IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MARYLAND OFFICE OF THE PUBLIC DEFENDER, *et al.*, *Plaintiffs*, v. TALBOT COUNTY, MARYLAND, *Defendant*.	Civil Action No.: 1:21-cv-01088-ELH

BRIEF FOR PUBLIC JUSTICE CENTER AND CAUCUS OF AFRICAN-AMERICAN LEADERS AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS

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INTERESTS OF *AMICI CURIAE*[1]

The Public Justice Center ("PJC"), a non-profit civil rights and anti-poverty legal advocacy organization founded in 1985, has a longstanding commitment to protecting constitutional rights and ensuring freedom from unlawful discrimination, restraint, or intrusion by government entities. Committed moreover to the pursuit of race equity through legal advocacy, the PJC has represented clients and participated as amicus curiae in cases seeking to enlighten the connection between the history of racism and its current badges and incidents in our society.

The Caucus of African-American Leaders ("CAAL") is a consortium of African-American clergy, civil rights leaders, elected officials and businesses that meet on a monthly basis to address the concerns of its community. The CAAL membership includes leaders from Maryland's Eastern Shore. The CAAL has participated in demonstrations at the Talbot County Circuit Court in Easton, Maryland. The CAAL has joined with other local organizations including the NAACP in demanding that this monument be moved. The CAAL has been in existence for eight years and its mission is to eradicate racism, sexism, and homophobia.

PJC and CAAL have a strong interest in eliminating racism and ensuring equal justice for all citizens regardless of race. They submit this brief to help shine a light on the devastating effects Confederate monuments have on Black individuals and how their presence at courthouses denies Black Americans equal protection of the laws as guaranteed by the Constitution.

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[1] Plaintiffs consented to the filing of this brief. Defendant did not consent. No counsel for a party authored this brief in whole or in part and no entity or person, other than *amici curiae*, their members, and their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION

Black Americans have endured centuries of mistreatment based on their race. Decades after the end of the Civil War, Confederate monuments—including the Talbot Boys statue at issue in this case—were erected on courthouse grounds to perpetuate the white supremacist myth that Black people were inherently inferior and send a message that Black people would never be equal members of American society. Though that message is contrary to the values of equality enshrined in the Constitution, Talbot County continues to endorse it by defending the placement of the Talbot Boys statue on its courthouse lawn, even as courts have ordered similar statues removed.

The Talbot Boys statue has an unacceptable racist history that serves as an everyday reminder to Black individuals who encounter it of the discrimination and hatred aimed at Black Americans throughout history. As long as the County leaves the statue on the lawn, Black attorneys, defendants, jurors, employees, and citizens will be forced to face that endorsement and the harms it creates while performing civic duties, working for the County, and obtaining the general benefits of citizenship offered at the courthouse.

Although the County argues that the Complaint should be dismissed because Plaintiffs cannot demonstrate a particularized injury-in-fact, that argument lacks merit for two reasons. First, because the Talbot Boys statue sits outside of the courthouse, the courts in Talbot County are plagued by the appearance of impropriety and partiality, and therefore cannot provide equal justice to Black defendants as required by the Constitution. Second, as the Fourth Circuit held in *Suhre v. Haywood County*, 131 F.3d 1083 (4th Cir. 1997), direct and unavoidable contact with a statue on courthouse grounds is sufficient to show particularized harm when its placement violates the Constitution. For either of these reasons, Plaintiffs have sufficiently pled an actual and particularized harm sufficient for standing under Article III.

ARGUMENT

I. Confederate Monuments, Including This Statue, Were Placed at Courthouses to Intimidate Black Americans and Undermine the Concept of Equal Justice Under Law.

The harm Plaintiffs suffer here is far from abstract. Each Plaintiff (and its members or employees) suffers a personal, concrete injury that is informed by the legacy of Confederate statues placed in courthouse settings: an intentional campaign of violence, terror, and control over Black Americans making civil rights gains, which glorified the fight for white supremacy at the very sites where Black Americans were supposed to receive equal justice under law. This legacy has been well documented by historians, both at the national level and locally in Talbot County. It also explains why the Talbot Boys statue inflicts a concrete, individualized injury on each Plaintiff: the assertion of white control over civic institutions and the accompanying infliction of fear in Black community members was precisely the point behind such monuments.

A. White Americans erected Confederate monuments decades after the Civil War as part of a renewed campaign of violence and control over Black Americans.

The vast majority of Confederate monuments were not built in the immediate aftermath of the Civil War. They were erected decades later, with the lion's share of monuments built between 1900 and 1920. Southern Poverty Law Center, *Whose Heritage? Public Symbols of the Confederacy* (Feb. 21, 2019), https://bit.ly/3AGthFH. Historians have since recognized that this timing was not a coincidence: these monuments "were put up as explicit symbols of white supremacy" as "part of a campaign to paint the Southern cause in the Civil War as just and slavery as a benevolent institution, and their installation came against a backdrop of Jim Crow violence and oppression of African Americans." Karen L. Cox, *The Whole Point of Confederate Monuments Is to Celebrate White Supremacy*, Wash. Post (Aug. 16, 2017), https://wapo.st/3jWA4x.

Confederate monuments first became widespread in the 1890s, a bloody "decade of virulent racism" marked by lynching sprees. *Id.* Both the pace of Confederate monument construction and the violence against Black Americans "only increased in the early decades of the 20th century," which saw continued lynchings and race riots. *Id.*; *see also* Equal Justice Initiative, *Lynching In America* (3d ed. 2017), https://bit.ly/3mxKWf9 (documenting more than 4,300 racial terror lynchings between 1877 and 1950). This "violent restoration of white supremacy" took place alongside "the consolidation of Jim Crow and racial segregation in the South, the final defeat of the ideals of reconstruction and racial equality in the South." Melissa de Witte, *Controversies over Confederate Monuments and Memorials Are Part of an Overdue Racial Reckoning for America, Says Stanford Historian*, Stan. News (July 16, 2020), https://stanford.io/3iKE0Ji (quoting historian James. T. Campbell); Jeremy Slevin, *A Confederate Monuments Expert Explains How We Memorialized White Supremacy*, Talk Poverty (Aug. 17, 2017), https://bit.ly/37F9wln (quoting Professor Kirk Savage).

Against this backdrop of racist aggression, Confederate monuments were intended to assert that white supremacy would remain a dominant force of social control. *See, e.g.*, Miles Parks, *Confederate Statues Were Built To Further a 'White Supremacist Future'*, NPR (Aug. 20, 2017), https://n.pr/37Kxc7O. The people erecting Confederate monuments in the early 20th century said as much themselves. In dedicating a Confederate monument of Jefferson Davis at a ceremony in 1927, Senator John Sharp Williams of Mississippi proclaimed that the Confederates fought to preserve "[t]he cause of White Racial Supremacy, which . . . is not a 'Lost Cause.' It is a Cause Triumphant. It was never as safe as now since the Missouri Compromise . . . The white man's family, life, his code of social ethics, his racial integrity—in a word his civilization—the destruction of which in the slave states was dreaded . . . are safe." Equal Justice Initiative,

Segregation in America (2018) (quoting The Jefferson Davis Memorial in the Vicksburg National Military Park, Dedication Ceremonies Pamphlet, October 13, 1927), https://bit.ly/3D1xy8B.

The Talbot Boys statue fits squarely within this historic context of discrimination and violence against Black Americans. The Talbot Boys statue was built in this same timeframe when the nation saw a boom in Confederate monuments—in 1914, nearly 50 years after the Civil War and during the Jim Crow era. Casey Cep, *My Local Confederate Monument*, New Yorker (Sept. 12, 2020), https://bit.ly/3sfeMFJ; Parks, *supra*. The same patterns that marked the 1890s and early 1900s in the South abounded in Northern states like Maryland as well. "Between 1900 and 1935 courthouse lawns on the Eastern Shore [of Maryland] were routinely the sites of lynchings or near lynchings, involving the participation of hundreds and sometimes thousands of white onlookers." Sherrilyn A. Ifill, *On the Courthouse Lawn* at 7–8 (2007).[2]

Though the ostensible purpose of the Talbot Boys statue is to honor the war dead, it bears other features in common with the national construction of Confederate monuments—including the precise model of the statue. The Talbot Boys statue is identical to The South's Defenders Memorial, a monument dedicated in 1915 on the lawn of the Calcasieu Parish Courthouse in Louisiana. *See* Cep, *supra*; Bill Chappell, *Hurricane Laura Rips Down 'South's Defenders' Confederate Statue in Lake Charles, La.*, NPR (Aug. 27, 2020), https://n.pr/3smaKLV. The fact that the Talbot Boys statue bears an identical twin in the South further connects it to the national movement to erect monuments, rather than a unique celebration of the dead from Talbot County.

The seat of the statue itself is a reason to question the motives underlying its construction. Talbot County voted against secession in a state that ultimately did not secede, and it sent more than three times as many residents to fight for the Union than the Confederacy. Cep, *supra*. Yet

[2] A copy of the excerpts of Ifill's book that are cited in this brief is attached as Exhibit A.

neither the courthouse lawn nor any other location in Talbot County bears a statue to honor the Union soldiers, undermining any suggestion that the statue was not intended to convey an interest in the white supremacist Confederate values being pressed at the same time on courthouse lawns in Southern states.

The substance of these values is not up for debate. The chief funder of the Talbot Boys statue, Confederate sympathizer Joseph Seth, romanticized slavery in Maryland's Eastern Shore by describing the conditions of enslaved persons as having "lived under a paternal, kindly rule." Cep, *supra*. Family members of other individuals memorialized on the Talbot Boys statue have likewise written that the honorees who died in battle were "added to that long list of martyrs who died for the cause, 'the lost cause,' though it be, still dear and will ever remain dear to the hearts of all true Southerners to the end of time." *Id.*

B. The Talbot County courthouse lawn is a historic site of racist rebellion against the guarantees of equality to Black Americans.

The placement of Confederate monuments on courthouse grounds "made a very pointed statement about the rule of white supremacy: All who enter the courthouse are subject to the laws of white men." Cox, *supra*.

Courthouses were used as political sites of racial terror. On the Eastern shore of Maryland, the courthouse lawn was the site of lynchings, including the lynchings of Isaac Kemp in Princess Anne in 1894 and Garfield King in Salisbury in 1898. Ifill, *supra*, at 8. Although the courthouse lawns were at times near the jails from which lynching victims were forcibly removed, white mobs intentionally sought out courthouse grounds in other cases—for example, Matthew Williams "was dragged three blocks from the hospital in Salisbury to the courthouse lawn" in Wicomico County, Maryland. *Id.*

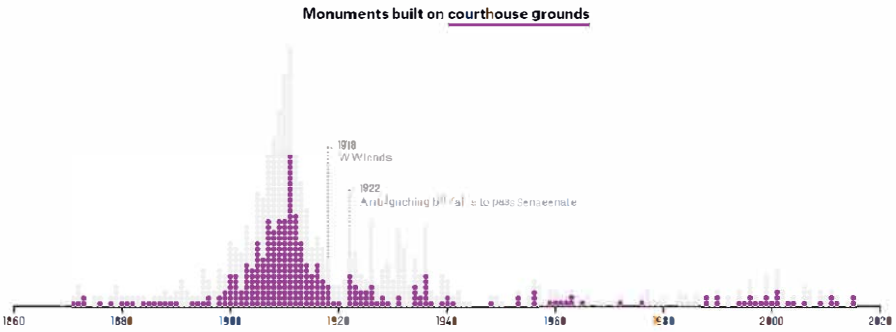
Carrying out lynchings on courthouse grounds was a political statement by white Americans on Maryland's Eastern Shore to resist measures to promote due process and impartial juries for Black Americans in the legal system. *Id.* In contrast to the "formal, codified law of the state's justice system" that some residents of Maryland's Eastern Shore believed "was elitist and stacked against them," "lynch law was *more* legitimate"—it was "uncompromising, and rather than being imposed by the forces from without, it was managed and enforced by the community itself." *Id.* "The courthouse lawn, therefore, was a very deliberate choice of venue for lynching. Lynch mobs used the location to assert what they regarded as a legitimate and necessary rebellion against the elitist trappings of the formal legal system. The hanging and charred black body on display outside the courthouse symbolized to the lynch mob and their supporters the independence of the local white community from the dictates of Annapolis and Baltimore." *Id.* at 8–9.

The Talbot County courthouse was no exception. Cep, *supra*. Lynch mobs converged on the courthouse lawn in Talbot County several times in the early 20th century. Ifill, *supra*, at 9. The most notable occasion occurred on April 21, 1919, when "nearly two thousand whites assembled outside the Talbot County Courthouse on the first day of [Isaiah] Fountain's trial." *Id.* at 9–10. When Fountain exited the courthouse, white masses "had assembled on the lawn, swarming around the then six-year-old statue of the Talbot Boys." *Id.* at 12. As the Maryland Court of Appeals described, Fountain was met with the "presence of a large and menacing crowd, determined that the prisoner should die, and unwilling to await the orderly processes of the law, which had been set in motion with the utmost promptness," and an "attempt to forestall by lynching the verdict of the jury and a judicial sentence." *Fountain v. State*, 107 A. 554, 556 (Md. 1919).

The message these statues sent—that white and Black Americans would be treated differently—is reaffirmed by the fact that no suspected lyncher was indicted in the fourteen

reported lynchings in Maryland between 1885 and 1931, including the attempted lynching next to the Talbot Boys statue. *14 Lynchings in State Since 1885, None Prosecuted*, Salisbury Times (Mar. 18, 1932), https://bit.ly/3sx7Pjw. For example, after a mob abducted Matthew Williams from a hospital and hung him in front of the Wicomico County courthouse, a grand jury reported that it had found "absolutely no evidence that can remotely connect anyone with the instigation or perpetration of murder" of Williams. *Lynch Verdict Closes Probe*, Balt. Post (Mar. 19, 1932), https://bit.ly/3gi[redacted]4C. The streak continued in 1933 when a grand jury in Somerset County issued no indictment for the lynching of George Armwood, despite hearing testimony from 42 witnesses, including nine state police officers who submitted sworn affidavits identifying four of the lynchers. Ifill, *supra*, at 88–92.

The racist history tied to the Talbot Boys statue is reflective of a broader historical pattern of placing of Confederate statues on the courthouse lawn decades after the Civil War concluded. From 19[redacted] to 192[redacted], hundreds of Confederate monuments were placed on courthouse lawns:



Ryan Best, *Confederate Statues Were Never Really About Preserving History*, FiveThirtyEight (July 8, 2[redacted]), https://53eig.ht/2UdhyPi. White Americans continued to erect Confederate monuments at courthouses through the following decades. As Professor Jane Dailey has observed:

> You have Black soldiers who have just fought for their country [in World War I] and fought to make the world safe for democracy, coming back to an America that's determined to lynch them. . . . [T]hose were very clearly white supremacist monuments and are designed to intimidate, not just memorialize.

Id. "[P]lacing these memorials on courthouse property . . . was meant to remind Black Americans of the struggle and subjugation they would face in their fight for civil rights and equal protection under the law." *Id.*

II. Given This Historical Context, Confederate Monuments on Courthouse Lands Cause Tangible Injuries to Those Forced to Encounter Them.

In its motion to dismiss, Talbot County asserts that Plaintiffs have failed to allege both an "injury in fact" and a "particularized injury." Mot. to Dismiss at 10–12. Neither contention is correct. First, the placement of the Talbot Boys statue directly outside of the Talbot County courthouse denies defendants of color, including those represented by the Maryland Office of the Public Defender ("OPD"), the fair, equal, and proper administration of justice in the courthouse. Second, the harms suffered by Black attorneys, jurors, and others forced to encounter the statue and the racist message it conveys satisfy Article III's standing requirements.

A. The Talbot Boys statue perpetuates an appearance of racial bias in the judicial system.

A fair trial requires "an impartial and disinterested tribunal in both civil and criminal cases." *Marshall v. Jerrico*, 446 U.S. 238, 242 (1980); *see also United States v. Weaver*, 282 F.3d 302, 314 (4th Cir. 2002) ("courts have a duty to conduct a jury trial in an impartial manner"); *In re Al-Nashiri*, 921 F.3d 224, 233–34 (D.C. Cir. 2019) ("Unbiased, impartial adjudicators are the cornerstone of any system of justice worthy of the label."). An impartial tribunal must preserve not only the reality but also the *appearance* of fairness, "generating the feeling, so important to a popular government, that justice has been done." *Marshall*, 446 U.S. at 242; *see also Weaver*, 282 F.3d at 314 ("courts have a duty to avoid creating even the slightest appearance of partiality"); *Al-Nashiri*, 921 F.3d at 233 ("[J]urists must avoid even the appearance of partiality."). For example, states have implemented judicial reforms to "eliminate the appearance of partiality," adopting the

American Bar Association's standard that "[a] judge shall avoid impropriety and the appearance of impropriety." *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 886 (2009).

A monument on courthouse grounds creates an appearance of the government's partiality. It sends a message that one group of people "are outsiders, not full members of the political community" and an accompanying message that another group "are insiders, favored members." *McCreary Cty. v. Am. Civ. Liberties Union of Ky.*, 545 U.S. 844, 860 (2005) (holding that displaying a Ten Commandments monument at a county courthouse was unconstitutional). For this reason, state courts in Virginia have ordered removals of Confederate portraits and memorabilia in courtrooms and a Confederate monument near a courthouse because they are "completely antithetical to the proper administration of justice." Letter from Charles N. Dorsey, Judge, Twenty-Third Judicial Circuit, to P. Jason Peters, Chairman, Roanoke Cty. Bd. of Supervisors (June 23, 2021), https://bit.ly/3ARlmD3 (ordering removal of Confederate statue from courthouse lawn); *see also* Letter from Timothy K. Sanner, Judge, Sixteenth Judicial Circuit, to Douglas A. Ramseur, Esq. *et al.* at 4 (Sept. 10, 2020), https://unc.live/37WjH5 (ordering removal of Robert E. Lee's portrait from courtroom because it "may impair the fair administration of justice"); Judge Martin F. Clark, *Full Statement from Judge Martin Clark*, Martinsville Bull. (Sept. 2, 2015), https://bit.ly/3xWT1Mm (stating that the removal of a portrait of J.E.B. Stuart in the courtroom is necessary to "provide a trial setting that is perceived by all participants as fair, neutral and without so much as a hint of prejudice").

The Talbot Boys statue, situated on the courthouse lawn, reminds people entering the courthouse of racial inequities in the justice system. As discussed above, courthouses on the Eastern Shore, including the Talbot County courthouse, were "routinely the sites of lynchings or near lynchings." Ifill, *supra*, at 7–8. It is hard to imagine any law more unjust and unequal than

lynch law administered at these courthouses, under which the accused were presumed to be guilty and summarily executed while legal immunity was granted to those who tortured and killed. *See supra* at Section I.B.

Even when a Black defendant avoided lynching, the trial court could not ensure an impartial jury. After Fountain was recaptured and returned to the Talbot County, his trial resumed at that courthouse the next day, and the jurors returned a guilty verdict after five minutes of deliberation. The Maryland Court of Appeals set aside the verdict because the attempted lynching had created "an atmosphere and environment incompatible with the right of the accused to a fair and impartial trial."[3] *Fountain*, 107 A. at 556.

Defendant Talbot County claims that Plaintiffs have not shown that any of their clients "has received less than full measure of the law" as a result of the Talbot Boys statue. Mot. to Dismiss at 6. But the statue's message of racism and white supremacy in itself inflicts harms on Plaintiffs simply by creating the appearance of bias.

Even if Plaintiffs were required to show that Black defendants have received "less than full measure of the law," that is an issue to be determined after discovery. And discovery is likely to yield harm that further bolsters the injuries Plaintiffs have pleaded, given the existing evidence that racial bias is prevalent in the criminal justice system. Although Black people make up 13.4 percent of the population, they make up 22 percent of fatal police shootings, 47 percent of wrongful conviction exonerations, and 35 percent of individuals executed by the death penalty. NAACP, *Criminal Justice Fact Sheet*, https://bit.ly/3k2awpu. And even though the Supreme Court's

[3] Likewise, when an all-white Baltimore County jury found Euel Lee guilty after his attempted lynching in Worcester County, the Maryland Court of Appeals overturned the conviction because "the actual selections made by [the trial court] throughout all the jury terms of the last twenty-six years show an established practice or system in which no opening is left for members of the negro race to obtain places on juries." *Lee v. State*, 161 A. 284, 288 (Md. 1932).

decision in *Batson* made it unconstitutional to disqualify jurors on the basis of their race, "racially-motivated jury selection is still prevalent twenty years after Batson was handed down." *Flowers v. State*, 947 So. 2d 910, 937 (Miss. 2007); *see also State v. Gorman*, 596 A.2d 629, 631 (Md. 1991) ("[T]he State concede[d] that the prosecutor's use of peremptory challenges to exclude the only two blacks in this venire establishes a prima facie case of discrimination.").

As a result, Black people perceive that the justice system treats them less fairly than white people. *Powers v. Ohio*, 499 U.S. 400, 412 (1991) (racial discrimination during jury selection process "invites cynicism respecting the jury's neutrality and its obligation to adhere to the law"). This perception compromises the integrity of the justice system. The Talbot Boys statue's presence on the courthouse lawn today—just as it did when a mob assembled there to lynch Isaiah Fountain—serves to further remind that "[a]ll who enter the courthouse are subject to the laws of white men" and to exacerbate the appearance of bias in the justice system. Cox, *supra*.

B. The harms inflicted by the Talbot Boys statue upon Plaintiffs are both individualized and particularized.

The Complaint details various injuries that the Talbot Boys statue has caused OPD employees and other Black residents of the county to suffer. The Complaint describes the statue as a "personal affront" that compares to a "knife lodged in [an OPD employee's] soul" due to the racist message conveyed by the statue. Compl. ¶ 75; *see also* Petticolas Dec. ¶ 11. Ms. Petticolas, an attorney at OPD, has explained that the statue affects her ability to do her job and "devalues [her] as a Black attorney and devalues her Black clients." *Id.* The County attempts to characterize these injuries as merely "stigmatic" injuries suffered by the general public that are insufficient to provide standing. Mot. at 14–17. However, Plaintiffs' injuries are (1) caused by the Talbot Boys statue; (2) specifically suffered by Plaintiffs and the individuals they represent; and (3) particularized to Plaintiffs based on their required use of the courthouse.

1. The Talbot Boys statue causes individualized harm to Plaintiffs.

As described above, Confederate statues across the United States, including the Talbot Boys statue, were erected throughout the 1900s to intimidate Black Americans and convey a message of racism and white supremacy. *See* Section I.A, *supra*. Such statues continue to convey this white supremacist message today, as evidenced by the Robert E. Lee statue in Charlottesville, Virginia becoming the centerpiece for a deadly white supremacist rally in 2017. Joe Heim, *Recounting a Day of Rage, Hate, Violence and Death*, Wash. Post (Aug. 14, 2017), https://wapo.st/3shpoUx. This message remains clear to individuals living in Talbot County as well: as Plaintiffs allege, those who work in the courthouse or come to it for its public services suffer harms as a result of this racist message directly conveyed by the statue. Compl. at 37–41.

The injuries Plaintiffs allege here are individualized and not merely stigmatic. Rather, the fact that Plaintiffs are involuntarily subjected to the statue by nature of their job in the courthouse or use of the public services offered solely on its grounds is sufficient to constitute an injury.

The Fourth Circuit addressed a similar question in *Suhre v. Haywood County*, 131 F.3d 1083 (4th Cir. 1997). In *Suhre*, the plaintiff alleged injury under the Establishment Clause because as a party to a number of cases in the Haywood County courthouse, he was regularly subjected to a statue of the Ten Commandments on the courthouse grounds. As an atheist, he asserted that the statue offended his religious beliefs and that the presence of the Ten Commandments interfered with the correct application of the law by influencing juries to consider their religious preferences over legal precepts. The plaintiff had not changed his behavior in any way due to the presence of the Ten Commandments, but asserted that contact with the display caused him distress. The Fourth Circuit found this sufficient for standing, stating "direct contact with an unwelcome religious exercise or display works a personal injury distinct from and in addition to each citizen's general grievance against unconstitutional government conduct." *Id.* at 1085.

Suhre controls the analysis here. First, the injury in each case is caused by government speech in the form of a statue. *See Pleasant Grove City v. Summum*, 555 U.S. 460, 470 (2009) ("Permanent monuments displayed on public property typically represent government speech."). Second, the harm caused by the government's message in each case arises from a constitutional wrong, and "[a]s the Constitution establishes no hierarchy of constitutional rights, there is of course no 'sliding scale' of standing." *Suhre*, 131 F.3d at 1085. Just as a religious message "endorsed by the state" was an affront to the Establishment Clause, *id.* at 1086, a message of racism and white supremacy is an affront to the Equal Protection Clause. Finally, just as the plaintiff in *Suhre* had no "realistic option of avoiding contact with the statue," *id.* at 1089, Plaintiffs here similarly have no option to avoid contact with the Talbot Boys statue unless they leave their jobs, forego certain actions such as obtaining marriage licenses, or fail to appear under a summons that calls them to the courthouse. As the Fourth Circuit held in *Suhre*, requiring a person to change their behavior to gain standing "seems a more onerous burden than Article III requires." *Id.*

In arguing otherwise, the County relies largely on the Fifth Circuit case *Moore v. Bryant*, 853 F.3d 245 (5th Cir. 2017). Their reliance is misplaced, because Plaintiffs satisfy even *Moore*'s standard to establish standing for the reasons set forth above. The Fifth Circuit distinguished Equal Protection cases from Establishment Clause cases like *Suhre* on the notion that "the gravamen of an equal protection claim is differential governmental treatment, not differential governmental messaging." *Id.* at 250. But a government message that endorses one race over another through a white supremacist statue directly results in differential treatment. Plaintiffs are forced to choose between subjecting themselves to the government's message that they are inferior because of their race or foregoing opportunities to work, failing to respond to summonses, and relinquishing their opportunity to express their views at City Council meetings—a choice white community members

are not faced with. While the opportunities available to Plaintiffs at the courthouse may appear the same as those available to white citizens, Plaintiffs cannot obtain those opportunities without experiencing "a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954).

In any event, the out-of-circuit decision in *Moore* is not controlling on this Court, and *Moore* did not discuss the Fourth Circuit's decision in *Suhre*. In addition, *Moore*, like many of the other cases cited by the County, relies heavily on the Supreme Court's decision in *Allen v. Wright*, 468 U.S. 737 (1984), but *Allen* is inapposite here. *Allen* found that individuals lacked standing to challenge tax exemption to racially discriminatory schools when the individual's children did not attend the schools nor desired to attend the schools. *Id.* at 755. This case is closer to *Suhre* than *Allen*: Plaintiffs are forced to encounter racist government symbols on a regular basis, without the option to reasonably avoid it.

2. Plaintiffs have alleged an particularized injury.

The County also asserts that Plaintiffs have not alleged an injury that is sufficiently particularized. Mot. at 16–17. This is not accurate. Plaintiffs have alleged injury to "Black people living or working in Talbot County, as professionals whose positions require them to work . . . at, in, and proximate to the courthouse and Talbot Boys statue," Compl. ¶ 23, and members of the public who "must pass [the statue] to enter the Talbot County courthouse for any personal business in one of its many government offices . . . or to attend County Council meetings." *Id.* ¶ 18. These are not mere members of the general public, but are individuals who "d[o] not have any realistic option of avoiding contact with the statue." *Suhre*, 131 F.3d at 1089. Therefore, the injuries are particularized to Plaintiffs and are sufficient for standing under Article III.

CONCLUSION

This Court should deny the motion to dismiss.

August 20, 2021

Respectfully submitted,

/s Stacey K. Grigsby

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Exhibit A

ON THE COURTHOUSE LAWN

Confronting the Legacy of Lynching
in the Twenty-first Century

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CHAPTER 1

A CONVERSATION ON RACE: LYNCHING AND THE COURTHOUSE LAWN

Driving or walking along the main road in downtown Easton, Maryland, it is clear that town planners put thought and creativity into this small city's central district. It is an inviting area, dominated by two-story eighteenth- and nineteenth-century brick buildings that house specialty stores, attractive pubs, and watering holes. Several restaurants in the district offer surprisingly urbane fare in well-appointed rooms, and the waitstaff and bartenders are friendly, professional, and welcoming. One feels at once a sense of history, the warmth of a small town, and a very deliberate touch of the modern and sophisticated. The window of Albright's gun shop on Washington Street features upscale outdoor wear and an advertisement for Caesar Guerini guns, billed as "fine Italian shotguns designed for the American shooter." It is all there in a five- or six-block radius—the library, the police station, the tourism office, the restaurants, and the historic Avalon Theatre. And like in small towns all over Eastern Shore, the county courthouse lies at its center.

The Talbot County Courthouse is an old, immaculately maintained red brick building with white-painted detailing. Modern renovations have connected the western wall of the courthouse to a large renovated brick and glass jail facility. Although the jail is more modern-looking than the courthouse to which it is appended, it stands slightly recessed from the front wall of the courthouse, and so manages not to distract from the quaint, historic appeal of the courthouse facade. On a sunny, temperate

day, downtown Easton's charm is in full effect, and one can see in it a kind of model for other Eastern Shore towns that have tried, with considerably less success, to transform their fading and shabby downtown districts into charming tourist attractions.

But Easton is more like her sister towns on the Shore than her superior physical layout suggests. Indeed, during the first weeks of March 2004, Easton's physical charm was eclipsed by a fierce and ugly racial debate that, ironically, challenged the integrity of this town's appealing facade. At issue was, in essence, a struggle over the racial meaning and content of public space in downtown Easton. The controversy centered around a proposal to erect a statue of Frederick Douglass on the lawn of the County Courthouse. Douglass is Talbot County's most prestigious and perhaps only internationally known native son. Born as a slave in the county, Douglass went on to become the most dynamic antislavery advocate of the nineteenth century. In fact, it was Douglass's firsthand experience as a runaway slave and his description of the conditions of slavery on the Eastern Shore that helped make his voice a unique and personally compelling force for the freedom of enslaved blacks. As a young man, Douglass had been held in the jail next to the Talbot County Courthouse after his first and unsuccessful attempt to escape. During the week that he was held in the jail, white slave traders taunted him daily with the prospect of being sold to Georgia or, worse, Florida—a fate commonly understood to mean brutal conditions and an early death for a slave. But Douglass was not sold South. Instead, he was returned to Baltimore, where he had been enslaved years earlier. While working as a slave at the Baltimore shipyards, Douglass managed to escape—this time successfully—to New York. He became an author and a mesmerizing orator, speaking out against the injustice of slavery with a personal passion that more famous white abolitionists of the day could not match. Douglass became known all over the world and traveled throughout Europe, speaking against slavery. Once back in the United States, he remained an influential public figure for the abolitionist cause throughout the Civil War, advising President Lincoln and in his later life serving as U.S. marshal for the District of Columbia and as the U.S. minister to Haiti. Douglass may also have been the first black male feminist in public life, championing the cause of women's suffrage. He was the only man to speak in favor of women's suffrage at the first women's con-

vention in Seneca Falls, New York, in 1848. Douglass returned to Talbot County in 1877 and delivered an address in the Talbot County Courthouse, and several more times thereafter, for a reconciliatory meeting with his former slave master and with the sheriff of the jail. In all, Douglass remains one of the most respected figures in U.S. history. His home in Washington, D.C., where he lived for the last twenty years of his life, is now a museum, administered by the National Park Service. It sits on a hill in Anacostia, a black neighborhood, and boasts an extraordinary view of the Capitol Building. But in Talbot County, where Douglass lived for the first twenty years of his life and where he had been enslaved, there is no public monument commemorating his life or birthplace save for a plaque obscured by trees at the entrance of a small, thirty-foot bridge on the northern edge of the county, which describes Douglass as a "Negro Patriot."

Despite Douglass's extraordinary life and Talbot County roots, bitter factions erupted in the county along racial lines in support of and opposition to honoring Douglass with a statue on the lawn of the courthouse.[1] A white veterans' group opposed the statue, citing a county "tradition" limiting monuments on the lawn of the courthouse only to veterans who "had given their lives for their country." Walter Black, president of the local NAACP chapter, and other black supporters of the Douglass monument derided this so-called tradition, which they contended no blacks had heard of until they attempted to erect a statue honoring Douglass.[2]

There are, in fact, only two monuments on the Talbot County Courthouse lawn, and both honor veterans. The Vietnam Veterans memorial is not technically on the lawn of the courthouse but is positioned more accurately at the southeast corner of Dover and Washington Streets at the entrance to the lawn of the courthouse. Made of granite, the two six-foot-tall rectangular panels of the monument list the names of soldiers from Talbot who died in that conflict between 1960 and 1973 and depicts a soldier assisting his wounded colleague as a helicopter (presumably a rescue chopper) circles overhead. The second war memorial is located squarely on the east lawn, directly in front of the courthouse. Its position is prominent and unavoidable as one approaches the entrance. Thirteen feet high, it features the statue of a young boy holding a flag atop a granite monument that reads "To the Talbot Boys, 1861–1865, C.S.A." On the sides of the monu-

ment are etched the names of eighty-four men from Talbot County who during the Civil War joined the Confederate army and lost their lives. The "C.S.A." on the front of the granite base stands for Confederate States of America. Erected in 1913, when many leaders in the county were still Civil War veterans who'd served on one side or another of the conflict, the monument to the Talbot Boys in 2004 became a symbol to supporters of the Douglass monument that whites remained unwilling to face the county's past and to give public and tangible recognition in the county's public space to honor local black heroes.

Veterans' groups, dominated by whites and supported by several white County Council members, rejected the notion that the issue had any racial dimensions. "Skin color isn't an issue for veterans," one white local veterans' leader declared, ignoring the stunning irony of his statement in the context of the Confederate soldiers' monument.[3] Alternative sites for the placement of a Douglass memorial were bandied about. Some veterans expressed support for the monument if it were placed outside the library located behind the courthouse. County Councilman Thomas G. Duncan, in an emotional statement, charged that veterans were being disrespected by efforts to infringe on the "special place" traditionally reserved for their honor. The courthouse lawn itself was described in soaring terms by those opposing the Douglass monument as both "sacred" and "hallowed ground."

Arguments in favor of the Douglass monument were also passionately and forcefully advanced by African Americans. For them, the courthouse lawn indeed had tremendous symbolic significance as a place of prominence and of the very issues for which Douglass had fought during most of his life. As Moonyene Jackson-Amis, the only black member of the Easton town council and the energetic leader of what would become known as "Fred's Army," put it, "The courthouse stands for justice, equal justice."[4] An African American columnist writing in the *Baltimore Sun* challenged the veterans' arguments on its own terms. He contended that the white veterans' effort to limit the courthouse lawn to honoring war heroes as a basis for excluding a statue of Douglass highlighted the historical irony of racism. Douglass reportedly wanted to accept a commission to join the Union army, but he was prevented from doing so by the Lincoln administration because of fear of white reaction.[5] Now, 150 years later, white veter-

ans were using Douglass's status as a nonveteran to keep his statue off the courthouse lawn. Moreover, Douglass had helped to recruit hundreds of black soldiers to serve in the Union army. Two of his sons served in the 54th Massachusetts Colored Infantry—the army unit depicted in the movie *Glory*.

For blacks in Talbot County, the fact that Confederate soldiers who had fought *against* their country on behalf of the seceded Confederacy of states are honored on the courthouse lawn seemed insult enough—an insult magnified by the fact that Maryland had never even been part of the Confederacy. Walter Black of the NAACP remarked, "Think about today if we had someone who fought against the U.S. government. They might be called terrorists now. But here we had the 'Talbot Boys.'"[6] As another black member of the coalition supporting the Douglass monument said of the Talbot Boys, "They certainly didn't fight for my freedom."[7]

What became known as the "courthouse incident" bitterly divided the community in Talbot. The County Council president Philip Carey Foster lamented, "This issue has so polarized our community that people are afraid to express an opinion for fear of being labeled a racist or unpatriotic. I can't think of a decision that has bothered me more or kept me awake more."[8] Another County Council person called the debate "the most emotional issue" she'd faced as a member of the council.[9] The county's NAACP chapter planned to lead a protest through downtown Easton if the council voted against the Douglass statue. For blacks in Talbot, the fact that the County Council that would decide this issue was all-white, and that it had never had a black member, now seemed a grim reminder of the consequences of minority underrepresentation in Talbot County government.

But lost in this controversy was the particular irony of the argument advanced by the white veterans' group and their supporters that the courthouse lawn was a "sacred" public space.[10] Indeed, those on both sides of the issue, white and black alike, seemed to accept the premise that the Talbot County Courthouse lawn is, as one white county councilman put it, "hallowed ground," reserved for the commemoration of great figures in local history.[11] In fact, the courthouse lawn in many Eastern Shore counties, including Talbot, has a more complex history than that suggested by the hyperbole of the veterans' groups. Between 1900 and 1935 courthouse lawns

on the Eastern Shore were routinely the sites of lynchings or near lynchings, involving the participation of hundreds and sometimes thousands of white onlookers.

The most infamous of these courthouse lynchings were, of course, the Williams and Armwood lynchings of the early 1930s in Wicomico and Somerset Counties. Both men were dragged to the courthouse for all or part of the ritual surrounding their gruesome murders. But the courthouse as a site for lynchings on the Eastern Shore extended back into the late nineteenth century as well, including the lynchings of Isaac Kemp in Princess Anne in 1894 and Garfield King in Salisbury in 1898. That the courthouse was often located directly next to the jail from which lynching victims were often taken in part explains the site outside the courthouse as a frequent location for lynching. But as in the case of Matthew Williams, who was dragged three blocks from the hospital in Salisbury to the courthouse lawn in Wicomico County, lynchers often deliberately sought out the grounds outside the courthouse.

What in the early 1900s was often referred to in the local press as "lynch law" was often regarded by whites as just that—a form of law that had as much legitimacy as the formal, codified laws of the state's justice system. In fact, for many on the Shore who believed that the formal justice system was elitist and stacked against them, lynch law was *more* legitimate. Lynch law did not remove trials to a faraway venue to ensure an impartial jury, exclude confessions merely because the black suspect had been beaten by police, prolong investigation of a crime when everyone knew who'd done it, throw out convictions because blacks had been excluded from jury service, or permit appeals on technical grounds. Lynch law was uncompromising, and rather than being imposed by forces from without, it was managed and enforced by the community itself. Moreover, lynch law was swift—a quality that Shore residents appear to have held at a very high premium. References to the importance of "speedy" justice abounded in local papers during this period, although in many cases black men in the formal justice system were arrested, indicted, and convicted in less than two weeks when they were suspected of committing violent crimes against whites.

The courthouse lawn, therefore, was a very deliberate choice of venue for lynching. Lynch mobs used the location to assert what they regarded as a legitimate and necessary rebellion against the elitist trappings of the for-

mal legal system. The hanging and charred black body on display outside the courthouse symbolized to the lynch mob and their supporters the independence of the local white community from the dictates of Annapolis and Baltimore. For rural whites, the battle for independence from the cultural norms of big cities might be a relic from the Civil War days, but in the early part of the twentieth century it still seemed worth fighting for.

Given this history, how would the debate about the Douglass statue have been transformed if the project's supporters had rejected outright the veterans' group's characterization of the courthouse lawn as "sacred" ground? What if supporters of the Douglass statue had argued that this characterization of the public space outside the courthouse reflected, as did the Talbot Boys monument, an unbroken tradition of white racial ownership of critical public spaces? Might the discussion about the Frederick Douglass statue have been transformed into a more productive, albeit still painful, dialogue about race, reparation, and the county's public spaces? And might this public dialogue have resonated with other counties on the Shore where black men were lynched on the courthouse lawn, but where similarly there are no markers, commemorative plaques, or other indications that this public space historically served as the locus for acts of racial exclusion and violence? Could the proposed Frederick Douglass monument in Talbot, with its undeniably powerful representation of black manhood, have constituted a form of reparation for the wound that lynching sought to inflict on black manhood and black citizenship on the Eastern Shore?

Although the history of lynching outside the courthouse never came up as part of the county's formal deliberations, elderly blacks talked about it among themselves and with members of the pro–Douglass monument coalition. They remembered hearing from their parents that a lynching, attended by hundreds of whites, had taken place on the courthouse lawn in the early part of the century. Certainly lynch mobs had converged on the courthouse lawn in Talbot several times during that period. But most elderly blacks were undoubtedly referring to the largest incident of mob violence in Talbot County's history—the near lynching of Isaiah Fountain. Fountain's lynching was narrowly averted, but the Talbot County Courthouse lawn was anything but "hallowed ground" on Easter Monday in 1919. On that evening, nearly two thousand whites assembled outside the

Talbot County Courthouse on the first day of Fountain's trial. A week earlier Fountain had been arrested and indicted for the rape of Bertha Simpson, a fourteen-year-old white girl. Simpson told police that as she walked home from high school along a road in Trappe, Maryland, a black man in a buggy overtook her and forced her to get in the buggy with him. She alleged that the man threatened her and raped her. A local doctor confirmed that Simpson had been raped.

The Isaiah Fountain case was one of the most notorious on the Shore during the early part of the twentieth century, and it threw Talbot County into the state spotlight. The case was remarkable for several reasons. First, Fountain was no cowering, timid farmhand. He hired himself to work on white-owned farms, yes, but he also owned a small farm himself, a horse, some livestock, and a buggy, which would figure prominently in questions about whether young Bertha Simpson had identified the right man. Fountain contended that he was not even on the Shore on the day of the attack on Simpson but had gone to look for his wife in New Jersey. He maintained his innocence at his trial and by all accounts was a forceful presence on his own behalf in the courtroom. His testimony was not shaken on cross-examination.[12] But as it was during the Jim Crow era, Fountain's self-possession probably worked against him with the all-white jury, and certainly with the townspeople of Easton. Those who were able to get in to observe the proceedings on the first day of trial reported back to their neighbors who were milling about on the courthouse lawn that Fountain displayed an "arrogant and sarcastic attitude." He appeared to participate actively in his own defense, making suggestions to his counsel as they questioned witnesses.[13] These reports probably stoked the ugly mood of the crowd outside the courthouse. To the whites in attendance, Fountain's demeanor suggested not only that he was unrepentant for a crime the town had already determined he was guilty of but, even worse, that Fountain was neither overwhelmed nor intimidated by the proceedings, which would most certainly end in a conviction and death sentence. As one reporter remarked, "Nothing seemed to ruffle him in the least."[14] This stance of control and poise, at a time when Fountain had to have known that his life hung in the balance, challenged Easton whites. Fountain did not play the role of the frightened black defendant in a script that was familiar to whites during this period. Thus the satisfaction and sense of power that

whites might have drawn from the trial were undermined by Fountain's unwillingness to play along.

Perhaps whites even suspected that Fountain's demeanor reflected something more offensive to them than a guilty man's arrogance. Fountain refused to conceal his contempt for what was an elaborate, but ultimately empty, proceeding. The outcome, whatever the testimony or evidence presented, as everyone knew, was preordained. The "sarcastic smile" that observers insisted "was seen on [Fountain's] face most of the time"[15] probably reflected his response to what was, for all intents and purposes, an elaborate show trial. Fountain's stance was one of emotional detachment from a proceeding in which he had no power, no real voice, and for which he had little respect. Thus even after the guilty verdict was announced, white-owned papers reported that Fountain's "pose of indifference was maintained."[16]

Simpson's identification of Fountain as her attacker was so filled with contradictions that it would not stand up in court today, or perhaps even in 1919, but for the fact that Fountain was black. Simpson initially described her attacker as having a mustache, which Fountain did not have. She told police that the buggy that the assailant was driving was new. Fountain drove a ramshackle old buggy.[17] In fact, when Simpson was taken by the local sheriff to look at different buggies in an attempt to identify the one driven by her assailant, she initially pointed to the buggy of another black man, named Andrew Mills. Mills reportedly had lent his buggy to yet another man, named Richard Wells, on the afternoon of the attack. Wells was never arrested, according to the sheriff, because "the popular clamor was for Fountain."[18] Wells left town the next day and did not return until Fountain's trial and conviction. Fountain's lawyer suggested that Ben Butler, the state's attorney (local prosecutor), prevented the sheriff from following these and other leads that might have turned up another suspect. In fact, State's Attorney Butler refused to permit Sheriff Stichberry or anyone but himself to be present when Simpson allegedly identified Fountain as her attacker, in Butler's private office at his home.[19] Sheriff Stichberry, who had been in charge of the criminal investigation of the case, was never even called by Butler to testify at trial, an extraordinary departure from routine criminal-prosecution trial practice.[20] Fountain reportedly told black reporters of the *Afro-American* that he had a history with the white state's at-

torney, who months earlier had threatened to "get" Fountain after he was released from serving a one-year term for driving an unshod horse.[21]

Fountain's case was also extraordinary because Fountain refused to be lynched. When he exited the courthouse on the evening of April 21, a large angry crowd of nearly two thousand whites had assembled on the lawn, swarming around the then six-year-old statue of the Talbot Boys. Some in the crowd showed that they had ropes. Others had knives. Stichberry kept Fountain close to him as he pushed his way through the crowd to lead Fountain to the jail next door. As the sheriff and Fountain reached the jail, the crowd began to press forward. Several reached out to grab Fountain. The sheriff quickly ordered his deputy to bring Fountain into the jail while the sheriff attempted to negotiate with the crowd. The deputy pushed Fountain into the jail and returned, perhaps to the door, to provide backup for Sheriff Stichberry. Fountain, apparently lacking confidence in the sheriff's crowd-control skills, squeezed his way through the small window of an office at the back of the jail and ran for his life. The local judge and sheriff organized a massive manhunt, deputizing 250 local men to find Fountain. Most were hunters, and the thrill of the hunt was on full display. The newly deputized men were given a small red ribbon to affix to their lapels, denoting their importance and license to hunt down Fountain. The local newspaper, the *Easton Star-Democrat*, published the names of those who were deputized in a glowing article describing the hunters' bravery and sense of civic duty. The paper was careful to note, after listing the names of all of the deputized men, that "two colored men volunteered also."[22]

Knowing and seeking to avert the likely outcome of 248 armed white men hunting for a black man accused of raping a white girl in Talbot County, Judge William Adkins, the presiding judge in the case, offered $5,000, a king's ransom in 1919, as a reward for Fountain's safe return.[23] The search for Fountain must have been like something out of a Hollywood movie. Roadblocks were set up; teams of bloodhounds led parties of men through the woods on Fountain's trail. The hunters increased the level of excitement by spreading the rumor that Fountain was "bristling with artillery,"[24] although there was no suggestion as to how he could have obtained firearms during his flight, nor was there evidence that Fountain was inclined to be homicidal. Nevertheless, local deputized men bran-

dished whatever weapons were available to them, imagining, perhaps with a small thrill, that they would be in mortal peril were they to meet up with Fountain.

Life came to a virtual standstill in Talbot as all of the county's excitement and focus were directed toward the search for Fountain. Little is known about what these days were like for the black community in Talbot, but it is not hard to imagine. White hunters stopped every car traveling in the county and drew their pistols and rifles whenever a black man was inside. Two and a half days later, Fountain was found hiding in a barn on a farm in Delaware, unarmed, hungry, and exhausted.[25] Judge Adkins's decision to announce a sizable reward for the return of Fountain may have saved Fountain's life. He was returned to Easton to complete the trial.[26] The reward money was split among eight men.

Governor Evan Harrington insisted that a battalion of the state militia be sent to Easton to ensure that the trial would be conducted without interference from the mob. He called Judge Adkins and informed him that troops would arrive later that evening. What Talbot Countians would have perceived as an "invasion" by state police might well have set off violent resistance among local residents, who by this time were hypersensitive to the negative depiction of their county in Baltimore papers over the Fountain case. But Adkins, a popular local figure, deftly managed the presentation of the governor's order to the townspeople. Assembling the 250 or so men who'd been deputized during the search for Fountain, he asked that they "give approval to the Governor's wish" that state militia troops be deployed in Easton to secure Fountain's safety.[27] Adkins characterized the "Governor's wish" not as "a reflection on the citizenry of the county, but [as] the intention of... preventing ruffianism on the part of *other than* Talbot countians."[28] Adkins's effort to placate the townspeople worked, and "permission" was given to bring in outside officers. The state militiamen arrived in the predawn hours of the following day and were stationed at all entrances to the courthouse and jail with drawn bayonets.[29] The militiamen were augmented by twenty-five members of the Baltimore Police force. No one, except Fountain, the attorneys, the jurors, and those having business with the court, was permitted to enter the courthouse.

Isaiah Fountain's trial resumed the next day. Bertha Simpson arrived to testify in a wheelchair. The jurors returned a verdict of guilty after five

minutes of deliberation.[30] Judge William Adkins sentenced Fountain to death by hanging.

In 1919, on the Eastern Shore of Maryland (and perhaps in most places in the United States), the fate of a black man would, by this point, have been sealed. But unlike other black men accused of raping white women during this period, who often survived being hung by a mob only long enough to be hung on the gallows by the state, Fountain's court-appointed attorney was a brilliant Baltimore lawyer who had made a name for himself by challenging injustice. Eugene O'Dunne had run unsuccessfully for the district attorney's office in Baltimore City but was best known for heading up a commission appointed to investigate conditions at the Baltimore City penitentiary. His 1912 report to the governor exposed inhumane conditions at the jail including torturous punishments, unsanitary living quarters, inedible food, and a complex system of graft and corruption organized by the warden.[31] O'Dunne raised arguments that few white lawyers were willing to make on behalf of black defendants in those days. He challenged the venue of the trial and in essence argued that the local prosecutor had improperly influenced the victim's identification of the buggy driven by the man who overpowered her. Even more impressively, O'Dunne argued on appeal after Fountain's conviction that Fountain had not received a fair trial before an impartial tribunal as guaranteed under the Constitution because of the atmosphere of mob violence that had pervaded the trial.[32] The judges of the Maryland Court of Appeals agreed with O'Dunne's argument.

According to the court, the mob that gathered on what would eighty-five years later be referred to as the "hallowed grounds" of the Talbot County Courthouse lawn tried to "take [Fountain] from the custody of the officers of the law and lynch him, this purpose being openly declared by members of the crowd, some of whom were armed with various weapons and provided with ropes."[33] As a result, the court found that the impartiality of the jury had been unalterably tainted. The court found it "difficult to imagine that the jurors could have remained in ignorance of the presence, temper and conduct of the crowd on the Court House grounds through which they passed repeatedly on their way to and from sessions of the Court."[34] The record also showed, the court noted, that the jurors were "informed of the flight of the prisoner to escape the violence of the crowd" and heard the court "offer... a reward of $5,000 for [Fountain's] recapture

and safe return" and suggest to the sheriff that local men be deputized to find Fountain. Based on all of this evidence, the court concluded that "[t]he conditions under which the appellant was tried were such as to make it almost impossible for the issue upon which [Fountain's] life depended to be impartially considered and decided by the jury."[35]

Local newspapers nevertheless blamed the Court of Appeals' decision on the influence of big-city newspapers in Baltimore, which had carried stories of Fountain's near lynching and escape on their front pages. Despite the record in the case and the Court of Appeals' findings, the local *Easton Star-Democrat* insisted that "at no time was Isaiah Fountain in danger at the hand of the people of Talbot County. At no time has there been an armed mob about the court-house." Earlier editions of the paper conceded that there had been a mob, but a "foreign mob," which had come "from outside the borders of the county."[36]

Fountain was granted a new trial. The venue of the trial was moved to Towson, Maryland, in Baltimore County. There, he was convicted a second time and sentenced to die. Fountain maintained his innocence throughout the period he spent on death row, and when his execution date approached, he insisted that he be executed wearing a purple robe and crown, to analogize his innocence to that of Jesus Christ.[37] In a last desperate attempt to retain control over his fate, Fountain tried first to hang himself and then to slash his own throat two hours before his execution. His suicide attempt was thwarted by prison guards.[38] Fountain was hung on a gallows in the Talbot County jail on July 23, 1920, the jail where Frederick Douglass had been held eighty-three years earlier as a runaway slave. On the night before his execution, a crowd of three hundred to four hundred men again assembled on the courthouse lawn and made their way to the jail. Some used a log as a battering ram and unsuccessfully attempted to storm the jail to get at Fountain.[39] By the day of his execution, Fountain had no property to leave to his absent wife. Eugene O'Dunne had not taken the Fountain case on a pro bono basis. Fountain's farm and other possessions had been sold to pay O'Dunne's fees and expenses.[40]

TRUTH, REPARATION, AND PUBLIC SPACES

The story of Isaiah Fountain's desperate escape from the Talbot County mob that gathered to lynch him on Easter Monday 1919 never made it into the divisive discussion on whether a statue of Frederick Douglass should be

placed on the courthouse lawn. Instead, after two heated public hearings, the County Council divided 3–2 in favor of the monument, and plans are moving apace to have the Douglass monument built and unveiled by 2007. Resentment, expressed covertly and passive aggressively—in controversies over the height of the monument (not to be taller than the Talbot Boys monument), over the selection of the artist, and over other details associated with the project—lingers. But the public debate has ended. And yet, what have the residents of Talbot learned from this debate about their pretty little town? Are the tensions that exploded over the Douglass monument merely lying dormant until a future effort to honor African American history is proposed for a prominent location in the town?

Public spaces have yet to become part of the formal reparation or racial-reconciliation conversation for black Americans. It is a curious omission because in towns all over the United States, and not only on the Eastern Shore, public spaces were used to enforce the message of white supremacy, often violently. Lynching, particularly in the twentieth century, was most often an explicitly public act. The examples of this practice are legion: the hanging of four black men from the Moore's Ford Bridge in Georgia in 1946;[41] the lynching of Anthony Crawford outside the fairgrounds in Abbeville, South Carolina, in 1916 after he was first paraded through town with a noose about his neck;[42] the hanging of three black men from a downtown lamppost in Duluth, Minnesota, in 1920;[43] the burning of Will Turner in a city park in Helena, Arkansas, in 1921;[44] the hanging of a black janitor by University of Missouri students from a bridge in Columbia, Missouri, in 1923;[45] the hanging of a black man from an oak tree in the public square in Bastrop, Louisiana, in 1934.[46] All of these incidents—and they represent only a fraction of the thousands of other such lynchings—are examples of the intensely *public* nature of lynching. Even those who did not attend lynchings, as most blacks in a community most assuredly did not, were compelled to witness the results. Lynch mobs routinely dragged the bodies of their victims to the black section of town to terrorize the black community. The gruesome and mutilated black body was meant to convey a message, and the public display of that body in a public space, sometimes for hours or days, was the means by which whites let blacks and other whites know that white supremacy would be protected in that jurisdiction at all costs. White Southern writer Ellen Douglas, in her

revealing memoir, *Truth: Four Stories I Am Finally Old Enough to Tell*, describes her mother's horrified reaction when in 1922, driving for the first time into Hope, Arkansas, where the family would live for many years, they saw the body of a lynching victim hanging from the town's water tower.[47]

Compelling communities to recognize the public nature of lynching serves a vital purpose. Communities, in order to forthrightly address the reality of lynching, must be prepared to recognize and grapple with the role of ordinary members of the community in supporting or condoning this act of racial terrorism. Most lynchings were not secret murders carried out in the woods without the knowledge of white community members. The central location of lynching and the role of hundreds or thousands of white spectators undermine the desperate effort of some to recast lynching as a covert act carried out by a few bad apples, ruffians, or out-of-towners. Instead, the responsibility for lynching sits squarely at the door of every member of a community who watched, who listened, but who failed to interfere, who refused to identify the lynchers, or who participated in the conspiracy of silence in the weeks, months, and years following a lynching. As historian W. Fitzhugh Brundage has remarked, although "some spectators may have been shocked and disgusted by the violence they witnessed ... it was their visible, explicit, public act of participation and not their ambiguous, private sentiment that bound the lynchers both socially and morally."[48]

Several years ago, on a trip to the Sachsenhausen concentration camp in Germany, this point was powerfully brought home. Sachsenhausen is located in what later became East Berlin but which is now just a district on the far eastern edge of the city. After the fall of the Berlin Wall, it became possible for Westerners to visit this former concentration camp where political prisoners, homosexuals, Jews, and other identified enemies of the Nazi state were imprisoned and killed. The S-Bahn stop leaves visitors about one and a half miles from the camp, and the walk there on a warm day seems long and dusty. I remember remarking to my husband, "In America, some enterprising person would have come up with a minibus or van service to the camp." But the longer I walked, the more it became clear why in America our insight often falls victim to eager entrepreneurship. The route to Sachsenhausen meandered through a residential district, on

sidewalks past ordinary homes, quaint pubs, and buildings that had clearly survived the war. And it occurred to me: this is the same walk that the prisoners took once they left the train. They too had to walk through the town to make it to the camp. The prisoners must have been tired, bedraggled, and frightened. But more important, they must have been *seen,* seen by the townspeople, the shop owners, and the local merchants. Seen by mothers with their babies, boys on bicycles, and old men smoking pipes on the street. Herein lay the value of the long, dusty, meandering walk to the camp. Perhaps on purpose, or perhaps just because a population as used to walking as Germans are would find it impractical to run a bus line for such a relatively short distance, those in charge of opening the Sachsenhausen camp as a museum and commemorative space had compelled visitors to absorb its most important lesson before ever setting foot on the grounds of the camp. Sachsenhausen did not exist as a secret. Perhaps residents of the town did not know all of the details of what took place in the camp, but they knew enough, and they did very little. Likewise, acknowledging lynching in key public spaces in towns throughout the United States would compel townspeople and visitors to reflect on the complicity of ordinary people in systematic violence.

Some communities where public lynchings occurred have begun to organize projects designed to create commemorative public spaces as part of a reconciliation process. In Duluth, Minnesota, after months of marches and community conversations, a group of black activists in 2002, supported by hundreds of community members, created a commemorative monument at the site where three young men were lynched before a crowd of ten thousand whites in 1920.[49] Even in Maryland's state capital of Annapolis, a plaque was commissioned for the place on St. John's College where Henry Davis was lynched in 1906. Also in Annapolis, a plaque was erected over the gravestone of John Snowden, a black man executed in 1919—a few months before the trial of Isaiah Fountain—for the murder of a pregnant white woman. In the black community, the belief in Snowden's innocence has passed down through several generations. His death was widely regarded as a "legal lynching," and members of Snowden's family had sought a gubernatorial pardon for nearly twenty years. After reviewing the records of the case, in 2000 Governor Parris Glendening granted a posthumous pardon to Snowden.[50]

Perhaps the most intriguing and comprehensive approach to integrating public spaces into reconciliation efforts is taking place in South Africa. Government-sponsored Legacy Projects are designed to address in a deliberate, thoughtful, and systematic way Afrikaners' historical use of public monuments to reinforce the white supremacist message of apartheid. The projects, which are developed by the Department of Arts, Culture, Science and Technology, are designed to erect monuments and set aside commemorative public spaces that "acknowledge the previously neglected, marginalized and distorted South African heritage."[51]

In 1998, for example, black South African leaders participated in a ceremony in Durban for the inauguration of a new monument to commemorate the loss of three thousand Zulus in the Battle of Blood River, one of the fiercest military battles between black and white colonial powers in the history of that nation. To commemorate their victory at the 1838 battle, Afrikaners erected a bronze monument on the site where the battle took place in KwaZulu-Natal. For Zulus, the Battle of Blood River is no less significant. It represents the important role of the fiercely proud and unrelenting Zulu nation in attempting to hold on to its freedom and land in nineteenth-century South Africa. Then-deputy president Mbeki explained that the two monuments would "help reconcile conflicting historical interpretations" of the Battle of Blood River by "commemorating the participation of both sides."

The Legacy Projects also recognize that in a country with such a long and intense history of racial oppression, there is very little consensus among blacks and whites about historical events. An event such as Blood River, regarded by Afrikaners as a great victory for pioneering Afrikaner forces, is for Zulus the ground upon which the blood of three thousand of their tribesmen was shed in the defense of their land. Because oppressed and marginalized racial or ethnic groups are often ignored in the official history written by those in power, Legacy Projects can help give voice to the untold stories of the oppressed.

A particularly compelling example of the potential of these projects to help blacks share in the official record of history is the planned recognition of black African casualties of the Boer War, regarded by Afrikaners as a seminal event in their battle to defeat British colonial forces for control of the territory of South Africa. The particularly vicious fighting that oc-

curred during this turn-of-the-century war has defined the relationship and traditional enmity between Dutch-descended Afrikaners and British-descended white South Africans. But as many blacks point out, twenty thousand black African lives were lost during the Boer War. For the Afrikaners and the British, the loss of African life in the Boer War has been a mere footnote to what they regard as the larger and more significant conflict between the two battling white colonial forces.

Legacy Projects and other reconciliation efforts directed at creating a shared ownership of historically significant public spaces are not without controversy. When few Afrikaners attended the ceremony unveiling the new monument at Blood River, both Thabo Mbeki, then the deputy president, and Chief Mangosuthu Buthelezi of the Zulu tribe expressed disappointment at the lost opportunity for reconciliation. Rather than viewing Legacy Projects as sharing historically significant public spaces, many Afrikaners regard these efforts as a "takeover" or displacement of white history. Likewise, many whites in Talbot County viewed the plans to create a memorial to Frederick Douglass as a threat to their conception of the courthouse lawn as a "sacred" space set aside to honor white war heroes.

A Legacy Project focused on recognizing the history of lynching in public spaces on the Eastern Shore would powerfully reclaim the public space for the shared history of blacks and whites in the region, and it would represent a commitment to honestly facing the region's complex and disturbing racial history. Such an effort would be particularly compelling on the Shore because lynch mobs claimed so many of the region's public spaces during the first third of the twentieth century. Yet that history is masked by white ownership of the terms in which public space is defined and developed.

In the fall of 2003, the *Baltimore Sun,* in its Sunday travel section, published an article that described a number of Eastern Shore towns as new real estate venues.[52] The towns listed, Trappe, Princess Anne, Berlin, Crisfield, and Denton, were each in turn seeking to build their population base by developing new homes and commercial property. Given the proximity of these communities to Ocean City and the popularity of waterfront retirement or second homes, the plans to jump-start the economy of these towns seemed promising indeed. Yet the reputation of these towns may sound a caution to some blacks in the state who might otherwise take

advantage of these lucrative new housing opportunities. Princess Anne and Crisfield were the sites of well-known lynchings in 1933 and 1907. Trappe, the town where little Bertha Simpson was attacked by a man she claimed was Isaiah Fountain, was also the town from which masked men came to Salisbury to lynch Garfield King in 1894. Berlin is the town where marauding mobs went looking for Euel Lee after the murder of the Green K. Davis family in 1930, and where in the days and weeks after those murders blacks were warned to stay off the street as bands of whites beat, chased, and assaulted black men and women.[53] And Princess Anne, of course, is the site of the George Armwood lynching, where perhaps two thousand spectators watched and many cheered the public mutilation, hanging, and burning of a black man in 1933. None of these towns bears in its public space tangible evidence that it has acknowledged and come to terms with its racially violent history. The assumption of most whites is that this history is dead, unimportant, and irrelevant to the modern reality of life on the Eastern Shore. But in fact a town's reputation as a racially violent one often lives on in the lore shared among blacks. Despite the many trips I've made to the Shore, blacks in other parts of the state routinely warn me to be particularly careful once I cross the Bay Bridge.

Decisions about where to look for a new home, where to stop late at night for gas or for a bite to eat, and where to send one's children to school are often informed by a town's historic reputation for racial violence passed down from generation to generation. The details may become lost in the telling, but the sentiment is often surprisingly intense and unchanged. But in avoiding these towns and communities, blacks may unwittingly cede to whites continued control and ownership of what may be a desirable real estate opportunity, the best schools, or just the closest gas station. And whites, unwittingly as well, may perpetuate a kind of segregation that is carried with a town's historical reputation for racial violence.

A white community's willingness to forthrightly address its history of racial violence through public plaques or markers recognizing the significance of these events is vital. More important is an opportunity for blacks to play an equal role in defining and developing the community's public spaces in ways that honestly reflect the town's history. A project that sought to reimagine public space in the context of racial reconciliation and reparation would ask: how can the community—black and white—deliber-

ately break historical patterns of white supremacist ownership of public space? The Talbot County "courthouse incident" presented just such an opportunity. Most residents on both sides of the Douglass monument issue accepted unthinkingly the "sacred" nature of the courthouse square. Little thought was given and certainly no discussion was aired about how the community might come to a consensus about which public spaces are sacred and what the content of those sacred spaces should be. Had they done so, the attempt to lynch Isaiah Fountain and others on the courthouse lawn would have been an important and relevant part of this discussion. The Douglass monument might have been explicitly recognized as a form of reparation for the violent historical use by whites of the grounds surrounding the courthouse. The fact that Douglass became a passionate antilynching activist in the last two years of his life, publishing several pamphlets on the subject and supporting the work of antilynching journalist Ida B. Wells-Barnett, would have positioned the proposed monument honoring him as an essential way to confront the county's shameful history of racial terrorism, rather than as a kind of racial balance to the Talbot Boys monument. In fact, the legitimacy of the Talbot Boys monument on that space might itself have become the subject of discussion and review.

Much of white supremacy is about the semiotics of place. In fact, "staying in one's place" was, for decades, a kind of mannerly way of describing the crude requirements of white supremacy. During the Jim Crow era, the "place" for blacks was understood to be below, behind, after, and under that of whites. Efforts by blacks to vote, to attend white schools, to use facilities designated for whites by law or custom, were all deemed to violate the boundaries of racial place. But the connection between white supremacy and "place" is not just metaphysical. In the contemporary physical landscape, continued white control of the terms in which public space in multiracial communities is defined and developed is a vestige of white supremacist notions of racial place. When some veterans in Talbot County suggested that the Douglass statue be erected on the lawn of the Easton Library located *behind* the courthouse, or alternatively at the library in the neighboring town of St. Michaels, located ironically on *Back* Street, blacks demanded a different place: front and center, in the heart of the charming little town of Easton, outside the town's most important building. The bat-

tle for the Douglass statue has been won, although "Fred's Army" is still faced with the daunting task of raising hundreds of thousands of dollars for the development of the project. But there is a larger battle, a more ambitious one, which has yet to be engaged in in the town of Easton and in towns throughout this country. That battle is really a challenge—a challenge to each community to do the hard work of healing the public space, of repairing the wounds of white supremacy that still stand open and untreated on the prettiest street in town.

Nowhere is the challenge of confronting the past greatest than in those Shore counties where lynching occurred. The last of the Shore lynchings —indeed, the last recorded lynchings in Maryland—were of Matthew Williams and George Armwood, who were lynched in 1931 and 1933 in Wicomic and Somerset Counties, respectively. I now turn to those lynchings and to the effect of the lynchings on the communities where they occurred. The brutality of the lynchings, the terror visited on the black community, and the widespread complicity of hundreds and perhaps thousands of whites in condoning this form of racial terrorism illustrate the enormous but compelling need for a truth and reconciliation process.

The courthouse lawn outside the Talbot County Courthouse, where some residents seek to erect a statue of Frederick Douglass. The monument to the Talbot Boys is in the foreground.

CHAPTER 4

"THE LAW IN ALL ITS MAJESTY"

It is only since the Supreme Court's majestic 1954 opinion in *Brown v. Board of Education* that the courts in the United States have taken on the reputation as defenders of racial minorities. The *Brown* decision established and cemented for the U.S. justice system an international reputation for courage, impartiality, and a commitment to equality. Given the significance of that decision in ending legalized racial apartheid, that reputation is, in part, deserved. The language of the opinion, and its recognition of how racial discrimination corrodes our society, articulate the highest aspirations of a nation struggling with the long legacy of slavery.

But *Brown*, in fact, is an anomaly. In the context of the Supreme Court's long history, the *Brown* decision is a bump in the road along a path marked more consistently by the Court's embrace and reaffirmation of inequality and exclusion based on race, wealth, and gender. In fact only a year after deciding that "separate but equal has no place in public education," the Court decided *Brown II*, considered by many to be a nadir in the Court's civil rights jurisprudence. In the 1955 *Brown* decision the Court turned over the implementation of school desegregation to local judges, who were to act not immediately but with "all deliberate speed." *Brown II* set off a twenty-five-year pattern of resistance to the core directive of *Brown* throughout the United States and sounded the death knell for the promise of integrated education in our nation's schools.

In fact, the Supreme Court's tentative and ultimately status quo–reinforcing decision in *Brown II* was more consistent with its history than the soaring courage of *Brown I*. The Supreme Court and the federal courts below it were not institutions of social or political change. Before the

1950s, the legal system, more often than not, reinforced and perpetuated society's gross class and race inequities. State court systems were notoriously reactionary, especially in the South. Judges on southern courts in most states have been elected since before the Civil War, and the jurisprudence of those judges, particularly during the first half of the twentieth century, often reflected the prejudices of the voters who put the judges in office.

The criminal justice system, in particular, played a critical role in subordinating and marginalizing blacks in southern states. Blacks were regularly excluded from serving on juries in the South, especially in cases where a black defendant was alleged to have committed a violent crime against a white victim. Where blacks served as witnesses, their word was not regarded as more credible than that of an opposing white witness. Jim Crow was the custom in courthouses, with different bathrooms and water fountains for blacks and whites. Different sides of the courtroom were reserved for whites and blacks. Black witnesses were often disrespected in the courtroom, under the indifferent eye of judges. When Martha Miller, who owned the boarding house where Euel Lee lived, testified at his trial in 1932, she was repeatedly addressed by the prosecutor as "Aunt Martha."

Black lawyers in the 1930s and 1940s fought hard and valiantly for black criminal defendants in a system in which black lawyers received little respect from judges, jurors, and prosecutors, and little or no remuneration from their struggling clients. Most southern jurisdictions had no black lawyers. In high-profile interracial criminal cases, black lawyers from the big cities or from the North might be prevailed upon to represent a black criminal defendant. In other cases, white lawyers, often with Communist or Socialist Party affiliations, represented black criminal defendants in an effort to expose the racism and inequality they regarded as inherent to the capitalist system. The case of seventeen black young men taken from a train in Alabama and arrested for raping two white women—the infamous Scottsboro boys case—became a symbol of the effort by white and black lawyers to fight against the excesses of the southern criminal justice system.

There is no record of any white person ever having been convicted of murder for lynching a black person—not in the thousands of instances of white-on-black lynchings in thirty-four states. This is both a damning

and a revealing statistic. It reflects across regions and over decades a colossal and unbroken culture of legal complicity in violent white supremacy. It reveals that thousands of individuals who served in the legal system—from police officers to judges to juries—participated in concerted action to subvert the rule of law and to further the cause of white supremacy. The long-term consequence of this history is the deep suspicion with which many blacks regard the legal system today. Blacks have an almost encoded memory of racial injustice in the criminal justice system—a memory passed down in families and communities. Contemporary racial miscarriages of justices—from the acquittal of the police officers who beat black motorist Rodney King in Los Angeles in 1991 to the death of African immigrant Amadou Diallo, who was shot by New York City police officers forty-one times as he attempted to produce his identification in 1999—serve to reinforce for blacks a preexisting and well-documented history of racial miscarriages of justice. When in 1993 blacks were shown on television applauding the acquittal of black former football star O.J. Simpson for the murder of his white ex-wife and her companion, many whites understood for the first time the skepticism and intense distrust with which many blacks regard the criminal justice system. What even fewer whites understood was the historical context within which blacks have developed this cynicism about one of our democracy's bedrock institutions. Lynching, and the historical complicity or indifference of legal institutions to lynching, is a critical part of this history.

The response of the legal community on the Eastern Shore to the lynchings and near lynchings of the 1930s provides an almost textbook example of the persistent and shameful collusion between and among white legal actors to insulate white criminals from legal punishment for crimes against blacks and to deny black criminal defendants the most basic due process. This history is grim. Very few whites involved in these cases demonstrated adherence to the rule of law that they had sworn to uphold as peace officers, lawyers, jurors, and judges. Some whites—few, but some, demonstrated enormous courage and integrity. They refused to yield to a racial code that compelled their silence, their inaction, or their acquiescence. It is important to recognize and explore at some length the actions of those whites who did act courageously to uphold the rule of law because their conduct undermines efforts to explain away the disgraceful conduct

of those who complied with injustice as compelled by the time and circumstances in which they lived. Whites—especially those in positions of power and authority, such as judges and prosecutors—had the choice to act honorably or dishonorably. Too few chose the former. And the consequences of this choice continue to shape black and white responses to, and involvement with, the legal system in communities throughout the United States.

LOCAL POLICE OFFICERS

The Williams Lynching

The first and therefore most important legal actors to respond to real or imagined black criminality were police officers. Their action or inaction set the stage for how a black man suspected of committing a crime against a white person would be treated. Often police officers determined whether a black man would face a trial or a lynch mob. When Matthew Williams was dragged from his hospital bed on the night of December 4, 1931, a large crowd had gathered on the streets of Salisbury. Groups had been gathering and talking about an impending lynching since the late afternoon. Law student Charles Hearne was advised by an older acquaintance to return downtown later in the evening to witness what was clearly a planned lynching. Hearne later returned to town as suggested and observed the lynching from the balcony of the Wicomico Hotel. This means that rather than the purely "spontaneous" event that Chief of Police Holland described to reporters later, the lynching of Matthew Williams was openly discussed and planned soon after word got out that Williams had shot and killed D.J. Elliot.[1]

By the evening, crowds were milling about outside the newspaper offices of the *Salisbury Times,* located across the street from Peninsula Hospital, where Williams lay, seriously injured. Police officers, including Chief of Police Holland, were stationed at the hospital, guarding Williams. This suggests, yet again, that the officer suspected that mob violence was a possibility. The police had every reason to take this threat of mob violence seriously. Mobs had searched four counties in an effort to lynch Euel Lee in October and had traveled through four counties to find George Davis in November. The leader of the mob looking for George

Davis displayed a rope over his arm. Two sheriffs helped save Davis's life that night. Sheriff John T. Vickers of Kent County had Davis immediately sent to Easton in Talbot County upon his arrest. When lynch mobs arrived at the Chestertown jail, Sheriff Vickers could honestly assure the crowd that he was not holding Davis. Leaders of the crowd, including the brother of Mrs. Lusby, went through the jail to confirm that Davis was not there. Undeterred, the mob went on to Talbot County. Sheriff George Carroll hurriedly had Davis taken to Baltimore City for safekeeping. A half hour after Davis's departure for Baltimore, a lynch mob arrived at the Talbot County jail, leaving only when Sheriff Carroll permitted leaders to conduct a search of the jail to ensure that Davis was not there. In both the Lee and the Davis case the mob was dispersed only after police officers and prison wardens permitted members of the mob to search the jails at Salisbury, Chestertown, and Easton. By December every police officer in the county knew that both Lee and Davis were alive only by virtue of their presence in the Baltimore City jail, where they had been taken for safekeeping. Even Lee's white attorney, Bernard Ades, had nearly been lynched in broad daylight in Snow Hill, Worcester County. Ades had been saved by the intervention of the local judge and sheriff, who spirited Ades away from the crowd and locked him in the town jail for his own safety. Thus the stage was set for a mob effort to lynch Williams.

Although Wicomico County chief of police N. H. Holland spoke with the men who came to the hospital to abduct Matthew Williams, followed the crowd that dragged Williams to the courthouse, saw Williams hung, and stepped in after the hanging to secure the body before the crowd took the corpse away to be burned, he was unable to identify any of the lynchers. Holland contended that after Williams was hung from a tree in front of the courthouse, "there was no use for me to try to arrest anybody because I was outnumbered too much."[2] And yet there was no evidence that Holland had anything to fear from the crowd. In fact, Holland himself stated that he could not "remember whether any of them threatened me, because everything happened so fast."[3]

The Armwood Lynching

The failure of local police to protect George Armwood from lynching in 1933 was even more egregious. After all, Armwood had been taken to

safety in Baltimore City immediately after his arrest. The order to bring him back was, in effect, a death sentence. Why was he brought back to the Shore? Responsibility for the order itself rests with the local state's attorney, John Robins, and the local sheriff, Luther Daugherty. No doubt under intense local pressure, they ordered that Armwood be arraigned in Princess Anne the next day, on October 18. No explanation for the urgency of this court appearance was ever offered. Sheriff Daugherty could easily have anticipated that Armwood would be in grave danger if he was returned to the Shore so soon after his arrest for the attack on Mary Denston. Daugherty could not claim, as the police had in Salisbury two years earlier, to be surprised by the determination of the mob. The Williams lynching only two years earlier had demonstrated all too clearly that Eastern Shore mobs were prepared to act murderously against black men accused of violent crimes against whites.

Moreover, throughout the afternoon of October 18 there were open discussions among townspeople about lynching Armwood. Whites standing in cliques along Williams Street and outside the Washington Hotel on Somerset Street talked excitedly and openly about the possibility of a lynching. According to one report, a young relative of Denston, the woman who had allegedly been attacked by George Armwood, was a fixture on Williams Street throughout the day, encouraging and exhorting townspeople to lynch Armwood.[4] Denston's son William, a motorcycle cop from Pennsylvania, was downtown and on hand to, as he put it later, see "every part of [the lynching]."[5] One out-of-town visitor, who later witnessed the lynching, swore in a statement that throughout the afternoon he heard discussion among groups of men who talked of lynching Armwood.[6] One such group milled about outside the jail. At least one mob member was heard to say, "Let's give him the same dose we gave Williams."[7] That same witness said that at least three police officers were present during these discussions. Across the bay, the evening edition of the October 18 *Baltimore Post* went on the newsstands at 6:00 p.m. The headline was eight columns wide and read, "Mobs Are Forming on the Eastern Shore and There Is Grave Danger That a Lynching Will Occur Tonight." As the associate editor of the *Post* testified before a congressional committee the following year, the story for the evening edition was written well before 6:00 p.m., which meant that by late afternoon even newsmen in

Baltimore had received word of the mob gathering in Princess Anne.[8] Yet local police insisted that they were unable to confirm that there were serious plans afoot to lynch Armwood.

Certainly by 1:00 p.m. Governor Ritchie in Annapolis had heard rumors of unrest in Princess Anne and talk of lynching Armwood. The governor began making a series of urgent calls to the local judge, Robert Duer, to State's Attorney John Robins, and to the state police, seeking reassurance that Armwood would be safe. Yet Sheriff Daugherty, who might have had credibility and influence with members of the gathering mob, and who in any case was charged with ensuring public safety, spent the afternoon and early evening at his home in the nearby town of Crisfield. By the time Daugherty arrived at the jail at around 7:00 p.m., the mob had already formed and solidified with the intent to storm the jail and lynch Armwood.

Accounts of lynchings reveal that mob action was averted only when local law enforcement removed a potential victim from the jurisdiction or conveyed persuasively to the members of the lynch mob that they would be shot if they proceeded with the lynching. Local lawmen were well known to members of the community and to the lynchers. A handful of cases from the South reveal that local law enforcement officers who were determined to forestall lynching in their jurisdictions used a variety of tactics to stave off mobs, ranging from humor to threats of violence. To stop a mob in Spartanburg County, South Carolina, from entering the jail yard where a black prisoner was being kept, for example, Sheriff W. J. White reportedly announced, "Gentlemen, I hate to do it, but so help me God, I am going to kill the first man that enters that gate."[9] By contrast, the presence of state officers or National Guardsmen in Princess Anne appeared to exacerbate the lynchers' sense that their murderous acts constituted a defense of their local pride and autonomy. As a result, the inaction or passivity of local law enforcement ensured that a lynching would be completed.

Unfortunately, zealous protection of black prisoners was all too rare. In many cases, local law enforcement officers appeared to be complicit with lynchers. Simply leaving the jail untended where a black defendant accused of committing a violent crime against a white person was being held could pretty well ensure that a mob would have its way. In one South Carolina lynching, the chief of police reportedly "told [the lynchers] to wait

until dark and we would find the jail unlocked."[10] In another lynching in Indiana, police officers "stood on the river bank and watched the men and boys about the fire for an hour or more." Officers rarely used their pistols to stop a lynch mob, in one Texas case expressing their fear that "somebody would be hurt."[11]

And in the aftermath of lynching, local police officers, like the townspeople who attended the lynching, proved unable and unwilling to identify lynchers. When George Armwood was lynched, three local police officers were present, along with a contingent of state police. The mob assaulted several of the state police officers. There is no evidence that the local police were injured or threatened. Deputy Police Chief Norman Dryden, the jailer at the Princess Anne who handed over the keys to the jail to mobbers, testified that he "didn't see anybody [he] knew." His exhortation to the crowd took the form of a plea that they "not do anything to [Armwood] *in the jail*."[12] Dryden also took the unusual step of removing his gun "when the thing got bad" because he "didn't want any shooting."[13] Charles Dryden, another deputy sheriff, testified that he "didn't see anything." Apparently without shame, Charles Dryden testified that when the mob burst into the jail, he ran to a back room inside the jail "to get out of sight."[14] The crowd of spectators at the postlynching inquest greeted this admission with a roar of laughter.

Sheriff Luther Daugherty, who stood at the door of the jail as lynchers pounded the door with a battering ram and assaulted state police officers, claimed later that he recognized "not a one of them."[15] Sheriff Daugherty's actions during the attack on the Princess Anne jail are at first glance difficult to figure out. No witness reported that the sheriff vigorously defended the jail. In fact, most accounts suggest that it was the state rather than the local police officers who attempted to defend the jail against the mob's attack. Daugherty was outside the jail at 7:00 p.m. as the mob began its attack. Although more than a dozen state police officers were hurt trying to repel the mob, Daugherty was not. When the mob broke through the front gate, Daugherty entered the jail as well and reportedly tried to dissuade the mob from taking Armwood.

But a close reading of news accounts suggests that once the crowd had grabbed Armwood, Daugherty busied himself with safeguarding the life of John Richardson, the white man who was also held in the jail as an ac-

cessory after the fact to the Denston attack. According to Norman Dryden, once the crowd grabbed a terrified and cowering George Armwood from his cell and dragged him down the stairs to the front door of the jail, Dryden began thinking about the safety of Richardson. "The mob had gone off to the left of the jail so I took Richardson and gave him to Sheriff Daugherty," Dryden explained. As the mob cut off Armwood's ear and dragged him to a tree to hang him, Daugherty, according to Dryden, "put [Richardson] in an automobile and went away with him toward Crisfield, where Daugherty lives."[16]

And Daugherty's misconduct did not end once the lynching was completed. Later on he showed little will to investigate the lynching or to identify perpetrators. At about 11:00 a.m. the next day, Baltimore detectives who had arrived to assist in the investigation recalled that when they asked Daugherty where Armwood's body was located, he replied "he had no idea."[17] Yet townspeople and schoolchildren had been ogling Armwood's charred body as it lay in the lumberyard all morning. Despite the fact that he had faced the mob outside the jail and later inside had admonished the mob not to take Armwood, Daugherty insisted that he did not recognize any of the members of the mob. More important, Daugherty either deliberately or carelessly compromised his own investigation into the lynching by publicly declaring the day after the lynching that the mob members "were all strangers . . . from Worcester County and maybe from down below the line in Virginia."[18] Thus any townsperson who might have been inclined to identify one of his or her neighbors as a member of the lynch mob would have had to be prepared to challenge the sheriff's certainty that the lynchers were all strangers.

The investigative skills of local police in all of these cases also left something to be desired. Strong-arm interrogation of suspects undermined the credibility of confessions obtained from black defendants. After Euel Lee was arrested by local police in October 1931, he was clearly beaten. Pictures of Lee emerging from the police station and from a police car with his face swollen and bandaged stoked suspicion among African Americans that his "confession" had been beaten out of him. Although Lee later provided a detailed confession under legal questioning by Baltimore police detectives, the photograph of him after the "third degree" at the hands of local police remained, in the minds of many blacks, as proof of his innocence, or at least proof that one could not trust the police account of the case. Thus de-

spite Lee's convincing confession, some blacks to this day continue to regard Lee as an innocent man who was the victim of a "legal lynching."

Sheriff Daugherty's "investigation" appears not to have yielded even a quarter of the information about the lynching developed by intrepid *Afro-American* reporters. His investigation probably followed the same assumption as the investigation into Matthew Williams's lynching—police officers either failed to recognize that the black community had important and valuable information that would aid the investigation or knew that it did and deliberately ignored it. Matthew Williams's aunt and cousin were never interviewed or called as witnesses in the lynching probe, for example, although they had important information about Williams's state of mind when he left their home to go to the box factory on the afternoon of the Elliot murder. Their knowledge of Williams's temperament, his habits, and, most important, his considerable savings should all have been regarded as relevant to the grand jury's inquiry. But Williams's family was never questioned or called to appear before the jury probing the lynching. Instead, Williams's sister Olivia, who lived in Philadelphia and was likely to have little information relevant to the lynching, was called.

Contributing to the manipulation of potential witnesses in the Armwood case was the coroner, Edgar Jones, in charge of convening a jury to conduct an inquest into the lynching. The day after the lynching, he issued a statement condemning the lynching but insisting that "the instigators of the crime were not from Princess Anne." Moreover, Coroner Jones stated that "the Euel Lee case [was] responsible. If it had not been for the excitement that followed the Lee case this lynching would not have occurred."[19] Not surprisingly, the members of the coroner's jury failed to identify any perpetrators whose names could be furnished to a grand jury for indictment. Later, after Attorney General Lane conducted his investigation of the lynching, which formed the basis of the governor's decision to send in the National Guard to arrest four of the lynching suspects, Jones served as the lawyer for Irving Adkins, one of the suspected lynchers.[20]

STATE POLICE OFFICERS

Unlike the local constabulary, state police officers showed, in this period, greater adherence to ethical police practices than their local counterparts. Although their record was not unblemished, the state police in several in-

stances performed admirably and even saved the lives (only temporarily, in some cases) of black criminal defendants. When Euel Lee was arrested, state police officers immediately surmised that Lee would not be safe on the Shore. The gruesome murder of the Green K. Davis family was shocking and deeply threatening to whites. Lee was a hired man, a laborer who performed occasional farmwork in exchange for subsistence wages. Whites were familiar with this type of person. Many whites employed blacks as laborers of some kind or another to help with farmwork or domestic chores. Lee's insurrection and explosion of violence against his employers, therefore, would have had personal resonance for Green K. Davis's neighbors. In their minds, the response to Lee's actions would have to be swift and of such a nature as to discourage other black laborers from contemplating violent reprisals against their white employers. State officers understood this reality and acted swiftly to thwart what they rightfully predicted would be a vigilante response to the Davis murders.

Likewise, Lt. Ruxton Ridgely of the Maryland state police transported George Armwood to Baltimore City after his arrest, over the objections of the local police and prosecutor. The photograph of Ridgely taking a solemn-faced but strong and able-bodied Armwood to Baltimore City that appeared in the *Sun* papers stands in stark contrast to that of Armwood's naked, burned, and defaced body on the cover of the *Afro-American* days later. And on the night of the lynching Ridgely and his deputies suffered injuries in their attempt to fend off the crowd. Thirteen officers were reportedly hurt, several of them seriously enough to warrant hospitalization, although at least one witness suggested that the injuries the state officers sustained were exaggerated.

Several of these officers courageously identified members of the lynch mob to Attorney General Preston Lane, who investigated the case. These identifications became the basis of the arrest warrants issued by Lane and the governor's order to the National Guard to arrest the men in November 1933. When he testified in favor of the Costigan-Wagner antilynching bill before Congress in 1934, Lane publicly read aloud the affidavits of the police officers who identified the lynchers as men they knew from Princess Anne and other nearby communities.

PROSECUTORS

In Maryland local prosecutors, known as state's attorneys, are charged with prosecuting crimes within the countywide district. Today and in the early 1930s state's attorneys ran for office countywide. This fact, no doubt, had an unfortunate effect on how state's attorneys conducted themselves when blacks were accused of violent crimes against whites.

The Euel Lee Case

When Euel Lee was accused of killing the Green Davis family, the local prosecutor was Godfrey Childs. Without question, if crusading International Labor Defense attorney Bernard Ades had not injected himself into the Lee case, Childs would have had an easy time of trying and convicting the elderly black laborer. Lee had no alibi, and Green K. Davis had told neighbors that he'd been threatened by Lee in the days preceding the murder. Jewelry and money from the Davis family were found in Lee's room at the boarding house where he lived in Ocean City. But Ades put Childs to his paces, and the experienced prosecutor struggled to prevail against Ades, who had never tried a criminal case before. Ades put race squarely at the center of Lee's defense. His successful petition for a change of venue off the Eastern Shore for the trial, and his success in having Lee's first conviction thrown out, proved that in many ways race was at the center of the Lee case. Moreover, Ades's defense of Lee demonstrated the structural conditions in the legal system that made it nearly impossible, without extraordinary representation, for a black defendant to receive a fair trial in an interracial murder case.

Like other prosecutors in Maryland, Childs accepted the embedded racism in the criminal justice system as a given; indeed, he may not even have recognized that it existed. And so, although Childs was aware that on the night of Lee's arrest roving mobs had visited several county jails looking for the black suspect, Childs resisted Ades's request for a change of venue. Even after Ades was set upon by a mob in broad daylight in Snow Hill, where the trial would have taken place, Childs continued to argue that Lee could get a fair trial before a jury made up of Shore residents.

The circumstances of the Green Davis family murder were reason enough to seek a change of venue. The slaying of the entire family shocked the small community. Once the murder was reported, crowds of local men

gathered outside the family house and took up a vigil for several days until experienced Baltimore City detectives arrived to investigate the crime scene. Many potential jurors would have known the Davises. Their children would have gone to school with the two teenaged Davis girls. These conditions alone suggested that it would have been hard to impanel an impartial jury to decide the fate of the person accused of this hideous crime. That Lee was black, and the almost immediate formation of lynch mobs to execute him before the trial, certainly provided enough reason to believe that Lee could not get a fair trial on the Shore, and in fact that Lee would be lucky to get a trial at all if he returned to the Shore.

State's Attorney Childs tacitly acknowledged that Lee's life would be in danger on the Shore, even as he insisted that the trial remain on the Shore. Childs proposed moving the trial to Cambridge, Maryland, sixty miles west of Worcester, but still "on the Shore," a kind of political compromise designed to mollify townspeople. In Cambridge, Childs suggested, Lee would be housed on a boat on the Choptank River, surrounded by armed guards. These extraordinary measures were necessitated only by the fact that Lee's life was in danger on the Shore. But Childs offered this "solution" as though the mere necessity of these extraordinary precautions was not in itself evidence supporting Ades's motion for a change of venue. Fortunately, the lynching of Matthew Williams on December 4 convinced the Court of Appeals that in the atmosphere of mob violence, Lee could not get a fair trial on the Eastern Shore. The case was moved to Towson, Maryland, on the Western Shore, where Lee was ultimately tried and convicted. Childs later cooperated in an investigation of Ades launched by a local judge, who enlisted the assistance of the FBI in an attempt to have Ades disbarred.

The George Davis Case

The conduct of prosecutors in the George Davis case was perhaps even more disturbing. The venue of George Davis's trial for attempted criminal assault in January 1932 was also moved from the lower Eastern Shore. Davis was tried in Cecil County, rather than in Kent County, where the attempted assault against Elizabeth Lusby had reportedly taken place. State's Attorney Kent Collins sought the death penalty for Davis—even though Davis was not charged with having assaulted Lusby. In fact,

Lusby's testimony strongly suggested that Davis had never even touched her. He entered her room and frightened her, asking her to intervene with her husband to rehire Davis on the farm. But none of the lurid details of attempted rape that would normally have accompanied a report on a case like this in the local press were present here. Lusby was permitted to testify outside the hearing of the public and outside the presence of the defendant (a violation of Davis's constitutional right to confront witnesses against him), so newspapers could only speculate on the nature of the "attempted assault." Although Davis was convicted, two facts suggest that the state's attorney overcharged the case and overreached on his sentencing recommendation. First, one of the judges in the Davis case dissented from the conviction. This, in and of itself, was extraordinary and suggests that the prosecution's case was weak. Moreover, the judges who voted to convict Davis refused to impose the death penalty and instead sentenced Davis to serve sixteen years in prison.[21]

In addition to his overzealous prosecution of Davis, State's Attorney Collins's reprehensible conduct included his refusal to investigate and, if possible, prosecute those who had tried to lynch Davis. Identifying the members of the mob would have posed no problem. The mob leaders spoke with the jailers at Easton, and three leaders of the mob were taken through the jail to prove that Davis was not there. One of the three leaders openly displayed a rope. In a letter to a local paper, a resident of Kennedyville, where the assault had taken place, described with pride the mob as "represent[ing] some of the best that the Kennedyville section could produce. They were there for the purpose of administering justice for a wrong deed that had been committed on a lad they knew and respected."[22] The writer signed his name as William Collins. There was no indication that the writer had any relation to the state's attorney.

Nevertheless, State's Attorney Collins determined that there was no action he could take against the mob. Collins insisted, "The mob didn't do anything. They didn't commit any act of violence. I have no intention of trying to prosecute them." One wonders whether the charge leveled against George Davis—attempted criminal assault—would not have been an equally appropriate charge for the leaders of the lynch mob that traveled over several counties with the express purpose of lynching a man who by law was innocent until proven guilty.

The Matthew Williams Lynching

Wicomico state's attorney Levin C. Bailey impaneled the grand jury to investigate the Matthew Williams lynching and to determine whether Williams had killed his employer as a result of Communist influence or instigation. The latter charge was ridiculous, purely a rumor. But charging the jury to investigate this wild claim provided a symmetry to the proceedings that enabled Shoremen to focus on the outrage of the Elliot murder rather than just on the unspeakable act of the Williams lynching. After hearing 128 witnesses, the grand jury reported that it had found "absolutely no evidence that can remotely connect anyone with the instigation or perpetration of murder" of Matthew Williams.[23] The grand jury also found no evidence of Communist influence in the murder of Daniel J. Elliot.

The two black eyewitnesses, who were patients in the Negro Ward at Peninsula Hospital and on the list of witnesses to be called before the grand jury, never had an opportunity to testify. Jacob Conquest died before the hearing, and Rufus Jernigan disappeared.[24] The state's attorney launched no investigation into the death of Conquest or the disappearance of Jernigan.

That Judge Joseph Bailey, the uncle of State's Attorney Bailey, presided over and charged the grand jury seemed not to have raised any question of impropriety in the probe of the Williams lynching. On the Shore in the 1930s, where everyone knew the names of the leading white lawyer families—the Duers, the Baileys, the Adkinses, the Keatings—it was not uncommon for these kinds of connections to exist.

The George Armwood Lynching

Somerset County state's attorney John Robins came from a long line of prominent male family members. As the prosecutor for Somerset County, he was well regarded, as was his father before him. At every turn, Robins thwarted efforts to prevent the lynching of Armwood and later to prosecute those responsible for the lynching. It was Robins who on October 17 ordered Armwood's presence at an arraignment in Somerset County—the order that compelled police to return Armwood from the safety of the Baltimore City jail to Princess Anne. Armwood would be dead within eighteen hours of Robins's decision. Robins spent the night of Armwood's lynching at his home in Crisfield, despite reported rumors that mobs

planned to kill Armwood that evening. Most important, Robins engaged in a pitched battle with Attorney General Preston Lane over how the investigation into the lynching would be conducted. At every turn, Robins gave lip service to his intention to fully investigate the lynching. But at the same time he publicly articulated his presumption that no one could be prosecuted for the lynching, signaling to potential witnesses that identifying the lynchers would be in vain. When the governor ordered the arrest of four of the lynchers, leading to a street confrontation between townspeople in Salisbury and the National Guard, Robins made clear to his constituency his intention to bring the accused lynchers back under local control. The lynchers arrived back in Princess Anne like conquering heroes, hailed by excited cries from a crowd of supporters. The habeas corpus proceeding was presided over by Judge Pattison and Judge Duer.

Later, when Attorney General Lane and the governor revealed publicly that Robins, at the time of the hearing, had in his possession the sworn affidavits of state police officers who identified the lynchers more than a week before they were arrested by the National Guard, it became clear that Robins had no will to produce an indictment. The affidavits constituted the kind of strong and persuasive evidence that in the hands of a willing and skilled prosecutor could not help but produce an indictment. For example, one state officer provided the following identification of Rusty Heath, a Princess Anne resident who was a former jailer at the Salisbury jail: "I positively identify 'Rusty' Heath as being in the crowd in front of the jail on the night of the lynching. I have known 'Rusty' Heath for 15 years. I first saw him at the intersection of the Deals Island Road and the road in front of the jail."[25] Yet another officer corroborated this identification, saying, "I can positively identify 'Rusty' Heath. I first saw him about 7:15pm [*sic*] at the intersection of Deals Island road and the jail road. He was the leader of the first mob (about 100 men). I grabbed him and pushed him back. The second time he was standing by the tree where Armwood was being hung."[26]

Several state officers identified William Hearn, a Salisbury truck driver, as one of the leaders of the mob. One officer "saw him directly in front of the jail, just before the battering rams came up. He was a leader. He shouted 'Let's go get him.' He came up to the door and attempted to shove us off the steps. He is very large shouldered, 6 feet 2 inches tall, 180

pounds, light or almost white hair, 28 years old, slouch hat (gray), blue coat and pants."[27] This testimony was also corroborated by several officers, one of whom said that Hearn was "in front of the jail before the main rush. This time he kept shouting, 'Let's go—come on,' just before the mob rushed. Then he ran to the jail steps, followed by the mob."[28]

Yet Robins made no effort to impanel an impartial jury (which could not have been obtained in Princess Anne) or to obtain an indictment based on this evidence. When asked whether, once the suspects in the lynching were identified, he would convene a grand jury on which black jurors would serve, Robins replied testily, "It hasn't anything to do with the case. Armwood is dead."[29]

It was only when Attorney General Lane testified before a subcommittee of the Senate Judiciary Committee on the Costigan-Wagner anti-lynching bill in 1934 that the full scope of John Robins's negligence was laid bare. Attorney General Lane released the affidavits from the state police officers identifying the lynchers, as well as the correspondence between Lane and Robins, which had grown increasingly acrimonious in the weeks after the Armwood lynching, as Robins refused to take action against the alleged lynchers. In one of the most astonishing exchanges, Robins, in a letter to Lane, explained forcefully his decision not to seek the arrest of the suspected lynchers. He first explained his belief that the proper legal procedure was to impanel a grand jury to seek indictments of the men before arresting them. Lane had urged Robins to arrest the men based on the sworn statements of the state police officers. Robins, the county prosecutor, dismissed the sworn identification of the lynchers pro-vided by the state officers, writing to Lane:

> Has it never occurred to you that the testimony you furnished me is from men who were battling against a mob in the nighttime, probably under the stress of great excitement, turmoil, and confusion. Has it occurred to you that under such circumstances there may easily be a case of "mistaken identity." There were some people there that night, the sheriff tells me, who were unknown to him, and who instead of inciting people to lynch, were urging them to desist. Is it not possible, even probable, that the State troopers in fighting with their backs to the wall might have mistaken those who were attempting to

> restrain the mob as being those who were inciting the mob? . . . Is it possible that the witnesses confused these well-intentioned people with others not so well intentioned . . . ?[30]

This communiqué ended the correspondence between Lane and Robins. Lane chose not to answer the letter; in a letter to Judge Pattison, the chief judge of the Circuit, he stated, "It seem[ed] hardly necessary for me to comment upon the right of the sheriff or any other peace officer . . . to make arrests without a warrant when he has reasonable ground to suspect that a felony has been committed. In this case a felony has been actually committed."[31] With regard to Robins's theory that the officers might have confused lynch mob leaders with resisters, Lane remarked, "Mr. Robins' duty is that of a prosecuting officer." Lane found it therefore "unnecessary for the State's attorney to raise the defensive question of mistaken identity." "If arrested," Lane reminded the court, "I assume that each of the accused persons will be ably defended."[32]

When Governor Ritchie finally had the men arrested by the National Guard, Robins was no more helpful. The four indeed were ably defended. Their counsel sought a hearing on habeas corpus, questioning the detention of the men before a judge in Somerset County. The four men were returned from the jail with the support and assistance of Harry Martin, the warden of the Baltimore City jail, who'd permitted the men to stay in unlocked cells. Warden Martin said later that he "thought of [the four men] more as guests than as prisoners."[33] He personally escorted the prisoners back to Princess Anne. Taking only an unarmed aide with him, Martin and the prisoners ate lunch together on the ferry. Martin was cheered by the Princess Anne crowd after it was learned that the prisoners had been treated so well. At the habeas hearing before Judge Pattison and Judge Duer, Robins offered no evidence to support the arrest of the men, even though he was in possession of copies of the affidavit testimony from the state troopers. With no evidence offered by the prosecution, the men were released to a cheering Princess Anne crowd.[34]

At the grand jury hearing convened in January 1934, forty-two witnesses were called. The grand jury was able to hear and dispense with the case in one day. Although the very state troopers who'd identified leaders of the lynch mob by affidavit were called, no "true bill" was issued, and no

indictments were handed down for anyone associated with the lynching.[35] The grand jury issued its report to Judge Duer, and the Armwood lynching case was over. The Armwood lynching may be the only one in the history of the United States in which nearly a dozen lynchers were identified based on the sworn affidavits of police officers, and in which four lynchers were arrested by the National Guard, and yet still no indictments were issued. And so the nine men identified by state police officers as leaders of the lynch mob lived out their lives, several in Princess Anne, for years thereafter, suspected by blacks and whites of being the men who lynched George Armwood and known, more importantly, as a symbol of the legal system's shameful alliance with white supremacy.

JUDGES

The lynching cases revealed a great deal about the state of the judiciary in Maryland in the early 1930s. The cases involved not just state judges, and not just judges on the Eastern Shore, but ultimately included judges from the federal bench, from the Maryland Court of Appeals, and from throughout the state. What emerges is a picture of legal minds both great and small, of judges courageous and reactionary, and of the critical leadership role judges play in fostering or undermining respect for and adherence to the rule of law.

A Fair Hearing on the Eastern Shore?

The judges to first rule on the Euel Lee case did not set the bar for judicial conduct very high. The principal issue before the judges of the First Judicial Circuit in November 1931 was whether to grant a change of venue sought by Lee's lawyer, Bernard Ades. Arguing that Lee could not get an impartial trial on the Shore, Ades sought to have the trial moved to Baltimore City. The First Judicial Circuit judges—Robert F. Duer of Somerset County, Joseph Bailey of Wicomico County, and John Pattison of Dorchester County—were all Eastern Shoremen. They rejected the defense argument that Lee, housed in the Baltimore jail after mobs gathered in Worcester County, could not receive a fair trial on the Shore. They concurred with the state's attorney's recommendation that the case be moved to Cambridge, Maryland, in Dorchester County, where Lee would be kept on a boat on the Choptank River during the course of the trial, guarded by

state troopers and police officers. Bernard Ades appealed the decision. By the time the case reached the Court of Appeals, Matthew Williams had been lynched in Salisbury, confirming that not only would it be unlikely that Lee could appear before an impartial jury on the Shore but also unlikely that he would survive a trial there.

Even without the Williams lynching, the decision denying a change of venue from the Eastern Shore was indefensible. Lynch mobs had begun looking for Lee once word got out that he'd been arrested for the murder of the Green Davis family. A menacing crowd had surrounded Lee's lawyer, Bernard Ades, in Snow Hill. Lynch mobs had visited four Shore counties searching for George Davis in November. Nevertheless, Judges Duer, Pattison, and Bailey refused to move the case off the Shore. That the state's attorney envisioned housing Lee on a boat in the Cambridge harbor protected by armed guards should on its own have put paid to the notion that Lee's life was not in danger if he remained on the Shore for trial. But Eastern Shoremen and Shore papers clamored for having the Lee trial remain local. In the heated climate of hurled insults between Baltimore writers such as H. L. Mencken and various Shore newspapers, the question of a change of venue came to be more about the "honor of the Shore" than about whether a black defendant accused of the quadruple murder of a white family and chased from the Shore by lynch mobs could get a fair trial. The First Circuit judges, in what they must have regarded as the defense of the Shore's honor, issued a decision that simply could not withstand appellate scrutiny, especially after Matthew Williams was lynched.

The Court of Appeals' review of the case ultimately resulted in the change of venue that Ades had sought. It should be pointed out that technically, the Court of Appeals did not reverse the venue decision of the First Circuit judges. In fact, the Court of Appeals determined that it was without jurisdiction to consider whether the First Judicial Circuit's decision to keep the case on the Shore was legally sound.[36] The matter of venue, the court ruled, was one that could be appealed only after the case had gone to trial. Moreover, the Court of Appeals, even if it had jurisdiction to hear the matter, could not consider evidence related to whether the lynching of Williams supported the petition for a change of venue because that evidence had not been first presented to the Circuit Court. But the Court of Appeals predicted what would likely happen if Lee were tried and con-

victed on the Eastern Shore. A conviction of Lee by a jury impaneled on the Eastern Shore, the court warned, would probably result in a reversal on the grounds that Lee's constitutional right to appear before an impartial tribunal was violated. This kind of discussion in a judicial opinion is known to lawyers as *dicta*—a part of the court's decision that does not have the force of law and has no precedential value. But appellate courts sometimes use dicta to signal to a lower court how it is likely to respond to a particular decision should the matter come again before the court. The judges of the Court of Appeals put the First Judicial Circuit on notice that if they did not move the trial off the Shore, any conviction of Lee would be voided on appeal.

With no other option, the First Circuit judges decided on remand to move the Lee case off the Shore to Towson, in Baltimore County. The First Circuit judges were not humbled by the Court of Appeals' decision, however. In their order moving the case to Towson, the judges took pains to express their disagreement with the Court of Appeals' suggestion that the First Circuit had not perhaps fully examined and considered the threat of mob violence and the bearing of this violence on the question of whether Lee could receive a fair trial on the Shore. The judges reasserted their certainty that Lee could get a fair trail on the Shore—a position that was patently indefensible. Nevertheless, chastened by the apparent willingness of the Court of Appeals to overturn a conviction of Lee unless the trial was moved off the Eastern Shore, the First Circuit judges issued the order moving the case to Towson.

The initial decision by the local judges to deny the request for a change of venue in the Lee case is an important moment in the events that gripped the Shore over the next two years. The "us versus them" mentality that came to animate many of the worst decisions of Shore people during this period would have been undermined at the very outset if local Shore judges had been willing to acknowledge that mob action, rather than outside interference, undermined the likelihood that local courts would be able to hear the Lee case. What white Shore residents needed in December 1931 was for one of their own, for local leadership, to denounce mob rule. Instead, what they got was a decision by Judges Duer, Pattison, and Bailey that endorsed the fantasy that Lee could obtain a trial before an impartial jury on the Eastern Shore. That their decision would clearly have put Lee's

life in danger—not just from execution after a guilty verdict but, more than likely, at the end of a lynch mob's rope—makes the decision that much more indefensible.

Courage and Failures in Euel Lee v. State

Two of the great judicial decisions that the Maryland Court of Appeals issued in the 1930s were in *Euel Lee v. State.* The first of these important decisions was discussed earlier, when the Court of Appeals left the First Judicial Circuit judges no choice but to move the venue of the Euel Lee case off the Eastern Shore. That decision probably saved Lee's life—at least until his execution in 1933.

But the even more important and far-reaching decision by the Court of Appeals in *Lee v. State* came in the court's decision to reverse Lee's first conviction for the murder of Green K. Davis after his trial in Towson. The conviction was reversed on the grounds that blacks had been impermissibly excluded from jury service in Baltimore County, where the trial was held. The decision was great because it affirmed for courts throughout the state that excluding blacks from juries—a practice outlawed by the U.S. Supreme Court in a case involving a black defendant from West Virginia in 1888, but still very much in practice in many states in the 1930s—would be regarded by the Maryland Court of Appeals as a basis for throwing out an otherwise valid conviction. In other words, counties where blacks were excluded from juries would, if convictions were challenged by black criminal defendants, find themselves in the position of having to retry defendants, a costly practice.

It was impressive that the Court of Appeals was willing to make an example of this important constitutional principle in the high-profile and highly charged Lee case. Certainly the court could have wanted nothing more than to have the Lee case put to rest, with Lee convicted and executed. The decision to overturn the conviction would not win the judges on the Court of Appeals friends among the Eastern Shore constituency, nor in other white communities throughout the state where the exclusion of blacks from jury service was the norm. In deciding *Lee v. State,* the Maryland Court of Appeals judges revealed the strength of their commitment to the rule of the law.

Yet another interesting twist to *Lee v. State* is that it did not involve dis-

criminatory practices in jury selection on the Eastern Shore. Lee's case had been moved to Towson, in Baltimore County. The county was strictly segregated, and certainly more rural than urban, but it was also regarded as more progressive than the counties on the Shore. Yet Bernard Ades's skillful lawyering revealed that in Baltimore County, blacks had not served on juries in at least one generation. Frank I. Duncan, the judge in charge of selecting juries in the county, had, in the previous twenty-five years, never appointed a black man to serve on a Baltimore County jury.

Judge Duncan was a Baltimore County man through and through. He'd lived there his entire life until his death at the age of eighty-eight. Although he was admitted to practice law in 1885, Duncan's legal career was initially sidelined in favor of a career in journalism. He bought a local newspaper, the *Baltimore County Herald*, which had been a Republican paper.[37] After changing the name of the paper to the *Baltimore County Democrat*, Duncan edited the paper until the turn of the century. As a lawyer, he was elected the state's attorneys of Baltimore County, served as counsel to the Board of County Commissioners, and even served a term in the legislature. Duncan held a number of public positions in the county, serving as a member and leader of several fraternal organizations and on the boards of public hospitals and schools. This immense and varied experience might have made Judge Duncan uniquely qualified to fill up the jury lists with the names of upstanding citizens in the county, except that Duncan, like everyone else in Baltimore County, lived in a segregated world.

Judge Duncan's method for selecting jurors was largely dependent on his contacts in the community. He testified that he "first procured the names of good men from suggestions" made by his outside contacts.[38] These would probably have been from among the fraternal organizations he was a member of, or the boards he served on. None of these was likely to put Duncan in touch with an appreciable number of black men. Duncan's own subjective view of prospective jurors appears to have been paramount in the selection process. Seemingly unaware that his jury selection practices might be constitutionally deficient, Duncan forthrightly explained his jury selection method to the court:

> A witness may impress me on the stand favorably; I may meet someone at some social gathering or church gathering; I make a memo-

> randum of him. I go to the tax books and the registered voters list to see if he is there, and the next step is to inquire from people in the community in which he lives, whether he is a good man, whether he pays his debts, is honest, sober, and if he is thought well of in his community. These are the only qualifications I am looking for, and that is the way the jury is selected.[39]

Using this method over the course of twenty-six years, Judge Duncan never selected a black person for jury service in Baltimore County.

The Court of Appeals struck down Lee's conviction and ordered a new trial. Jury selection in the county would have to include the names of blacks in the jury venire. Careful to absolve Judge Duncan of any *intent* to exclude blacks from jury service, the Court of Appeals found, however, that "the mere failure to select persons of the colored race over that period of time raised what *appears* to be an irrebuttable presumption of such an intent or purpose on the part of the judge."[40] The decision was a landmark. It reaffirmed in Maryland the continuing significance of the 1888 Supreme Court's decision, in *Strauder v. West Virginia,* that the exclusion of blacks from jury service violates the Sixth and Fourteenth Amendment rights of black defendants. And the Court of Appeals' decision exposed the practice of racial exclusion from jury service—not on the so-called backward Eastern Shore but in Baltimore County.

That Lee was entitled to a new trial meant that his execution—the event that many Shore residents regarded as the only outcome that could provide justice for the murdered Green K. Davis family—would not happen in 1932. This "delay" in what Shore residents were certain would be Lee's execution (there seemed to be no question that he would be convicted and given the death penalty) was a principal reason that Shore residents cited for why the Matthew Williams and George Armwood lynchings occurred. Lynching was swift justice. No Shore newspaper or commentator of the period publicly conceded that discrimination in the state's own criminal justice system had "delayed" Lee's execution. Instead, the reversal of Lee's conviction was described contemptuously as evidence of Bernard Ades's Communist-backed manipulation of legal technicalities. Adherence to the Constitution was merely a legal technicality when a black man was accused of an interracial crime.

The Court of Appeals' opinion authored by Judge Carroll Bond courageously and forthrightly swam against the tide of white public sentiment on the Shore (and no doubt other parts of the state, where jury selection practices were probably similar to that used by Judge Duncan), berated (albeit gently) the jury selection practice of an old and well-liked Baltimore County judge, and insisted that even a black criminal defendant accused of a heinous crime against a white family was entitled to the full protection of the Constitution.

Majority Doubts and a Dissenting Voice in the George Davis Case

Although George Davis was sentenced to sixteen years for attempted assault—a sentence impossible to imagine today—the judges who imposed this term on the twenty-three-year-old black farm laborer stand out as virtual profiles in courage compared with some of their judicial colleagues on other courts during this period. Davis's trial had been moved sixty-six miles north, from Kent County to Cecil County. The change of venue was granted on December 7, 1931, only days after the lynching of Matthew Williams. Lynch mobs had visited four Eastern Shore jails looking for Davis after his arrest.

Stephen Collins, the state's attorney for Kent County, had made the extraordinary decision to seek the death penalty against Davis, even though the crimes he was charged with, attempted criminal assault, involved no actual physical harm to the victim. Given the heated emotions on the Shore in late 1931 had Davis's case been tried before a jury, he might well have been executed for frightening Mrs. Lusby in her bedroom on an early November morning in 1931. Elkton was only thirty miles north of Chestertown, and although not part of the Lower Shore, it was still technically part of the Eastern Shore. But Davis's appointed counsel, in addition to seeking a change of venue, had the presence of mind to request a trial before a judicial panel rather than a jury. This decision most likely saved Davis's life.

Davis's case was heard before Chief Judge William Adkins, Judge Lewin Wickes, and Judge Thomas J. Keating. Two judges on the three-member panel, Adkins and Wickes, found Davis guilty. But rather than accept the death sentence recommended by the state's attorney, they chose to sentence Davis to sixteen years in the state penitentiary. But by far the

most courageous of the three-judge panel was Keating, who took the extraordinary step of dissenting from the conviction. The refusal of two of the three judges on the panel to accept the state attorney's recommendation that Davis receive the death penalty for attempted assault, coupled with Judge Keating's dissent from the conviction, strongly suggests that all of the judges on the panel had doubts about Davis's guilt.

Chief Judge Adkins was nearing the end of an illustrious career on the bench. He'd first been appointed to the bench in 1906 and became chief judge of the Second Judicial Circuit in 1919. When Davis was tried in Elkton, Adkins was just three years shy of retirement from the bench.[41] His leadership, foresight, and good judgment had avoided the lynching of a black defendant named Isaiah Fountain in 1919, in a case involving the rape of a young white girl. Fountain escaped and fled from custody after a two-thousand-member lynch mob had assembled on the courthouse lawn in Easton, Talbot County, on the first day of his trial. Adkins managed to undermine efforts to lynch Fountain, deftly handling the local population and posting a $5,000 reward for Fountain's safe return. Fountain was found and returned to Talbot County unharmed. The case of Isaiah Fountain and Judge Adkins's participation are discussed at greater length in chapter 1.

Judge Lewin Wickes was a lifelong resident of Chestertown in Kent County who'd been appointed to the bench in 1919—the same year Adkins had been elevated to chief of the Second Circuit. By the time of the Davis trial, Wickes was seventy-five years old and would have only a year left to live. Judge Thomas J. Keating was sixty years old and had been serving on the Second Judicial Circuit for ten years when he issued his extraordinary dissent in the Davis case. Keating came from a prominent political family in Queen Annes County.[42]

In January 1932 the Shore was deep in the throes of postlynching self-protection. The battle of words between Shore newspapers and H. L. Mencken was in full swing. Paranoia ran rampant as well, with white leaders fearing a black uprising and white extremists insisting that Communists were instigating blacks to interracial violence. Armed guards surrounded the courthouse in Elkton where George Davis's trial was being held.

Davis's appointed counsels were two well-known and well-regarded

white attorneys. Bernard Ades had sought to represent Davis, using Euel Lee as the conduit for messages in the Baltimore City jail. Ades attempted to obtain permission from Davis to enter an appearance on his behalf. Warden Harry Martin at the Baltimore jail refused to give Ades permission to meet with Davis. But Davis's attorneys, R. Hynson Rogers and J. H. C. Legg, were well-known Eastern Shore lawyers who took seriously their representation of Davis. Legg was a former state senator. Without question, they did not raise the kinds of issues that Ades would probably have raised. But they first sought a trial before a judicial panel, rather than a jury. Accounts of the trial suggest that the legal team took great pains to ingratiate itself with the judges, commending the bench on its fairness to their client.[43] The two defense lawyers acquiesced to the request to have Lusby testify in private, outside the presence of the public and outside the presence of George Davis, the defendant. It seems unlikely that Ades would have permitted Davis to waive his constitutional right to confront the main witness against him. Davis's attorneys also appear to have conceded that the attack had occurred but suggested that Davis was intoxicated and thus not in control of himself.[44] This again seems an unlikely course for the defense had Ades been Davis's counsel.

But the evidence against Davis was weak, and the judges must have known it. Although Lusby testified that Davis had tried to rape her, the judges, in explaining their sentencing decision, speculated that perhaps Davis had no intention of harming Lusby when he entered her room to ask her for assistance in getting his job back. Instead, Judge Adkins suggested, Davis may have entered her room for legitimate purposes but under the influence of alcohol become aroused by seeing Lusby in her nightdress.[45] Given the fact that Davis did not testify in his own behalf, the court's speculation about Davis's motives was unusual. The implication of the court's imaginary reenactment—the details for which there appeared to be no support in the record—was that the judges did not believe Davis had attempted to assault the young farm wife. To cast doubt on Davis's motive challenged Lusby's testimony, at least implicitly.

The majority went on to note that Davis should be credited for coming back after the "attack," "call[ing Lusby] politely by name, and [seeking] to apologize."[46] The court then found that "[t]o inflict the death penalty in such a case . . . would not be in the interest of public policy . . . [and would] place the accused beyond redemption."

Davis was taken to the Maryland Penitentiary under heavy guard. The last record for Davis at the penitentiary shows that he was transferred to the prison farm at Hagerstown in 1942.

Judge Robert Duer and the Lynching of George Armwood

Perhaps no judge emerged from the lynching cases as roundly denounced as Judge Robert F. Duer. Born and raised in Princess Anne, Duer was a rare Republican judge on the largely Democratic Eastern Shore. In fact, when he was first elected to the bench in 1917, Duer became the first Republican judge to serve on the Eastern Shore since the Civil War. When his fifteen-year term was complete, he was appointed by Governor Albert Ritchie to serve until the next general election in 1934.[47] Duer's ignominious role in the Eastern Shore lynching cases began with his participation in the first significant decision of the First Judicial Circuit, the decision denying the motion to move the venue of the Euel Lee trial from the Eastern Shore. Nevertheless, it was Duer's conduct in the George Armwood case that was the most egregious. Duer reportedly endorsed the order returning Armwood from the Baltimore City jail to Princess Anne, although he claimed not to remember whether he was asked to endorse it.[48] And it was Duer who failed to warn the governor that mob lawlessness appeared imminent on the night of October 18. Of his failure to apprise the governor that conditions were unsafe for Armwood, Duer said after the lynching that he had been "badly mistaken" in believing that the crowds he addressed were harmless.[49] To be fair, Duer's failure to realize that the mob that had formed outside the jail in the evening of the 18th were not just curiosity seekers, but were in fact intent on violence, was a "mistake" made by Sheriff Luther Daugherty and Chief of Police Charles Dryden as well. But unlike the two law enforcement officers, Duer had addressed the crowd. His impotence before them and their cavalier dismissal of his pleas to disperse were most certainly evidence that this crowd was one with a fixed intention and with little regard for the trappings of the law.

Despite his close connection to the case, including his address to the lynch mob, Duer presided over or participated in subsequent hearings and closed-door judicial meetings related to the lynching. Along with Judge Pattison, Duer participated in the habeas corpus hearing when the four lynching suspects arrested by the National Guard were returned to Princess Anne after one night in the Baltimore City jail. The four men

The Law In All Its Majesty

The Baltimore Sun *ran a political cartoon titled "The Law in All Its Majesty," showing a beleaguered and impotent Judge Duer after the Armwood lynching.*

were released in a hearing that lasted only a few minutes. Outraged that the four suspected lynchers had been taken back to Princess Anne from the Baltimore jail just a day after the melee with the National Guard, Governor Ritchie called Judges Duer and Pattison before the hearing to urge a postponement until Attorney General Lane could provide the state witnesses who had identified the suspects. Neither the governor nor Attorney General Lane had been informed by State's Attorney Robins that the men would be arraigned. This action was surely an embarrassment to the gov-

ernor, who had expended tremendous political capital in calling out the Guard to make the arrests. Governor Ritchie made clear to Judge Duer that State's Attorney Robins had in his possession the evidence that supported the arrest of the men and had been in possession of the information for more than a week. Governor Ritchie suggested that Judge Duer compel State's Attorney Robins to produce the evidence that had been furnished to him by the attorney general—including the affidavits of state police officers positively identifying the suspects as active members of the lynch mob. Alternatively, the governor noted that it was within Judge Duer's authority to postpone the habeas hearing until Attorney General Lane could come forward and present the evidence to the court himself. Governor Ritchie sent a telegram to the judges reiterating his views. But Judges Duer and Pattison pressed ahead with the hearing despite this communication from the governor and the unwillingness of State's Attorney Robins to use the evidence furnished to him by the attorney general. The four suspected lynchers were released based on a lack of evidence supporting their arrest and detention. The crowd of several thousand townspeople (and, as no doubt Judge Duer was aware, voters) that packed the courtroom broke out in cheers. Governor Ritchie publicly concluded that Attorney General Lane had not been apprised of the hearing or given an opportunity to present evidence for the simple reason "that the Attorney-General's witnesses were not wanted and the Attorney-General was not either."[50]

Judge Duer was a witness in the grand jury hearing into the lynching, in which, after receiving the testimony of forty-two witnesses, the grand jury found no true bill—Maryland's way of saying no cause for indictment—against anyone associated with the lynching. Oddly enough, the grand jury made its report for the January term to Duer, who thanked the jury and discharged them on January 25, 1934. The grand jury did report an indictment against Sam Johnson, a black man accused of killing a white woman in Somerset County on New Year's Eve. In a repeat of the now-familiar pattern, Johnson had been removed to Baltimore for safekeeping. Duer announced that it would be unnecessary to bring Johnson back to Princess Anne immediately for arraignment.[51]

Duer lost his reelection bid the next year, but his colleagues provided a balm to his pride by selecting him as chair of the Somerset County Bar

Association. He went into practice thereafter with his son, E. McMaster Duer, and with Charles Hearne, who as a law student had observed the lynching of Matthew Williams from the balcony of the Wicomico Hotel in 1931. The firm of Duer, Hearne, Duer was located in Salisbury at the intersection of Main and Division Streets—across the street from the courthouse, just yards from where Matthew Williams was lynched.