Martin Luther King Jr.'s Perjury Trial: A Potential Turning Point and a Footnote to History

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INTRODUCTION

§ 382. (5166) (7548) Perjury before state department of revenue
Any witness who shall testify falsely as to any material fact about which he is interrogated by the department of revenue, or in any investigation or proceedings held before the department of revenue, shall be guilty of perjury, and shall, on conviction, be imprisoned in the penitentiary for not less than two years nor more than five years.¹

In 1960, the state of Alabama indicted Martin Luther King, Jr. for perjury, based on his alleged underpayment of his state income taxes in 1956 and 1958.² Governor John Patterson ordered the prosecution as a tactic in his campaign of resistance to the Civil Rights Movement.³ While civil rights activists turned to the courts on occasion to advance their goals, legal strategies lay at the core of Governor Patterson’s effort to defeat the movement. Dr. King defined this trial as a potential turning point in his career as a civil rights activist.⁴ Convictions on both charges of perjury could have sent Dr. King to prison for as long as ten years, likely removing

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¹ ALA. CODE § 14-382 (1940).
³ John Patterson served as Alabama Attorney General from 1955 to 1959 and as Governor from 1959 to 1963. He began his counter campaign as Attorney General. See discussion infra Part I.
⁴ Compare Martin Luther King, Jr., Foreword to WILLIAM M. KUNTSLER, DEEP IN MY HEART: THE FIRST PERSON STORY OF A “FREEDOM LAWYER” AND HIS BATTLES IN COUNTLESS DIXIE COURTROOMS, at xxi (1966), with Fred Gray, Dr. King’s first lawyer and a member of his legal team in the perjury trial, viewed this prosecution as the most important legal case of his career. FRED D. GRAY, BUS RIDE TO JUSTICE 108 (rev. ed. 2013).
him as a leader of the Civil Rights Movement. However, much to Dr. King’s surprise, the jury acquitted him.

This Article examines several key issues related to the prosecution, including how it came about, the extraordinary challenges it posed for Martin Luther King, Jr., the key question of why the jury acquitted him, and the possible implications of a hypothetical conviction. The discussion shows how the case could have been a major turning point in Dr. King’s career but instead became a footnote to the story of his life and to the history of the Civil Rights Movement.

Part I discusses the origins of the perjury trial. Section A considers the political and historical context that provided the backdrop for the prosecution. It introduces segregationist John Patterson, Alabama attorney general and then governor during this period, who played a central role throughout the trial. Section B shows how the perjury prosecution developed as an opportunistic initiative by Governor Patterson, as a part of his counter-campaign to defeat the Civil Rights Movement. Part II examines the extraordinary challenges the prosecution presented for Dr. King, discussing both the difficult personal threats to his core reputation for honesty, as well as the reasons Dr. King believed that conviction was inevitable.

Part III explores the surprising outcome of the case—when the all-white jury acquitted Dr. King. The discussion suggests that the acquittal was the result of two converging factors. Section A considers the widely accepted explanation that fair-minded jurors concluded that the state’s case against Dr. King was extremely weak and, as a result, they acquitted him. However, that section also suggests the problematic nature of that explanation, since it would have been such an aberrational event at that time and place.

Section B describes another factor that could have contributed to the extraordinarily surprising verdict. This section suggests that the jurors would have considered a conviction to be counterproductive to the interests of the city’s white community. Dr. King had left Alabama and moved to Atlanta, hard-core segregationists had taken control of Montgomery after the bus boycott, and the exhausted Black community had become fractured and relatively ineffective in that period. The jurors would have decided to “let this sleeping dog lie” rather than

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5 See discussion infra Part 1.
6 After the acquittal on the 1956 charges, the prosecutor dropped the charges rather than proceeding with a second trial on the 1958 charges: “Negro integration leader Martin Luther King Jr. will not be prosecuted on a second count of perjury in connection with his filing state income tax returns, authorities said today. Circuit Solicitor William F. Thetford said King was acquitted of the first count ‘and I don’t think this one is any better.’” King’s Perjury Retrial Dropped, WASH. POST, July 19, 1960, at A13.
7 There is only one extended account of the prosecution. See Dyer, supra note 2.
8 “Black” is capitalized wherever it refers to Black people, to indicate that Blacks, or African Americans, are a specific cultural group with its own history, traditions, experience, and identity—not just people of a particular color. Using the uppercase letter signifies recognition of the culture, as it does with Latinos, Asian Americans, or Native Americans. See MARTHA BIONDI, TO STAND AND FIGHT: THE STRUGGLE FOR CIVIL RIGHTS IN POSTWAR NEW YORK CITY (2003); Kimberlé Williams Crenshaw, Race,
making Dr. King a martyr by convicting him, thus risking strong pushback from the Black community and very serious consequences for white Montgomery.\textsuperscript{9} However, it seems extremely unlikely that this concern would have led to acquittal if the prosecutor had presented a strong case of Dr. King’s guilt. The conclusion here is that the most plausible path to acquittal is that both factors—the state’s weak case and the consequentialist dangers in a conviction—were necessary, but neither was sufficient to produce the result.

Finally, Part IV engages in counterfactual speculation about the possible implications of a conviction of Dr. King. Section A imagines the impact on Dr. King, and Section B considers the possible impact on the movements with which he was associated.

\section{How the Prosecution of Dr. King Happened}

\subsection{The Context: A Counter Campaign to Defeat the Civil Rights Movement}

In 1954, John Patterson decided to run for Alabama attorney general.\textsuperscript{10} He did so reluctantly, having had no previous interest in giving up private law practice and entering public life. He chose to stand in for his father, who was murdered during his own campaign for Attorney General.\textsuperscript{11} The elder Patterson had run on a promise of cleaning up the corrupt and crime-ridden town of Phenix.\textsuperscript{12} He paid the ultimate price for taking on the criminals who ran the town.\textsuperscript{13} When Albert’s son replaced him on the ballot, he campaigned successfully on a platform of “decency.”\textsuperscript{14} That term came to embody two major commitments: cleaning up the town of Phenix and defeating the Civil Rights Movement.\textsuperscript{15}

John Patterson’s successes on those two fronts helped secure his election as governor, where he served from 1959 to 1964.\textsuperscript{16} During his time as attorney general,

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\bibitem{Prosecutor} Prosecutor William Thetford used this phrase. See discussion infra Part III.B.; see also infra note 74 discussion.
\bibitem{HowardNote} Howard, supra note 10, at 48–49; see also Grady, supra note 10, at 1.
\bibitem{Howard1} Howard, supra note 10, at 36.
\bibitem{Howard2} Howard, supra note 10, at 48; Grady, supra note 10, at 1, 12.
\bibitem{Grady} See Grady, supra note 10, at 1–4. Both crime and the Civil Rights Movement posed a danger to decency because they threatened the order and stability of the “southern way of life.” Id. at 76–86.
\bibitem{Id} Id. at 1–4.
\bibitem{In1958} In the 1958 race for governor, Patterson’s record as attorney general helped him win the day. All of the candidates favored segregation. However, Patterson was the only one with a proven track record of opposing integration. See Carl Grafton & Anne Permaloff, John. M. Patterson (1959–63), in}

he assumed the leadership in the state’s struggle to maintain pervasive segregation and exclusion of Blacks from the political process.\(^{17}\) He retained that role in his term as governor.\(^{18}\)

Throughout his time in statewide office, John Patterson engaged in a campaign designed to undermine and defeat the Civil Rights movement in Alabama by excluding the main organizations and individual leaders and activists.\(^{19}\) His strategy for defeating the Civil Rights Movement was creative, opportunistic, and multi-pronged. As a lawyer, he relied heavily on the legal system to accomplish his goal. His tactics included challenges to the operation of the NAACP in the state, the perjury prosecution of Martin Luther King, Jr., a libel suit against Dr. King and others, and condoning racial violence against Black and white “freedom riders” seeking to integrate interstate bus facilities.\(^{20}\)

As attorney general, Patterson’s first and most noteworthy success in this regard was in shutting down the NAACP’s operations in Alabama in 1956.\(^{21}\) He held

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17 When John Patterson was Attorney General, the governor, Jim Folsom, was not an ardent segregationist. In the terminology of the time, he was a “racial moderate.” So Patterson filled the void of leadership in defending the status quo. See Grady, supra note 10, at 4, 59–75.

18 Fred Gray described John Patterson as “very racist.” Gray, supra note 4, at 135. On the other hand, fellow activist Virginia Durr, who happened to be John Patterson’s cousin, seemed to forgive him for his segregationist actions. Virginia Durr, Outside the Magic Circle 300–01 (1985).

19 See discussions infra at Section III. The “freedom rides” took place in 1961 after the perjury prosecution that serves as the focus of this article. See Raymond Arsenault, Freedom Riders: 1961 and the Struggle for Racial Justice (2006); J. Mills Thornton III, Dividing Lines: Municipal Politics and the Struggle for Civil Rights in Montgomery, Birmingham, and Selma 118–27 (2002). In 1961, an integrated group of civil rights activists (called the “Freedom Riders”) rode interstate buses into southern states that were violating federal law by forcing segregation on public buses. Howard, supra note 10, at 188. Klan members repeatedly and severely attacked the Freedom Riders along the way, often without any police intervention. Thornton, supra note 20, at 118–19. After significant federal pressure, Patterson personally assured Robert F. Kennedy, Attorney General, that he would protect the freedom riders, and then went back on his word, leaving them subject to attacks by a white mob in Montgomery. Adam Fairclough, To Redeem the Soul of America: The Southern Leadership Christian Conference & Martin Luther King, Jr. 79 (2d ed. 2001). In a press conference, Governor Patterson referred to the Freedom Riders as “agitators” who came to Alabama “to force themselves into situations which tend to inflame the local people,” and to “incense them and enrage them and provoke them into acts of violence.” WSB-TV newsclip of a press conference during which Alabama Governor John Patterson condemns the Freedom riders for instigating racial trouble and demands that the Freedom Riders and Martin Luther King, Jr. leave the state, Montgomery, Alabama, 1961 May 23, Civil Rights Digital Library, http://crdl.usg.edu/export/html/ugabma/crdl_ugabma_wshn_34963.html. Additionally, in 1960, Governor Patterson demanded the expulsion of thirty-five Black students from Alabama State College for participating in a sit-in in the courthouse cafeteria. After further protests on and off campus, the governor ordered firings or resignations of over twenty faculty members sympathetic to civil rights. Thornton, supra note 20, at 113–15. See also infra note 276.

20 See also infra note 10, at 188. Klan members repeatedly and severely attacked the Freedom Riders along the way, often without any police intervention. Thornton, supra note 20, at 118–19. After significant federal pressure, Patterson personally assured Robert F. Kennedy, Attorney General, that he would protect the freedom riders, and then went back on his word, leaving them subject to attacks by a white mob in Montgomery. Adam Fairclough, To Redeem the Soul of America: The Southern Leadership Christian Conference & Martin Luther King, Jr. 79 (2d ed. 2001). In a press conference, Governor Patterson referred to the Freedom Riders as “agitators” who came to Alabama “to force themselves into situations which tend to inflame the local people,” and to “incense them and enrage them and provoke them into acts of violence.” WSB-TV newsclip of a press conference during which Alabama Governor John Patterson condemns the Freedom riders for instigating racial trouble and demands that the Freedom Riders and Martin Luther King, Jr. leave the state, Montgomery, Alabama, 1961 May 23, Civil Rights Digital Library, http://crdl.usg.edu/export/html/ugabma/crdl_ugabma_wshn_34963.html. Additionally, in 1960, Governor Patterson demanded the expulsion of thirty-five Black students from Alabama State College for participating in a sit-in in the courthouse cafeteria. After further protests on and off campus, the governor ordered firings or resignations of over twenty faculty members sympathetic to civil rights. Thornton, supra note 20, at 113–15. See also infra note 276.

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the NAACP responsible for what he viewed as the two most serious threats to Alabama's racial status quo in the early and mid-1950s—the Montgomery Bus Boycott and the effort to integrate the University of Alabama through a constitutional challenge on behalf of Atherine Lucy in 1953.\textsuperscript{22} Even though the NAACP was not actually responsible for either of those threats, Attorney General Patterson viewed the NAACP as the most dangerous civil rights organization in the state.\textsuperscript{23} He believed that shutting it down could go a long way toward stopping the Civil Rights Movement there.

Attorney General Patterson turned to the law and the courts to bar the NAACP from operating in the state. Because the NAACP was an out-of-state entity, he ordered the organization to provide a great deal of information about its operation in order to determine whether it was eligible to operate in the state.\textsuperscript{24} Most importantly, he sought to obtain the NAACP’s membership lists.\textsuperscript{25} The NAACP refused to turn over those lists, since that would have resulted in disastrous consequences for its members.\textsuperscript{26} Additionally, as a result, membership rolls would have declined dramatically.\textsuperscript{27}

With the organization’s refusal to reveal its members, Attorney General Patterson secured an injunction preventing it from operating in the state.\textsuperscript{28} As a result, the state branch of the NAACP was forced to shut down and to spend a great

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\item[22] Howard, supra note 10, at 101. The effort to integrate the University of Alabama began in 1952, when Atherine Lucy and Pollie Myers, both Black women, applied to the university for graduate school. Grafton & Perlmanoff, supra note 16; see also Christopher Coleman, Laurence D. Nee & Leonard S. Rubenowitz, Social Movements and Social-Change Litigation: Synergy in the Montgomery Bus Protest, 30 L. & Soc. Inquiry 663, 721 n.154 (2005).
\item[23] Thornton, supra note 20, at 91. The organizers of the bus boycott created the Montgomery Improvement Association (MIA) to carry out the boycott, rather than having the NAACP do so. At the same time, a number of NAACP leaders played important roles in the bus boycott, including E. D. Nixon, Rosa Parks, and her lawyer Fred Gray. See generally Taylor Branch, Parting the Waters: America in the King Years, 1954–1963, Volume 1 131–207 (1988); Fairclough, supra note 20, at 15–18, 23–25, 53–54; David J. Garrow, Bearing the Cross: Martin Luther King, Jr., and the Southern Christian Leadership Conference 11–32, 57–89 (1986); Thornton, supra note 20, at 20–140.
\item[24] Grady, supra note 10, at 130; see Branch, supra note 23, at 186–87; Howard, supra note 10, at 101.
\item[25] See Branch, supra note 23, at 186–87; Howard, supra note 10, at 101; Grady, supra note 10, at 116.
\item[27] See Patricia Sullivan, Lift Every Voice: The NAACP and the Making of the Civil Rights Movement 425 (2009) (stating that membership fell from 8,266 to 2,202 in South Carolina when members’ identities were being made public). The NAACP’s Alabama membership decreased by 16,000 in 1957, representing more than half of the total national loss of 30,000. Grady, supra note 10, at 142.
\item[28] Branch, supra note 23, at 186–87; Howard, supra note 10, at 102; Grady, supra note 10, at 138.
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deal of time and money litigating the matter up to the US Supreme Court. In 1958, the Supreme Court held the disclosure order invalid because it would deter membership due to physical and economic reprisals and because the identity of the members had nothing to do with the state’s interest in deciding whether the organization was required to register. After that, Governor Patterson returned to the receptive state courts repeatedly for procedural rulings that prolonged the ban on the NAACP. Finally, in 1964, the Supreme Court issued a direct order to Alabama authorities to permit the NAACP to do business in the state. In the meantime, John Patterson had prevented an important adversary from pursuing its objectives for more than eight years. However, the US Supreme Court’s repeated intervention proved frustrating to him and ultimately defeated his plan to exclude the NAACP permanently.

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29 Branch, supra note 23, at 186–87; Grady, supra note 10, at 145. Each of the four trips to the Supreme Court cost the NAACP around $18,000. Howard, supra note 10, at 103.

30 See NAACP v. Ala. ex rel. Patterson, 357 U.S. 449, 466 (1958) (Patterson I).


33 On June 30, 1958, the Supreme Court ruled unanimously that the right of association was guaranteed by the Due Process Clause of the Fourteenth Amendment and that the sort of beliefs advanced by a particular association, no matter how odious to some, were immaterial. The Court also ruled that privacy of an association’s membership may be indispensable to preservation of freedom of association. Patterson, 357 U.S. at 460, 462. Patterson originally filed a lawsuit seeking an injunction on NAACP activities in the state, which the segregationist circuit judge granted. When the NAACP appealed the injunction, Patterson asked the court to first order the production of NAACP records, including a member list. The NAACP refused to comply with the order and thus was held in contempt and unable to litigate the injunction. The NAACP appealed to the U.S. Supreme Court, which in 1958 reversed and remanded the contempt citation. The Alabama Supreme Court held the organization in contempt for a different reason and maintained the injunction. In 1959, the U.S. Supreme Court again reversed the contempt order and ordered the state to hear the case, and the state court simply did not do so. Next, NAACP attorneys sued in federal court seeking an injunction against the next Governor of Alabama. The Court again ordered the Alabama Supreme Court to hear the case, which they did, and found in favor of the state. When the NAACP appealed that ruling, the U.S. Supreme Court held the state court judgment unconstitutional and ordered the state to finally lift the ban on NAACP operations in the state. See generally Bagley, supra note 26, at 104–12; Patterson I, 357 U.S. at 452–55; NAACP v. Ala. ex rel. Patterson 360 U.S. 240, 240 (1959) (Patterson II); see NAACP v. Gallion, 368 U.S. 16, 16 (1961); Flowers, 377 U.S. at 288, 310.

34 Branch, supra note 23, at 187; Thornton, supra note 20, at 108. This was part of an effort by states across the South to shut down the NAACP branches. Months earlier, Louisiana attempted to remove the NAACP under an old state anti-Ku Klux Klan law that required such groups to file membership lists. Howard, supra note 10, at 100. Alabama’s attempt was later copied in Texas, Arkansas, Georgia, and Virginia. Id. at 103.
B. The Prosecution

1. The Perjury Indictment

Having succeeded as attorney general in shutting down the NAACP, John Patterson continued his campaign against the Civil Rights Movement as governor.\(^{35}\) In his inauguration speech, Governor Patterson expressed a total commitment to protecting the state’s segregation regime:

There can be no compromise in this fight. There is no such thing as a “little integration.” The determined and ruthless purpose of the race agitators and such organizations as the NAACP is to bring about as fast as possible an amalgamation of our society. They seek to destroy our culture, our heritage, and our traditions. If we compromise or surrender our rights in this fight, they will be gone forever, never to be regained or restored.\(^{36}\)

Martin Luther King, Jr. was the leading “racial agitator” in the state and an obvious target for the governor, once the governor shifted his focus from organizations to individuals. Soon, an opportunity presented itself to Governor Patterson to continue his campaign of using the courts to undermine the Civil Rights Movement by prosecuting Dr. King.\(^{37}\) He viewed Dr. King as engaged in morally reprehensible actions that were especially pernicious because they were designed to undermine the “southern way of life.”\(^{38}\) Since he could not prosecute Dr. King for “crimes” against

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35 In the governor’s race, John Patterson—unlike his young competitor George Wallace—understood clearly that success in the Democratic primary required an explicit and aggressive commitment to preserving and protecting racial segregation. *See generally* HOWARD, supra note 10, at 110–23, 140–49. After that defeat, Wallace determined that no one would ever out-race bait him again. In the next gubernatorial election, he promised “segregation now . . . segregation tomorrow . . . segregation forever,” and won the election. DAN T. CARTER, THE POLITICS OF RAGE: GEORGE WALLACE, THE ORIGINS OF THE NEW CONSERVATISM, AND THE TRANSFORMATION OF AMERICAN POLITICS 109 (1995). Though Patterson may have campaigned as an ardent segregationist in order to win the election, once he was elected Governor, he was likely acting out of conviction rather than opportunism. In 1958, it was highly unlikely Patterson had any hopes of achieving a higher office, or any political future immediately after his term as governor. He could not immediately run for a second term as governor, and both Alabama Senators seemed firmly entrenched in their positions. *See* E-mail from Jonathan L. Entin, Assoc. Dean for Acad. Affairs, David L. Brennan Professor of Law & Professor of Political Sci., Case W. Reserve Univ. Sch. of Law, to author (Dec. 20, 2016, 01:41 EST) (on file with author).

36 JOHN PATTERSON, INAUGURAL ADDRESS OF JOHN PATTERSON GOVERNOR STATE OF ALABAMA (Jan. 19, 1959), in 20 ALA. LAW. 129, 131 (1959). While his address referred specifically to integration of schools, his campaign sought to maintain all aspects of racial segregation.

37 HOWARD, supra note 10, at 174.

38 *See* id.; *see also* supra note 36 discussion. *See generally* Wilma Dykeman, *What is the Southern Way of Life?*, 44 SW. REV. 163 (1959).
southern culture, Governor Patterson pursued a prosecution based on the alleged underpayment of state income taxes to get him off the streets.39

Each step Governor Patterson took related to the prosecution demonstrated his deep determination to eliminate Dr. King as an activist and to impose maximum financial and other costs on him, his followers, and his organization.40 The alleged evasion of state income taxes was a minor matter that would not have gotten a governor’s attention if it was only an instance of routine law enforcement. However, an effort to eliminate the man that the governor considered the state’s most dangerous civil rights leader was a logical follow-up to shutting down the NAACP.41

The prosecution of Martin Luther King had strategic advantages for John Patterson over his effort to exclude the NAACP. While the latter proved to be vulnerable to constitutional challenges resolved by the US Supreme Court, a criminal prosecution under the state’s penal code started in the receptive state courts and was very likely to remain there. On its surface, it was a garden variety prosecution under the state’s traditional police power, with no obvious constitutional challenge that the Supreme Court was likely to hear.42 The defense made a number of constitutional objections, which went to the heart of the state’s Jim Crow legal system. But the trial judge promptly rejected them, as counsel expected. Several of the objections were as follows: exclusion of Blacks from the popular election of judges; exclusion of Blacks from juries (grand jury, petit jury panels, actual trial jury); and a due process challenge to the judge’s refusal to transfer the trial from Montgomery, where Dr. King arguably could not receive a fair trial because of its prejudiced jurors.43 Since Dr. 

39 Fred Gray characterized the perjury prosecution as: “white authorities in Alabama made one last desperate attempt to use the courts and legal machinery to derail the civil rights movement and to smear its leader.” He saw it as part of a plan that included Attorney General Patterson raiding the Tuskegee Civic Association and seizing its records and shutting down the NAACP. GRAY, supra note 4, at 146.

40 See discussion infra Part II.

41 Patterson had also made earlier efforts, possibly including a role in the Montgomery Bus Boycott. See BRANCH, supra note 23, at 277 (referring to Patterson having led the fight against the bus boycott). However, Patterson is not generally credited for this effort, see, e.g., THORNTON, supra note 20, at 82–83 (discussing the boycott prosecution as having been called for by prominent local attorneys). Following Montgomery, Patterson did seek an injunction, based on the same act, to end a boycott against Tuskegee merchants by the Black Tuskegee Civic Association, but in that case the judge denied it due to a lack of connection between the association and any coercive or violent acts. Id. at 89–90. In discussing Governor Patterson’s role in initiating the perjury prosecution, Dyer said that Patterson “had established a pattern of pester ing civil rights organizations as Alabama’s attorney general and was simply continuing this activity in the King indictment, purely for the purpose of harassment and humiliation.” See Dyer, supra note 2, at 248 (emphasis added). The indictment was far more insidious and ambitious than merely “pestering” the movement. Instead, it represented a key strategic move aimed at defeating the Civil Rights Movement in the state.

42 See discussion infra Part IV.A. of the constitutional challenges that the defense raised, which had little chance of success at the Supreme Court.

43 GRAY, supra note 4, at 154–57.
King was acquitted, there was no appellate review of those claims; but success seemed far less likely than in the NAACP case.\(^44\)

The impetus for Governor Patterson seeking the perjury indictments seems to have been the 1959 publication of Uriah Fields’s book called *The Montgomery Story: The Unhappy Effects of the Montgomery Bus Boycott*.\(^45\) Fields was a local Black minister and former official of the Montgomery Improvement Association (MIA), the organization that carried out the bus boycott.\(^46\) He had become disaffected with the organization.\(^47\)

During the boycott, Fields had publicly accused unnamed MIA leaders of misappropriation of funds.\(^48\) After Fields experienced a storm of protests and threats, he had a meeting with Martin Luther King, Jr. during which Fields appeared to recant. He did so again at a mass meeting.\(^49\) Dr. King encouraged his followers to forgive Fields.\(^50\)

However, in his short 1959 book, Fields renewed his claims of financial misconduct by MIA leaders.\(^51\) In recasting the boycott as “The Montgomery Catastrophe,” he once again accused boycott “leaders” and “bosses” of misappropriation of funds.\(^52\) He asserted that they had enriched themselves at the expense of the thousands of their fellow Blacks who they were supposed to be helping.\(^53\) He also said that $100,000 in MIA funds had disappeared and could not be accounted for.\(^54\)

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\(^44\) See discussion infra Part IV.A. of the likelihood of success on appeal if Dr. King had been convicted.
\(^45\) See THORNTON, supra note 20, at 103; Reverend Martin Luther King Accused of Embezzlement by Minister He Defeated, PHILA. TRIB., Feb. 20, 1960, at 1 [hereinafter Phila. Trib.] (making the book’s existence and availability known to the public); see also THORNTON, supra note 20, at 612 n.133. See generally Uriah J. Fields, The Montgomery Story: The Unhappy Effects of the Montgomery Bus Boycott (1959).
\(^46\) See generally Fields, supra note 45; THORNTON, supra note 20, at 100.
\(^47\) In a statement to the press, Fields stated that the MIA no longer represented what he stood for, and he accused the leaders of misusing funds as well as becoming focused on themselves instead of the goals of the movement. See MARTIN LUTHER KING, JR., STRIDE TOWARD FREEDOM: THE MONTGOMERY STORY 153 (1958); THORNTON, supra note 20, at 100.
\(^49\) In his 2002 book, Fields said that he recanted in order to avoid interfering with the bus boycott, but he continued to believe that there was misappropriation of MIA funds. See Uriah J. Fields, Inside the Montgomery Bus Boycott: My Personal Story 140–44 (2002).
\(^50\) Dyer, supra note 2, at 247–48; See Branch, supra note 23, at 189; FAIRCLOUGH, supra note 20, at 28. Later, Fields argued that he never recanted. Millner, supra note 48, at 536.
\(^51\) See generally Fields, supra note 45. He had the book published by a vanity press. THORNTON, supra note 20, at 103.
\(^52\) Fields (1959), supra note 45, at 36.
\(^53\) Id. at 30, 35–36.
\(^54\) Id. at 36–37.
Fields provided Governor Patterson an opportunity to try to eliminate the state’s leading civil rights activist, and the governor eagerly seized it. Governor Patterson took Fields’s accusations of misappropriation of funds very seriously. As a local Black minister and a former MIA official, Fields had access to inside information.\(^55\) His resignation from the MIA, ostensibly because of the problems he said that he identified, gave him added credibility.\(^56\)

However, many aspects of Fields’s book would have given an objective reader a great deal of pause about the credibility of the author’s account and its utility in pursuing a criminal charge against Dr. King.\(^57\) First, Fields acknowledged his deep disappointment that his colleagues did not choose him to lead the Montgomery Improvement Association, instead giving that honor to the newcomer, Martin Luther King, Jr.\(^58\) He claimed further that his many followers were on the verge of rebellion with that decision.\(^59\) Instead, the organizers elected him to the much lesser position of recording secretary.\(^60\) He even lost that post when he was not reelected in mid-1956.\(^61\) At that point, he resigned from the organization, apparently out of anger and bitterness.\(^62\) That sequence of events suggests that the book may have just been Fields’s way of exacting revenge against the MIA leaders who he felt had disrespected and belittled him.\(^63\)

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55 See Thornton, supra note 20, at 100.
56 He also associated himself and his views with those of E.D. Nixon, a long-time leader of the Black community and a founder of MIA, who had also resigned from his position with the organization. See Fields (1959), supra note 45, at 29–31.
57 See Fields (2002), supra note 49 at 136, 140; see also King, supra note 47, at 134. Fields published a book in 2002, in which he admits that he was not in a position to write objectively about the Montgomery Bus Boycott and the MIA when he published his 1959 book: “About a year after King’s book, ‘Stride Toward Freedom,’ was published my book, ‘The Montgomery Story: The Unhappy Effects of the Montgomery Bus Boycott’ was published. But because I had been so greatly disenchanted with some bus boycott leaders, displeased with how I had been treated by them, painfully wounded and vengeance-ridden, admittedly, I was in no condition to write objectively and compassionately about the Montgomery Bus Boycott. . . because I was bitter.” Fields (2002), supra note 49, at 14.
58 See Branch, supra note 23, at 189; Fields (1959), supra note 45, at 24.
59 Fields wrote: “I, who served as the original secretary of the Montgomery Improvement Association, narrowly missed being elected president. It is known that when many people heard that King instead of Fields had been elected president, they were moved to indignation.” Fields (1959), supra note 45, at 24; see also Steven M. Millner, supra note 48, at 381, 534; Phila. Trib., supra note 45, at 1.
60 Fields (1959), supra note 45, at 24–25.
61 Thornton, supra note 20, at 100.
62 There is a controversy regarding the reason for Fields’ resignation. According to some sources, Fields was very upset that the MIA’s executive board did not reflect him to his position as recording secretary, which prompted his resignation and disaffection with the MIA. See King, supra note 47, at 133; Thornton, supra note 20, at 100; Dyer, supra note 2, at 247; see also Stewart Burns, Daybreak of Freedom: The Montgomery Bus Boycott 274 (1997). However, Fields claims that he resigned because of the organization’s leadership’s so-called greed and misuse of funds. See Fields (1959), supra note 45, at 40. It is also possible that part of Fields’ resentment was due to jealousy of other MIA members who received honorariums for their speaking, while Fields was rarely ever asked to represent the MIA. See Burns, supra note 62, at 275.
63 In his 2002 book, Fields provided quite a different account of the bus boycott, acknowledging that his original version was a result of the personal hurt and pain resulting from the chain of events during the
Moreover, Fields’s inflammatory rhetoric and highly critical tone about the boycott itself contrasted sharply with the views of the thousands of participants, civil rights activists elsewhere inspired by it, and historians’ assessments of the movement. Fields referred to the boycott as “The Montgomery Catastrophe” and claimed that:

[T]he much publicized Montgomery boycott did not significantly contribute to the betterment of Montgomery, and the effect of that damnable catastrophe will cast its dismal shadow upon Montgomery for years to come, resulting, inevitably, in the retardation of progress in race relations and causing yet unborn generations to rise up and curse their elders of this very day.  

Having made those bold assertions, Fields provided few specifics about financial wrongdoing and virtually no evidence in support of his vague claims. His only example was a charge that “$100,000” of MIA money had disappeared; but no details or evidence followed. Finally, Fields did not mention Martin Luther King, Jr. by name in his allegations. He referred only to unnamed “leaders” and “bosses.” In short, Fields’s book inadvertently provided many reasons to view him as just a disgruntled participant who had not gotten the respect that he felt that he deserved and was simply making vague, unsubstantiated claims as a way of venting his frustrations and seeking revenge.


64 Fields, supra note 45, at 53.
65 On numerous occasions Fields used general terms such as “according to reports,” “it is known,” etc. Fields, supra note 45, at 24, 33, 35–36, 42, 52, 66–68.
66 See Fields, supra note 45, at 36, 52.
67 Furthermore, in his 2002 book, Fields stated that he was more concerned about the credibility of other MIA leaders, rather than Dr. King, and mentioned that after his public allegations he told Dr. King that he did not think that Dr. King personally misused any MIA funds. See Fields, supra note 49, at 30–34, 36, 51–52, 76, 85. In his 2002 book about the boycott, Fields talked more specifically about his 1956 private meeting with Dr. King. He said that he told Dr. King that he did not believe that Dr. King had engaged in financial misconduct, that he was referring to other MIA leaders: “Then I told him remorsefully that I had no intention of hurting the Montgomery Bus Boycott and attempted to convince him that I did not feel that he had personally misused any MIA funds. I added that I felt some other leaders had misused MIA funds.” Fields, supra note 49, at 140; see King, supra note 47, at 134. If Fields had said that in the 1959 book, perhaps there would not have been any perjury prosecution.
68 E.D. Nixon, a long-time Montgomery civil rights activist and a founder of the Montgomery Improvement Association, also experienced frustrations and resigned from his official position as treasurer. He shared some of Fields’s concerns about inefficient management but did not agree with Fields’s claims that there had been financial misconduct. In a July 27, 1977, interview with Steven M. Millner, Nixon said that the MIA had a lot of money at that time and they handled some of it unwisely. He stressed however that there was no stealing, just unwise handling. When he was asked about Fields’s allegations regarding Black ministers pocketing money, he confirmed that ministers
However, the dubiousness of Fields’s claims did not deter Governor Patterson from proceeding aggressively to pursue criminal charges against Dr. King. Governor Patterson followed up by seeking to gain access to Dr. King’s Atlanta bank records. He knew that he had no legal authority to see those private records, but he instructed an Alabama Revenue Department investigator to go to Dr. King’s Black-owned bank and “bluff his way into getting King’s financial records.” The deception worked just as intended. The bank officials were intimidated and confused by the auditor’s credentials, so they allowed him to see all of Dr. King’s bank records without a court order or any official authorization. This release of confidential information presumably violated Georgia privacy laws. Apparently, the size of Dr. King’s Atlanta bank account raised additional suspicion for the governor about possible under-reporting of his Alabama income for tax purposes.

Governor Patterson concluded that Dr. King had underpaid his Alabama income taxes in 1956 and 1958 and should be prosecuted for those offenses. William Thetford, the county solicitor (the local prosecutor), said later that he strongly disagreed with the governor about that course of action. Dr. King had just resigned as pastor at Montgomery’s Dexter Avenue Church and moved back to Atlanta.

The bank called Dr. King to warn him about what was afoot and he quickly filed an amended state tax return and made proper payment. Governor Patterson still wanted to prosecute. It would not be difficult to secure an indictment from the grand jury, since the bar was so low, and Dr. King was perceived as such a troublemaker by many whites. See HOWARD, supra note 10, at 174–75; Dyer, supra note 2, at 262.

In a 2002 interview, Governor Patterson said “they were all amazed that the Georgia bank allowed an Alabama official to see all of King’s bank records without a court order or any official authorization.” Dyer, supra note 2, at 262.

“When he (Patterson) concluded that Dr. King’s income didn’t match his lifestyle, Patterson said he saw an opportunity to ‘unhorse King’ by getting a conviction that would send him to prison.” HOWARD, supra note 10, at 174.

Years later, Thetford told historian Mills Thornton about this disagreement and said that he was secretly pleased about the acquittal. While this may have been the case, his statements are also self-serving. For any prosecutor, an acquittal is a negative mark on the record. In this case, there could have been a particular blemish since he was unable to secure a conviction in this high-profile prosecution—covered by the media extensively—of the most hated civil rights leader in the state, even with the usual all-white jury. See THORNTON, supra note 20, at 615; Dyer, supra note 2, at 248.
Thetford said that he had urged the governor to “let this sleeping dog lie.”\textsuperscript{76} Normally, this kind of case would be a matter for the local prosecutor’s discretion. The case involved a minor matter of alleged state income tax underpayment with a relatively small amount of money at issue.\textsuperscript{77} Dr. King was not a wealthy man alleged to have cheated the state out of tens of thousands of dollars.\textsuperscript{78}

But Governor Patterson finally ordered Thetford to proceed with the prosecution, and he went ahead with it.\textsuperscript{79} Governor Patterson’s aggressive intervention at the charging stage showed that much more was at stake for him than enforcing state tax laws. As Governor, Patterson continued to position himself as leading the state’s battle against the Civil Rights Movement.\textsuperscript{80} A successful prosecution of the leader of the Civil Rights Movement in the state would have made a major splash early in his term in the statehouse.\textsuperscript{81}

The governor did not want to pass up a chance to remove the key civil rights leader from his position in the movement.\textsuperscript{82} All indications were that Dr. King would be convicted—whether he was guilty or not.\textsuperscript{83} That would be an effective way of both punishing Dr. King for his past civil rights activity and preventing him from continuing to threaten the system of white supremacy.\textsuperscript{84}

\textsuperscript{76} See Thornton, supra note 20, at 615.
\textsuperscript{77} Prior to the indictment, an auditor claimed King underreported his income by $7,012 in 1956 and $20,173 in 1958. At that time, Dr. King gave the agent $1,600 for payment. Dyer, supra note 2, at 247.
\textsuperscript{78} Id.
\textsuperscript{79} See infra Part III and infra text accompanying n.227. It is unclear if Gov. Patterson actually had legal authority to order Thetford to prosecute or simply used his political clout to do so.
\textsuperscript{80} Thornton, supra note 20, at 108–09; Grady, supra note 10, at 263–83. This again shows that Patterson was likely a segregationist out of conviction, rather than simply a political opportunist.
\textsuperscript{81} As he signed the extradition papers from Georgia, Governor Patterson “made a merrily sarcastic public statement” that “if you dance, you must pay the fiddler.” Branch, supra note 23, at 277. Any concern Patterson had about making a splash would have likely related to giving him leverage with the legislature, rather than his future political ambitions.
\textsuperscript{82} Governor Patterson may have viewed the case as a necessary escalation of the prosecution strategy after the anti-boycott conviction during the Montgomery bus boycott proved ineffective. See infra Part I.B.2. Perjury was a more serious offense, with potential punishment that could take Dr. King out of the movement for an extended period.
\textsuperscript{83} There was no reason for the governor to think that Dr. King would be acquitted any more than there was for Dr. King himself to think that would happen. See infra Part II. Perhaps the governor counted on an all-white jury to ignore the presumption of innocence and the prosecutor’s burden of proof beyond a reasonable doubt and to convict, even if the defendant was innocent.
\textsuperscript{84} This trial was not the first time Governor Patterson and Dr. King had squared off. Patterson had subpoenaed Dr. King to testify in the State’s 1956 case against the NAACP. See Patterson, John Malcolm (1921- ), Martin Luther King, Jr and the Global Freedom Struggle, http://kingencyclopedia.stanford.edu/encyclopedia/encyclopedia/ency_patterson_john_malcolm_1921(last visited Jul. 14, 2016). See also Letter from John Patterson to Martin Luther King, Jr. (Jul. 12, 1956), in The Papers of Martin Luther King, Jr., Volume III: Birth of a New Age, December 1955-December 1956 at 319–20 (Clayborne Carson et al. eds., 1997). During his time as Attorney General, Patterson had also had personally written and argued a response against Dr. King’s appeal to the Alabama Supreme Court in M. L. King, Jr. v. Alabama. The case dealt with Dr. King’s alleged violation of the state’s anti-boycotting law during the Montgomery bus boycott. See John Patterson, Brief and
The case could have been a preemptive strike to prevent Dr. King from returning to Alabama to carry out additional civil rights campaigns there. A press release dated December 1, 1959, quoted Dr. King as saying that he intended to remain a presence in Montgomery after his move to Atlanta: “He has assured its [MIA’s] members that he will be in and out of Montgomery ‘almost as much as ever.’” Governor Patterson may have felt that Dr. King still posed a threat to white supremacy in Alabama, especially since the release also noted that part of Dr. King’s motivation for the move was his goal of launching a region-wide voter registration campaign.

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85 With his statewide perspective as governor, Patterson may have been concerned about Dr. King carrying out future campaigns in the state even though he no longer lived there. Dr. King frequently made trips back and forth to Atlanta when he was living in Montgomery. Governor Patterson’s motivations in chasing Dr. King and bringing Dr. King back from Atlanta for trial may have reflected a mixture of personal antipathy, concern that he would continue as a threat in Alabama and throughout the South, and a desire to send a message and intimidate those who might take Dr. King’s place. If so, he was quite prescient. The Birmingham movement in 1963 and the Selma Voting Rights initiative in 1965 were among the most important campaigns of Dr. King’s career. See generally THORNTON, supra note 20, at 141–99. The state of Alabama continued to serve as the site of his major victories. If Governor Patterson’s plan had succeeded, Dr. King might well have been serving time in prison during that period.

86 Dr. King said that the campaign would span the whole South.

After prayerful consideration, I am convinced that the psychological moment has come when a concentrated drive against injustice can bring great tangible gains. We must not let the present strategic opportunity pass. Very soon our new program will be announced. Not only will it include a stepped-up campaign of voter registration, but a full-scale assault will be made upon discrimination and segregation in all forms. We must train our youth and adult leaders in the techniques of social change through non-violent resistance. We must employ new methods of struggle, involving the masses of our people.... Atlanta is perhaps the most strategic location for the headquarters of this expedition. We intend that it shall reach the far corners of every state of the South. I hate to leave Montgomery, but the people here realize that the call from the whole South is one that cannot be denied.

Id. Dr. King’s promises about a region-wide voting rights campaign were aspirational and inspirational, rather than literal. There were no specific plans at that time, and organizing efforts to that point had produced very modest results. See FAIRCLOUGH, supra note 20, at 43–51. Moreover, his talk of spending

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Even if Dr. King had planned to remain mostly in Atlanta, Governor Patterson still may have wanted to prosecute him. With Dr. King’s continuing leadership in the southern civil rights movement, his message could have been felt by the Alabama Black Community. As long as he remained admirable, powerful, and credible, he remained a threat to the system of segregation. So one plausible explanation for the governor’s desire to prosecute Dr. King may have been the feeling that he needed to discredit Dr. King entirely, in hopes of crushing the spirit of the movement.

2. The Structure of the Prosecution

The design of the prosecution suggests an intention to maximize Dr. King’s potential punishment as well as the burden on him of the process itself. In light of Governor Patterson’s intense interest in removing Dr. King from the movement—and the prosecutor’s expressed reluctance to proceed with the case—it is likely that the governor made the decisions about the prosecution’s structure as well.

88 If Dr. King had succeeded in launching the voter registration campaign, much could have been lost from Patterson’s perspective: it could give Black voters the power to determine the winner of a close election—a catastrophic prospect for a governor who campaigned on a platform of segregation. A press release regarding Dr. King’s move to Atlanta also quoted a Black Montgomery church leader:

Rev. King will not truly be leaving us because part of him always will remain in Montgomery, and at the same time, part of us will go with him. We’ll always be together, everywhere. The history books may write it Rev. King was born in Atlanta, and then came to Montgomery, but we feel that he was born in Montgomery in the struggle here, and now he is moving to Atlanta for bigger responsibilities.

Press Release, SCLC, supra note 86.

89 This seemed to be the view the Committee to Defend Martin Luther King, Jr. took regarding Governor Patterson’s motivation:

What is the purpose of this indictment? It seeks to harass Dr. King and to discredit him . . . . [T]his man holds the trust and confidence of the Negro people. Therefore, the dixiecrats have unleashed this evil and groundless attack on his honesty, hoping to remove him from the scene.


90 This was a substantial escalation beyond Dr. King’s trial for violating Alabama’s anti-boycott misdemeanor statute during the bus boycott. His conviction did not interrupt his activism. See infra Part II.B (discussing the boycott).
The charge related to underpayment of state income taxes.91 This was essentially a matter of tax evasion.92 Instead, the charge was perjury—the first time in the state’s history a defendant was so charged in such a case.93 That ratcheted up the offense from the misdemeanor charge of tax evasion to the felony charge of perjury, with a possible sentence of two to five years in prison for each count and a greater stigma associated with the conviction as well.94 The technical basis for charging the felony of perjury rather than the misdemeanor of tax evasion was the allegation that he had perjured himself in signing his tax returns for 1956 and 1958.95 With Governor Patterson’s goal of removing Dr. King for as long as possible and undermining his leadership, the perjury charges provided a creative tactic for pursuing those objectives.96 With the stakes higher, the costs of the legal defense increased accordingly, thus potentially diverting additional funds from the movement’s campaigns for change.97

The charges against Dr. King related to two different years—1956 and 1958.98 Rather than charging him with two counts of perjury and proceeding with one trial, the prosecutor tried him on the allegations related to 1956 in the initial trial, with an expectation of proceeding with a second trial on the 1958 charges after an anticipated conviction in the first one.99

The prosecutor did not explain why the state employed this potentially more expensive approach for both sides.100 One possibility is that the governor wanted to impose the greatest costs possible on Dr. King. Two trials would add to the already
very high defense costs. That approach would also add to the stigma and prolong the public humiliation that was so damaging to Dr. King personally and professionally.\textsuperscript{101} Still another possibility is that he wanted to make sure that prison sentences would run consecutively rather than concurrently, which could happen with conviction on two counts in one trial.\textsuperscript{102}

3. An Inadvertent Additional Opportunity to Challenge the Civil Rights Movement

The perjury prosecution provided an unexpected additional opportunity for Governor Patterson to use the courts to pursue Dr. King. In the lead-up to the trial, supporters of Dr. King took out a full-page advertisement in the \textit{New York Times} to raise money needed for his legal defense and other civil rights activities.\textsuperscript{103} The ad made general claims about pervasive segregation and discrimination in Alabama, without naming any responsible public officials.\textsuperscript{104} It also included the names of four Black Alabama ministers as supporting those claims.\textsuperscript{105} The ad had some factual errors in describing alleged incidents of racial discrimination.\textsuperscript{106} In response, several Montgomery public officials sued the \textit{New York Times} and the four Black ministers for libel, each seeking $500,000 in damages.\textsuperscript{107}

\textsuperscript{101} See discussion infra Part II.A.
\textsuperscript{102} It is not clear why they would have feared that outcome from an Alabama state judge.
\textsuperscript{103} The purpose of the ad was to raise money for Dr. King’s defense and for the student movement, with sit-in demonstrations spreading across the South. \textsc{Branch, supra} note 23, at 288–89; \textsc{Garrow, supra} note 23, at 131; \textsc{Gray, supra} note 4, at 148; \textsc{Make No Law, supra} note 48.
\textsuperscript{104} See \textit{Heed Their Rising Voices}, \textsc{N.Y. Times}, Mar. 29, 1960, at L25, reprinted in \textsc{Make No Law, supra} note 48, at 2–3. The ad also asserted that the perjury prosecution was part of a strategy “to behead this affirmative movement, and thus to demoralize Negro Americans and weaken their will to struggle.” \textsc{Branch, supra} note 23, at 289.
\textsuperscript{105} It turned out that the ministers did not know that their names would be used in the ad. \textsc{Branch, supra} note 23, at 289; \textsc{Gray, supra} note 4, at 166; \textsc{Make No Law, supra} note 48, at 31–32. On April 8, 1960, Police Commissioner Sullivan wrote letters to the four Black ministers listed as supporters of the \textit{New York Times} ad, demanding a full retraction. The ministers were completely surprised because they did not know of the existence of the ad, much less that their names appeared in it, until they received that letter. \textsc{Branch, supra} note 23, at 289. Almost no one in Alabama was even aware of the ad, as only 394 copies of the newspaper were circulated in Alabama, with only 35 of those being in Montgomery. \textit{See N.Y. Times v. Sullivan}, 376 U.S. 254, 260 n.3 (1964).
\textsuperscript{106} The ad had minor technical errors, including stating that student protestors sang “My Country ‘Tis of Thee,” when they actually sang “The Star-Spangled Banner,” and that police “ringed” the campus, instead they massed along one border. \textsc{Branch, supra} note 23, at 289.
\textsuperscript{107} \textsc{Make No Law, supra} note 48, at 10, 12. Sullivan and the other plaintiffs joined the ministers to keep the case in state court, as doing so eliminated the federal court’s diversity jurisdiction. \textit{Id.} at 13–14. The state court found that the defendants had libeled the plaintiffs, granted the remedies sought, and used civil forfeiture to enforce the decision. \textsc{Gray, supra} note 4, at 1227; \textsc{Make No Law, supra} note 48, at 33. Several years later, the U.S. Supreme Court reversed the state court, in the landmark libel decision of \textit{N.Y. Times v. Sullivan} and remanded the case to the state court. It did not specifically require the return of the property, which had long been sold, nor the return of the cost of the property.
Governor Patterson filed his own libel suit related to the advertisement. Unlike the others, he included Dr. King as a defendant, even though Dr. King was not involved in the advertisement. The governor also sought double the relief requested by the other plaintiffs. His libel suit was just one more sign of Governor Patterson’s great determination to remove Dr. King from the scene, as he had done with the state’s NAACP.

II. THE CHALLENGES FOR MARTIN LUTHER KING, JR.

The case was overwhelmingly stressful for Martin Luther King, Jr. in both personal and practical ways. It was a time of public humiliation. Moreover, he believed that his conviction was inevitable, even though he was innocent. He

See Sullivan, 376 U.S. at 292; Gray, supra note 4, at 1228. The Court held that a libel suit by public officials required proof of actual malice, and that the evidence presented was constitutionally insufficient to support the judgment against the defendants. Sullivan, 376 U.S. at 279–80, 285–88.  
108 Branch, supra note 23, at 312; Make No Law, supra note 48, at 13.  
109 Again, neither were the other four ministers. Branch, supra note 23, at 312; Make No Law, supra note 48, at 13.  
110 Branch, supra note 23, at 312; Make No Law, supra note 48, at 13. Once again, Governor Patterson seized on the opportunity to maximize the financial pressure, presumably in the hope of putting the movement out of business. Relatedly, the damages sought would have also had a severe impact on the press, both in terms of possibly bankrupting the New York Times, and in making it so expensive to cover the Civil Rights Movement that the story would go unreported, which itself would kill the movement. See Make No Law, supra note 48, at 34. Justice Black observed that the Times was facing 11 libel suits for a total of $5.6 million and that CBS was facing 5 suits demanding $1.7 million. See Sullivan, 376 U.S. at 295 (Black, J., concurring). Ironically, in subsequent decades, Morris Dees and the Southern Poverty Law Center used other kinds of civil litigation to put white supremacist groups out of business. After a hate crime, instead of suing the perpetrators, Dees goes after the groups they are associated with “in a bid to ruin them financially.” If the group cannot pay the damages, Dees forces liquidation of their assets with the goal of shutting down the organization. Raju Chebium, Attorney Morris Dees Pioneer in Using “Damage Litigation” to Fight Hate Groups, CNN (Sept. 8, 2000), https://web.archive.org/web/20071223063535/http://archives.cnn.com/2000/LAW/09/08/morris.dees.profile/ (last visited Oct. 16, 2016). See generally Morris Dees, A Lawyer’s Journey: The Morris Dees Story (2001).  
111 See supra Part I.A. While Dr. King served as the direct target, the prosecution could undermine the viability and effectiveness of SCLC, the organization for which he served as president. Alan F. Westin & Barry Mahoney, The Trial of Martin Luther King: The Landmark Birmingham Case and Its Meaning for America Today 171 (1974); Branch, supra note 23, at 312.  
113 Dr. King was certain that he was innocent. He was quoted as saying “I knew it wasn’t true, but who would believe me?” Dyer, supra note 2, at 249. Further, the Alabama revenue agent had informed him, prior to the trial that he did not believe there was any evidence of fraud. Dyer, supra note 2, at 255; see infra text accompanying n.165. In fact, he had paid more than he believed he owed, under very strong protest, just to avoid an ongoing encounter with state tax officials, writing checks to both the IRS and the state of Alabama before moving to Atlanta. Branch, supra note 23, at 269; Dyer, supra note 2, at 247. Dr. King’s check remained uncashed, apparently because tax officials had not reached a final decision on what he owed. Make No Law, supra note 48, at 122; Lerone Bennett, What Manner of Man: Martin Luther King, Jr. 116 (1992). Moreover, Dr. King’s close confidant, Stanley Levison, prepared his tax returns throughout his career. Levison was a successful business man as well as a lawyer, and Dr. King had complete confidence in him. “Throughout King’s career, Levison drafted articles and speeches for him, prepared King’s tax returns, and raised funds for SCLC.” Levison,
anticipated that the consequences would be disastrous for his career, his personal life, and perhaps very damaging to the Civil Rights Movement as well.\textsuperscript{114}

As the prosecution became public, it caused him great embarrassment. It attacked a core aspect of his self-image and of his reputation—his honesty. \textsuperscript{115} He acknowledged as much.\textsuperscript{116} His wife Coretta recalled that the case brought with it the greatest suffering of any event in her husband’s life up until that time:\textsuperscript{117} “[D]espite all of the bravery he had shown before, under personal abuse and character assaults . . . this attack on his personal honesty hurt him most.”\textsuperscript{118} Dr. King’s greatest fear was that his reputation for honesty would be destroyed with a conviction, replaced by the public image of a greedy liar who was out for himself.\textsuperscript{119} Fred Gray, a member of the defense team, characterized the prosecution as Dr. King’s “greatest challenge.”\textsuperscript{120}

On a practical level, Dr. King believed that conviction was a given. Several years later, Dr. King reflected on his mindset at the time of the prosecution:

> The case was tried before an all-white Southern jury. All of the State’s witnesses were white. The judge and the prosecutor were white. The courtroom was segregated. Passions were inflamed. Feelings ran high. The press and other communications media


\textsuperscript{115}Gray, supra note 4, at 147–48.

\textsuperscript{116}Dyer, supra note 2, at 248–49; In a February 22, 1960 letter to Goshen College where Dr. King was supposed to speak, Dr. King’s secretary noted his mental state in regards to the perjury trial: “As you probably know, the state of Alabama has attacked Dr. King on a charge of perjury regarding income tax. This has caused him quite a bit of strain because this is an attack on his integrity and honesty. Of course, we feel that it’s just another attempt to harass him and embarrass him.” Richard R. Aguirre, Martin Luther King Jr.’s Visit to Goshen College in 1960 Inspired the Entire Campus, Goshen C., https://www.goshen.edu/cie/intercultural/goshen-visit/ (last visited July 14, 2016).

\textsuperscript{117}“He noted that he had been previously convicted in Alabama and had risked his life in bombings but the tax case hit him hardest because ‘I was being attacked on honesty.’” Martin Luther King Lauds White Jury That Freed Him, N.Y. HERALD TRIB., May 30, 1960, at 6.

\textsuperscript{118}Garrow, supra note 23, at 130; see also Coretta Scott King, My Life with Martin Luther King, Jr. 185 (1969); 5 The Papers of Martin Luther King, Jr.: Threshold of a New Decade, January 1959-December 1960 at 28 (Clayborne Carson et al. eds., 2005).

\textsuperscript{119}See Coretta Scott King, supra note 117, at 185. Another possible explanation may be that his spirit was just broken by this time. Since Dr. King began doing Civil Rights work, he had “been arrested five times on trumped up charges. His home ha[d] been bombed. His life ha[d] been threatened countless times.” Statement on the Indictment of Martin Luther King, Jr., supra note 89.

\textsuperscript{120}Branch, supra note 23, at 277. Clarence Jones, a member of the defense team who would become a member of King’s inner circle, initially assumed that Dr. King was just “some Negro preacher [who] got his hand caught in the cookie jar stealing . . . .” CLARENCE B. JONES & STUART CONNELLY, BEHIND THE DREAM: THE MAKING OF THE SPEECH THAT TRANSFORMED A NATION 37 (2011).
were hostile. Defeat seemed certain and we in the freedom struggle braced ourselves for the inevitable.”

Dr. King had little trust in southern state courts to provide justice for Black people who came before them. He viewed the judges and jurors as politically and personally committed to maintaining white supremacy, including the segregation that permeated social life in the South. He viewed the courts as an integral part of the system of Jim Crow segregation, so his innocence of the charges would not protect him.

Dr. King’s distrust of the legal system grew out of his own experience as well as his awareness of a long history of racism in southern states’ courts. During the Montgomery bus boycott, Dr. King and eighty-eight other leaders had been indicted for allegedly violating the state’s ancient anti-boycott statute. He alone was tried and convicted. The Alabama Supreme Court had previously ruled that liability under the state statute required the use of violence. The prosecution’s case focused in significant part on allegations that Blacks stayed off the buses because of physical intimidation by the Montgomery Improvement Association under Martin Luther King’s leadership. However, the prosecution introduced no evidence linking Dr. King, a strong advocate of non-violence, to any of the alleged threats or violence. Nevertheless, as expected, the jury convicted Dr. King of violating the anti-boycott

121 Kuntsler, supra note 4, at xxiv. On the central question of whether Dr. King’s income exceeded what he had reported, the lawyers shared their client’s view that the jury would agree with the prosecutor. They expected that their client would spend the decade in prison, and they told him as much. Branch, supra note 23, at 293. Even Dr. King’s lawyers were skeptical about his claims and worried that he had actually underpaid his taxes. It was not until Chauncey Eskridge, a tax expert with training in accounting in William Ming’s Chicago firm, entered the scene that they began to believe in their client’s innocence. Eskridge discovered that Dr. King kept day-by-day pocket diaries of his receipts and expenditures. Since diaries could be admissible as evidence, Eskridge analyzed the ones for 1956 in great detail. He concluded that their client had paid the state what he owed and reported his findings to the legal team. Id. at 293–97.

122 See Martin Luther King, Jr., Stride Toward Freedom: The Montgomery Story 131–32 (1958) (“The Negro goes into these courts knowing that the cards are stacked against him. Here he is virtually certain to face a prejudiced jury or a biased judge, and is openly robbed, with little hope of redress.”); Martin Luther King, Jr., Why We Can’t Wait 29 (1964) (describing that the threat of jailing a Black person meant “that his day in court, if he had it, would be a mockery of justice”).

123 In a 1956 interview with a Black newspaper, Dr. King said, “Our local judges, it seems, succumb to whims and caprices of local custom in deciding cases like ours.” Jack Bass, Taming the Storm: The Life and Times of Judge Frank M. Johnson, Jr., and the South’s Fight over Civil Rights 109 (1993).

124 Randall Kennedy, Martin Luther King’s Constitution: A Legal History of the Montgomery Bus Boycott, 98 Yale L.J. 999, 1029 (1989); Thornton, supra note 20, at 81, 84.

125 Kennedy, supra note 124, at 1029, 1034; Thornton, supra note 20, at 88–90. Dr. King had never won a trial in an Alabama court. Branch, supra note 23, at 308.

126 Lash v. State, 244 Ala. 48, 56 (1943) (holding that the anti-boycott statute could only be constitutional as applied to boycotts enforced by violence or other unlawful activities); Thornton, supra note 20, at 89.

127 Kennedy, supra note 124, at 1031–32.

128 Id. at 1031–32, 1041; Thornton, supra note 20, at 89.
statute.\textsuperscript{129} Even the judge acknowledged Dr. King’s commitment to non-violence, and he took that into account in the sentencing process.\textsuperscript{130} That the conviction had no basis in evidence reinforced Dr. King’s perception that any prosecution of a Black defendant, especially a leader like him, would lead to a guilty verdict from an all-white jury.\textsuperscript{131}

Dr. King viewed his unjust conviction in the 1956 boycott trial as just another example of “southern justice.”\textsuperscript{132} Whites routinely convicted Black defendants, regardless of the evidence or of their guilt or innocence. Perhaps the best known historical example was the infamous wrongful 1931 Alabama conviction of the nine “Scottsboro boys” for allegedly raping two young women on a train.\textsuperscript{133} The US Supreme Court overturned the conviction because of the obvious and extreme unfairness of the state court trial.\textsuperscript{134}

Coincidently, there was another example of racial injustice in the Alabama courts just a few weeks before Dr. King’s perjury trial. The Montgomery ordinance prohibiting whites and Blacks from eating together in restaurants had recently been repealed.\textsuperscript{135} A group of white college students on a field trip in Montgomery with their white professor was eating with some Black activists at a Black-owned restaurant when a police officer noticed them.\textsuperscript{136} Notwithstanding the legality of their interaction, numerous police cars arrived at the scene, which in turn attracted a

\textsuperscript{129} \textsc{Thornton}, \textit{ supra} note 20, at 90; Kennedy, \textit{ supra} note 124, at 1034.

\textsuperscript{130} The judge minimized the punishment because of that. \textsc{The Autobiography of Martin Luther King, Jr.} 86 (Clayborne Carson ed., 1998).

\textsuperscript{131} After reviewing the requirements for conviction under the law and the evidence the prosecution presented, leading historian Mills Thornton concluded that “There can simply be no question, therefore, that the state supreme court’s 1943 interpretation of the anti-boycott statute entitled King to an acquittal.” \textsc{Thornton}, \textit{ supra} note 20, at 89. Professor Kennedy suggested that the conviction was “virtually certain” no matter how the defense presented its case. Kennedy, \textit{ supra} note 124, at 1035.

\textsuperscript{132} \textsc{See generally} \textit{Southern Justice} (Leon Friedman ed., 1965).

\textsuperscript{133} \textsc{See generally} \textit{James R. Acker, Scottsboro and Its Legacy: The Cases that Challenged American Legal and Social Justice} (2008).

\textsuperscript{134} The Supreme Court actually overturned their convictions twice. \textsc{See} Powell v. Alabama, 287 U.S. 45 (1932) (holding that the defendants’ due process rights were denied based on the denial of effective counsel, where counsel was assigned immediately prior to the one day trials); Norris v. Alabama, 294 U.S. 587 (1935) (holding that the systematic exclusion of Blacks from juries violated the equal protection clause). More recently, an Alabama trial judge gave an instruction to the all-white jury, in an early 1950s trial, that they could take the Black defendant’s race into account in deciding whether he was guilty of attempted rape of a white woman. While the judge did not explain that instruction, the implicit racist message was obvious. McQuirter v. State, 63 So.2d 388 (Ala. 1953). The racist stereotypes implicit in the instruction included: (1) Black men are sex-crazed and want to have sex with white women; and (2) all credibility questions should be resolved against Black defendants (especially men) and in favor of whites (a woman in this case).

\textsuperscript{135} Clifford J. Durr, \textit{Sociology and the Law: A Field Trip to Montgomery, Alabama}, in Friedman, \textit{ supra} note 132, 43, 46.

\textsuperscript{136} Friedman, \textit{ supra} note 132, at 45–46. The police officer arrived after the department received an anonymous tip that some young, white women had been seen entering the restaurant with Blacks. \textit{Id.} at 46.
crowd of onlookers on the street. Ultimately, the police arrested the whole group in the restaurant, charged them with disturbing the peace, and the local judge convicted them. If there was any disturbance of the peace, it was caused by the police. That incident presumably reinforced Dr. King’s belief that his conviction was inevitable.

Dr. King’s lawyers were so concerned about the racial tensions in Montgomery that they moved for a change of venue on the grounds that Dr. King could not get a fair trial in the city. Judge Eugene Carter’s denial of that motion probably added to Dr. King’s sense of the inevitability of his conviction. Also, the state’s striking of the only three Black people in the venire produced the usual all-white jury.

As certain as Dr. King was that he would be convicted, he was equally sure of his innocence. One reason for his confidence was that Lloyd Hale, an Alabama State revenue agent, told him as much:

The last time the state came and said that since I was leaving the state they wanted to make this audit. And the man who made the audit made it very clear to me, over and over again, that my returns were thoroughly honest and accurate as anyone could make return, but he also admitted that he was under pressure from his superiors to bring some charges.

Dr. King was all too aware of how little innocence mattered to Alabama prosecutions of Black defendants. So he had little expectation of justice prevailing.

III. THE ACQUITTAL

The acquittal is the central mystery of the case. After the three-day trial concluded, the judge gave the jurors instructions, and they retired to deliberate. Three hours and forty minutes later, they returned from the jury room, having acquitted Dr. King of perjury. A news report said that “King seemed stunned by

137 Id. at 49.
138 Id. at 45. All the Blacks were tried together, separately from all of the whites. On May 9, 1960, all of the Blacks were convicted, along with only the white professor in charge of the group of whites. All of the convictions were later overturned on appeal, on narrow technical grounds relating to the language of the complaints. Id. at 51–54. Clifford Durr represented the white students and the professor, at the request of the college. SARAH HART BROWN, STANDING AGAINST DRAGONS: THREE SOUTHERN LAWYERS IN AN ERA OF FEAR 184 (1998).
139 Dr. King surely knew of the incident. It occurred in Montgomery; word of mouth would have gotten it to him. It also made the local newspaper. Moreover, Fred Gray acted as one of the attorneys for the Blacks who were arrested. Id. at 12.
140 Dyer, supra note 2, at 253; GRAY, supra note 4, at 151–52.
141 Dyer, supra note 2, at 254; see also Part. IV.A. (discussion of jury-selection process).
142 During an interview Dr. King gave on February 17, 1960, he stated that his tax returns had previously been investigated two or three times. Interview with Martin Luther King, Jr. Following Indictment by Grand Jury of Montgomery County (Feb. 17, 1960), in THE PAPERS, supra note 84, at 370–72.
143 Id.
the verdict . . .”145 His co-lead counsel, Hubert Delaney, said that the acquittal was “the most surprising thing in my 34 years as a lawyer.”146 Fred Gray, also of Dr. King’s defense team, had a similar reaction:

We were joyfully surprised when the jury foreman stood up and read the verdict: “Not guilty”. No one would have predicted that an all-white jury in Montgomery, Alabama, the Cradle of the Confederacy, in May, 1960, in the middle of all of the sit-ins and all of the racial tension that was going on, would exonerate Martin Luther King, Jr. But it really happened.147

There is no definitive answer to the key question of why the jurors acquitted Dr. King. None of them spoke publicly at the time, and they have all since passed away.148 Nor is there necessarily any single explanation, since even individual jurors may have had mixed motives and the jury as a whole may have arrived at the surprising result for multiple reasons.

In a sermon the day after the acquittal, Martin Luther King, Jr. described the verdict as a “quirk.”149 While he speculated about possible reasons for the jurors’ decision, he did not suggest that he could explain it.150 Instead, he simply concluded that “[s]omething happened to the jury.”151

The following discussion considers two possibilities of what might have “happened to the jury.”152 The first one reflects traditional jury decision-making processes and emphasizes the weakness of the state’s case.153 The jurors acquitted Dr. King. Therefore, the jurors acquitted him because the state’s case was very weak. The argument is that the evidence carried the day with fair-minded jurors.154

A potentially complementary explanation brings the larger political and social context into the jury room. It suggests that the jurors took account of the local circumstances in 1960—Dr. King having moved to Atlanta, hard-core segregationists in the ascendancy, and the Black community in relative disarray—and concluded that

145 Id.; see also Dyer, supra note 2, at 258.
146 BRANCH, supra note 23, at 309.
147 GRAY, supra note 4, 154.
149 Id.; BRANCH, supra note 23, at 310.
150 BRANCH, supra note 23, at 311.
151 Id.
152 Each one includes a subsidiary explanation that is related to the broad one. Id.
153 A number of participants and observers seem to subscribe to this line of reasoning, which has become the conventional explanation. Id.
154 Fred Gray used the term “fair minded” in praise of exceptional judges. GRAY, supra note 4, at 386. Related to that is a possible concern among the jurors that conviction might expose them and other taxpayers to the risk of future tax audits and prosecution for underpayment of taxes.
a conviction would be counterproductive to the interests of white Montgomery. Rather than risk making Martin Luther King into a martyr and rekindling the highly disruptive mass Black movement of the mid-1950s, they decided to “let this sleeping dog lie.”\textsuperscript{155} The jurors might have concluded that Montgomery’s white community would be better off with Martin Luther King, Jr. back in his new home in Atlanta rather than in an Alabama prison.\textsuperscript{156} The suggestion here is that each of these explanations was necessary, but neither was sufficient to produce an acquittal.

\textbf{A. A Substantive Explanation: A Weak Case and Fair-minded Jurors}

This is seemingly the most obvious explanation for the acquittal.\textsuperscript{157} The state’s case was weak, and the defense team was strong. Dr. King’s initial reaction to the verdict credited the jurors for rising above their racial biases. Outside the courtroom, after the trial, he spoke to the press about his acquittal:

\begin{quote}
This represents to my mind great hope, and it reveals that said on so many occasions, that there are hundreds and thousands of people, white people of goodwill in the South, and even though they may not agree with one’s views on the question of integration, they are honest people and people who will follow a just and righteous path.\textsuperscript{158}
\end{quote}

\begin{footnotes}
\item[155] See \textit{infra} Thetford’s use of the term p. 269.
\item[156] A related objective seems to have been a desire to project the city of Montgomery and the state of Alabama in a positive light to the outside world. The Statement on the Indictment of Martin Luther King, Jr. issued by the committee to Defend Martin Luther King, Jr, made it abundantly clear to any potential jurors that if the jury convicted Dr. King, this case would continue to be appealed to the highest court. The statement essentially threatened that this would cause Alabama to appear racist to the rest of the country (“When this case is brought out of the Alabama courts into the Federal court—and to the Supreme Court, if necessary—the State of Alabama will be revealed as the real criminal. It will be exposed as a contemptuous evader of the law, as it has been again and again in voting cases, school desegregation, and the denial of due process to its Negro citizens for almost 100 years. More specifically, the Dixiecrats at this point are seeking to frustrate the drive of Negroes to register and vote and to achieve this they are determined to destroy Dr. King.”). \textit{Statement on the Indictment of Martin Luther King, Jr., supra} note 89.
\item[157] The convergence theme suggested here is arguably more nuanced and persuasive than the “fair-minded jurors” approach, since it takes into account the political and social context in which the jurors decided. See \textit{infra} pp. 268–74.
\item[158] Coretta Scott King also seemed to subscribe to the “fair minded jurors” explanation: “A southern jury of twelve white men had acquitted Martin. It was a triumph of justice, a miracle that restored your faith in human good.” \textit{King, supra} note 117, at 187. Dr. King also paid tribute to his lawyers at that time: “And I certainly want to commend all of the lawyers, this brilliant array of lawyers who represented me in this case. And I’m sure that their brilliant and profound arguments and that factual evidence played a great part in the ultimate decision, which was one of not guilty.” \textit{King, supra} note 144, at 462.
\end{footnotes}

Several years later, Dr. King elaborated on his tribute to the lawyers. There were two men among us who persevered with the conviction that it was possible, in this context, to marshal facts and law and thus win vindication. These men were our lawyers, Negro lawyers—Negro lawyers from the North: William Ming of Chicago and Hubert Delaney from New York. They brought to the courtroom wisdom, courage, and a highly developed art of advocacy; but most important, they brought the lawyers’ indomitable determination to win. After a trial of three days, by the sheer strength of their legal arsenal, they
Some of the defense counsel shared that view of the acquittal. Local and national media accounts subscribed to it as well. Finally, scholars seemed to accept the fair-minded jurors hypothesis, also. All did so without much discussion or analysis.

Id. at xxiv.

Like Dr. King, defense counsel Fred Gray found that the verdict helped to restore his faith in the judicial system in Alabama. Gray, supra note 4, at 159. In his sermon the next day, Dr. King once again referred to that possibility, as well as the possibility that the jurors reacted as taxpayers to the concern that they, too, might be subjected to an unjustified prosecution. Branch, supra note 23, at 310–11. A half century after the trial, Clarence Jones, another member of the defense team, tried to recall his sense at the time of the reason for the acquittal:

So people have asked me, ‘Well how is it in April, 1960, Martin Luther King, Jr. can be acquitted by an all-white jury in Montgomery?’ and my explanation is, based upon my recollection . . . . I won’t say the jury being polled, but information that came back to us – the tax attorneys had so destroyed the government’s, the State of Alabama’s case, just ripped it to shreds, that the jurors had to make a decision of whether or not they were going to look like idiots and buffoons by having convicted this man, or whether they should acquit him. And they had to live in that community. And I think they decided, rather than be ridiculed because the government looked like a fool, that’s why they voted for an acquittal.

Clarence Jones, Martin Luther King’s Lawyers’ Symposium, 10 NW. J. L. & SOC. POL’Y. 688, 694 (2016).

In an article that was published in the Black-owned New Pittsburgh Courier on June 4, 1960, titled “Why Did Alabama Jury Free King?,” the author states that there are two reasons for the acquittal: (1) Brilliant defense lawyers; and (2) The jury felt the weight of the evidence in favor of Dr. King was too overwhelming to be overlooked. See Trezzvant W. Andersen, Why Did Alabama Jury Free King?, N. PITT. COURIER, June 4, 1960, at 2. In an obviously self-serving editorial, the Alabama Journal claimed that the “verdict in this case ought to go far to prove to the outside world Montgomery’s fairness and justice in dealing with Negro defendants.” It also said that “[King] evidently thought he could not have his income tax case handled fairly because of the low esteem in which he is held in Montgomery. Probably no living man is more detested in Montgomery than this self-serving blatant agitator who has done so much to disrupt the pleasant race relations Montgomery has long enjoyed.” That he was acquitted “testifies to the high quality of our jurors.” The Verdict in King Case, ALA. JOURNAL, May 31, 1960, at 4-A. The Alabama Attorney General also used the acquittal as conclusive evidence that even the most hated man in Montgomery could get a fair trial in Alabama. Dyer, supra note 2, at 259.

Professor Dyer shared this view of the jury: “The twelve men who comprised the jury obviously took their job very seriously and avoided a racially inspired discriminatory verdict.” Dyer, supra note 2, at 260. Leading historian Mills Thornton suggested that, from the extreme segregationists’ perspective, “only the jurors’ excessive scruples” prevented Dr. King from spending years in prison. Thornton, supra note 20, at 118. In his biography of Dr. King, David L. Lewis noted the absurdity in prosecuting someone for underpayment of taxes when the state had not reached a final determination of what the taxpayer owed. He assumed that the jurors were moved by that fact: “Here was logic that spoke even to the hard prejudices of the white jurors.” Make No Law, supra note 48, at 122. Professor Entin also suggested that Dr. King’s acquittal by a white jury “graphically demonstrates the weakness of the case against him.” Entin, supra note 31, at 252–78. Other historians simply reported the verdict without
The “fair-minded juror” hypothesis emphasizes the weakness of the state’s case and Dr. King’s lawyers’ ability to undermine the state’s case and present their own persuasive evidence and arguments. The state’s case appeared to rest on a faulty premise. The auditor determined Dr. King’s taxable income simply by adding up the deposits to his bank account. Since he assumed that all of those deposits represented taxable income, he may have included nontaxable travel expenses for Dr. King’s many speaking engagements around the country, as well as nontaxable gifts that he had received.

The glaring weakness in the state’s case seemed to be that its main witness, the state’s revenue auditor, testified honestly that he did not find any evidence that Dr. King had committed fraud. In cross-examining Lloyd D. Hale, the state’s key witness, William Ming elicited evidence that strongly supported Dr. King’s case. First, Hale acknowledged that he was still not sure how much Dr. King had earned in 1956. Moreover, Hale acknowledged that he had told Dr. King in Atlanta that there was no evidence of fraud in his tax return. Dr. King had paid, under protest, 

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162 Dyer, supra note 2, at 258.
163 THORNTON, supra note 20, at 117.
164 Id. Since there was no appeal, no trial transcript was made. The result is that the discussion of the evidence is based largely on Dyer’s discussion, using newspaper articles and interviews. At the request of the author, a tax attorney with thirty years of experience reviewed the material available and found it impossible to make an overall assessment of the evidence because so much information was missing. He raised concerns about both the prosecutor’s apparent theory that all remittances Dr. King received related to the movement constituted income to him and problems related to Dr. King’s record keeping that relied on a diary and his memory. The expert’s conclusion was that he had “insufficient information to evaluate the case.” Since there was no trial transcript available, it is uncertain whether the expert would have been able to carry out a full evaluation with the transcript and exhibits. Memorandum from Douglas H. Frazer, DeWitt Ross & Stevens Law Firm to Professor Len Rubinowitz (June 4, 2013) (on file with author).
165 There was also evidence that the auditor had insisted that Dr. King had underreported his income. Dyer, supra note 2, at 247. Notwithstanding his strong disagreement with that assessment, Dr. King submitted a check under protest for about $1,600 and considered the matter closed. Id. Note that the discussion of the evidence relies heavily on Dyer, Gray, MLK biographies, and the sources cited there. The main focus is on the testimony of the state’s auditor, which seems to have been honest and straightforward and undermined the state’s claims. See BRANCH, supra note 23, at 294–99 (discussing Chauncey Eskridge’s examining Dr. King’s diaries as evidence). The defense submitted Dr. King’s secretary’s diary that provided the basis for listing expenses associated with speaking engagements. Dyer, supra note 2, at 256.
166 BRANCH, supra note 23, at 308; LEWIS, supra note 103, at 122.
167 BRANCH, supra note 23, at 308. Hale’s concession brought an audible gasp from the spectators, with a white Alabama official providing support for Dr. King’s claim, thus endangering the outcome of this political trial of a Black leader. Id. While the evidence was irrelevant to many white jurors in cases with Black defendants, that was especially the case when there were violent crimes alleged, where there were specific victims, especially white victims, and most especially white women alleged victims. See supra note 134 discussion. The alleged offense here was financial rather than violent and there was no individual victim. That suggests the possibility of a verdict based on the evidence, even with a Black
the additional amount that the auditor said that he owed; but that did not prevent the prosecution.  

Defense witnesses may have strengthened Dr. King's position. One of those was Dr. King himself. In addition, the defense presented its own expert witness on the financial and tax-related accounting issues at the heart of the case, as well as character witnesses on behalf of Dr. King. The impact of this evidence on the jury remains unclear.  

Finally, in his closing argument, defense counsel William Ming emphasized that the state's key witness, the revenue agent, had testified that there was no evidence of fraud on Dr. King's part. The state presented no evidence contradicting that statement. Ming then challenged the jurors to imagine the implications for them if the state determined their taxable income by their bank accounts. He argued that if tax officials could do that to anyone, all taxpayers were at risk of facing prosecution for underpayment of their state income tax.  

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168 Dyer, supra note 2, at 247; see also Branch, supra note 23, at 310–11. The fact that Dr. King had accepted and had already paid the state’s additional assessment may have added to the jury's reluctance to convict Dr. King. It was virtually unheard of to prosecute a taxpayer in such a situation. Branch, supra note 23, 277.  

169 After a debate among the lawyers about whether to have Dr. King take the stand, they decided to go ahead and do so. Gray, supra note 4, at 157; see also Dyer, supra note 2, at 256.  

170 Defense witnesses included R.D. Nesbitt, Sr., deacon and clerk at Dexter Avenue Church, who also monitored King's financial transactions with the church, and a string of character witnesses testified for Dr. King, including the president of Morehouse College, the president of Tuskegee Institute, and a number of Black ministers and businessmen. Dyer, supra note 2, at 255–56; see also Gray, supra note 4, at 157–58. Jesse B. Blayton, Sr., a Black bank resident and certified CPA, also testified as the accounting expert who had audited Dr. King's books. His analysis supported Dr. King's and Chauncey Eskridge's claims about the accuracy of his stated income and the taxes paid. Dyer, supra note 2, at 256; see also Gray, supra note 4, at 158.  

171 Fred Gray described both Dr. King and Nesbitt as very good witnesses, but states that Blayton, the accountant, “completely mesmerized the jurors.” Gray, supra note 4, at 158. Dr. King’s daily diaries may have been persuasive to the jurors, as well. They constituted contemporary accounts and provided time lines, which can be particularly persuasive to juries. The author acknowledges the suggestion of Professor Shari Diamond on this point. The extensive coverage of the trial in the local papers focused on the evidence presented by both sides, thus implying that the evidence mattered in the outcome of the case. See, e.g., Coomes, supra note 93, at 2A; Ray Jenkins, King Case May Hinge on ‘Gifts’, Ala. Journal, May 27, 1960, at 1A; Arthur Osgoode, Final Arguments Set in King Trial, The Montgomery Advertiser, May 28, 1960, at 1A; Arthur Osgoode, 999 Exhibits Entered as King Trial Opens, The Montgomery Advertiser, May 26, 1960, at 1A; Judith Rushin, King Takes Stand in Perjury Case, Ala. Journal, May 27, 1960, at 1A; Judith Rushin, Agent Told King No Fraud Evident, Ala. Journal, May 26, 1960, at 1A.  

172 One focus of the closing was that even the state's key witness admitted there was no evidence of fraud, “[a]nd if there is no evidence of fraud, there is no evidence of the state's case.” Dyer, supra note 2, at 257.  

173 Id.  

174 Fred Gray reported that Ming’s closing argument was spellbinding to both the jury and the leading white members of the bar who were there to watch and listen. Gray also said that he overheard one of
Even with the state’s weak case, there are good reasons to question the “fair-minded jurors” explanation of the acquittal. While there was widespread acceptance of that explanation, it is not consistent with the history and experience that caused Dr. King to think that his conviction was inevitable and that produced such universal surprise with the announcement of the verdict. After all, the case took place in 1960 Alabama; the defendant was the most hated Black person in the state; it was tried before a segregationist judge and an all-white jury. As Dr. King knew all too well, that routinely led to conviction of innocent Black defendants.

Also, Dr. King’s counsel called a series of Black witnesses for the defense, including Dr. King himself, as well as expert and character witnesses. Since the norm was for white jurors to discount or simply ignore Blacks’ testimony, the race of those witnesses raises another question about the fair-minded jurors explanation for the acquittal.

Moreover, the “fair-minded jurors” hypothesis seems to depend on the jury consisting entirely of “racial moderates,” or at least dominated by them, all of whom were willing to take the evidence very seriously and express their views publicly through an acquittal. That scenario seems to be in tension with Montgomery’s

the “old established white lawyers” remark about the closing argument: “Now you have heard the master.” Gray, supra note 4, at 154. Co-lead counsel Delaney emphasized to the jurors that their verdict would be heard throughout the world, implying that Montgomery’s reputation would be affected by their decisions. Dyer, supra note 2, at 257. Moreover, some jurors may have been afraid of this case as a possible precedent for the use of the tax laws to intimidate and punish severely political opponents. Co-lead counsel William Ming tried to appeal to that concern in his closing argument. Id. It could be understood as establishing a precedent for using the state tax laws to punish anyone state officials viewed as adversaries. That problem was exacerbated by the complicated and confusing nature of tax law, with many traps for the unwary. Those aspects of tax law made it a readily available weapon that could be used against political opponents. Some jurors may have seen the tax prosecution of Dr. King as an opening shot across the bow, the first time that political leaders used this law as a political tactic. A conviction could have served as a frightening precedent for silencing others.

See supra Part II.

See supra note 145 and accompanying text (discussing Dr. King’s expectation of conviction).

Predictably, that pattern reasserted itself six months later. In the two trials in the libel suit related to the New York Times fund raising advertisement, four Black Montgomery ministers received a devastating defeat at the hands of an all-white jury. While their names appeared in the ad in question, the evidence indicated that they had not given permission for that and were not even aware of the ad until after its publication. Nevertheless, the respective juries found for the two plaintiffs and awarded each of them the requested $500,000 in damages. Through civil forfeiture, the ministers’ cars and a great deal of other property were seized and sold at auction. Thornton, supra note 20, at 591; see also Gray, supra note 4, at 116. After the Supreme Court reversed, in New York Times v. Sullivan, the ministers were reimbursed, in part, for their losses. Gray, supra note 4, at 170.

There are reasons to think Jesse Blayton especially might not have been so credible to jurors. He was Black, a member of the board of trustees of Dr. King’s Atlanta church, and his analysis agreed with Dr. King to the penny. Gray, supra note 4, at 153. Moreover, Blayton received very substantial compensation for his analysis and testimony, a subject of considerable controversy within Dr. King’s camp. Branch, supra note 23, at 287–88, 293–94, 309.

Professor Thornton defined “moderates” as on a spectrum between “liberals” seeking elimination of racial segregation laws and extreme segregationists—“all of them opposed arbitrary and highhanded actions directed toward blacks by white authorities . . . .” Thornton, supra note 20, at 591.
racial reality in 1960, as discussed below.\textsuperscript{179} In the post-boycott period, white supremacists gained control and silenced white moderates in the process.\textsuperscript{180} An acquittal would have been aberrational in that sense as well.

Thus, there are reasons to suggest that the “fair-minded jury” explanation is insufficient by itself. In short, it would have been a rare departure from an extremely consistent pattern of all-white juries convicting Black defendants, regardless of their innocence.\textsuperscript{181} That invites consideration of another possible contributing factor that has quite different underlying assumptions.

\textbf{B. A Consequentialist Explanation: Jurors Concerned about Potential Negative Consequences for Whites of a Conviction (“Let this Sleeping Dog Lie”)}

When Governor Patterson was moving to indict Dr. King, Solicitor Thetford encouraged him to “let[] this sleeping dog lie” and allow Dr. King to remain in Atlanta, rather than risk making him a martyr.\textsuperscript{182} In the few years between the end of the bus boycott at the end of 1956 and the perjury indictment, Montgomery’s situation had changed significantly. Those changes provide the basis for a plausible complementary explanation for the acquittal. The most immediate and visible factor was Dr. King’s apparently permanent departure from Montgomery with his move back to Atlanta.\textsuperscript{183} That move underlies the “letting this sleeping dog lie” aspect of the different explanation. Two other changes in the late 1950s suggest that the white jurors might have seen the acquittal as a measure that would help protect the “southern way of life.”\textsuperscript{184} Extreme segregationists had taken virtually complete control of the city.\textsuperscript{185} Moreover, the Black community had fragmented and had failed to build on any momentum that the boycott might have provided.\textsuperscript{186} White supremacy was firmly ensconced. Dr. King’s jurors may have been so wedded to the new racial status quo that they were unwilling to risk the upheaval that his conviction might have caused.\textsuperscript{187}

\begin{footnotesize}
\begin{enumerate}
\item See infra Part III.B. That discussion is based largely on leading historian Mills Thornton’s account in Dividing Lines. J. THORNTON, supra note 20, at 96–118.
\item THORNTON, supra note 20, at 112–13; GRAY, supra note 4, at 75.
\item See supra note 76 and accompanying text.
\item THORNTON, supra note 20, at 113, 615 n.147.
\item See infra notes 188–90 and accompanying text.
\item See infra notes 185–86 and accompanying text.
\item THORNTON, supra note 20, at 112–13.
\item THORNTON, supra note 20, at 107–08.
\item All of the changes seemed to be a matter of public knowledge, so the jurors were likely to have been aware of them. See Garrow, supra note 23, at 123 (stating King issued a statement to the press after announcing the move to his church).
\end{enumerate}
\end{footnotesize}
At the start of 1960, Martin Luther King, Jr. left Montgomery and Alabama. Many signs pointed to the permanence of that relocation, thus diminishing, if not ending, his threat to the city’s entrenched segregation. In November, 1959 Dr. King announced, to “a saddened black community and a jubilant white one,” that he was resigning as pastor of Dexter Avenue Church and moving to his home town of Atlanta, where he would join his father as co-pastor of Ebenezer Baptist Church. Part of the reason for the move was that his many responsibilities as a civil rights activist had left him insufficient time and energy to perform his role as a pastor as he intended.

Also, colleagues at the Southern Christian Leadership Conference (SCLC) pressed Dr. King to play a much larger role in the organization that he served as president. SCLC’s struggles at that point led one historian to refer to its early period as “the fallow years.” The organization needed Dr. King’s strong leadership to build and sustain it. With SCLC headquartered in Atlanta, fulfilling that role meant moving there. Moreover, sharing the pulpit with his father meant that he would be able to devote more time and energy to SCLC than was possible while meeting the responsibilities of his Montgomery church.

Also, Dr. King was at the center of tensions within Montgomery’s Black community, and he hoped that his departure would defuse those tensions. Dr. King and other activists contemplated filing a school desegregation lawsuit in Montgomery, which caused substantial pushback within the Black community.

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188 THORNTON, supra note 20, at 106; see also BRANCH, supra note 23, at 266–67; GARROW, supra note 23, at 122–23.
189 See BRANCH, supra note 23, at 266 (describing King’s reasons for going to Atlanta and his trying to convince Abernathy to go with him); FAIRCLOUGH, supra note 20, at 51 (discussing SCLC organizational changes leading to his move to Atlanta); GARROW, supra note 23, at 123–24 (stressing that the move was due to increasing demand for SCLC leadership and due to meetings discussing future leadership opportunities in Atlanta).
190 THORNTON, supra note 20, at 106; see also GARROW, supra note 23, at 122–23.
191 As Dr. King was increasingly torn between his responsibilities at his Montgomery church and his ever-expanding role in the civil rights movement, his guilt about not adequately fulfilling his obligations to his congregation grew. His meticulous preparation and memorization of his sermons gave way to scribbling a few notes before preaching. He simply could not sustain his original vision of serving as pastor to his local church. GARROW, supra note 23, at 122.
192 FAIRCLOUGH, supra note 20, at 51; GARROW, supra note 23, at 122–24.
193 FAIRCLOUGH, supra note 20, at 37. Between 1957–60, SCLC barely raised enough money to keep itself afloat, and for much of that time was operating with only one staff member and with a lack of real leadership. Id. at 47–49.
194 See id. at 37–38.
195 BRANCH, supra note 23, at 266; GARROW, supra note 23, at 122.
196 Dr. King moved to Atlanta to devote more time to SCLC and to not be obligated to preach every Sunday. FAIRCLOUGH, supra note 20, at 51; GARROW, supra note 23, at 123.
197 Dr. Thornton suggested that Dr. King’s departure was largely to remove the pressure that Black teachers and other Blacks were facing as a result of his threat to file a school desegregation lawsuit. THORNTON, supra note 20, at 106.
198 Governor Patterson claimed that he would shut down the state’s schools rather than integrate them, thus leading to significant Black opposition to the suit that included many members of Dr. King’s church. THORNTON, supra note 20, at 109–06.
\end{flushleft}
Black teachers were especially vocal in opposing Dr. King because they feared that such litigation would cost them their jobs.\textsuperscript{199}

At the same time that Dr. King left Montgomery, seemingly for good, white supremacists had assumed virtually total control of the city.\textsuperscript{200} The increased hostility between the races that the boycott engendered enabled the extreme segregationists to expand the legal regime separating Blacks and whites. Within a few months after the bus boycott ended, the city commissioners had further institutionalized segregation by passing an ordinance that sought to prevent social interaction between the races, especially where there would be physical proximity and the potential for actual physical contact.\textsuperscript{201}

In the process of dominating the city, the extreme segregationists also silenced racial moderates.\textsuperscript{202} One scholar describes the extremists as imposing a “reign of terror” on white moderates and liberals, subjecting them to harassment and ostracism.\textsuperscript{203} The message seemed clear that the bus situation was aberrational, and the Jim Crow system was to remain in effect in all other realms of social life.\textsuperscript{204}

Montgomery’s judicial system also reflected the racist status quo. In early 1957, in the aftermath of the bus boycott, racists bombed several Black homes and churches.\textsuperscript{205} Two of the alleged bombers went to trial, based on their confessions and their having led the police to bombing materials in locations which only the perpetrators could have known.\textsuperscript{206} Notwithstanding this powerful evidence, the all-white jury quickly acquitted them on all counts.\textsuperscript{207}

\begin{itemize}
\item \textsuperscript{199} Id. at 105–06.
\item \textsuperscript{200} Id. at 112–13.
\item \textsuperscript{201} The ordinance made it:

\begin{quote}
Unlawful for white and colored persons to play together, or, in company with each other . . . in any game of cards, dice, dominoes, checkers, pool, billiards, softball, basketball, baseball, football, golf, track, and at swimming pools, beaches, lakes or ponds or any other game or games or athletic contest or contests, either indoors or outdoors.
\end{quote}

Montgomery, Ala., Ordinance 15-57 (Mar. 19, 1957), quoted in Kennedy, supra note 124, at 1057. Segregation was also still in effect in “employment, restrooms, water fountains, lunch counters, hotels, and restaurants.” Coleman, et al., supra note 22, at 720 n.150 (citing Henry Hampton & Steve Fayer, Voices of Freedom: An Oral History of the Civil Rights Movement from the 1950s Through the 1980s, at 33 (1991)).
\item \textsuperscript{202} See Thornton, supra note 20, at 96–99.
\item \textsuperscript{203} Id. at 97.
\item \textsuperscript{204} Coleman et al., supra note 22, at 692.
\item \textsuperscript{205} Thornton, supra note 20, at 94.
\item \textsuperscript{206} Id. at 95.
\item \textsuperscript{207} Id. at 96. Two circuit judges stated publicly that the jury rendered “a verdict which the court would itself have given.” Id. One of those judges was Eugene Carter, the judge in Dr. King’s anti-boycott case. Kennedy, supra note 124, at 1029; see also Thornton, supra note 20, at 96.
\end{itemize}
To make matters worse, the Black community’s activism diminished in the aftermath of the boycott.\textsuperscript{208} It largely failed in the few initiatives it undertook.\textsuperscript{209} Its energy had dissipated from the boycott. The remarkable unity of the Black community that prevailed during much of the bus boycott began to fray toward the end of that movement.\textsuperscript{210} Divisions and tensions among the leaders grew, as the Montgomery Improvement Association struggled to define an agenda after the bus boycott.\textsuperscript{211} The deep divisions within the Black community that pre-existed the bus boycott began to resurface as well.\textsuperscript{212} Even the MIA’s seemingly most successful initiative of the late 1950s failed in the end. Its suit challenging the segregation in the city’s parks won in court; but city officials closed all the parks at the end of 1958.\textsuperscript{213} Judge Frank Johnson, who had upheld the initial claim, concluded that he did not have the power to order reopening of the parks.\textsuperscript{214}

All of these facts suggests that Montgomery’s extreme segregationists were having their way by 1960: “Thus the white supremacist who surveyed the situation in Montgomery at the beginning of 1960 could do so with considerable satisfaction.”\textsuperscript{215}

\begin{thebibliography}{99}
\bibitem{208} THORNTON, supra note 20, at 101–02.
\bibitem{209} See id.
\bibitem{210} Id. at 99–100. He describes the concerns of E.D. Nixon, one of the founders of the MIA and its treasurer, about the way the organization’s funds were being handled. Uriah Fields’s accusations also caused dissension within the movement. See supra Part I.A. and text accompanying notes 10–34. Blacks who were “opposed to racial strife and [sought] to work with city officials for the expansion and improvement of [B]lack institutions” formed a rival organization to the Montgomery Improvement Association called the Restoration and Amelioration Association. THORNTON, supra note 20, at 102.
\bibitem{211} THORNTON, supra note 20, at 101.
\bibitem{212} Id. at 107.
\bibitem{213} Id. at 101–02. Approximately half of the parks reopened in 1965, but the others never reopened because they had been sold or were being used for other purposes. In summarizing the new status quo that existed when Dr. King left Montgomery, Professor Thornton said that:

\begin{quote}
Despite the logic, the passion, and the bravado of King’s farewell address, however, it was apparent that he was merely whistling past the graveyard . . . . [H]is insistence that the black citizenry must not yield to [segregationist zealots] could not help but lose much of its force as even his most ardent local admirers came to understand that, in leaving Montgomery, he himself just had.
\end{quote}

\textit{Id.} at 107. Fred Gray had a more optimistic view of that period. He suggested that the civil rights movement still flourished in Montgomery, with some desegregation of buses, parks, and the airport. Gray, supra note 4, at 144.
\bibitem{214} THORNTON, supra note 20, at 102.
\bibitem{215} Id. at 112.

Once we have examined the events in the city in the years just after the end of the boycott, the notion advanced by the Citizens’ Councils in January 1959, that history would record Montgomery as the place where the tide in the civil rights battle was turned and ‘integration efforts were stopped cold,’ seems a good deal less peculiar . . . . The forward march of desegregation, which had appeared at the end of 1959 to be about to create a breakthrough, did indeed seem to have been halted in its tracks.
In that context, perhaps the question for the perjury jurors became: with Martin Luther King, Jr., having departed the state, the extreme segregationists firmly in control, and the Black activist community in disarray, why risk disturbing the racial status quo by convicting Dr. King of a serious crime.\footnote{Id. Dr. King’s arrest was enough to send shock waves through the Black community in Atlanta. \textit{Branch}, supra note 23, at 276–77.} If the jury did raise that question for itself, the jury would likely have turned to the city’s recent history as a guide.

Montgomery’s segregationists had learned early on that prosecuting and convicting Black activists did not necessarily help protect the “southern way of life.” The arrest and prosecution of Rosa Parks for refusing to give up her seat on a segregated bus triggered the year-long boycott along with the litigation holding the bus segregation laws unconstitutional.\footnote{See \textit{King}, supra note 47, at 50–51. (“The bus protest . . . was the culmination of a slowly developing process. Mrs. Parks’ arrest was the precipitating factor rather than the cause of the protest.”); \textit{Daybreak of Freedom: The Montgomery Bus Boycott} 8–10 (Stewart Burns ed., 1997).} The arrest of 1955

During the bus boycott, officials indicted many leaders and prosecuted and convicted Dr. King for violating and old anti-boycott statute.\footnote{Kennedy, supra note 124, at 1029; \textit{Thornton}, supra note 20, at 84 (“On February 21 the grand jury returned indictments of eighty-nine blacks, twenty-four of whom were ministers, for the misdemeanor of conspiring to boycott.”).} They sought to undermine the movement by convicting its leadership.\footnote{The county solicitor, William Thetford, was the prosecutor in the perjury case four years later. He recalled later that he was “deeply dubious” about the anti-boycott prosecution because it was unlikely to be effective. \textit{Id.} at 604; J. Mills Thornton III, \textit{Challenge and Response in the Montgomery Bus Boycott of 1955–1956}, 67 ALA. REV. 40, 101 (2014). Conviction would only lead to a small fine or short jail sentence, punishments too minor to deter the protest. However, Thetford did not explain why he proceeded with the prosecution if that was his view about its likely impact.} However, the tactic backfired, as it “spurred the black community to further displays of unity, confidence, and self-sacrifice.”\footnote{Kennedy, supra note 124, at 1029. The prosecutor proceeded with the trial of Dr. King, who was convicted and fined. When it became clear that the conviction had strengthened the Black community’s resolve, the prosecutor decided not to prosecute any of the others who had been indicted. See \textit{Photograph of Dr. King and Arthur Shores, in Helen Shores Lee \& Barbara S. Shores, \textit{The Gentle Giant of Dynamite Hill}} 160 (2012) (caption of the photograph reads, “Rev. Martin Luther King, Jr., shaking hands with his lawyer, Arthur D. Shores, as they stood in front of cheering followers after King’s conviction for his part in the boycott in Montgomery, 1956.”). In another incident, the police arrested Dr. King when he was driving as part of the “car pool” for a minor (and probably non-existent) traffic violation. \textit{Garrow}, supra note 23, at 55. This was part of a “get tough” policy seeking to disrupt and perhaps destroy the alternative transportation system that was central to sustaining the boycott. \textit{Thornton}, supra note 20, at 73–77. Initially, the police were going to keep Dr. King in jail overnight, since there was no bail money available in the evening. When the word of the arrest got out, however, angry Black residents surrounded the jail, and the jailer changed his mind and released his prisoner. Coleman, supra note 22 at 713, n.88; \textit{Garrow}, supra note 23, at 56; Robert J. Glennon, \textit{The Role of Law in the Civil Rights Movement}, 9 L. \& Hist. Rev. 59, 67 (1991).} Those indicted turned themselves in to the police, taking their
arrest as a badge of honor.\textsuperscript{221} The prosecution was counterproductive on another level as well. It turned a local news story into a national and international one.\textsuperscript{222} That provided additional support for the thousands of Black residents who were continuing to sacrifice in order to bring about change on the buses.\textsuperscript{223}

The counter-productivity of the anti-boycott prosecution did not bode well for the governor’s plan in initiating the perjury prosecution a few years later. By 1960, Martin Luther King, Jr. had a national and international reputation.\textsuperscript{224} And the punishment involved was far greater than was at stake in the anti-boycott trial. As a result, the risk of martyrdom and backlash was far greater than with the earlier conviction. A relatively quiescent local Black community might have been aroused and unified in a way it had not been for years. The jurors had reason to fear that the Black community’s unity, discipline, courage, and resilience that sustained the bus boycott could be aroused again by the conviction of Martin Luther King, Jr.\textsuperscript{225} The national and international reaction in support of Dr. King might also have made the conviction very costly for the proponents of the racial status quo. The city’s business community had shown deep concern about that goal during the bus boycott, and there was good reason to continue that focus on building a good public image.\textsuperscript{226}

In an interview many years after the trial, solicitor Thetford said that he had been secretly pleased that the jury had acquitted Dr. King.\textsuperscript{227} He felt that the acquittal was “finally ridding his jurisdiction of the troublesome minister.”\textsuperscript{228} If the jurors imagined that Dr. King’s move to Atlanta meant that he would not continue to make trouble in Montgomery, they were largely correct.\textsuperscript{229} The heavy presence of Blacks in the courtroom could have alerted the jurors to the risks of convicting Dr. King.

\begin{thebibliography}{99}
\bibitem{221} Kennedy, \textit{supra} note 218, at 1029.
\bibitem{222} The boycott made the front page of the \textit{New York Times} for the first time, as well as network television coverage. \textit{Id.} at 1029; Garrow, \textit{supra} note 23, at 66; \textsc{Lawrence Reddick}, \textit{Crusader Without Violence: A Biography of Martin Luther King, Jr.} 139–41 (1959).
\bibitem{223} Kennedy, \textit{supra} note 218, at 1029.
\bibitem{224} See, \textit{e.g.}, Gray, \textit{supra} note 4, at 145; see also Branch, \textit{supra} note 23, at 203, 385; Fairclough, \textit{supra} note 20, at 37.
\bibitem{225} Coleman et al., \textit{supra} note 22, at 675. They could also easily have imagined that a conviction and the Black community’s response to it could have taken the kind of toll on the city’s reputation that occurred with the bus boycott. \textit{See id.} at 692–93; Thornton, \textit{supra} note 20, at 80–83.
\bibitem{226} \textit{See discussion infra} note 230 based on Thornton’s \textit{Dividing Lines}, pp. 80–81.
\bibitem{227} Thornton, \textit{supra} note 199 at 615, n.147.
\bibitem{228} \textit{Id.} Thetford’s statement was certainly self-serving and possibly disingenuous. After all, he had failed to convict the most hated Black person in the state, even with the usual advantage of an all-white jury. A Black defendant tried before an all-white jury in that time and place usually meant virtually certain conviction, no matter what the charge and no matter what the evidence showed. \textit{See supra} Part II (discussing Dr. King’s sense before the trial of the inevitability of his conviction).
\bibitem{229} Dr. King did not return to Alabama to lead a movement until 1963, and that was in Birmingham, not Montgomery. \textit{See} Thornton, \textit{supra} note 20, at 141–379. In 1965, he led the voting rights march to Montgomery; but the central focus was Selma where such a small portion of the Black population had been permitted to register. \textit{See id.} at 380–499. While the jurors might understandably have focused on future implications for their city of Montgomery, Governor Patterson might have seen Dr. King as a continuing threat to Alabama, a relatively short distance from his new home in Atlanta.
\end{thebibliography}
King and the relief available in his return to Atlanta. At the start of the trial, approximately two-thirds of the spectators in the courtroom were Black. From the announcement of the indictments to the jury’s verdict, the reaction of the Black community to the prosecution was strong and very visible. Officials understood how provocative this prosecution was to the Black community. It is quite plausible that some or all of the jurors shared the prosecutor’s secret views. They too may have preferred to see Dr. King back in Georgia rather than in an Alabama prison, where his incarceration might have produced Blacks’ reactions that whites could not control.

However, if the state had presented a strong case that Dr. King had perjured himself by lying on his state tax return, the picture would have been quite different. Even if the jurors were seriously worried about the consequences of a conviction, an acquittal would have required the act of jury nullification. While white juries in the South often acquitted obviously guilty white defendants accused of a crime against Blacks, it would have been extraordinary to ignore the judge’s instructions and the evidence against a Black defendant, especially when that defendant had been the leader of the Civil Rights Movement in the state. Since neither the weak case nor

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230 On a related point, jurors who were businesses leaders, owners, or otherwise concerned about the city’s economic climate may have been especially concerned about possible disruption, just as many whites were during the bus boycott. See generally id. at 80–81. Business progressives also shared a concern about the city’s reputation and its attractiveness to northern industry as a relocation destination. They made that concern public a year later when “freedom riders” traveling on interstate buses were greeted by violent mobs when they arrived in Montgomery. Id. at 123. There was an effort to attract industry to Montgomery, specifically, and the South, generally, during this period. Supporters of that goal believed that racial peace and stability were required for companies to relocate there. Id.

231 Dyer, supra note 2, at 254.

232 As early as the May 16 arraignment, Montgomery officials were aware of the tense and potentially explosive nature of the prosecution. Sheriff’s deputies on horseback, along with state troopers and city policemen, stood guard outside the courthouse in case of racial demonstrations. Branch, supra note 23, at 301. Immediately prior to reading the verdict, the judge warned that there would be no demonstrations inside or outside the courtroom, and stationed police outside the courtroom to enforce his statement. Coombes, supra note 93, at 2A. The judge also ordered the release of spectators one row at a time. Dyer, supra note 2, at 258.

233 The riots all over the country after Dr. King’s death perhaps shows that the jurors would have been wise to be concerned about the Black community’s possible response to a felony conviction with a substantial prison term. See Fairclough, supra note 20, at 382; Taylor Branch, At Canaan’s Edge: America in the King Years 1965–68, 767 (2006). The acquittal gave Montgomery’s Black community a cause for great celebration. At the same time, it may have given many of the city’s whites a sense of relief, as it calmed the racial waters that Governor Patterson had stirred up with his prosecution of Martin Luther King, Jr.

234 Jury nullification is defined as a jury’s “knowing and deliberate rejection of the evidence or refusal to apply the law either because the jury wants to send a message about some social issue that is larger than the case itself or because the result dictated by law is contrary to the jury’s sense of justice, morality, or fairness.” Jury Nullification, LEGAL INFO. INST., https://www.law.cornell.edu/wex/jury_nullification (last visited Jan. 9, 2017).
the consequentialist approach seems sufficient by itself, the plausible explanation points to the convergence of those two factors producing the acquittal.

IV. THE COUNTER-FACTUAL: DR. KING’S HYPOTHETICAL CONVICTION

In referring to the perjury trial several years later, Dr. King wrote, “I can recall what may very well have been a turning point in my life as a participant in the Negro struggle in the South.” This section considers possible implications of that turning point—the trial, ending with a conviction rather than an acquittal. This counter-factual discussion is suggestive only. Some aspects of the analysis seem likely because the participants involved at the time discussed contingency plans, such as appealing a possible conviction. Others can be inferred based on previous history, such as Dr. King’s conviction during the bus boycott for violating the state anti-boycott statute. Still others can be considered in light of actual events that followed, such as Martin Luther King, Jr.’s assassination. Because of Dr. King’s central role in the Civil Rights Movement, the “what if” question can be considered in respect to him personally as well as in respect to the movements with which he was associated.

A. Implications for Martin Luther King, Jr.

The impact on Dr. King of a conviction in that trial relates to both the subsequent aspects of the prosecution as well as the punishment that would have resulted. The former involves the appeals of the conviction, the possible sentence, and a second trial that could have followed. The implications of incarceration include the constraints on Dr. King’s activism and the personal risks—both physical and psychological—of his imprisonment.

Dr. King and his lawyers planned to appeal the conviction that they thought was inevitable. The motions made by the defense throughout the proceedings were designed to lay the foundation for such an appeal. Dr. King had confidence in his innocence. The public, practical, and psychological impacts would have been too great to let a conviction stand without a fight. A lengthy prison sentence would have made an appeal even more imperative. Moreover, a conviction in the first trial would have paved the way for a second trial—one related to Dr. King’s 1958 state income tax returns.

In anticipation of a likely appeal, the lawyers filed numerous motions that the trial judge denied but would be preserved to serve as potential grounds for appeal. The lawyers challenged the constitutionality of the jury selection process that

235 Kuntsler, supra note 4, at xxiii.
236 See Dyer, supra note 2, at 252.
produced an all-white jury.\textsuperscript{238} Their motion for a directed verdict at the end of the state’s case argued that the state had not made a case that should go to the jury.\textsuperscript{239} This was a claim that the evidence was insufficient—that no rational jury could have found that the prosecution had proven its case beyond a reasonable doubt.\textsuperscript{240}

The challenge to the jury selection process had little chance of success. The constitutional challenge to the all-white jury was based on the fact that the prosecution excluded the only three Blacks in the venire.\textsuperscript{241} The selection process resembled a peremptory challenge, where no reason for exclusion was necessary.\textsuperscript{242} That process was constitutionally viable at the time. A half decade later, in \textit{Swain v. Alabama}, the US Supreme Court rejected a constitutional challenge to a claim of racial discrimination in prosecutors’ use of peremptory challenges.\textsuperscript{243} The Court pointed to the history and purpose of the peremptory challenge as emphasizing the need to permit some challenges that do not require any explanation whatsoever.\textsuperscript{244}

\begin{itemize}
\item \textsuperscript{238} Dyer, \textit{supra} note 2, at 254.
\item \textsuperscript{239} \textit{Id.} at 255.
\item \textsuperscript{240} \textit{Id.}
\item \textsuperscript{241} \textit{Id.} at 254.
\item \textsuperscript{242} According to a 1965 court case quoting the statute, Alabama’s jury selection process for non-capital crimes at the time was as follows:

\begin{quote}
[Section] 60. Mode of selecting and empaneling juries in criminal cases other than capital cases. -- In every criminal case the jury shall be drawn, selected and empaneled as follows: Upon the trial by jury in any court of any person indicted for a misdemeanor, or felonies not punished capitally, or in case of appeals from lower courts, the court shall require two lists of all the regular jurors empaneled for the week, who are competent to try the defendant, to be made and the solicitor shall be required first to strike from the list the name of one juror and the defendant shall strike two, and they shall continue to strike off names alternately until only twelve jurors remain on the list, and these twelve thus selected shall be the jury charged with the trial of the case.
\end{quote}

\textit{Donahey v. Montgomery}, 43 Ala. App. 20 (1965). This framework approximated a peremptory challenge approach, since the lawyers did not have to explain their reasons for excluding potential jurors, as would be necessary under a “challenge for cause” approach with a specified number of peremptory challenges available. Defense counsel may have been able to exclude potential jurors who revealed the most extreme racism, who would likely have voted for conviction regardless of the evidence. That might have produced a somewhat more moderate jury than would otherwise have been the case.

\item \textsuperscript{243} \textit{Swain v. Alabama}, 380 U.S. 202 (1965).
\item \textsuperscript{244} The Court stated:

\begin{quote}
[i]n the light of the purpose of the peremptory system and the function it serves in a pluralistic society in connection with the institution of jury trial, we cannot hold that the Constitution requires an examination of the prosecutor’s reasons for the exercise of his challenges in any given case. The presumption in any particular case must be that the prosecutor is using the State’s challenges to obtain a fair and impartial jury to try the case before the court.
\end{quote}

\textit{Swain}, 380 U.S. at 222. It was not until the Court decided \textit{Batson v. Kentucky}, 476 U.S. 79 (1986), that
Similarly, an appeal based on the insufficiency of the evidence would have had little chance of success, given the composition and inclination of the Alabama appellate courts, the straightforward legal issue, and the high bar in winning an appeal based on inadequate evidence.\textsuperscript{245}

If Dr. King’s conviction had been affirmed on appeal, the prosecutor presumably would have proceeded with a second trial, based on the indictment related to the 1958 state tax return.\textsuperscript{246} In theory, a different jury could have acquitted Dr. King even though the first one convicted him; but there would have been little reason to expect that to happen. The second jury would almost certainly have been composed entirely of whites, coming from the same culture as the first.\textsuperscript{247}

If Dr. King’s conviction on both charges had been affirmed on appeal, he would have received a sentence of two to five years for each.\textsuperscript{248} So he could have served from four to ten years. With Governor Patterson seeking to eliminate Dr. King from the movement, the prosecutor would likely have sought the longest sentence possible. With the bias that state judges demonstrated routinely, a lengthy sentence seemed likely.\textsuperscript{249}

As a result, Dr. King might have been “out of circulation,” as he referred to it, for a quite substantial period—possibly the entire decade of the 1960s.\textsuperscript{250} While his numerous stays in jail had little impact on his leadership role, they were all for very brief periods.\textsuperscript{251} It seems highly unlikely that Dr. King could have continued his central role in strategic decision-making, his inspirational impact, or his exceptional fund-raising efforts during an extended prison sentence.\textsuperscript{252}

\begin{itemize}
\item it permitted constitutional challenges to a pattern of using peremptory challenges to exclude potential jurors based on race.
\item See supra Part II (discussion of Dr. King’s view of local courts); see generally Friedman, supra note 132.
\item Appeals courts rarely reverse based on insufficient evidence, as they believe the jury is in a better position to make that decision than an appeals judge, since the jury was actually present when the evidence was presented.
\item Solicitor Thetford said that he was not proceeding with the second trial because of the acquittal in the first one and the similarity of the evidence related to the 1958 tax return. Thornton, supra note 20. Moreover, Governor Patterson presumably would have ordered him to go ahead with a second trial if the first had produced a conviction.
\item See supra pp. 259–60 (discussion of the all-white jury).
\item See supra text accompanying note 94.
\item See, e.g., Kunstler, supra note 4, at 102 (recalling Dr. King saying, “I don’t mind violating an unjust state injunction, but I won’t violate a federal one”); Thornton, supra note 199, at 89–90 (discussing Dr. King’s conviction for violating the anti-boycott statute); see supra notes 122–23 and accompanying text.
\item Dr. King was jailed an average of two times per year throughout his career. See Bennett, supra note 113, at 243 (listing Dr. King’s “record of arrests”); The King Years: A Timeline of Martin Luther King, Jr., The King Legacy, http://www.thekinglegacy.org/content/king-years (listing many of his arrests, along with dates he entered and exited jail) (last visited Oct. 26, 2106).
\item Dr. King recognized the likely limitations that a prison sentence would have imposed on his involvement in the movement. In a letter to Jackie Robinson he explained the additional need for
\end{itemize}
Moreover, a conviction and a prison sentence would have posed significant personal risks for Dr. King. The shame and humiliation he felt as a result of the charges would likely have been exacerbated by a finding of guilt, followed by punishment. Confinement, with the possibility of relative isolation, was painful for Dr. King even in his short jail stays. A lengthy prison term could have taken a substantial toll on his psyche, especially since the pressures of his work already produced periodic bouts of depression.

In addition, Dr. King could have faced physical dangers in prison. If white racist prisoners had access to him, his life was threatened. Prison guards represented a similar threat. Later in 1960, Dr. King was incarcerated in a Georgia prison. His family had real fears for his life. There was great relief when supporters were able to secure a quick release, before any harm could come to him. A much longer time in a southern prison posed much greater risks of physical harm to Dr. King.

Fundraising for his defense “because I knew that I would be out of circulation for a while, and that I could not raise as much money for the Southern Christian Leadership Conference as I would ordinarily raise.” Letter to Jackie Robinson, *supra* note 250, at 476. This is not to suggest that he would have been necessarily been wholly removed from the movement. Outside contact might have continued; but it is likely that Governor Patterson and prison officials would have tried to minimize Dr. King’s continued involvement in the Civil Rights Movement.

Fred Gray suggested that conviction would have been “devastating” because it would have undermined Dr. King’s credibility throughout the South. It would have tainted this leader of thousands of Black people as a dishonest man who failed to pay his taxes. *Gray, supra* note 4, at 148. It would also have undermined his development as an international figure. *Id.* at 149.

*See supra* Part II.A.

*See Garrow, supra* note 23, at 243, 331, 670.

*Id.* at 134–35, 421, 602–03; *Branch, supra* note 23, at 579–80.

After being placed on probation for a previous traffic incident, Dr. King was arrested for a sit-in. *Garrow, supra* note 23, at 143; *Maurice C. Daniels, Horace T. Ward: Desegregation of the University of Georgia, Civil Rights Advocacy, and Jurisprudence* 166 (2001). His probation was revoked, and he was sentenced to four months hard labor at a maximum security prison. *Maurice C. Daniels, Saving the Soul of Georgia: Donald L. Hollowell and the Struggle for Civil Rights* 115–17 (2013).

*Garrow, supra* note 23, at 146.

Attorneys Donald Hollowell and Horace Ward quickly filed an appeal in the original case, and were able to secure his release on bond after eight days in prison. *Daniels, supra* note 257, at 115. As the same time, Senator John Kennedy intervened, calling Coretta Scott King to comfort her, and eventually calling the judge on Dr. King’s case. *Id.* at 177–78. While the lawyers appeal was the technical cause for Dr. King’s release, Kennedy is often given much of the credit. *Id.* at 118–19.

It is even possible that if Dr. King had been convicted and the conviction had been overturned on appeal, he would have left SCLC and returned to serving as a full-time pastor. Before the ordeal of the trial, he expressed having second thoughts about whether his activism was worth all the trouble it was causing his family. In a letter to Daniel Wynn dated February 24, 1960, he said: “So often in my dark and dreary moments, I end up asking concerning my involvement in the civil rights struggle: ‘Is it worth it?’ At other times I find myself asking, ‘are you able?’” *See Letter from Martin Luther King, Jr. to Daniel Wynn (Feb. 24, 1960), in The Papers of Martin Luther King, Jr. Volume V: Threshold of a New Decade, January 1959–December 1960*, 375 (Clayborne Carson et al. eds., 2005). It is possible
B. Impacts on the Civil Rights Movement and Organizations

By removing Martin Luther King, Jr. from the Civil Rights Movement at a critical time, there were likely to have been impacts on the movement as well. The concerns of the “let sleeping dogs lie” advocates provide a starting point for considering possible impacts. Beyond that, Dr. King’s Southern Christian Leadership Conference (SLSC) would have changed its leadership, with accompanying implications.

A conviction could have made Dr. King a martyr and produced outrage in the Black community. In light of Dr. King’s stature by 1960, that reaction could have extended throughout Alabama and beyond. In Montgomery, for example, a relatively fractured and divided Black community could have been re-unified and re-energized to mount protests on issues Dr. King raised, such as voting rights and pervasive segregation. Those efforts might have even escalated beyond those of the bus boycott experience. In turn, the dominant white segregationists could have mounted counter-initiatives. With likely white violence, Blacks’ response was uncertain. Whites had used violence during and after the boycott, and, at Dr. King’s insistence, Blacks had responded non-violently. This time, disillusioned Blacks could have lost faith in the non-violence that Dr. King preached. While the specific actions of the Black community in Montgomery and elsewhere were unpredictable, it seems likely that a conviction would have elicited a dramatic response.

In the meantime, SCLC Vice President Ralph Abernathy would have taken over the leadership of the organization. He shared his colleague’s beliefs and goals, and the two of them had worked very closely together since the Montgomery bus

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261 Dr. King downplayed the potential impact of his incarceration on the Civil Rights Movement. In a letter to Jackie Robinson dated June 19, 1960, he stressed that “in the long run of history, it does not matter whether Martin Luther King spends ten years in jail, but it does matter whether the student movement continues, and it does matter whether the Negro is able to get the ballot in the South.” Letter to Jackie Robinson, supra note 250, at 476.

262 See supra Sections I., III.B. (discussing Solicitor Thetford’s opposition to the prosecution and concern as a possible motivation for the jurors’ acquittal).

263 See, e.g., GRAY, supra note 4, at 145; see also BRANCH, supra note 23, at 203, 385; FAIRCLOUGH, supra note 20, at 37.

264 See supra Section I.B. (discussing Dr. King’s plans for continuing to work in Alabama after his move to Atlanta a few months earlier).

265 See Christopher Coleman et al., supra note 22, at 680, 695–97; see also THORNTON, supra note 199, at 93–95. Many Black people in Alabama did not subscribe to non-violence as a core principle, and followed Dr. King’s urgings only out of commitment to him. See e.g., Coleman et al., supra note 22, at 688, 696; ADAM FAIRCLOUGH, MARTIN LUTHER KING, JR., 24–25 (1995). While Dr. King would undoubtedly have continued to preach non-violence to his followers, this kind of insult to the community might have made that plea less than fully effective.

266 Whatever the nature of that reaction, it was potentially very problematic for the white community. See supra Section III.B.

267 FAIRCLOUGH, supra note 20, at 257, 385.
boycott.²⁶⁸ Within the Black community, Abernathy had a reputation as an effective preacher and leader; but he did not have nearly the stature of Martin Luther King, Jr. in either the Black or white community.²⁶⁹

As Ralph Abernathy would have taken the reins of SCLC, he would also have had to work out relationships with other organizations. Dr. King had managed delicate and often contentious relationships with the NAACP and the decade-old Student Non-Violent Coordinating Committee (SNCC).²⁷⁰ That challenge would have been in Abernathy’s hands, with unpredictable outcomes.

Dr. King had also served as what he called a “fireman,” responding to calls from local activists for his assistance when their movements had stalled.²⁷¹ In 1962, activists in Albany called on him.²⁷² In 1965, it was a coalition of local organizations in Chicago that sought his assistance.²⁷³ Ultimately, he died answering the call of Memphis sanitation workers in 1968.²⁷⁴ Those calls for assistance were personal and depended heavily on Dr. King’s stature and his accomplishments. With him in prison, it is not as likely that local activists would have called on SCLC for its assistance.

²⁶⁸ BRANCH, supra note 233, at 197; Abernathy became President of SCLC after Dr. King’s assassination in 1968. See Paul Good, No Man Can Fill Dr. King’s Shoes—But Abernathy Tries, N.Y. TIMES, May 26, 1968, at SM28. In Abernathy’s acceptance speech as President of SCLC, he spoke about how he was not Dr. King, but he would continue to carry out his work and aim towards the same goals as Dr. King, just as he had done while Dr. King was alive. DONZALEIGH ABERNATHY, PARTNERS TO HISTORY: MARTIN LUTHER KING, JR., RALPH DAVID ABERNATHY, AND THE CIVIL RIGHTS MOVEMENT 54 (1999).

²⁶⁹ See Good, supra note 268, at SM28. That also limited his fund-raising ability, a responsibility that Dr. King carried throughout his career. See, e.g., FAIRCLOUGH, supra note 20, at 49, 70, 96–97, 256, 287, 345; GARROW, supra note 23, at 151, 153, 155, 234, 429, 461–63; LEWIS, supra note 103, at 120, 156.


²⁷¹ BRANCH, supra note 233, at 632.


²⁷⁴ See generally BRANCH, supra note 233, 683–766; GARROW, supra note 23, at 604–24; MICHAEL K. HONEY, GOING DOWN JERICHO ROAD: THE MEMPHIS STRIKE, MARTIN LUTHER KING’S LAST CAMPAIGN (2007). To further extend the counterfactual, it is also possible that King may have continued doing Civil Rights work after he was released from prison, and could possibly have continued doing so for a long time, had he not been in Memphis where he was killed in 1968.
All of this suggests that Dr. King was a very strong presence as president of SCLC. While his role can be overstated, his absence from the fray could have changed civil rights history in important but unknowable ways.\textsuperscript{275}

\textbf{CONCLUSION}

The perjury charges against Martin Luther King, Jr. were almost certainly part of Governor John Patterson’s effort to derail the Civil Rights Movement in Alabama.\textsuperscript{276} The opportunistic legal maneuver made Dr. King the first person in Alabama ever prosecuted for perjury related to taxes. As a lawyer, Governor Patterson regularly turned to the courts as a method for preserving the “southern way of life.”\textsuperscript{277} The perjury case served as a creative attempt to remove Dr. King as a threat to the system of segregation.

Governor Patterson intended that the prosecution itself, along with the way it was executed, harm Dr. King as much as possible. Dr. King could have faced, and he fully expected to spend, up to ten years in prison.

Notwithstanding the expectations of both Dr. King and Governor Patterson, the jury acquitted Dr. King of the perjury charge. The jurors’ reasons remain uncertain, but the convergence of two possible explanations seems most plausible. First, even though the trial took place in segregationist Alabama, the state’s weak case and Dr. King’s lawyers’ strong defense may have contributed to the result.

\textsuperscript{275} See Aldon Morris, Leon Forrest Professor of Sociology & African Am. Studies, Nw. Univ., Remarks at the Northwestern Law Journal of Law and Social Policy Eighth Annual Symposium: Martin Luther King’s Lawyers: From Montgomery to the March on Washington to Memphis (Oct. 31, 2014), in 10 NW. J.L. & SOC. POL’Y 624, 626–27 (2016). Aldon Morris described Dr. King as an “able, charismatic leader”, but argued that he was part of a “leadership team” whose great achievements were due to “his ability to assemble around him diverse thinkers and expertise that encouraged creative thought, strategizing, and actions that led to the overthrow of Jim Crow.” \textit{Id.} at 626–27.

\textsuperscript{276} In his later years, former Governor Patterson presented a redemptive stance toward the Civil Rights Movement, Dr. King and the perjury prosecution. In an interview, Patterson told Dyer: “You’ve got to give King credit. We were wrong and he fought the thing.” \textit{Dyer, supra} note 2, at 262. However, an incident in the mid-1990s, more than three decades after the perjury trial, suggested that Governor Patterson continued to harbor great hostility toward the movement and deep regret that he had not been able to defeat it. Fred Gray and his colleague, Professor Darlene Clark Hine (then at Michigan State University and subsequently University Professor at Northwestern University) met with John Patterson as part of the research for Gray’s memoir \textit{Bus Ride to Justice}. After a courteous exchange of greetings between Patterson and Gray, Gray left the room for a half hour. Professor Darlene Clark Hine, Board of Trustees Professor of African American Studies; Professor of History, Northwestern University, Remarks at the Northwestern Law Journal of Law and Social Policy Eighth Annual Symposium: Martin Luther King’s Lawyers: From Montgomery to the March on Washington to Memphis (Oct. 31, 2014), in 10 NW. J.L. & SOC. POL’Y 641, 647 (2016). Professor Hine described what then transpired as an unrelenting “rant” against the Civil Rights Movement, which he would have defeated had it not been for Fred Gray keeping activists out of jail. \textit{Id}. White he did not mention the perjury trial specifically, it was certainly an important case in point since Gray served on the defense team. When Gray came back to the room, Patterson immediately returned to his courteous posture toward him. \textit{Id}. It seems that the former governor lost control during that time and revealed strong residual anger toward the Civil Rights Movement. It is striking that he showed that side of him to a total stranger, a Black woman who was a colleague of Fred Gray’s who would certainly pass along the content of their conversation to him. \textit{Id.; see also} Gray, supra note 4, at ix-x.

\textsuperscript{277} Abraham Maslow said in 1966, “I suppose it is tempting, if the only tool you have is a hammer, to treat everything as if it were a nail.” \textsc{Abraham H. Maslow, The Psychology of Science: A Reconnaissance} 15 (1966).
Second, the jurors may have shared a concern that a conviction would have risked igniting the Black community and threatening the racial stability and relative calm that had developed in Montgomery since the end of the bus boycott. The convergence of those factors seems to have produced the “miracle” result.

While the case was a quiet victory for Martin Luther King, Jr., a conviction would have been heard throughout the land. While the actual effects of such a conviction are unknown, they surely would have had a major impact on both Dr. King’s life and the Civil Rights Movement. His acquittal allowed the ordeal to become a minor footnote in history. Dr. King was able to exit the courtroom, reputation intact, to continue his leadership role undiminished.