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Memoir of a Civil Rights Lawyer.
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**Philadelphia Freedom
Memoir of a Civil Rights Lawyer**
[title tentative]

by David Kairys

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Introduction

Under the Bridge

It was an overcast evening in late February 1972, and mist rose above the Delaware River as I crossed the Ben Franklin Bridge, the ornate suspension bridge between downtown Philadelphia and Camden, New Jersey. As I slowed for the toll booth on the Camden side, I could see the waterfront and idle Campbell's Soup factories. I had driven around for an hour looking in the mirrors to see if the FBI was following me, but I mostly noticed I was not as nervous as I should be.

I went south on the New Jersey side about ten miles until I came to the interstate that heads to Atlantic City if you go east, or back over the Delaware River on the Walt Whitman Bridge to Philadelphia if you go west. I slowed down, looked around, and checked the mirrors again before taking the ramp onto the Walt Whitman Bridge. I got off at the first exit in Philadelphia and, as directed, made several turns that curled me around and onto a small, dimly lit street in a residential neighborhood under the Walt Whitman.

I was relieved to see I wasn't the first to get there. It was a few minutes before midnight, the meeting time we had set, and a car with windows up and engine running was parked at the designated corner. I recognized Toni Dewees behind the steering wheel. She had brown hair, big happy eyes, and the heavy lipstick and nail polish fashionable in the predominantly Italian areas of South Philadelphia.

"Hi Toni," I said as I got out of my van and she rolled down her window. "Thanks for

doing this.”

“No problem. It’s all cloak and dagger, I guess.” She smiled.

“Yeah, sorry I can’t tell you more.” Toni worked for the established law firm that rented a room in the back of their office to my partner and me for our fledgling law firm started a year earlier. She typed, did the books, basically ran their office, and she was a notary public, which meant she could witness the signing of documents and “notarize” them so they’d be recognized as sworn documents in legal proceedings. I had asked her to do me a favor – meet me at midnight at an out of the way place to notarize a document though I couldn’t tell her what it was about. She suggested a corner in South Philadelphia under the Walt Whitman Bridge near her house.

At about midnight, two vehicles pulled up behind my van.

“What’s a priest doin’ here?” Toni said, as a small, thin man with reddish hair in informal priest garb emerged from the closest car.

“He’s part of what I can’t tell you.”

I didn’t know hardly any Catholics as a child, and I hadn’t met many since except in the civil rights and anti-Vietnam War movements, which always seemed heavily populated by Catholics and Jews. Father Michael Doyle was a local priest who fit my image of just what a priest should be. He was mild mannered yet incorruptible and unwavering in the things that matter most, with an understated spirituality and calm commitment grounded in the lives of common people, and a good sense of humor. He reminded me of Bing Crosby playing Father Chuck O’Malley in *The Bells of St. Mary* and *Going My Way*, movies from the 1940s that were already corny by the 1950s, although he didn’t have the Crosby voice.

Bob Hardy, a tall, stocky man with thick reddish blonde hair neatly combed over a wide, handsome face, came out of the driver's side of a beat-up van used for construction work that pulled up behind Father Doyle. He looked like a working-class Kennedy.

They approached Toni and me, and each shook my hand and nodded as I introduced Toni. Father Doyle was calm and quiet. Hardy looked nervous.

"This is it, Bob, you're making things right." I said.

"I know. Let's do it!" he replied, pursing his lips and looking away.

I felt relieved that he didn't raise any questions and seemed ready to go ahead. We stepped into the open side door of my van and took seats inside. I pulled a small box from under the rear seat.

A half year earlier, Father Doyle broke into the draft board office in downtown Camden in the middle of the night and tore up draft records. Bob Hardy was among the draft-board raiders, but he also worked undercover for the FBI. Hardy was in my van to sign an affidavit that would make the front page of the *New York Times* when I filed it two weeks later¹ because it explained how FBI Director J. Edgar Hoover and Attorney General John Mitchell had set up the antiwar raid on the draft board in Camden.

The FBI orchestrated the crime, then ordered scores of FBI agents to hide while the draft records were destroyed before jumping in to make their arrests. The next day Hoover and Mitchell trumpeted their middle-of-the-night capture at an early morning news conference. The complex plan for the break-in, unusual tools needed to pull it off, walkie-talkies for communications, even groceries to sustain some of the plotters and the plot – all were provided by Hardy and authorized and paid for by the FBI. The FBI also paid Hardy an hourly wage for

his considerable time, and Hoover personally sent him a bonus for a job well done.

Draft boards were where the Vietnam War touched the lives of Americans. The draft of young men to fight in the War became a focal point for antiwar activists, and its system of offices dedicated to the war effort in every community provided convenient targets for demonstrations and break-ins. The Camden draft-board raid needed FBI assistance because it was the only one that required a burglary of the top floor of a large, urban office building. Hoover and Mitchell made it happen to discredit the antiwar movement and to stem criticism of their earlier vague and not-very-believable conspiracy charges against antiwar activists.

The affidavit I had hidden in a box was the result of several secret meetings over a period of months with Hardy in which Father Doyle and I convinced Hardy to “flip” – testify against the government. If the FBI found out Hardy was meeting with a defense lawyer in the case, Hardy and his startling testimony, which might win the case for the defense, would be in jeopardy. The stakes were particularly high because Hoover and Mitchell had so publicly placed themselves at the center of this prosecution, and because, as the affidavit said, Hardy was told by his FBI contacts that the Camden set up had been ordered by “someone at the little White House in California,” the retreat of President Richard Nixon in San Clemente.

It turned out well. The defendants, who quickly became known as the “Camden 28,” were acquitted in what Supreme Court Justice William Brennan later described as “one of the great trials of the twentieth century.”*

But I had plenty of reason to worry as I looked around the unfamiliar area while Hardy initialed each page and signed at the end. I had been careful. I drove in circles prior to each

*For more on this, go to Chapter 7.

meeting with Hardy to make sure I wasn't followed, as I imagined James Bond would in a dull scene, and I covered all discussions of the matter on the phone and in person with blaring rock music in case I was being bugged.

As Toni filled out the notary portion at the end of the affidavit and squeezed her plyers-like mechanism with a round seal on the end so it got engraved into the paper, I wondered how I had gotten to this moment in my life, puzzled by myself. I was only 29, just four years out of law school, and I was handling this historic challenge to abuse of power by the executive branch of the U.S. Government, some of the leading civil rights cases of the time, and an odd assortment of other cases that regularly drew public attention. I had become a "movement lawyer" – lawyer for a range of progressive civil rights and antiwar groups. Filing documents that upset powerful people was becoming a habit.

I was a middle-class kid from Baltimore who started college in 1960 studying mechanical engineering after a high-school guidance counselor told me engineering majors didn't have to take anymore languages. I envisioned a life immersed in engineering and business and, I hoped, making a lot of money.

I was at the 1963 March on Washington and heard Martin Luther King, Jr. deliver his inspirational "I have a dream" speech, volunteered to tutor poor black kids in East Baltimore, and marched against the Vietnam War. But civil rights and politics were among my many interests, "sidelights" in a life headed for personal wealth. Even as I entered law school in 1965, in part to avoid the draft, I never imagined that civil rights and political activism would become central to my work and life.

Endnotes – Introduction

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1. Donald Janson, “F.B.I. Is Accused by Informer of Aiding Antiwar Crime in Camden,” *N.Y. Times*, March 16, 1972, p. 1.

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Chapter 1

Georgia on My Mind

A small elevator took me slowly to the 8th floor of the old office building at 13th and Market Streets in Philadelphia. Clients, almost all of them black, filled the seats and standing room in a cramped reception area just outside the elevator. Beyond them, a center area and a large hallway were filled with secretaries' desks, typewriters and file cabinets. Lawyers' offices were in small, irregular-shaped rooms around the perimeter of the floor. Two or three old wood desks and an assortment of beat-up chairs and bookshelves were crammed into each office, leaving little room for people. The ceilings were very high and the windows were large and surrounded by fancy wood moldings. It was all painted a drab off-white, but it had the feel of a once grand workplace. Now it was home to the Defender Association of Philadelphia, the local public defender office, where I reported for work the day after Labor Day in 1968.

I stopped for a moment and looked around, struck by how alien I felt among the clients and lawyers, all of whom seemed to know what to do. After a few brief introductions, a secretary led me to a desk and handed me a stack of the basic tools of the law trade, big yellow pads and pencils. As I sat down at my desk, I couldn't imagine anything I could write to fill a whole yellow page. I wondered if, as a lawyer, I would have enough to say.

But the metal desk chair and the banged up old oak desk were sure signs that I

had become a lawyer. I thought of my parents still in Baltimore, neither of whom had gone to college, who had made a sizable dent in the family finances to finance me and my career.

I soon found myself debating whether the pad should be lined up with the edges of the desk or at an informal angle. The lined up way looked orderly and symmetrical, but the angled pad made me look experienced and savvy, like a lawyer whose first day was some time ago. I felt embarrassed at my own thoughts.

Two other desks were in the room, covered with scattered papers and books. Whoever used those desks looked like they must be busy, which I felt I should be as soon as possible. I looked through the stack of forms left on my desk to greet me – forms for interviews, investigations, cases involving juveniles, and referrals to other departments. File folders for each case had blocks printed on the outside for detailed information about what happened at each stage of the process. Green files marked “Bail Case” were for clients out on bail; manila ones marked “Jail Case” were for clients imprisoned awaiting trial. I was anxious to fill in some blocks.

I knew it would be some time before I got into a courtroom. I had taken the bar exam that July after graduation from Columbia Law School and wouldn't be admitted until late in December. Beginning that first September day and for the next few months, I spent my time interviewing clients, first those out on bail, the people waiting in the reception area, and later those held in prison. I learned a great deal, but it was mostly uneventful, and frustrating because I took down the information and the defendants' stories but never found out how the cases turned out.

By the second or third week, I was getting bored when I happened to overhear an interview by one of the lawyers who shared the room with me. Stu had been a public defender for over a decade. He looked like so many white guys I had known in college and law school – medium height, brown hair in a crew cut, and always brown or black loafers. He was reserved, almost shy, but around the office he was known as one of the best in the courtroom. In court he became a different person, assertive, focused, often aggressive. Once I heard about his reputation, I began to observe how he worked.

That day, Stu was interviewing a large black woman whose voice caught my attention. It was gravelly and at the same time melodic and deeply resonant. She was sobbing, clutching a tissue in one hand and waving her arms as she talked to Stu. I picked up bits of their conversation. Her husband had just been arrested and was being held at the Detention Center for something that had happened in Georgia a long time ago. I started listening more intently.

“He accused of killing a man in 1944,” she said, wiping tears from her face. “He escape from a chain gang.” She explained that he had been arrested by Philadelphia police the day before when they had a loud argument and a neighbor called the police. When he was routinely fingerprinted, his prints matched those of an escaped fugitive.

“Was Mr. Jiles convicted for the Georgia murder?” Stu asked.

“They say he was.”

“The police told you that?”

“Uh-huh.”

Stu paused, looking down and away from her, then slowly back up to her face.

“There's really nothing we can do, Mrs. Jiles,” he said. “When someone is convicted and the state where it happened seeks extradition, that's the end of it. To extradite someone, all Georgia officials need to prove is that a crime was committed there, and that the person held for it here is the same person they tried and convicted. That will be easy, since the fingerprints match.”

“Lord help us,” she gasped. She said she and her husband had four young children. “He was never in any trouble before. His work on construction support our family.”

“I'm sorry, ma'am,” Stu replied. “Our office advises clients to waive extradition. It can take months before the identification hearing, and your husband won't get any credit for the time he spends waiting here for extradition. If he waives and goes back to Georgia, at least he'll get credit for that time. I'll visit your husband in prison and explain it all.”

She was sobbing, and wheezing as if she had a bad cold. I stood up out of my chair, slowly, as I watched her leave. This murder her husband had been convicted of had happened almost 25 years ago, just about when I was born. Mary Jiles didn't know a thing about it until her husband was arrested. He had escaped, married, and made what sounded like a good life in Philadelphia for himself and his family. But now he would be sent back to a Georgia chain gang, probably for the rest of his life. She reminded me of someone I knew well, but I couldn't admit that yet, even to myself.

I had no reason to doubt Stu's assessment. He was experienced, and one of the best. Yet I just couldn't accept it. There had to be something worth trying, though I had

no idea what. I had a strong urge to intervene, although I was afraid it could anger him and I had no basis for thinking I could do anything that might help.

After a long silence, I casually asked, “Stu, would you mind if I look into it more.” I made the mistake of adding, “I’ve got nothing to do now but interview.”

Stu bristled, looking more like I imagined he did in the courtroom. “Fine. You want a wild goose chase, go ahead,” he said, as he held the file up in the air like something I would have to fetch. He added some good advice: “Don’t let anyone hear you say you got nothing to do but interview. That’s a vital function around here. We all do it, even the Ivy Leaguers.”

The Ivy League comment reflected a tension in the office I would become familiar with. Until the 1960s, public defender work was usually not sought by graduates from the Ivy League. Most public defenders went to local schools, often, like Stu, at night so they could work and support themselves. Law practice is very hierarchical, and public defender work was near the bottom. This changed in the 1960s, as the nation turned its attention to civil rights, poverty and the rights of people accused of crimes. Criminal defendants’ rights are often discussed as if they were an innovation of the 1960s, but they were also the main subject of the Bill of Rights.

Just then, Mrs. Jiles came back into the room to get her purse, which she had left on a chair, making an awkward moment more awkward. “I will be visiting your husband in jail,” I said, “to look into whether there is anything that can be done.”

“Thank you, sir. May the Lord Jesus bless you,” she said.

The word “Jesus” was startling. I never imagined that Jesus would care about me.

It feels strange to be blessed so personally if you believe in a different religion or don't believe in any religion as much as the person blessing you. I felt her blessing deeply, although I have never been very religious. I was raised to be proud of my Jewish heritage and aware of the historic oppression of Jews, although my family seldom attended synagogue and I hadn't felt personally oppressed. Right then I thought I needed a good legal theory more than a prayer.

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That night, I worked late at the law library in the office, but I was finding only what I had already been told: Georgia would have to prove just two things – that the crime occurred, and that Jiles was the person convicted for it. He was, after all, a fugitive who had escaped from prison. That was the beginning and end of the analysis. It didn't matter that 25 years had passed, that James Jiles had led a good and productive life in Philadelphia, or that there might have been discrimination or unfairness in his trial. All that was up to Georgia, and could be presented in the Georgia courts and then the federal courts once Jiles was returned to the chain gang.

I started with *Corpus Juris*, a legal encyclopedia that covers just about everything, a good place to look when you don't know anything. It had a section on extradition and cites to many cases. I also found an article in *American Law Reports*, which summarizes the law on particular issues, on the requirements for proving the identity of a fugitive. Extradition was mainly a matter of state law. Pennsylvania had adopted the Uniform Extradition Act, standard in most states. From all these materials, I got references and citations to over a hundred cases. I browsed the cases almost randomly, looking for some

opening to challenge Jiles's extradition.

I found a 1963 New Hampshire case that refused to extradite a man to Massachusetts for failing to pay child support. This was because the guy had never been to Massachusetts, so that case didn't help. Recent cases in Wisconsin and Washington, D.C. mentioned the hardship an extradition could cause to family members, but didn't refuse extradition on the basis of hardship. I was getting nowhere. I knew it didn't make much sense for the state where a prisoner fled after escaping to retry or pardon him, even if that's what he deserved. Maybe I was wasting time. That's always a hard call, particularly when you've got no experience.¹

The list and definitions of crimes and available defenses are different in each state, and most law schools don't teach the laws of any particular state. Every state has crimes like murder, rape, burglary, assault, but even those have differing definitions and defenses. I had no idea of particular crimes or defenses in Pennsylvania.

The library was only a little larger than my office, the walls lined with the numbered volumes of books I knew well from law school. There were hundreds of volumes of court decisions, statutes, general reference books, and practice guides. I liked the look of them. They held answers to puzzles I wanted to solve, but their sheer volume was daunting.

I settled on Title 18 of the Pennsylvania code, which covered the state's crimes. The list and definitions seemed pretty standard, but I noticed some strange ones. It was a misdemeanor in Pennsylvania to break the ice on a frozen pond, or to tell fortunes.²

Anyone who "pretends for gain or lucre to tell fortunes or predict future events"

commits a misdemeanor, said §4870, adopted in 1861. I liked the squiggly section marks – § – which reminded me of my earlier education in science. They look like a squashed integral sign in calculus.

I looked up the full opinions of a few cases. I was reading intensely when I had that feeling of being observed. I looked up, and there was Stu, peering in the doorway.

“Find anything helpful?” he asked, with a slight, knowing grin.

“No, but now I know all about the crime of fortune telling.”

“Is that a crime?”

“Well,” I said, happy that I knew at least one thing he didn’t, “a faith-healer, David Blair, was prosecuted in 1927 in Chester County for advising someone to avoid spells and restlessness by placing salt in his bed in the form of a cross. The court found the advice ‘foolish’, but let him off because he ‘did not furnish the salt’ and had ‘assumed the usual attitude of prayer.’ They exempted what looked like established spirituality.”

“Are there more?”

“Yeah. One not-so-established fellow, Charles Dice, was convicted in 1924 for convincing someone that an invisible black dog was circling his house and casting a curse. The curse and the dog were removable for a fee of \$36, of which \$32 was for curse removal and \$4 for the house call. Jeanne Viscount attempted to defeat a curse by burying animal hearts in a backyard and a cemetery. The court called this ‘weird’ and felt a duty to protect ‘the ignorant, superstitious and credulous who, like the poor, are always among us.’ It doesn’t seem any weirder than a bed full of salt.”

“I guess not. I’ll stay away from black dogs and animal hearts,” Stu said, “and

maybe you should get some sleep and tomorrow get back to interviewing.”

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After an unproductive evening of law books and daydreams, I headed for the small second floor apartment I had rented on Spruce Street west of Rittenhouse Square. On the way, I stopped for dinner. I had a strong, almost urgent feeling that was familiar, but no idea what to do about it. Whenever something seemed important, I couldn't wait. Any delay might change it, ruin it. My tendency was always to try to make things happen right away.

As I watched a black man mop the floor of the restaurant, something that had bothered me earlier came into focus. My thoughts focused on Mrs. Jiles. She was such an appealing person. She struck me as someone with real integrity, a religious woman deeply devoted to her family. But it was also clear that she was tough and had seen the harder side of life.

Now I understood why I had such a strong positive reaction to her. She reminded me of Queeny, my family's maid when I was a child growing up in Baltimore. The connection was embarrassing, though nobody knew it but me. Her nickname, Queeny, seemed a noble's title for a servant, as if mocking her place in life. After my father, who worked for a slipcover manufacturing company, was promoted to manager of the factory, Queeny had cooked and cleaned and taken care of me in my younger years, particularly when my mother was sick for a time.

I loved Queeny, who worked part or full time for my parents until I was seven or eight, though most of my concrete memories of her are gone except her face and her

walk. I remember the time she let me watch her give herself insulin for diabetes. We were in the laundry room, down in the basement. The skin of her leg was so tough, she had to jab the needle in. Her fist wrapped around it, then her arm slammed it down. She had to do it every day. The shots I got for typhoid and tetanus seemed easy after that.

The civil rights and antiwar activists I had gotten close to in college and law school would find the relationship of this kind, hard-working woman to my family repugnant. So did I, although it provided the only real contact I had with black people until my high school was integrated in the late 1950s. Why is it some people have every opportunity, I wondered, while others have none? Here I was a lawyer, and before that I wanted to be an engineer. Maid or butler weren't on my list, and engineer or lawyer weren't on hers, or her kids'. Knowing her was part of my bewilderment later in life that white people were so nasty to black people.

In the restaurant where I was eating, the black man continued to mop the floor, so I and other patrons, almost all white, could dine in a clean place. Black people cleaned our homes and workplaces, cooked our food, parked our cars. I knew most whites didn't notice such things, and I often wondered why I did. Maybe it was all Queeny's doing, or maybe I was open to Queeny and saw the injustice of her plight because that's the way I am. Back then, I thought I would probably never know, and perhaps I never will.

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The day I planned to interview James Jiles, I pulled up in front of Holmsburg Prison. Three Philadelphia County prisons, the Detention Center, Holmsburg, and the House of Correction, held everyone imprisoned prior to trial, and everyone convicted and

sentenced to less than two years. Prisoners sentenced to two years or more served their time at one of several state prisons, most in remote rural locations. Most pretrial inmates were held at the Detention Center, the newest of the three. Holmsburg and House of Correction held mostly sentenced prisoners, with one wing at the House of Correction for women and one wing, referred to as “Penny Pack House,” for juveniles.

About 3,000 inmates were locked up at the three county prisons. Over half of them were being held prior to trial – which seemed a lot of people to be imprisoned but not convicted of any crime.

Holmsburg was imposing. Its giant, old stone walls, maybe 20 feet high, had a medieval look. There was no moat, but it looked like there should be. Cars were parked all along the road in front of the gate on a neighborhood street, with row houses right across from it. Kids were playing jump rope and tag in the shadow of the prison, a strange place to grow up.

Inside, three large men, who looked like guards, worked behind a wooden counter in a narrow hallway. As I waited my turn, I noticed an architect's pen and ink drawing of the prison on the opposite wall, dated 1896. Holmsburg was laid out in the shape of a wheel, with a guard center in the hub and long corridors of cells like spokes. This seemed smart, since a small number of guards stationed at the hub could see down each of the cell corridors. I wondered if prisoners maneuvered to get out of sight of the hub.

I smelled a familiar locker room odor, but also a pungent mildewy smell that made me feel like I might sneeze. Beyond the counter were what looked like interview rooms along a corridor that led to a door made of heavy metal bars. The door, with a

solid metal panel about waist high that held a locking mechanism and a slot for a large key, led to an open or lighted area. Loud noise came from beyond the door, sounding somewhat like a high school corridor between classes. I wondered if the noise was constant throughout the day. Paint was peeling off the walls, and frayed electrical wiring was visible. The concrete floors had odd lines painted on them. Spending your life in this place seemed inconceivable to me.

I introduced myself to a guard behind the desk, who led me to an interview room. “Mr. ‘Carey,’ you can set up in that last room on the left, right before the gate. Do you know how this works?”

“Actually, I don't. This is my first time up here,” I said. I liked the sound of “mister” in front of my name, but its formality also made me uneasy.

He pointed toward the gate. I could see right away that it opened into the hub. In the center was a large structure, like a big counter. It was made of oak and stood about four feet high. Guards in gray uniforms stood inside the counter. About 15 feet outside the counter was a thick yellow line on the floor that encircled the counter. Several prisoners stood just outside the yellow line facing in, looking like they were waiting for permission to approach the counter. About 30 feet beyond the yellow line was a white line that extended almost to the outer stone wall that encircled the hub. Many prisoners were walking around the perimeter between the white line and the wall. Along the wall, large barred gates led to each of the cell-lined spokes and some smaller barred gates like the one I was peering through.

“I sent a pass down to the cell blocks,” the guard said.. “It'll take some time, but

the prisoner you want will come to the gate on his block and be admitted to the guard station in the middle. They will send them to this gate, and you'll see them come in. If your inmate has a special assignment, it'll take longer to find him.”

“You mean he might be working?”

“No, nobody works here. They just sit.”

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James Jiles walked into the tiny interview room slowly and sat across a small table from me. He was slender, medium height, looking much younger than his 43 years. He slumped over the table a bit and had sad eyes and a blank look I later came to associate with long-time prisoners. He said little as I told him I had spoken to his wife Mary. I knew I should not hold out much hope that anything could be done to stop his extradition. There were some uncomfortable silences as I tried to figure out how to say that while also saying that I would try everything I could think of.

I read him the paperwork from Georgia, which said he was Louis Booker, who was convicted of murder in 1944 and escaped from their chain gang in 1945. I asked him if he was Louis Booker.

“I know Mary send you, sir, but I don't know if I should answer that,” he said, bringing his right hand to his forehead, slowly moving his fingers in small circles as if he was massaging sore sinuses. His head sank down to where I couldn't see his face.

I didn't expect this, but it made sense. He had kept it all completely secret for almost 25 years. “I understand your hesitance,” I said. “You know, as your lawyer, I'm not allowed to tell anyone what you say to me. The only way we're going to see if there's

anything I can do for you is for you to tell me everything.”

Jiles paused. “That be my given name, Booker,” he said softly into the table, his head still down. I could barely hear him. “I guess I am the one they want, sir. No use hidin' it no more.” He looked up, eyes squinting and brow furrowed, the muscles around his mouth and cheeks beginning to relax. “I wasn't in trouble except for that,” he added, almost apologetically.

I told him, in the most official tone I could summon up, that it is very hard to beat an extradition, particularly for someone already convicted. I would do some legal research, but there might not be anything I could do about it.

He nodded, then said, “Well, sir, ya know, I was convicted, but it wasn't right.” He looked me straight in the eyes for the first time.

“Why wasn't it right?”

He sunk down in the chair, and paused for a moment. “Lemme see. I was 17 when we had the fight. Me and Perry work on a crew for the lumber yard. We was sent out, jus' the two of us, from Augusta to New Brunswick. In Georgia, you know. Perry was older, maybe 35, and everyone say he a bully. But they tell me to drive the truck. That make Perry my helper, you see. We was given a hut to sleep in, and we cook our food there every night. Perry got drunk that night. He kick the food I cook into the dirt. I was hungry, and we got to arguin'. He be carryin' on bad mouthin' me, threatenin' you know. I get up and get my huntin' gun out the hut. He still talkin' that shit and he come in at me, so I shot low to back him off. Some buckshot hit his leg, but it weren't bad. That be the beginnin' of the trouble.

“He got his leg fix up and come back to the hut the next day. He say he was goin’ to kill me. I told him he better not try. Couple days later I’m with my girlfriend at her place on Boyd’s Alley in Augusta. A woman up the street say Perry looking for me with a gun. I get my huntin’ gun out and wait. Surenuff he come down the street, holdin’ his gun. I step out and he point the gun at me. I shot him dead where he stood.”

I didn’t expect anything like this story. Jiles was just a kid when it happened. He might even be innocent. “At your trial, did your lawyer argue that you acted only to defend yourself?”

“I don’t get no lawyer, sir.”

"You had no lawyer at your trial?"

"No, sir. No one but my kin saw me the whole time I was in jail waitin’ for the trial. Somebody I never met sat at the table next to me during the trial, but he didn’t do nothin’."

"Did you have a jury?"

“Yes, sir. They was all white men, like all the juries in Georgia. The whole trial didn’t take but a couple hours. My family wasn’t even there, cause they didn’t tell ‘em when the trial would be. They heard I was convicted after I was on the chain gang.”

If this was true, the conviction should be reversed. But no judge was going to listen to any of it on an extradition. The story and my urge to immediately do something about it were nearly irresistible. I hoped that didn’t show.

Jiles said that after a few months on the chain gang he knew he couldn’t spend the rest of his life there. “I knew I had to escape or die trying,” he said. “I be dyin’ there the

rest of my life anyway.”

I asked him how he escaped. He said he was on a rural chain gang that bunked in a dilapidated former farmhouse. At night, there was an old guard who slept soundly and sometimes forgot to lock the front door. Escape was nearly impossible because the irons and chains on the prisoners’ legs were not removed at night, the farmhouse was surrounded by a fence, and several bloodhounds roamed inside the fence at night. If a prisoner left the farmhouse at night, the dogs would attack and their barking would wake the guard. Even if you got out, an alarm set off by the guard would alert locals, who would shoot you on sight.

“I watch the dogs at night from the bunk window, tryin’ to figure a way out. One night, I see the cows going out to pasture. They show me how to get out. The dogs don’t even move when a cow walk by. They do everythin’ by smell, and cows smell okay to them. A few nights after that, when the old guard didn’t lock the front door, I rub cow dung all over me and walk right by them dogs, holdin’ the chain ‘tween my legs with one hand. I get over the fence and run to where I hear a train go by each night, hop it, and get to Philadelphia. It be a while ‘fore I smell right. That cow shit, you know.”

“How did you get the chains off,” I asked.

“We find a bar in a rail yard. There be two of us, and we pry the chains off each other with the bar. One of the older men come with me, but he get so scared of bein’ lynched, he turn himself in a few days later. I hear he still on the chain gang.”

I asked him why he chose Philadelphia. “My people was from Carolina, Union, South Carolina,” he said. “We was always told Philadelphia is the best place in the

North. It ain't been bad to me, but I don't know why they said that. None of 'em ever been here."

For the first few years after his escape, he did farm work in south New Jersey. "I was pickin' tomatoes, cabbage, lettuce, all sorts of things. That's where I met Mary, waitin' for a train one day. The best day of my life." He smiled for the first time.

He got regular work with a construction crew. First he was digging ditches and breaking rock with a sledgehammer. "Weren't much different than the chain gang," he said. "I be workin' a jackhammer for 10 years by now, when they need me."

I paused, trying to figure out what to say next. "I'll look into this and come back to visit you soon," I said. My words felt insignificant after his story. I wished I had more to offer him and found myself trying to appear as if everything was routine.

"I be here, ya know," he said, smiling again as he got up and returned to his cell.

§§§

Jiles' story was part of the strange history of black migration to the north after the Civil War. Northern cities with growing industries were eager to recruit former slaves and unemployed young blacks for cheap manual labor. Many older blacks were hesitant to leave the south, but after cotton picking machines were perfected, there wasn't much work for them there. Northern companies and cities sent recruiters to the south, offering blacks incentives to come up North, although often they didn't keep their promises. Cities competed; recruiters spun tall tales of plentiful jobs and housing almost free.³

Blacks from the Mississippi Delta migrated to form the large black communities in Chicago. Philadelphia recruiters focused on North and South Carolina, so for many

blacks from those states, Philadelphia was the place to go. Jiles followed that trail, but for him the journey required an ingenious escape.

I was impressed with Jiles's resourcefulness and courage. What looked like waste or fertilizer to most people became a way out for him. As I drove back to the office, I decided to go through every case I could find to look for any decision that refused extradition based on the unfairness of a conviction, the passage of a long time in which a defendant led a productive, law-abiding life, or the hardship that extradition would cause a family.

I spent almost all that weekend in the law library at the University of Pennsylvania, so involved the time passed quickly. Still, I caught myself daydreaming frequently, and I wasn't the only one there doing so. Experienced lawyers and well-published professors could be seen looking vacantly into the distance, with a finger gracefully inserted in an ear or a mouth hanging open. It was tempting to assume they were absorbed in creating some great theory or strategy. But I knew it was probably just that legal decisions are numbing, trance inducing.

Finally, I began to find some useful legal stuff. An article in the Washington & Lee law review published early in 1968 said "future irreparable harm" should be a ground for a court to refuse extradition. The article discussed hardships, rehabilitation of the person convicted, and invalid convictions. "Future irreparable harm" made it sound more official, I thought. I would use that phrase if this got anywhere. The article cited a case that was the best I had found yet. A recent federal court decision in Michigan focused on the difficulty and time required to challenge an invalid conviction. The case was helpful,

even if it stood alone amidst hundreds that went the other way, but the article itself didn't mean much. The article had been written by a student; even law review articles by professors are notorious for spinning theories that don't amount to anything. I had learned in law school that often you can't trust what books say.⁴

In several other cases I noticed references to the role of state governors in extradition cases. A Missouri Supreme Court decision in 1947 said, "there might be a variety of circumstances which would justify a governor in refusing extradition." In 1943 the Illinois Supreme Court referred to the discretion of governors. My whole law school experience – which never included a mention of extradition – had focused on courts and judges, so I didn't understand why a governor would have anything to do with it. Law schools still generally operate as if the only significant legal event or action is the decisions of appellate courts, which does not prepare students very well to actually practice law. The role and discretion of governors seemed worth exploring.

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I had done the basic research and had at least one interesting idea. It was time to talk to the person I knew could help me most with ideas and advice – Anthony G. Amsterdam, the law professor who had brought me to Philadelphia and the Defender office. Tony created an innovative program at Penn law school that provided law students with some hands-on “clinical” experience with real cases, as medical schools routinely did for their students. Before Tony’s program, law students got credit only for courses that focused on appellate court opinions. Funded for four years by a grant from the Ford Foundation, Tony hired three law-school graduates a year who worked for the

Defender office like other Defender lawyers but with the assistance of about 50 law students.

Though less than 10 years out of law school, Tony was already a legendary figure in the law. He had clerked for Supreme Court Justice Felix Frankfurter, who referred to him as “one of the best brains to ever come down the tubes.” His articles were already influential, and he was leading a nationwide challenge to the death penalty. He had prepared a “Last-Aid Kit” – a set of legal documents for any person on death row, with full instructions and blanks to be filled in, that raised a range of constitutional challenges and included everything required to get a stay of execution at any stage of the process after a death penalty was imposed. The documents were so clearly drafted and at the same time so sophisticated and complete that probably anyone who could read and write could stop an execution. These efforts by Tony and others, mainly at the NAACP Legal Defense Fund, eventually stopped all executions in the country for about a decade and came close to invalidating the death penalty in Supreme Court cases often argued by Tony. I was honored to be chosen by Tony as one of the three graduates for 1968. I also couldn’t tell why he picked me, and worried that I might not live up to his expectations.

As I entered Tony’s often open office at Penn, he was, as usual, deeply engrossed in a mass of documents. He looked up at me as I came in. He was thin and gaunt with a chiseled face, mustache and deep-set eyes. Some used to call him “the hawk” because of the intensity of those eyes. He wasn’t much into small talk, but he was always friendly and a focused listener, to students as well as colleagues.

Desks and tables were arranged in an arc around Tony’s swivel chair, and two big

manual typewriters were on adjacent table tops – one was for text, the other for footnotes. Tony would bounce back and forth between them, typing out the content of a legal scholar’s typically long footnotes, usually with complete citations and page references, as he placed their numbers in the text. His typing was intense and fast – some described him as the fastest living typist – as words composed, edited and retained in his olympian memory seemed to spill out.

I explained the problem and the results of the research I had done as Tony looked at me with his piercing gaze. He paused a moment, then said, “Dave, you’ve hit on the only possibility. A court challenge would be a waste of time. The governor route is possible, but extremely unlikely. The governor of the state must sign what’s called a ‘governor’s warrant’ to validate an extradition. It’s a technicality really, but a signed governor’s warrant is a prerequisite to extradition. Governors sign them routinely. Once in a blue moon, a governor refuses.”

“Are there reported cases where a governor has refused?” I asked.

“The instances where it’s done are hard to find because they’re not in any of the case reports. This body of law can’t be found in appellate decisions. There was a law review article about it sometime in the mid-’50s. Student law review editors wrote to the governors or attorneys general of every state and reported on the instances of governors’ refusing to extradite.” As he finished, Tony smiled and added, “Before you go much further, do you know who the governor is?”

“No.” I was new to Pennsylvania, and it sounded like I wouldn’t be happy with the answer.

“The new governor is a conservative Republican named Raymond Shafer. Governors in general and Republican conservative ones in particular don't like to appear to be helping convicted murderers. They also worry about retaliation by the other state because down the line they'll also be requesting extraditions.”

This made sense. If Pennsylvania's governor refuses to send somebody back to Georgia, Axehandle Maddox might refuse to return some murderer to Pennsylvania. The Axehandle moniker for Georgia's governor, Lester Maddox, came from his standing in the doorway of his fried chicken restaurant with an axehandle in his hand, refusing to admit black people. This public act had launched him to the governorship.

“So you think it's not worth pursuing?”

“Your call. It's a worthwhile fight, but you should weigh the chances of success, which are minimal to nonexistent, and the other things you could accomplish in all the time it would take to do this.”

“I'll think about it some more.”

“Take care.” He turned back to his mass of papers as I left.

I ran back to the law library. I couldn't wait to get at the Index to Legal Periodicals. The Index contained long lists of law review articles, organized chronologically and alphabetically. I scanned the rows of thick red books, and took down the volumes for the 1950s. There it was – an article entitled "Interstate Rendition: Executive Practices and the Effects of Discretion" in the 1956 Yale Law Journal.⁵ It was over a decade old, and written by a student. The handful of governor refusals to extradite had happened years earlier, some as far back as the 1930s. The most recent cited was in

1952. Most disappointing, there was no instance of a Pennsylvania governor refusing an extradition request. It had never been done in Pennsylvania.

But I had a theory. The article said the "foremost" bases for governors refusing extradition was the rehabilitation of the fugitive and the "time lag," the time elapsed since the offense. Jiles's 25 years was as long as any of the successful cases. Other bases included hardship to the fugitive or his family, and the unfairness of the trial. Trial issues were less favored, since they implied wrongdoing in the state where the crime was committed, which might upset relations between the states. In the rare cases in which extradition was refused on the basis of rehabilitation or hardship, the article said there were no hard feelings, bruised egos, or retaliations.

I felt the excitement in my stomach, where I often experience strong feelings. The article not only provided a catalog of unreported cases and successful theories. It also met the major argument against refusal. Refusals on grounds that don't imply wrongdoing have not caused a problem. And I thought I could frame the argument so the age of the favorable cases actually helped: Governors' refusing extradition was a traditional part of the established process, not some new-fangled '60s invention, and Pennsylvania's governors hadn't done it before because it wasn't something done lightly. An appropriate case simply hadn't come along, until this one.

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I went to office of *The Evening Bulletin*, Philadelphia's major daily newspaper at the time, to look at news clips and get some understanding of this Governor Shafer, and maybe some idea of how to approach him.⁶ Many microfilmed articles mentioned him,

but they didn't say much about him. He had beaten the Democrat Milton Shapp.

Governor Shafer was born in 1917 in Meadville, at the western end of Pennsylvania near the Ohio border. Before running for governor, he had been a prosecutor and state senator. His campaign literature described a Republican version of John Kennedy. He had even skippered a PT boat in the Pacific. I pictured the Pacific cluttered with PT boats, to accommodate the number of politicians who claimed to have skippered one. "Handsome in a rugged sort of way . . . never a loser . . . big in both body and mind," a campaign flyer said. A campaign ad in a newspaper described him as "big, tough, and likeable." Big and tough seemed important to the campaign strategy, perhaps because Shapp wasn't. Shafer went to college locally and then to law school at Yale. "Never a loser," he had, of course, been president of his college class.

There wasn't much about what he stood for – "development," "prosperity" – or any indication that he either opposed or favored the '60s liberal reforms in criminal law. The only information on racial issues didn't sound promising, particularly since conservatism was more or less defined in those days by opposition to integration and to civil rights for blacks. Shafer condemned racism as a "brutal cancer" in a speech, which sounded like the moderate part of moderate-conservative, but the NAACP had boycotted a conference he sponsored on minority employment.

An interesting sidelight in the more recent articles was that Shafer had strongly backed the unsuccessful 1967 Republican candidate for mayor of Philadelphia, District Attorney Arlen Specter. Specter, most known as the leading proponent of the "single-bullet theory" of the John Kennedy assassination (and later as the U.S. senator who

grilled Anita Hill at Justice Clarence Thomas' confirmation hearing), was the first Republican DA anyone could remember. This had possibilities. Any official in Philadelphia had to be concerned with black votes. Maybe the person to focus on first was Specter. He would be hard to convince, particularly as a prosecutor. But at least he would have to pay attention to issues important to blacks and liberal whites.

As I thought this through, it became clear that I would have to organize essentially a political campaign aimed at the governor. My argument to the governor and district attorney would be in terms of the traditional though seldom-used discretion to refuse extradition and the factors for doing so identified in the law review article. The injustice of the conviction, the time lag, Jiles' productive, family-oriented life in Philadelphia – all were essential and doubtless appealing to most people. But they would not be enough to get this governor to refuse to extradite, or this district attorney to urge him to do so. I had to make it politically appealing to refuse extradition or unappealing not to, or both.

It would take a lot of time and effort. Tony had said it was extremely unlikely to succeed, accompanied by a smile that I took to mean something like you may have to learn some things by making your own mistakes. Everyone I asked at the public defender office also thought it a waste of time that could better be spent on other cases, including the lawyer in Tony's program I was closest to who would be my law partner later, David Rudovsky. Maybe I was too young, too stubborn or too stupid (because rationally, they were right) to listen.

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I started formulating strategies and gathering evidence to reach and then convince the governor. I got a big break while talking to Mary Jiles on the phone. Sometimes luck or fate can seem to lend you a helping hand or to smack you in the head. It's tempting to see it as confirmation or repudiation of the rightness of one's cause, or even of one's life. I haven't made up my mind whether it has spiritual origins, but it sure feels good when it goes my way.

I was explaining my strategy to Mary so she could help get evidence that James was a good person who was greatly needed by his family. I told her I want everyone in the black community to know about James, and I asked her to start with the churches, neighbors, anyone else she could think of. I prepared a petition for her to distribute for signatures, and asked her to get some people who knew James to tell me stories about good things he had done, what he meant to them and the like, which I would write out in affidavit form.

"Okay," she said. "I be singin' and passin' petitions at every church in the city 'fore you know it."

"You sing in the choir?"

"Oh, yes, I do. You come to my church sometime and hear us."

"I would like that. Do you know anyone in the church who might know Arlen Specter, the District Attorney?"

"No. James met Specter once though."

"He did?"

"Uh-huh. Specter spoke at the union hall, and James shake his hand. He told me

'bout it."

"He shook Specter's hand. That's good. Maybe I can use that as an opening with Specter, though he probably wouldn't remember James."

"He remember they for him."

"What do you mean 'they for him'?"

"For DA. They vote later that night in the meetin' to back him for DA. The TV say they the only union that back Specter."

"Mr. Jiles' union was the only union to back Specter when he ran for DA?"

"Uh-huh. Do that help?"

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Local No. 57, Laborers' International Union of North America, AFL-CIO, had a reputation for tough work and tough workers, and a renegade streak in politics that preceded its support of Arlen Specter in a town where labor was strongly Democratic. News clips at *The Bulletin* said Local 57 was already supporting Richard Nixon over labor-backed Hubert Humphrey in the upcoming presidential election. This wouldn't be easy. I needed a contact at the union who might support a resolution by the membership and provide an opening to Specter. People at the public defender office could arrange for me to have a conversation with Specter, but I was afraid that would make it, in his mind, a criminal, prosecution-versus-defense matter. I wanted him to see it as a union and black community issue.

Even if I got him to see it that way, he would be afraid of being labeled soft on crime, or of being blamed if James were later charged with another crime. What I needed

first was something to assure Specter and the governor that Jiles was not dangerous and to insulate them from blame in a worst-case scenario. The best way to do that was to get a report on Jiles by the court's Probation Department, which did such reports to aid judges in sentencing convicted defendants. One of the higher-ups at the Defender got me on the phone with one of the heads of the Probation Department. He seemed to want to do it after I told him the circumstances, but since there was no pending criminal case in the Philadelphia court, it was problematic. The Probation Department had authority and funding for cases in its own court, not extraditions to another state. Nevertheless, the Probation Department assigned an experienced, well reputed probation officer, Earl Hall, who completed a report in two weeks.

The conclusion of Hall's report was clear and emphatic:

It is respectfully recommended that the Subject's freedom be continued, as the Subject is completely rehabilitated and no useful purpose would be served by incarcerating him. He is an asset to his church and to his community, and the Subject's family would suffer severely if he is taken from the home.

This statement appeared on the last page. The first page discussed Jiles' arrest in Philadelphia and the argument between James and Mary that precipitated the arrest. This made sense, particularly given the doubts about whether the Probation Department could do a report at all. They started with the Philadelphia arrest, as a usual report would. But it bothered me. I thought the statements made in the report's conclusion should have been put at or near the very beginning and not be left to the end. The argument against extradition should start there and be stressed throughout the rest of the report. Such details always bother me. I knew in this instance it was less important than it seemed, and I let go of it. Letting go of bothersome details has always been hard for me.

I was getting close to the most significant and challenging steps in this process: the calls to Specter and Shafer. I had the Hall report, and Mary was gathering petition signatures and stories about Jiles for affidavits. Tony Amsterdam gave me the name of a lawyer in Georgia who might help, John Ruffin, Jr. He agreed to get copies of the case file and trial transcript and to try to substantiate Jiles' memory of a lack of counsel and an all-white jury, which he said were common shortcomings of trials of blacks in Georgia in the 1940s. He also said the reason Jiles wasn't executed was probably the race of the man he killed. Georgia often didn't execute someone for killing a black man.

I was tempted to go to the media with the story, particularly the *Philadelphia Tribune*, a black community newspaper. A story there would get Mary more invitations to sing, and maybe they would run an editorial. I began to read the *Tribune* regularly and to keep track of reporters' names. I could also approach the big circulation, mainstream press. The *Philadelphia Inquirer* was very conservative in those days, but the *Bulletin* might do a good story. This was risky, though. An early negative story in the major press could kill it with the public, and maybe with the DA and governor. I decided to go slowly and carefully with the media, starting with the *Tribune*.

I had one other idea that seemed strange but intriguing. There was no reason to leave Georgia officials out of this. Once I had the evidence of rehabilitation, I could ask Georgia to withdraw the extradition request. The chances of that happening were slight, but why not try. If Georgia said no, it could help in Pennsylvania because I could tell Shafer that Maddox got all the same evidence and refused to do the right thing. I decided that I would call Georgia when I had everything in hand, and I'd ask to speak to Maddox personally.

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The union lawyer was cautious, but the leadership of Local 57 saw supporting Jiles as an opportunity for a union criticized for racial insensitivity to help a black member in a matter that would draw significant publicity. They arranged a meeting with Specter, and told the union lawyer to accompany me.

Specter's office was upscale City Hall, the woodwork in good shape and polished mahogany bookshelves lining one wall. Specter sat in front of a large semicircular window and greeted us cordially. His dark curly hair framed fine, almost delicate features. He was thinner and smaller than I expected.

Specter spoke as everyone sat down. "Nice to meet you, young man," he said to me. "I hear you're new over there at the PD. I want you to know that it's only through the graces of Local 57 that I've set aside this time for you. If something is important to them, it's important to me. But I must tell you that my people can't find any precedent for a governor refusing extradition, and I'm concerned this was a murder case." He sat back in his chair, looking squarely at me. He was smart and direct, and gave a good politician's nod to the union.

I explained that at the time of the murder, Jiles was 19, in a fight with a 35-year-old man, with both of them armed, when Specter interrupted.

"So why wasn't he acquitted?"

"You would be horrified by the record in the case," I said. "There was no defense lawyer, the trial took a few hours, and the jury was all white men."

"But if I accept all that, why not send him back to Georgia and let him raise these issues in appeals?"

I gave him the results of my research on the major errors in the trial, emphasizing that Georgia courts, including their appellate courts, were regularly affirming convictions even if the U.S. Supreme Court had reversed convictions based on the same error in other cases.⁷

Specter grinned. "Why doesn't that surprise me?" He leaned a little forward and relaxed, a good sign I thought, feeling myself warming up. I decided to focus on the all-white jury.

"The Supreme Court recently reversed a Georgia case where a jury commissioner had noted an 'N' for Negro next to the names of blacks on the jury list," I said.. "Yet a Georgia appellate decision refused to apply that precedent to a case where the commissioner had noted 'c' for colored. In both cases, the notations were used to exclude blacks from juries."

"Alright, but that's a problem for anybody convicted in Georgia," said Specter. "Why should I help this guy?"

"It would take Jiles several years and a topnotch appellate lawyer to get all the way through the Georgia Courts to the Supreme Court," I said, "and, as you know, the odds against the Supreme Court even deciding to review any particular case are enormous. Meanwhile, his wife would lose her husband and his four children would have no father. They'd probably end up on welfare – not in Georgia, but here. This trouble happened 25 years ago. He was a kid, and he's rehabilitated now."

"How do I know that?"

I handed him the Hall Report, opened to the last page, and read him the conclusion. "James Jiles isn't perfect, but there's no question he's rehabilitated, if in fact he did the crime and needed rehabilitation."

Specter read the Hall conclusion. He looked up at me, slightly curling his lips on one

side, his eyes squinting. "I'm going to be honest with you, Mr. 'Carey.' The guy doesn't sound dangerous, and I'd like to do you a favor. But it's risky."

"Why?" I said, looking at him eye to eye.

"Look, David," the union lawyer said, "maybe we should go."

I looked directly at him – I probably glared – took a deep breath, and turned back to Specter.

"Mr. Specter, I appreciate your honesty," I said. "You put it on the level of risk, so let me address it directly on that level. There is no risk to you, and a lot of benefit. In the unlikely event he's freed and later does something bad, you can say you relied on the Probation Department report. Nobody's going to hold that against you. The report says he's no danger, and it's been 25 years since he was in trouble. On the other hand, you could be a hero on this, standing up for justice and civil rights. It'll help you win union votes and black votes. I found out this morning that the *Tribune* is about to do an editorial asking the governor not to send Jiles back to Georgia. Blacks are over a third of the voters in this city, and they care about an innocent black man sent back to a chain gang, as do a lot of whites. You know, your role in this will be public, whatever you do and however it comes out."

"The *Tribune's* doing an editorial?" Specter said.

"Yeah. Look at the conclusion of this report again. You can't be faulted, and you'll get the credit for this as a leader who's willing to stand up. We'll all see to that."

Specter paused, thinking. "Well, you've made your best case. Now let me think it over, and we'll get back to you soon."

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Almost a month had passed, and I hadn't yet heard from Specter. It was time to call Governor Shafer's office. If I let too much time go by, the governor's warrant might get signed routinely. I had to at least alert them that we were asking him not to sign it. I also wanted to request a hearing at which we could make our case to him face-to-face.

There was no procedure for this. I had trouble deciding whether I should get the name of some high level advisor to the governor or attorney general, or maybe call blind and not say much until I got to the higher-up. Either way, this strategy was aimed at getting to a higher-up quickly. An alternative was to purposely find somebody lower down. A high level person would have power in the governor's operation. But I could imagine that someone lower in the operation and younger might be more likely to latch onto the case as a matter of principle and an important civil rights case, and become an advocate to the governor and his advisors. Someone who would take it on as a project of their own, be more accessible to me, and might keep me posted on the goings on in the governor's office.

A receptionist answered at the governor's office.

"Hello. I wonder if you could help me. I'm not sure who in the Governor's office I should speak to." I had chosen the dedicated subordinate strategy, and thought I'd enlist the help of whoever I got, including the receptionist.

"I'll try, what is it you want?"

"Thanks. I'm David Kairys, an attorney in Philadelphia. I have an unusual case involving an extradition."

"Extraditions go through the Attorney General's office. Do you want that number?"

"I don't think so. This involves the Governor directly, although it's a legal matter. Is

there someone who advises the Governor on legal matters?"

"Yeah, the Attorney General . . . but, you know, one of the Governor's new assistants is a lawyer. Hold on, I'll transfer you to" –

– "What's his title? Hello, are you there?" I heard clicks, then the off and on ringing tone. She was gone.

"Hello, Governor's office."

"Hello. This is David Kairys at the public defender office in Philadelphia. I have an unusual civil rights matter, and I'm not sure who I should be talking to." I worried that I should have said "whom" instead of "who."

"Well, shoot, and I'll tell you if it's me or someone else." He sounded direct, friendly, and young, and the mention of civil rights seemed to spur interest in his voice.

"I represent a black man who escaped from a chain gang in Georgia 25 years ago after being convicted without a lawyer by an all-white jury. He came to Philadelphia, married, and raised four kids. Georgia now wants him back – 25 years later. At first, it looked hopeless, but I've come on one possible avenue of relief, and it involves the Governor."

"How so?"

I explained that governors have a power they often are not aware of themselves since they must sign the warrants for an extradition to occur.

"I put a stack of them on his desk every so often. He signs 'em, though I doubt if he reads 'em. It's *pro forma*."

I asked if he knew that governors throughout the country have refused to sign on occasion, emphasizing that this is just the kind of case where it's been done. I asked for an

evidentiary hearing before the Governor, a chance to present evidence and argument before he routinely signs the warrant.

"I never heard of this. Lemme ask around here and get back to you."

Before he hung up, I found myself chatting with him. This sort of chat became familiar over the years, something I came to call lawyer banter. It can be about a case, a job, work in general, vacations, or the meaning of life. Sometimes it was strategic – to establish a relationship that could be used for particular purposes. I found it also humanized otherwise sterile and often hostile exchanges that consume most of a lawyer's day. Most often, it was both.

"I really appreciate your looking into this," I said. "It sounds like you're the right person for it. What are your usual duties?"

"I'm first assistant to the Counsel to the Governor, and I spend part of my time in the Attorney General's office."

"Sounds like an interesting job. How long you been at it?"

"Oh, maybe 11 or 12 weeks. That's why I'm not sure. But it's a great job, and an opportunity to see how government works."

"How long you been out of law school?"

"Three years. How about you?"

"I just graduated last June. I was doing interviews at the Defender, and this just fell in my lap."

"Sounds more like a novel than a legal case. Look, it's good talking to you. I'll get right on this and get back to you."

After years of law practice, I lost my taste for lawyer banter, at least when it goes beyond

this kind of friendly chat, which it usually does if three or more lawyers gather together. I still have many friends who are lawyers, but I took to eating lunch with clients or friends, or by myself, rather than with other lawyers. I was aware that some lawyers saw it as an affront, not playing the game. For me lunch became a break from law practice, not an occasion for more lawyer talk.

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I paused, then dialed again, trying to calm myself.

"Hello, Governor's office."

"Hello. Could I speak to the Counsel to the Governor, please?"

"You mean Special Counsel, Special Counsel to the Governor?"

"Yeah, that's it," I said. I thought I'd try the same title in Georgia. It was close, except in Georgia they're special, like FBI agents. All FBI agents are officially "special agent."

"Office of Special Counsel. Can I help you?"

"Yes," I said, "I'm calling from Pennsylvania. I need to speak to Special Counsel for Governor Maddox as soon as possible about an interstate matter."

"Hold please."

I thought sounding like I expected it to be important to the Special Counsel and using an established sounding category for it might get me put through. But I was on hold so long that I almost hung up. Then a man's voice came on.

"Hello, Frank Blankenship here."

"Mr. Blankenship, hello. I'm David Kairys, an attorney in Philadelphia, Pennsylvania, and I need to speak to the Special Counsel."

"That's me, get to it."

"Well, I represent a man who did something awful in Georgia 25 years ago, then escaped from one of your prisons to Philadelphia, where he's led an exemplary life, working in construction, marrying, and raising four kids. He was just discovered as a fugitive, and I wanted to talk to you, and if possible to Governor Maddox, about the possibility that you might extend mercy in his case. I've heard the Governor, though tough on crime, has an unusual record among governors for extending mercy when it's appropriate." One of the lawyers in the office told me he had read in a magazine story that Maddox pardoned a lot of mostly black prisoners each Christmas.

"Yes, that's right, and he's proud of that record. But I don't think we've ever granted clemency to a fugitive. He'd have to turn himself in down here, then ask for clemency."

"I understand that's the usual procedure. But that could take years, and it would destroy a family up here in Pennsylvania. They'd have to go on welfare without his income."

"Look, Mr. 'Carriage'" –

– "Kairys" –

– "Give me his name and your phone number, and I'll look into it and get back to you."

"Thanks. He's Louis Booker, convicted of murder in a fight in 1944. I'd appreciate it if I could send you supporting materials, including a report of our Probation Department saying he's rehabilitated. What I'd really like is just a moment to talk to Governor Maddox personally on the phone."

"We'll see. Murder, huh. . . . What was that number?"

"LO-8-3190 in Philadelphia. Thank you."

Nobody gets my name on the first try, or often the second or third. My ancestors on both sides – the Lovetts and the Kairys – came from small Jewish enclaves in eastern Europe, probably in what is now the Ukraine. Our original name sounded and may have been spelled “Kuris,” meaning fisherman or something to do with fish. I’d prefer to think it didn’t mean fishy, although at times I’ve wondered. Some immigration official probably thought it a garbled pronunciation of a not uncommon Lithuanian Catholic name pronounced “care-reez.” Kairys has been our name ever since.

I sent the materials to Blankenship– Hall’s report, affidavits with the stories Mary had gathered, and the petitions. It didn’t seem hopeful, until a couple weeks later when I got a call back.

“Mr. Kairys. Governor Maddox will talk to you, and he read some of the materials you sent. Hold on a minute, I’ll get his secretary and see if he’s still ready or got into something else.”

More than a minute passed. I thought I might be dreaming.

"Is this Mr. ‘Carey’?" a woman's voice said.

"Yes." I had given up on the pronunciation.

"Hold for the Governor."

Another minute, maybe two. I felt myself sweating.

"This is Governor Lester Maddox calling from Atlanta." His southern drawl was extreme, his voice friendly.

"Hello, Governor Maddox. I really appreciate your taking the time to talk to me."

"Yes, young man, well I read what you sent, but I'm afraid I can't do anything for ya."

"Do you have any doubt that he's rehabilitated, Governor?"

"Nah. I seen that probation report, and it's been a long time. I suppose he's as rehabilitated as the rest of us."

"Then why waste Georgia's money keeping him in jail?"

"I'm goin' to be honest with you, son. Every Christmas, I free some nigras from prison in the spirit of the holiday. My people collect the files of the best still in prison, and I pardon some of 'em, sometimes as many as a dozen. But this ain't Christmas and" –

– "Governor, shouldn't we strive to keep that Christmas spirit alive the whole year through?"

"Well, that's creative young man, but I got a hell of a fight on my hands in the legislature. The Assembly won't pass anything I send up. Those bastards would love to stick me with a soft-on-nigras story. Nobody can remember a governor down here pardoning somebody who's still a fugitive. Have him come back to Georgia, voluntarily. In a year or so, maybe I'll be able to do it."

"I appreciate that, Governor. Can I tell the Governor of Pennsylvania that you don't mind if he doesn't send the guy back?"

"Well, I don't know, you're playin' me every which way now. . . . Nah, it could get out down here. Now you come down here and visit us, son. You're doin' a fine job."

"Thanks, Governor. Good luck with the Assembly."

I hung up and sat back, not sure what had just happened. I liked his style, and sense of humor. At the end I wished Maddox good luck with the legislature although I had no idea what the issues were between them. He might be pushing things I deeply opposed. And my

Christmas every-day-of-the-year argument was naive and felt embarrassing. I was trying to absorb what happened, but all I could think about was the absurdity of it all. He won't do it because it's not Christmas.

§§§

Several months went by, during which I was admitted to the bar and started arguing cases in court. I spoke to Mary a few times a week. On the morning of June 25, 1969, I left for the state capitol in Harrisburg with my car stuffed with stacks of legal papers. I wasn't worried about keeping my presentation to the governor short. I wanted the case for refusing extradition to be compelling, supported by mounds of evidence. However, I wasn't so sure about two things.

I still wore the beard I had let grow off and on since graduation. Beards were unusual among lawyers in those days, more associated with the hip or beat counter-culture. There was a short article about mine in *The Evening Bulletin*, about a judge's telling me, during a legal argument, how his law clerk from Harvard was late because "his beard got stuck in an inkwell and he had to take time to clean it."⁸ Inkwells were uncommon by that time, but I was apparently the only practicing lawyer in Philadelphia with a beard, although the walls of the courthouse were lined with pictures of bearded judges from the past. Some of my colleagues in the public defender office thought it unwise, even irresponsible, to retain my beard when I went to the hearing before the governor.

I wasn't trying to look hip or beat, but I was conscious that it looked and made me feel different than other lawyers and judges. The beard gave me some separation from them, and confirmed my sense of integrity. It said, for me, something like, I don't want to be a judge or

care if I make a lot of money; I'm here because I believe in what I'm doing. There were also less noble and less self-conscious reasons – it saved a lot of time and money. I was liberated from the shaving industry, with its never-ending array of products for before, after and during. I had made up my mind to keep it unless I got the sense that it hurt a client. So far, it had drawn comments and some jokes, but it didn't seem to have any significant effect on judges. Today, I still have a beard – I haven't shaved for almost 40 years.

My other worry that day as I drove to Harrisburg was coming in a separate car: James Jiles. I had used the rehabilitation evidence we gathered and a parade of community witnesses to convince a judge to release him on bail, although that was unusual for a fugitive who had been convicted of murder. Some in the office also thought bringing him was a mistake. There wasn't going to be a trial but an informal hearing or perhaps just a discussion with the governor. With no established procedure or precedent, I had no idea whether it would be held in a courtroom, conference room or office. The governor might be offended by Jiles being brought into an informal or attorneys-only setting. I took this seriously, and it worried me, because people who were more experienced and knew much more than me were deeply concerned. But their apprehensions also baffled me.

I wanted Jiles there because he was a soft-spoken, likeable guy who would seem nonthreatening, and he and Mary would make this case human and real. He said he would come if I thought it would help; he left it to me. I wanted to introduce Jiles to the governor and have them shake hands. I told him to try to make eye contact when he was introduced. I thought this would make it as hard as possible for the governor to send him back to a chain gang for the rest of his life.

The initial reception we got wasn't encouraging. The governor's staff told us the governor was too busy to preside at the hearing or to meet us. We would be heard by a deputy attorney general, Frank Lawley, Jr., who would come as soon as someone found a room. I told them we would need several chairs. After a while, we were led into a large ceremonial room to a very long table in one corner. I set up my notes and stacks of papers, and we waited.

Lawley walked in briskly and sat in the chair at the head of the table. The staff introduced me, and I immediately introduced James, Mary and our witnesses. Lawley looked a bit surprised to see James standing in front of him, but he rather routinely shook James' hand and cordially but formally smiled at him. I thought it counted as contact.

Lawley asked if anyone was there to represent Georgia. His staff said no one came, although they were invited. He turned to me. "Proceed."

I handed Lawley my 16-page brief – on that silly looking long paper, like the yellow pads but white – that presented five grounds for refusing to extradite James Jiles: rehabilitation, time lag and hardship, invalidity of the conviction, future harm because of the refusal of Georgia courts to abide by U.S. Supreme Court decisions, and timeliness (based on their missing some deadlines). I started with a short summary, emphasizing that extradition requests had been refused in other states without any resulting interstate problems. Then I called our witnesses and presented our documents.

Nolan Rochester was a neighbor and friend of James and Mary. He told Lawley that James saved him when he was attacked by two youths on the street. They beat him and crushed his eyeglasses into his eyes. James intervened, stopped the beating, and held one of the youths until the police came. Mr. Rochester said he realized only later how courageous this was, since

any contact with police could result in James' return to the chain gang. He concluded, "If he is not a good friend and neighbor, then I don't know who is." Earl Hall summarized his report and strongly reaffirmed that James presented no danger and that Mary, who had been ill in recent years, would probably have to go on welfare to support the children if James were sent back to Georgia. Lawley had no questions for them, or for James.

I presented the petitions and letters or affidavits from four other neighbors, James' employer, the union president, and the pastor of his church. There was a unanimously passed resolution by the membership of Local 57 urging the governor to allow James to "remain among us as a free man." A lengthy editorial in the *Philadelphia Tribune* noted that James' conviction stemmed from a fight with the "town bully," that churchgoers contributed the money for his bail, that the conviction was unfair, that he was rehabilitated. The editorial urged Governor Shafer to "refuse to sign the extradition papers which would send this man back to the slave labor Georgia chain gang."

The affidavit of John Ruffin and a letter from the clerk of the trial court in Georgia documented the deficiencies of the trial James told me about in our initial discussion. Two attorneys had been appointed to represent James just before trial, but neither of them had considered possible defenses, investigated, sought witnesses, or even interviewed James. One of them appeared at trial, but asked few if any questions. The jury was all white. Ruffin had determined the race of all the jury members by comparing the jury list to the tax lists that identified the race of taxpayers. The clerk confirmed that there was not even a transcript of the trial.

I had one last piece of paper. I handed Lawley a copy of a letter sent a week before

directly to Governor Shafer. Arlen Specter, resting heavily on Earl Hall's report, concluded that "the interests of justice would best be served if Mr. Jiles were not extradited back to Georgia."

Just as I was winding up, Lawley stopped me – probably fearful that more was to come, enough for several days. He said that the governor would make the final decision, but based on what he had seen, he would recommend that James not be extradited. James jumped up from his chair, as if thrown out by a big spring suddenly uncoiled. He stood speechless, looking at Lawley. Mary sobbed, "Praise the Lord."

§§§

A couple weeks later, the governor's office issued a press release announcing that he had refused to extradite James Jiles to Georgia, and I received a copy of a short statement by the governor and a formal opinion prepared by Lawley recommending that extradition be refused. Lawley emphasized rehabilitation, but he came down hard on Georgia – harder than I anticipated – for the trial and for flaunting Supreme Court decisions. It said he was "frankly impressed by the mass of evidence."

I liked that, and enjoyed the subsequent celebration at the public defender office and the approval of the outcome expressed by stories and editorials in the media.⁹ There's nothing like an early, startling victory to lift your spirits and confidence. But it was also unsettling. I didn't have a method or approach to law practice; I didn't even know why I did what I did in Jiles' case. I had put to good use some lessons from my childhood – which was hardly in the distant past – my father Bernard's resourcefulness and sense that there is always a way, my mother Julia's strong but charming opinions and stubbornness, and my identification with outsiders and sensitivity to injustice from as far back as I could remember. But the public praise and pats on

the back by colleagues were tempered by the sense that I didn't know what I was doing. I wondered if it was just a fluke.

I had to advise James not to leave Pennsylvania. If he were picked up in another state, Georgia could again request extradition, and Shafer's decision would not be binding. He never set foot outside of Pennsylvania, nor did he get in any trouble. I saw him a few more times, when he stopped in my office to say hello, before he died in 1991.

I saw Mary more often and remained close to her. We usually talked on the phone or I visited her at home. Once I took her to one of the best restaurants in town, where she talked a lot about the difficulty of her early life and her sometimes rocky relationship with James, which had not come up earlier. Her health deteriorated, but she stayed active in her church and its choir as long as she could.

In 1994, a few years before her death, she invited me and my wife Antje Mattheus to the Sunday service at Oak Grove Baptist Church in North Philadelphia. We got there before the service began, as people entered the church and greeted each other with lots of big smiles and big hugs. The program on the seats contained prayers, events, and a list of the names and addresses of church members who were sick, with the heading "Please Remember Our Sick and Shut-in Members!" It was a community, with a mission, loyalty and sacrifice at its heart, so different from the groups I was part of.

The church was now packed to the walls with members of the congregation. A door behind the altar opened and nine women in long, pale-blue robes entered and stood on a stepped podium, three to a row. The last one out was Mary, who by then needed help walking. There was muted conversation and some milling around until piano music filled the room, at first softly

and then with building depth and force. Several men in long black robes entered from the choir door and took seats on decorative wooden chairs on either side of the altar, facing the quiet but now packed congregation. No one spoke, but I could feel the shared anticipation in the room.

A large man rose from the chair nearest the altar and walked slowly to the pulpit. "Good morning brothers and sisters," he said, smiling, his deep baritone voice carrying through the room. "Sister Charisse will offer today's morning prayer."

A slight woman rose from the congregation and read a short passage from the Bible. As she sat down, the blue-robed choir rose in unison. Their hymn started slowly, then built to a chorus:

Sing out, sing out, Oh Lord
Please do not pass me by.

They repeated the chorus, again and again, giving the "do not's" increasing emphasis with each repetition. I felt the music deep inside, so unlike anything I had heard in a synagogue. The harmony, the intensity, the unmistakable beat of every blues and rock 'n roll song I'd ever heard, moved me deeply.

The minister rose, announcing school and church events for the coming week in a low, almost whispered voice. Then he said, "You all know a lawyer came to the aid of Brother James and Sister Mary. Not a rich or famous lawyer, but a lawyer who cares about all God's souls. Welcome to you, David Kairys, and your wife beside you. Stand up, please stand up, and say something to us."

I didn't expect this. Loud applause surprised me more, but gave me a moment to collect myself. "I'm deeply honored to be recognized by you and welcomed to your church this way," I

said, feeling my voice crack and wondering if everybody could hear it. "I want you to know that we couldn't have won without Sister Mary, and many people in the community, several of whom I see here today, who helped. For me personally, knowing Sister Mary has enriched my life. She will always be an inspiration to me." My tearing eyes met Mary's, then I sat down quickly, very aware that I hadn't called her "sister" before.

"Thank you, brother," the minister said, "now Sister Mary goin' to lead the choir in a hymn she's dedicatin' to Mr. Kairys." The piano played a soft rhythm as Mary stepped forward in front of the choir. Her heavy lidded eyes were barely open as she settled into position with some difficulty.

"Oh, Lord," her voice boomed deep and urgent,

Forgive us, forever. Forever.
For we shall obey Thy will.
Peace. Peace be still.

The choir joined behind her with thundering harmony, "Peace be still, peace be still." Several verses and choruses followed. By the time they were done, I was ready to be saved.

I don't believe I will ever receive a greater honor.

Endnotes – Chp. 1

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1. *Necessity and sufficiency of identification of accused as the person charged, to warrant extradition*, 93 A.L.R.2d 912 (1964); Note, *Extradition Habeas Corpus*, 74 YALE L.J. 78 (1964); *Kirkland v. Preston*, 385 F.2d 670 (D.C.Cir. 1967); *Foster v. Uttech*, 31 Wis.2d 664 (1967); *Hardy v. Betz*, 195 A.2d 582 (N.H., 1963).
 2. 18 Pennsylvania Statutes Annotated §4870; *Commonwealth v. Blair*, 92 Pa. Super. 169 (1927); *Commonwealth v. Viscount*, 118 Pa. Super. 595 (1935); *Commonwealth v. Dice*, 38 York 41 (1924).
 3. See Nicholas Lemann, *The Promised Land, The Great Black Migration and How It Changed America* (New York: Knopf, 1991).
 4. Comment, *Future Irreparable Harm: A Ground for Release in Federal Extradition Habeas Corpus Proceedings*, 25 WASHINGTON & LEE L.REV. 300 (1968); *In re Hunt*, 276 F. Supp. 112 (E.D. Mich. (1967)); *State v. Wynne*, 356 Mo. 1095 (1947); *People ex rel. Barrett v. Bartley*, 383 Ill. 437 (1943).
 5. Note, *Interstate Rendition: Executive Practices and the Effects of Discretion*, 66 YALE L.J. 97 (1956).
 6. See “‘Competitive’ Drive Makes Shafer a Winner,” *The Evening Bulletin*, Nov. 9, 1966; Ad by Shafer campaign, *Philadelphia Evening Bulletin*, Nov. 6, 1966.
 7. See *Avery v. Georgia*, 345 U.S. 559 (1953); *Williams v. Georgia*, 349 U.S. 375 (1955); *Whitus v. Georgia*, 385 U.S. 545 (1967); *Cobb v. Georgia*, 389 U.S. 12 (1967), *Jones v. Georgia*, 389 U.S. 24 (1967); *Sims v. Georgia*, 389 U.S. 404 (1967); *Anderson v.*

Georgia, 390 U.S. 206 (1968).

8. *Philadelphia Daily News*, April 7, 1969.

9. For example, "State Refuses to Extradite Escaped Killer," *Philadelphia Inquirer*, July 8, 1969.