

# “MLK 50: WHERE DO WE GO FROM HERE?”<sup>1</sup>: TEACHING THE MEMPHIS CIVIL RIGHTS MOVEMENT THROUGH A THERAPEUTIC JURISPRUDENCE LENS

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*We walk on sacred and honorable ground.*

## ABSTRACT

As the nation pauses to commemorate the 50th anniversary of the assassination of Dr. Martin Luther King, Jr. on April 4, 1968, in Memphis, Tennessee, it is imperative that we study the epic civil rights history of Memphis which preceded this dreadful event, especially in the legal academy. Therapeutic Jurisprudence (TJ), with its focus on laws, legal processes, and legal actors, and the extent to which they can be therapeutic or antitherapeutic, is a fitting academic vantage point. The TJ repertoire of principles and techniques and the “genius loci,” a spirit of time and place which comes from the field of historic preservation, are teaching rubrics with which to assist law students to reflect upon the tightrope which Dr. King walked in 1968 Memphis and to prepare them for modern day civil rights challenges. Dr. King’s soul remains in Memphis. According to law professor John Nivala, “[T]he places where we work and live have a spirit which enlivens our present by reminding us of our past and anticipating our future.” The places where law students walk and study have a past and future too,

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1. This is the theme of a symposium that took place April 2–3, 2018, sponsored by the National Civil Rights Museum and the University of Memphis Cecil C. Humphreys School of Law. The symposium commemorates the 50<sup>th</sup> anniversary of the death of Dr. Martin Luther King, Jr. See Symposium, *MLK50 Symposium: Where Do We Go From Here*, <https://perma.cc/P3LU-GWX2>, (last visited January 9, 2018).

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none more venerable than the Downtown Memphis Corridor, where civil rights battles were fought and won, and where Dr. King died.

The University of Memphis Cecil C. Humphreys School of Law occupies a former Federal Courthouse, Customs House, and Post Office. Too little has been written about the civil rights history of this building and the Downtown Memphis Corridor it anchors. Yet precedent-setting desegregation lawsuits were filed here to integrate Memphis State University, the public schools, the libraries, buses, and places of public and private accommodations. The Corridor was the scene of student sit-ins to protest segregation. Criminal prosecutions of civil rights activists took place at the state courthouses. The U.S. Civil Rights Commission held influential hearings here. These historic moments were a prelude to Dr. King's 1968 visits to Memphis that led to his death.

MLK 50 offers a teaching opportunity for all of the nation and especially for students of the law. It is regrettable that Memphis Law, and indeed most law schools, do not offer a civil rights curriculum that includes Memphis civil rights history. The Memphis experience must be taught. I suggest that TJ offers a theoretical framework for such a pedagogical endeavor.

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## INTRODUCTION

This is Memphis, 2018. A monument to Martin Luther King, Jr. once sat in close proximity to the “new” federal courthouse in Memphis,

Tennessee, opened in late 1963.<sup>2</sup> The memorial reads: “The Monumental Movement for the People of Memphis, A Tribute to the Memory of the Late Dr. Martin Luther King, Jr.”<sup>3</sup> Called the “Mountaintop,” the sculpture was moved to a Dr. Martin Luther King, Jr. Reflection Park on March 30, 2018.<sup>4</sup> A new downtown marker notes the site of the 1866 Memphis massacre of black citizens.<sup>5</sup> The Cecil C. Humphreys School of Law at the University of Memphis (Memphis Law) sits within walking distance to these landmarks,<sup>6</sup> a monumental location of the Law Building and its remarkable civil rights history. Before Memphis Law was repurposed as a law school in 2009–10, it served as the Federal Courthouse, Customs House, U.S. Post Office, and the federal trial court for Tennessee’s western counties.<sup>7</sup>

The Law School sits across the street from a bluff once occupied by Chickasaw Indians that, until a few years ago, was a public park called “Confederate Park”<sup>8</sup> and has recently been renamed “Fourth Bluff.”<sup>9</sup> In the park’s center once sat a bronze statue of Confederate general Jefferson Davis surrounded by Civil War cannons.<sup>10</sup> It was removed on December 20, 2017, after the City of Memphis sold the park to a private entity.<sup>11</sup>

A few blocks from the park was the site on Adams Street where Nathan Bedford Forrest once operated a slave market and sold “the best selected assortment of field hands, house servants, and mechanics . . . with

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2. *Big Shift to New Building Facing 1,000 U. S. Employees*, THE COM. APPEAL, Oct. 3, 1963 (reporting an expected move of the Federal District Court judges to the new federal building on Oct. 25, 1963).

3. Monument to Dr. Martin Luther King, Jr., Memphis, Tennessee (verified on personal visit by Brittany Roberts, Research Assistant, on Sept. 24, 2015).

4. Wayne Risher, *‘Mountaintop’ Sculpture Moves in Runup to MLK50*, THE COM. APPEAL, Mar. 31, 2018, at 4A.

5. David Waters, *New Marker Notes 1866 Massacre*, THE COM. APPEAL, May 2, 2016, at 1B (reporting on the erection of a marker to commemorate “one of the most tragic and shameful events in Memphis history.”). The author strives to use a respectful nomenclature. When a cited reference uses Negro or colored, the author retains that term. Similarly, if a cited reference uses black, the author uses that term. When she speaks in her own voice, she uses African American or black.

6. See Map of Downtown Memphis, GOOGLE MAPS, <https://perma.cc/5E55-Y2F2> (last visited Feb. 1, 2016) (showing that the 38103 zip code runs from Carolina Avenue on the south to N. Mud Island Road on the north to N. Pauline St. on the east and the Mississippi River on the west).

7. D. R. Jones, *The New Home of the Cecil. C. Humphreys School of Law*, MEMPHIS LAW PRESS KIT, Jan. 16, 2010, <https://perma.cc/TN6K-FTGZ> (last visited Oct. 13, 2015).

8. HAMPTON SIDES, HELLHOUND ON HIS TRAIL 15 (2010).

9. Chris Herrington, *Confederate Statues, Parks Obscure War-Era History*, THE COM. APPEAL, July 1, 2015, at 1A (opining that the name change was more about blandly deflecting controversy rather than respecting history).

10. Verified on personal visit by author, Aug. 2, 2016.

11. David A. Graham, *Memphis’s Novel Strategy for Tearing Down Confederate Parks*, THE ATLANTIC (Dec. 21, 2017), <https://perma.cc/37QY-FA46>; Emmanuella Grinberg and Nicole Chavez, *Confederate Statues Come Down in Memphis*, CNN (Dec. 21, 2017), <https://perma.cc/EN8X-2XPA>; Jonathan Mattise, *Confederate Statue Removed After Memphis Sells Public Park*, U.S. NEWS (Dec. 21, 2017), <https://perma.cc/75CP-ZJVY>.

fresh supplies of likely Young Negroes.”<sup>12</sup> A plaque erected on the site calls Forrest a businessman and makes no mention of the slave trade. Still today, this plaque faces the Judge D’Army Bailey Civil Courthouse,<sup>13</sup> but a new marker was erected on April 5, 2018, to note the true use of the site as a slave market.<sup>14</sup> About a mile and a half away stood a statue of Nathan Bedford Forrest, in a public park renamed “Health Sciences Park.” It was also removed on December 20, 2017, after the sale of the park to a private non-profit.<sup>15</sup>

The Memphis 38103 zip code (Memphis Law zip code) was in many ways a ground zero in the national civil rights movement.<sup>16</sup> Dr. Martin Luther King, Jr. died here in 1968 as he prepared to lead a peaceful sanitation workers’ march through downtown Memphis.<sup>17</sup> The newly renovated National Civil Rights Museum marks the spot of Dr. King’s murder.<sup>18</sup> Clayborn Temple, the scene of organizing the sanitation workers’ strike, is under renovation, and an “I AM A MAN” sculptural park and memorial plaza was opened there on April 5, 2018.<sup>19</sup> Before that tragic event, however, both federal and state lawsuits tried in downtown Memphis courthouses paved the way for the advancement of civil rights.<sup>20</sup> The U.S. Civil Rights Commission held influential public hearings at the former Federal Courthouse, now the Law School, in 1962.<sup>21</sup>

Apart from the events surrounding Dr. King, surprisingly little appears in the scholarly literature or in the law school curriculum about the

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12. SIDES, *supra* note 8, at 15.

13. Verified on personal visit by author, Jan. 25, 2018. Judge D’Army Bailey, an African American, was largely responsible for the establishment of the National Civil Rights Museum in Memphis. Linda A. Moore, *Movement Memories*, THE COM. APPEAL, Apr. 5, 2014; Janet K. Keeler, *Room 306: A Renewed Nation Civil Rights Museum Soars in Memphis at the Site Where MLK Was Struck Down*, TAMPA BAY TIMES, Oct. 12, 2014.

14. Bill Dries, *MLK Observances Come With Worldwide Involvement, New Appeals*, THE MEMPHIS DAILY NEWS, Apr. 6-12, 2018, at 14.

15. See Graham, *supra* note 11.

16. Map of Downtown Memphis, *supra* note 6.

17. W. J. Michael Cody, *King at the Mountaintop: The Representation of Dr. Martin Luther King, Jr., Memphis, Apr. 3-4, 1968*, 41 U. MEM. L. REV. 701, 701-02 (2011); *Martin Luther King, Jr. and Memphis Sanitation Workers*, NAT’L ARCHIVES, <https://perma.cc/DRJ3-9QEQ> (last visited July 3, 2018).

18. Keeler, *supra* note 13; Moore, *supra* note 13.

19. Cliff Garten Studio, *Memphis Sanitation Workers Strike and Martin Luther King, Jr. Memorialized 50 Years Later*, PR NEWSWIRE (Apr. 4 2018) <https://perma.cc/QJ6Y-YLQB>; Dries, *supra* note 15; see CLAYBORN TEMPLE <https://perma.cc/2FHT-MZLN> (last visited Jan. 23, 2018).

20. Testimony of Russell B. Sugarmon, Jr., Esq., in HEARINGS BEFORE THE UNITED STATES COMMISSION ON CIVIL RIGHTS, 99, 99-113 (hearings held in Memphis, Tenn., June 25-26, 1962) [hereinafter HEARINGS].

21. *Id.* Memphis was the only southern city to be chosen to host the civil rights hearings. Other hearings were held in Phoenix, Newark, Indianapolis, and Washington, D. C. *Report of the United States Commission on Civil Rights*, U.S. COMM. ON C.R., 8 (1963).

time and place that this Downtown Memphis Corridor<sup>22</sup> marks in the legal history of the civil rights movement.<sup>23</sup> Yet the civil rights litigation brought in the federal and state courthouses that Memphis Law students routinely traverse is vast. It encompasses the desegregation of the public schools, public libraries, Memphis State University (now the University of Memphis), the municipal bus system, the zoo, the art museum, the city auditorium, an amusement park, golf courses, playgrounds, and church services at an outdoor acoustical stage called the “Levitt Shell.”<sup>24</sup> The litigation includes downtown lunch counters, as well as airport restaurants.<sup>25</sup> Because the use of sit-ins at these various locations was a strategy accompanying civil litigation, the downtown criminal courts became involved when those who sat-in were arrested.<sup>26</sup>

On the cusp of MLK 50, as I sit as a retired law professor in this historic law school building that faces the former “Confederate Park,” I find myself taking stock of how we think about, teach about, and use the civil rights history we find at our doorstep.<sup>27</sup> The period in Memphis between the early 1950s and late 1960s marked an organized movement of lawyers and others speaking truth to power and seeking changes in the law, just as more recently Black Lives Matter has become a similar movement.<sup>28</sup> It has already been recognized that such movements belong in a law school curriculum, and a variety of teaching methodologies have been suggested,<sup>29</sup> but I offer

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22. The author has coined the phrase, Downtown Memphis Corridor, to describe the 38103 zip code.

23. LAURIE B. GREEN, *BATTLING THE PLANTATION MENTALITY: MEMPHIS AND THE BLACK FREEDOM STRUGGLE* 4 (2007) (citing the paucity of analyses of freedom struggles during the civil rights era). A notable exception is the scholarship of Daniel Kiel. Daniel Kiel, *Exploded Dream: Desegregation in the Memphis City Schools*, 26 *LAW & INEQ.* 261 (2008); Daniel Kiel, *A Memphis Dilemma: A Half-Century of Public Education Reform in Memphis and Shelby County from Desegregation to Consolidation*, 41 *U. MEM. L. REV.* 787 (2011). The Cody essay is another exception. *See supra* note 17. The Benjamin Hooks Institute for Social Change at the University of Memphis, surprisingly, features the civil rights history of Fayette County, but not Shelby County. *Tent City: Stories of Civil Rights in Fayette County, Tennessee*, THE U. OF MEM., available at <https://perma.cc/DP5A-RHAX> (last visited Jan. 9, 2016).

24. Sugarmon, *supra* note 20, at 100–03.

25. Sugarmon, *supra* note 20, at 100–03, 111–12; *see also* G. W. Foster, Jr., Memphis, in *STAFF REPORTS SUBMITTED TO THE UNITED STATES COMM. ON C.R.* 139–40 (1962).

26. Sugarmon, *supra* note 20, at 111.

27. My reflections have been informed by a symposium, *Ferguson and Its Impact on Legal Education*, which focused on the aftermath of the shooting and death of a black man Michael Brown at the gun of a white police officer in Ferguson, Missouri, in 2014. *See* Symposium, *Ferguson and Its Impact on Legal Education*, 65 *J. LEGAL EDUC.* 261 (2015). The symposium addressed teaching opportunities arising from this event. *Id.*

28. Scott L. Cummings, *Teaching Movements*, 65 *J. LEGAL EDUC.* 374, 376–77 (2015).

29. *Cf.*, inter alia, Amna Akbar, *Law’s Exposure: The Movement and the Legal Academy*, 65 *J. LEGAL EDUC.* 352 (2015); Cummings, *supra* note 28; Harold McDougall, *The Rebellious Law Professor: Combining Cause and Reflective Lawyering*, 65 *J. LEGAL EDUC.* 326 (2015). Other teaching opportunities also come from social movements. *See* Maureen Johnson, *Separate But (Un)Equal: Why Institutionalized Anti Racism Is the Answer*

Therapeutic Jurisprudence (TJ) as another appropriate pedagogical framework.<sup>30</sup>

Part I of this essay will describe TJ, its principles and selected methodologies that are relevant to the Memphis civil rights movement. It will incorporate the “genius loci,” a spirit of time and place, into the TJ repertoire. Part II will apply TJ principles broadly and microanalytically to the civil rights movement. It will highlight those aspects of the time and place of the 1950s and 1960s in Memphis that had both therapeutic and antitherapeutic consequences. Part III will hone in microanalytically on Memphis lawsuits and protest activities that particularly involved students in the belief that such a focus should particularly resonate with law students and have a particular fit in a law school curriculum. Part IV will apply selected TJ methodologies to the Memphis civil rights movement to round out a law school curriculum. These are: reframing the past, honoring the heroes, and according procedural justice. Part V, in conclusion, will offer reflections on the lessons that Memphis civil rights history of the 1950s and 1960s offers for current times and places and for today’s law students.

### I. OVERVIEW OF THERAPEUTIC JURISPRUDENCE

TJ in a nutshell is the study of law’s healing potential.<sup>31</sup> It is based on the premise that legal landscapes (legal rules and legal procedures) have either therapeutic or antitherapeutic consequences, and it studies the practices and techniques (legal roles) of judges, lawyers, and other professionals operating in a legal context.<sup>32</sup> Legal rules, procedures, and legal actors are social forces with inevitable if unintended consequences for the mental health and psychological functioning of those they affect,<sup>33</sup> and thus TJ infuses these

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*to the Never-Ending Cycle of Plessy v. Ferguson*, 52 U. RICH. L. REV. 327, 329 (2018); Trina Jones, *Occupying America: Dr. Martin Luther King, Jr., The American Dream, and The Challenge of Socio-Economic Inequality*, 57 VILL. L. REV. 339 (2012) (describing Occupy Wall Street, a challenge to economic inequality in New York City in 2011); and Mary Wood, *Standing Up for Charlottesville*, UVA LAWYER 5 (Fall, 2017) (both commenting upon a violent demonstration in September 2017 in Charlottesville, Virginia by white supremacists).

30. I previously applied TJ to the experience of the Holocaust as a teaching tool. Christina A. Zawisza, *Sprawuj Sie (Do Good): Using the Experience of the Holocaust Rescuers to Teach Public Service Values*, 81 REV. JUR. U.P.R. 1051 (2012).

31. Bruce J. Winick, *Therapeutic Jurisprudence and the Role of Counsel in Litigation*, in DENNIS STOLE, ET. AL., PRACTICING THERAPEUTIC JURISPRUDENCE: LAW AS A HELPING PROFESSION 311 (2000).

32. David B. Wexler, *New Wine in New Bottles: The Need to Sketch a Therapeutic Jurisprudence “Code” of Proposed Criminal Processes and Procedures*, 7 ARIZ. SUMMIT L. REV. 463 (2014) [hereinafter Wexler I].

33. SUSAN DAICOFF, COMPREHENSIVE LAW PRACTICE: LAW AS A HEALING PROFESSION, 81 (2011); David B. Wexler, *Reflections on the Scope of Therapeutic Jurisprudence*, in SUSAN L. BROOKS & ROBERT G. MADDEN, EDs., RELATIONSHIP CENTERED LAWYERING, 20, 27 (2010); Kevin H. Smith, *Essay: Therapeutic Civil Disobedience: A Preliminary Exploration*, 31 U. MEM. L. REV. 99, 106 (2000).

forces with interdisciplinary insights from related fields such as psychology, criminology, and social work.<sup>34</sup> A consequence, then, becomes therapeutic if it is beneficial for the mental or emotional and/or physical health of the parties concerned and antitherapeutic if it is detrimental to the mental, emotional, or physical health of individuals.<sup>35</sup>

What does the TJ approach<sup>36</sup> offer a civil rights curriculum that includes Memphis history? The vast and rich TJ scholarship<sup>37</sup> is growing in popularity, and it is being applied in innovative ways—to see patterns, make connections, and traverse far flung legal doctrinal territory in search of better and more humane ways to structure, interpret and practice law.<sup>38</sup> TJ principles have been applied both microanalytically and macroanalytically.<sup>39</sup> Big picture applications include terrorism,<sup>40</sup> civil disobedience,<sup>41</sup> and the Holocaust.<sup>42</sup> TJ has already been applied microanalytically and macroanalytically to the civil rights movement.<sup>43</sup>

TJ utilizes a variety of analytical techniques and methodologies, one of which is creative problem-solving, an approach which seeks to find transformative solutions to redefine problems, expand resources, and facilitate enhanced relationships among people.<sup>44</sup> Another is reframing, a technique coming from the field of mediation that replaces harmful and judgmental observations or actions with neutral or factual ones in order for one's perceptions of events to shift or change.<sup>45</sup>

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34. Wexler I, *supra* note 32.

35. Smith, *supra* note 33, at 106.

36. See Christina A. Zawisza, *Taking Hold of the Elephant in Child Dependency and Neglect Cases*, 17 ST. THOMAS L. REV. 531 (2005); see also Zawisza, *Sprawuj Sie*, *supra* note 30; Christina A. Zawisza & Adela Beckerman, *Two Heads Are Better Than One: The Case-Based Rationale for Dual Disciplinary Teaching in Child Advocacy Clinics*, 7 FLA. COASTAL L. REV. 631 (2006).

37. Zawisza, *Sprawuj Sie*, *supra* note 30, at 1059 (citing three law review symposia devoted to TJ).

38. *Id.* at 1060 (citing Ellen Waldman, *Therapeutic Jurisprudence: Growing Up and Looking Forward*, 30 T. JEFFERSON L. REV. 345, 349 (2008)).

39. Zawisza, *Sprawuj Sie*, *supra* note 30, at 1061.

40. Edgardo Rotman, *Therapeutic Jurisprudence and Terrorism*, 30 T. JEFFERSON L. REV. 525 (2008).

41. Smith, *supra* note 33.

42. Zawisza, *Sprawuj Sie*, *supra* note 30. Eric Muller has created a program called Fellowships at Auschwitz for the Study of Professional Ethics to use the Holocaust as a teaching tool for law students. Eric L. Muller, *The Fellowships at Auschwitz for the Study of Professional Ethics and the Moral Formation of Lawyers*, 64 J. LEGAL EDUC. 385, 400 (2015).

43. Carol L. Zeiner, *Marching Across the Putative Black/White Race Line: A Convergence of Narratology, History, and Theory*, 33 B. C. J. L. & SOC. JUST. 249 (2013).

44. Daicoff, *supra* note 33, at 125.

45. Zawisza, *Sprawuj Sie*, *supra* note 30, (citing ROBERT A. BARUCH BUSH & JOSEPH P. FOLGER, *THE PROMISE OF MEDIATION* 267-68 (1994); RICHARD S. GALLAGHER, *HOW TO TELL ANYONE ANYTHING: BREAKTHROUGH TECHNIQUES FOR HANDLING DIFFICULT CONVERSATIONS AT WORK* 101 (2009)).

TJ practice borrows the concept of modeling from the field of social work. A social worker “models” effective behavior so that individuals can mirror positive interactions and act with intentionality.<sup>46</sup> Social models are powerful influences on positive behavior, as observers watch and form the desire to emulate the behavior.<sup>47</sup> TJ writers have come to understand that the observation of one’s parents or teachers when they exhibit an act of courage, compassion, or tolerance, not the words they use, influences behavior.<sup>48</sup>

Procedural fairness or procedural justice is central to the TJ repertoire.<sup>49</sup> People highly value “voice,” the ability to tell their story, to validate that the feelings they convey are taken seriously, and to signify that they have been treated with respect, dignity, and good faith.<sup>50</sup> People who have been heard and validated experience greater satisfaction with the adversary process,<sup>51</sup> have higher self-esteem and morale and are more likely to comply with court orders and legal rules and procedures.<sup>52</sup>

Because TJ is interdisciplinary and borrows from related fields, it is fitting that a civil rights curriculum using a TJ lens adopt and apply the concept of the “genius loci,” a spirit of time and place, which comes from the fields of historic preservation and legal narratology. People value places and spaces, as well as their voices.<sup>53</sup> The Downtown Memphis Corridor in the 1950s and 1960s, Wall Street in 2011, Ferguson in 2014, and Charlottesville in 2017<sup>54</sup> are examples of times and places that were both anti-therapeutic and therapeutic; all are worthy of study through a TJ lens.

A leading proponent of the “genius loci” is historic preservationist and environmental law professor John Nivala, who writes:

The places where we work and live have a spirit that enlivens our present by reminding us of our past and anticipating the future. The ancients called this spirit the genius loci, a cluster of associations identified with a place: pervading spirit. It is the distinctive character or atmosphere of a place with reference to the impression that it makes on the mind. In our

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46. Susan L. Brooks, *Using Therapeutic Jurisprudence to Build Effective Relationships with Students, Clients, and Communities*, in BROOKS & MADDEN, *supra* note 33, at 353.

47. Zawisza, *Sprawuj Sie*, *supra* note 30, at note 68 (citing Harvey A. Hornstein, *The Influence of Social Models on Helping*, in ALTRUISM AND HELPING BEHAVIOR: SOCIAL PSYCHOLOGICAL STUDIES OF SOME ANTECEDENTS AND CONSEQUENCES 2–3, 29 (Jacqueline R. Macaulay & Leonore Berkowitz eds., 1970)).

48. Zawisza, *Sprawuj Sie*, *supra* note 30, at 1078-79 (citing DANIEL GOLEMAN, SOCIAL INTELLIGENCE: THE NEW SCIENCE OF HUMAN RELATIONSHIPS 55 (2006)).

49. Daicoff, *supra* note 33, at 113.

50. Winick, *supra* note 31, at 320.

51. *Id.*

52. Daicoff, *supra* note 33, at 114.

53. DOLORES HAYDEN, THE POWER OF PLACE: URBAN LANDSCAPES AS PUBLIC HISTORY 11 (1995).

54. *See* Cummings, *supra* note 28.

built environment, the *genius loci* refers to the power of the structures around us to create these associations, to make that impression.<sup>55</sup>

Places and spaces can have both positive and negative connotations, or in other words, therapeutic and antitherapeutic consequences.<sup>56</sup> Nivala, in advocating the preservation of historic buildings, elaborates:

Preserving these structures recognizes the power of the past—its ideas, values, and culture—to inform our present ideas, values, and culture. We do not have to agree with the statements made by the structures, but we do have an obligation to preserve what was said, both as a basis for present debate and as a record for those in the future. Our view of our built environment must be long as well as short term.<sup>57</sup>

Nivala believes that the government should preserve structures that the public walks past on a daily basis; they have become cultural property because they enhance a quality of life.<sup>58</sup> Nivala recognizes the importance of time and place not only through buildings but in neighborhoods, districts, or areas.<sup>59</sup> Too, simple things like sidewalks and benches develop a sense of place and ownership and thus a sense of community, he says.<sup>60</sup>

Nivala writes as a law professor, but a sense of place is an interdisciplinary concept that belongs under the TJ umbrella.<sup>61</sup> Architects, geographers, sociologists, anthropologists, and historians write frequently about a sense or spirit of time and place and its effect on one's present environment.<sup>62</sup> Some argue that a sense of place is a fundamental value to

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55. John Nivala, *Saving the Spirit of Our Places: A View of Our Built Environment*, 15 UCLA J. ENVTL. L. & POL'Y 1 (1996–97) (discussing the preservation of Penn Central Station in New York City).

56. *Id.*; Hayden, *supra* note 53, at 11.

57. Nivala, *supra* note 55, at 4.

58. *Id.* at 31, 33.

59. John Nivala, *Tout Ensemble: Preserving Seattle's Satterlee House*, 18 WIDENER L. REV. 247 (2012) (using the New Orleans French Quarter and Seattle's Satterlee House as examples).

60. *Id.* at 249. The Satterlee House is an historic private residence used as a summer retreat and vacation Bible school overlooking the Puget Sound and the Olympic Mountains. *Id.* at 254. Julie L. Wilkins builds on Nivala's work to discuss the preservation of other Seattle historic landmarks under the Seattle Landmarks Preservation Ordinance. Julie L. Wilkins, *A Sense of Time and Place: The Past, Present, and Future of the Seattle Landmarks Preservation Ordinance*, 37 VA. ENVTL. L.J. 415 (1998).

61. Jennifer Cross, *What Is A Sense of Place?*, WESTERN STATE COLLEGE (Nov. 2–4, 2001), <https://perma.cc/ZE2K-YFQF>.

62. *Id.*

people everywhere.<sup>63</sup> Urban architect Dolores Hayden notably posits that urban landscapes nurture peoples' public memory<sup>64</sup> and cultivate a profound, subtle, and inclusive sense of what it means to be an American.<sup>65</sup> Our personal memories of where we have come from and where we have lived and our collective social memories of the histories of our families, neighbors, coworkers, and ethnic communities are intimately tied in memory to public space.<sup>66</sup> Shared spaces and places, even those that evoke bitter experiences and community fights, form our community identity.<sup>67</sup> These present psychological soft spots and opportunities, as TJ informs us.<sup>68</sup>

Sociologist Jennifer Cross has deeply studied such places and spaces, and she focuses on culturally shared, subjective, emotional, and affective meanings that evoke personal and visceral reactions.<sup>69</sup> Because people create a sense of place over time, recurring events reinforce a sense of place.<sup>70</sup> Cross recognizes six connections that people have with place: biographical, spiritual, ideological, narrative, commodified, or dependent.<sup>71</sup> Cross' connections will be applied in detail in the following section that reconsiders Memphis civil rights history through a TJ lens.

But this introduction would not be complete without referencing law professor Carol Zeiner's use of TJ principles to weave a legal story about discrimination, oppression, and the lack of basic human rights in the time and

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63. Fred Kent, *Toward an Architecture of Place: Moving Beyond Iconic to Extraordinary*, PROJECT FOR PUBLIC SPACES, <https://perma.cc/7BUJ-A94Y> (last visited Aug. 26, 2016).

64. Hayden, *supra* note 53, at 9.

65. *Id.*

66. *Id.*

67. HAYDEN, *supra* note 53, at 11, et. seq. (describing for the most part the public places and spaces in and around the Watts neighborhood in Los Angeles). Hayden pays tribute to, *inter alia*: Boston's streetcar suburbs, Washington's African American alley dwellings, and Manhattan's rental housing from colonial times to the present. HAYDEN, *id.* at 30. She further references the Chinatown History Project, *id.* at 52; the Black Heritage Trail at Boston's African American National Historic Site, *id.* at 54; the Women's Rights National Historic Park in Seneca Falls, New York, *id.* at 57, and numerous other National Trust Historic Preservation Sites, *id.* at 59–66. The Spiritual Signposts of Charleston, Congolese in origin, also draw her attention. *id.* at 69. Places we remember run the gamut from architectural monuments (imperial Rome, Gothic cathedrals) to union halls, schools, and residences. All create social or public memory. *id.* at 46–47. Similarly, visible vestiges of segregation are now being preserved throughout the South. Jay Reeves, *Architecture Evokes Memories of South's Past*, THE COM. APPEAL, Feb. 14, 2016 (describing the preservation of white and colored sections in the Lyric Theater in Birmingham, Alabama, Oakland Cemetery in Atlanta, Montpelier Train Depot in Orange, Virginia, the Jones County Courthouse in Ellisville, Mississippi, and the Rosenwald Schools throughout the South).

68. Winick, *supra* note 31.

69. Cross, *supra* note 61 (citing David Hummon, *Community Attachment: Local Sentiment and Sense of Place*, in PLACE ATTACHMENT (Irwin Altman & Setha Low eds., 1992); Setha Low, *Symbolic Ties that Bind: Place Attachments in the Plaza*, in PLACE ATTACHMENT).

70. Cross, *supra* note 61 (citing landscape architect John Brinckerhoff Jackson, *A Sense of Place, A Sense of Time*).

71. Cross, *supra* note 60, at 2.

place of Memphis in the 1950s and 1960s through the stories of Jean Yehle and Barbara Vidulich.<sup>72</sup> Zeiner analyzes these white women's experiences based on TJ principles and concludes that their exercise of their First Amendment rights during the Memphis sanitation strike in 1968 was an example of TJ at work.<sup>73</sup> Zeiner's application of TJ sets a stage for further development of a teaching framework for Memphis civil rights history, as subsequent sections will show.

## II. THERAPEUTIC JURISPRUDENCE AND MEMPHIS CIVIL RIGHTS HISTORY: A BROAD VIEW

A civil rights curriculum through a TJ lens should begin with a broad, macroanalytic view of civil rights history, including that of Memphis. History shows that the law of segregation, upheld in this country until the United States Supreme Court decided *Brown v. Board of Education*<sup>74</sup> in 1954, was believed by some to be positive and therapeutic. Tennesseans and Memphians shared this time and place with the rest of the country. "[I]t had been the established order of things and the way of life in the State [of Tennessee]."<sup>75</sup> Some touted the excellent relationships between Tennessee officials and its "negro citizenship," acknowledging no race strife of any kind or character.<sup>76</sup> Memphis leaders, in particular, praised themselves for their law-abiding community with a long history of good race relations, indeed calling it a model southern city when it came to race relations.<sup>77</sup>

But for others, segregation was decidedly anti-therapeutic, as the following quote from *Brown* illustrates:

To separate them from others of similar age and qualifications solely because of race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone.<sup>78</sup>

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72. Zeiner, *supra* note 43, at 310.

73. *Id.*

74. *Brown v. Bd of Educ.*, 347 U. S. 483 (1954) [hereinafter *Brown I*]. *Brown* has been described as arguably the most important political, social, and legal event of the 20<sup>th</sup> century, due to the enormity of the injustice it condemned, the entrenched beliefs it challenged, and the immensity of the legal principles it both challenged and changed. J. HARVIE WILKINSON III, *FROM BROWN TO BAKKE* 6 (1979).

75. General Ray H. Beeler, *Opinion on Segregation to Dr. C. B. Brehm* (Sept. 26, 1950), *President's Papers AR 0006*, U.OF TENN. AT KNOXVILLE, 2.

76. *Id.* at 5.

77. Statement of William D. Galbreath, President, Board of Education, Memphis City Schools, *in* HEARINGS, *supra* note 20, at 145; GAIL S. MURRAY, *THROWING OFF THE CLOAK OF PRIVILEGE: WHITE SOUTHERN WOMEN ACTIVISTS IN THE CIVIL RIGHTS ERA* 208 (2004).

78. *Brown I*, *supra* note 74, at 494.

Quoting the lower Delaware Supreme Court case presented in *Brown*, the Supreme Court elaborated upon the anti-therapeutic effects of segregation in saying:

Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to (retard) the educational and mental development of Negro children and to deprive them of the same benefits they would receive in a racially integrated school system.<sup>79</sup>

Segregation in the South for many years had the sanction of law and greatly impacted, in an anti-therapeutic way, the self-esteem of African Americans.<sup>80</sup> The shared times and places in which such segregation occurred in Memphis and beyond had a powerful impact on the public memory.<sup>81</sup> Segregated times brought back reminiscences of slave trading and lynchings of black people in downtown Memphis, as well as a post-Civil War massacre of black Memphians.<sup>82</sup>

Judge Robert M. McCrae, Senior United States District Judge for the Western District of Tennessee, described the 1950s and 1960s thusly in his oral history: “Many of the white community were racists and therefore biased against blacks. They were very ignorant of much of the controlling law and extremely irresponsible in their citizenship.”<sup>83</sup> Whites downplayed the tensions that existed, while blacks were left to feel threatened, isolated, and marginalized.<sup>84</sup>

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79. *Id.*

80. See HEARINGS *supra*, note 20 (quoting *Brown I*, 367 U. S. 483 (1954)).

81. See HAYDEN *supra* note 53; Nivala, *supra* note 55.

82. SIDES, *supra* note 8, at 17; David Waters, *Prayer Service at Forrest Site Sheds Light on Racist Past in Shelby County*, THE COM. APPEAL, Dec. 11, 2015, at 1B (describing a history of slave trading and lynchings of black people in downtown Memphis); David Waters, “*We Lose a Lot When We Try to Erase Shameful Episodes of Past*,” THE COM. APPEAL, May 20, 2016, at 1B (editorializing on a post-Civil War massacre of black Memphians and the lost history of Memphis); David Waters, *Truth Can Put Past To Rest and Present In Perspective*, THE COM. APPEAL, Dec. 1, 2015, at 1B (commenting on the former historical marker in the Downtown Memphis Corridor that honored Confederate war hero Nathan Bedford Forrest). Waters quotes Memphis journalist Ida B. Wells, who said, “The way to right wrongs is to turn the light of truth on them.” *id.* at B2. Wells was a 19th century leader in the civil rights movement who repeatedly risked death with protests against lynchings.

83. ROBERT M. MCCRAE, ORAL HISTORY OF THE DESEGREGATION OF MEMPHIS CITY SCHOOLS, 1954-74, iii (1997). Judge McCrae presided over the Memphis elementary school desegregation case, *Northcross v. Board of Education*, from 1966 to 1974. *Id.*

84. Zeiner, *supra* note 43, at 262.

Cross's taxonomy of the "genius loci," i.e. describing connections between people biographically, ideologically, spiritually, dependently, through story-telling, or in a commodified fashion, is a compelling approach to a civil rights curriculum. Each connection can be found in Memphis civil rights history or within the broader civil rights movement.

The biographical connection refers to a personal history with a place and can be seen in the several books written by or about Memphis civil rights leaders.<sup>85</sup> By writing about themselves or by reading their stories, these leaders could turn painful events into more therapeutic opportunities. Spiritual ties also provided a more therapeutic antidote to segregation because these leaders exhibited a deep sense of belonging or resonance with their communities, especially through their churches, which were integral to the civil rights movement.<sup>86</sup>

Ideological connections that are based on conscious values or beliefs are, according to Cross, another key connection to time and place.<sup>87</sup> Working-class black Memphians during the time of the civil rights movement were connected to a belief about their lack of freedom and of the existence of a plantation mentality in the city, using the bucket and dipper as a symbol of their perceived status. The term "plantation mentality" referred to white racist attitudes that promoted white supremacy and black subservience reminiscent of slavery and sharecropping.<sup>88</sup> For white Memphians the 1950s and 1960s were therapeutic, while for black Memphians those times were antitherapeutic.

Narrative links, Cross says, are formed by stories of places, such as those told about the lives of black civil rights activists Benjamin Hooks and Maxine Smith.<sup>89</sup> They are visible also in the stories of courage told by two, Memphis white women, Jean Yehle and Barbara Vidulich, who were civil rights activists at the time of the 1968 sanitation workers' strike and march.<sup>90</sup> Cross sees commodified ties as one's choosing a place to live based on desirable characteristics.<sup>91</sup> To comfort them in antitherapeutic times, African

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85. Cross, *supra* note 60. BENJAMIN L. HOOKS & JERRY GUESS, *THE MARCH FOR CIVIL RIGHTS: THE BENJAMIN HOOKS STORY I* (2003) (entitling his first Chapter "Deep are the Roots."); SHERRY L. HOPPE & BRUCE W. SPECK, *MAXINE SMITH'S UNWILLING PUPILS: LESSONS LEARNED IN MEMPHIS'S CIVIL RIGHTS CLASSROOMS*, xiv–xv (2007).

86. GREEN, *supra* note 23, at 247 (commenting on the role that church played in the lives of Memphis black college students in the civil rights movement); HOOKS & GUESS, *supra* note 85, Chapter 27 "My Life and the Church"; JOHN J. THOMASON, *BLUFF CITY BARRISTERS* 90 (2008) (providing a short biography of Reverend Hooks); Cody, *supra* note 17, at 706 (describing the scene of Dr. Martin Luther King, Jr.'s Mountaintop Speech at the Mason Temple in Memphis); *see also* the history of Clayborn Temple, *supra* note 19.

87. Cross, *supra* note 61.

88. GREEN, *supra* note 23, at 2.

89. HOOKS & GUESS, *supra* note 85; HOPPE & SPECK, *supra* note 85; Julia Smith Gibbons, *Foreword*, 41 U. MEM. L. REV. 663 (2011) (introducing a symposium issue on significant lawsuits that took place in Memphis).

90. Zeiner, *supra* note 43, at 257–89.

91. Cross, *supra* note 61, at 7.

Americans in Memphis sought solace and found pride in their neighborhoods, communities, and social life.<sup>92</sup>

Dependent connections, according to Cross, exist when people have no choice or little choice about the places in which they live.<sup>93</sup> While some African American Memphians held a commodified tie with the city for its desirable connections, some also experienced a dependent relationship. Memphis, located on the Mississippi River, was a key part of a transportation network for agricultural products and offered jobs for impoverished agricultural migrant workers.<sup>94</sup> When they arrived in Memphis, they feared the plantation mentality mentioned above and perceived that they had a dependent status.<sup>95</sup>

Race, gender, and class imposed spatial limitations on all of the relationships identified by Cross.<sup>96</sup> African Americans throughout the South experienced such race and class based spatial limitations not only on segregated streets and in neighborhoods, but also in schools, hotels, stores, fire stations, swimming pools, cemeteries, movie theaters and other spaces formerly closed to them.<sup>97</sup> In addition, African American Memphians suffered a lack of paved streets, curbs, sidewalks, and gutters in their neighborhoods.<sup>98</sup> African American civic clubs, consolidated into the Bluff City and Shelby County Council of Civic Clubs in 1952 and composed of working-class people, advocated for improvements to these spaces, not so much to improve property rights, but to distinguish their black neighborhoods from white neighborhoods in collective racial justice terms.<sup>99</sup>

With regard to gender, women were formerly relegated to a traditional women's sphere, and African American women were doubly limited because white women's clubs, charities, and suffrage organizations were not open to them.<sup>100</sup> African American women, therefore, created their own spaces and played a significant role in the struggles for equal justice by leading and sustaining the movement in local communities throughout the South.<sup>101</sup> In Memphis, large numbers of women joined the shared space of the various civic clubs to link concerns about home, family, school and community to collective political action.<sup>102</sup>

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92. ERNESTINE LOVELLE JENKINS, *AFRICAN AMERICANS IN MEMPHIS* 85–126 (2009) (entitling Chapter 8 “Pride of Place: Neighborhoods, Communities, and Social Life.”).

93. Cross, *supra* note 61.

94. SIDES, *supra* note 8, at 15–16; Zeiner, *supra* note 43, at 249 and 254.

95. GREEN, *supra* note 23, at 2.

96. HAYDEN, *supra* note 53, at 24–27.

97. *Id.* at 24.

98. GREEN, *supra* note 23, at 200.

99. *Id.* at 200.

100. HAYDEN, *supra* note 53, at 27.

101. VICKI L. CRAWFORD ET AL., *WOMEN IN THE CIVIL RIGHTS MOVEMENT: TRAILBLAZERS AND TORCHBEARERS, 1941–1965* xvii–xviii (1990).

102. GREEN, *supra* note 23, at 201.

Although much of the time and place of Memphis in the 1950s and 1960s was antitherapeutic, a spirit of change awoke slowly in Memphis.<sup>103</sup> The decades long oppression of the Mayor Ed Crump political machine that fostered civil rights violations caused entrenched attitudes of fear among African Americans.<sup>104</sup>

There is a concerted drive . . . to force Negro leaders out of business and out of town and to intimidate the entire Negro population by wholesale arrests every day and by placing heavy police guards in peaceful Negro neighborhoods. Memphis residents suffering under the Crump machine domination cannot protest for they know that speaking out would mean the end of their economic security and possibly the bloodshed that has been threatened in the press and by leading citizens.<sup>105</sup>

The Crump machine promoted a myth of racial harmony in the city, aided by the policy of the city's two, white newspapers, The Commercial Appeal and the Press Scimitar, to keep publicity about demonstrations and racial tensions to a minimum.<sup>106</sup> When Crump died in 1954, shortly after *Brown* was decided, the slumbering Memphis spirit was able to come alive.<sup>107</sup>

In order to make the extensive Memphis civil rights history accessible to law students, a professor might focus on the activities of students in the 1950s and 1960s and the lawsuits that particularly affected them. Students were notably at the forefront of awakening the slumbering spirit of change in Memphis. College students conspicuously transformed a moribund Memphis branch of the NAACP into a vigorous organization that used a three pronged strategy of desegregation lawsuits, demonstrations, and sit-ins to force integration in the city.<sup>108</sup> These students largely came from historically black LeMoyne College and Owen Junior College (now LeMoyne Owen College).<sup>109</sup> They were joined by young college educated men and women who returned to Memphis after receiving college degrees outside of the state<sup>110</sup> or serving in the military.<sup>111</sup> These civil rights activists

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103. *Id.* at 189.

104. *Id.*

105. PRESTON LAUTERBACH, *BEALE STREET DYNASTY* 299–300 (2015).

106. GREEN, *supra* note 23, at 254.

107. *Id.* at 9.

108. *Id.* at 185.

109. *Id.* at 232–33.

110. HOPPE & SPECK, *supra* note 85, at 15 (noting that civil rights attorney, Russell B. Sugarmon, Jr., had wanted to pursue his legal education at the University of Tennessee (UT). He noted in his UT application that he had also applied to Harvard. UT informed him that they would pay for his education at Harvard, including flying him home to Tennessee at least twice a year, rather than educating him in the state.).

111. GREEN, *supra* note 23, at 190.

returned to Memphis with a keen sense of urgency about racial democracy and reached out to national civil rights leaders, to black communities in Memphis, and to rural communities in the Mississippi Delta for support. These activists included accountant Jesse Turner and lawyers Benjamin Hooks, James Estes, H. T. Lockard, Ben Jones, A. W. Willis, and Russell Sugarmon.<sup>112</sup> They formed an energetic legal team in Memphis where once there had been only one African American attorney, A. A. Latting.<sup>113</sup>

A pivotal moment in Memphis civil rights history came when these lawyers and other community leaders traveled down Highway 61 to Mound Bayou, Mississippi, ten days before *Brown* was decided, to join 6000 African Americans from the Delta region to hear Thurgood Marshall, then NAACP special counsel, speak.<sup>114</sup> “Here is where the fight is,” proclaimed Marshall to thunderous applause.<sup>115</sup> This group of young lawyers had the opportunity to meet individually with Attorney Marshall to discuss initiatives to implement the *Brown* decision that was expected any day.<sup>116</sup>

After conversing with Mr. Marshall, these lawyers became energized by a newly found perspective and a concrete strategy.<sup>117</sup> They returned to Memphis and persuaded several young African Americans, two recently returned from the Korean War, to apply for admission to the undergraduate school at Memphis State University (now the University of Memphis) in 1955.<sup>118</sup> Thus was born the first of the momentous civil rights lawsuits that took place in Memphis Law’s Historic Courtroom.<sup>119</sup>

### III. THERAPEUTIC JUSTICE: FOCUSING MICROANALYTICALLY ON THE MEMPHIS LAWSUITS

The previous section provides students with a broad view of the therapeutic and antitherapeutic aspects of the times and places surrounding midcentury civil rights history in Memphis. This section enhances the

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112. *Id.* 190–91. Photographer Vasco Smith and his wife Maxine and several other activist wives also joined in the advocacy, namely Laurie Sugarmon, Frances Hooks, and Anne Willis. HOPPE & SPECK, *supra* note 85, at 18.

113. GREEN, *supra* note 23, at 190–91. These black lawyers were not allowed to join the Memphis Bar Association, however, until 1964. THOMASON, *supra* note 86, at 87. It is interesting to discover that some of these African American attorneys used initials instead of their first names because routinely they were addressed by their first names in court while white attorneys were addressed by their surnames. The use of such initials forced courts to use the attorneys’ surnames. Shea Sisk Wellford, *President’s Column*, 33 MEMPHIS LAWYER, ISSUE 2, 6 (2016).

114. GREEN, *supra* note 23, at 192. Thurgood Marshall was the first African American elevated to the U. S. Supreme Court. He served from 1967–1991. Justice Marshall was lead counsel in *Brown v. Board of Education*. THURGOOD MARSHAL, <https://perma.cc/7J5S-F8YM> (last visited Feb. 16, 2016).

115. *Id.*

116. *Id.*

117. HOPPE & SPECK, *supra* note 85.

118. *Id.*

119. *Booker v. State of Tenn. Bd. of Educ.*, 240 F.2d 689 (6th Cir. 1957).

teaching of a TJ civil rights curriculum by focusing microanalytically on several lawsuits filed in the Historic Courtroom at Memphis Law School. These lawsuits are compelling reminders of the Law School's significant history. This section will concentrate primarily on legal actions affecting students and learners in order to engage law students. Beyond education, however, Memphis civil rights activists chose a variety of strategies affecting a cross section of daily life, including buses, lunch counters, parks, swimming pools, places of employment, railroads, the airport, and voting booths, and these will be mentioned as well.<sup>120</sup>

### **A. *Booker v. State of Tennessee Board of Education***

*Booker v. State of Tennessee Board of Education*<sup>121</sup> desegregated Memphis State University (now the University of Memphis). On May 26, 1955, five young people who, though meeting all eligibility criteria, had been denied admission to Memphis State filed suit in the Federal Court for the Western District of Tennessee (Memphis Law Building) against the Tennessee Board of Education. They alleged that the rejection of their applications was solely due to their race and color.<sup>122</sup> They were: Ruth Booker, Willie Peoples, Mardest Knowles Van Hook, Elijah Noel and Joseph McGee, Jr. Three of the plaintiffs Booker, Peoples and Van Hook sued through their mothers as next friends because they were still minors.<sup>123</sup> They were represented by Nashville lawyer, Alexander Looby, Memphis lawyers, J. F. Estes, H. T. Lockard, B. L. Hooks, A. W. Willis, Jr., and NAACP counsel, Thurgood Marshall.<sup>124</sup>

The complaint was a bare bones Section 1983 class action lawsuit which sought a declaration of the rights of the plaintiffs and all other Negro children eligible to attend Memphis State College and a declaration that the provisions of the Tennessee statutes and Constitution of Tennessee that prohibited and excluded white and colored persons from attending the same school violated the Fourteenth Amendment to the U.S. Constitution.<sup>125</sup> The lawsuit sought to permanently enjoin the enforcement, operation, and execution of that body of law.<sup>126</sup>

Tennessee had long since enjoyed a constitutional provision in Article II, Section 12 that provided a right to education.<sup>127</sup> However, that

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120. HOPPE & SPECK, *supra* note 85, at 23-132.

121. Booker, *supra* note 119.

122. Complaint at 5, *Booker*, 240 F.2d 689 (Civ. A. No. 2656).

123. *Id.* at 1.

124. *Id.* at 6.

125. *Id.* at 2.

126. *Id.* at 6. 42 U. S. C. Section 1983 speaks to the deprivation under color of law of any rights, privileges or immunities secured by the Constitution and laws of the United States. R. S. § 1979; Pub. L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub. L. 104-317, title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.

127. Tenn. Const. art. II, § 12.

same constitutional provision, adopted in 1870, prohibited white and negro children "to be received as scholars together in the same school."<sup>128</sup> The Tennessee Code in Section 11395 6888a37 further prohibited white and colored children from attending the same school, college or other place of learning.<sup>129</sup> Furthermore, Tennessee statutes in Section 11396 6888a38 made it unlawful for any teacher to allow such mixed attendance in the classroom, and Section 11397 6888a39 made any violation a misdemeanor punishable by fine or imprisonment.<sup>130</sup> These laws forced Booker and her colleagues, the lawsuit alleged, to be turned away from public higher education in Memphis.<sup>131</sup>

In answer to the complaint, the Board said that the above constitutional provision and statutes had never been declared unconstitutional.<sup>132</sup> The answer cited a Resolution adopted by the Board on June 15, 1955, which provided that any effort to integrate Tennessee colleges would be invalid until: 1) the provisions of the Constitution and statute were declared unconstitutional in a Tennessee legal proceeding; 2) a court of law declared that the opinions of the Supreme Court in the segregation cases applied not only to public grade schools but to state colleges and universities in Tennessee; and 3) only after the State presented in court all of its available defenses.<sup>133</sup>

The Board argued that segregation in education existed for more than 100 years; "They propose to comply as far as possible with the decisions of the Supreme Court of the United States requiring such desegregation but they would show to the Court that after so long a period of segregation, an abrupt effort to end the same will produce many problems."<sup>134</sup> Defendants proposed a gradual phase-in beginning with graduate level and senior class students because such students were more mature than freshmen or sophomores.<sup>135</sup> They also argued that Memphis did not have physical space to take in 1,000 new freshmen.<sup>136</sup> Finally, they pointed out that the Tennessee Legislature met every two years and would not meet again until 1957, and thus Memphis State did not have the funds for physical facilities.<sup>137</sup>

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128. *Id.*

129. Tenn. Code Ann. §§ 11395, 6888a37.

130. Tenn. Code Ann. §§ 11396, 11397, 6888a38, 6888a39.

131. Complaint, *supra* note 122, at 3-5.

132. The Answer of Quill E. Cope, Ernest C. Ball, Norman Frost, Edward L. Jennings, W. R. Jandrum, Chester Parham, Mrs. Ferdinand Powell, Robert P. Williams, J. Howard Warf and Mrs. Sam Wilson, all members of the State Board of Education, and J. M. Smith and R. P. Clark, President and Registrar Respectively of Memphis State College at 2, *Booker*, 240 F.2d 689 (Civ. A. No. 2656) [hereinafter Answer].

133. Resolution of State Board of Education, Called Session, Nashville, TN, June 15, 1955, attached to Answer, *supra* note 132.

134. Answer, *supra* note 132, at 2.

135. *Id.* at 2-3.

136. *Id.* at 4.

137. *Id.* at 2-3.

The Board hung its hat on the U.S. Supreme Court's now infamous "all deliberate speed" doctrine.<sup>138</sup> This doctrine recognized that public and private considerations might make a prompt and reasonable start towards full desegregation difficult, and considerations such as the physical condition of the school plant, transportation, personnel, and administrative boundaries were relevant.<sup>139</sup> But scholars argue that the real argument behind "all deliberate speed" was not administrative but political.<sup>140</sup> "Deliberateness" was used as an excuse for resistance and delay tactics to preserve a segregated South for as long as possible.<sup>141</sup>

The *Booker* litigation took place against the backdrop of Attorney General Roy Beeler's 1950 Opinion regarding the admission of African American students to the University of Tennessee law school, dental school, and graduate schools. Citing U.S. Supreme Court decisions integrating the University of Texas<sup>142</sup> and University of Oklahoma<sup>143</sup> law schools, General Beeler reluctantly opined that he had to follow these cases because Tennessee did not have a separate law school, dental school, or graduate schools for non-white students.<sup>144</sup> But General Beeler's personal view was:

I think continued segregation of the races in educational institutions is the correct way to handle these educational matters, with the State furnishing adequate educational facilities for members of the negro race. It is certainly the established order of things in our Southland . . . I am fearful that when the bars are let down and negro students, even in limited number, are admitted to our State institutions that strife and turmoil will be engendered and that the amicable feeling and relationship that now exists between the races will no longer continue . . . .<sup>145</sup>

Judge Marion Boyd, whose portrait graces the Memphis Law Historic Courtroom, presided over *Booker*, and after a long period for discovery, the *Booker* case was finally heard on October 17, 1955, on the Petitioners' motions for judgment on the pleadings and for summary

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138. *Brown v. Bd of Educ.*, 349 U. S. 294, 301 (1955) [hereinafter *Brown II*].

139. *Id.* at 300-01.

140. Wilkinson, *supra* note 74, at 69.

141. *Id.* at 69, 75.

142. *Sweatt v. Painter, et. al.*, 339 U.S. 629, 636 (1950).

143. *McLaurin v. Okla. State Regents for Higher Educ.*, 7339 U.S. 637, 642 (1950). It was not until 1958 that the University of Florida was enjoined from limiting graduate and undergraduate enrollment based on race. *Hawkins v. Bd. of Control of Fla.*, 162 F. Supp. 851, 853 (N.D. Fla. 1958), discussed in Betty W. Taylor, *A History of Race and Gender at the University of Florida Levin College of Law, 1902-2001*, 54 FLA. L. REV. 495, 508 (2002).

144. General Ray H. Beeler, *Opinion on Segregation to Dr. C. E. Brehm* (Sept. 26, 1950), *President's Papers AR0006*, U. OF TENN. AT KNOXVILLE, 19-21.

145. *Id.* at 16.

judgment.<sup>146</sup> Contemporary accounts of this place and time document the increasing frustration of the plaintiffs and other civil rights activists with persistent delays.<sup>147</sup> Finally, the Judge pronounced on October 17 that “state laws and the provisions of the State constitution in question are already invalid beyond any doubt.”<sup>148</sup> Thus, the Court set aside the Tennessee Constitution and statutory provisions that segregated Tennessee schools, on the books since 1870.

This left for Judge Boyd the simple question of whether or not the integration plan submitted by the Board would be adequate to satisfy the Supreme Court’s commands of “all deliberate speed.”<sup>149</sup> In the end, Judge Boyd approved the Board’s plan to open the doors of state supported “institutions of higher learning to academically qualified colored students a year at a time from the graduate level down,” and he found that the plan was reasonable, in good faith, feasible, adequate, and sound.<sup>150</sup> He further opined that a five-year period of time was necessary in the public interest to promote a harmonious solution and to avoid friction between the races.<sup>151</sup> But the Sixth Circuit Court of Appeals struck down his opinion in 1957, stating that the Board’s gradual integration plan did not comply with *Brown* because the State could have limited the number of admissions generally without limiting admissions based on race or color.<sup>152</sup>

Although the first African Americans to enter Memphis State, Rose Blakney, Sammie Burnett, Eleanor Gandy, Marvis Kneeland, Luther McClellan, Ralph Prater, Bertha Rogers, and John Simpson, matriculated in 1959, they were banned from the cafeteria, social and sporting events, all but two assigned student lounges, the library, physical education, and ROTC.<sup>153</sup> They were escorted by plain clothes police officers and were off campus by noon each day.<sup>154</sup> Gandy was quoted as saying, “You could feel the tension and the resentment, but I was so happy to be in college I didn’t care. I would have walked through fire to get into college.”<sup>155</sup>

After the Sixth Circuit ruled, the Board ordered that these students be admitted in the fall of 1958, but then Memphis State president Jack Millard Smith moved to postpone the plan due to his fears of trouble or violence. “I am convinced now that the proposal is not acceptable to a large

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146. Transcript of Oral Argument at 11, *Booker v. State of Tenn. Bd. of Educ.*, 240 F.2d 689, 693 (6th Cir. 1957) (Civ. A. No. 2656). The author personally visited the Historic Courtroom on January 30, 2018 to view the portrait.

147. HOPPE & SPECK, *supra* note 85, at 40–41.

148. Transcript of Oral Argument, *supra* note 146, at 9.

149. *Id.* at 10.

150. *Id.* at 168–69.

151. *Id.*

152. *Booker v. State of Tenn. Bd. of Educ.*, 240 F.2d 689, 693 (6th Cir. 1957).

153. Linda A. Moore, *Memphis State 8 Were Torchbearers for Integration at University*, THE COM. APPEAL, Feb. 2, 2009.

154. *Id.*

155. *Id.*

majority of the people,” he argued.<sup>156</sup> Smith resisted the admission of African Americans, citing lack of space and lack of slots.<sup>157</sup> One of the local NAACP lawyers, H. T. Lockard, smelling subterfuge, countered by issuing a subpoena duces tecum for 50 years of records of out-of-state students admitted to the same university that now purportedly lacked slots.<sup>158</sup> This maneuver almost brought the Attorney General’s office to a standstill, given the voluminous discovery it entailed,<sup>159</sup> but Lockard’s tactic worked. President Smith resigned, and his replacement, Dr. Cecil C. Humphreys, made “all deliberate speed” a reality in Memphis.<sup>160</sup>

Integration of Memphis State finally occurred several years after two female stalwarts of the Memphis civil rights movement, Laurie Sugarmon and Maxine Smith, were denied admission to the graduate school without explanation.<sup>161</sup> Activists then moved on from the university to other venues in need of integration,<sup>162</sup> as the next sections reveal.

### **B. *Turner v. Randolph***

*Turner v. Randolph*<sup>163</sup> desegregated the Memphis Public Library system. Plaintiff Jesse Hosea Turner, a graduate of LeMoyne-Owen and the University of Chicago’s business school and the first African American certified public accountant in Tennessee, was employed as a cashier at the black-owned Tri-State Bank and later became its president.<sup>164</sup> Turner uncovered that the Memphis Public Library system (MPL) had been segregated for seven decades, excluding African Americans from its main library, the Cossitt Library, which sits adjacent to Memphis Law.<sup>165</sup> MPL offered inferior collections and services in a single branch library open to African Americans at the Vance Library.<sup>166</sup>

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156. *Smith Moves to Prevent Fall Integration of MSU*, THE MEMPHIS WORLD, Aug. 13, 1958.

157. HOPPE & SPECK, *supra* note 85, at 29.

158. *Id.*

159. *Id.*

160. *Jack Smith Resigns as Head of MSU*, THE MEMPHIS WORLD, Dec. 19, 1959. The Law School is named for Dr. Humphreys.

161. “*Smith Moves*,” *supra* note 156. Mrs. Sugarmon had graduated from Wellesley, and Mrs. Smith had graduated from Middlebury. HOPPE & SPECK, *supra* note 86, at 50. Laurie Sugarmon later earned a master’s degree and a Ph. D. from Johns Hopkins University and returned to Memphis State as its first African American professor. *Id.* at 19.

162. HOPPE & SPECK, *supra* note 85, at 133.

163. *Turner v. Randolph*, 195 F. Supp. 677 (W.D. Tenn. 1961).

164. ALLEGRA W. TURNER, EXCEPT BY GRACE: THE LIFE OF JESSE H. TURNER viii (2003).

165. Steven A. Knowlton, *Memphis Public Library Services to African Americans, 1903-1961: A History of Its Inauguration, Progress, and Desegregation 1-2* (August, 2015) (unpublished master’s thesis, The University of Memphis) (on file with author).

166. *Id.*

Turner's wife, Allegra, loved reading but had dismissively been turned away from the Cossitt Library in 1952.<sup>167</sup> Eight years later, Jesse Turner walked into the main branch of MPL, which by that time had moved to Peabody and McLean, and applied for a library card.<sup>168</sup> Chief Librarian, Jesse Cunningham, denied his request, "acting on the custom that prevails in this community and the South."<sup>169</sup> The Library's Board of Directors sustained the action.<sup>170</sup> The Board had a policy of restricting use of its library facilities by race, a course of action that the Memphis City Commission informally supported without a vote.<sup>171</sup> Met with delay tactics for a year in his quest for a library card, Turner, represented by local lawyers, A. W. Willis, Jr., R. B. Sugarmon, H. T. Lockard, along with Thurgood Marshall and Constance Baker Motley for the NAACP, filed suit in federal court (Memphis Law building) on August 15, 1958.<sup>172</sup>

The Turner complaint, too, was a Section 1983 class action lawsuit seeking injunctive and declaratory relief. It alleged that the Board of Directors of the MPL and Jesse Cunningham, Chief Librarian, operated the MPL in a racially segregated manner as a matter of policy, custom, and usage.<sup>173</sup> The Board denied this allegation and replied that Turner did not genuinely and in good faith seek to use the library.<sup>174</sup> The library case also weathered a two-year delay in getting a hearing due to the fact that Judge Boyd finally recused himself, citing family conflicts of interest, and a Nashville judge, Judge William Miller, was appointed to replace him.<sup>175</sup> Judge Miller denied the Petitioner's Motion for Summary Judgment on July 13, 1960.<sup>176</sup>

The two-year federal court lull prompted Turner and the NAACP to turn to a different strategy: sit-ins at the library and other public facilities in Memphis.<sup>177</sup> The strategy worked. On September 19, 1960, the City

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167. TURNER, *supra* note 164, at 110.

168. *Id.* at 110-11

169. *Id.* The Cossitt Library was given as a gift to the citizens of Memphis by businessman Frederick H. Cossitt. He named nine men whom he wanted to serve as trustees for the library and, after his death, they applied for and were granted a charter by the State of Tennessee. Deps. of Wassell Randolph, C. Lamar Wallace, Charlie Wade Crutchfield, Charles A. Baker, and Walter Chandler at 7-8, *Turner v. Randolph*, 195 F. Supp. 677 (No. 3525) (W.D. Tenn. 1961).

170. Dep. of Wassell Randolph, *supra* note 169, at 24.

171. *Id.*

172. TURNER, *supra* note 164, at 112-13. Compl., at 1, *Turner*, 195 F. Supp. 677 (No. 3525).

173. Compl., at 2, *Turner*, 195 F. Supp. 677 (No. 3525).

174. Answer of Defendants, Wassell Randolph, Horace Hull, Vance Alexander, Alfred D. Mason, Sr., Walter Chandler, E. W. Hale, Jr., R. A. Tripper, and William F. Murrell, Constituting the Board of Directors of Cossitt Library of the City of Memphis, Tennessee, and Jesse Cunningham, Librarian, at 2, *Turner*, 195 F. Supp. 677 (No. 3525).

175. Designation of District Judge for Service in Another District Within His Circuit (February 24, 1959). Knowlton, *supra* note 165, at 138.

176. Order, *Turner*, 195 F. Supp. 677 (No. 3525).

177. Knowlton, *supra* note 165, at 146-61. The sit-in strategy is further discussed *infra*.

Commission met and agreed to desegregate the libraries.<sup>178</sup> The Library Board finally concurred,<sup>179</sup> and the agreement was announced to the court on November 9, 1960.<sup>180</sup> This agreement did not end the public libraries lawsuit, however, because the City had an ordinance that prohibited use of the same restroom facilities by the “white and negro races.”<sup>181</sup> The Defendants used the ordinance as a defense to the lawsuit, and the trial court set the case for hearing on February 28, 1961.<sup>182</sup> After another delay, Judge Miller finally heard the case on July 22, 1961, and enjoined the segregation of the restrooms in the public library on equal protection grounds.<sup>183</sup> “The ‘separate but equal’ doctrine which formerly met with judicial approval in sustaining racial distinctions in connection with a great variety of publicly owned, maintained or operated facilities, has been generally swept away . . . [.]” he said.<sup>184</sup>

At long last, Jesse Turner won his battle. Allegra Turner took their three boys to get library cards, calling it a happy day for them, but a bittersweet day for her husband and her.<sup>185</sup> The oldest child was ten, and the boys had been deprived of the privilege of a library card that white children enjoyed for too long.<sup>186</sup>

### C. Sit-Ins in Downtown Memphis Corridor

While the lawsuits dragged on for five years,<sup>187</sup> African American college students in Memphis, championed by NAACP activists, began a sit-in movement to desegregate all public facilities, starting with the public library.<sup>188</sup> On March 19, 1960, thirty-six students from LeMoyne and Owen colleges quietly entered Cossitt and the main library (which had moved to Peabody and McLean), occupied tables, and approached the reference desk.<sup>189</sup> They along with five black journalists and photographers from two black newspapers, the *Tri-State Defender* and the *Memphis World*, were arrested.<sup>190</sup> No white journalists were arrested.<sup>191</sup> Palmer was accused of talking above a whisper and carrying a pad and pencil; he was charged with

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178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. Order, at 1, *Turner v. Randolph*, 195 F. Supp. 677 (No. 3525) (W.D. Tenn. 1961).

184. *Turner*, 195 F. Supp. at 679.

185. TURNER, *supra* note 164, at 122.

186. *Id.*

187. CIVIL RIGHTS U.S.A.: PUBLIC SCHOOLS, SOUTHERN STATES 1962 (A REPORT TO THE UNITED STATES C. R. COMM.) (citing G. W. FOSTER, JR., MEMPHIS 139).

188. GREEN, *supra* note 23, at 232–33.

189. *Id.*

190. *Id.* The black reporters charged were Robert Morris, Lutrell Palmer, George Hardin, Burleigh Hines, and Thaddeus Stokes. Jerome Wright, *Morris’ Lens Captured the Struggle*, THE COM. APPEAL, Nov. 15, 2015, at 3V.

191. Wright, *supra* note 190.

disorderly conduct and fined \$51.<sup>192</sup> The City Court Judge who tried these cases called the journalists “gangsters.”<sup>193</sup> Parents, students, clergy, NAACP, and civic club leaders promptly began a demonstration in the streets of the Downtown Memphis Corridor around the police station and the criminal courthouse.<sup>194</sup> At another venue, LeMoynes student, Johnnie Turner, and others were arrested while trying to integrate a white religious service at the Levitt Shell in Overton Park, a move which blocked Johnnie Turner for years from becoming a teacher in the Memphis City Schools.<sup>195</sup>

The arrested individuals were charged with disturbing the peace, loitering, and disorderly conduct.<sup>196</sup> According to one of their lawyers, Russell B. Sugarmon, Jr., “the book was thrown at them,” with all available charges levied against them.<sup>197</sup> The students’ sit-ins at various public facilities amounted to a “religious fervor,” with over 300 arrests.<sup>198</sup> All ten African America lawyers in Memphis represented them, and the charge of loitering was sustained only five times.<sup>199</sup>

According to Attorney Sugarmon, “[A]fter the first sit-ins, those of us who were working in the defense of these students found ourselves arguing cases in the morning and getting others out of jail in the afternoon, interviewing them at night so that we could argue in the morning.<sup>200</sup> It was a rather hectic time, and I have a memory of a very chaotic situation, with incidents happening every day.”<sup>201</sup> In all there were 318 arrests, 163 convictions, and 155 dismissals at the city court level.<sup>202</sup> There were 191 appeals, of which 119 were dismissed and 17 convicted.<sup>203</sup> One set of cases involving a religious assembly at the Levitt Shell was appealed to the Supreme Court.<sup>204</sup> The lawyers successfully borrowed a *Shelley v. Kramer* strategy developed by attorneys in Greensboro, North Carolina, the site of the first Southern sit-in.<sup>205</sup> Most of those arrested ended up with a fine rather than jail time, but those involved were more interested in eliminating discriminatory barriers than in losing money.<sup>206</sup>

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192. *Id.*

193. *Id.*

194. GREEN, *supra* note 23, at 233–34.

195. Linda A. Moore, *Movement Memories*, THE COM. APPEAL, Apr. 5, 2014, at 2A (reporting that Johnnie Turner later became a state representative and executive director of the Memphis NAACP).

196. HEARINGS, *supra* note 20, at 100-01.

197. *Id.* at 101.

198. *Id.*

199. *Id.* No white lawyers stepped up to help.

200. *Id.* at 101-02.

201. *Id.* at 102.

202. *Id.*

203. *Id.*

204. *Id.*

205. *Shelley v. Kraemer*, 68 S. Ct. 836, 843 (1948) (holding that the 14<sup>th</sup> Amendment covered state judicial action that deprived individuals of due process); Suzanne Craig Robertson, *When “Courage Superseded Fear,”* 46 TENN. B.J. 12 (2010).

206. HEARINGS, *supra* note 20, at 104.

After the initial sit-ins, students became emboldened and began to sit-in at Woolworth's and Walgreen's lunch counters.<sup>207</sup> The students were joined by NAACP leaders, including Laurie Sugarmon, Maxine Smith, Ann Willis, and Eloise Flowers, and by local businessmen, dentists, doctors, and other adults in the community.<sup>208</sup> Next came city buses when two black pastors, Rev. Billy Kyles and Rev. James Netters, rode in the front of the segregated public buses.<sup>209</sup> The civil rights activists took the march for civil rights in Memphis to still more times and places, with increasingly diverse foot soldiers.<sup>210</sup>

#### D. More Lawsuits

*Booker* and *Turner* were significant not only because they desegregated major institutions in Memphis but also because they produced written decisions that left us with a record of the spirit of the time and place that permeated Memphis in the 1960s. A third case, *Northcross v. Board of Education of Memphis City Schools*,<sup>211</sup> desegregated the Memphis public schools; this lawsuit is not discussed in this article because it is amply described in the scholarship of Daniel Kiel.<sup>212</sup>

Law students should know that the Memphis civil rights activists did not rest with educational institutions and public libraries, however. Their goal was complete desegregation of public and private facilities.<sup>213</sup> They next sued against the Memphis Street and Railway Company, airport facilities, and parks and recreational sites. These cases, *Evers v. Dwyer*,<sup>214</sup> *Turner v. City of Memphis (Turner II)*,<sup>215</sup> and *Watson v. City of Memphis*,<sup>216</sup> are briefly described below.

When O. Z. Evers, a community activist in the Binghampton neighborhood and a postal employee, filed suit against Memphis Street and

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207. These sit-ins and a later boycott resulted in an agreement in the fall of 1961 to withdraw the protest in return for promises that lunch counters would be desegregated after the Christmas rush was over. FOSTER, *supra* note 25, at 140.

208. GREEN, *supra* note 23, at 237; HEARINGS, *supra* note 20, at 106. Laurie Sugarmon was among those arrested.

209. Jennifer Pignolet, *Hundreds Gather to Bid Rev. Kyles Goodbye*, THE COM. APPEAL, May 8, 2016, at 1A.

210. ENTERING THE FRAY: GENDER, POLITICS, AND CULTURE IN THE NEW SOUTH 140-41 (Jonathan Wells & Sheila Phipps eds., 2010) (citing Elizabeth Gritter, *Women Did Everything Except Run*). Strategies included black voter registration campaigns and a boycott of THE COMMERCIAL APPEAL for its discriminatory coverage of blacks.

211. *Northcross v. Bd. of Educ. of City of Memphis*, 302 F. 2d 818 (6th Cir. 1962).

212. See GREEN, *supra* note 23.

213. *Id.* at 250.

214. *Evers v. Dwyer*, 358 U.S. 202 (1958) (buses and railways).

215. *Turner v. Memphis*, 369 U.S. 350 (1962) (airport facilities).

216. *Watson v. Memphis*, 373 U.S. 526 (1963); *Watson v. Memphis*, 303 F.2d 863 (6th Cir. 1962) (city recreational facilities).

Railway, as the bus system was then called,<sup>217</sup> he was represented by civil rights stalwarts, H. T. Lockard, B. F. Jones, A. W. Willis, Jr., and Russell Sugarmon, Jr.<sup>218</sup> They again experienced frustrating delays: according to Attorney Sugarmon, “the case went up on appeal because at that point there was one Federal District Court Judge in the Western District of Tennessee. He was called Speedy Boyd, but that was for cases other than civil rights cases, ‘cause he buried them every time . . . .”<sup>219</sup> The trial court ruling was based on lack of Evers’s standing,<sup>220</sup> but on direct appeal, the Supreme Court reversed, emphasizing the facts as follows: on April 26, 1958, Mr. Evers boarded a Memphis bus and seated himself in the front.<sup>221</sup> The driver told him to move to the rear.<sup>222</sup> Following his refusal, two police officers boarded and ordered him to move to the back of the bus or suffer an arrest.<sup>223</sup> Mr. Evers chose to leave the bus.<sup>224</sup> The Supreme Court opined that Mr. Evers did not have to be arrested in order to have standing, and the fact that Mr. Evers got on the bus for the purpose of initiating a lawsuit was not significant.<sup>225</sup> The case was remanded.<sup>226</sup> The transit company thereafter adopted a policy of non-segregation, and the federal lawsuit was rendered moot.<sup>227</sup>

Jesse Turner, of public library fame, also sued to desegregate the Memphis airport facilities and its restaurant.<sup>228</sup> His case went up to the Supreme Court on the procedural issue of abstention.<sup>229</sup> The highest court found no reason for the federal trial court to abstain in order to await a Tennessee state court decision.<sup>230</sup> This case, therefore, was remanded and resolved in favor of Turner.<sup>231</sup>

The final lawsuit, *Watson*, addressed the lack of deliberate speed in desegregating city recreation facilities.<sup>232</sup> I. A. Watson and his friends had originally sought to integrate Pine Hill Golf Course, McKellar Lake Boat Dock, the Brooks Art Museum, the John Rogers Tennis Courts, and the Pink

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217. Marina Pacini, Curator, Memphis Brooks Museum of Art, *THE MEMPHIS WORLD*, 1949-64, 91 (2008) (photographs from The Memphis World).

218. *Id.* at 90.

219. *Id.* at 91 (Interview by Marina Pacini with Russell Sugarmon, in Memphis, Tenn. (Mar. 14, 2008)).

220. *Evers v. Dwyer*, 358 U.S. 202, 203 (1958).

221. *Id.* at 203-04.

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.* at 204.

226. *Id.*

227. *HEARINGS*, *supra* note 20, at 112.

228. *Turner v. Memphis*, 369 U.S. 350, 350 (1962). Desegregation of the airport restaurant occurred after Assistant Secretary of State, Carl Rowan, was denied entrance while his white companions had coffee. *FOSTER*, *supra* note 25, at 140.

229. *Turner*, 369 U.S. at 353.

230. *Id.*

231. *Id.*

232. *Watson v. Memphis*, 303 F.2d 863, 868 (6th Cir. 1962).

Palace Museum.<sup>233</sup> While the City of Memphis voluntarily desegregated the named facilities after the decisions in *Booker* and *Turner*, it continued the segregation of 131 parks and recreational facilities.<sup>234</sup> On appeal to the U.S. Supreme Court, the lower court decisions in favor of the city were reversed, and all parks and recreational facilities were integrated.<sup>235</sup> To sum up this section, these lawsuits teach students that it was the persistence of many advocates over a long period of time that resulted in the voluntary integration of schools, libraries, buses, lunch counters, and private and public facilities. These activists both began and ended an era in civil rights history in the Downtown Memphis Corridor.

#### IV. THE MEMPHIS CIVIL RIGHTS MOVEMENT AND THERAPEUTIC JURISPRUDENCE

The foregoing history of the Downtown Memphis Corridor illustrates that the Memphis Law School sits on sacred and honorable ground and is imbued with a pervading spirit. It has a distinctive character and atmosphere borne in the struggles of black individuals for freedom, black lawyers for acceptance, and the white majority for preservation of the status quo.<sup>236</sup> The formerly segregated public spaces in Memphis—such as the university, the library, and the schools—cannot be forgotten, as those who frequent these places “often feel a reverence toward them as spaces for the almost holy activities of reading and writing.”<sup>237</sup> Similarly, the zoo, parks, and golf courses were important recreational areas for those who chose to sit-in.<sup>238</sup> These and other places were off limits to African Americans: places such as buses, the city auditorium, playgrounds, the art museum and gallery, lunch counters, restaurants, rails, bus and air terminals, restrooms, water fountains, churches, skating rinks, housing opportunities, and jobs.<sup>239</sup> Segregation in Memphis was anti-therapeutic and dehumanizing.<sup>240</sup>

When young people grew tired of this antitherapeutic racial divide and took it upon themselves to sit-in and desegregate these places, they turned their pain into a therapeutic movement that instilled in them a politicized understanding of pride.<sup>241</sup> Their newfound self-respect made “freedom” not just a goal of altering segregated Memphis, but it changed their perception of themselves.<sup>242</sup> So, too, did the civil rights litigation

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233. *Id.*

234. *Id.* at 868–69.

235. *Watson v. Memphis*, 373 U.S. 526, 539 (1963).

236. Without referring to the Downtown Memphis Corridor, both Zeiner and Green set out similar themes in their scholarship. *See*, Zeiner, *supra* note 43; GREEN, *supra* note 23.

237. Knowlton, *supra* note 148, at 2–4.

238. Robertson, *supra* note 205, at 15.

239. HOPPE & SPECK, *supra* note 85, at 17.

240. *Id.*; *see also* HOPPE & SPECK, *supra* note 85, at 23–25.

241. GREEN, *supra* note 23, at 241.

242. *Id.*

brought by so many lawyers and other activists.<sup>243</sup> The lawyers unhinged the quiet of eternal custom and the marginalization of black people.<sup>244</sup> Because of such students and lawyers, now fifty years later, “what we better understand is our own lack of understanding.”<sup>245</sup>

The structures and environs Memphis Law students traverse on a daily basis live and breathe this history.<sup>246</sup> We must preserve the past—its ideas, values, and culture—because it has power to inform the future.<sup>247</sup> The TJ principle that law, legal processes, legal procedures, and the time and space in which they play out have therapeutic and antitherapeutic consequences is an appropriate pedagogical framework for the civil rights movement. To better elucidate these principles, TJ offers a number of relevant methodologies: reframing the past to look forward; honoring the heroines and heroes; and according procedural justice by remembering the past and giving it voice. These methods will be visited in the next sections.

### A. Reframing the Past

To commemorate the 50th anniversary of Dr. King’s death, law students should be encouraged to reframe the civil rights history of the 1950s and 1960s through a TJ lens. Reframing, the reader will recall, is the replacement of harmful or judgmental observations or actions with more neutral or factual reflections to shift the framework of events and one’s perceptions of them.<sup>248</sup> It is certainly true that the temper of the times in mid-20th century Memphis, as indeed in the South, favored segregation and promoted xenophobia, but now “we need new ways of understanding the history of the mid-20th century black freedom movement.”<sup>249</sup> At least three such openings come to the author’s mind: the success of the rule of law, the recognition of equality as a fundamental right, and the role of lawyers in the legal process.

All said and done, despite years of delay and frustration, it was the court system that delegitimized racial discrimination across broad societal institutions from schools and universities to public accommodations.<sup>250</sup> The rule of law prevailed, and the authority of the United States Supreme Court to establish principles, beginning with *Brown’s* “separate is unequal”

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243. GRITTER, *supra* note 210, at 141 (documenting civil rights litigation as a major strategy of Memphis civil rights leaders).

244. WILKINSON, *supra* note 74, at 307.

245. *Id.* at 308.

246. Jones, *supra* note 7.

247. Nivala, *supra* note 55, at \*4.

248. See GALLAGHER, *supra* note 45, at 101.

249. GREEN, *supra* note 23, at 294.

250. Matthew E. K. Hall, *Bringing Down Brown: Super Precedents, Myths of Rediscovery, and the Retroactive Canonization of Brown v. Board of Education*, 18 J. L. & POL’Y 655, 698–99 (2010) (arguing that *Brown* should not be considered a super-precedent because it did not reflect that the civil rights accomplishments were ultimately political).

doctrine, was vindicated.<sup>251</sup> *Brown* inspired the civil rights movement in Memphis. “It was like the Emancipation Proclamation to us. It was just that important,” said Maxine Smith.<sup>252</sup> Fundamental legal rights to due process and equal protection under the 14th Amendment to the U.S. Constitution were upheld.<sup>253</sup> *Brown I* and *II* enabled the decisions in *Booker*, *Turner*, *Northcross*, *Evers*, *Turner II*, and *Watson* that bookmark Memphis civil rights history.

The legal acumen of lawyers, such as B. J. Hooks, A. W. Willis, Russell Sugarmon, Jr., H. T. Lockard, and James Estes, was pivotal in the Memphis civil rights movement. These Memphis lawyers strategized with civil rights lawyers around the country, adopted the sample Section 1983 pleadings developed by NAACP legal counsel, Thurgood Marshall and Constance Baker Motley, and made straightforward allegations of denial of equal protection under the 14th Amendment to the U.S. Constitution.<sup>254</sup> They similarly used the U.S. Constitution under a *Shelley v. Kramer* theory to defend the students who sat-in and were arrested.<sup>255</sup> They made the legal system work for them. As much as the 1950s and 1960s in Memphis history were antitherapeutic times and places, they were also times of great accomplishment, as we now have come to understand.

## B. Honoring the Heroes

And, yet amidst the great darkness, there were still pinpoints of light. The horrors, the atrocities, the heinous and brutal things that man perpetrated upon man . . . the accounts of these have been told and retold many times. But the sparks of human greatness that flared up during this nightmarish time . . . these have not been told enough.<sup>256</sup>

TJ has grown in its understanding to recognize the accomplishment of heroes: heroes of the Memphis civil rights movement were altruists, people exhibiting selfless behavior, often opposed by society and involving great physical and social risks.<sup>257</sup> Dr. King spoke about “excessive altruism,” action that goes beyond duty or the law and that is purely spontaneous, unmotivated, groundless, and creative, arising out of genuine concern for

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251. WILKINSON, *supra* note 74, at 6.

252. GRITTER, *supra* note 210, at 141.

253. Zeiner, *supra* note 43, at 323.

254. *See supra* pp. 20-23

255. Shelley *supra* note 205.

256. Zawisza, *Sprawuj Sie*, *supra* note 30, at 1064 (quoting YITTA HALBERSTAM & JUDITH LEVENTHAL, *SMALL MIRACLES OF THE HOLOCAUST* xii (2008)).

257. Zawisza, *Sprawuj Sie*, *supra* note 30, at 1064 (citing ALTRUISM AND HUMAN BEHAVIOR: SOCIAL PSYCHOLOGICAL STUDIES OF SOME ANTECEDENTS AND CONSEQUENCES 2–3 (Jacqueline R. Macaulay & Leonard Berkowitz, eds. 1970)). Wilkinson celebrates their “unrecorded sacrifices for human dignity.” WILKINSON, *supra* note 74, at 3.

one's neighbor.<sup>258</sup> The heroes of the Memphis civil rights movement serve as social archetypes for their proteges, exemplifying the values of caring and courage and elevating their pupils to act with similar courage, compassion, and tolerance.<sup>259</sup>

The heroes of the times and places of the Downtown Memphis Corridor in the 1950s and 1960s can be honored by calling their names:

- Johnnie Turner and the unnamed students who demonstrated and sat-in.
- The journalists who were arrested: Robert Morris, Lutrelle Palmer, George Hardin, Burleigh Hines, Thaddeus Stokes.
- The lawsuit plaintiffs: Ruth Booker, Nellie Peoples, Mardest Knowles, Elijah Noel, Joseph McGee, Jr., Jessie Turner, Jr., I. T. Watson, O. Z. Evers.
- The lawyers: J. F. Estes, H. T. Lockard, A. W. Willis, Jr., Benjamin W. Hooks, Alexander Looby, Russell B. Sugarmon, Jr., A. T. Lattingly, Thurgood Marshall, Constance Baker Motley.
- The supporting activists: Vasco Smith, Maxine Smith, Laurie Sugarmon, Allegra Turner, Rev. Billy Kyles, Rev. James Netters, Ann Willis, Eloise Flowers, and many more.<sup>260</sup>

Nashville lawyer, Alexander Looby, called the students who sat-in “a revelation to our people . . . they are tired of waiting on others to help them out. I take my hat off to them in this fight.”<sup>261</sup> Hundreds of students put themselves, their educations, and their safety at risk in service of the ideal of equal justice. These children (many activists were still minors) were the heroes.<sup>262</sup>

“If the children were the heroes of the . . . sit-ins, it sometimes seemed that their lawyers were just as young, and just as strong, in spirit.”<sup>263</sup> They were a new generation of black leaders.<sup>264</sup> They disregarded the very real dangers of supporting an unpopular cause and did their jobs, even in the

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258. MARTIN LUTHER KING, JR., *STRIDE TOWARDS FREEDOM: THE MONTGOMERY STORY* 86 (1987), referenced in Walter Earl Fluker, *Now We Must Cross A Sea: Remarks on Transformational Leadership and The Civil Rights Movement*, 95 BOS. U. L. REV. 1225, 1230 (2015).

259. Zawisza, *Sprawuj Sie*, *supra* note 30, at 1071 (citing SAMUEL P. OLINER AND PEARL M. OLINER: *THE ALTRUISTIC PERSONALITY* 142 (1988); DANIEL GOLEMAN, *SOCIAL INTELLIGENCE: THE NEW SCIENCE OF HUMAN RELATIONSHIPS* 52–53 (2006)).

260. Brief biographies of many of these individuals are catalogued in Destiny Smith & Allyson Topps, *Strides for Equality: A Resource Guide for the Civil Rights Struggle in Memphis* (2013 Rhodes Institute for Regional Studies: Urban Education), <https://perma.cc/5XTD-DDBQ>.

261. Gary C. Shockley, *Counsel for the Children: Defending Freedom in the Nashville Sit-in Trials*, 10 NASHVILLE B.J. 10, 16 (2010) (quoting Attorney Loobey).

262. *Id.* at 21; see also Wright, *supra* note 191.

263. Shockley, *supra* note 261, at 16.

264. GRITTER, *supra* note 210, at 140.

face of threats, taunts, and fear of violence.<sup>265</sup> One of these young lawyers, H. T. Lockard, commented, “It was scary, but my courage superseded my fear.”<sup>266</sup> Those who followed, such as attorney Walter Bailey, were motivated by that courage. Bailey said, “Once I got that fire lit, to get out there and fight for social change, it continue[d] to burn. It [became] habit forming.”<sup>267</sup> The modeling of heroes such as these has become a norm in the TJ framework.<sup>268</sup> It is fitting that the courage of the heroes be part of a law school curriculum.

### C. According Procedural Justice

According to the psychology of procedural justice, the process of recognizing the dignity and value of each individual and treating them with respect and in good faith, especially in court, results in the individual’s belief that procedural justice is achieved.<sup>269</sup> People highly value “voice,” the ability to tell their story, and “validation,” the feeling that what they had to say was valued by decision makers.<sup>270</sup> People also experience a feeling of procedural justice when they have voluntarily chosen a course of action.<sup>271</sup> Voice, validation, and control transform lives.<sup>272</sup> Too, exercising a degree of control and self-determination in significant aspects of one’s life also is an important component of psychological well-being.<sup>273</sup>

Written decisions in court cases are a fundamental aspect of procedural justice. In and of themselves they give voice to litigants and validation that at least their stories were heard. Written orders can instill in plaintiffs a greater respect for the law as well as a semblance of relaxation and peace.<sup>274</sup>

The heroes of the Memphis civil rights movement took procedural justice into their own hands when they did not find it in the existing social system, and thus experienced TJ in numerous ways. They self-validated, gave each other voice, and voluntarily chose the ways in which they would

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265. Robertson, *supra* note 205.

266. *Id.*

267. Linda A. Moore, *Movement Memories*, THE COM. APPEAL, Apr. 5, 2015, at 1A (noting that Walter Bailey joined the legal team that represented Dr. Martin Luther King, Jr. in the sanitation workers march in 1968).

268. Susan J. Brooks, *Using Therapeutic Jurisprudence to Build Effective Relationships with Students, Clients, and Communities*, 13 CLINICAL L. REV. 213, 218 (2006).

269. *See supra*, notes 49-52.

270. Winick, *supra* note 31, at 320.

271. *Id.*; Zeiner, *supra* note 43, at 316–20.

272. Bernard P. Perlmutter, *George’s Story: Voice and Transformation Through the Teaching and Practice of Therapeutic Jurisprudence in a Law School Child Advocacy Clinic*, 17 ST. THOMAS L. REV. 561, 620 (2005).

273. Amy T. Ronner and Bruce J. Winick, *Silencing the Appellant’s Voice: The Antitherapeutic Per Curiam Affirmance*, 24 SEATTLE L. REV. 499, 502 (2000).

274. *Id.* at 505.

participate in the movement.<sup>275</sup> They self-validated through their biographical, spiritual, narrative, and commodified ties to Memphis.<sup>276</sup> They endorsed common ideological beliefs when they came together in various civic clubs, women's clubs and charities, and student associations.<sup>277</sup> They united in the NAACP and joined together to travel to Mound Bayou, Mississippi, to gather with regional civil rights activists in order to self-validate.<sup>278</sup>

The lawyer activists in the Memphis civil rights movement experienced the power of voice in the pleadings they drafted, the briefs they wrote, the discovery they commanded, the buildings they entered, and the environs they challenged. Albeit after long delays and judicial skepticism, the lawyers and the plaintiffs they represented experienced voice and validation in the final opinions written by federal trial judges, in the opinions of the U.S. Supreme Court supporting their causes, in the dismissal of criminal charges at the criminal courthouse, and in the settlement agreements crafted with the Board of Education, the Memphis Public Library Board, the City Commission, the Memphis Street and Railway Company, and the numerous other public and private accommodations. Most notably they experienced voice and validation when the trial court in *Booker* struck down a Tennessee constitutional and statutory provision that had been on the books since 1871.<sup>279</sup>

The civil rights altruists achieved a degree of voluntariness and self-determination, and thus procedural justice, by choosing the roles they would take in the civil rights movement. Some chose to serve as plaintiffs in lawsuits, some represented the plaintiffs as attorneys, some demonstrated and sat-in, while others engaged in civic and political action groups.<sup>280</sup> All took an antitherapeutic racial climate and transformed it into a therapeutic opportunity. These are lessons that today's law students can look to for inspiration.

## V. LOOKING FORWARD

Was Dr. King's presence in Memphis on April 4, 1968, tied to the civil rights struggles described above? Absolutely. Memphis had already been noted as the urban hub of the Mississippi Delta and a matrix of regional and national developments in the cotton industry, politics, and popular culture.<sup>281</sup> Dr. King had a personal relationship with the Memphis civil rights activists, especially local pastors, James Lawson and Billy Kyles, who

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275. Zeiner, *supra* note 43, at 319.

276. *See supra* pp.16-17.

277. GREEN, *supra* note 23, at 200.

278. *See supra* p. 19; GREEN, *supra* note 23, at 192-94.

279. *See* Part III, pp 16-27, *supra*.

280. *See supra* pp. 31-32.

281. GREEN, *supra* note 23, at 287.

implored him to come to Memphis to support the sanitation workers' strike.<sup>282</sup> Dr. King saw the ensuing sanitation workers' march and demonstration a dress rehearsal for his national Poor People's Campaign to be held in Washington, D. C., later that month. "If we don't have a peaceful march in Memphis, no Washington. No Memphis, no Washington," he said.<sup>283</sup> The sanitation workers' march and the ensuing rebellions around the country that followed Dr. King's assassination made Memphis key to the future direction of the national freedom movement.<sup>284</sup>

Much has happened in Memphis and around the country in regard to civil rights since 1968 and, surely, since I began the research for this essay two years ago. Some of these changes have focused on symbols, which as Nivala instructs, have the capacity to speak to us and about us.<sup>285</sup> In the Downtown Memphis Corridor alone, the National Civil Rights Museum renovation is now complete.<sup>286</sup> The former Confederate Park has been renamed the "Fourth Bluff,"<sup>287</sup> the state courthouse has been renamed for a civil rights leader, Judge D'Armeay Bailey,<sup>288</sup> and placards commemorating lynching sites and the Memphis racial massacre have been erected.<sup>289</sup> Auction Avenue which leads to the Mississippi River and once was the site of slave auctions has been renamed "A. W. Willis, Jr. Avenue" in honor of one of the desegregation lawyers.<sup>290</sup>

Around the country, Confederate flags have been removed from flag poles, and Confederate emblems have been banned from clothing, jewelry, and even cars on college campuses.<sup>291</sup> College presidents now grapple with the legacy of slavery as research reveals that universities participated in and profited from the slave trade.<sup>292</sup>

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282. GERALD POSNER, *KILLING THE DREAM* 4–5 (1998).

283. *Id.* at 10–11.

284. GREEN, *supra* note 23, at 287.

285. Nivala, *supra* note 55.

286. Emily Adams Kiplinger, *National Civil Rights Museum: Celebrating 25 Years*, THE COM. APPEAL, May 29, 2016, at 12A.

287. Chris Herrington, *Confederate Statues, Parks Obscure War-Era History*, THE COM. APPEAL, July 1, 2015, at 1A (opining that the name change was more about blandly deflecting controversy rather than respecting history).

288. Linda A. Moore, *A Fitting Tribute*, THE COM. APPEAL, July 28, 2015.

289. David Waters, *Telling Shelby's Lynching History*, THE COM. APPEAL, Nov. 16, 2015, at 1A.

290. Verified by personal visit by author, August 7, 2016.

291. Associated Press, *A Look at Calls to Remove Confederate Symbols Across South*, N.Y. TIMES, June 23, 2015; Krishnadev Calamur, *Alabama Governor Orders Removal of Confederate Flags from Capitol*, N.Y. TIMES, June 24, 2015; Alan Blinder & Richard Fausset, *South Carolina House Votes to Remove Confederate Flag*, N.Y. TIMES, July 9, 2015; Natalie Schachar, *New School Rule in Charleston, S.C.: No Confederate Flag Apparel*, L.A. TIMES, Aug. 18, 2015.

292. Rachel L. Swarns, *Intent on Reckoning with Georgetown's Slavery-Stained Past*, N.Y. TIMES, July 11, 2016, at A11.

At the same time, the country has witnessed the tragedies of Ferguson,<sup>293</sup> Charleston,<sup>294</sup> Charlottesville<sup>295</sup> and so many other places.<sup>296</sup> These places highlight the nation's racial divisions and illustrate that Americans have yet to come to terms with discrimination.<sup>297</sup> As a National Civil Rights Museum official reflects, "[T]he historic issues of the past continue to plague us today, fueling the debate for equality, access and justice. Society is still fighting for voting rights, educational equality, and against mass incarceration, gun violence and human trafficking (modern day slavery)."<sup>298</sup>

Looking forward, what can law students learn therapeutically from the Memphis civil rights history, and what place does that era have in a law school curriculum? The heroes of the civil rights movement found a way to reframe the antitherapeutic views of segregation held by white Americans in the 1950s and 1960s. They challenged the temper of the times, and they prevailed. The spirit of the times and places they occupied, students can learn, offers a therapeutic framework and guideposts for the civil rights challenges that lie ahead. The movement focused on using the law, legal processes, and legal procedures to establish fundamental legal rights. It was a time of heroism among lawyers who used their talents to make a difference for their neighbors. It was a time of coming together in collective action among African Americans in civic clubs, the NAACP, and other group efforts. It was a place for strategizing and relying on mentors outside the local community. Lawyers and other activists did not rely on a single blueprint that they hoped would succeed. They combined various strategies and pursued all of them simultaneously. Side-by-side with litigation, their techniques included demonstrations, sit-ins, a media presence, voter registration, and church activism.

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293. The Ferguson Commission, *Forward through Ferguson: A Path Toward Racial Equality*, STL POSITIVE CHANGE (Oct. 14, 2015), <https://perma.cc/BDD4-JPTU> (studying the underlying issues brought to light by the death of a black man in Ferguson, Missouri at the hands of a white police officer in Aug. 2014).

294. Richard Fausset, et. al., *A Hectic Day at Charleston Church and then a Hellish Visitor*, N.Y. TIMES, June 20, 2015 (reporting on the killing of nine African American bible students in a Charleston church by a young white man).

295. Wood, *supra* note 29.

296. Katie Freitland, *NAACP Speaks Up: Leaders Urge Transparency and Patience*, THE COM. APPEAL, JULY 22, 2015, at B1 (reporting on the call for patience in the investigation of the killing of a black Memphis youth by a white police officer); Emily Wagner Pettus, *A March Without Fear*, THE COM. APPEAL, JULY 27, 2016, at 3B (comparing the 1966 Mississippi March Against Fear to the contemporary Black Lives Matter movement and the national responses to police violence).

297. Swarns, *supra* note 292; see also David Waters, *Protesters Block a Bridge and Wake a City*, THE COM. APPEAL, JULY 12, 2016, at 1A (commenting on the peaceful protest in Memphis that blocked the interstate bridge over the Mississippi River in the wake of more shootings of black men across the nation by white police officers).

298. Kiplinger, *supra* note 286 (quoting Faith Morris, chief marketing and external affairs officer).

Some law students who traverse the Downtown Memphis Corridor instinctively already embrace the time and place in Memphis civil rights history that has preceded them. Memphis Law students, for example, hosted a Unity March to Recognize Respect and Dignity for All on February 27, 2016. Their intent was to highlight the fact that despite differences, “we all share a common feature—we are human beings who deserve dignity and respect at all times and to reach out to the greater Memphis community to work together to promote unity, peace, and humanity.”<sup>299</sup> Memphis law students need to continuously be reminded that “Memphis is a city that does not hide its scars; we reflect on them to help us build a better future for all.”<sup>300</sup> This is true not only for Memphis law students but for all law students whose communities face today’s civil rights challenges.

According to Boston University theology professor, Walter Fluker, the civil rights activists of the 1960s crossed an ocean, but those who come after them must cross a sea, and they must do so with creativity, compassion, faith and courage.<sup>301</sup> Therapeutic jurisprudence, its principles, its methodologies, and its application to civil rights history offers one path on that journey, one that should be a welcome addition to today’s legal academy.

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299. Ryan Jones, *Memphis Law Students Host Unity March to Recognize Respect and Dignity for All* (quoting Student Bar Association President Preston Battle)

300. *Id.* (quoting Regina Thompson, president of the Black Law Students Association).

301. Fluker, *supra* note 258, at 1231.