

# **Darien Men's Association**

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## **Speakers Program**

**July 29, 2020**

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***A Conversation Between Judge Myron Thompson and  
DMA Member Tom Igoe***

The **Darien Men's Association**, established in 1977, is a community organization of 310 members whose mission is to provide a forum in which retired and semi-retired men can find good fellowship and friendship amidst a range of engaging activities designed to nourish both body and mind while providing a sense of community. As a critical part of its mission, the organization sponsors a **Speakers Program** in which it invites notable historians, academicians, business leaders, think-tank and policy leaders, government officials, judges, doctors, lawyers, former United States military officers and knowledgeable representatives from the worlds of art, architecture, theater and music to share with the group their valuable insights and perspectives.

To that end, the DMA invited Judge Myron H. Thompson, United States District Court Judge from the Middle District of Alabama, to talk with its members. Judge Thompson was nominated to the bench in September 1980 by President Jimmy Carter and has served as a Federal jurist with distinction over a 40-year span.

What follows is a transcript of the lengthy discussion between Judge Thompson and DMA member Tom Igoe, his former roommate at Yale. The two men engaged in a wide-ranging dialogue about (1) their fundamentally different backgrounds and evolving life-long friendship; (2) Judge Thompson's perspectives, developed in his early years, that shaped the course of his life; (3) his return to Alabama to practice law and appointment to the bench as the youngest Federal judge in the U.S.; (4) his experience serving as a jurist in a Southern state; and (5) his abiding philosophy on the importance of public service.

This transcript was ably prepared by **Holly Moose**, CSR-RPR-RMR-RDR-CRR-CCRR, a Fellow of the Academy of Professional Reporters.

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**Preface.** The following discussion between Judge Thompson and Tom Igoe took place in the immediate aftermath of the death of long-time national civil-rights leader, **John Robert Lewis**.

John was born outside Troy, Alabama, in 1940, the son of share croppers. He rose to become an American statesman who served in the United States House of Representatives for Georgia's 5th congressional district from 1987 until his death on July 17, 2020. He served as the chairman of the Student Nonviolent Coordinating Committee from 1963 to 1966.

John was one of the "Big Six" leaders of groups who organized the 1963 March on Washington. He fulfilled many critical roles in the civil rights movement and its actions to end legalized racial segregation in the United States.

Reflecting back on that momentous occasion in 1963, John recalled a critical moment at the very beginning of his role as a national figure:

We started organizing. We were able to bring 250,000 people to March on Washington. And we all had to prepare a speech. I was very young...23 years old with all of my hair and a few pounds lighter. When A. Philip Randolph said I now present to you young John Lewis, the national chairman of the Student Nonviolent Coordinating Committee, I looked to my right...I saw hundreds and hundreds of young people who had been involved during the early days. Looked straight ahead. I saw a sea of humanity. Then I looked to the left, I saw young black men and young white men up in the trees trying to get a better view and then I said to myself: "well this is it." And I looked straight ahead again and something said to me: "go for it." And I opened my mouth and I started speaking [from the steps of the Lincoln Memorial]:

"We march today for jobs and freedom. But we have nothing to be proud of for hundreds and thousands of our brothers are not here. For they are receiving starvation wages or no wages at all. To those who have said 'be patient and wait,' we must say 'we cannot be patient; we do not want our

freedom gradually, but we want to be free now!' The time will come when we will not confine our marching to Washington. We will march through the South, through the streets of Jackson, through the streets of Danville, through the streets of Cambridge, through the streets of Birmingham. We must say 'wake up, America, wake up!' for we cannot stop and we will not and cannot be patient."

*– Video excerpt played for DMA members in advance of the dialogue*

John Lewis was one of the 13 original Freedom Riders. Determined to ride across the South in an integrated fashion, resisting state laws that prohibited Black and White riders from sitting next to each other on public transportation, John and other nonviolent Freedom Riders were often beaten by angry mobs and arrested, exposing the government's passivity towards violence against law-abiding citizens.

On March 7, 1965, armed police attacked the unarmed peaceful civil rights demonstrators attempting to march to the Alabama state capital of Montgomery in an incident that became known as "Bloody Sunday." John Lewis, one of the leaders of the march, was severely attacked and brutally beaten by police and the state troopers as they crossed the Edmund Pettus Bridge.

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In the midst of these turbulent times, in September 1965, Myron Thompson, a Black student from Tuskegee, Alabama, and Tom Igoe, a White student from St. Louis, Missouri, first met each other as incoming college freshman at Yale.

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*.....we are all born into a silent war game, centuries old, enlisted in teams not of our own choosing. The side to which we are assigned in the American system of categorizing people is proclaimed by the team uniform that each caste wears, signaling our presumed worth and potential. That any of us manages to create abiding connections across these manufactured divisions is a testament to the beauty of the human spirit.*

*– Isabel Wilkerson, Author of Caste | The Origins of Our Discontents*

## TRANSCRIPT OF DIALOGUE, JULY 29, 2020

TOM IGOE: Good morning, everybody. I'd like to introduce you to Judge Myron Thompson, who is a United States District Court judge for the Middle District of Alabama.

Judge Thompson was nominated to that seat in September of 1980 by President Jimmy Carter. He served as Chief Judge of the court from 1991 to 1998 and remains today an iconic fixture on the bench.

Judge Thompson is a graduate of Yale College and Yale Law School. He served as Assistant Attorney General of Alabama from 1972 to 1974. He was the first African-American Assistant Attorney General for the State of Alabama, the first African-American Bar Examiner for the State, and the second African-American federal judge in the State. Judge Thompson was in private practice from 1974 until 1980.

Over the course of Judge Thompson's 40-year career on the bench, he has presided over many challenging cases, including those involving separation of church and state, employment discrimination based on sexual orientation, voting rights, policing practices and the use of deadly force, restrictions on abortion, racial discrimination in the ranks of state troopers, and troubled conditions in the Alabama prison system, among other issues.

Judge Thompson has received many awards for his distinguished record on civil rights, advancement of the personal freedoms and human dignities of the American people, and for his courage and integrity.

Yale Law School recently awarded him its highest honor, the Award of Merit, for his substantial contributions to public service and the legal profession.

Myron and I go back a long way, to the mid-1960s when we became undergraduate roommates at Yale. Today, we plan to engage in a wide-ranging informal dialogue on several topics: our fundamentally different backgrounds and evolving lifelong friendship, the perspectives that shaped the course of our lives, Myron's return to practice in Alabama, his service as a federal jurist in a southern state, the different paths we both pursued through our lives, and lastly, our belief in the importance of public service.

I don't intend for us to go through the paper that I prepared and talk about each one of these cases [see below the Appendix to this transcript entitled “**Selected Judicial Opinions and Commentary**”], but rather, talk about -- with that as a foundation, to talk about the things we think are important.

For today's discussion, a couple of simple guidelines: we'd like to avoid talking about any matters involving cases pending in Judge Thompson's court, and we also want to steer clear of political debate.

At the end of our talk, we've reserved time for questions from members of our group or others in the audience.

But before we delve into these subjects, and given the video [words of John Lewis] Gary has just presented, I'd like to ask Myron briefly to make any personal observations he deems appropriate on John Lewis and his impact on the civil rights movement.

So, Myron, we're so happy to have you with us today.

JUDGE THOMPSON: Thank you, Tom.

First of all, thank you for your remarks. I agree with the earlier speaker who said that it's impossible to follow John Lewis. His words are words that one should not have to come up and say something afterwards. He's a remarkable speaker.

As I was listening to him -- just the remarks a few minutes ago -- I realized that he was 23 when he made those remarks. I was thinking about some of the challenges that I faced as a young man myself.

And I also thought of just how different John Lewis and I were in the sense of how we grew up. He grew up as a -- in a farm family, and I grew up in a family that was -- lived in the shadows of Tuskegee, a college town. But we did have -- but I did have, the same as he did, roots in farm life.

John would often talk about how his family wanted him to be a preacher. And I think my family wanted me to be a preacher as well, just because, like his family, my family had strong roots in the church, in particular the Black church.

And when I was growing up, I was responsible for opening up the church; my stepfather was a minister in -- in the church. And I lived in the church parsonage.

And so, when I heard him talking about a young man confronting all these issues, I, at the time he gave that speech in Washington -- in fact, at the time he made his historic bus ride to Montgomery, where he was so badly beaten, I was 14. But I remember it vividly.

And I remember wondering how those people could do what they were doing, to ride into what I would consider -- literally ride into violence. But that was the nature of John Lewis. He was a man who did not believe in shying away.

I had two occasions to meet him. I can't say that I was a close friend, but we did know each other. And one of the earlier occasions was that he came to Montgomery, and I had arranged for him to meet with the governor of Alabama in my chambers. And this was the governor of

Alabama at the time of the Freedom Rides, when he was badly beaten in Montgomery. The governor then was John Patterson.

And John Patterson had a reputation back then of allowing a lot of violence to go on in the State. And for those of you who are not familiar with the events at Montgomery -- at the bus station in Montgomery, Freedom Riders were brought in -- or rode in, and the federal government had left it up to the states to provide protection. And the State of Alabama -- in particular, the state troopers -- were going then to leave it up to the local police to provide protection to the Riders.

Well, as the bus arrived in Montgomery, the troopers went away and left it up to the City of Montgomery to provide the protection, and the City of Montgomery provided no protection. And some people had thought that it was actually a collusion between the City of Montgomery and the local Klan.

And the Klan members then descended on the bus station and beat the Riders. And John Lewis was badly beaten.

And the meeting I held in my chambers, which was in 2011, was between John Lewis and the governor then, John Patterson, who many, as I said, had accused Patterson of allowing this to happen.

And in classic John Lewis fashion, he went up to the governor, shook his hand, and said "Let us talk." And I had also invited several other Freedom Riders to join John Lewis and the governor in my chambers.

By the way, my chambers has a huge library. It's an old chambers, built back in the '30s. And the library is fairly large. And we had a table there, and we were going to all have lunch together.

And John Lewis thought it was very important that he and the governor and the other Riders break bread. For him, that was symbolic of

reconciliation, of coming to grips with the past, and for moving forward as well. And I have to admit, it was a very solemn occasion for me.

But I was just amazed by John Lewis, that he could do this, that he could sit down with this governor, who arguably was responsible for just the atrocious acts that had occurred not only at that bus station, but throughout the State, and say "Peace."

And I think that just -- words cannot capture the character of John Lewis. That's the way he was.

Don't get the idea, though, that when he said "Peace," he meant "Let's sit down and, you know, sing Kumbaya and walk off into the sunset." No way! When he said "Peace," that meant moving forward to proceed to correct wrongs that still existed.

And he did that when he was a congressman. He was not one who sat on his laurels. He was one who moved forward.

And as he aptly noted on many occasions, the wrongs are many out there and still yet to be addressed. And he devoted his life to doing that.

So, it was a memorable occasion to be there. We have a tape of that -- we hope to have it on the website soon -- of that meeting between John Lewis and Governor Patterson.

The second time I met John Lewis was -- he has a group called Faith & Politics, which, again, in true character to John Lewis, tries to reach out -- and here are some pictures -- reach out to -- across the political party line. He tries to reach out to other people and talk and exchange ideas and talk about the past and talk about the future.

And the group came to Montgomery, Alabama, and I hosted the group in my courtroom. And actually, this is a picture of the balcony in my

courtroom, and this is a picture of John Lewis, and this is a picture of me giving John Lewis a plaque from the judges of the Middle District of Alabama for everything he had done for the State.

You know, some people say that, you know -- in particularly, Black people say, you know, "John Lewis changed our lives." And he definitely changed my life. But for him, there's no question that I would not be sitting or could never have sat on the bench in the Middle District of Alabama.

But, you know, he changed the lives of all people. He lifted us all up, Blacks and Whites together. He lifted up all the people of that State. And it was quite fitting that we were able to present him this plaque, and it was really an honor for me to present it to him personally.

The picture in the middle is actually a picture of John Lewis with the other Freedom Riders and Governor Patterson. The picture at the bottom is a picture of John Lewis and Governor Patterson with their hands on each other's back. Can you imagine that? Here's John Lewis patting on the back the governor, who had -- as I said, arguably was responsible for what happened at the Montgomery bus station, as well as many of the other events that happened in Alabama.

It's an honor to talk about John Lewis.

TOM IGOE: Myron, I think that's a great lead-in to some of the things that we have to talk about today. So, I'd like to suggest that we start by talking about how two people with such fundamentally different beginnings met at Yale and found some common ground.

So, I'd ask you to give us your thoughts about that.

JUDGE THOMPSON: Well, you know, I guess I'll start by just giving you an idea of myself. I assume that you've read about me in general, about

my cases and so forth, but this is an opportunity to talk about myself and to talk about you, Tom, and to talk about us.

I grew up in Alabama. I grew up under Jim Crow. I went to an all-Black high school. I was born in a hospital that was for all -- it was all-Black.

In fact, until I went to Yale, I had never in my life known a White person. All my friends were Black. Everyone that I knew was Black. It was a totally, virtually all-Black community.

I had in a summer or two met some White people -- in particular, students who had come to teach in Alabama, some of the summer programs -- but never really gotten to know or really met anyone who wasn't Black. I jokingly say this, but it's really true, that during that freshman year at Yale, I had a hard time telling you all apart because, you know, White people were just -- I had not been around White people. So, I used to confuse a couple of the guys. I won't mention names. But I would just say in the hall "How you doing?" because I wasn't sure to whom I was talking.

But anyway, I grew up in this all-Black community. But, you know, the challenge was not only the fact that I grew up under Jim Crow, but I also was one of the last victims of the scourge of polio. I caught polio when I was two years old and was essentially paralyzed.

And much of my childhood, in addition to being -- growing up in this all-Black community, was the fact that I spent much time in rehabilitation. I had a series of operations. And that really shaped, I think, in many ways who I grew to be. Plus, the fact that I considered myself -- actually, I did not consider myself disabled back then. That's another long story about disability. But I did grow up with a disability, severe disability.

And over the years, I've often wondered which had the strongest impact on me, the fact that I was Black or the fact that I was disabled. And I've now come to somewhat the conclusion that the disability may have edged out being Black.

I realize now, in retrospect, how people treated me. And a lot of people, I think, thought that, as I used to say, because I had braces on my legs, I had braces on my brains too, which was obviously not true.

But that's what it was like growing up when you're disabled.

You know, one of the things too, as I've grown older, I realize that -- I've had a limp my whole life, which has become probably more pronounced now -- in fact, it has -- and, you know, I have difficulty with steps and I have difficulty with hills, and things like that. But the wonderful thing is when I speak to people my own age, they've become more like me. They now have trouble with steps. They now have trouble with hills.

So, I realize that insofar as I'm disabled, the field has been leveled among us older folks. We're now -- in fact, I -- when I go back to my high school reunion, I just feel so wonderful that I walk better than most of my high school classmates. It's not to say that I -- you know, I don't feel sorry for the fact they're having difficulty, but I have to say that it does make me feel good to know that I can walk better than some of the football players.

But anyway, growing up with a disability was a challenge, but it also was in being in the Black community.

I know, Tom, that your youth was different. How so?

TOM IGOE: Well, it was dramatically different, although there are some reciprocal observations that I would make. I grew up in St. Louis, Missouri. And Missouri, for historians, was a border state during the

Civil War. And the last time they sold slaves on the courthouse steps in St. Louis was 1861, which was about 86 years, Myron, before you and I were born.

But my education was among all White people. I went through a Catholic preparatory school that was run by English Benedictine monks. I had no exposure to Black people, people that might be my peers. My only exposure to Black people was people who were in service, who were maids or chauffeurs or things of that sort.

None of the -- I never met anybody in our neighborhood or in the area that I lived in, Webster Groves, Missouri, that was Black.

And so, coming to Yale, I had no experience whatsoever with the Black community or any significant knowledge of the issues that the Black community was dealing with at the time.

And so, you know, we were -- in some ways, we mirrored one another. Each of us had no experience with either the Black or the White community.

And when we got to Yale, obviously we lived in a dorm that included a bunch of folks, including some of the folks on this video today, and we got to know one another. And I will tell you quite candidly that my experience as a young student at Yale was an open one. I embraced it fully. And I was very much intrigued by developing a friendship with Myron, for a number of reasons:

One, he instilled in me a strong interest in music -- he loved Vivaldi and Aaron Copland -- and art. And he loved Impressionist paintings. And he himself actually painted a work of art where I think he was channeling Claude Monet.

But there was an openness and candor about him. He's not a human being who was in a hurry. He was easy to talk to. He was open-minded.

He had a great sense of humor, and he enjoyed campus life. So -- and he also had a refreshing curiosity about everything.

And so, you know, when you're a young student in an undergraduate environment, you look for people that you develop connections with. And we did. And I think we enjoyed spending time together. We enjoyed going out to eat together. We enjoyed all the fruits of campus life together in a very nice sort of way.

And so, when it came to the time to start the sophomore year, Myron and I talked about rooming together. And I very much wanted to do that. I talked about it with my family, and my family thought that was a very bad idea. They told me -- and you have to understand the context. This was St. Louis, Missouri. But they told me that they thought it would be -- it would ruin my reputation in the St. Louis community, that it would adversely affect my professional career, and that they would be very unhappy if I did that.

And so, regrettably, I told Myron that because of the concerns that my family had, we could not room together. And I think that was an outcome that was very unfortunate for both of us. And it made us both very unhappy. I know it made me very unhappy.

But a year transpired, and I went back to the well on this one and I said "Look, I just think that it's appropriate. I'd very much like to have Myron be my roommate." And they conceded. They basically said "Okay. You're old enough at this point to make your own decisions. Go ahead and do that."

My mother, in half jest, said "But there's one caveat." She said "If you ever bring Myron to St. Louis, into our home, just make sure you don't bring him home when the bridge girls are there." And I said "Mom,

that's okay. That's a concession I'm able to make." And we laughed about it.

And so, Myron and I became roommates and became best friends for the balance of our career at Yale.

And, after Yale, we went different ways. Myron went to Yale Law School, and I went to Virginia Law School. And he had a career that developed in Alabama, and I had a career that developed in New York City. But we always stayed in touch.

When it came time for me to marry my bride, Susan, in 1974, I asked Myron to be my best man. And he did a great job as best man. And when it came time for Myron to be wed to Ann, he asked me to best his best man. And so I went to Alabama and was proud to do that.

And we stayed in touch over the course of our lives: the development and growth of our families, the challenges that we both have had on the personal family side. We've always been free to talk with one another.

And, as his career has extended over time, I've kept in touch with him. He's obviously received many awards. I attended the ceremony at the Yale Law School for the Award of Merit and listened to him there. And I became intrigued by developing a better understanding of the body of his work as a jurist in Alabama, so I began to delve into the cases and the issues that he had to wrestle with over the course of his 40-year career.

But it's one of the great friendships of my life. I've learned a lot from it. He has very, very good perspectives on a lot of personal issues. So that's how, I think, we kind of came together and were able to have this lifelong friendship, something that I've treasured for a long time.

JUDGE THOMPSON: Thank you, Tom.

TOM IGOE: Those are my thoughts.

JUDGE THOMPSON: I will give you that scenario from my perspective now. My going to Yale actually was not as dramatic an event as, in retrospect, I thought it should have been. I think one of the things that made it easier was that I had grown up in a college community, albeit an all-Black one.

And my family's interest in education was so strong -- by the way, my mother had gone to Tuskegee [University], where I grew up, herself. And my grandfather paid her tuition with sugar cane syrup. He was a farmer, had only gone to the third grade, and he was so interested in all of his kids going to school that -- there were no Blacks...there were no Black high schools in Alabama, so my grandfather had to send all -- at least his first three kids away to high school in order to go to college eventually. And he paid their tuition with syrup. He would deliver the syrup to the college.

He was at my investiture as a judge candidate. He actually came to Yale too when I graduated. But at the investiture, he sat in the front row, and I don't think he saw any of it. He could not stop crying. He just cried the whole time.

That was just an incredible -- I saw him cry, and I knew that it was just overwhelming him that, you know, here's this guy that had gone to third grade, sent his kids, and here's his grandson who's now being sworn in as a federal judge. I just wanted to add that.

And also the fact that, of course, I had polio. And I remember growing up with polio, and some people were saying "Well, what are we going to do about Myron?"

The assumption for that phrase was, you know, "How are we going to take care of him," you know, "What will he develop into," you know,

"What challenges will we all face, because," you know, "he probably will have difficulty living a fulfilling life?"

But that's the challenges that people -- those are assumptions people make about the disabled. And of course, they're not true -- are often not true.

But anyway, when I got to Yale, Tom, as I said, it was a challenge. And, you know, I know that when you and I met, one of the interesting things was -- and everyone who's listening to this has to remember the context in which Tom and I met. We met in the late '60s. We're talking about the '60s. And, you know, civil rights was just a huge issue.

And then, of course, Dr. King was assassinated. Bobby Kennedy was assassinated. And the country was still just in such turmoil over the issue of race.

Yale had very few Black students in our class, Tom. There were only about 20 out of a thousand guys, which is virtually nothing. And I remember also being very alone in the sense there were no other -- or very few Black students at Yale.

Many of the other Black students had decided to room together and switch colleges, and I decided to stay in JE [Jonathan Edwards College] because I had developed, with a group of guys, a fairly strong friendship, and I did not want to give that up.

And then I met you, Tom, and of course we, you know, grew to be very good friends. And one of the things I often found very nice about you was in the midst of all this, sort of, turmoil, that you essentially saw me for who I was. And it's as if the issue of race just dissolved between us into nothing. And we just became friends, sort of -- as if our friendship transcended that.

I often asked you -- and in fact, I think I asked you not too long ago -- why did you choose me? You know, since you had known no other Black person, you know, why me? And you just said you felt comfortable.

And I have to say that that's the way I felt too. It was just a matter of comfort.

During sophomore year when you told me that you could not room with me because your parents had objected, I had never been hurt so bad in my life. I was literally devastated. And -- but I knew I still liked you as a friend. And -- I don't think I told you this, but I was so hurt that I went to talk to the dean of the College about it, and -- the dean of Jonathan Edwards.

I just didn't know what to do. I didn't want to tell my parents because I thought they would be worried and they would be concerned about the fact that I was unhappy, and so I sort of kept it from them.

I didn't share it with any of our other friends because I didn't want to do that unless you wanted me to, and we had never agreed that we would share it with our other friends.

And so, I went to talk to the dean. And he said that you and I could have singles together. I don't know if I told you this. And I thought about it. And he said -- by the way, getting singles was considered a real difficulty at Yale then. You could only get a single if you were a senior.

But he said "I'll make an exception for you, Myron, in light of these extraordinary circumstances, and I'll give you and Tom singles and you can room next to each other."

And I don't know if you remember. I think I may have come back and told you that.

And you said to me, after talking to your parents again, that "We are going to room together." And you said "We're going to do it," no matter what your parents said. And I was floored.

And you actually -- I'm pretty certain you rejected the singles. You said "We're just going to room together." And we did.

And -- so in many ways, you know, all the turmoil that was going around us in society, we were sort of, in a very private way, playing out what our country was going through in our own sort of secret, private way, 'cause I don't think we talked about it with anyone else, just the two of us. And we came to our own reconciliation, which was we would do it and we just didn't give a damn.

And we did it. And we roomed those last two years together. And I'll have to admit to you when your parents came up for graduation, I was wondering how your parents would accept me. And your parents were just wonderfully gracious. It was as if nothing had happened.

And then I was totally shocked that you wanted me to be best man at your wedding, which meant that I would be the only non-White there, I think. But I was best man.

So, I thought that -- you know, that -- I thought you showed such character and bravery. And it wasn't on a level where, you know, you're standing up and shouting it to the world, but you did it because you thought it was the right thing to do.

And over the years, I've never talked about it and you've never talked about it, until today. And I think the fact that you did not talk about it and the fact that you just showed that tremendous courage and that you, you know, said "To heck, you know. You're my best man. You're my best friend. I want you there. I don't care." And I met your parents

again, and they were lovely, and I did not know there was anything inappropriate.

But I think that speaks a lot about your character and a lot about who you are and how you don't seek -- you don't engage in courage in order to display it; you engage in courage because you believe it's the right thing to do.

TOM IGOE: I appreciate those thoughts. They're heartfelt, and I very much appreciate it.

Why don't we move on --

JUDGE THOMPSON: I want to say one other thing, you know. I think this is -- you know, as we think about our lives and we think about how things impact on us, you know, I could have been left with a bitter feeling about those events -- and by the way, I did love Yale. I had a wonderful time at Yale. I just -- the College was wonderful. My life there was wonderful.

But I think our having gone through that shaped me, in the sense that it left me with a strong belief that we all have to stand up and we all have to, in a personal way, show courage and do the right thing.

And I think we both got that out of that, what happened to us. And I think that in many ways has shaped my career. It's definitely been a foundation for it.

You know, people ask me about courage and about doing the right thing and so forth, and I think that the thing you showed me was you can show courage without shouting something from the rooftop.

TOM IGOE: Thank you.

So, let's move on and talk a little bit about your professional career, your return to Alabama. I mean, one of the obvious questions people

will ask is "Myron, why did you go back to Alabama, given the challenges that were -- would be faced in doing that?"

So, I'd like you to talk about that, talk about your career and your appointment to the bench and your philosophy for approaching cases, in terms of things that are most important to you in your overall philosophy at a jurist.

JUDGE THOMPSON: Well, why did I go back to Alabama. I never felt that I belonged anywhere other than in Alabama. I thought of myself as an Alabamian. I grew up there. I did not see the solution to my life being to go somewhere else in the country. I thought that the problems that existed in my State were problems that I needed to go back to and solve.

Now, I can't say that was something that originated just with me. My parents were very involved in the civil rights movement. My stepfather eventually became field secretary of the NAACP. My mother was extremely involved in voting rights and in boycotting. I remember we boycotted stores that wouldn't serve Blacks. She was adamant about that.

But there was one other thing that they had instilled in me which I had very strong feelings about, which was "class." Growing up in an all-Black community and having very little exposure to Whites allowed something else to surface, which I have to admit had an equally strong impact on who I was as a judge, and that is class.

I saw within the Black community strong elements of divisions of class. And my parents had very strong feelings about it. I remember once I had -- I wanted to throw a birthday party -- have a birthday party. And my mom said "Myron, you know, you have to invite kids who are your

friends, but you also have to invite kids who are literally from the other side of the tracks."

She said "You have to invite kids who are not as well off as you, as well as the kids who go to the university and college." She had very strong feelings about that. And the issue of class was just huge.

I also remember when I was growing up, before my mother married my stepfather, we had a maid in our house. My mother was not wealthy, but she did have someone who helped to clean up the house and helped take care of me as well.

And I remember when the bus boycott started in Montgomery with Rosa Parks, and the Blacks in Tuskegee -- by the way, the Blacks in Tuskegee were not as strongly supportive of Dr. King. They thought that the issue of race should be resolved in the courts. They thought that the use of the streets was not the solution to the problems of Jim Crow.

And so, there was a strong, sort of, division. In Montgomery, you had Dr. King, with his churches and the maids. In Tuskegee, you had the professors and the doctors. And you can sort of see the divide there. And eventually with the Selma to Montgomery march, all of us came together. We all realized we were in the same boat.

But to get back to my story, when they were having the bus boycott in Montgomery and, you know, the thing about the Blacks being required to sit in the back of the bus and so forth, I remember that when my mom would go pick up our maid, who lived on the other side of town from Tuskegee, I would sit in the front and the maid would sit in the back of our car.

And I remember the day we went to pick up the maid -- she was very close to my family -- and my mom turned to me and said "From this day forward, Myron, you will sit in the back of the car and our maid,

Marianne, will sit in the front of the car." And I was furious, 'cause I did not want to sit in the back of the car. But I didn't understand the symbolism of what she was saying. And she said "From this day forward, maid Marianne will sit in the front of the car. I will not have her sit in the back of the car another day," which meant I had to sit in the back.

And then I realized what she was saying, and -- later, actually. But it was that impact about class that really carried forward. And it has influenced me a lot in Alabama, in a lot of my decisions, and a lot about John Lewis, when I was talking about how he lifted all of us up. You know, he lifted Whites, Blacks, all of us. We're all in the same boat if you're poor.

And -- but that event with my mom and the maid just really resonated with my -- with me as to how my mom felt about people who were less privileged than we were, whether they were Black or White. And it also let me know that you don't have to be White to be a snob.

Anyway, that -- that's sort of a bit of the background about my coming back to Alabama, because I actually got a call my senior year in Alabama, from my mother, when she heard I was thinking about going to New York and working on Wall Street.

And she called me up and, in classic mom style, said to me: "Don't you care about us in Alabama," meaning us, meaning your Black people. That's my mom telling me not to take a job that pays three figures and come back and take a job that pays very little. How many moms tell their sons and daughters to get paid less?

That was just sort of the home I grew up in. And that was my mother as well. And I knew that also she was probably asking me to come back so she could be near me. But I think in truth, she felt that I had an

obligation to come back and that my grandfather wanted me to come back.

And that -- and I went to south Alabama, a place called Dothan, which was rural, and opened up a law practice. I hung out a shingle. I was in the law practice for myself, by myself. And there were no other Black lawyers down there. And I was the only lawyer who would take civil rights cases. By the way, I was the only lawyer who would also represent a union. And I was also the only lawyer who would do First Amendment cases.

And -- but, you know, in classic Tom Igoe fashion, when I was up for my judgeship, by the way, the local Bar Association, despite the fact that I was the only lawyer who did all these things, gave me -- all but one lawyer supported my judgeship. The entire bar supported me, and -- because we were so close and I was able to get along with all of them, even though we're ideologically not on the same page. That was separate from being able to get along with people.

And I felt very strongly that it was important, even in Dothan in that rural area of farmers, that I get along with them.

And -- anyway, that's -- I don't know if that answers your question about why --

TOM IGOE: I think -- one other thing I wanted you to comment on a little bit is, can you talk a little bit about the legacy of Frank Johnson and what that meant to you.

JUDGE THOMPSON: Judge Johnson, for those of you who probably have never heard of him, was a very famous southern judge. He was the judge that allowed the Montgomery to Selma march -- Selma to Montgomery march, I should say. He was the judge that was basically responsible for desegregating most of the institutions in Alabama.

Schools, parks, public transportation, you name it, his signature was at the bottom of most of those orders. And he was highly vilified.

George Wallace, the governor of Alabama, said that he would like to give Judge Johnson a barbed wire enema. That's how much he hated him. His home was bombed -- well, actually, his mother's home was bombed. He was just a man who was truly hated.

As much as he was hated by the White folk in Alabama, he was admired strongly by the Black community.

I would have to say that he and Dr. King, in my household, were the two people that -- when my parents would talk about things that were going on in the State, we would talk about Dr. King, we would say his name with some reverence, and Judge Johnson, we would say his name with some reverence, because they were the two people whom we saw as the people whom we could turn to who could lead us, who could -- who stood as examples of what the State could be, Alabama.

And I remember -- I practiced in his court as a lawyer. He was an incredibly intimidating judge. But the thing he believed in was doing the right thing.

Now, this is where it gets difficult, extremely difficult. When I was tapped to be a judge, I was tapped to replace Judge Johnson, and I did it. And I'm not sure in within my family, my parents, indeed if not in a large section of the Black community, the fact that I was tapped to be a federal judge was not equally as important as that I was tapped to replace Frank Johnson. I think those were considered two honors, and I'm not sure which one was higher.

So that's Judge Johnson. And I sat on many cases with him. I remember one of the earlier cases I sat on, we were marching into the courtroom -- and we were sitting on a three-judge court. The lower courts would

have these three judges. And here I was sitting -- literally sitting with Judge Johnson, who, I remember when I was 12, 11, 13 years old, I thought walked on water.

So here I am sitting on the bench with him. And as we're walking in, I said to him -- I said "Do I sit on your right or your left?" And Judge Johnson, by the way, who was appointed by, Eisenhower -- he was a Republican, a Lincoln Republican -- turned to me and he said "Listen," he said, "I don't ever want to hear of you being on my right. You're always on my left."

TOM IGOE: And you were 33 --

JUDGE THOMPSON: He also had a sense of humor.

And also -- I'll tell another little story about Judge Johnson, who lived through all of this vilification as a judge. On one of my earliest cases -- in fact, within the first two or three years of my being on the bench -- I had received a bit of bad press for a decision of mine. And the decision involved the use of deadly force. I was the first court in the country to say that deadly force could not be used by the police without some basis. The person posed a threat to someone else in the community ... there had to be a reason for it. You couldn't just summarily execute people merely because they were running from the police. You know, you don't shoot a taxpayer, a person who doesn't pay his taxes, just because he's running from the police. They have to pose a threat.

So, I said it was unconstitutional to summarily shoot people unless they posed a threat. You couldn't summarily execute them.

And it went up on appeal. And I met Judge Johnson in the hallway -- and by the way, he had been elevated to the 11<sup>th</sup> Circuit [Court of Appeals] by this time, which was the court above me. And I was sweating bullets because my case was being argued in that court, and I

had ruled for the plaintiff and had iterated this principle of law. And he could tell that I was nervous, and he said -- he met me in the hall and he said "Listen," he said, "You know, I know you're hurting. I know you're nervous." And, essentially, he was telling me "I've been there." But he says "That's why you have life tenure....so you can do the right thing."

And he says "Also, to do this job, you have to have a backbone. Do you have a backbone, Myron?"

And again, he was telling me, you know, essentially "You did the right thing, you know. Even if you get reversed, you did the right thing."

It ends up I was affirmed, by the way. But the point was everlasting, whether I was reversed or affirmed, that as a judge, you have to have a backbone to do the right thing.

You don't read what's in the press. You don't put your finger up and say "Which way is the wind blowing?" You decide cases based on what the law is, and that's it. And if the law tells you it's one way, that's the way you go. And you don't play politics with the law. You have to have a backbone.

TOM IGOE: Myron, in your talks and in your opinions, you talk about the importance of freedom from bias and a concern about the dignity and humanity of people, irrespective of the conditions in which they find themselves, including folks who are spending time, perhaps their lifetime, in prison.

And so, I don't suggest that you talk about all of the opinions that you've written on this subject, but I think it would be helpful for people to have a perspective on your view of the playing field and the independence of the judiciary and doing the right things in terms of

preserving the dignity and humanity of people that are dealing with the court system and the penal system.

JUDGE THOMPSON: You know, Marian Anderson used to say that "In order to keep someone down, you have to stay down there with them [so that means you cannot soar as you otherwise might]."

And I think if I had one case that, to me, was symbolic of my acknowledgment of that principle, it would be what I would call the trooper case. It was a case in which the State of Alabama had said that Blacks could not be troopers.

Judge Johnson, prior to my joining bench, had ruled that state troopers had to be integrated. I had inherited that case. The issue for me was promotion. The State of Alabama had essentially frozen promotions in that case so that no Blacks could move up, but also no Whites could move up.

And the question for me was how could I open up the system. And I wrote an opinion that said that they had to promote, and until they had some system for promotion -- a legitimate system for promotion, they had to promote one Black for every White. And -- to remedy past wrongs.

The way that opinion was written, it was to vindicate the rights of Black people. I remember writing that in my study at home. And I had just seen *Grapes of Wrath* about the Joad family, and I realized that the way -- the good ol' boy system in Alabama not only hurt Blacks, it hurt Whites.

So I redid the opinion and talked about how the end game was to open up the promotion system so that everyone could be promoted on merit and to get rid of the good ol' boy system so that it would benefit not only Blacks, but the end game would benefit Whites as well.

And so the thrust of the opinion was fairness to everyone, even though the opinion was before me as vindicating the rights of Blacks.

The case goes up to the 11th Circuit. I get affirmed, and it goes to the Supreme Court, the United States Supreme Court. And the opinion was written by Justice Brennan, affirming me, but he only had four votes. The fifth vote came from Justice Powell. And the fifth vote from Justice Powell talked about the fact that my end game was a system of fairness for all.

In other words, he picked up on the fact that my perspective, while requiring one-for-one promotions, was to end with a fair system for all and that it would help Blacks and Whites together.

And I don't know whether I would have gotten his vote had I not revised the opinion, but he did buy into that. And when I wrote it, I wasn't thinking about Justice Powell; I was basically just thinking about my mom and the whole issue of class. And I thought that this was a case in which the harm that the State of Alabama was doing was harmful to all of its citizens, not just Black citizens. And that's the way I wrote the opinion.

That's -- you know, in my judicial philosophy, the issue of fairness, to me, is one that -- it's not a black-and-white issue; it's a human issue. And I've always considered the issue of race to be -- when people discriminate, I really do think it's a crime against humanity. I think it's a crime against everyone's dignity.

And I think that whenever we discriminate against people because of their sexual orientation, I think it's a crime against humanity; it's a crime against who they are.

And I think as a judge, I am responsible for making sure that when I -- and when I vindicate it, I vindicate it for all of us, not just for the group that's before us.

That's my philosophy. That's been the driving force. And I try to drive that home with opinions a lot of the time, even though -- and I hope that it picks up that fifth Powell joke -- vote. Not joke, vote.

TOM IGOE: Right. So, let me ask you about one other area here, a different area, and that was the politically charged situation involving the Ten Commandments Judge, Roy Moore. This is not quite like any of your other cases that I've seen.

JUDGE THOMPSON: Yeah.

TOM IGOE: But it involves some very challenging and unique circumstances politically, and so I'd just like your thoughts or comments about that, how you navigated through that.

JUDGE THOMPSON: In many ways, it's really not as different from the other occasions as you might think. At bottom in that case, as well as in the other cases, the issue was the rule of law.

And for those of you who don't know about the Ten Commandments case, it's a case where the Chief Justice of the Alabama Supreme Court placed a two-ton monument in the rotunda of the Supreme Court building in honor of the Ten Commandments. In fact, he had the Ten Commandments at the top of the monument.

And several lawyers sued, saying that it violated the First Amendment, in particular the Establishment Clause. And I got the case, and the issue before me was what to do.

Resolving the case was difficult but was not the most difficult issue in the case. I was thoroughly convinced that under Supreme Court

jurisprudence, that putting this Ten Commandments, the monument -- which, by the way, Chief Justice Moore admitted, you know, it was put there out of respect for the Chief Justice and God. It was homage to God. And I said this violated the separation of church and state. And I wrote an opinion to that effect and then ordered him to remove it.

This is where the case became incredibly difficult because he announced on national news, CNN -- I actually saw it on CNN myself -- that he would not comply with my court order.

Here is the Chief Justice of the State saying to me that "I will not obey." The question for me then was what to do.

Several of my colleagues said "Put him in jail. Hold him in contempt, put him in jail."

And one thing I had learned from the '60s was that Justice Moore was not going to write a letter from the Montgomery jail. I don't know how many of you know about Martin Luther King's letter from the Birmingham jail, but I knew this was not going to be replayed in Montgomery by Justice Moore. So I decided I was not going to put him in jail.

But there was an even more important principle at play here. Here was a coordinate part of government, state government -- here was the head of the State judiciary telling me he would not comply with my court order. And I don't think I could in good conscience just place him in jail as long as there were other avenues. And so, still the question was posed, you know, what should I do.

By the way, just as a little bit of -- little bit more history, I had stayed my own order requiring that he remove the monument until my case could be heard on appeal. I thought it was critical that not only was I saying

this to Justice Moore, Chief Justice Moore, but the -- what I would consider the entire federal judiciary was saying it to him.

So, I was pretty confident I would be affirmed, assuming the appellate court followed what I considered to be law back then, but I thought it was important that I be affirmed and that we judges speak with one voice.

And the case did go up, and I got a pretty swift affirmance, just a few months later, and then issued my injunction directing Justice Moore to remove the monument. And that's when he announced that he had a higher obedience to God and that he could not comply with my order.

To me, then, this became what I considered, as I said, the same principle that was at play in all of my other cases, which is our country's respect for the rule of law.

And, you know, I thought about it at length, conferred with other judges on my court. You know, we talked among each other. And as I said, I decided I was not going to hold him in contempt or put him in jail, but instead, I did something else.

I decided that if he had no respect for the rule of law -- oh, by the way, I also did not want him to stand in the courthouse door like Wallace had done at Tuskegee. We were not going to have a replay of that either.

So, I wasn't going to send in any federal troops to remove the monument. I was not going to give him glorification of playing out George Wallace's stand in the school bus door. I definitely had studied my history.

And I said "You know, there are other people in state government whom I think, like me, believe in the rule of law."

So what I did was, I served the injunction on the governor. I served the injunction on the state controller, threatening fines. But most importantly, I served the injunction on the other eight members of the Alabama Supreme Court and observed that, when Justice Moore put that monument in the State capitol, he acted on behalf of the State, and as a result, it was the obligation of the State, in light of my injunction, to remove it.

Whether Justice Moore thought he had an obligation to remove it, to me, was immaterial. In fact, I ignored him from that point forward. I said that it was the obligation of the State of Alabama, if it believes in the rule of law, to remove that monument.

The other eight justices brilliantly rose to the occasion. They wrote an order essentially saying that "If we have no respect for the rule of law, how can we expect people who are obligated to obey our orders to carry out those orders?"

So here we had an order from a judge, that's been affirmed, telling us what we have to do, not as judges but administratively, on behalf the State. And they ordered the monument removed. They hired a crew out of Georgia to remove it, and it was removed.

And I did not lift a finger, other than a pen, because I believed that my fellow judges and justices in Alabama knew what their obligation was even if Justice Moore did not. And they did. And they did it. And that was just my belief, you know, in the integrity of other judges.

And so, in many ways, the principle -- it was more of a strategic decision, you could argue. But the underlying principle was the same; it was still the rule of law. And I have a strong belief in the rule of law.

TOM IGOE: One further question for you before we go to the Q&A session. We haven't talked about, you know --

JUDGE THOMPSON: Tom, I feel as if I've -- how much time do we have left?

TOM IGOE: Not enough time.....

JUDGE THOMPSON: Oh, I regret that 'cause I wanted you to talk about yourself too before we go into the Q&A. I know that in many ways your path was so different, and -- mine going back to Alabama and my serving my state, but in many ways your public service was equally as important.

TOM IGOE: Well, I don't know about that. If we have a moment, I'll chat about it, 'cause I know we're running short on time.

My experience was different, though the fundamental question: "Why not return to St. Louis?" I decided not to do that. And why is that? It's because growing up in St. Louis, it was a society that in many ways had a legacy and a structure and a social life that, I don't know, didn't resonate with me. So I decided I'd like a fresh start.

And so, having left Yale, I went to Virginia Law School and then came back to New York City, which at the time was a great place to have a fresh start. And I began a career with a law firm that -- and one other firm -- that lasted 40 years.

And I had what I regard as an interesting, challenging and very enjoyable career as a partner in a law firm, working on corporate finance and regulation. And ultimately in the early 2000s, I became chairman of our firm and was either chairman or vice chairman for the next 11 years of the firms that I was associated with.

And what was interesting and challenging about that was that like any organization, there are a variety of different personalities; there are different economics associated with the range of practices that these

large firms embodied; there were different approaches to the practice and different cultures.

And I thought that my job was to manage the firm so that we treated all people with decency, that we didn't look down upon people whose practice, just by virtue of the practice, didn't generate the same level of revenue or income as other areas of our practice.

These were all outstanding lawyers in their respective fields, and my challenge was to make everybody feel that they were contributing as part of a whole and retain a collegial atmosphere that was rewarding, not only to our partners but to our associates and our staff.

And that, to me, was a challenge, but it was also one that I enjoyed taking on very, very much.

And during the course of that, we did some work with other communities. Particularly, after Katrina, I organized an effort to go down to Gulfport, Mississippi. The computer system for the school system in Gulfport was washed into the sea by Katrina, and I led the effort, working with the school administrators in Mississippi, to rebuild the computer system, with a lot of financial help from our firm and, in the process, just had tremendous enduring friendships with a lot of people in an area of the country that I didn't live in but I got to know. And I just found that work tremendously rewarding.

I then got involved in what was called -- an organization that was called Managing Partners Council [MPC], which was an organization of large law firms that created their own captive insurance company to provide lawyers professional liability insurance.

And in the course of that work -- it was a global insurance operation -- we had 28 global carriers on the program. And the most significant aspect of my job as head of that organization was to work with people

all over the world who were involved in the insurance industry, whether it was the United Kingdom, Germany or Switzerland or France or Bermuda. Big industry. And it opened up a whole new world to me in terms of economics and how the insurance actually works to protect and preserve a lot of different aspects of our lives.

But it was a different experience from yours. But one of the things that I learned from you at Yale, and which remained with me, was the importance of dealing with people with decency, with honesty, to tell them the truth and to find a way to solve problems when they occurred.

And I think that legacy in terms of our relationship has lived on with me in a lot of rewarding ways in addition to just our own personal friendship, which continues to be strong.

I guess I'd like just to finish up by -- you and I have both talked in the past about, but I know you feel particularly strongly about, the importance of public service.

JUDGE THOMPSON: Yes.

TOM IGOE: I've heard you speak on that subject before. But maybe another four or five minutes on that, to the extent --

JUDGE THOMPSON: I'd like -- actually, I'd like you to talk about it, and I will chime in second. The importance of public service.

TOM IGOE: I think once I cut the cord in terms of working, I felt it was important, and continue to feel important, to give back to others, to get involved in my local community, and to work with organizations that are involved in challenges that are well known to me and my family, Susan and I.

So, I became involved in an organization called Benhaven, which provides critical services for up to 300 children and adults in the area of Connecticut -- particularly the greater New Haven area.

And that has been a real eye opener in terms of the change and transformations that can occur when people that are seriously challenged get the help that they need in order to live their every-day lives and in order to have an opportunity to earn money in a real job.

And the people that work in that organization come from local businesses; they come from outstanding professionals, people that are involved in the Yale programs. It's a wonderful working group, and I enjoy spending time on that organization and doing the best I can to make sure that it's sustained well and that it provides critical services for people in the community.

I also head the condominium association where our son -- our disabled son lives. And most of those units -- or a majority of those units are occupied by disabled adults who are trying every day to do what they need to do in their lives to have a rewarding life.

So those two things have been very, very rewarding to me. And then, as folks on the Darien Men's Association know, I enjoy being a part of the association, to contribute to and to share a life with the others who are part of this group, which is an extraordinary group of people who have led tremendously interesting lives. And it's just been a pleasure to be a part of that.

And now recently, I've also joined the Darien Community Association, which provides assistance -- financial assistance to needy people. It runs a thrift shop. It gives scholarships to high school students in the area.

So being well attached to the community and giving in ways that I think -- giving back in ways that are meaningful to me and to others is something that I've wanted to do, and now I have the time to do it.

So that's my view on my personal aspect of public service.

JUDGE THOMPSON: I'd like to just give a slightly -- maybe it's not a different take as much as an addition. I've been very much aware of Tom -- you know, the challenge of having a disabled son. And I have felt a special affinity there, which I'm sure you're aware of, because of my own disability and our society's ability to come to grips with the fact that, you know, within our families, within ourselves, throughout society, you know, there are many people who suffer from disability.

And when I was growing up, it was something you hid, you know. And I think when we were talking not too long ago, I asked you -- I said "Did you ever notice that I was disabled?" And you said "Not particularly."

And it's so funny how you as a person, if you are disabled, you try to hide it or you don't talk about it or you don't engage it.

And that goes back to our own friendship again, because here you had this development with a guy like me, who clearly had a disability about walking and so forth, and then you have a son.

And I know over the years, I have become -- as part of my involvement in -- as a judge, I've taken on many disability cases too. And I've read a lot of law, for obviously selfish reasons, because of myself, but also because I've just come to a recognition of that disability.

I spoke to a disabilities group, people who have difficulty hearing and seeing, in Baltimore a couple of years ago. And I said to them, I said, you know, "We hide our disabilities. We ourselves hide our disabilities."

And I said "I am out. I am announcing to you today that I am a disabled person. And I'm proud of it. And I'm just like anybody else." And I called it, you know, coming out as disabled.

And I think families do that too. And I think it's a very different issue in our society, and I think it's a part of our society that has yet to really come to grips with the notion of the disabled. And when I'm talking about disabled, I mean in its very broad terms: physically disabled, mentally disabled, and all dimensions. Just not being, you know, without a disability.

And for you, Tom, I know you've really become deeply involved in that. And sometimes I wonder whether it's because you saw me. You started out with a college roommate, and you ended up with a son.

But again, I just think that is so admirable about what you've done and how you've devoted your life to that.

TOM IGOE: I have to say -- I appreciate that. I would also have to say that in the first 25 years of our son's life, 90 percent of the work was done by Susan, my wife.

JUDGE THOMPSON: Right.

TOM IGOE: And I've been fortunate since I've retired to be able to devote more time to this. But it took tremendous courage on her part to do the work that was necessary and to knock down the barriers in order to provide for him an opportunity in life. And that's a tremendous contribution that she's made.

JUDGE THOMPSON: Yes. I know Susan, and I share your -- she's just an incredible person.

TOM IGOE: So, let's do this: We could talk -- you and I could talk for at least another hour --

JUDGE THOMPSON: I'm ready for Q&A.

TOM IGOE: -- but I think, Gary, if we can -- can we open this up to the broader group?

GARY BANKS: People raise their hands and unmute themselves.

BRYAN HOOPER: And the first hand that went up is Charles.

CHARLES SALMANS: Well, Judge, I just want to thank you for a wonderful presentation. And one of the things I'd like to convey is the King Solomon Award, after I heard how you handled the Ten Commandments case. That was sort of the equivalent of dividing the baby as a way to get to a good final outcome.

But I would like to ask a question that has to do with how much more divisive our society has become in -- you know, in -- certainly during the current White House administration where, you know, we hear a president saying that there are very fine people on both sides and so on.

And I suspect that as a judge, you have always had some level of threat to your personal safety. And I was just wondering whether you had seen an uptick in (audio distorted), given the fact that in some ways, people are being encouraged to do violent things.

JUDGE THOMPSON: Right. I assume you're all aware of the judge whose son was killed in New Jersey.

CHARLES SALMANS: Yes.

JUDGE THOMPSON: That is something that we all live with. And it has been with me. I have had protection maybe three or four times. I've never had anyone personally threaten me, you know, just outright threaten me. I've had people use some very strong language against me.

But nonetheless, because of the nature of the cases that I have, I have had protection. During the Ten Commandments case we were talking about earlier, there were thousands of people in Montgomery from all over the country who had descended to support Justice Moore. And out in front of my own court, they burnt some of my orders in a trash can. They just took my orders and they were burning them in front of the court. And I could see it from where I was working. I did have protection then.

I would have to say, though, that the worst time for me was early on -- I guess it was -- no, it was in the mid-'90s when Justice -- Judge Vance, who was on the 11th Circuit, fellow judge, was assassinated. He was sent a package, and in it was a bomb. And it blew him up. Hurt his wife; he was killed.

And they assumed that the person who was then the suspect also wanted to -- that I was the target, because Judge Vance and I had handled his case at one point. They had sort of done a search and found out that I had handled the case as well, so they thought that I would probably -- that I was likely a target as well.

And at the time that Judge Vance was killed by this bomb, I was in Russia, meeting with some Russian counterparts. This was actually the Soviet Union. This was before the breakup of Russia. I had seen Gorbachev and others, and we were meeting over there with these people and talking about the rule of law in the United States and how it would play out eventually when the Soviet Union would split up, which was, I think, during perestroika.

And I had gotten off the plane on my return, and I was told about -- that Judge Vance had been killed with a bomb and that I was the target next. And the marshals met me there, and they essentially took me into custody right off the plane in New York.

And, of course, my only concern was my wife and my children. And I tried to call them, and I couldn't reach them, and I was going bananas. I just said "Where is my wife? Where are my children? Please find out where they are and let me talk to them." And I could not sleep until that happened.

It ended up that my wife, once she heard that I might be a target, had packed the kids into the car, two kids, and had driven to her parents' house and just stayed there. She went home to her mom and dad. But I was eventually able to find out that they were safe.

And then, of course, I had protection for a very, very long time then because they thought -- it ended up that I was not a target, but it was a very scary scenario. And I really understood what the judge was going through -- well, not truly; I didn't lose a child like that. But I understood, you know, what -- the fact that she had someone come to her and, unfortunately, kill one of her children. I know she's saying to herself "Why couldn't it have been me?" There's nothing worse than losing a child.

But other than -- the -- I have never really -- other than just on a few occasions -- two or three, maybe four, I have had protection, but I've never really felt in danger other than on those occasions.

BRYAN HOOPER: Okay. Let me ask that anybody who has a question, please click electronically, put your hand up, and then I can look across the various parties.

Tom Brislin, you have a question? Unmute yourself. Okay. Judge, this is Tom Brislin.

JOHN BASSLER: John Bassler has a question, Bryan.

BRYAN HOOPER: Okay. John, you go.

JOHN BASSLER: Okay. Thank you.

First of all, Tom, thank you so much for getting the judge to be with us today. I've found this to be a very powerful exercise in friendship, and also I learned a great deal.

And I would be interested in Judge Thompson's experience in terms of what can we as an individual do in the current state of the violence that's going on through these federal troops that are stirring the pot in our cities.

JUDGE THOMPSON: Right. I can't offer you any advice on that. I always tell people if they want my views about a current scenario, they'll have to pay, what is it, \$400, file a lawsuit and I'll give you my opinion.

But I guess the real thing, though, is -- you know, this is where Congressman Lewis comes in so beautifully, you know. I love his phrase about "good trouble" and, you know, in standing up for what you believe in. But I don't have any direct answer to -- in fact, I know that there's a judge out there who's somewhat involved in that, and right now I'm glad I'm not that judge.

BRYAN HOOPER: Okay. Gary, I think you have a question.

GARY BANKS: Go with Harris first.

HARRIS HESTER: Judge, thank you for a fascinating presentation. And thanks to my dear old friend Tom Igoe for convincing you to join us.

My question is a bit on a different plane. Since you joined the federal bench in the early '80s to today, has the bench become more politicized?

And there's a follow-up to that question. And strangely enough, my question, that part of it is, does it matter?

JUDGE THOMPSON: Yeah, I think it does matter. I think that the rule of law only works with an independent judiciary. And judges have to rise above politics to render decisions that people will respect. And they'll only respect it if they are confident that when you have ruled, you have done it in an unbiased way.

If we're nothing but politicians in robes, then I don't think we're any more a judiciary. And that's a challenge. It's easy to announce that; it's difficult to actually live it. And it's -- in many ways, it's more aspirational than an absolute. But I think we as judges have to aspire to that continually, every time we decide a case, to make sure that we are resolving it based on the law. It is hard, but I think it's important.

I sometimes lament back the fact that when they -- the newspapers -- report that a judge decided a case, particularly when a panel of judges decided a case -- until recently, they used to have three-judge courts; they don't have them as much anymore. But early on in my career, I sat on three-judge courts -- three-judge trial courts, not appellate courts -- and they would always say two white judges to one black judge.

I'm always saying what does the color of the judge have to do with the decision? Why not just talk about the reasoning that the judges or judge gave and see if you agree with it. Why does it make any difference what the color of the judges is, or in the same line, you know, what their political party is, you know?

Unfortunately, I think that has undermined our independence. I think we should be viewed as free thinkers and people who follow the law.

BRYAN HOOPER: Gary?

HARRIS HESTER: Thank you.

GARY BANKS: Judge Thompson, have you -- I know some of your rulings had to do with, you know, prison abuses and chain gangs and

things like that. Have you ever worked with Bryan Stevenson in the Equal Justice Institute?

JUDGE THOMPSON: He's had a case or two before me. Right. And, you know, I just know of him. Yes. But if you ever have a chance to visit Montgomery, you really should see the memorials. They're breathtaking. Absolutely breathtaking, yes.

GARY BANKS: Terribly upsetting.

BRYAN HOOPER: Do we have some more questions?

GARY BANKS: Somebody with an accent. We have Mark on the -- you're going to recognize this accent.

BRYAN HOOPER: Mark, are you there?

TOM IGOE: I thought Tom Brislin had a question. I don't know if he's still on.

MARK NUNAN: Do you want me to go first or second?

BRYAN HOOPER: Mark, you go now.

MARK NUNAN: All right.

Thank you very much for the most interesting presentation. And one thing I wanted to ask you about, did you ever have a chance to meet A.G. Gaston? And if you could talk a little bit about --

JUDGE THOMPSON: How do you know about A.G. Gaston?

MARK NUNAN: My mother did some real estate deals with him back in Alabama.

JUDGE THOMPSON: You're talking about when I was a little kid -- I didn't really know him -- in Birmingham. Quite a towering figure during

the civil rights movement. And, of course, involved in real estate and insurance.

But I can't really say that I knew him on a personal level. He was -- how do I put this. I don't say this anymore, but he was an old man when I was a kid. Now that I'm an old man, I don't say that.

MARK NUNAN: Well, you know, he lived to be very old. He died in his nineties.

JUDGE THOMPSON: He was probably -- what I think of as an old man -- he was probably in his fifties at the time, and I thought of him as an old man. So I say that with some reluctance. It's more that I knew of him.

MARK NUNAN: But did you -- do you think the Black community -- business community -- how did they react with the civil rights community? Because I understand that he was kind of a financial backer but was kind of --

JUDGE THOMPSON: Definitely. Without question. You know, the whole thing about civil rights is always a two-edged sword. When Blacks are asking for equality, it always requires change, not only for the people who -- that could be Black and White people -- who can bring about the equality, but for those who are the victims. They still have to make a sacrifice as well.

And so, for instance, you know, like you think of A.G. Gaston and the businesses that he had. But I also think about my grandfather, who was also a businessman. The integration of the South had a significant impact on them. Segregation meant that Black business -- apart from integration -- that a lot of Black businesses failed.

And, you know, when suddenly the integrated hotels came in, Black businesses failed. It had definitely a negative impact on Blacks as well.

And you can see why to some degree some Black businessmen may not have been as on board as, you know, some other Blacks who may not have been businessmen.

Black employees who could lose their job were really put in a bind. If they went out and demonstrated with Dr. King, they'd get fired.

And school desegregation is a classic example too. I went to an all-Black school, but I'll be very candid with you. In some ways, the education that I received in all-Black schools was superior to the schools that some of these kids go to today that are all-Black.

You know, it -- progress has had some negative downside to it as well. And -- I don't know if that answers your question.

TOM IGOE: I think it's time to wrap up, guys, but I would say -- I want to say a special thank-you to Judge Thompson for making the time available to us, not just for today, but the planning for this.

And I think it's an extraordinary opportunity for a lot of us to have a better understanding of what it is that you deal with from day-to-day. And I'm so appreciative of your ability to do it. And I know you have a busy day in court today, so I think at this juncture we should sign off. And thanks again so much.

GARY BANKS: Thank you to the two Treys also for technically making this possible.

TOM IGOE: I hope we've recorded this.

GARY BANKS: I hope so too.

TOM IGOE: Good-bye, everybody.

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## AFTERWARD

In the week immediately following this dialogue, **Bryan Hooper**, head of the DMA Speakers program, issued the following post-script:

Our speaker's virtual podium was graced last week by **Judge Myron H. Thompson** from Alabama in conversation with DMA member, **Tom Igoe**. This was an incredibly honest, open and frank discussion of a bi-racial friendship that started at Yale, developed when they became roommates, strengthened as each became the other's best man, and deepened further over the years since. It is impossible to convey the genuine emotion and intellectual content of that discussion in these notes, but you can get a much better idea from the recorded conversation and subsequent question and answer session posted on the DMA website in the speaker section.

In particular, you will gain an impression of Judge Thompson's humanity, honesty and humor. As you watch and listen to that video, you will observe some of the judge's life attitudes which were conveyed with such conviction and applied in his judgments, particularly the two cases discussed involving promotions within the ranks of state troopers, and the removal of the stone monument listing the Ten Commandments from the Alabama supreme court building:

- You don't have to be white to be a snob (learnt from his mother!)
- Show courage and do the right thing
- It's a question of respecting the rule of law.

We received more comments than usual about this session, and they reflect the emotional impact on the audience:

“You don’t too often see two men share such deep personal reflections, thoughts and feelings in front of so many strangers ... I felt privileged to be a part of such a group.”

“The genuine depth and intensity of their friendship really came across.”

“Simply one of the best speakers/presentations!”

“Today’s discussion was just amazing and very timely given what’s happening in the country.”

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***Other DMA members’ feedback.*** The following are additional representative comments received in the wake of the discussion:

“What a wonderful session today. I was so impressed with Myron Thompson and, I must say, I learned a lot about you which was impressive as well. The way Thompson handled the enforcement of the 10 Commandments Case and the Alabama trooper promotion case was brilliant. So it was insight not only into arriving at a decision but also on how as a judge he maneuvered to get his decision enforced in a conservative region such as Alabama. Both truly, as I said in preface to a question, worthy of the King Solomon Award. I had tears in my eyes a couple of times as you both related friendship, and your parents’ prejudice and then acceptance of your friendship. I can see my own parents having a similar reaction, by the way. But the honesty with which you talked about that was remarkable.....I loved Thompson's remark that he had polio as a child but at the class reunion he could walk better than the football players in his high school graduating class. Age, in many respects, is a leveling experience.”

“I was greatly moved and impressed by your conversation with your friend, Judge Thompson. Your respective comments brought out

important character attributes and values that are sorely needed in our country, and those comments pointed toward a path forward.”

“You and your friend Judge Thompson gave a very effective, and I must say, touching presentation today, especially your dialogue on your long friendship and your days at Yale. I loved hearing about Judge Thompson's interactions with Judge Frank Johnson, and the anecdote about the meeting of ex-Governor Patterson and John Lewis (I wonder if Patterson apologized to Lewis). In our family too Judge Johnson "walked on water" (even better than Bear Bryant, which was quite a feat in Alabama). My parents viewed him as almost a secular saint, and the *ethical* leader of Alabama in that era. He was such a positive force there, throughout the Southeast, and the nation. As Irish Catholic immigrants to Alabama, we children were dimly cognizant of being in another kind of minority (though nothing along the lines of what blacks faced); and the rare individuals with power who stood up for the true *rule of law* were heroes in our community too. I can well understand Judge Thompson's initial trepidation at succeeding Frank Johnson, especially at such a young age. But your friend has more than met the challenge.

“I was also quite moved to hear of your son. My youngest brother was disabled, and I know the challenges this brought my parents, especially my mother who moved heaven and earth (and kicked quite a few bureaucrats in the ass along the way) to get my brother more opportunities for a better life (back in the '60's and '70's - not so easy), as you so aptly put it this morning.”

“I certainly hope that the recording worked because I have a number of friends who can benefit from both the example of having an open and honest exchange and from the insights you both shared that have relevance to other conversations that are finally happening across our country.”

## APPENDIX

### Myron H. Thompson US District Court, Middle District, Alabama

#### Selected Judicial Opinions and Commentary

**Preamble:** Below is a representative sample of opinions written by Judge Myron Thompson that are part of the broad body of his work extending over a 40-year career. The topics addressed in these opinions include

- Policing practices and the use of deadly force
- Racial discrimination in the appointment of county polling officials
- Abusive prison systems and policies involving chain gangs, hitching posts, access to toilet facilities, visitation rights
- Separation of church and state and the application of the Establishment Clause
- Compassionate release of at-risk prisoners exposed to the emerging coronavirus
- Employment discrimination based on sexual orientation

In addition to these opinions (certain aspects of which I have summarized below), Judge Thompson presided over, and issued important opinions in, many other challenging cases in Alabama involving (1) abortion rights, (2) racial diversity of the Alabama state post-secondary education system, (3) redistricting in the City of Montgomery, (4) Alabama law barring gay and lesbian groups on college campuses from receiving public money or official support and (5) troubled conditions within the Alabama prison system.

Beyond the substance and technical legal aspects of all these opinions, the Judge's rulings reflect several obvious qualitative and character traits. They are thorough, well-written, and supported by extensive examination and analysis of relevant judicial precedents, and they reflect careful adherence to and respect for the applicable rulings of the Eleventh Circuit Court of Appeals, which are binding on the Federal District Court in Alabama. They are quite thoughtful in the sense that the matters in dispute (including collateral issues) are fully vetted and considered, with obvious sensitivities for the competing concerns of the litigants. And most importantly, they exemplify an even-handedness, an absence of judicial bias and a notable respect for the dignity of human beings.

In my view, you cannot have read through these opinions without concluding that Judge Thompson, armed with his knowledge and understanding of the US Constitution, was swimming against the "tide" in Montgomery. For despite the efforts of many of our country's civil rights leaders (a number of whom, including John Lewis, were and are known to Judge Thompson), at the time of Judge Thompson's arrival on the bench in October of 1980 there remained within Alabama an enduring history of racial discrimination across the entire political, social and economic spectrum.

Over the years, the force of that discrimination has begun to diminish owing in no small measure to the integrity, humanity and uncommon courage of this man.

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The summaries of these opinions follow. Other than textual material presented *in italics*, reflecting Judge Thompson's personal observations, the summaries and comments below are solely those of the author and not those of Judge Thompson.

- 1. Eugene Ayler v. Joseph Hopper, Deputy Commissioner of Corrections for the State of Alabama**, 532 F. Supp. 198 (M.D. Ala. 1981) *(first court to hold that fleeing felon statute -- authorizing use of deadly force where use was unnecessary -- was unconstitutional)*. I attach it as a very early case. As you can see, I had been on the bench for only a very short period of time. It was daunting to realize that I could strike down a state law. And, of course, that I had no prior case on point made it all more challenging. And my own insecurity. And I was so very young. And there was the possible embarrassment of being reversed.

In a case brought against a state correction officer to recover damages arising out the use of deadly force to effect an arrest, Judge Thompson articulated the principle that to the extent a fleeing felon statute purports to allow the use of deadly force in situations not necessary to prevent imminent, or at least a substantial likelihood, of death or bodily harm – which the Alabama statute appeared to do – it is unconstitutional.

The plaintiff had requested that the Judge instruct the jury that the correction officer could not assert the defense of “good faith immunity” in reliance upon a statute that was unconstitutional. The Judge ruled that, because the constitutionality principle had not clearly been established at the time the defendant police officer used deadly force to effect the arrest, the principle could not be used to evaluate the defendant’s claim of good faith immunity and accordingly refused to issue the jury instruction.

- 2. Philip Paradise, Jr., et al. v. Bryon Prescott, Director of the Alabama Department of Public Safety**, 585 F. Supp. 72 (M.D. Ala. 1983) *(required that, in light of history of racial discrimination and continuing severe racial imbalances in upper ranks, 50% of all*

*Alabama State Troopers promoted to corporal and above must be black). This one went all the way to the U.S. Supreme Court and was affirmed, 5 to 4. Drew national attention because it dealt with affirmative action. Also, it was very early in my career.*

This was an affirmative action case that addressed the long history of racial imbalance among the ranks of Alabama state troopers, the latest ruling in litigation involving discrimination in hiring practices extending back to at least 1972. The plaintiffs had filed a motion to enforce the terms of two previously entered consent decrees intended to remedy the imbalance. Noting the repeated failures by the Alabama Department of Public Safety to make meaningful progress (for example, of the 66 corporals on the force, only 4 were black), Judge Thompson established procedures that the Department was required to implement in the promotion of troopers. Specifically, the Judge ruled that, for a specified period of time, (1) 50% of all those promoted to the rank of corporal and above must be black troopers as long as there were qualified black troopers available; (2) for each white trooper promoted to a higher rank, the Department was required to promote one black trooper to the same rank if there was a black trooper qualified for the promotion; and (3) this requirement was to remain in effect as to each rank above entry level until either 25% of the rank was black or the Department had developed and implemented promotion procedures meeting prior orders of the court.

Using strong language to describe the past history of racial discrimination in hiring and promotion, the Judge ruled that the promotional quotas imposed by the court were necessary, failing which the intolerable racial disparities would not dissipate within the near future.

**3. Charles Harris and Mose Batie, et al. v. Charles Graddick, in his official capacity as Attorney General of Alabama**, 593 F. Supp. 128 (M.D. Ala. 1984); 615 F. Supp. 239 (M.D. Ala. 1985) (*required, under § 2 of Voting Rights Act, that defendant class of officials for all but one county in State of Alabama appoint more blacks as poll officials for primary, general, and special elections, and that failure to appoint blacks as poll officials in number proportionate to number of blacks in county constitutes prima-facie violation of court order*). This is one of my favorites, primarily because the issue was: remedy. What to do about centuries of racial intimidation at the voting polls. It has been cited for its "imaginative" use of the Voting Rights Act.

The subject of this case is the long history of efforts by Alabama officials to suppress the black vote by not apportioning an appropriate percentage of blacks to serve as polling officials in counties across the State. Judge Thompson's opinion describes in detail the open and official racial discrimination manifested in practically every area of political, social and economic life. And even though, by 1984, blacks were legally entitled to expanded rights, they nevertheless continued to harbor strong fears of entering into public places. The simple act of registering and voting, especially when voting officials were all white, was an extremely intimidating experience. As a result, many blacks didn't register and didn't vote. In this context, the Judge found that, across the state, black people were grossly underrepresented. In at least 36 of Alabama's 67 counties, the percentage of black poll officials ranged from one-half to substantially less than one-half of the percentage of blacks in the county population.

To mitigate these effects, Judge Thompson determined that the presence of black officials would significantly alleviate the situation and open up the political process to those suffering from

fear. Issuing a preliminary injunction under section 2 of the Voting Rights Act (which bars racial discrimination in voting), the court ordered the appointing authorities for all counties (with one exception) to make polling appointments for all primary, general and special elections such that the total number of black persons appointed as poll officials would reasonably correspond to the percentage of black persons in the population of the county. In a subsequent ruling, the court approved a settlement agreement that reflected the court's earlier findings and provided for ongoing record-keeping and the opportunity for further judicial review, if necessary.

**4. Michael Austin et al. v. Joe Hopper, Commissioner of the Alabama Department of Corrections, 15 F. Supp. 2d 1210 (M.D. Ala. 1998) (*held that use of the "hitching post" in the Alabama prison system constituted cruel and unusual punishment in violation of the Eighth Amendment*), supplemented, 28 F. Supp.2d 1231 (M.D. Ala. 1998). One of a number of run-ins with the Alabama penal system.**

This case is based on a broad set of claims lodged by inmates of the Alabama prison system that challenged the constitutionality of specific prison systems and policies associated with chain gangs, "hitching posts," access to toilet facilities and denial of visitation rights. The case falls within the broader context of years of litigation and Federal judicial oversight regarding Alabama prison conditions, policies and practices.

The Judge's opinion recounted, in great detail, the long, sordid history of chain gangs in Alabama. During Reconstruction, chain gangs provided an alternative to rebuilding the penal institutions that were destroyed during the Civil War and also served as a

cheap form of labor. In the modern iteration of this penal practice (which affected 2,000 to 4,000 prisoners), inmates were shackled by leg-irons in groups of 5, separated with 8 feet of chain between them, and required to work on public highways or other hard labor projects. One or two corrections officers supervised 25 to 40 inmates, who remained shackled throughout the day, including at times when they had to relieve themselves and during mealtime. Chain gang assignments often ranged from 30 to 180 days (which could be extended by prison officials, based on behaviors). The majority of chain gang inmates, who died at enormously high rates due to brutal conditions, were blacks. After reviewing the serious physical and psychological harms inflicted by this practice, Judge Thompson approved a settlement agreement that barred the chaining of inmates together.

The hitching post claims involved a special penal practice for those who refused to work on the chain gangs or disrupted work squads. These inmates, with their hands handcuffed, were tied to a horizontal bar made of sturdy non-flexible material, located on the prison grounds. Some inmates were forced to stand with their arms above their heads while others were handcuffed such that they couldn't stand upright. Most were shackled with their two hands close together but some were handcuffed so that their arms were spread apart and their hands shackled independently. Inmates were not permitted to take breaks to flex or stretch and often had to stand for hours, on uneven surfaces, in an open-air setting, under the hot sun, without access to water or toilet facilities. As a result, they often suffered extreme pain, anguish, humiliation and mental suffering.

After reviewing prison regulations and numerous accounts of hitching post experiences (many of which involved malicious and sadistic treatment by corrections officers), and with the record

showing that no other prison system, state or federal, utilized this practice, Judge Thompson determined that this penal policy, as currently practiced in Alabama prisons, violated the Eighth Amendment's cruel and unusual punishment constraints, which prohibit punishments that are incompatible with evolving standards of decency.

In his analysis of both chain gangs and hitching posts, Judge Thompson carefully considered the treatment of convicts as human beings who, within necessary limitations of prison life, are nevertheless entitled to be treated with decency. These considerations involve broad and idealistic concepts of dignity, civilized standards and humanity balanced against competing penological goals.

- 5. Stephen Glassroth v. Roy Moore, Chief Justice of the Alabama Supreme Court**, 229 F. Supp. 2d 1290 (M.D. Ala. 2002) (*held that placement of monument engraved with the Ten Commandments in the lobby of the Alabama State Judicial Building violated the Establishment Clause of the First Amendment*); see also **Kelly McGinley v. Gorman Houston, Senior Associate Justice of the Alabama Supreme Court, et al.**, 282 F.Supp.2d 1304 (M.D. Ala. Sept. 4, 2003) (*removal of monument engraved with Ten Commandments in compliance with the court's order did not unconstitutionally establish the religion of "nontheistic beliefs"*). *The challenge here was not so much the law, but how to enforce my order without violence, in the face of defiance and thousands of people gathered in support of Moore. That issue is not in the opinion, or, really, written anywhere.*

Several Alabama attorneys sued the Chief Justice of the Alabama Supreme Court, the politically popular Roy Moore, asserting that

he had violated the Establishment Clause of the First Amendment by placing a 5,280-pound granite monument engraved with the Ten Commandments in the Alabama State Judicial Building. The Establishment Clause provides that “the government shall make no law respecting the establishment of religion.”

Judge Moore, in the early 2000s, was a larger-than-life figure in the State of Alabama, having been involved in highly-publicized litigation with the American Civil Liberties Union and the State over his prior placement of a plaque of the Ten Commandments in his Gadsden, Alabama court room. He regularly invited the clergy to lead prayer in his courtroom before trials. Judge Moore’s funding for these litigations came from Coral Ridge Ministries, an evangelical organization.

During his run for the office of Chief Justice, his campaign referred to him in all its materials as the “Ten Commandments Judge,” and, on the evening of July 31, 2001, the newly-elected Chief Justice Moore quietly placed the monument in the large colonnaded rotunda in the Judicial Building. This was an act carried out without the approval or knowledge of the other eight Alabama Supreme Court Justices.

In a carefully worded, lengthy opinion, Judge Thompson described the monument (“the monument’s sloping top and the religious air of the tablets unequivocally call to mind an open Bible resting on a lectern”), its positioning in the Building to achieve maximum effect and Justice Moore’s own words at the time of the unveiling on August 1:

The monument serves to remind the Appellate Courts and Judges of the Circuit and District Court of this State and members of the bar

who appear before them of the truth that in order to establish justice we must invoke the favor and guidance of Almighty God.

On the basis of an extensive record, a week-long trial, and a personal visit to and inspection of the site, Judge Thompson concluded that the monument had the primary effect of advancing and endorsing religion. In so finding, Judge Thompson rejected Justice Moore's assertion that, as a matter of law, the Judeo-Christian God must be recognized as sovereign over the State, addressing and countering, respectfully and thoroughly, each of Moore's arguments.

In his order, Judge Thompson ruled that placement of the monument was unconstitutional. Reflecting sound judgment, and undoubtedly being aware of the politically charged situation at the time of his ruling, Judge Thompson allowed Justice Moore 30 days to remove the monument, retaining jurisdiction to enter an injunction ordering removal, if that action became necessary. An injunction ultimately ensued, Chief Justice Moore failed to comply with it, but the other eight Associate Justices of the Alabama Supreme Court ordered removal of the monument, which was completed on August 27, 2003.

In a follow-up brief opinion, Judge Thompson denied legal arguments that forced removal of the monument constituted government endorsement of the religion of "non-theistic" beliefs in violation of the Establishment Clause.

- 6. United States of American v. Martinezza McCall, 2020 WL 2992197** *(on emergency Motion for Compassionate Release, finding "extraordinary and compelling" reasons for prisoner McCall's supervised release from prison in light of his sickle-cell disease and exposure to Covid-19, which posed an urgent life-or-*

*death situation that Bureau of Prisons was unable to address in the face of rampant outbreak among prison population).*

Prisoner McCall had already served two years of his 10-year sentence. Looking at his circumstances, Judge Thompson ruled that, in light of McCall's unique susceptibility to Covid-19, given his sickle-cell disease and rapidly worsening medical condition, coupled with the prison's inability properly to treat McCall's medical condition, there were extraordinary and compelling reasons for his release. In so ruling, the Judge considered not only the prisoner's medical condition but also his life history, his prior inability to secure disability benefits, his decision to sell drugs to pay bills, and his enduring PTSD symptoms stemming from the murders of his two brothers – one which occurred in his presence. The Judge also noted that McCall's 10-year prison sentence consisted of a 5-year mandatory minimum sentence for his drug conviction plus another 5-year sentence in light of two prior felony drug convictions (the tack-on sentence would have been eliminated by the First Step Act of 2018, which became effective just 3 months after McCall's sentencing). The Judge's order permitting release required that the prisoner be placed in home confinement with electronic monitoring for the next 3 years, followed by 5 years of supervised release.

Judge Thompson's opinion in *McCall* resonates with the body of work by Bryan Stevenson. Stevenson's 2014 book, ***Just Mercy | A Story of Justice and Redemption***, provides a compelling narrative of the challenging legal work undertaken by Stevenson and others who were and are part of the Equal Justice Initiative. By virtue of their enduring efforts, many innocent people condemned to die secured their freedom and scores of others, including children convicted of non-homicide crimes who were sentenced to die in

prison, have either been freed or given the opportunity of ultimate freedom.

A key message that emerges from the book, aside from the long history of unequal treatment of African-Americans, other minorities and poor people, is the transformative effect of the initiative undertaken by Stevenson and his colleagues to cause participants in the criminal justice system to give more meaningful consideration to the circumstances, including parental upbringing, psychological development, mental and physical disabilities and disruptive living conditions, that inform and provide context for aberrational and violent behaviors.

As Judge Thompson has made clear, these factors, often complex, are highly relevant in sentencing determinations.

**7. Roger Isaacs v. Felder Services, LLC**, 143 F.Supp.3d 1190 (M.D. Ala. Oct. 29, 2015) (*holding, as a matter of first impression, that claims of sexual discrimination – on the basis of an individual’s sexual orientation – are cognizable under Title VII of the Civil Rights Act*).

Plaintiff Roger Isaacs, a gay man, alleged that his former employer, Felder Services, fired him on the basis of his sex, gender non-conformity and sexual orientation. While denying Isaac’s claim (in view of his failure to present any direct or circumstantial evidence of actual discrimination by his employer), Judge Thompson held that claims of sexual orientation-based discrimination are cognizable under Title VII of the Civil Rights Act of 1964. This issue is one that, at the time in 2015, had not been addressed by the Eleventh Circuit Court of Appeals.

Endorsing the position articulated by the Equal Employment Opportunity Commission, Judge Thompson held that Title VII prohibits employers from treating an employee or job applicant differently from other employees or applicants based on the fact that the individual is in a same-sex marriage or because the employee has or is interested in having a personal association with someone of a particular sex. Adverse action on that basis is, by definition, discrimination because of the employee's or applicant's sex.

Notably, almost five years later, in June 2020, in the case of **Bostock v Clayton County, Georgia**, the U.S. Supreme Court resolved the disputes among several Circuit Courts of Appeals on the issue of sex-based employment discrimination, finding that an employer who fires an individual merely for being gay or transgender violates Title VII. In so holding, the Supreme Court reversed a ruling of the Eleventh Circuit to the effect that the law does not prohibit employers from firing employees for being gay.

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**Tom Igoe**  
**July 2020**