, and you kill them without legal justification, excuse, et cetera, that one specific person or two or three specific persons. Universal malice, on the other hand, was greatly disregarding human life. It involved commission of an act that was greatly endangerous of human life without a design to kill any particular person. That fit our facts perfectly.

JUDGE THOMPSON: That's sort of like, what, like shooting a gun into a crowd—

JUDGE CARNES: Yes.

JUDGE THOMPSON: —not aiming at anybody in particular, but knowing you're going to kill somebody?

JUDGE CARNES: Or driving a car into a crowd.

JUDGE THOMPSON: Right.

JUDGE CARNES: Or setting off an explosion.

And that fit our crime perfectly because some of the most incriminating evidence that we had against Chambliss was the testimony of Elizabeth Cobbs, his niece, who despised him. She testified to some incriminating statements he made. The most incriminating one was kind of good news/bad news for the prosecution. It was the Friday after the bomb went off that killed the girls. He was watching TV. And Reverend Cobbs—she was a minister then—told how the guy on the TV, the newsman, said that there could be murder charges. And Chambliss was talking to the television with her in the room. And he said, “It wasn't supposed to kill anybody. It didn't go off when it was supposed to,” which is bad news for first-degree premeditated murder, which requires intent to kill, but is good news—you don't get much better evidence of universal malice. So we went with that.

JUDGE THOMPSON: George, why don't you tell us—

JUDGE CARNES: Same punishment.

JUDGE THOMPSON: Right.

JUDGE CARNES: Life imprisonment, regardless.

JUDGE THOMPSON: Why don't you tell us what the evidence was at trial.

MR. BECK: Well, we knew we had to try a good case, because some young lawyer that never would amount to anything was going to have to help us out on appeal and get it affirmed.

And, of course, Bill, as a prosecutor, had prosecuted hundreds of cases. I was kind of a novice at prosecuting criminal cases, although I had trial experience. And, you know, the prosecutor has the burden of proof. They said it was a bomb. The first thing they object to, there's no bomb, you haven't proved a bomb, this type of thing.

So Bill and John and I, I think, put up a group of people that we thought—one, of course, would be the witnesses that we had in an order that we thought would flow and an order that we thought would fit together and would allow the jury to understand the dastardly act that this guy and others had performed.

And Reverend [John] Cross, I think, was one of our first witnesses. And he was, of course, the pastor of that church. The bomb had gone off, and he was helping people upstairs. Some of them had fallen, been knocked down. The windows had broken. He had to stop and fix a cut on his own little girl's head. And when he made sure everybody was out, he goes outside to see what the damage is. And then all of the sudden, “The girls! The girls!”

People jumped. They don't know what he's talking about. He says, “The girls! They're in the basement.” So he jumps down in that crater, dives through

that warped, busted wall, and starts digging in a pile of debris left and right, throwing bricks and rocks and digging his hands in and trying to get the debris uncovered so he could see and hope for the best.

And then he hears this one voice saying, “Addie Mae. Addie Mae.” And he keeps digging, because he can’t see. It’s smoke, it’s soot, it’s—plaster has fallen down and there’s a general haze, but he’s digging. And others, by this time, had joined him. And then when he uncovers these four bodies—

JUDGE THOMPSON: Now, was he uncovering Sarah at that time?

MR. BECK: No. Sarah was kind of uncovered but reaching out. She had damaged—she lost her sight in one eye. She couldn’t see out of her other because of the smoke, the blood, and the damage to her eye. And he was continuing to dig, as others were. And there, huddled together, were the bodies of these girls. The dynamite had sucked out the air in the room, the percussion had jammed them together and busted their skull and just—just battered them all around. They were kind of laying almost in a heap. And—

MR. BAXLEY: Reverend Cross said they were stacked like cordwood.

MR. BECK: Yeah. And that’s kind of the way we started, because we wanted the jury, right off, to see the force of this explosion. We don’t know if it’s ten, twelve, fifteen, or twenty sticks of dynamite, but we knew it was big. And, of course, the assistant fire chief had heard the blast. He recognized it was a bomb. He comes over there, and he sees the crater. He knows it’s caused by a bomb.

But the defense was trying to say, “Oh, it’s just some kind of natural gas leak. Nobody set a bomb.” And, of course, natural gas would run in a lateral line and be bluish looking, probably still be golden.

But this was a bomb that had dug out a hole and blasted inward through the wall and back and, like Bill said, knocked the cars back five to six feet. These are heavy vehicles. So it was a tremendous, tremendous blast. It opened a hole, obliterated the stairs. The assistant fire chief testified, “The crater looked like a bomb had been there. I’ve heard—I heard that one go off. I’ve heard forty-something bombs in this neighborhood. I’ve trained through the military. I’ve trained through several forces in Florida and Alabama. I know what dynamite does. I know what a bomb is. I smelled it.”

And later FBI Agent [John] McCormick also attended. He was still in Birmingham. He came up there. He went through the same training and also testified it had to be a bomb. And he actually got a headache because when that particular—whatever chemical is in dynamite, when he’s around it, it gives him a headache, and he got a headache immediately. And two or three other—I think the fire marshal and a retired fire marshal came and substantiated them and said about the same thing.

And then, of course, the bodies of four girls were taken to a makeshift morgue in a local hospital. And the surgeon who examined them testified that

clearly the damage and injuries to these four girls was caused by trauma when the explosion—explosive device.

An interesting thing came up, because we had the death certificate of each of the four girls. And we were going to introduce them, and the defense objected because it had cause of death by dynamite bombing. Well, of course, that's part of the ultimate issue to be proved, and they didn't want that in there. So we wanted the death certificate because we wanted to prove they were dead. And, of course, the coroner pronounced them dead and testified, identified the girls. But the judge took out his pocketknife and on each one of those death certificates cut out the word—when he got to “killed by” or “death by,” he cut out “dynamite bombing.” And, of course, you know, in closing argument, I think we all—both of us took a lick at it, said, “You can fill in the blank on these death certificates now that you've heard all the evidence and you know what went on.”

JUDGE THOMPSON: Why don't you give us an idea, though, of the witnesses who testified that they were certain that Chambliss had done this.

MR. BECK: Well, of course—

JUDGE THOMPSON: Obviously, you don't have anyone who was certain. But you had the circumstantial evidence that Chambliss—

JUDGE CARNES: Elizabeth Cobbs.

MR. BECK: Elizabeth Cobbs—

JUDGE THOMPSON: Well, first of all, why don't you tell who Elizabeth Cobbs is.

MR. BECK: Elizabeth Cobbs—first of all, let me tell you this thing about that. Bill was always the showman. He's the orchestra conductor. We just played the trumpet and second fiddle.

So he goes up and tells the judge, says, “Judge, this next witness is very important.” Says, “She's had some death threats. She's really scared to testify. And I think you ought to just clear the courtroom, and let's seal it and make sure nobody can come in here and scare her.”

JUDGE CARNES: I happened to be out in the hall and got sealed out, but we won't discuss that.

MR. BECK: Judge did that. So while he's doing that, Bob Eddy is going out looking for Ms. Cobbs. He finds her. Well, he comes back in; the marshal won't let him bring her in. Says, “No, the courthouse is sealed. The judge ordered me not to let anybody in.”

Says, “You don't understand. This is the next witness.”

Well, it took a long time. Yung and I looked at each other and thought—we didn't know if she had left. I'm going to tell you, these people were still scared fifteen years later because, one, it was—

MR. BAXLEY: She was Chambliss's niece.

MR. BECK: That's right. I've got another story on that.

And they were scared. And so she sits down to testify. And Art Hanes, the defense lawyer, turns to Chambliss, says, “Who’s that? Who’s that?” It’s his niece.

“I’ve got no idea.” His niece gives very damaging testimony, and he didn’t want to tell his own defense lawyer that he knows who she is. She lived in and out of his house for years, went to Klan meetings, knew all about it, and knew what he said.

Do you want to pick up on Cobbs’s statement?

JUDGE CARNES: Yes. Let me tell you, I had to argue the sufficiency of the evidence on appeal. And Elizabeth Cobbs was, in my mind, the most important witness because she was there in the house a lot, was the niece. And he ridiculed her and made fun of her and all that for gender-identification reasons, and she despised him. But she was there.

And one morning they were talking about a press report about a black man who allegedly assaulted a white woman. And she testified that Chambliss became animated and very angry and said he had been fighting a one-man war to keep the GD N-words down and all this, and if anybody would help, they would be—they would have won by now and so forth and so on. And if he could find that N-word, he would kill him himself, et cetera.

And then he started talking about what he was going to do and said he had enough stuff to flatten half of Birmingham. And she said, “Well, what good would that do?” And he said, quoting from her testimony, “You just wait until after Sunday morning, and they will beg us to segregate. Just wait. You will see.”

And that was a day or two before—

MR. BAXLEY: This was the Friday, I think—

JUDGE CARNES: Friday before.

MR. BAXLEY: —before the bomb went off on Sunday.

JUDGE CARNES: Right. And she testified what I’ve described earlier. The next Friday after the bomb had gone off and killed the four little girls—and then he was talking out—

JUDGE THOMPSON: This is Chambliss talking.

JUDGE CARNES: Chambliss talking to himself to the TV and said it didn’t go off when it was supposed to.

MR. BECK: So Ms. Cobbs not only supplied motive but also supplied direct quotes from Chambliss—

JUDGE THOMPSON: It’s almost not even circumstantial evidence.

MR. BECK: —indicating his intent.

JUDGE THOMPSON: It borders on—

MR. BECK: Right.

MR. BAXLEY: By the time she testified, she had become a Methodist minister. So I think I had her wear her clerical collar.

JUDGE CARNES: Yeah. You did. It looked like it was new and had just been bought.

JUDGE THOMPSON: Any other witnesses that you—

JUDGE CARNES: Tell them about Yvonne Young, George.

MR. BECK: Ms. Young, Yvonne Young, dated one of the Klan members that socialized with Chambliss. And I think he rode a motorcycle, and she jumped on the back of it and they went over to Chambliss's house one night. She was talking to Chambliss's wife, and she excused herself to go down the hall and use the restroom. And she—apparently it was kind of dark, an old house. She—I was going to say she made a right turn instead of a left turn. I'll just say she turned wrong, and she went into a room. Instead of the bathroom, it was kind of another dark room. And she looked over there, and she saw some things on the floor that she described as giant firecrackers, held up her hand like this (*indicating*), just a bundle of them, in bundles, wrapped up in bundles. But Chambliss—

JUDGE CARNES: In beige paper.

MR. BECK: Pardon?

JUDGE CARNES: In beige paper.

MR. BECK: I don't know about the paper. I can't remember that. But I know that they were wrapped up in bundles.

But then Chambliss caught her back there and scolded her and said, "You have no business in there; get out," and ran her out and all of that.

And, of course, they asked her on cross two important things there. And says, "Well, you know, that was in '63, and this is '77. Haven't you undergone shock treatments? Haven't you had mental treatment and so forth? And now you're coming up with this story about this." And, of course, on redirect, we were able to show, no, she told the very same story within days after the bombing to the FBI. And that shut that part off. She made a good witness. And then I think Art made a—defense lawyers have to ask questions they don't know the answer to. Sometimes you just have to do it. So you can't say—

JUDGE THOMPSON: I want to go on to—

MR. BECK: The judge is interrupting me.

JUDGE THOMPSON: Oh, the blood money. Do you want to tell about the blood money?

MR. BECK: That's what I was going to say. That was the next thing I was going to say.

JUDGE THOMPSON: Yes. Sorry.

MR. BECK: —was, "Well, you're just here for money. There's a reward out. You're just here for money."

She said, "I wouldn't touch it. That's blood money. I don't want any part of it."

So she did a good job on direct, and she held up on cross. That's the best kind of witness you can expect. And that made Ed's job a lot easier on appeal.

JUDGE THOMPSON: I want Bill to tell us about after the government had rested, the defense was supposed to put on its case. And I call this having evidence fall in your lap.

Tell us about that, Bill.

MR. BAXLEY: Well, they put on some witnesses, some character witnesses and other folks. But they—I think their last witness before Chambliss—they were intending to call Chambliss. And the last witness was his nephew, Chambliss's nephew, who was a Birmingham policeman. And so I cross-examined him and, I think, did the best job I've ever done before or since on cross-examination. I ripped him up pretty good.

And so as he was walking off the stand after I jumped on him big-time, was walking by, and Art Hanes Sr.—the Haneses were good lawyers, good people, my friends, and I respected them. Tough to try a case against, but they are honorable. But Art Senior stood up and said, "We will call our final witness, Mr. Robert Chambliss."

So Chambliss had just been sitting there watching his nephew. And he said, "Nope. I ain't getting up there."

I said, "What did he say, Judge?"

He said, "No. I ain't getting up there."

"What did he say? What did he say?" It's getting louder—

JUDGE THOMPSON: You realize Bill was saying, "What did he say, Judge? What did they say?" so they'll hear it over and over again.

MR. BAXLEY: "Nope. I'm not"—of course, you learn in law school you can't ever comment on somebody failing to take the stand. That's an automatic mistrial. But I thought that if I just said, "What did he say?" and it wasn't me commenting, he's going to say it.

I thought that was pretty good—

JUDGE CARNES: You now understand why my job getting it affirmed was the hardest job of all.

There was another witness Bill did a great job on. Character witnesses: "Are you—are you familiar with that man?" "Yes." "Are you familiar with his reputation in the neighborhood in which he lives or in the area of the city or what-not?" "Yes, I am." "You know that's based on what you've heard about him." "Yes." "Is it good or bad?" "It's good." You know, typical thing. And the standard deal is if you're on the other side, the prosecution, you don't cross-examine. Just get them off the stand and out of there.

Baxley stands up. And I'm thinking, what in the—and this lady is an elderly lady, not a hair on her head that wasn't gray or white—not that there's anything wrong with that.

But just a pitiful little lady in the sense she was scared and shaking.

And Bill says, "Now, you know that reputation is what people say about you."

"Yes, sir."

“And you know that to have a good reputation, you’ve got to have people say good things about you.”

“Yes, sir.”

And he said, “Well, how long have you been living next to”—the wife’s name—“and Robert Chambliss?” And she said, “Twenty-four years,” or something like that.

And he said, “Well, ma’am, tell me what you’ve ever heard about him that was good.”

And I’m thinking, oh my, no. You don’t ask questions you don’t know the answer to. But she didn’t say a word.

And Bill repeated the question. Very dramatic pause and then repeated it. She didn’t say anything.

Then Bill said to the judge, “You know, I hate to be insistent, but could you instruct her to answer the question.”

And the judge does. He is nice about it but says: “Ma’am, you’ll have to answer the question.”

And she finally said, “I can’t remember anything.” She could not recall ever having heard anyone say anything at all good about Chambliss during the more than two decades she had lived next door. Not one thing.

A good trial lawyer knows the rules of advocacy. A great trial lawyer knows when to break them.

JUDGE THOMPSON: We’re getting a little late in the time now, and I want to talk about one of the real highlights of the trial, and that’s Bill’s closing argument.

Bill, I know you say you don’t remember all of it, but we’ve uncovered a number of newspaper articles about your closing argument. And we’re going to try to reconstruct it, because I think most people who were there would say that it was probably one of the best closing arguments that’s ever been given at a trial. So why don’t you tell us what you said. And this was also another gift that you got during this trial.

MR. BAXLEY: The best thing was I was going to give the final part of the argument. George gave the opening part and went over the evidence and the law, then the defense had their part, then I was going to do the final part. But it broke for lunch right before my argument. So I went and walked around downtown; still don’t remember whether I got anything to eat or not. If it was, it was a hot dog. But when I came back, John Yung was up there fooling with the exhibits along with one of the investigators.

JUDGE THOMPSON: John is one of the lawyers who was helping.

MR. BAXLEY: Yeah. The other lawyer other than George and myself that was on the prosecution side. And so when I came in the courtroom, he said, “Baxley, Baxley, come here. I want to show you something.”

I said, “No, John. I’m kind of getting my thoughts together.”

Said, “Come here. Come here. I need you to see this.”

I said, "No."

He said, "You stubborn goat. Come up here."

So I went up there, and he said, "Look at this." Handed me—I think it was State's Exhibit 1. It was the death certificate for Denise that they cut the thing out of. So I looked at it and said, "Okay. Okay. It's Denise's death certificate. So what?"

He says, "Baxley, you idiot. Look at the date of birth." And that day was her birthday. She would have been twenty-six years old that very day. I hadn't had enough sense to know what I was looking at.

And so that gave me a gift that fell in my lap. That let me close my argument by saying—I had spread out on the rail all these pictures of the damage to the church and the horrible injuries, the death—the dead little girls and all this stuff. And at the end, I put the death certificate. So I picked that up right at the end. I said, "When you go back to that jury room, I want you to think about something." I said, "This is Denise's—look at this exhibit. This is her birthday." It would have been her, I think, twenty-sixth birthday.

JUDGE THOMPSON: That's right.

MR. BAXLEY: And I said, "It ought to be a happy night at the McNair house, but it won't be. There will be an empty chair there." Said, "It would be—in fact, every Christmas for the last—I mean every year"—

JUDGE THOMPSON: Fourteen years.

MR. BAXLEY: —"for fourteen years there's been an empty chair. Every Christmas and Thanksgiving there's been an empty chair. Tonight it could have been ice cream and cake and maybe talking about school or a new job or grandchildren, even, or a wedding, but there won't be any of that talk at the McNair house tonight. But tonight, you twelve people will have an opportunity to do something that nobody on earth will ever have. And it's something that I believe Denise will know. And I know that she will appreciate it. You will have an opportunity on her twenty-sixth birthday to give her probably the best present she ever got. You'll have an opportunity to bring her killer to justice."

And some of them started crying. And that's when I really kind of felt like we might have a chance. But that was just something just fell in my lap that I didn't think of. And it was a higher power looking out for us.

JUDGE CARNES: There were a bunch of people crying on that jury. And it had a lasting effect. The jury deliberated four hours that night—afternoon and night, two hours the next morning.

Bill, with his superstition about not being there when the verdict comes in, was back in the hotel. And Judge Gibson let me sit in his office with the door open watching the jury come in so I could report to Bill on a moment what had happened, what the verdict was. He was excited, and I was excited and kind of shaking to find out what was going on.

And he said, "What did they say? What did they say?"

I said, "They haven't said anything, but two of them are crying."

He said, "Oh, that's good. That's good. That's good." And it turned out to be very good.

JUDGE THOMPSON: Turned out to be very good.

I wish we had more time. To be quite candid with you, you've only heard a bit of the story of this trial, which I consider one of the most remarkable trials in the history of the State of Alabama.

Have you got something else, Bill? Go ahead. Go ahead. Go ahead.

MR. BAXLEY: Two things, really. I'll try to make it brief.

Art Junior—Art Hanes Jr. told me this.

JUDGE THOMPSON: This is good. Yes.

MR. BAXLEY: His dad—after the jury found Chambliss guilty, Art Junior had to go tell Ms. Chambliss because—

JUDGE THOMPSON: Art Junior was Chambliss's lawyer.

MR. BAXLEY: Yeah.

JUDGE THOMPSON: Right.

MR. BAXLEY: Senior and Junior were the lawyers in that firm. And so Art Junior had to go over there and tell her. It was broad daylight, the middle of the afternoon, almost noon. It was right after noon, I reckon.

And he said that the house had the blinds down and the curtains pulled and not a light on. He knocked on the door, and this voice said, "Come in."

Said he went in. Ms. Chambliss was lying in a housecoat with a wet rag—on a couch—over her forehead, and the house was dark as it could be. So he said, "Ms. Chambliss," says, "I'm sorry. Dad told me to come tell you the jury has just found—just convicted Robert. They found him guilty of first-degree murder. And you're going to need to pack him some—he's in jail, and he can't get out. Can't make bond when you're guilty of first-degree murder. And so you'll need to pack his toiletries and some clothes for him and carry them to him."

And she said, "Well, when will he be coming home?"

He said, "Well, he can't make bond. We're going to have to appeal. That will probably take a couple of years. And we're going to give it our best shot, but it doesn't—the judge tried a pretty good case. It's probably going to be hard to get this overturned."

I reckon he knew Carnes was on the other side.

He said, "We're going to give it everything we've got, but it's going to be hard."

She said, "Well, I mean when will he be home? When will he get here again?"

He said, "That's what I'm trying to tell you. I think at his age, it's very unlikely that he'll ever be out."

She says, "You mean he won't ever be in this house again?"

He said, "That's what I'm trying to tell you. We don't think he'll ever get to come in here again."

And he said she sat up and threw that cloth across the room—and jumped up and started lifting the blinds up—and started saying, “Hallelujah! Hallelujah! Thank you, Jesus. Praise the Lord! Glory Hallelujah! Glory Hallelujah!”

And they didn’t know that the Chambliss women had been cooperating with us and with the FBI. They even let the FBI put a bug in the cuckoo clock—because it was so bad that they had—

JUDGE THOMPSON: There’s one other thing I don’t know if you’re going to talk about, which is that you have one regret about not pursuing the other two defendants. And I want you to end with that.

MR. BAXLEY: The biggest regret I had about being in public office was that I left office without being able to finish the job and prosecute the other two that I knew had done it. And I regretted that, because the people that came in after me, by and large, didn’t touch it. They didn’t—

JUDGE THOMPSON: Talking about state attorneys general.

MR. BAXLEY: State attorney general. Yeah. And so it went nearly twenty years, and I regretted that fairly often. But what I didn’t know—if I would have known it then, I would have slept a lot better. But there was a young kid in law school during that trial in Birmingham, and he cut class every day and sat in the balcony and watched that trial. And twenty-something years later, he was the U.S. Attorney. And that’s [now-Senator] Doug Jones.

And Doug Jones came in and opened that case up again. He had to get appointed by Bill Pryor as a special assistant Alabama attorney general even though he was the U.S. Attorney, because it had to be prosecuted in state court. But that kid that watched that trial, Doug Jones, came in and finished what I couldn’t finish. And I think that was amazing.

JUDGE THOMPSON: And he got two convictions.