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The Past as Moral Guide to the Present: The Parallel between Martin Luther King, Jr.'s Elements of a Nonviolent Civil Rights Campaign and Jackie Robinson's Entry onto the Brooklyn Dodgers

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THE PAST AS MORAL GUIDE TO THE PRESENT: THE PARALLEL BETWEEN MARTIN LUTHER KING, JR.'S ELEMENTS OF A NONVIOLENT CIVIL RIGHTS CAMPAIGN AND JACKIE ROBINSON'S ENTRY ONTO THE BROOKLYN DODGERS

JAMES R. DEVINE*

About 1963, in Birmingham, Dr. King wrote: "We proved that we possessed the most formidable weapon of all—the conviction that we were right. We had the protection of our knowledge that we were more concerned about realizing our righteous aims than about saving our skins."¹

About 1946, in Brooklyn and Montreal, Branch Rickey said: "[By signing Jackie Robinson, we'll be cut out of scouting in the South for] a while, yes . . . not forever. Alexander Pope covers it mighty well in his Essay on Man . . . . They don't want Negroes in baseball, but when it happens, 'We first endure, then pity, then embrace.' "²

INTRODUCTION

Today, the story is a familiar one to most Americans. On Good Friday, 1963, in Birmingham, Alabama, four ministers—the Reverends Martin Luther King, Jr., Ralph David Abernathy, Fred Shuttlesworth, and Wyatt Walker—brought together by a common desire to right injustice, join with about fifty other people at the Sixth Avenue Zion Hill Baptist Church and begin to march, two by two, toward Birmingham's City Hall. They march on the sidewalks, and no vehicular traffic is obstructed or interrupted.³ They have

¹ David Ross Hardy Professor of Trial Practice, University of Missouri-Columbia School of Law. Funding for this research was made possible through grants from the Maurice B. Graham Faculty Research Fellowship and the John W. Maupin Faculty Research Fellowship. Special thanks, therefore, go to Maurice Graham and John Maupin for their ongoing support of legal research generally and for this project specifically. In addition, thanks go to my colleague, Professor Douglas Abrams, for his editorial comments and assistance.

² Martin Luther King, Jr., Why We Can't Wait 62 (1964).

no parade permit, and indeed they know an outstanding injunction prohibits their activity.4 About a half-mile later, they are met by police, arrested, and soon thereafter, jailed.5 Dr. King is held in solitary confinement and incommunicado through Easter Sunday when President Kennedy intervenes, learns of Dr. King’s safety and

4. In seeking injunctive relief, Birmingham city leaders cited sit-in and kneel-in demonstrations as well as street parades, all of which threatened public safety and placed undue strain on the police department. Walker, 388 U.S. at 309. The temporary injunction prohibited the participation in or encouragement of street parades or processions in the absence of a permit as required by Birmingham ordinance. Id. It was served on Dr. King and other leaders at about one o’clock a.m. on Wednesday, April 11. Id. at 310; William A. Nunnelly, Bull Connor 139 (1991); Bains, supra note 3, at 178.

Dr. King recognized that violation of this court order was “an audacious thing, something we had never done in any other crusade.” King, supra note 1, at 68. However, he argued that this type of injunction had been used in the south to routinely block nonviolent civil rights activities and that, in Alabama, the courts were “notorious” for not resolving cases about such injunctions. Id. at 68-69. In his “Letter from the Birmingham Jail,” Dr. King argued that “one has a moral responsibility to disobey unjust laws. I would agree with St. Augustine that ‘an unjust law is no law at all.’ ” Id. at 84. Mr. Justice Douglas would later agree that “[t]he right to defy an unconstitutional statute is basic in our scheme. Even when an ordinance requires a permit to make a speech, . . . to picket, to parade, . . . it need not be honored when it is invalid on its face.” Walker, 388 U.S. at 336 (Douglas, J., dissenting).

Between issuance of the injunction and Good Friday, Dr. King announced to the press his intention to violate the order, claiming that the city and state had misused the legal process. King, supra note 1, at 69.

5. King, supra note 1, at 72. At the time of the Good Friday parade, there were already some 400-500 persons in jail for attempting to sit-in or kneel-in at various Birmingham businesses. See id. The demonstrators knew that their jail stay might be of some length. See id. The City of Birmingham had already notified the bail bondsman who had previously furnished bond for those involved in the demonstrations that he did not have enough assets to continue to furnish bonds in Birmingham. Id. at 69-70.
telephones the news to Dr. King's wife, Coretta. Ultimately, Dr. King and others are tried and convicted in an Alabama state court for contempt of the order prohibiting marching without a permit, a conviction the United States Supreme Court upholds in *Walker v. City of Birmingham.*

Following his arrest, Dr. King spent eight days incarcerated in the Birmingham jail, during which he penned the now-famous "*Letter from the Birmingham Jail.*" The Letter was first fully published on June 12, 1963, the same day President Kennedy called race a "moral crisis" and proposed federal civil rights legislation.

6. 388 U.S. 307 (1967). In a five to four majority decision, Mr. Justice Stewart allowed for sympathy for "the petitioners' impatient commitment to their cause." *Id.* at 321. The temporary injunction was upheld because the trial court had equitable jurisdiction of the matter and because the Alabama courts did not consider non-jurisdictional error in defense of a contempt citation. *Id.* at 315, 319. While the Court acknowledged the dubious federal constitutional status of both the Birmingham ordinance requiring a parade permit and the underlying order, the Court noted that the proper method for making those constitutional challenges was by seeking modification of the injunction or by appeal of the injunction itself. *Id.* at 317-18. Violation of the judicial decree was not a substitute. *Id.* at 316-19. Ultimately, the defendants had to spend five days in the Birmingham jail for their contempt. *Bains, supra* note 3, at 249 n.46.

While holding that it was impermissible to violate a validly issued injunction on First Amendment grounds, the Court ultimately refused to permit conviction of any of the marchers for violation of the Birmingham ordinance. *Shuttlesworth*, 394 U.S. at 153-57.

7. Dr. King was released on bond on April 20, 1963. *Bains, supra* note 3, at 179. There were funds available that would have permitted King to make bail sooner, but his incarceration enabled the movement to call nationwide attention to Birmingham, thus generating additional contributions necessary to keep the efforts going. *Id.; Nunnellely, supra* note 4, at 146. Dr. King's release coincided with a downturn in interest in the street demonstrations. *Id.* at 147.

8. Dr. King's *Letter* was a response to a letter written by eight, white, moderate clergymen who had previously opposed the segregationist views of Alabama Governor George Wallace. These ministers had written an open letter that was published the day following Dr. King's arrest in the *Birmingham News.* Their letter indicated that Dr. King was an outsider who ought not to interfere in Birmingham. It also favored moderation in light of the then-moderating political situation in Birmingham. See E. Culpepper Clark, *The American Dilemma in King's "Letter from Birmingham Jail,"* in Martin Luther King, Jr. and the Sermonic Power of Public Discourse 39-40 (Carolyn Calloway-Thomas & John Louis Lucaites eds., 1993).

9. Clark, *supra* note 8, at 35. The *Letter* was published in pamphlet form in Birmingham by the American Friends Service Committee shortly after it was finished on April 16, but the rhetoric created little public stir. Excerpts were reprinted on May 19, 1963 in the *New York Post Magazine.* The copy published in June parallels a copy of the original that is in the archives of the Birmingham Public Library. *Id.* at 187-88 n.3. In this Article, references to the *Letter* are from the version printed in Martin Luther King, Jr., *Why We Can't Wait,* which Clark indicates has been edited for syntax, but which carries the "argumentative integrity" of the original. *Id.*

10. Compare Juan Williams, *Eyes on the Prize, America's Civil Rights Years, 1954-1965* 195 (1987) quoting President Kennedy as telling the nation:
The *Letter* has been called "[t]he ultimate manifesto of the 'Civil Rights' movement," and a "classic of protest literature." In the *Letter*, Dr. Martin Luther King, Jr. sets out the elements of a nonviolent campaign which are:

1. Collection of facts to determine the extent of injustice;
2. Negotiation;
3. Self-purification; and

The fires of frustration and discord are busy in every city. Redress is sought in the street, in demonstrations, parades and protests which create tensions and threaten violence. We face, therefore, a moral crisis as a country and as a people. [Then discussing the civil rights bill that would prohibit segregation in most public places, President Kennedy said:] This seems to me to be an elementary right. Its denial is an arbitrary indignity that no American in 1963 should have to endure. Dr. King, in his *Letter*, makes the following points, all of which appear in the quotation from President Kennedy:

1. "The Negro has many pent-up resentments and latent frustrations, and he must release them. So let him march; let him make prayer pilgrimages to the city hall; let him go on freedom rides - and try to understand why he must do so. If his repressed emotions are not released in nonviolent ways, they will seek expression through violence. . . ."

King, *supra* note 1, at 91;

2. One of the purposes of civil rights activities engaged in by Dr. King and his followers was "to foster such a tension that a community which has constantly refused to negotiate is forced to confront the issue. . . ."

*Id.* at 81;

3. On moral responsibility, King discusses the obligation to violate, or change, immoral laws.

*Id.* at 84-86. See also Nunneley, *supra* note 4, at 163 (noting that Dr. King stated "[t]he sound of the explosion of Birmingham reached all the way to Washington."). See also Clark, *supra* note 8, at 48 (quoting Reverend Fred Shuttlesworth as indicating that when African American leaders later went to White House, President Kennedy remarked: "But for Birmingham, we would not be here today.").

This legislation proposed by President Kennedy became the Civil Rights Act of 1964 and passed following Kennedy's death.

In his study of what he called the "Negro problem" in America, Gunnar Myrdal suggested that American racial unrest was caused by the obvious disparity between our national conscience, which he called the American Creed — a belief in democratic political, social and economic equality for all citizens, and the actual status accorded African Americans. *Gunnar Myrdal, An American Dilemma: The Negro Problem and Modern Democracy* 23 (20th Anniv. ed. 1962). By the time he reached Birmingham, Martin Luther King was familiar with Myrdal's work. Clark, *supra* note 8, at 43. Dr. King became familiar with Myrdal's 1944 work while a student at Boston University. *Id.* Clark also mentions that Dr. King visited Myrdal on several occasions. *Id.*


12. It has been referred to in this way, in part, because of its summarization of prior King views on nonviolence. Clark, *supra* note 8, at 40-41; James P. Hanigan, Martin Luther King, Jr. and the Foundations of Nonviolence 246 (1984); Williams, *supra* note 10, at 187.
4. Direct action.\textsuperscript{13}

Because the nonviolent campaign in Birmingham represented a national turning point in civil rights and because these elements were essential to the success of the effort, it seems almost sacrilegious now to argue that the identical elements had been used effectively in the cause of African American civil rights some seventeen years earlier. Yet, that is exactly the case.

This earlier story is also familiar to many Americans, but it is not necessarily associated with the Civil Rights Movement. On Tuesday, April 22, 1947, one week after the beginning of the 1947 baseball season,\textsuperscript{14} Jackie Robinson, the first African American to play major league baseball in the twentieth century, steps to the plate. He knows that baseball has a long-standing tradition prohibiting this action, but he defies that tradition. As a result, members of the Philadelphia Phillies, on their initial visit of the season to the Dodgers’ Ebbets Field, begin to taunt Robinson:\textsuperscript{15}

\begin{quote}
‘Hey, nigger, why don’t you go back to the cotton fields where you belong?’
\end{quote}

\begin{quote}
‘They’re waiting for you in the jungles, black boy.’
\end{quote}

\begin{quote}
‘Hey, snowflake, which one of those white boys’ wives are you dating tonight?’
\end{quote}

\begin{quote}
‘We don’t want you here, nigger.’
\end{quote}

\begin{quote}
‘Go back to the bushes!’\textsuperscript{16}
\end{quote}

\textsuperscript{13} KING, supra note 1, at 79.

\textsuperscript{14} JOSEPH DURSO, BASEBALL AND THE AMERICAN DREAM 233 (1986). In preparation for the 1947 season, Robinson had been promoted to the Dodgers from its minor league club in Montreal on April 10. Id.

\textsuperscript{15} The taunting started from the dugout and was led by the Philadelphia manager, former Yankee and Dodger, Ben Chapman. ROGER KAHN, THE ERA 47 (1993) [hereinafter KAHN, THE ERA]. For a discussion of Chapman’s major league career, see DAVID S. NEFT & RICHARD M. COHEN, THE SPORTS ENCYCLOPEDIA: BASEBALL 232 (13th ed. 1993). Chapman was traded from the Yankees because of his intertemperance towards Jewish players. He was traded to Washington for another outfielder, Jake Powell. See KAHN, supra. Powell was also a racist. For a further discussion of Powell, see infra note 128. See also KAHN, supra (discussing both Powell and Chapman, and their roles in development of baseball from 1947-1957).

\textsuperscript{16} JACKIE ROBINSON, I NEVER HAD IT MADE 59 (1995). The language used is apparently Robinson’s, despite the quotation marks. It is repeated by both Durso and Falkner. DURSO, supra note 14, at 233; DAVID FALKNER, GREAT TIME COMING 164 (1995). Long-time Robinson follower Roger Kahn, writes of these taunts more in the language of the drawl of Alabaman Chapman:

\begin{quote}
‘Hey you, there, Snowflake. Yeah, you. You heah me. When did they let you outa the jungle . . . .
Hey, we doan need no niggers here . . . .
Hey, black boy. You like white poontang, black boy? You like white pussy? Which one o’ the white boys’ wives are you fucking tonight?’
\end{quote}
There are no responses, only shocked silence from the Dodger dugout. Robinson is at a crossroads. "All my life I've been a proud guy." He recognizes how cleansing it would be to drop his bat, stride over to the Phillies dugout, "grab one of those white sons of bitches and smash his teeth in with [his] despised black fist."

Robinson, however, is part of what he refers to as "Mr. Rickey's noble experiment." He agreed not to retaliate, even though the actions of the Phillies so upset him that he became an easy out. When he does not trade blow-for-blow, his nonviolence becomes a turning point for major league baseball and for African American professional athletes in all sports.

Even before African American Jackie Robinson stood in defiance of the Philadelphia Phillies dugout, African American lawyers Charles Houston and Thurgood Marshall had stepped up the battle for integration on a national basis. Juan Williams' chronology of the Civil Rights Movement, EYES ON THE PRIZE, explains how Houston, as NAACP legal counsel, began the process of school integration by attempting to integrate law schools in the 1930s and 1940s. Williams also writes about how Marshall, who succeeded Houston as NAACP counsel, established the organization's Legal Defense Fund in 1946. Williams makes it clear that these two lawyers and others were intent on reversing the Jim Crow segregation laws adopted in so many states as a result of Plessy v. Ferguson, but Williams does not mention the impact Jackie Robinson's reintegration of baseball had on those efforts. Similarly, in his book THE CIVIL RIGHTS STRUGGLE: LEADERS IN PROFILE, John D'Emilio presents biographical...
cal profiles of "83 men and women who were in the vanguard of [the civil rights] struggle." 24 Jackie Robinson is not among them. 25

Today, historians have begun to include athletes like Jackie Robinson when discussing the American civil rights movement, but the discussion tends to place Robinson’s actions as an early example of that movement. For example, in BASEBALL, Geoffrey Ward and Ken Burns noted that "[f]or all the hardship that Robinson and other black players endured and despite the slow pace of integration that followed their pioneer struggles — it would be a dozen more years before all teams were integrated — major league baseball was well ahead of the country." 26 Some writers, like Roger Kahn, see the development of the winning Brooklyn Dodger teams of the later 1940s and the 1950s as having "integration" as their "dominant truth." 27 Few writers, however, have perceived the process involved in Robinson’s 1947 integration of the Dodgers as being virtually identical to Dr. King’s later integration of the Birmingham business district.

That striking similarity is the focus of this Article. If these two events have similar elements and if we have labeled the second event as pivotal to the civil rights movement, then it would be a mistake to fail to accord the first event similar status. Indeed, closer scrutiny of the two events may show that the first was pivotal to the happening of the second.

25. Id.
27. Clearly, Roger Kahn has the best grasp of the social importance of Robinson’s entry onto the Dodgers. In his BOYS OF SUMMER, however, Kahn tends to downplay that importance:

[The Dodgers] were the first integrated major league baseball team and so the most consciously integrated team and, perhaps, the most intensely integrated team. All of them, black and white, became targets for the intolerance in which baseball has been rich.

Hate was always threatening the team. But the Dodgers, the dozen or so athletes who were at the core of the team . . . stood together in purpose and for the most part in camaraderie. They respected one another as competitors and they knew that they were set apart. No one prattled about team spirit. No one made speeches on the Rights of Man. No one sang “Let My People Go.” But without pretense or visible fear these men marched unevenly against the sin of bigotry.

ROGER KAHN, THE BOYS OF SUMMER xvi (Harper & Row 1971) [hereinafter KAHN, BOYS OF SUMMER]. In fact, however, it is Kahn’s “standing together . . . against the sin of bigotry” that was this group’s greatest accomplishment because it was done nonviolently.
I. PRELUDE: PREPARING A STRATEGY

A. Birmingham, 1963

Following the nonviolent campaign to integrate Albany, Georgia, which has been labeled "a stunning defeat" in his political career, Martin Luther King, Jr. knew the need for careful planning in the attempt to integrate Birmingham. He believed an absence of strategy caused the perceived failure in Albany. The Albany Movement's purpose, he said, was "so vague that we got nothing and the people were left depressed and in despair." In cities like Birmingham, King and his followers believed more would be accomplished by concentrating their efforts on one aspect of segregation rather than by fighting segregation generally, which is what had been done in Albany. Before significant activity in Birmingham, Dr. King met for several days with other religious leaders to set "out a careful plan of attack." As a result, "Project C," as it was known, set as its first goal the integration of downtown Birmingham lunch counters. These establishments were selected because African Americans suffered a "special humiliation" when their money was taken in stores that refused to serve them at their lunch counters. Dr. King and the other religious leaders believed that if Birming-

28. In Albany, Dr. King entered the civil rights dispute after it had started. Begun in Spring, 1961, the "Albany Movement" resulted from white intimidation of African American women students at Albany State College. Thereafter, the "movement" became a political dispute between rival civil rights organizations. On one hand, the Southern Christian Leadership Conference attempted to work through local ministers and other community leaders; on the other hand, the Student Nonviolent Coordinating Committee worked through grass roots leaders, including high school students. The two groups disagreed over strategy and goals. Eventually, an umbrella group, "The Albany Movement" attempted to reconcile these groups and multiple marches, freedom rides and mass meetings were held. When over 500 demonstrators had been arrested, leaders invited Dr. King to speak and to lead a rally. Dr. King did lead the rally and was arrested, but he was not jailed with others. Instead, he was held in the sheriff's office, then released on bond, and later was sentenced to a fine or jail. When the fine was mysteriously paid, Dr. King was released. See Williams, supra note 10, at 164-70. See also David J. Garrow, BEARING THE CROSS: MARTIN LUTHER KING AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE, 173-230 (1986) (giving another historical account of Albany Movement).

30. Williams, supra note 10, at 178.
31. King, supra note 1, at 48.
32. Williams, supra note 10, at 181. See also Bains, supra note 3, at 175 (discussing Dr. King's preparation for "Project C").
33. King, supra note 1, at 48. The "C" in "Project C" was for "confrontation." Bains, supra note 3, at 175. Many of the discussions had to use code, because of the belief that the state and local police had wiretapped the telephones of many of Birmingham's civil rights leaders. Id.
34. Id.
ham's African American community withdrew its financial support of downtown businesses, the resulting losses might cause those businesses to change their policies. The plan had three stages. The first phase was to sit-in at lunch counters that refused to serve African Americans and to picket stores which persisted in segregation in an attempt to influence others to boycott those stores. The second phase was to picket and march against the injustices caused by these downtown businesses. The third phase was to introduce children into the sit-ins, the marches, and the demonstrations.

To effectuate this three-stage plan required extensive national and local organization. At the national level, Dr. King conducted a whirlwind speaking tour in an attempt to attract financial backing and volunteers. At the local level, Reverend Walker mapped downtown Birmingham, including "each store's eating facilities." His sketches included entrances and exits and "the number of stools, tables and chairs" in each business so the appropriate number of demonstrators could be determined. He also mapped out secondary and tertiary targets in the event primary sites were blocked. In addition, workshops were scheduled to teach recruits the techniques of nonviolence and direct action.

Originally, "Project C" was scheduled to begin within two weeks of the Birmingham mayoral election of March 5, 1963. However, when no candidate gained a majority in that election, a runoff was scheduled. Plans were postponed until that runoff was held to avoid making the direct action campaign a "political football" that

35. Id.
36. Bains, supra note 3, at 177-80.
37. Id. at 176. Dr. King delivered 28 speeches in 16 cities. The theme was "as Birmingham goes, so goes the South." Id. Financial backing came with the help of singer Harry Belafonte, who sponsored a meeting at which existing conditions in Birmingham were discussed by King and Reverend Shuttlesworth. See id.
38. Id. at 177.
39. Id.
40. Id. Reverend Walker also calculated the amount of time it took both older and younger demonstrators to walk from the Sixteenth Street Baptist Church to the affected downtown area. Id. at 176-77. In addition Walker conferred with local lawyers about city ordinances and the amount of bail that would likely be required of those jailed. Id. He also organized groups to help transport volunteers. Id. at 176; King, supra note 1, at 49.
41. King, supra note 1, at 49-50. Sensing the possible repercussions of their actions, both Dr. King and Reverend Walker advised President Kennedy's administration in Washington of the impending direct action campaign. Bains, supra note 3, at 176 n.11.
might inure to the benefit of one of the candidates, former Commissioner of Public Safety Eugene “Bull” Connor.42

B. Major League Baseball, 1946

The strategy to integrate the Brooklyn Dodgers was also born of failure. While 1941 is known in baseball history primarily for the American League efforts of Joe DiMaggio and Ted Williams,43 the National League Brooklyn Dodgers won only one less game during the regular season than the Yankees. The five-game 1941 World Series was a defensive affair, with the victorious Yankees scoring a total of only fifteen runs on a team batting average of .247, while the losing Dodgers scored only eleven runs on a team batting average of .182.44 In 1942 and 1943, the Yankees again won the American League pennant. The Dodgers, on the other hand, lost the 1942 National League pennant to the St. Louis Cardinals.45 In 1943, the Dodgers fell to third. By 1944, the Dodgers lost ninety-one games, while winning only sixty-three, and finished seventh.46

Branch Rickey, son of a lay Baptist minister, became the Brooklyn Dodgers’ general manager in 1942, having left a similar job with the St. Louis Cardinals.47 Upon his arrival, he forecast a dim future

42. King, supra note 1, at 49, 79-81. Originally, nonviolent protest was scheduled for earlier in the spring, to coincide with the Easter season, a season that, other than Christmas, brought the most shoppers to downtown Birmingham. Id. at 80. One of the concerns of the ministers whose protestations sparked Dr. King’s Letter was that a new City administration, in the form of a supposedly more “liberal” Mayor Albert Boutwell, should be given time to act. Id. Dr. King responded that both Boutwell and Connor were “segregationists, dedicated to maintenance of the status quo.” Id. at 82. It would thus seem that the decision to delay the campaign until after the election was a fear that backlash from even peaceful demonstrations would secure the election of Connor.

43. In 1941, DiMaggio hit in 56 straight games, which is still considered a virtually unsurpassable record, and Williams batted .406, the last time a major leaguer surpassed the .400 mark. Neft & Cohen, supra note 15, at 208.

44. Neft & Cohen, supra note 15, at 208, 210-11. Joe Gordon and Charlie Keller each had seven World Series hits for the Yankees in the five-game series. No Dodger had more than four hits. The earned run averages of the two pitching staffs: the Yankees, 1.80; the Dodgers, 2.66. Id. at 211.

45. Id. at 214. The Dodgers actually won more games in 1942 (104) than they did in 1941 (100), but the Cardinals ended the season with a record of 106-48, finishing with a run of 43-8. Stanley Cohen, Dodgers 66 (1990).


47. Cohen, supra note 45, at 67. Like many other baseball stories, the “spin” on the comings and goings of players and executives takes on differing twists depending on who is doing the telling. Cohen indicates that Rickey replaced Larry MacPhail, who left the Dodgers to take a military commission, and that the transition from MacPhail to Rickey was more of a succession than a change, as MacPhail had been Rickey’s classmate and mentor at Michigan Law School. Id. at 66. The two would have a falling out when MacPhail joined the New York Yankees. For a
for the Dodgers. In 1943, he proposed a daring plan to the Dodgers board of directors. Rather than wait out World War II, as most baseball teams were doing, Rickey encouraged the Dodgers to “hire more scouts and find players as young as sixteen—yes fifteen,” and to sign those players. If the war lasted more than another two and a half years, those players would undoubtedly be drafted and the Dodgers would be out as much as $100,000. But if the war ended in less than two and a half years, the Dodgers would have the young players it needed and would “be in an enviable position.”

Further discussion of the rift between MacPhail and Rickey, see infra note 249 and accompanying text.

MacPhail’s undoing with the Dodgers, however, apparently stemmed from the fourth game of the 1941 World Series. With the Yankees ahead two games to one, the ninth inning of game four found the Dodgers with a four to three lead. When, with two outs, Yankee Tommy Heinrich swung and missed a low pitch by Dodger pitcher Hugh Casey, the Series was apparently tied. Unfortunately, the ball was so low that it was missed by Dodger catcher Mickey Owen. Heinrich wound up at first, Dodger pitching collapsed and the Yankees put up four unanswered runs and won the Series in the following game. MacPhail reportedly got intoxicated and was soon dismissed by the Dodgers. Ward & Burns, supra note 26, at 275.

Rickey, on the other hand, had a falling out with Cardinal management largely because he insisted on a 10% commission on all player transfers. Charles Alexander, Our Game 198 (Owl Book ed. 1992).

48. Many of the 1942 and 1943 Dodgers were over 30 years old, in contrast to Rickey’s former Cardinals, where most of the players were under 30. Neft & Cohen, supra note 15, at 214, 218. It was Rickey’s view that the younger, faster Cardinals would be a better team for years to come, regardless of any veterans who would return to the Dodgers upon the conclusion of World War II. Mann, supra note 2, at 213. A former college and professional player, coach, manager and general manager, Rickey had already coached at least one African American baseball player. For further discussion of Rickey’s coaching experiences, see infra notes 103-04 and accompanying text.

49. At the time, interests of the late Charles Ebbets owned 50% of the Dodgers and Steve and Ed McKeever, contractors who purchased the stock from Ebbets during their construction of Ebbets Field owned the other 50% interest. Cohen, supra note 45, at 15, 79. The 50% ownership interests of the Ebbets family was controlled by the Brooklyn Trust Company, of which George McLaughlin was president. Mann, supra note 2, at 212. McLaughlin was generally thought to be the heaviest backer of the Dodgers. Falkner, supra note 16, at 104. It was he who assembled the board to hear Rickey’s proposal. Mann, supra note 2, at 213. The 50/50 ownership relationship changed in 1944 when 75% of the outstanding shares of the Dodgers were sold in thirds to Rickey, Pfizer Chemical Company’s President John J. Smith, and Dodger attorney Walter O’Malley. Cohen, supra note 45, at 79.

50. Mann, supra note 2, at 213.

51. Id. at 213-14. This would, of course, require a substantial expansion of the Dodger farm system. Falkner, supra note 16, at 104.

Clearly, one of Rickey’s motives had to be economics. He had a reputation of frugality. Sportswriter Jimmy Powers called him “El Cheapo.” The farm system Rickey built while general manager of the Cardinals had enabled Rickey to sign baseball “talent at the lowest possible cost.” Id. at 103. The signing of 15 and 16 year olds would likely accomplish the same purpose.
There was a caveat to Rickey's proposal: If the proposal were accepted, Rickey would direct his scouts "to beat the bushes and sign whatever good players turned up, even if they happened to be Negroes." After lively debate, the Dodgers' board approved Rickey's plan. This approval became the first of six strategic steps Rickey envisioned as necessary to prepare to integrate baseball:

1. Support by the Dodger board of directors;
2. Selecting the right player on the field;
3. Selecting the right player off the field;
4. Support from the public and media;
5. Support of the African American population; and
6. Acceptance of the player from teammates.

Completion of this campaign also required action at both the national and local levels. At the national level, Rickey had to find the right person both on and off the field. Because of the absence of African American baseball players in organized baseball, his national strategy involved secrecy and some deception. Rickey used

52. Mann, supra note 2, at 214.
53. Id. Others indicate that approval came only from McLaughlin. Cohen, supra note 45, at 79; Falkner, supra note 16, at 104. Both Cohen and Mann agree that there was further discussion of Rickey's motive. Cohen indicates that McLaughlin cautioned Rickey to go ahead only if he was doing so for the sake of the Dodgers and not for "the emancipation of the Negro." Cohen, supra note 45, at 79. Mann indicates that another of the Dodger directors asked Rickey about his "real motives" behind wishing to sign African Americans. Mann, supra note 2, at 214.
54. Mann, supra note 2, at 214-15; Falkner, supra note 16, at 104.
55. Initially, the members of the Dodgers' board of directors agreed to keep Rickey's plan secret even from their families. Mann, supra note 2, at 214.

On the issue of deception, the record is again subject to differing interpretations. The conventional interpretation is that Rickey helped form a new Negro baseball league, the United States League, which would have one of its key teams use the Dodgers' Ebbets Field. The creation of this league created a reason for Rickey's scouts to search through the existing Negro Leagues for the "right" person on and off the field. Id. at 218; Cohen, supra note 45, at 79; Robert Peterson, Only the Ball Was White 186-87 (1970); Ward & Burns, supra note 26, at 284. The team would be called the Brooklyn Brown Dodgers. Future Dodgers Roy Campanella and Don Newcomb were recruited with the belief that Rickey was looking to create a Negro League team. Falkner, supra note 16, at 114.

Rickey's formation of the United States League was equally susceptible to another interpretation. By forming the league, with teams in Philadelphia, Chicago, Toledo, Detroit and Brooklyn, Rickey indicated that his intent was to create a Negro league that would have a working relationship with organized baseball. Thus, Rickey would get the money from the Brown Dodgers' rental of Ebbets Field, as well as have first crack at Negro League players if integration came into being. Donn Rogosin, Invisible Men 206-07 (1983). The African American press was, naturally, furious at the prospect of Negro League baseball as subservient to the major leagues. "[W]e won't have any major-league owners running any segre-
non-traditional scouts, including two University professors to scout players in Mexico and the Caribbean.\textsuperscript{56} Over a two-year period, he received reports on potential players from these scouts as well as others in the United States.\textsuperscript{57} While these reports were used more as "[a] process of elimination," they did help Rickey narrow his choices.\textsuperscript{58} When Rickey started an entirely new Negro League, including his own Brooklyn Brown Dodgers, "Rickey was able to turn loose his ace scouts" to aid the effort.\textsuperscript{59}

Action at the local level was also necessary. Following the signing of Robinson and pending his promotion to the major league Dodgers, Rickey met with Brooklyn's African American leadership and told them Robinson's greatest threat was "the Negro people gated leagues for us." \textsuperscript{60} PETERSON, \textit{supra}, at 187 (quoting African American sportswriter Frank Young).

Under this latter scenario, Rickey would be a guaranteed winner. If the United States League succeeded, Rickey would have the rental income and instant access to Negro League players if integration took place. When the United States League failed after two months, Rickey was still in a position to send Jackie Robinson to Montreal. With an African American in the Dodger minor league system, attendance would pick up at Ebbets field, thus increasing Dodger profit. ROGOSIN, \textit{supra}, at 208-10. When the United States League was formed in 1945, Rickey was in the middle of negotiations for purchase of an ownership interest in the Dodgers. From July through September of that year, Rickey sunk all of his money and a substantial amount of borrowed funds into that interest. He was "flat broke" and in debt in excess of $300,000. MANN, \textit{supra} note 2, at 290.

But for the historical record of Rickey's support of African American athletes, the more sinister view of Rickey's motives would have some appeal. For discussion of the historical record of Rickey's support of African American athletes, see \textit{infra} notes 103-04 and accompanying text. As is normally the case, the most logical interpretation, based on all the facts, is that there is some truth in all parts of the analysis.

\textsuperscript{56} These included Dr. Jose Seda of the University of Puerto Rico and Professor Robert Haig of Columbia University, who had been a fraternity brother of Rickey at Ohio Wesleyan. MANN, \textit{supra} note 2, at 217. By the 1930s, baseball flourished throughout the Caribbean. In Cuba, the game had been introduced in the 1880s and players from both organized baseball and the Negro Leagues played side by side without difficulty in a four team league. Likewise, in Puerto Rico, the Dominican Republic and Panama, leagues, many of which were sponsored by American commercial enterprises, flourished. All of these leagues employed Negro League players. As early as the 1920s, a similar development in Mexico took place, with American players, both African American and white, being used to stock the teams. ROGOSIN, \textit{supra} note 55, at 152-77. It was thus perfectly logical for Rickey to scout these leagues. In 1943, the Dodgers did sign Luis Olmo, a dark skinned outfielder from Puerto Rico. FALKNER, \textit{supra} note 16, at 97. Olmo batted over .300 in both 1943 and 1945 for the Dodgers, finishing his career with an average of .281 in 462 games for Brooklyn and Boston from 1943-1951. NEFT & COHEN, \textit{supra} note 15, at 218, 226, 242.

\textsuperscript{57} PETERSON, \textit{supra} note 55, at 186.

\textsuperscript{58} MANN, \textit{supra} note 2, at 217.

\textsuperscript{59} PETERSON, \textit{supra} note 55, at 187. These included George Sisler, Wid Matthews, Tom Greenwade, and Clyde Sukeforth. \textit{Id}.
themselves.’” He indicated that if, in reaction to Robinson’s entry into Major League Baseball, African Americans would “‘go out and form parades and welcoming committees...strut...wear badges...wine and dine the player until he is fat and futile...You’ll symbolize his importance into a national comedy...’” Promoting Robinson could not, according to Rickey, be used “‘as a triumph of race over race.’” Heeding Rickey’s advice, committees were formed to assure orderly conduct at ballparks in Brooklyn and in other cities. “Don’t Spoil Jackie’s Chances” became the theme in “pulpits, clubs and bars.”

II. Collecting Facts to Determine the Extent of Injustice

A. Birmingham, 1963

In his Letter, Dr. King called Birmingham “the most thoroughly segregated city in the United States,” with a history of violence against African Americans, their homes, their churches and of injustice in the courts. Facts supported this charge. For example, the Reverend Fred Shuttlesworth, spiritual leader of Birmingham’s black community, had been beaten while trying to register his children for a white school and his home had been bombed in 1957. On Mother’s Day, 1961, a Birmingham mob attacked Freedom Riders, and local police failed to intervene. There were eighteen unsolved bombings in black neighborhoods between 1957 and 1963. Infamous Birmingham Public Safety Commissioner Eugene “Bull” Connor used the police to break up political gatherings of African Americans. To avoid compliance with federal court ordered desegregation in 1962, the city closed sixty-eight parks, thirty-eight playgrounds, six swimming pools and four golf courses. One upper-middle class African American section had earned the nickname

60. MANN, supra note 2, at 255.
61. Id.
62. Rickey biographer Arthur Mann claims to have been at the meeting and notes that Rickey’s initial statements left the gathering “shocked into silence.” MANN, supra note 2, at 255.
63. Id. It seems clear that, at this stage, Rickey was answering concern of other major league owners that African American players would so increase black attendance that whites would stay away, thus decreasing the value of some major league clubs, a belief formally expressed by owners in 1946. For further discussion of the concern over Negro attendance, see infra notes 129 & 162 and accompanying text.
64. KING, supra note 1, at 79.
65. WILLIAMS, supra note 10, at 181. It had been Reverend Shuttlesworth who wanted Dr. King to make Birmingham a focal point of a nonviolent desegregation effort.
“Dynamite Hill,” and the city itself had earned the nicknames “the worst big city in the U.S.A.” and “Bombingham.”

B. Major League Baseball, 1946

Organized baseball also had a long history of segregation. For example, one of the first organized baseball leagues, the National Association of Amateur Base Ball Players, barred blacks in December, 1867. Even earlier, the Pythians, an all-black Pennsylvania team, was denied credentials at the Pennsylvania amateur baseball association convention, withdrawing its application for membership, rather than being “black balled.” Nineteenth century baseball, however, was not entirely segregated. African Americans played baseball in white leagues throughout the post-Civil War period. Primarily in the South during this same period, all-black teams and leagues existed and sometimes even thrived. In fact, between 1883 and 1898, some fifty-five African American players played in “Organized Baseball,” and two brothers, Weldy and Moses “Fleetwood” Walker, made it to what was then considered the “major league” level. These African American players, leagues and teams were not treated equally when compared to their white brethren. Fleetwood Walker, for example, was not just a catcher. He was a highly intelligent one. Born a free man, Walker’s father was, depending on the report, either a physician or a minister. Walker’s formal baseball career began at Ohio’s Oberlin College,

68. As to the historic significance of this league, see James R. Devine, Baseball’s Labor Wars in Historical Context: The 1919 Chicago White Sox as a Case-Study in Owner-Player Relations, 5 Marq. Sports L.J. 1, 6 (1994). As to the fact that this league excluded African American players, see Harold Seymour, Baseball: The People’s Game 537 (1990) [hereinafter Seymour, People’s Game].
69. Seymour, People’s Game, supra note 68, at 537-38.
70. Id. at 537-45.
71. As defined by baseball historian Seymour, “organized baseball” includes the minor and major league teams that are bound together by an intricate set of inter-league agreements which, taken together, regulate the entire industry into one vertical combine. Harold Seymour, Baseball: The Golden Age 6 (1989) [hereinafter Seymour, The Golden Age].
72. Seymour, People’s Game, supra note 68, at 547.
73. Peterson, supra note 55, at 21. This account indicates that Walker was born in Mt. Pleasant, Ohio, just across the Ohio river from Wheeling, West Virginia, and, therefore, a stopover on the underground railroad during the years prior to the Civil War. Peterson indicates that Walker’s father was a physician who moved his family upriver to Steubenville while Fleetwood was a child. Id. In Arthur Ashe, A Hard Road to Glory: Baseball 3-4 (1993), the author indicates that Fleetwood’s father was a “doctor practicing in Steubenville.” Id. But see Seymour, People’s Game, supra note 68, at 547 (disputing these reports and indicat-
where he was an above average student.74 During the 1881 school year, Oberlin began intercollegiate baseball, and Walker became the team’s catcher. The team played three games, the last of which was against the University of Michigan. Evidently, the Michigan coaches saw something they liked since they recruited Walker and he eventually earned varsity baseball letters as Michigan’s catcher during both 1882 and 1883.75 Walker studied law at Michigan and is listed in the University’s all-time record book, but he returned to Oberlin following the 1883 season and caught at least one more game for his old school.76 In 1883, Walker joined the Northwestern League’s Toledo Mudhens as its catcher and was generally praised by both the press and the public for his commendable performance.77

When lawyer Abraham G. Mills became National League president in 1882,78 he held a baseball summit conference with leaders of the American Association and the Northwestern League in an attempt to resolve an inter-league bidding war for player talent.79 As a result of that meeting, the American Association was recognized as a “major” league and the Northwestern Association as a high minor league.80 Fleet Walker was elevated to major league

ing that his review of 1870 Steubenville census records indicated that Walker’s father was minister).

74. PETERSON, supra note 55, at 21; SEYMOUR, PEOPLE’S GAME, supra note 68, at 547. Peterson points out that Walker took mainstream courses like "mathematics, Greek, rhetoric, mechanics, natural philosophy, French, civil engineering, zoology, chemistry, astronomy, German, botany, logic, and Latin." PETERSON, supra note 55, at 21.

75. PETERSON, supra note 55, at 21-22.

76. SEYMOUR, PEOPLE’S GAME, supra note 68, at 548. Both Peterson and Seymour indicate that Walker earned a degree from neither Oberlin nor Michigan. Id.; PETERSON, supra note 55, at 21-22.

77. PETERSON, supra note 55, at 22; SEYMOUR, PEOPLE’S GAME, supra note 68, at 548. He was said to do good work, although at times, he had difficult throwing out runners. He batted a respectable .251. For a comparison of the averages of other stars from 1876-1900, see NEFT & COHEN, supra note 15, at 10. Fleetwood Walker’s brother, Weldy, followed him to Oberlin and played on the college team in 1881 and 1882. SEYMOUR, PEOPLE’S GAME, supra note 68, at 548. Evidently, he also followed his brother to Michigan because the University’s newspaper is said to have written in the Fall of 1882: "We are glad to welcome Weldy, and are willing to harbor any more [Walkers] if they are as good a baseballist as Weldy’s brother." ASHE, supra note 73, at 4.


79. ALEXANDER, supra note 47, at 37; DAVID VOIGT, AMERICAN BASEBALL 127 (1966).

80. ALEXANDER, supra note 47, at 37; VOIGT, supra note 79, at 127-28. All three leagues agreed on a minimum player salary of $1,000, agreed to retain a reserve clause and, most important, agreed to respect the reserve rights of other teams. Id.
status when Toledo joined the American Association in 1884.\textsuperscript{81} Despite a generally recognized scarcity of catchers,\textsuperscript{82} despite the fact that Toledo's best battery, Tony Mullane, a colorful Irish pitcher and Fleet Walker, an African American catcher, presented "a sure gate attraction,"\textsuperscript{83} and despite his forty-two games as Toledo's starting catcher, Walker was not "reserved" for the following season.\textsuperscript{84} Arthur Ashe noted that "[p]erhaps Toledo manager Charles Norton was worried about protecting a Negro when everyone else was trying to get them out."\textsuperscript{85}

In fact, more tolerance was required of Walker than of white players. Against Louisville, for example, Walker was the object of numerous racial epithets and his play suffered. To its credit, the Toledo newspaper is said to have reported this disturbing news, thereafter causing the Louisville club to be soundly booed the next time it traveled to Toledo.\textsuperscript{86} When Toledo was scheduled to travel to Richmond late in the 1884 season, Walker's manager received a

\begin{footnotesize}
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\item Seymour, People's Game, supra note 68, at 548.
\item The period from 1881 to 1883 was one of the most lucrative for early baseball players. The American Association challenged the fledgling National League for baseball superiority. While inter-league games were played between the two leagues in 1882, the American Association then began to "raid" National League clubs for players, causing both salary competition and salary inflation in both leagues. Because catchers were at a premium, both leagues recruited likely signal callers. Devine, supra note 68, at 16-18. Eventually the American Association invited "any National League catcher to join the new league." Id. at 16.
\item Seymour, People's Game, supra note 68, at 548. Mullane was known as "Count" and "The Apollo of the Box," and pitched from 1881-1894 for Detroit, Louisville, St. Louis, Toledo, Cincinnati, Baltimore and Cleveland in both the National League and American Association. He had a career record of 286 wins and 213 losses. Neft & Cohen, supra note 15, at 10. Despite their attractiveness at the gate, Mullane evidently did not like the fact that he had to pitch to an African American and thus often ignored Walker's signs. Seymour, People's Game, supra note 68, at 548.
\item The reserve system allowed teams to retain the services of specific players from other teams in the league. For a discussion of the reserve system, see generally Joseph J. McMahon, Jr. & John P. Rossi, A History and Analysis of Baseball's Three Antitrust Exemptions, 2 Vill. Sports & Ent. L.F. 213, 223-24 (1995).
\item Ashe, supra note 73, at 4.
\item Peterson, supra note 55, at 22-23. The Toledo paper is said to have written: "Many a good player under less aggravating circumstances than this, has become rattled and unable to play. It is not creditable to the Louisville management that it should permit such outrageous behavior to occur on the grounds." Id. at 23. Following the game, Louisville citizens were said to have followed both Fleetwood and his brother Weldy, another member of the Toledo team, in the streets and pelted them with rocks and sticks. Seymour, People's Game, supra note 68, at 552. On the positive side, however, Walker received applause and generally favorable treatment in both Baltimore and Washington, D.C. Peterson, supra note 55, at 22-23.
\end{enumerate}
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letter threatening that "seventy-five determined men" had sworn to attack Walker if he attempted to play in that city.\textsuperscript{87}

Even if Toledo's manager had wanted to play Walker, neither he nor Walker could look to the law for protection. In \textit{The Civil Rights Cases}\textsuperscript{88} in 1883, the United States Supreme Court considered the impact of the post-Civil War Fourteenth Amendment to the federal Constitution.\textsuperscript{89} At issue in \textit{The Civil Rights Cases} was whether the refusal to any persons of the accommodations of an inn, or a public conveyance, or a place of public amusement, by an individual, and without any sanction or support from any State law or regulation, does inflict upon such persons any manner of servitude, or form of slavery, as those terms are understood in this country?\textsuperscript{90}

Noting that "[m]ere [private] discriminations on account of race or color were not regarded as badges of slavery," the Court found no basis in the Fourteenth Amendment for congressional action and, therefore, held the act unconstitutional.\textsuperscript{91}

While \textit{The Civil Rights Cases} did not authorize white baseball players to physically attack an African American player just for play-

\textsuperscript{87} ASHE, supra note 73, at 4. The letter was apparently a hoax as none of the players who allegedly signed it were even on the Richmond team. PETERSON, supra note 55, at 23. There is some controversy over the effect of the letter. Ashe reports that Toledo manager Norton left Walker home and the Toledo press reported him ill. ASHE, supra note 73, at 4. Peterson, however, reports that Walker had broken a rib in July and would not have made the trip in any event. PETERSON, supra note 55, at 24.

\textsuperscript{88} 109 U.S. 3 (1883).

\textsuperscript{89} That amendment forbade any "State" from adopting laws that restrict the "privileges or immunities of citizens of the United States" or "deprive any person of life, liberty, or property, without due process of law," or "deny to any person . . . the equal protection of the laws." U.S. CONST. amend. XIV. Using the amendment as a guide, Congress had enacted civil rights legislation granting to "all persons within the jurisdiction of the United States . . . full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances . . . theaters, and other places of public amusement . . . ." \textit{Civil Rights Cases}, 109 U.S. at 9. The act itself can be found at 18 Stat. 336 (1875).

According to the Court, the act provided both civil and criminal penalties for its violation. Two of the \textit{Civil Rights Cases} involved criminal charges against persons for denying inn or hotel privileges to African Americans; two of the cases involved similar charges arising from failures to seat persons in theaters, and one of the cases involved a civil suit by an African American against a railroad for refusing to allow her to ride in the ladies' car of a railway train. \textit{Civil Rights Cases}, 109 U.S. at 4-5. In dismissing all of the cases, the Court found no connection between any of the activities and the actions by a "state," the entity subject to the provisions of the Fourteenth Amendment. \textit{Id}. This was critical because the purpose of the act was to eliminate the "badges of slavery" which the states had enacted. \textit{Id}.

\textsuperscript{90} \textit{Civil Rights Cases}, 109 U.S. at 23.

\textsuperscript{91} \textit{Id}. at 25.
ing, the decision ratified the attitude that prompted the conduct. Once the Supreme Court permitted discrimination by a private party, all of baseball quickly embraced it. In the South, interracial teams and games were banned, and fans were segregated. African American teams were specifically excluded from organized baseball tournaments.92

At the major league level, latent discrimination yielded to patent discrimination, with players like Hall of Famer Adrian "Cap" Anson leading the way. "'Little darky,' "'chocolate-covered coon,' " and "'no-account nigger' "93—these are the names used by Anson, manager and captain of the Chicago National League club, to describe "talented singer-dancer" and African American Clarence Duval, who traveled with the Chicago club on a world exhibition tour in 1888-1889.94 Even earlier, in 1887, Anson refused to permit his team to play an exhibition game against Newark of the International League if Newark permitted its ace pitcher, African American George Stovey, to pitch the game. Anson's acts were hidden by the press, which printed that Stovey had not played due to illness. Anson's refusal to play mirrored his similar effort in 1883, when he refused to play Toledo if Moses Walker played. In that incident, Toledo's management called Anson's bluff by refusing to share gate receipts with Anson's team if Walker could not play.95 Not mentioned in any of the reports is the effect of *The Civil Rights Cases* on Anson's antics. During the 1883 season, when Toledo successfully called Anson's bluff, the civil rights laws overturned in *The Civil Rights Cases* remained intact. By 1887, however, the United States Supreme Court had authorized this bigotry.96 Permitted to privately discriminate, Anson was vigorous in his racial hatred. When Hall of Famer John Montgomery Ward tried to bring Stovey to the

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92. Seymour, *People's Game*, supra note 68, at 545. Obviously, this attitude was not uniform. In 1887, for example, The Sporting News is reported to have published the report of a Syracuse player suspended for a "refusal to sit beside the Colored Pitcher." Peterson, supra note 55, at 28. At the same time, however, the impact of Southern attitudes on baseball cannot be underestimated. Also in 1887, for example, the International League officially barred African Americans after it was alleged that the best players in the league would leave if African American players were employed by the teams. Id.


94. Id. "Cap" Anson was elected to baseball's Hall of Fame by the Committee on Old-timers in 1939. Neft & Cohen, supra note 15, at 628.


96. Civil Rights Cases, 109 U.S. at 3. *The Civil Rights Cases* were decided on October 15, 1883, after the 1883 baseball season would have ended.
Giants, Anson "bullied Ward into canceling the deal." Baseball historian Harold Seymour writes "that Anson . . . not only waged a one-man campaign against mixed teams and against white ones that played blacks, but also made it his business to urge every player he ever met to refuse to play with any team that included a Negro, Chinese, Japanese, or Indian, or to take the field against one that did." In 1887, the same year that Anson refused to play Newark, a similar incident took place when eight St. Louis Browns players refused to play an exhibition game against the all-Black Cuban Giants. Also, by 1887, many of the minor leagues began to restrict or eliminate African American players. After the February, 1888, meeting of the International League, one press report indicated that the three African American players who had been reserved by League teams for 1888 would probably be allowed to remain, but that no other blacks were likely to gain entry into the League. What is clear is that by the end of the 1880s, restraints familiar to African Americans in later years were solidly in place.

When it was reported that the Ohio State League adopted a rule prohibiting African American players for its 1888 season, former player Weldy Walker wrote an anguished letter to the league president stating the obvious: "There should be some broader cause—such as lack of ability . . .—for barring a player, rather than his color." Another national sporting newspaper, writing of John W. "Bud" Fowler's ability in 1885, sounded yet another familiar rejoinder, after first indicating that he was an outstanding baseball player: "[I]f he had a white face [he] would be playing with the best of them.'


98. Seymour, People's Game, supra note 68, at 553. Peterson indicates that "Anson's attitude was strange." He was born in Iowa and raised with Pottawatomie Indian children as playmates. His entire baseball career was played in the North and much of it was spent in what was thought to be racially liberal Chicago. Nonetheless, his dislike of African Americans "was strong and obvious." Peterson, supra note 55, at 30.

99. As with the Anson incident, it was reported that St. Louis was unable to play because many of the players were injured. Peterson, supra note 55, at 30-31. The game had been widely advertised and some 7,000 seats sold. It should be noted that of the eight players who authored the letter, four were from the North, and one was from Canada. Parts of the letter are reprinted in Peterson, supra note 55, at 30-31.

100. Id. at 32.

101. Id. at 32-33.

102. Seymour, People's Game, supra note 68, at 549. Many American journals were, unfortunately, not so kind. Id. at 555.
Branch Rickey and Jackie Robinson both knew first-hand about racial segregation in baseball. Before he became involved with major league baseball, Rickey was the baseball coach at Ohio Wesleyan college. Integrated baseball was comparatively common among colleges at the turn of the century, so it was not surprising that Rickey had an African American catcher, Charles Thomas, on his team. As the story goes, when Ohio Wesleyan visited South Bend, the team was stopped at its hotel lobby by a frightened clerk who would not let Thomas stay with the otherwise white team. Rickey, who had previously been able to convince hotel clerks to allow Thomas to stay in a room with him, convinced the South Bend clerk to allow Thomas to wait in Rickey's room until alternative arrangements at a local YMCA could be investigated. When Rickey went to get Thomas at the room, he found Thomas had broken down and was sobbing, "[b]lack skin . . . . Oh, if I could only make 'em white," as he scraped at the skin of his hands while rubbing them together.

By 1900, only Charlie Tokahama had a shot at breaking the color barrier. "Takahama" was the last name given by Baltimore manager John McGraw to Charlie Grant, an African American second baseman seen by McGraw while his team was in spring training in Arkansas prior to the 1900 season. Determined to use Grant on his Baltimore team, McGraw read the name "Takahama," referring to a small creek, on a map in his hotel lobby. Ashe, supra note 73, at 15. McGraw evidently developed an elaborate ruse, to which Grant was a willing accomplice, indicating that Tokahama was the son of a white mother and full Cherokee father and that proof of these facts would soon be forwarded to any who contested the infielder's pedigree. Chicago White Sox owner Charles Comiskey put an end to this charade, however, by declaring, in what must be considered a non-sequitur, that if McGraw "really keeps this Indian, I will get a Chinaman of my acquaintance and put him on third." Peterson, supra note 55, at 56. Grant returned to the all-black Columbia Giants for the balance of his career. Id. at 56-57. Comiskey indicated that he had heard that Tokahama was actually Grant, "the crack Negro second baseman from Cincinnati, fixed up with war paint and a bunch of feathers." Id. at 56. McGraw is said to have been unable to withstand the disdain that would follow his signing of an African American player, even though he also expressed interest in other black athletes during his managing career with the New York Giants. Id.

103. Ashe, supra note 73, at 10-11.

104. Mann, supra note 2, at 216. The most recent biography of Jackie Robinson attempts to separate fact from fancy. Thomas was a student and did catch for Rickey during the period of the story, and there was considerable discrimination against African American collegiate baseball players. Thomas graduated from Ohio Wesleyan and became a dentist. Ashe, supra note 73, at 11. However, when he read Mann's account, he told Mann that it was an exaggeration. Rickey's children relegated the story to dinner table conversation. Falkner, supra note 16, at 104-05. There is also little question that Rickey, both as a person and as a lawyer, was acutely sensitive to the condition of African Americans and had a deep sense for moral commitment. Id. at 105-06.
Like Fleetwood Walker and Charles Thomas, Jackie Robinson played on an integrated college baseball team at UCLA. Like both Walker and Thomas before him, merely playing on one integrated team did not eliminate the effect of racial bigotry generally. Later Brooklyn Dodger teammate Pete Reiser had not yet met Robinson when Reiser served in the United States armed forces and played for the Fort Riley, Kansas, baseball team during the early days of World War II. While attending Officer Candidate School, Robinson was also assigned to Fort Riley and wanted to

105. Robinson was hardly a star baseball player in college. Following his matriculation from Pasadena Junior College to UCLA, Robinson played just one year of baseball for UCLA in 1940. While he collected four hits and stole four bases, including home, in his first game, he collected only two more hits in ten remaining games and had ten errors at shortstop. Falkner, supra note 16, at 56-57. Robinson left UCLA during the spring of his second (senior) season. Id. at 64. Robinson's enormous talent is evident in a story told about him by his later Dodger teammate Duke Snider.

Duke Snider was in junior high in California when Robinson played for Pasadena Junior College. Snider remembered that

[F]ive or six of us kids saw him play a baseball game, leave in the middle of it with his uniform still on to trot over and compete in the broad jump in a track meet, and then run back and finish the baseball game just as if nothing unusual had happened.

**Duke Snider & Bill Gilbert, The Duke of Flatbush** 22 (1988). Another somewhat apocryphal story told about Robinson may have been a more spectacular achievement than that related by Snider. The incident arose when Robinson was running track for Pasadena while the college's baseball team was involved in a championship game some 40 miles away. Robinson and some friends drove Robinson’s car to the track meet but had a flat tire on the way and just barely made the meet in time for Robinson to compete in the long jump. He used his first three jumps to warm-up for his fourth jump, in which he broke his brother Mack's national Amateur Athletic Union (AAU) record with a leap of 25' 6 1/2". He then got in the car, drove with his friends the 40 miles from Pomona to Glendale and participated in the baseball game, contributing a couple of hits and a stolen base. Falkner, supra note 16, at 42-43.

106. Reiser was one of the few Dodgers scheduled to return from the war a relatively young man. Born in 1919, the same year as Jackie Robinson, Reiser was only 21 when he came to the Dodgers in 1940 and only 23 when he left for military service after the 1942 season. He returned to the Dodgers for the 1946-1948 seasons and then played for Boston and Pittsburgh in the National League and Cleveland in the American League before retiring after the 1952 season. His career batting average was .295 in 861 games, but he had batting averages of .295 in 1940, a league leading .343 in 1941, and .310 in 1942. Neft & Cohen, supra note 15, at 206, 210, 214, 332. Reiser also developed a penchant for running into walls in an effort to catch fly balls. Kahn, The Era, supra note 15, at 107-11. His career ended for all practical purposes in 1942 when Dodger General Manager Lee MacPhail insisted on Reiser playing despite a serious head injury caused by a collision with the outfield wall. Peter Golenbock, Bums 76-78 (1984).

Dixie Walker, who later refused to play with the Dodgers if Robinson was on the team, was also on the Fort Riley team. Falkner, supra note 16, at 70.

107. Even in this venue, Robinson experienced discrimination. Apparently, his application for Officer Candidate School (OCS) was initially rejected because of his color and he was told, “off the record, that blacks were excluded from OCS
play on the baseball team. " 'One day a Negro lieutenant came out for the ball team,' Reiser told Donald Honig. 'An officer told him he couldn't play. You'll have to play with the colored team,' the officer said. 'That was a joke. There was no colored team. The lieutenant didn't say anything. He stood there for a while . . . . Then he turned and walked away.' "108

Like demonstrators in Birmingham in 1963, Branch Rickey and Jackie Robinson had considerable knowledge of the extent of injustice against African Americans. Dr. King's first element was thus certainly present when Branch Rickey and Jackie Robinson came together in 1946 to integrate the Brooklyn Dodgers.

III. Negotiation

A. Birmingham, 1963

Dr. King's second element in a nonviolent campaign is negotiation. His *Letter* details how, with the knowledge that Birmingham was one of the most segregated cities in the United States, the African American leadership attempted negotiation with city leaders. Until 1962, those attempts resulted in an absence of meaningful discussion.109 In the Spring of 1962, the Southern Christian Lead-
ership Conference's decision to hold its annual convention in Birmingham caused enough concern among Birmingham businesses that by the Fall, discussions with economic leaders in Birmingham did take place.\textsuperscript{110} Those discussions produced such promises as the removal of overtly racial store signs. Unfortunately, while some store signs were removed, most remained and, as time passed, even those that had been removed returned.\textsuperscript{111}

In his \textit{Letter}, Dr. King noted that one of the basic points of the ministers writing him was that "the action that I and my associates have taken in Birmingham is untimely. Some have asked 'Why didn't you give the new city administration time to act?'"\textsuperscript{112} This "new city administration" was one selected following voter approval of a new, mayor-council form of government in November, 1962.\textsuperscript{113}

\begin{flushright}
Gaylord, 202 F. Supp. 59 (N.D. Ala. 1961), Reverend Shuttlesworth sought to enjoin various Birmingham officials from maintaining a policy of segregation in any public recreation facilities owned and operated by the City. \textit{Id.} at 60. While he won the court case, Reverend Shuttlesworth did not win the battle as the city elected to close all of its public recreation facilities rather than have them integrated. \textbf{Nunnelee, supra} note 4, at 112-17. By this time, Reverend Shuttlesworth had left Birmingham and taken a pastorate in Cincinnati, Ohio. \textit{Id.} at 112.

That all of these lawsuits were related to each other can be seen from the interlocking group of attorneys who represented those petitioning for enforcement of their civil rights. These suits, and others, were all related to actions of Reverend Shuttlesworth. \textit{Id.} at 70-76, 80-82, 112-17.

110. News of the SCLC decision to meet in Birmingham was viewed as a signal that Birmingham would be targeted as a protest site. This caused the Chamber of Commerce to form a Senior Citizens' Committee, a biracial group that included African Americans like wealthy businessperson A.G. Gaston and Lucious Pitts, president of local Miles College. By Fall, 1962, it was already known that Birmingham voters would be asked to change their local form of government from a commission to a mayor and council form. One of the reasons for supporting a new form of government within the African American community was to eliminate or reduce the power of Commissioner "Bull" Connor. It was thought that disruption during the form of government election campaign might both hurt the downtown economy and harm chances for the mayor/council form of government. \textbf{Nunnelee, supra} note 4, at 130. \textit{See also} King, \textit{supra} note 1, at 49 (discussing racial barriers to voting in Birmingham under Connor).

111. \textbf{King, supra} note 1, at 47. When the Southern Christian Leadership Conference left Birmingham, Commissioner Connor reminded store owners that racial discrimination in public facilities was required under City ordinance and threatened to arrest those white merchants who broke that law. \textbf{Nunnelee, supra} note 4, at 132.

112. \textbf{King, supra} note 1, at 82.

113. Birmingham had been governed by a three-person commission form of government since 1911. Following a decision by the commission to close public recreation facilities rather than permit those facilities to become integrated, discussion began of changing the form of government to the mayor/council form. \textit{See} \textbf{Nunnelee, supra} note 4, at 125-28 for a more detailed history. That the new form of government won at the polls by over 1,600 votes did not automatically make it so. The entire election was challenged by proponents of the existing form. On March 1, 1963, following the election for mayor, the Alabama Supreme Court

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The newly-elected mayor was Albert Boutwell, who defeated Police Commissioner "Bull" Connor in a March, 1963 special election, although the results were not finalized until almost a month after Dr. King was released from jail in April. The mere fact that Connor was dismissed from Birmingham public office did not change the need for a nonviolent campaign. In its headline, the BIRMINGHAM NEWS may have reported that " 'A New Day Dawns for Birmingham,' " but Dr. King wrote: "We are sadly mistaken if we feel that the election of Albert Boutwell will bring the millennium to Birmingham." Boutwell had, after all, penned legislation in the Alabama legislature that sought to inhibit the impact of the Supreme Court's mandate in Brown v. Board of Education. Dr. King explained that "[w]hile Mr. Boutwell is a much more gentle person than Mr. Connor, they are both segregationists, dedicated to maintenance of the status quo." Dr. King's Letter pointed to finally upheld the change of government election in Reid v. City of Birmingham, 150 So. 2d 735 (Ala. 1963).

114. KING, supra note 1, at 80-81; WILLIAMS, supra note 10, at 182-83. Following the election, Connor went to court seeking to delay commencement of the Boutwell regime until the terms of office of the displaced commissioners had finally expired.

Dr. King was released on bond on April 20, 1963. Id. at 188. Meanwhile, the issue of who governed Birmingham was not resolved until the Alabama Supreme Court ruled on May 23 that the newly elected mayor and council were entitled to be seated upon their election. Connor v. State ex rel. Boutwell, 153 So. 2d 787, 789 (Ala. 1963). This was the second suit concerning this election. While the dispute simmered, the city was governed by both the prior commission and the current mayor/council, and city employees had their paychecks signed by both Boutwell and Connor. WILLIAMS, supra note 10, at 183-84.

Commissioner Connor had been a fixture in Birmingham for many years, having originally served as police commissioner for 16 years in the 1930s and 1940s. He was then out of office for several years, but came back in 1958, "running on a platform of race hate." Harrison E. Salisbury, Fear and Hatred Grip Birmingham, Appendix to The New York Times Co. v. Connor, 365 F.2d 567, 579 (5th Cir. 1966).

Lest it be thought that the State of Alabama was moving toward fairer treatment of African Americans following the election of Mr. Boutwell in Birmingham, it should be pointed out that Commissioner Connor, after two unsuccessful bids to be Governor of Alabama, was elected President of the Alabama Public Service Commission in 1964, largely upon the basis of his support for then segregationist Governor George Wallace. NUNNELLEY, supra note 4, at 167-69. He served in that position until defeated in the 1972 Democratic primary. Id. at 177-79.

115. WILLIAMS, supra note 10, at 183.
116. KING, supra note 1, at 82.
117. 347 U.S. 483 (1954). WILLIAMS, supra note 10, at 183. Specifically, Boutwell sponsored what has been termed a "freedom of choice" amendment that would have ensured continued segregation. NUNNELLEY, supra note 4, at 134.

118. KING, supra note 1, at 82. Boutwell's view was said to be that "'[o]ur resources lie not in disorder but in firm legal resistance' " to segregation. NUNNELLEY, supra note 4, at 134. As a result, Reverend Shuttlesworth is reported to have called Boutwell "'just a dignified Bull Connor.' " Id.
the fact that those in power never give up their privileges voluntarily, and he noted that groups tend to be more immoral than individuals. He indicated that civil rights activists had gained nothing without "determined legal and nonviolent pressure." Finally, he noted that African Americans had waited "340 years for our constitutional and God-given rights," thus indicating that the word "wait" invariably meant "never." Some "direct action" would be needed to change "never" to now.

B. Major League Baseball, 1946

As was true in Birmingham, the movement to integrate baseball in the twentieth century met with little initial success. A significant roadblock facing those who would negotiate was organized baseball's failure to recognize that a negotiable problem existed. "I do not recall one instance where baseball has allowed either race, creed or color to enter into its selection of players," National League President John Heydler is reported as saying in 1933. Even if a separation between Negro and white leagues was acknowledged, a negotiable problem was still denied. Baseball oracle The Sporting News indicated that any "movement" to integrate baseball was the product of "agitators" who were looking out for their own interests and not those of either the Negro or Organized League. "[C]olored people," the paper is reported to have written, "ought to concede their own people are now protected

At the time of these statements, Dr. King also had something of a timing problem. In February, prior to the April campaign in Birmingham, President Kennedy had refused Dr. King's call for issuance of a new Emancipation Proclamation, in honor of the 100th Anniversary of the original document. Civil rights had taken a back seat to international developments, including the Fall 1962 Cuban Missile Crisis. As a result, momentum in the movement was waning. Dr. King and his followers believed that the segregationist history of Birmingham would work to galvanize public opinion in favor of any nonviolent action taken and they believed that they had enough economic muscle to severely injure businesses that would not treat African Americans and whites with equality. WILLIAMS, supra note 10, at 178, 183.

119. KING, supra note 1, at 81.
120. Id. at 80-81.
121. Beginning with the Federal League in 1915, Chicagoan "Rube" Foster had challenged organized baseball to integrate. Foster may have thought his efforts would be more successful as baseball sought to recover from the Black Sox scandal of 1919. However, newly appointed federal district court judge Kennesaw Landis, baseball's first unitary commissioner, apparently believed his efforts should be exclusively directed toward policing baseball gambling. He evidently did not wish to additionally become embroiled in the sticky subject of integration. ASHE, supra note 73, at 22.
122. Peterson, supra note 55, at 175.
123. Id. at 172.
and that nothing is served by allowing agitators to make an issue of a question on which both sides prefer to be let alone."  

At least twice, largely as a result of the efforts of African American newspaperman Wendell Smith of the PITTSBURGH COURIER, the issue of racial integration was unsuccessfully placed squarely in front of organized baseball. In 1939, Smith, his publisher and Afri-

124. Id. at 179. Then Dodger president, Larry MacPhail, echoed this sentiment reportedly indicating that "the problem has been contaminated by . . . vicious propaganda circulated by professional agitators who do not know what they are talking about." Id.

Nonetheless, efforts to negotiate baseball integration continued through the 1930s and early 1940s, fueled in part by the writings of some white sportswriters, legends like Jimmy Powers, Westbrook Pegler, and Heywood Broun. Id. at 175-76. Peterson notes that in 1938, Powers conducted a poll of important baseball figures and found only John McGraw opposed to the idea of admitting African Americans to the Major Leagues. Id. at 175. In 1931, Peterson writes that Pegler denounced baseball's apartheid practices. Id. (calling practice of denying outstanding African American players fame and fortune they deserved "silly"); ROGOSIN, supra note 55, at 181. By the end of the 1930s, Peterson notes that both Powers and Broun "were excoriating the major leagues." PETERSON, supra note 55, at 176. WASHINGTON Post writer Shirley Povich wrote that the Negro Leagues contained pitchers who could win 20 games for major league teams "this season," players who could hit .350 and at least one catcher, Josh Gibson, who was better than Yankee star Bill Dickey. Id. at 176-77.

In addition to these well-known writers, interest in the Negro Leagues caused many northern papers to include at least one article per year on injustices suffered as a result of organized baseball's segregationist policies. ROGOSIN, supra note 55, at 181. At least one writer is reported to have pointed out the un-American nature of baseball apartheid. Dan Parker of the NEW YORK DAILY NEWS is quoted by Rogosin as writing that "there is no good reason why in a country that calls itself a Democracy, intolerance should exist on the sportsfield, that most democratic of all meeting places." Id.

One of the staunchest campaigners for that integration was Wendell Smith, sportswriter for the PITTSBURGH COURIER, a leading African American newspaper. Smith had been the victim of baseball apartheid when, after pitching his American Legion team to a 1-0 victory in a championship game, he was overlooked by a major league scout in favor of the opposing pitcher, who was white. Smith is said to have been told: "I wish I could sign you, too, kid. But I can't." Jerome Holtzman, He Wrote Historic Baseball Script—Wendell Smith Goes Into Hall as Key to Breaking Color Line, CHI. TRIB., July 28, 1994, at 3 (Sports). Smith suggested that his paper adopt integration of baseball as a crusade and the newspaper agreed. Id. Smith, of course, was not alone. "In black circles there was constant agitation for baseball integration." ROGOSIN, supra note 55, at 180. A quote suggestive of the name of Rogosin's book comes from African American press agitation. After referring to the opening of spring training, the NEWARK STAR EAGLE is reported to have written: "But it isn't . . . the famous names of the majors and minors that we're starting to write about, but . . . Men Nobody Knows — nobody that is but thousands of baseball fans from here to Chicago and along the Atlantic seaboard. We refer to the stars of the Negro National League." Id. at 181. Other papers which kept the pressure on organized baseball included the CHICAGO DEFENDER, the AFRO-AMERICAN, the NEW YORK AGE, the NEW YORK PEOPLE'S VOICE, the KANSAS CITY CALL, and the CALIFORNIA EAGLE. In the South, some of the Northern papers could not even be read in public and local papers had to tame some of their editorial comments for fear of backlash. However, papers like the RICHMOND PLANET and the MONTGOMERY ADVERTISER did sympathize with the movement. ASHE, supra note 73, at 33.
can American actor Paul Robeson met with baseball commissioner Landis. "Frankly," Smith was later reported to have said of the meeting, "we were met with silence." Nothing had apparently changed by 1943, when Robeson accompanied members of the Negro Publishers' Association to organized baseball's winter meetings. Commissioner Landis reportedly introduced Robeson as a "man of great common sense." Robeson addressed the owners for about twenty minutes, at the conclusion of which he called for immediate integration of baseball and was greeted with sustained applause. Commissioner Landis is reported to have stated that no prohibition, "written or unwritten, exists to prevent blacks from participating in organized baseball." The Commissioner's words thus tended to make Robeson's entreaties irrelevant.

Organized baseball, therefore, presented a dichotomous front to the race question. On the one hand, baseball continued its racist attitude. On the other, it denied the existence of a "race" issue worthy of negotiation.

125. Holtzman, supra note 124, at 3.
126. Falkner, supra note 16, at 98.
127. Id. at 98-99.
128. Kahn, supra note 15, at 200. Falkner states that Landis made this statement while introducing Robeson, as a diversion from his prepared remarks. Falkner, supra note 16, at 99. The statement makes far more logical sense as a response to Robeson, however, than it does as part of an introduction. Falkner also indicates that the press was prevented from attending this meeting, so all accounts are based upon recollections from The Daily Worker, the Communist newspaper, some of whose employees claimed to have listened to the event at an opened transmitter. Id.
129. Consider these examples:

Beginning in the early 1920s, teams of players from organized baseball barnstormed during the off season, playing against teams from the Negro Leagues. Particularly during the Great Depression, the practice put extra money into the pockets of both major and Negro League players. Peterson, for example, quotes Negro League star Buck Leonard as indicating that, in 1943, he made as much as $150 playing a Sunday doubleheader against a team of major leaguers. Peterson, supra note 55, at 153. The practice caused major leaguers like Babe Ruth, Joe DiMaggio, Dizzy Dean and Stan Musial to praise the quality of play in the Negro leagues. Unfortunately, by playing Negro League teams, the major leaguers risked losing. "When you beat our teams it gives us a black eye," baseball commissioner Landis is reported to have told Negro League organizer Rube Foster. Id. at 152. Accordingly, Landis ordered some games stopped, and further ordered that the major leaguers not wear their regular uniforms in an apparent attempt to prevent the public from thinking that a team from the Negro League could beat an organized group of major league stars. Id. at 152-53; See Rocosin, supra note 55, at 182-84.

Another example of institutional discrimination took place in 1943 when Bill Veeck contemplated purchase of the Philadelphia Phillies. Because of World War II, the Phillies lacked talent. Veeck decided he would stock the team with players from the Negro Leagues and make arrangements for players like Satchel Paige, Josh Gibson, Buck Leonard, Willie Wells and Ray Dandridge to be available to the
By the early 1940s, organized baseball, at least outwardly, appeared to be positively responding to racial concerns. Clubs in organized baseball arranged a number of "try-outs" and "near try-outs" for Negro League players. Unfortunately, like other efforts at "negotiation," these tryouts proved disasters. In 1942, the Pittsburgh Pirates were a weak major league franchise. Because of that weakness and because of the strong history of Negro League baseball in Pittsburgh, the Pirates seemed a likely candidate for integration. Wendell Smith and other Pittsburgh Courier reporters obtained a concession from Pirates owner Bill Benswanger that baseball might be better off with some African American players. Sensing an opportunity, Smith chose four potential players in case

Phillies. Rogosin, supra note 55, at 197. One of Veeck's confidants was Abe Saperstein, owner of the Harlem Globetrotters, who "was as close to black baseball as any white man." Peterson, supra note 55, at 180. Because of his respect for the Commissioner, however, Veeck advised Judge Landis of his plans. While Landis had no outward reaction, Veeck soon found his plan stopped when the Phillies were sold back to the league for about half of what Veeck had offered. Id. When Veeck protested to the Phillies' owner, the response was reportedly "[w]hat are you going to do, sue me?" Rogosin, supra note 55, at 197. The league sold the team to a lumber dealer, William Cox, who was, within a year of his purchase of the Phillies, banned from the game by Commissioner Landis for gambling. See Alexander, supra note 47.

Individual instances of racism also existed. In 1938, Yankee outfielder Jake Powell, in response to a radio interviewer's question about what he did during the off season, replied that he served as a police officer "where he kept in shape by cracking niggers over the head." Rogosin, supra note 55, at 190. The announcer immediately cut Powell off and apologized. Powell was suspended for ten games, but was able to continue to play in the majors, ending his career in 1945. Id. Powell played in 688 major league games for Washington, New York and Philadelphia. Neft & Cohen, supra note 15, at 243. Rogosin reports that Powell's appearance in major league parks thereafter often caused disturbances and a need for greater police protection. Powell attempted to apologize, reportedly telling the Chicago Defender that "I have two members of your race taking care of my home while myself and wife are away and I think they are two of the finest people in the world." Rogosin, supra note 55, at 191. Rogosin also reports that Powell slipped out of the major leagues in 1940 because of injury, to the apparent delight of Yankee management. Id. This is not accurate. Powell played 33 games in 1943, 91 games in 1944, and 27 games in 1945, all with Washington and a further 44 games with Philadelphia in the National League in 1945. Neft & Cohen, supra note 15, at 216, 221, 225, 227.

130. One reason was purely economic. Negro League games were attracting fans at an ever-increasing pace. Ashe reports that the 1938 Negro League East-West Game was "the most well-known black sports event on earth and was attended by more blacks than any other single occurrence." Ashe, supra note 73, at 35-36. The 1941 East-West Game drew 50,256 fans, the 1942 Game drew 48,400 fans and the 1943 Game 51,723 fans. In 1944, the East-West game outdrew the major league All Star game 46,247 fans to 28,589. Id.
the Pirates elected to conduct tryouts. The players waited in vain for a tryout following the 1942 season.\textsuperscript{131}

During the same year, Roy Campanella was led to believe that he would be allowed to try out with either the Philadelphia Phillies or the Pirates. In anticipation of that tryout, he quit the Negro League Baltimore Elite Giants. When his expectations went unmet, Campanella had to pay a fine and serve a suspension as a condition of his return to his Negro League club.\textsuperscript{132}

In Boston in 1945, city councilman Isadore Muchnick, whose constituency was largely African American, threatened to oppose waiver of a traditional ban on Sunday baseball if the Boston Braves and Red Sox did not offer tryouts to African Americans.\textsuperscript{133} Again, PITTSBURGH COURIER sportswriter Wendell Smith made the arrangements. This time, he invited Sam Jethroe of the Cleveland Buckeyes, Marvin Williams of the Philadelphia Stars, and Jackie Robinson of the Kansas City Monarchs to report to Boston for the tryout.\textsuperscript{134} These players fared better than their Pittsburgh counterparts because they were permitted to take the field.\textsuperscript{135} Robinson

\textsuperscript{131} ROGOSIN, supra note 55, at 193-94. Smith chose infielders Willie Wells and Sam Bankhead, catcher Josh Gibson and pitcher Leon Day for the tryouts. \textit{Id.} at 194.

\textsuperscript{132} \textit{Id.} at 194. Similar events took place in the minor leagues. In 1943, in the Pacific Coast League, the Los Angeles Angels' owner invited three African Americans to try out with the team. \textit{Id.} at 194-95. After pressure by other league owners, these tryouts were cancelled. \textit{Id.} In Oakland, the Oakland Oaks' owner, under pressure from the press, ordered his manager to give tryouts to two African American players. \textit{Id.} The manager refused. \textit{Id.}

\textsuperscript{133} PETERSON, supra note 55, at 184. Another report indicates that sportswriter Wendell Smith had encouraged Muchnick to include a plank dedicated to integration of baseball in his election platform. Holtzman, supra note 124, at 3. Ultimately, the Red Sox were the last team to include an African American, Pumpsie Green, in July 1959. ASHE, supra note 73, at 45.

\textsuperscript{134} Smith stated that he thought more well-known Negro League stars, such as Satchel Paige, were too old. Holtzman, supra note 124, at 3. He also indicated that he asked permission of the Pittsburgh (Homestead) Grays to invite Josh Gibson, but was turned down. \textit{Id.} Jethroe ultimately signed and was the 1951 Rookie of the Year, playing with the Boston Braves from 1950-1952 and with the Pittsburgh Pirates in 1954, appearing in a total of 442 major league games, collecting 460 hits in 1763 at bats and accumulating 98 stolen bases. NEFT & COHEN, supra note 15, at 329. There is no record of Marvin Williams playing in the major leagues. Peterson indicates that he played second base for the Philadelphia Stars from 1944 through 1949. PETERSON, supra note 55, at 396. However, Ashe indicates that he played for the Stars from 1942-1949. ASHE, supra note 73, at 188.

\textsuperscript{135} FALKNER, supra note 16, at 102. The tryouts were initially delayed, ostensibly because of the death of President Franklin Roosevelt. Falkner reports that Robinson was angry with the delay, reportedly telling Wendell Smith that "it burns me up to come fifteen hundred miles to have them give me the run-around." \textit{Id.}

Falkner also reports that this was not Robinson's first tryout. He indicates another in 1942, with the Chicago White Sox, who were then training in Pasadena.
later wrote that the players never believed "the tryout was sincere," although all three players put their "best efforts into it." Sam Jethroe reportedly later told his Cleveland Buckeye teammates that Red Sox manager Joe Cronin remained in the stands with his back turned to the field during the entire tryout.  

*Id.* at 68-69. Robinson and Nate Moreland, a journeyman Negro League pitcher, tried out and so impressed Sox manager Jimmy Dykes that he is reported to have indicated that Robinson would be worth at least $50,000 to any current major league team. *Id.* Falkner attributes the fact that this tryout never appears in any Robinson account to two factors: first, it was probably arranged by one of the communist-influenced newspapers, a fact Robinson would later be wise to avoid; and, second, Robinson did not want public knowledge of his skill at a time when he was entering military service on "limited service" because of a prior football injury. *Id.*  

136. Robinson, *supra* note 16, at 29. The players never did tryout for the Braves. The trial they did get was at Boston's Fenway Park. Holtzman, *supra* note 124, at 3. Robinson indicated that team officials "let us fill out application cards, and said 'so long.' We were fairly certain they wouldn't call us, and we had no intention of calling them." Robinson, *supra* note 16, at 29. 

That the players performed well was also reported by Robinson to Peterson: "Every ball the pitcher threw up became a line drive somewhere. We tattooed that short left-field fence—that is, Marv and I did—and Jethroe was doing extremely well from the left side, too. And he looked like a gazelle in the outfield." Peterson, *supra* note 55, at 184-85. Wendell Smith recalled, however, that the entire tryout was a "joke." Falkner, *supra* note 16, at 102. "It was demeaning . . . They had these kid pitchers throwing. It wasn't a real test." Holtzman, *supra* note 124, at 3.  

137. Falkner, *supra* note 16, at 102. Also in 1945, the Brooklyn Dodgers were forced into giving tryouts to Dave "Showboat" Thomas and Terris McDuffie when New York Daily Worker reporter Joe Bostic showed up at the Dodgers spring training facility with a photographer and the players demanded a chance to perform. Peterson, *supra* note 55, at 184. At the time Thomas was 39 and had been playing and managing since 1923, and McDuffie was 36 and had been playing since 1930. *Id.* Both were at the very end of their career, as Thomas' last listed year in the Negro Leagues was 1946 and McDuffie's was 1945. *Id.* at 184, 363, 387. Neither player is listed by Peterson as one of the "Lost Legends" of the Negro Leagues. *Id.* at 207-52. Rogers indicates that Bostic embarrassed Dodger general manager Branch Rickey into watching the two, and Falkner indicates that Rickey was furious. Compare Rogers, *supra* note 55, at 195-96 with Falkner, *supra* note 16, at 102-103. Rickey's own biographer does not mention the incident at all. See Mann, *supra* note 2, at 212-24 (discussing Rickey's hiring of Jackie Robinson). Rickey rejected both players. Rogers, *supra* note 55, at 196. Part of Rickey's embarrassment or anger may have been related to Bostic. Falkner quotes Rickey as believing Bostic's actions had a "sickening red tinge." Falkner, *supra* note 16, at 103. This undoubtedly relates to the fact that one of Bostic's papers, The Daily Worker, was a leading American Communist Party journal. *Id.* at 86. 

By 1945, the Communist Party was one of the leaders in calling for baseball integration. In another incident, on opening day, 1945, the Party picketed the Yankees opener with the Red Sox at Yankee Stadium. Peterson, *supra* note 55, at 185. Communists tried to get Negro Leaguers to join the picket line, but were reportedly told: "You fellows demonstrate and protest. We're gonna play [ball]." Rogers, *supra* note 55, at 186. 

It was the Communist Daily Worker which reported Jackie Robinson's first "tryout" with the White Sox in 1942. Falkner, *supra* note 16, at 68.
None of the "tryouts" produced an African American Major League player. Yet organized baseball still denied any institutional racism. In 1944, Brooklyn Dodger manager Leo Durocher publicly commented that he would play African Americans if permitted by the Commissioner's office. Commissioner Landis issued a statement: "Negroes are not barred from organized baseball by the commissioner and never have been during the twenty-one years I have served." Thus, while baseball may have claimed on the surface that there was no "race" problem, the undercurrent was quite the opposite.

As would again be true in Birmingham, however, events suggested that still more waiting would permit forces of moderation an opportunity to respond positively to the issue.140

138. Peterson, supra note 55, at 178. See also Rogosin, supra note 55, at 193 (giving background of statement).

139. As reportedly noted by Landis' successor, Albert "Happy" Chandler, "[s]o long as Landis remained commissioner, . . . '[t]here wasn't going to be any black boys in the league." Rogosin, supra note 55, at 197-98. Despite public statements to the contrary, African American newspaperman, Wendell Smith, is quoted as saying that Landis remained "immovable" on the issue of baseball integration; he stated "'[t]here is nothing further to discuss.'" According to Smith, Landis "'died with those words on his lips.'" John P. Holway, A Vote for Chandler, an Ignored Pioneer, N.Y. TIMES, Mar. 1, 1981, § 5, at 2.

140. The forces working to reintegrate organized baseball were not the only ones working towards the integration of the United States. Members of the NAACP had been working since the 1930s to integrate American schools. For further discussion of integration, see supra note 22 and accompanying text.

In 1941, with the United States on the brink of war, many African Americans were denied jobs in companies that participated in defense contracts. A. Philip Randolph, who had formed the Brotherhood of Sleeping Car Porters in 1925, organized and was prepared to lead a march on Washington if the federal government did not prohibit discrimination in defense-oriented industry. Following a meeting with President Roosevelt at which Roosevelt agreed to issue a prohibitory order, Randolph called off his march. See Williams, supra note 10, at 197. The resulting Executive Order 8802 reaffirmed United States' policy of "full participation in the national defense program by all citizens . . . regardless of race, creed, color, or national origin." Exec. Order No. 8802, 6 Fed. Reg. 3109 (1941). The order recognized that evidence of discrimination existed and went on to "declare that it is the duty of employers and of labor organizations . . . to provide for the full and equitable participation of all workers in defense industries, without discrimination because of race, creed, color, or national origin." Id. Finally, the order created a Committee on Fair Employment Practice within the Office of Production Management whose duty it was to investigate complaints of discrimination. Id. President Roosevelt created a new Committee on Fair Employment Practice and redefined its role in Executive Order 9346. Exec. Order No. 9346, 8 Fed. Reg. 7183 (1943). Executive Order 8802 has been heralded as "the first U.S. law aimed specifically at equal employment opportunity." 197 CONG. REC. S8627-01 (1991) (remarks of Senator Packwood).

Following Pearl Harbor and the United States' entry into World War II, President Roosevelt issued Executive Order 9001, which permitted the War Department, the Department of the Navy and the U.S. Maritime Commission to enter into contracts to further the war effort, provided, however, that no such contract
First, as in Birmingham, "a new day dawned" for Major League Baseball following the November, 1944 death of Commissioner Landis.\(^1\) In April, 1945,\(^2\) owners chose former Kentucky governor and then United States Senator Albert B. "Happy" Chandler as his successor.\(^3\) Shortly after public announcement of his selec-
could "discriminate in any act performed thereunder against any person on the
ground of race, creed, color or national origin." Exec. Order No. 9001, 6 Fed.
Reg. 6787 (1941). Each contract was "deemed to incorporate" such a provision.
Id.

These Presidential Orders, however, did not create either a "federal question"
or "arise under the Constitution or laws of the United States" so as to permit fed-
eral court jurisdiction over a complaint by an African American who alleged dis-
crimination by a defense contractor. See Miller v. Brown Shipbuilding, Co., 71 F.

Fair Employment legislation was also adopted in New York State in 1944,
largely because of the lobbying efforts of Jewish groups which had been the vic-
tims of overt discrimination and quotas in the selection of candidates for New York's
medical schools. KAHN, THE ERA, supra note 15, at 44. That law made it a crime to
discriminate in employment. N.Y. Laws, ch. 118, § 1 (1945). Branch Rickey later
told Roger Kahn of a feeling of comfort in signing Jackie Robinson, knowing this
law was in force in New York. KAHN, THE ERA, supra note 15, at 46.

There were also a number of local committees working both against discrimi-
nation generally and against discrimination in baseball specifically. ASHE, supra
note 73, at 43; MANN, supra note 2, at 219, 223-24.

141. "The death of Landis, late in 1944, provided the necessary precondition
for baseball integration." ROGOSIN, supra note 55, at 198.

142. Holway, supra note 139, at 2.

143. At least one commentator has reflected on how well Chandler was "de-
picted by his name. Even in anger he came smiling through, though the words he
was spitting through his pearly teeth might be less than ministerial." Furman
Bisher, Unfounded Chandler Tale Makes Another Appearance, ATLANTA J. & CONST.,

In his testimony before a Senate subcommittee in 1991, current Chair of Base-
ball's Executive Council and acting Commissioner Bud Selig, owner of the Milwau-
kee Brewers, said, in response to what one committee member perceived as being
a weakening of the Commissioner's office: "As somebody who has been raised in
this industry and this business, the sport of baseball, that I agree with you, . . . , on
the need for a strong commissioner, I don't think there is really any disagreement
on that." Baseball's Antitrust Immunity 1992: Hearings on S.C.102-1094 Before the Sub-
comm. on Antitrust, Monopolies and Business Rights of the Senate Comm. on the Validity of
Major League Baseball's Exemption from the Antitrust Laws, 102d Cong., 2d Sess. 94
(1992) [hereinafter Hearings].

The selection of Chandler, however, belies Selig's testimony. Following the
death of Judge Landis, reports agree that baseball's owners did not want another
"czar" as commissioner. ALEXANDER, supra note 47, at 231. Prior to the April 1945,
meeting at which a new commissioner was to be selected, Brooklyn's Branch
Rickey met with the New York Giants' Horace Stoneham, the Philadelphia Phillies'
Robert Carpenter and the Boston Braves' Lou Perini, and these four agreed to
support Ford Frick as their first choice and former United States Postmaster James
A. Farley as second choice. A club owner's nominating committee was unable to
agree on a relatively small number of candidates and presented more than 12 poten-
tial candidates, including Frick and Farley, as well as 1944 Presidential candi-
date Thomas E. Dewey, Supreme Court Justice William O. Douglas, Former
Cleveland mayor/Ohio governor and U.S. Senator Frank J. Lausche, FBI Director
J. Edgar Hoover, Senator Chandler and then Postmaster General Robert E. Han-
tion, Chandler was approached by a Washington reporter for the Pittsburgh Courier and asked about the possibility of African Americans playing in organized baseball. Chandler reportedly told the correspondent: “‘If they can fight and die on Okinawa, Guadalcanal, in the South Pacific, they can play baseball in America.’”

Clearly, these were words of encouragement. In fact, however, observers of Chandler’s record must have realized that, to borrow the later words of Dr. King, Chandler’s selection would not “bring the millennium to” organized baseball. Chandler had, after all, been governor of Kentucky from 1935-1939, when the Commonwealth enforced a “School Code” that mandated separate schools for African Americans. Despite agreement by the Dodgers, Giants, Phillies and Braves to elect Frick, his candidacy faded rapidly. Mann, supra note 2, at 229. This left only the politicians and certainly lends credence to reports that the owners were looking for a politician whom they believed they could manipulate. Morris Siegel, Happy Chandler’s Courage Caught Owners by Surprise, Wash. Times, June 24, 1991, at B7. Owners possibly feared their biggest problems were of a political nature, such as continuing a judicially-created antitrust exemption. John Helvar, Lords of the Realm 76 (1994). Chandler, considered a “dark horse,” became a favorite when former Postmaster Farley’s integrity was severely questioned by a report of unknown origin. Ultimately, Chandler was elected unanimously. Mann, supra note 2, at 229-30. Chandler lost his job as commissioner, in part, because he was too independent for baseball’s owners. “Happy” Known for Fortitude: Show of Support for Robinson Bothered Owners, L.A. Daily News, June 16, 1991, at S5. He was replaced in 1951 by the Dodgers, Giants, Phillies and Braves candidate from 1945, Ford Frick, a former sportswriter and National League President from 1934-1951. Frick was chosen because “he would generally follow the owner’s wishes.” Alexander, supra note 47, at 231. In one report, it was said that he “‘walked softly and carried no stick at all.’” Id.; Alan Trues, Grading the Commissioners, Hous. Chron., Feb. 28, 1993, S2 (Sports), at 21. Chandler was even less charitable, reportedly saying of the owners and Frick that “‘[t]hey wanted a vacancy in the commissioner’s office, and they soon had one.’” Billy Bowles, An Ex-Governor’s Racial Slur Hurts his Liberal Record, Det. Free Press, Apr. 24, 1988, at 4C.

The owners may have assumed that appointing a Southern politician would continue baseball’s prior racial attitude. Rogosin, supra note 55, at 198. Rogosin agrees that what the owners were really interested in was political clout. Id.

144. This is the longest of the reported quotations. Rogosin, supra note 55, at 199. Other versions of the statement abound: “‘If a black boy can make it on Okinawa and Guadalcanal, hell, he can make it in baseball.’” Alexander, supra note 47, at 198. Holway quotes Chandler using much the same language as Alexander, but indicates that Chandler prefaced his remarks by: “‘I’m for the Four Freedoms.’” Holway, supra note 159, at 2. It is a little unclear how President Franklin Roosevelt’s Four Freedoms, “freedom from want,” “freedom from fear,” “freedom of speech,” and “freedom of worship,” relate to the integration of baseball.

At the time, Chandler was chairing a military affairs subcommittee of the Senate, and he was reported to have just returned from an inspection of United States troops overseas.

145. For further discussion of the effect of new people in positions of power, compare supra note 116 and accompanying text.

for white and African American children upon penalty of a fine of fifty dollars.147 There is no evidence that Governor Chandler opposed the enforced segregation created by such laws.148 While he was later willing to use federal troops to enforce integration of schools in two Kentucky towns, Chandler also supported Strom Thurmond's segregationist Dixiecrat ticket in 1948 and later sought to run for Vice President in Governor George Wallace's failed 1968 Independent Party campaign.149

In addition to selecting its new Commissioner, major league owners were persuaded by 1946 to consider the issue of race as part of an overall review of "'all matters of Major League interest.' "150

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148. Bowles, supra note 143, at 4C.

149. Id. Even following Chandler's second term as Governor, in 1960, when Olympic gold medalist Muhammad Ali returned to his Louisville home and attempted to obtain a hamburger and coffee at an "all white" restaurant, he was refused. George Hostetter, On Closer Review, Chandler Not Such a Liberal, FRESNO BEE, June 30, 1991, at C11 (Sports).

In 1982, upon his induction into the Baseball Hall of Fame, Chandler described his thought process when asked to approve Robinson's major league contract. In language that can only seem odd in a politically correct world, Chandler is quoted as saying: "'I figured that someday I'd have to meet my maker and He'd ask me why I didn't let that boy play. I was afraid that if I told him it was because he was black, that wouldn't have been sufficient.' " Ira Berkow, Happy Chandler Didn't Stand in Jackie Robinson's Way, PHOENIX GAZETTE, June 29, 1991, at C2. Accord Hostetter, supra, at C11.

In 1988, while a member of the Board of Trustees of the University of Kentucky, Chandler is reported to have stated, in discussing University investments in South Africa: "'You know Zimbabwe's all nigger now. There aren't any whites.' " CHANDLER APOLOGIES, NEWSDAY, Apr. 8, 1988, at 155. Accord Bowles, supra note 131, at 4C. Chandler indicated his comment was not intended to "'intentionally' " offend anyone. Id. "'If it's offensive, I'm ready to say I'm really sad and sorry.' " Id. Chandler went on to explain that he had used the word since childhood "as a term of affection" for African Americans "'and they didn't dislike it.' " CHANDLER, 92, Dies; Aided Integration, L.A. TIMES, June 16, 1991, at 1, col. 2.

150. The lineage of this study remains somewhat clouded. Peterson, for example, writes that, in 1945, after Communists picketed the Yankees' home opener against the Red Sox because of baseball's racist attitudes, organized baseball appointed a committee to study the issue of race and issue a report. PETERSON, supra note 55, at 185. Peterson indicates that only Larry MacPhail, then general manager of the Yankees, and Branch Rickey, general manager of the Dodgers, were on the committee. Rogo- sin, however, indicates a larger committee consisting of MacPhail, Rickey, Phil Wrigley (Chicago Cubs), Sam Breadon (St. Louis Cardinals), Tom Yawkey (Boston Red Sox) and the two league presidents, American League President William Harridge and National League President Ford Frick. ROGO- SIN, supra note 55, at 200.
Unfortunately, however, the resulting report's discussion of racial integration was yet another example of double-talk.\textsuperscript{151} While the report indicated that all Americans, "without regard to" race or creed "should have a fair chance in baseball," and vigorously denied that baseball flew "a Jim Crow flag," it also set out a number of reasons why prior racist attitudes should be continued.\textsuperscript{152}

This study is problematic because all the reports arising from it were to be destroyed. \textit{Id.} at 200-01. \textit{See also Janet Graham, An Answer Lost in Time: Branch Rickey's Grandson Questions Chandler's Role in Integrating Baseball, CINCINNATI POST, June 18, 1991, at 2B.} One copy, however, did survive. It was the copy given to Commissioner Chandler which he later donated to the University of Kentucky Library. \textit{Id.} The report itself supports the Rogosin statement that the committee consisted of two owners from each league and the two league presidents: Ford Frick, Sam Breadon and Philip Wrigley of the National League and William Harridge, L.S. MacPhail and Tom Yawkey of the American League. \textit{Report of Major League Steering Committee For Submission to the National and American Leagues at the meeting in Chicago (27 Aug. 1946), 25 (undated) (obtained on request from University of Kentucky Library) [hereinafter Report].} The report also supports its own secrecy. The title page of the copy on file at the University of Kentucky indicates "No. ___" followed by a signature line "Delivered to _________," which signature line appears to carry the signature of Commissioner Chandler. \textit{Id.} at title page. Obviously, the title page thus suggests a limited distribution of numbered copies for which recipients had to sign.

The report itself, contrary to what appears to be the suggestion of both Peterson and Rogosin, is not limited to issues of race relations. It first sets forth the resolution approved by the National League in July, 1946, authorizing the committee to consider "all matters of Major League interest and report its conclusions and recommendations no later than August 15, 1946," and then indicates that a similar resolution was also adopted by the American League. The problems studied were:

1. Organization of Major and Minor League baseball;
2. Legality of Structure;
3. Player Relationships;
4. Public Relations Problems;
5. Race Question; and
6. Operational Problems.

\textit{Id.} at 2-3.

While this report is cited in sources like Peterson and Rogosin for its portrayal of racial relations in baseball, only two-and-one-half of the 25 pages of the report actually deal with that issue. Of perhaps even greater interest are the findings by these owners, in 1946, based on the conclusions of all of their legal advisors, that: "the present reserve clause could not be enforced in an equity court in a suit for specific performance, nor as the basis for a restraining order to prevent a player from playing elsewhere, or to prevent outsiders from inducing a player to breach his contract." \textit{Id.} at 10.

151. \textit{Id.}

152. \textit{Report, supra} note 150, at 18. The introductory paragraphs dealing with race would appear to disarm prior criticism by outsiders, acknowledging that "[t]he American people are primarily concerned with the excellence of performance in sport rather than the color, race or creed of the performer." \textit{Id.} The report then goes on to state that "[b]aseball will jeopardize its leadership in professional sport if it fails to give full appreciation to the fact that the Negro fan and the Negro player are part and parcel of the game." \textit{Id.} Past performances by African American athletes in football and boxing are acknowledged, along with the fact that 54 Negro League players served in the military during World War II and that
First, echoing earlier statements of The Sporting News, the report said that the movement to integrate baseball was being led by “political and social-minded drum beaters,” who were not interested in baseball generally, or in providing opportunities for the many African Americans who wanted to play baseball or in aiding the few African Americans who were then employed in baseball.\textsuperscript{153}

Second, perhaps referring to The Civil Rights Cases,\textsuperscript{154} the report made clear that “[p]rofessional baseball is a private business enterprise.”\textsuperscript{155} The report then seemed to merge two issues into one. Initially, the report indicated that the Negro and white leagues were both financially successful while remaining separate and that care needed to be exercised to protect the investments of both African American and white owners and players. Then, the report dealt specifically with Jackie Robinson, noting that “[t]he employment of a Negro on one AAA League Club in 1946 resulted in a tremendous increase in Negro attendance at all games in which the player appeared.”\textsuperscript{156} In cities like Newark and Baltimore, African Americans comprised more than fifty percent of the live audience. This percentage was the real concern, and a concern far removed from protecting African American investment because “[a] situation might be presented . . . in which the preponderance of Negro attendance [in cities like New York and Chicago] could conceivably threaten the value of the Major League franchises owned by those Clubs.”\textsuperscript{157}

Third, the report indicated that the signing of just a few African American players would be unfair to “[t]he thousands of Negro boys of ability who aspire to careers in professional baseball.”\textsuperscript{158} It would be “a gesture” that contributed little to solution of “the real problem.”\textsuperscript{159} The report then took the quality of play in the Negro Leagues to task.\textsuperscript{160}

According to the report, baseball players needed technique, coordination, competitive aptitude and discipline, attributes nor-

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\textsuperscript{153} Id. As of August 1946, only Jackie Robinson was employed in any of baseball's major or minor leagues.

\textsuperscript{154} 109 U.S. 3 (1883). For further discussion of the Civil Rights Cases, see supra notes 88-91 and accompanying text.

\textsuperscript{155} See Report, supra note 150.

\textsuperscript{156} Id.

\textsuperscript{157} Report, supra note 150, at 18.

\textsuperscript{158} Id.

\textsuperscript{159} Id.

\textsuperscript{160} Id. at 19.
mally developed during the seven years the average major leaguer spent in the minor leagues. Because Negro League players had not played in the minors, the report seemed to imply, they were not seasoned enough to play in the majors. In a masterful understate-
ment, the report indicates that "[c]omparatively few good young Negro players are being developed." 161 At the time, "comparatively few" was one — Jackie Robinson at Montreal. Additionally, there is no mention that these were the very owners who prevented Negro League players from playing minor league baseball. This paragraph concluded with a quotation attributed to African American sports-
writer Sam Lacy indicating that while some Negro League players might have comparable skills in one baseball area, such as batting or running, very few Negro League players could hold their own with major leaguers in multiple areas. 162

The report next made clear that the movement to integrate baseball presented a serious threat to owners' wallets. If organized baseball took the best of the Negro League players, the Negro Leagues would collapse. If that occurred, many Major League owners would suffer because Negro League teams rented playing space from the owners of Major League ballparks. The Yankees, the report noted, netted nearly $100,000 each year from Negro League games played in Yankee Stadium. As a result, many Major League owners wanted the Negro Leagues to continue. 163

The report then concluded its section on race by indicating that the relationship among African American players, the Negro Leagues and organized baseball "is a real problem" and should be given serious consideration by the Executive Council. Branch Rickey was then apparently singled out when the Committee noted that it did not question the motives of those who were opposed to segregation, but noted that "individual action" could have signifi-

161. Id.

162. Report, supra note 150, at 18-19. This must be an out-of-context or incorrect quote from Sam Lacy. Lacy was an ardent supporter of African American integration of major league baseball. He grew up a fan of the Washington Senators and played semi-pro baseball with members of the Negro League. "'I was in a position to make some comparisons, and it seemed to me that those black players were good enough to play in the big leagues.'" Ron Fimrom, Sam Lacy: Black Crusader, SPORTS ILLUSTRATED, Oct. 29, 1990, at 90. He believed that black players and white audiences were being cheated by enforced integration and took it upon himself to generate change. Id.

163. Report, supra note 150, at 19-20. The report mentioned that success of the Negro Leagues had increased prosperity for the league, which then employed about 400 players. No statistics, however, are cited indicating the amounts that might be lost among African American owners. Rather, the report is far more concerned with lost revenue to major league owners.
cant economic consequences on several Major League teams. Finally, the Committee went "on record as feeling that this is an overall problem . . . and that effort should be made to arrive at a fair and just solution."164 That solution must be "compatible with good business judgment."165

What should be clear from the tenor of this report and from its suggestion for further study by the Executive Committee is the unmistakable message to African Americans: "Let's Wait . . ."166 As Dr. King would later note, for African Americans "waiting" almost always meant "never."167 As a result, negotiation would not immediately cause organized baseball to change its racist attitude. Some "direct action" was needed to determine whether baseball was institutionally ready for integration.168

IV. SELF-PURIFICATION

A. Birmingham, 1946

"Self-purification," Dr. King's third element of a successful nonviolent campaign, required individuals to affirmatively answer a question Dr. King posed in the Letter. That question was: "Are you

164. Id.

165. Id. at 20. The report also wanted the solution to also be compatible with "principles of good sportsmanship." Id.

Although still shrouded in some mystery, this report was evidently adopted by a 15-1 vote of the major league teams, with only the Dodger's Branch Rickey dissenting. It is difficult to understand quite what would have been approved. Despite its charge to draw conclusions and make recommendations, the Report makes none for resolving the issue of whether baseball should begin the process of integration. Thus, there appears to be nothing to adopt. Murray Polner, Happy Chandler's Stand on Integration Supported, N.Y. TIMES, Mar. 15, 1981, § 5, at 2.

166. Id.

167. For a discussion of waiting for rights, see supra notes 112-20 and accompanying text.

168. Chandler's role in Robinson's entry into organized baseball remains unclear. Chandler claimed, after Rickey died, that Rickey came to Chandler after the August, 1946, report was voted upon, and sought Chandler's support. Polner, supra note 165, at 2.

On December 10, 1992, the Senate Judiciary Committee's Subcommittee on Antitrust heard testimony from current baseball owner/commissioner Bud Selig. When asked about owner firing of prior Commissioner Faye Vincent and whether organized baseball really wanted a strong commissioner, Selig pointed to past incidents of disagreement between the commissioner and owners and the fact that the commissioner's office remained intact. One of those incidents was, according to Selig, "the Happy Chandler episode in the late '40's." It took Subcommittee Chair Senator Howard Metzenbaum to point out that the "Chandler episode" was the decision by the commissioner to allow baseball integration to go forward. Hearings, supra note 143.
able to accept blows without retaliating? A nonviolent campaign's dramatic impact arises only when the two dependent elements presented by this question are present.

First, participants must accept suffering: "Are you able to accept blows?" This element stems from "the Christian idea of sacrificial love." A nonviolent campaign relies on psychological warfare for its success. When persons seeking vindication of their rights are willing to "present [their] very bodies as a means of laying [their] case before the conscience of the local and the national community," they show both "sincerity and seriousness of purpose." That demonstration shows self-commitment that brings the demonstrator "self-respect, strength and courage." It allows the individual to escape from the notion that mere survival is life's primary goal. The commitment to "accept blows" shames the op-

169. King, supra note 1, at 80. Another question, not as relevant to the Jackie Robinson/Branch Rickey situation was: "Are you able to endure the ordeal of jail?" Id. Dr. King and his followers held workshops to teach followers the concepts of non-violence.

170. Hanigan, supra note 12, at 264-66. Hanigan demonstrates with a passage from a letter written by Dr. King to protesters being held in jail in South Carolina: "Every day that you remain behind bars sears the conscience of that immoral city. You are shaming them into decency." Id. at 264. As the concept was envisioned by Dr. King:

We shall match your capacity to inflict suffering by our capacity to endure suffering. We will meet your physical force with soul force. Do to us what you will and we will still love you . . . . Send your propaganda agents around the country, and make it appear that we are not fit, culturally and otherwise, for integration, and we'll wear you down by our capacity to suffer, and one day we will win our freedom . . . .

Id. at 265-66.

171. Id. at 264.

172. King, supra note 1, at 80.

173. See Hanigan, supra note 12, at 271.

174. Id. at 272. "Self-suffering, therefore, stands at the very center of militant nonviolence 'because it reveals the human capacity to endure and overcome that which is inhuman . . . . Suffering for a positive purpose says love of mankind is the first law of life.' " Id.

A similar dichotomy — getting along at any cost and self-suffering to overcome inhuman treatment — was apparently part of the disagreement between Jackie Robinson and his Dodger teammate Roy Campanella. When Robinson responded to a newspaper reporter's question that the federal government ought to use all its resources to prevent the bombing of African American places of worship in the South, the writer advised that Campanella has said that the way to stop "such incidents was for blacks 'to stop pressing to get too far too fast.' " Robinson, supra note 16, at 96.

Later, when discussing the differences between the two African American Dodgers, New York sportswriter Dick Young told Robinson:

The trouble between you and me, Jackie, is that I can go to Campy and all we discuss is baseball. I talk to you and sooner or later we get around to social issues . . . .
pressor into a change in prior attitude.\textsuperscript{175} For most African Americans in 1963, acceptance of suffering was an easy task. Suffering was already their condition. Dr. King's program of nonviolence sought to re-channel that acceptance of suffering into affirmative moral goodness. To react to oppression with violence was "to submit to and cooperate with white oppression and injustice. It was to suffer and yet also to forfeit all hope of redemption."\textsuperscript{176}

As a result, the second half of Dr. King's question was equally important. The individual must not only be able to accept suffering, but be able to do so "without retaliating."\textsuperscript{177} Once suffering is accepted without retaliation, the exercise is complete because "\[v\]oluntary acceptance of suffering manifests the human ability to be and to remain human in face of and in spite of the evil and violence that would deny and destroy the humanness of self and other selves."\textsuperscript{178}

To mount this kind of nonviolent campaign required Dr. King to find not only people willing to demonstrate, but also people with the human qualities necessary to "accept and endure violence without retaliating."\textsuperscript{179} Acceptance into the ranks of demonstrators required intense training sessions that included "socio-dramas" in which the candidate was presented with the violence and abuse that

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Personally, Jackie, . . . when I talk to Campy, I almost never think of him as a Negro. Any time I talk to you, I'm acutely aware of the fact that you're a Negro.

\textit{Id.} at 97. Robinson responded that if Young thought of Robinson as a man, standing before you with his hat in his hand expressing eternal gratitude for the fact that you only had nine little digs in yesterday's story when you could have had ten, that's one thing . . . . If you think of me as the kind of Negro who's come to the conclusion that he isn't going to beg for anything, that he will be reasonable but he damned well is tired of being patient, that's another thing. I want to be thought of as the latter kind of Negro.

\textit{Id.} The differences between Robinson and Campanella were also summed up, according to Robinson, by African American sportswriter "Doc" Young:

Campy is a Dale Carnegie disciple who believes in 'getting along' at all costs, in being exceeding grateful for any favor or any deed interpreted as a favor.

Jackie, on the other hand, is an aggressive individualist who is willing to pay the price and, once having paid it in full, does not believe that effusive thank you's are a necessary tip.

\textit{Id.} Young went on to say that he liked both men and wished this kind of feud did not have to divide them. \textit{ROBINSON, supra} note 16, at 96-98.

\textsuperscript{175} HANIGAN, \textit{supra} note 12, at 264.
\textsuperscript{176} \textit{Id.} at 271.
\textsuperscript{177} \textit{Id.}
\textsuperscript{178} \textit{Id.} at 272.
\textsuperscript{179} KING, \textit{supra} note 1, at 58.
awaited them on the street to which they could not retaliate. Ultimately, volunteers had to sign a written pledge to present their persons and bodies to the nonviolent movement. This presentment required, among other things, that the volunteer “refrain from the violence of fist, tongue, or heart.”

B. Major League Baseball, 1946

When Branch Rickey decided to mount a nonviolent campaign to integrate baseball, he had to find not only the right baseball player, but also, like Dr. King, the right human being — one who could suffer blows without retaliating. As a baseball player, Jackie Robinson's credentials were hardly sterling. When he started with the Kansas City Monarchs, Robinson's coaches deter-

180. Id. at 59-60. Generally, individuals volunteered to be part of what Dr. King called an "army to storm bastions of hatred" following mass meetings in much the same manner as converts come forward to repent in many churches. These volunteers were later screened and trained by the Leadership Training Committee of the movement. Id. at 59.

181. Id. at 61. These pledges were part of a commitment card signed by each volunteer, whereby the volunteer agreed to abide by 10 commandments, one of which was to refrain from violence. The others: (1) daily meditation; (2) remembering that the Birmingham demonstration sought "justice and reconciliation — not victory;" (3) walking and talking the doctrine of love; (4) daily prayer; (5) self-sacrifice to the common goal of freedom for all; (6) courteousness to both friend and foe; (7) seeking to perform other public service; (8) striving to maintain bodily and spiritual health; and (9) following directions from demonstration leaders. Id.

Those who could not sign this pledge were permitted to volunteer as support workers. Id. at 60-61.

Dr. King noted that volunteers were urged to give up any weapons they had, including penknives which many of the demonstrators had to protect themselves from a possible attack by police dogs. "We proved to them that we needed no weapons — not so much as a toothpick. We proved that we possessed the most formidable weapon of all — the conviction that we were right." Id. at 58-59.

182. As early as 1938, owners such as Clark Griffith of the Washington Senators had acknowledged the pressures that would be faced by the first African American baseball player of the twentieth century. Griffith is reported to have said: "A lone Negro in the game will face caustic comments. He will be made the target of cruel, filthy epithets. [He will] become a sort of martyr to the cause." PETERSON, supra note 55, at 176. Branch Rickey recognized these problems. Steps two and three of his six part plan for integrating baseball were:

2. Picking a Negro who would be the right man on the field.
3. Picking a Negro who would be the right man off the field.

MANN, supra note 2, at 214.

183. While there are anecdotal incidents showing Robinson's versatility, such as the one told by Duke Snider, in SNIDER & GILBERT, supra note 105, the actual record was unspectacular. His entire college baseball records consisted of six hits (four of them coming in his first game and the other two in the next 10 games) and four stolen bases, a batting average of .097, and 10 errors in 10 games in the field, (a fielding average of .907). See FALKNER, supra note 16, at 56-57. Robinson left UCLA in the spring of his second year (after two years at junior college) and did not play baseball for the Bruins that second year. Id. at 64.
minded that he did not have the ability to play shortstop. When they were forced to give him the nod at shortstop because of an injury to the planned starter, longtime Monarch pitcher Hilton Smith184 found Robinson to be only an "adequate" fielder.185 Even African American sportswriter Wendell Smith is reported to have agreed that Robinson "wasn't the best player."186 What distinguished Robinson from other Negro League players was not his playing ability. His personal characteristics made him Rickey's logical choice.

Jackie Robinson was raised by his mother with most of his formative years spent in a home in a white section of Pasadena, California. Robinson biographer David Falkner notes that while Pasadena in the 1920s and 1930s had no "segregation laws," it was a community where African Americans and whites lived separate and apart, with the conditions for whites always being superior.187 As a result, Jackie Robinson, his mother Mallie, brothers Edgar, Frank and Mack, and sister Willa Mae were constant victims of racial insult, rock throwing, separation in school, and they were once the targets of a cross burning in their yard.188 Through it all, Mallie

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184. Smith played with the Monarchs from 1933-1948. Peterson, supra note 55, at 382. Ashe mentions that Smith also played on a Bismark, North Dakota team that won the 1935 National Baseball Congress Tournament in Wichita, Kansas, although it is unclear at what point during the year that tournament was held. See Ashe, supra note 73, at 32.

185. Rogosin, supra note 55, at 202-03. Smith also indicated his belief that the Monarchs third baseman was a better overall ballplayer. This player is a testament to the absence of meaningful record keeping in the Negro Leagues. Rogosin quotes Hilton Smith as calling the player "Serrell." Id. at 203. Ashe refers to him as Herb Souell. Ashe, supra note 73, at 191. Peterson refers to him as Herb Souell. Peterson, supra note 55, at 383. Both Ashe and Peterson, however, agree that the player was an infielder with the Monarchs from 1944-1950. In setting out results of Negro League All-Star games, Rogosin agrees with Peterson, mentioning Herb Souell as the West team's third baseman in both 1948 and 1950. Rogosin, supra note 55, at 271, 273. Smith believed Monarch first baseman Lee Moody was a better hitter than Robinson. Moody played only during the 1944 and 1945 seasons, both with the Kansas City Monarchs. Peterson, supra note 55, at 366.


187. Falkner, supra note 16, at 19. Falkner points out that the public swimming pool was available to African Americans only one day per week and movie theaters all had separate sections, either in the balcony or on the side, for African Americans. Id.

188. Id. at 23. Willa Mae believed that the cross was burned by their neighbor across the street. Id.

Robinson was not always a subscriber to Dr. King's doctrine of nonviolence. Falkner reports that both Jackie and his brother Mack would meet verbal challenge with verbal challenge, rock with rock, fist with fist. Mack is later quoted as saying: "Kids aren't so tough when you can knock them down with a punch." Id.
Robinson stressed the belief “that kindness was stronger than fear and prejudice.”\(^{189}\) Jackie’s older brother Edgar helped prove this by chopping wood and doing small favors, without recompense, for a wealthy neighbor. As a result, when neighborhood petitions sought to oust the Robinsons, this neighbor refused to go along with the attempt, which then failed.\(^{190}\) Despite the fact that her children were isolated at school and were not permitted to visit their white friends’ homes, the Robinson home was always open. Neighbors, friends, apparently almost anyone, could come into the Robinson house at any time, could help themselves to whatever was in the kitchen and could use the telephone, one of the few in the neighborhood, without charge.\(^{191}\) A baker, whose shop was closed on Sunday, knew of the Robinson’s poverty. He told Mallie Robinson to send her sons on Saturday afternoon to take leftovers at clos-

\(^{189}\) This quotation actually refers to Willa Mae’s ability to work out an arrangement with school teachers to be allowed to sit near a window and watch her younger brother, Jackie, not yet old enough to go to school, play in a sandbox. She also earned the right to help him out by leaving class when he got in trouble. \textit{Id.} at 23. She learned this attitude from her mother, as ably demonstrated by events. \textit{Id.} at 24-27.

Later, Willa Mae would conclude that her mother was indoctrinating her into a religious faith that found Hell as the absence of God:

Paying respect to the Lord represented both spiritual sustenance and collective survival in a social order ruled by racism and poverty.

The mother’s teaching was by example. Mrs. Robinson refused to be broken or even limited by circumstances. Her notion of the Lord included a worldly spirit that would always be ready to combat evil through goodness and effort. \textit{Id.} at 24-25. \textit{Compare Hanigan, supra} note 12, at 269-70:

What King consistently stressed . . . was that the suffering servant suffers because of his or her service, because of fidelity to a personal calling and freely accepted responsibility; the servant is not of service simply by suffering. The suffering is a consequence of a steadfast loyalty to the work God has summoned the servant to do. The servant suffers because he or she must at whatever cost to self remain true to the mission that has been entrusted to him or her . . . . King realized that to follow this road, the road of truth, would involve suffering . . . . But it was imperative to go forward on the road and to face the opposition boldly in the faith that God would open the way. \textit{Id.}

\(^{190}\) \textit{Falkner, supra} note 16, at 23-24.

\(^{191}\) \textit{Id.} at 24-26. It was the Robinsons’ belief that generosity was part of living God’s will, even when there was very little to go around. \textit{Compare Hanigan, supra} note 12, at 273-74:

To be “my brother’s keeper” may be a high, and at times even an impossible, ideal, but for King it was the deepest demand and truth of human life . . . . King’s espousal of nonviolence and voluntary suffering was rooted in his understanding of God and His Christ, and his basic willingness to let God’s Will set the agenda for human action. \textit{Id.}

\textit{Falkner reports that while friends and neighbors used the telephone all the time, no one ever ran up any large phone bills. Falkner, supra} note 16, at 25-26.
ing. They did and when they received too much, Mrs. Robinson made baskets for other poor neighbors, regardless of color. 192

What is clear today is that long before Branch Rickey ever thought about Jackie Robinson as a potential baseball player, Robinson’s life was sustained by his mother’s notions of discipline, self-respect and respect for others. 193 Even in college, what attracted people, like his future wife Rachel, to Robinson was that “he ‘walked straight, he held his head up and he was proud of not just his color, but his people.’ ” 194

Today, it is widely known that Branch Rickey extensively scouted Jackie Robinson not only for his baseball talent, but also for his personal character traits. 195 Based on these reports, Rickey

192. Falkner, supra note 16, at 26. The same type of thing also happened with the milk deliverer who sometimes left extra milk at the Robinson home for distribution to others. Jackie Robinson’s sister is said to have described the activity as “the poor looking after the poor.” Id.

193. Id. at 24-26. Falkner characterized Mrs. Robinson as fitting “no one’s stereotype. She crossed the continent for her children; she crossed the street for no one. She demanded iron discipline; she opened her home.” Id. at 26. Again, this resolve was a product of faith. “Living according to the will of God was an active, not an abstract, principle. Faith sustained the family when reason provided little support. From day to day, being in the will of God meant a lifestyle that opened rather than closed the house.” Id. at 25.

Martin Luther King, Jr. is said to have realized that simply being an African American in the United States meant suffering — a suffering that could be eliminated only by “turning White.” That prospect amounted to “a profoundly immoral denial of one’s humanity, a denial as immoral as racism itself.” Hanigan, supra note 12, at 270. Evidently, what both Dr. King and, years before, the Robinson family:

had clearly grasped was the demand of the human conscience to oppose actively this denial of self, to affirm and insist upon who one was and was called to be without in turn denying any one else’s humanity. Only in such an affirmation could black Americans free themselves and make it possible for blacks and whites alike to see the truth and do the work of justice . . . . [S]uch an affirmation would involve new, even additional suffering, not essentially different in kind, perhaps from what was already the lot of black Americans, though possibly greater in degree. But the new suffering would be different in one essential point, and in this lay its redemptive power . . . . [O]nly the voluntary acceptance of a suffering that resulted from affirming the truth and standing by that affirmation was redemptive.

Id. at 270-71.

Perhaps Mallie Robinson and her children, if they cannot be stereotyped, can be said to fit a certain mold.


195. Robinson himself said that Rickey told him of a thorough investigation that included inspection of Robinson’s character and reputation. Robinson, supra note 16, at 32. Peterson, as well, indicates that Rickey went to California to check out Robinson’s character. Peterson, supra note 55, at 189. Whether this trip was actual or figurative (Robinson does not indicate that anyone actually told him of a trip by Rickey), it is clear that Rickey proceeded with caution, leaving nothing to chance, when it came to the signing of Robinson. Falkner, supra note 16, at 111.
In addition to Rickey, the F.B.I. investigated Robinson because of the support Robinson and the entire idea of integration in baseball received from communist circles. It appears that the Dodgers and the F.B.I. exchanged information about Robinson on an extended basis. Id. at 119.

Some examples of what these character investigations would have revealed are the following incidents:

1. When Robinson first enrolled at Pasadena Junior College, he expected to be a starting running back; however, a number of Oklahoma players refused to play if Robinson played. Ultimately, the Oklahomans agreed to play, according to Falkner, “and largely through the insistence of Jackie and [another], the players, black and white, became a unit.” Id. at 44. That does not mean that players on the team were truly “equal.” When Robinson injured an ankle badly enough to have to remove himself from practice, no coach or trainer evaluated it, even though it later turned out to be broken. Additionally, when the team traveled, the African American players were required to stay in separate, but clearly unequal hotels. Id. at 44-45.

2. After becoming an officer in the United States Army, and following an encounter with white officers at Fort Riley, Robinson was sent to Fort Hood, Texas, where he became a platoon leader of an all African American tank battalion. The experience Robinson gained as a platoon leader in this unit, which “answered prejudice with performance,” is said to have been a formative one in his growth. Id. at 76. Robinson’s commanding officer, Col. Paul Bates, a football all-American at Western Maryland, is reported to have said that Robinson was instilled with pride and strength from this service and learned to lead even if all of the men did not entirely like him.

3. After an incident on a civilian operated military bus where Jackie Robinson allegedly: (a) told a superior officer “‘Captain, any Private, you or any General calls me a nigger and I’ll break them in two . . .’ or words to that effect;” (b) showed disrespect toward a superior officer by “contemptuously bowing to him and giving him several sloppy salutes, repeating several times ‘OK Sir, ‘OK Sir,’ or words to that effect;” (c) violated a lawful command by a senior officer by failing to remain in a receiving room seated in a chair; and (d) used abusive and obscene language. Record of Trial and Accompanying Papers in the case of Robinson, Jack R. (0-103-1586) by General Court Martial, #262476, tried at Camp Hood, Texas, 2 August, 1944 [hereinafter Record of Court Martial]. One of the observed interactions between Robinson and military police officials involved Robinson being told to be “at ease” by a military police officer. The observer then saw Robinson “salute . . . in a bowed manner, and exaggerate the salute as though he were making fun of Captain Bear.” Report of Court Martial, supra (Statement of Sgt. William L. Painter dated July 8, 1944). When he spoke with one of the officers, Robinson came to the half gate of the guard and rested his on the gate “in a slouching position . . . and he kept interrupting.” When another officer told Robinson to wait outside the guard room, Robinson “bent his trunk forward to a horizontal position . . . at the same time bringing his right hand just above his right eye” and said “‘O.K. Sir, O.K. Sir. O.K. Sir.” At the same time he “kind of smirked or grimaced his face . . .” When later told to sit in a chair, Robinson was said to have repeated the “O.K. Sir” response and then walked to the chair, “ambling along very reluctantly . . . shifting his weight from one foot to the other.” Report of Court Martial, supra (Proceedings of a General Court Martial at 9-12). The subsequent court martial proceedings against Robinson revealed that conduct of his type by Robinson angered the military police. Jackie Robinson was acquitted of all charges arising from this incident. Falkner, supra note 16, at 79.

If Branch Rickey reviewed all Robinson’s military affairs, what would he have been able to conclude from the Court Martial episode? First, that Robinson understood his right to ride on military transportation without being the victim of discrimination. Second, that Robinson did not allow the situation in which he was involved to become violent. Third, that Robinson knew how to observe rules but
wanted a personal interview with Robinson to determine whether this was the player he needed. On at least one occasion, Rickey interviewed Robinson posing situation after situation that would befall the first African American baseball player in the twentieth century. Using what Dr. King would later call "socio-dramas" when referring to the intense training required of potential demonstrators in Birmingham, Rickey acted the part of a white major league player colliding with Robinson then, hypothetically, playing second base. Rickey asked Robinson to assume the white player jumped up

was not afraid to stretch those rules to the point of goading an oppressor into making an error. Fourth, that Robinson was willing to suffer for his beliefs. While it cannot be verified, Rickey, an astute judge of baseball talent, would likely have been able to visualize Robinson dancing off third in a manner taunting to opposing pitchers as he read of Robinson's dealings with the Provost Marshall personnel.

4. While Robinson was playing for the Kansas City Monarchs during the 1945 season, Buck O'Neil recalled an incident in Oklahoma when the Monarch's bus needed gas. The attendant was willing to fill the bus' two fifty-gallon gas tanks but not willing to allow the players to use the bathroom. O'Neil reported that Robinson told the attendant to remove the hose from the tank and told his colleagues that the attendant would not likely sell 100 gallons of gas in an entire year. If the Monarchs could not use the bathroom, the team would purchase gas elsewhere. They got the gas, and used the restroom. WARD & BURNS, supra note 26, at 285-86. In their book, Ward and Burns quote O'Neil as though O'Neil was witness to the event. O'Neil played and managed only with the Monarchs, from 1938-1950. PETerson, supra note 55, at 369. The credibility of the person telling the story is important because Falkner relates another, diametrically opposite incident. Falkner credits the second story to long-time Negro Leaguer Frank Duncan, Jr., who Peterson says played for the Baltimore Elite Giants in 1945. Id. at 333. Falkner indicates that Duncan heard the story from several teammates of Robinson's. In this incident, the bus was in Alabama, Robinson wanted to use the bathroom, was told that he could not, but headed for it anyhow. When the attendant ran at Robinson, Robinson knocked him apparently unconscious. The players left the appropriate amount of money for gas and left. FALKNER, supra note 16, at 94. As Robinson played for less than a full season with the Monarchs, it is difficult to imagine that both incidents actually took place.

196. Jackie Robinson himself says there was one meeting between Rickey and himself, set up when Dodger scout Clyde Sukeforth interviewed Robinson at a game the Monarchs played in Chicago's Comiskey Park. ROBINSON, supra note 16, at 29-30. Branch Rickey's biographer tells much the same story. MANN, supra note 2, at 219-20. Falkner's more recent biography of Robinson suggests at least two meetings, one earlier than the August, 1945, date mentioned by both Robinson and Rickey. That earlier meeting was attended by Rickey's daughter Jane Jones, who remembered Robinson well and remembered Clyde Sukeforth not being present. Sukeforth only recalls a meeting at which Jones was not present thus prompting Falkner to indicate that the normally cautious nature of Branch Rickey would certainly mitigate in favor of at least two meetings on such an important issue. FALKNER, supra note 16, at 110-11.

In either event, Rickey made it clear to Robinson that there had been a thorough investigation of Robinson before he was summoned to Brooklyn. ROBINSON, supra note 16, at 32. Rickey knew, for example, that Robinson could have been labeled a "'racial agitator'" but also knew that Robinson's activities, if carried on by a white person, would have simply labeled the person as a "'competitor.' " Id.
and yelled: "You dirty, black son of a —." Rickey also posed as the white actor in the following scenarios: a clerk at a southern hotel cursing Robinson while denying him a room; a white sportswriter whose twisted story is filled with racial hatred; a hotheaded player tagged out by Robinson at second base in an important World Series game who had come into the base spikes first and who then jumped up and punched Robinson. After each of these scenarios, Rickey demanded from Robinson: "What do you do?"

When Robinson told Rickey that it was the box score that really mattered, Rickey responded that it was not: "Maybe one of these days it will be all that counts. That is one of the reasons I've got you here, Robinson." To participate in the nonviolent integration of baseball, Robinson would be required to control his temper and "remain steadfastly loyal to our ultimate aim." However, Robinson had spent much of his life to that point in the apparent belief that payback and retaliation were necessary to maintain what he referred to as his "most luxurious possession" and "richest treasure" — his personal dignity. At that point, Robinson and Rickey engaged in what can only be viewed as classic nonviolent repartee:

Robinson: "Mr. Rickey, . . . are you looking for a Negro who is afraid to fight back?"

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197. Robinson indicates that Rickey also castigated Robinson's family during this scenario. *Robinson*, *supra* note 16, at 34.

198. *Mann, supra* note 2, at 222-23. Robinson tells of some of these sociodramas even more graphically:

Suppose I was at shortstop. Another player comes down from first, stealing, flying in with spikes high, and cuts me on the leg. As I feel the blood running down my leg, the white player laughs in my face.

'How do you like that, nigger boy?' he sneers.

Could I turn the other cheek?

*R Robinson, *supra* note 16, at 34. Compare *King, supra* note 1, at 80: 'Are you able to accept blows without retaliating?'

199. *Robinson, supra* note 16, at 33 (emphasis in original). Compare the statement in the written pledge required of Birmingham demonstrators that the nonviolent movement seeks justice, not victory. For the language of this pledge, see *supra* note 181 and accompanying text.


201. Wendell Smith, African American sportswriter for the Pittsburgh Courier, who set up a Boston Red Sox/Braves try out for Robinson and others, recommended Robinson to Rickey, see note 193, *supra* and accompanying text. After Robinson reportedly threatened to punch an umpire during a Negro League game, Rickey wanted to know of Robinson's temper: "I didn't want to tell Mr. Rickey, 'Yes, he's tough to get along with.' A lot of us knew that. When he was aroused, he had a sizable temper. But to survive, he couldn't be a Mickey Mouse." *Falkner, supra* note 16, at 109.

Rickey: "Robinson, . . . I'm looking for a ballplayer with guts enough not to fight back." 203

Rickey then advised Robinson in language that should be familiar to those aware of the Birmingham training sessions: "You've got to do this job with base hits and stolen bases and fielding ground balls, Jackie. Nothing else." 204 Like Dr. King and the would-be demonstrators in Birmingham, Rickey and Robinson, at the conclusion of their negotiations, had forged an agreement based on one fundamental premise: "You can't fight back." 205

V. DIRECT ACTION

A. Birmingham, 1963

Actual direct action, Dr. King's fourth element of a successful nonviolent campaign, started slowly in Birmingham. Sit-ins and picketing demonstrations commenced on the day after the mayoral runoff election and were held at lunch counters that refused to

203. Id. at 34. Accord, MANN, supra note 2, at 222.

204. MANN, supra note 2, at 222 (emphasis in original). Compare Dr. King's statements to the would-be demonstrators about not needing weapons, "not so much as a toothpick." See supra note 181.

Like Dr. King, Branch Rickey gained much of his insight into nonviolence from his religious beliefs. At one point during his negotiations with Robinson, Mann writes that Rickey produced his copy of Papini's Life of Christ which Rickey used "as a guide to humility." Mann also says that Rickey then proceeded to read portions to Robinson. MANN, supra note 2, at 221.

205. Id. at 223 (emphasis in original). Compare the Reverends King, Shuttlesworth or Abernathy's call for volunteers at the end of mass meetings in Birmingham: "We made it clear that we would not send anyone out to demonstrate who had not convinced himself and us that he could accept and endure violence without retaliating." KING, supra note 1, at 58. Durso also uses similar language, with Rickey reportedly telling Robinson:

You can't retaliate . . . . You can't answer a blow with a blow. You can't echo a curse with a curse. Can you do it? You will have to promise me that for your first three years in baseball, you will turn the other cheek. I know you are naturally combative. But for three years, you will have to do it the only way it can be done. Three years. Can you do it?

DURSO, supra note 14, at 232.
serve African Americans.206 After three days of this first phase of "Project C," thirty-five arrests had been made.207

The second phase of the campaign, including public parades, then began. The first parade took place when Reverend Shuttlesworth led about thirty demonstrators toward Birmingham's City Hall on Saturday, April 6. They were met by the Birmingham police, who politely escorted the demonstrators to jail.208 At this stage, the Birmingham police were copying tactics used by their police colleagues in Albany, Georgia.209 There, Police Chief Laurie Pritchett had studied the philosophy of Dr. King's nonviolent movement and told reporters that he believed in nonviolent law enforce-

206. See BAINS, supra note 3, at 177; WILLIAMS, supra note 10, at 183.

Those involved at this stage were members of Reverend Shuttlesworth's ACMHR, Reverend King's SCLC and students from Miles College in Birmingham. See GLENN T. ESKEW, The Alabama Christian Movement for Human Rights and the Birmingham Struggle for Civil Rights, 1956-1963, in BIRMINGHAM, ALABAMA, 1956-1963: THE BLACK STRUGGLE FOR CIVIL RIGHTS 76 (David J. Gaitow ed., 1989). The Miles College students had been active in the effort to desegregate downtown Birmingham since at least 1961 and had been involved in limited boycotting in 1962. See id. at 65-66.

The speed with which the campaign started is as reported in the media. Actually, it was Reverend Walker's aim to begin activity on a limited basis. See id. at 76. Those demonstrating had six demands:

1. an end to segregated lunch counters, bathrooms and drinking fountains;
2. affirmative hiring of African American clerks and salespeople by the affected stores;
3. a reopening of closed city parks, and integration of them;
4. a fair hiring system for city jobs;
5. an interracial committee to consider Birmingham's racial problems; and
6. amnesty from prosecution for past demonstration arrests.

See id.

On the first day, 20 students were arrested. Id. at 76; BAINS, supra note 3, at 177-78. At the time, Birmingham had adopted an ordinance making it a crime to remain "on the premises of another, after being warned not to do so." See Gober v. City of Birmingham, 133 So.2d 697, 698-99 (1961), rev'd, 373 U.S. 374 (1963); BAINS, supra note 3, at 178.

It was at this time that demonstration organizers attempted to obtain a picketing permit from now-defeated Commissioner of Safety Connor. BAINS, supra note 3, at 178. See also supra notes 3, 4 and accompanying text (discussing permits, injunction and march).

Students returned the following day, Thursday, April 4, again willing to be arrested in attempted sit-ins of lunch counters. Eskew, supra note 3, at 76.

207. KING, supra note 1, at 66. This is despite the fact that there already existed court orders calling for the integration of Birmingham's public facilities. See supra note 66 and accompanying text.

208. See BAINS, supra note 3, at 178.

209. KING, supra note 1, at 66. Dr. King notes that Birmingham's residents were surprised at the "amazing politeness" of the local police. He also indicated that the demonstrators had acted exactly as trained — they marched with order and there was no public outburst of singing and no banners. Id. at 65.
ments. He emphasized that, "[c]ivil rights workers would find no police brutality in Albany."\textsuperscript{210}

Unfortunately, with both demonstrators and police acting with obviously feigned good feeling toward one another, the "C"onfron-tation of "Project C" was missing.\textsuperscript{211} To be successful, a cam-paign of direct action needed "to create such a crisis and foster such a tension that a community which has constantly refused to negotiate is forced to confront the issue."\textsuperscript{212} Nonviolent tension, wrote Dr. King, dramatized the issue to a point where it cannot be ignored and is thus a constructive way of helping people "rise from the dark depths of prejudice and racism to the majestic heights of understanding and brotherhood."\textsuperscript{213} It was not long before that "crisis" arrived in Birmingham.

On Palm Sunday, the day following the "polite" arrest of Rever-end Shuttlesworth and other marchers, Dr. King’s younger brother, A.D., led a prayer march during which Birmingham police moved into the crowd with snarling guard dogs and night sticks.\textsuperscript{214} As police began to arrest the relatively small crowd of approximately two dozen marchers,\textsuperscript{215} a larger crowd of African American bystanders gathered to watch. One of those bystanders antagonized one of the dogs, which then attacked and pinned the bystander to the ground. As the crowd rushed to observe, police used more dogs and swung clubs to disperse the group.\textsuperscript{216}

\textsuperscript{210} Garrow, supra note 28, at 209. Pritchett, a friend of Birmingham’s police chief, was invited to counsel Birmingham leaders on how to mount a nonviolent response to the demonstrations. When it became apparent that Commissioner Connor might not follow his suggestions, Pritchett left Birmingham. See Nunnellely, supra note 4, at 140-41.

\textsuperscript{211} For a discussion of Dr. King’s admitted “miscalculations” during the early stages of the efforts to integrate Birmingham, see Garrow, supra note 28, at 237-39.

\textsuperscript{212} Compare id. at 43 with King, supra note 1, at 81 (quoting from Letter from the Birmingham Jail).

\textsuperscript{213} King, supra note 1, at 81.

\textsuperscript{214} See Bains, supra note 3, at 178; Garrow, supra note 28, at 239. This fulfilled a promise Commissioner Connor was reported to have made to “sic the dogs” on demonstrators. Eskew, supra note 3, at 76.

\textsuperscript{215} See Eskew, supra note 3, at 76.

\textsuperscript{216} Garrow, supra note 28, at 239; Eskew, supra note 3, at 76. In his chronology of events, Dr. King seems to render this incident almost meaningless. King, supra note 1, at 67. However, this is likely just political fiction. It was clear that after this assertion of violence, leaders like Reverend Wyatt Walker believed: “We’ve got a movement.” Garrow, supra note 28, at 239.

As a historical footnote, Eskew indicates that the bystander poked at the dog with a “piece of pipe,” while Garrow describes the object as “a large knife.” Compare Eskew, supra note 3, at 76 with Garrow, supra note 28, at 239. It seems unlikely that the dog knew the difference.
Three days later, on Wednesday, a state court judge issued an injunction against Dr. King and others forbidding parades or other protests without a permit.\textsuperscript{217} Dr. King noted that “[t]wo days later, we did an audacious thing, something we had never done in any other crusade. We disobeyed a court order.”\textsuperscript{218}

At this point, the “tension” envisioned by Dr. King was created. By appealing to the courts, Commissioner Connor and Birmingham political leaders attempted to uphold traditional notions of “law and order,” after having sanctioned the use of violence against peaceful demonstrators. Dr. King and his followers, on the other hand, were law violators, but their nonviolence solidified both a higher respect for the law and a growing public sentiment that some laws were indeed unjust.\textsuperscript{219} Once Dr. King was arrested on Good Friday for violating the law, he became like the “early Christians facing the lions” and could no longer be ignored by Birmingham leaders, the media or federal authorities.\textsuperscript{220}

The jailing of Dr. King and others led civil rights leaders to look for demonstrators who would have both time to spend in jail and public relations appeal.\textsuperscript{221} This was the final phase of “Project C.” By May 2, 1963, civil rights organizers had amassed over 6,000 children, ranging in age from six to eighteen, mostly from Birmingham schools, to continue the marches. In two days, Thursday, May 2, and Friday, May 3, those children left the Sixteenth Street Baptist Church and were met by water bursts sufficient to strip bark from trees and by snarling German Shepherds from the Birmingham police’s K-9 corps.\textsuperscript{222}

The use of water hoses and dogs on nonviolent children galvanized support for the Birmingham demonstrators in both local and national African American and white communities. Nightly video clips and daily newspaper photographs of “marchers of all ages swept along and staggering under the pressure of the water

\textsuperscript{217} See Garrow, supra note 28, at 240; King, supra note 1, at 69. See also supra note 3 and accompanying text (discussing ordinance, injunction and march).

\textsuperscript{218} King, supra note 1, at 68. On a practical level, it was thought that whatever movement had begun, it would lose its momentum if the injunction were obeyed. See Bains, supra note 3, at 178-79.

\textsuperscript{219} See Judith D. Hoover, Reconstruction of the Rhetorical Situation in “Letter from Birmingham Jail,” in Martin Luther King, Jr., and the Sermonic Power of Public Discourse, supra note 8, at 50-55.

\textsuperscript{220} Id. at 54. See Garrow, supra note 28, at 242-47 for reactions of each.

\textsuperscript{221} See Williams, supra note 10, at 188-90.

\textsuperscript{222} See Bains, supra note 3, at 180; Nunnellely, supra note 4, at 148-49; Williams, supra note 10, at 190.
streams” shocked the American people. The police actions caused more demonstrators to join the marches, which caused more jailings. The massiveness of the demonstrations resulted in both greater economic loss to downtown Birmingham businesses and to a belief by the Kennedy administration that federal assistance might alleviate some of the tension.

As Dr. King had hoped, the national community had begun to rise from the depth of its prejudice. By Friday, May 10, an agreement was reached that bound downtown Birmingham merchants to “desegregation of lunch counters, rest rooms, fitting rooms, and

223. See NUNNELLEY, supra note 4, at 152; WILLIAMS, supra note 10, at 191. On 4 May newspapers across the nation and around the world ran wirephotos of bare-fanged German shepherds confronting young black children in the streets of Birmingham. One news photo pictured an older demonstrator taunting one dog as another canine sank his teeth into the man’s posterior. Other images were equally dramatic—five policemen holding down one woman demonstrator . . . .

NUNNELLEY, supra note 4, at 152.

Despite the violence, there were very few injuries. Eighteen members of the police department, the fire department and the news media required some hospital treatment, mostly from injuries suffered from thrown stones, bottles and other objects. Two African Americans were treated for dog bites, one was treated for facial injuries, one for injuries caused by the water hoses, and one for chest pains following being hit by water. This last injury was to organizer Reverend Fred Shuttlesworth. Id. at 151-52. When Public Safety Commissioner “Bull” Connor learned that Reverend Shuttlesworth had been hit by water and taken to the hospital, his response was said to be: “I’m sorry I missed it. I wish they’d carried him away in a hearse.” WILLIAMS, supra note 10, at 191. Accord, NUNNELLEY, supra note 4, at 152.

224. By Tuesday, May 7, around 2,000 demonstrators had been jailed, with some being held both in surrounding localities and in a makeshift barracks/jail at the Alabama state fairground. See BAINS, supra note 3, at 181; WILLIAMS, supra note 10, at 190-91.

225. From the outset, the Kennedy administration believed there was no federal remedy to aid the demonstrators in Birmingham. As a result, administration leaders watched the worsening situation along with the rest of the nation. See WILLIAMS, supra note 10, at 193. On May 4, however, Attorney General Robert Kennedy did send Assistant Attorney General Burke Marshall to Birmingham to determine if negotiation was possible and to facilitate such negotiation as needed. See id.; NUNNELLEY, supra note 4, at 154.

There were few suburban shopping malls in 1963, so most shopping was done in downtown Birmingham. When traditional shoppers avoided the downtown area because of the demonstrations, business decreased by 15-20%, causing significant economic hardship. Id. As a result, local business leaders began to meet daily to discuss possible settlement and, through the efforts of local attorney, David Vann, began negotiations with the African American community. Assistant United States Attorney Burke Marshall served as an intermediary in those negotiations. See BAINS, supra note 3, at 181-82; WILLIAMS, supra note 10, at 193.

After negotiations began, Dr. King agreed that the fundamental goal of the demonstrations was desegregation of downtown businesses. WILLIAMS, supra note 10, at 193. It was feared, however, that any such agreement could not fully be met without the agreement of the Senior Citizens Committee, a group of leaders representing over 80% of the employers in Birmingham. When that group agreed to negotiation, an agreement was quickly reached. BAINS, supra note 3, at 182.
drinking fountains in all downtown stores within ninety days" and "placement of blacks in clerical and sales jobs in stores within sixty days."226 The agreement also established "permanent communications" between African American and white community leaders and required release of all prisoners on the posting of minimal bail.227

B. Major League Baseball, 1946

Like the integration of Birmingham lunch counters, Jackie Robinson's integration of baseball started slowly. Although his 1946 minor league season in Montreal included outstanding play on the field as well as acceptance off the field,228 Robinson was not assured that he would be with the Brooklyn Dodgers in 1947. In February, 1947, Rickey reportedly told a Brooklyn YMCA audience

226. BAINS, supra note 3, at 182.
227. BAINS, supra note 3, at 182. Despite their solidarity, the "morally binding" agreement was announced at two separate news conferences.

The agreement was reached without the participation of Public Safety Commissioner "Bull" Connor, who immediately condemned it as a product of "weak-kneed white people" "capitulating to threats "'of violence by the rabble-rousing Negro, King.'" WILLIAMS, supra note 10, at 193. Connor urged whites to boycott those stores participating. Id. at 193-94.

To fulfill the minimal bail portion of the agreement, the United Auto Workers Union, the National Maritime Union, the United Steelworkers Union and the AFL-CIO contributed the $237,000 required for the release of the almost 800 prisoners who remained in detention. BAINS, supra note 3, at 182.

228. In 1946, Robinson batted .349 for Montreal, with 155 hits in 444 at bats. He also stole 29 bases. ASHE, supra note 73, at 194. "He wound up leading the International League in hitting ... was second in stolen bases, tied for first in runs scored, was the leading fielder among second baseman — and the league's Most Valuable Player." FALKNER, supra note 16, at 138.

The racial taunting of Robinson was severe. In Syracuse, one of the opposing players threw a black cat on the field during the game and yelled to Robinson: "'Hey, Jackie, there's your cousin.'" ROBINSON, supra note 16, at 50.

At the conclusion of the season, after Montreal had won the pennant in the International League, the team played Louisville, the American Association champion in the "Little World Series." Taunting by Louisville fans and players prevented Robinson from playing well in the three games in Louisville and, as a result, Montreal lost two of those games. "When we arrived in [Montreal], we discovered that the Canadians were up in arms over the way I had been treated. Greeting us warmly, they let us know how they felt." Id. at 51-52. Inspired by these fans, Robinson "went on a tear, getting seven hits, leading his team at bat and in the field, ultimately scoring the winning run in the final game." Id. at 52. Fans poured onto the field, followed him after he dressed, refused to allow him to leave the city in demonstrations of affection that few had seen accorded any Canadian athlete. See FALKNER, supra note 16, at 141-42. Even Montreal manager Clay Hopper, who reportedly asked Branch Rickey at the beginning of the season: "'Mr. Rickey ... do you really think a nigger's a human being?' " came to Robinson, shook his hand, and said: "'You're a great ballplayer and a fine gentleman, ... It's been wonderful having you on the team.'" Compare FALKNER, supra note 16, at 132 with ROBINSON, supra note 16, at 53.
that promotion of Robinson to the Dodgers was "iffy." At the same time, Rickey arranged for the Dodgers and Montreal Royals to hold joint spring training camps in Cuba, perhaps to prevent Robinson from being subjected to the racist treatment he had received the prior year in Florida.

For his part, Robinson viewed the Dodgers' change in training locale as a positive sign. He was concerned that Rickey had given him no word about his status, particularly as pressure increased from the media and fans following his season in Montreal.

When he arrived in Cuba, Robinson chafed at the living arrangements. While the parent Brooklyn Dodgers were housed at the "posh Hotel National," all but four of the minor league Montreal Royals were housed in military barracks on the site of the Dodger training camp. Jackie Robinson and fellow African Americans Roy Campanella, Don Newcombe and Roy Parlow, along with writers Wendell Smith and Sam Lacy found themselves staying at a "sleazebag" hotel, nicknamed "cockroach heaven" by Newcombe, some fifteen miles from the Dodger training camp. Robinson was especially upset when he learned Rickey had arranged this hotel. He only reluctantly accepted the explanation that Rickey did not want a racial incident to take place when Robinson was on the "threshold of success." Robinson thought the threshold might slip away, however, when he was given a first base-

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229. See Mann, supra note 2, at 254-55. Mann, who was Rickey's assistant and who attended this meeting of African American leaders in Brooklyn, reports Rickey as saying: "I have a ballplayer named Jackie Robinson . . . on the Montreal team . . . he may stay there . . . he may be brought to Brooklyn. But if Jackie Robinson does come up to the Dodgers, . . ." Id. at 254 (emphasis in original).

230. See Falkner, supra note 16, at 151. Falkner details how the Robinsons attempted to travel from California to Florida to meet the Montreal team for spring training and how they were "bumped" off airplanes in the south and ultimately forced to travel by bus from Pensacola to the Daytona Beach training camp. While Robinson was accepted in Daytona Beach, the team was prevented from playing in Jacksonville and DeLand. In Sanford, Robinson was met at home plate by a sheriff, informing him that he was not permitted in the same stadium with whites. Id. at 127-34; see Robinson, supra note 16, at 40-46.

231. Robinson, supra note 16, at 55-56. The Robinson's first child, Jackie, Jr., was born in November, 1946, and, as a result, Robinson would be traveling to spring training without his wife, a change from the previous year.

Robinson maintained faith in Rickey and his judgment, although that faith must have been questioned when he was ordered to return to the Montreal Royals spring training camp. Id.

232. See Falkner, supra note 16, at 155; Robinson, supra note 16, at 55-56. Falkner indicates that both Robinson and Newcombe suffered from dysentery during their stay. The Dodgers did rent a car and provide meal money for the players, but the quality of those meals left something to be desired. While eating soup one evening, Newcombe noticed a cockroach float to the top of the bowl. Falkner, supra note 16, at 155.
man's glove and was told he would need to learn that position. In reality, the Dodger lineup was already set at second base, third base and shortstop. First base was the weak spot, and, despite getting his feet "hopelessly tangled" in a similar try the previous year, Robinson was installed as the Royals first baseman for the duration of spring training.  

The apparent purpose of Rickey's treatment of Robinson during the spring was to fulfill the final point of his plan to integrate the Dodgers which was acceptance of the player by his teammates. The moving of training camp to Cuba, thus allowing the Dodgers to play exhibition games against several integrated Latin American teams, the housing of Robinson and other African American players to both avoid a racial incident and to simulate life on the road in the big leagues, and the switch to first base where no other player had a firm claim were all designed to allow Robinson to blend into the Dodger team. As was one other Rickey idea.

During the early spring, Rickey told Robinson "to be a whirling demon against the Dodgers . . . . I want you to concentrate, to hit the ball, to get on base by any means necessary. I want you to run wild, to steal the pants off them, to be the most conspicuous player on the field," subject to one overriding condition: that on-the-field notoriety be based only on baseball skill. Rickey thought Robinson would so impress the other Dodgers and create such a stir in the media, that all would demand that Robinson be placed on

233. See Falkner, supra note 16, at 155-56. Falkner indicates that Robinson was "unceremoniously handed an old mitt" while the team was in Panama and told to play first. Id. He also indicates that Robinson's arm prevented him from playing third. Eddie Stanky and Pee Wee Reese were fixtures at second base and shortstop. See Robinson, supra note 16, at 56. Robinson indicates that the position change was "to strengthen the first base position." In his history of the Dodgers, Stanley Cohen indicates, in addition to Stanky and Reese, that rookie Spider Jorgenson would apparently replace Cookie Lavagetto at third. As a result, first base was the only weak spot. Cohen, supra note 45, at 81.

234. See supra note 54 and accompanying text.


236. In 1946, Ed Stevens, with a batting average of .242, and Howie Schultz, with a batting average of .253, shared the bulk of the first base duties for the Dodgers. See Neft & Cohen, supra note 15, at 268. Neither of these players were thought to be of major league caliber. See Cohen, supra note 45, at 82.

237. Rickey also used Manager Leo Durocher in the plan. Durocher was to tell the press that the Dodgers could win the National League pennant if they had a quality first baseman and that Robinson was the person who should fill that position. Before that plan could be carried out, however, Durocher was suspended from baseball for one year by Commissioner Chandler. See Robinson, supra note 16, at 57-58.

238. Id. at 57 (emphasis in original).
the team. Robinson batted .625 and stole seven bases in seven games against the Dodgers, all played on a tour of Latin America. These statistics, however, produced no groundswell among Dodger players for Robinson’s promotion.

In fact, sentiment for Robinson’s promotion to the parent club seemed to run in just the opposite direction. By the time the tour reached Panama, several southern-born players, led by the very popular Dixie Walker, started a petition to prevent Robinson from joining the team. When the attempt to exclude Robinson was exposed, Dodger manager Leo Durocher “hauled his players before him in a barracks mess hall,” even though it was well after midnight. Durocher, clad in yellow pajamas, reportedly indicated that he had heard about the petition, but that he did not want to see it. Instead, he told the players they could use the petition to clean their personal private parts.

I’m the manager and I’m paid to win and I’d play an elephant if he could win for me and this fellow Robinson is no elephant. You can’t throw him out on the bases and you can’t get him out at the plate. This fellow is a great player. He’s gonna win pennants. He’s gonna put money

239. Id.

240. For years, Walker denied that he was the “ringleader” of the petition. He even threatened to sue both Branch Rickey and Arthur Mann if they wrote articles indicating Walker as the leader. FALKNER, supra note 16, at 154. In 1976, Walker reportedly acknowledged to Pee Wee Reese that he did organize the petition drive. He indicated it was not because of Robinson personally, but to protect his hardware store in Birmingham, Alabama. He reportedly stated that “people told me I’d lose my business if I played ball with a black man.” KAHN, THE ERA, supra note 15, at 35. Reese indicated that Walker went on to say that “’[i]t was the dumbest thing I did in all my life. If you ever get a chance, sometime, please write that I am deeply sorry.’” Perhaps Walker was “shamed” into his beliefs. Id.

241. The plot was exposed when Dodger traveling secretary Harold Parrott went drinking with pitcher Kirby Higbe, who was one of those involved in the petition. See FALKNER, supra note 16, at 152; ROBINSON, supra note 16, at 56. Higbe told Peter Golenbock that his grandfather had told him stories about how members of his family fought on both sides during the civil war. Higbe thought that the players should accept Robinson if he could play baseball, but his southern upbringing ultimately caused him to sign the petition. GOLENBOCK, supra note 106, at 148-49.

Golenbock indicates that Walker actually wrote a petition and took it around to various players’ rooms to get it signed. Id. at 146. Rickey biographer Arthur Mann called it “a word-of-mouth and handshake agreement.” MANN, supra note 2, at 256. No copies have ever surfaced, although a letter from Dixie Walker to Rickey dated March 26, 1947, indicates his desire to be traded as soon as possible. See FALKNER, supra note 16, at 154.

242. GOLENBOCK, supra note 106, at 150.
in your pockets and mine . . . . The meeting is over. Go back to bed.243

When Branch Rickey, who was still in New York, learned of the petition, he immediately flew to Panama and met individually with each of the players alleged to be involved in the petition drive.

With some of the petitioners, southerners Ed Head and Hugh Casey and northerner "Cookie" Lavagetto, for example, Rickey must have used his persuasive skills, because other than signing or agreeing to sign the petition, they are not heard from again as the story unfolds.244

With four-year veteran Eddie Stanky, born in Philadelphia but then living in Mobile, Alabama245 and hence nicknamed "The Mo-

243. This is the rendition contained in KAHN, THE ERA, supra note 15, at 36. Falkner reports Durocher's speech slightly differently, although with the same point:

I don't care if this guy is yellow or black or if he has stripes like a fuckin' zebra. I'm the manager of this team, and I say he plays. What's more, I say he can make all of us rich ... an' if any of you can't use the money, I'll see that you're traded.

FALKNER, supra note 16, at 152. Either of these renditions sound plausible from the colorful Durocher. They both echo the statement Durocher reportedly made in 1949 about being willing to play African Americans but for the opposition of the Commissioner's office. See supra notes 138-39 and accompanying text.

While Kahn indicates this speech was Durocher's "finest hour," KAHN, THE ERA, supra note 15, at 35, Falkner indicates that road secretary Parrot did not think Durocher made his comments out of a sense of equality, indicating that Durocher "wouldn't have been able to spell equality much less preach it . . . . He would have been the first to tell you that all men are not created equal.' " FALKNER, supra note 16, at 152 (emphasis in original). Durocher's only interest was in winning and the money it brought. Id.

244. Mann indicates that Rickey shamed many of the players with "lectures on Americanism." MANN, supra note 2, at 256. None of these players, however, spent much more time as players for the Brooklyn Dodgers. Lavagetto played his last year for the Dodgers in 1947. Pitcher Ed Head did not make the 1947 team, playing his last major league season for the 1946 Dodgers. Casey pitched for the Dodgers through the 1948 season, and then he pitched for Pittsburgh and the New York Yankees. See NEFT & COHEN, supra note 15, at 239, 252, 255.

While Casey remained with the Dodgers, he did not give up his southern heritage. While playing cards with Robinson and others, Casey had a turn of bad luck. Robinson reports that Casey said: "You know what I used to do down in Georgia when I ran into bad luck? . . . I used to go out and find me the biggest, blackest nigger woman I could find and rub her teats to change my luck." ROBINSON, supra note 16, at 67. Robinson further reports his own internal strife at not being able to respond to such insults. Id. On a positive note, Casey was one of the first to charge from the dugout when a St. Louis player spiked Robinson at first base toward the end of the 1947 season. See id. at 68-69.

245. See NEFT & COHEN, supra note 15, at 333. See also FALKNER, supra note 16, at 152 (indicating Stanky's home as Mobile); GOLENOCK, supra note 106, at 146 (calling Stanky Alabamian); KAHN, THE ERA, supra note 15, at 34 (calling Stanky Philadelphia).
bile Muskrat,"^{246} Rickey appealed to "Dodger blue," Stanky's sense of team pride. Stanky agreed to help Robinson any way he could.^{247}

With Carl Furillo, a Pennsylvanian, who continued to deny that he was involved,^{248} Rickey used simple economics: If he did not accept Robinson, Furillo would be out of work.

With two of the southerners, Bobby Bragan and Dixie Walker, Rickey acknowledged their prejudice. When Walker and Bragan each told Rickey they would rather be traded than play with Robinson, Rickey indicated that he would attempt to accommodate them both.^{249}

Rickey's plan to engender support for Robinson by showing his excellence, simply was not working. When integration-supporter Leo Durocher was suspended from baseball for one year by Commissioner Chandler on the eve of the 1947 season,^{250} Rickey was forced to act.^{251} He immediately named Robinson scout Clyde Sukeforth as interim manager and further announced that the Dodgers had purchased Robinson's contract with Montreal.^{252} By the second game of the season, Rickey had named his friend and associate Burt Shotton as Dodger manager.^{253}

Because he joined the Dodgers late in the spring, Robinson did not even get a locker when he joined the parent club. The wall

246. This was only one of the rodent-like nicknames of the 5'8" infielder. Others listed by Neft and Cohen are "The Brat" and "Muggsy." Neft & Cohen, supra note 15, at 333.

247. See Falkner, supra note 16, at 153 (noting that Stanky had just received raise and therefore was in debt to Rickey).

248. Furillo claimed to be the man in the middle. When asked what he would do if Robinson came after his job, Furillo admits saying that he would attempt to cut Robinson's legs off. That statement was, he claimed, taken out of context, as racial. In the movie, The Jackie Robinson Story, the petition story focuses on an Italian player who Branch Rickey severely criticizes. Furillo claimed that this character was unfairly made to look like him. Golenbock, supra note 106, at 152.

249. Rickey, in fact, admired the honesty of both men. He ultimately offered Walker a job as manager of the Dodgers' Minneapolis farm team, which Walker turned down to play several more seasons. Bragan accepted a job as manager of the Dodgers' Fort Worth farm team and successfully coached many African American players, including Roberto Clemente and Tommy Davis. See Falkner, supra note 16, at 153-54; Golenbock, supra note 106, at 152. Later, Walker did become a Dodger coach. Kahn, The Era, supra note 15, at 35.

250. The suspension of Durocher appears to be part of a riff between Larry MacPhail and Branch Rickey, and was certainly part of the rivalry between the New York Yankees and the Brooklyn Dodgers. For accounts of the Durocher episode, see Kahn, The Era, supra note 15, at 36-40; Mann, supra note 2, at 243-54.

251. At least one source indicates that Durocher's suspension appeared to have the incidental effect of delaying Robinson's promotion, "[w]hether or not Chandler intended it." Falkner, supra note 16, at 157.

252. See, e.g., id. at 157-58.

253. See Cohen, supra note 45, at 82-83; Mann, supra note 2, at 260-61.
hook he used to hold his clothes reflected his aloofness from his team.\textsuperscript{254} During a three-game preseason exhibition series against the New York Yankees, Robinson had difficulty at first base and was reportedly labeled "too clumsy" to play the position by Yankee players.\textsuperscript{255} He did lay down a sacrifice bunt in the first game of the year that led to the winning Dodger runs.\textsuperscript{256} Otherwise, however, his hitting was sporadic at best. Robinson himself indicated his appreciation of Manager Shotton's continued faith in him,\textsuperscript{257} but Robinson's zero for twenty batting slump left him very close to being benched.\textsuperscript{258} Then the Philadelphia Phillies came to Brooklyn.

When Phillies manager Ben Chapman led his players in ugly, racist taunts of Jackie Robinson, Chapman became Bull Connor to Robinson's Dr. King. Chapman viewed his activity as representing "bench jockeying" in the baseball tradition because "[w]hite rook-ies, he said, were referred to as wops, dagos, Polacks, and they never complained. Taunting Robinson was no different."\textsuperscript{259} If Robinson had charged the Phillies dugout, grabbed one of his tormentors and smashed in some teeth, he would have played into Chapman's hands.\textsuperscript{260}

Instead, Robinson created what Dr. King later referred to as the "kind of tension in society that will help men rise from the dark depths of prejudice and racism."\textsuperscript{261} Robinson violated baseball law and continued to play, letting his skills, and not his violence, do his persuading.

In the bottom of the eighth inning with the score tied at zero, Robinson led off with a single. On the first pitch to the next batter, Robinson stole second. When the catcher's errant throw went past the shortstop, Robinson wound up at third. A single by teammate

\textsuperscript{254} FALKNER, supra note 16, at 162-63.
\textsuperscript{255} Id.
\textsuperscript{256} Robinson's sacrifice bunt was so good that it was misplayed by the opposing first baseman, allowing Robinson to advance to scoring position where he was driven in by Reiser. In the second game of the season, Robinson's first hit was also a bunt. He had his first home run during the first season series with the Giants. Mostly, however, he slumped during the first month of the season. \textit{Id.} at 163.
\textsuperscript{257} ROBINSON, supra note 16, at 59. "People began recalling Bob Feller's analysis of me. I was 'good field, no hit.' There were others who doubted that I could field and some who hoped I would flunk out . . . . Shotton, however, continued to encourage me." \textit{Id.}
\textsuperscript{258} FALKNER, supra note 16, at 163.
\textsuperscript{259} Id. at 164.
\textsuperscript{260} KAHN, THE ERA, supra note 15, at 48-49. Robinson had been sworn to pacifism by Dodger owner Branch Rickey. \textit{See} supra notes 199-204 and accompanying text. Robinson's thoughts: "'All of a sudden I thought, the hell with this. This isn't me. They're making me be some crazy pacifist black freak.'" \textit{Id.}
\textsuperscript{261} KING, supra note 1, at 81.
Gene Hermanski brought Robinson home. The Dodgers won, one to zero.262

This victory, however, did not stop the verbal assault, which continued for two more games.263 Finally, in the last game of this three game series, Dodger second baseman Eddie Stanky, one of those who originally petitioned against Robinson joining the team, reportedly screamed toward the Phillies' dugout, "'Listen you yellow-bellied cowards, . . . why don't you yell at somebody who can answer back?' "264

Other players soon stepped forward. In an early season road game, pregame taunts again greeted Robinson and those who were willing to be on the same team with him. Kentucky-born Dodger captain Pee Wee Reese, who grew up in a segregated neighborhood and who could recall his father showing him where they hanged "niggers" who got out of line,265 stopped his warm up, went over to first base and put his arm around Robinson's shoulders in an indication of solidarity with his teammate.266 When the press got word of the verbal abuse facing Robinson, support galvanized behind his actions.267

262. ROBINSON, supra note 16, at 60.
263. The next day, Phillie manager Chapman reportedly asked Robinson: "'Hey, Jungle Bunny, . . . You go out and get yo-sef some white pussy last night?' " KAHN, THE ERA, supra note 15, at 49.
264. See, e.g., Falkner, supra note 16, at 164; ROBINSON, supra note 16, at 61. The media picked up on the activities and support began to emerge for Robinson. For example, the New York Mirror is reported to have written about how the Phillies had "'poured a stream of abuse' " on Robinson, who, with "'admirable restraint, ignored the guttersnipe language . . . thus stamping himself as the only gentleman among those involved in the incident.' " ROBINSON, supra note 16, at 61.
265. See KAHN, THE ERA, supra note 15, at 34.
266. Id. at 52. Kahn's version is alleged to have taken place in Philadelphia, as a response to further abuse by Chapman. Id. Robinson's own version of the incident has it taking place in Boston: "[Reese] put his hand on my shoulder and began talking to me. His words weren't important. I don't even remember what he said. It was the gesture of comradeship and support that counted." ROBINSON, supra note 16, at 65. Still another version places the incident in Cincinnati, following the Dodgers first visit to Philadelphia. Cincinnati was just across the river from Kentucky, Reese's home. Rex Barney reported that as he was warming up for the bottom of the first inning, he heard the crowd taunting Robinson and then Reese, whereupon Reese went over to first base and put his arm around Robinson. GOLENBOCK, supra note 106, at 161.
267. See, e.g., Falkner, supra note 16, at 164-68. Chapman's conduct drew press notice and then a reprimand from Commissioner Chandler and National League president Ford Frick. Fans were subjected to the same abuse accorded Robinson when radio microphones placed near the field picked up the racial slurs and had to be removed. Generally, the New York press strongly supported Robinson. See also ROBINSON, supra note 16, at 61-64, (crediting African American press for publishing true stories, but also mentioning that "[s]ports columnists around
Soon thereafter, Robinson went on a batting tear. Starting June 14, he hit safely in twenty-one games.268 During that streak, in Pittsburgh, with the score tied two to two late in the game, Robinson, on third base, noticed the Pirate pitcher was not keeping a close eye on him. He danced off third. On the next pitch, he stole home with the winning run in a three to two victory. Robinson recalled that “[a]s I ran I heard the exhilarating noise that is the best reward a player can get. The roar of the crowd.”269

By May, even a plot by the St. Louis Cardinals to strike games Robinson tried to play in St. Louis was thwarted by National League Commissioner Ford Frick who threatened to suspend any player who refused to play.270 In August, when the Dodgers again played in St. Louis, Cardinal outfielder Enos Slaughter, while running out a ground ball, deliberately went after Robinson’s leg with his spikes. The players in the Dodger dugout charged the field in protest, led by Hugh Casey, one of those who petitioned to keep Robinson off the club.271 The team unity now shown by the Dodgers enabled them to win the National League championship from the defending Cardinals.

The nonviolent, direct action campaign of Branch Rickey and Jackie Robinson had been successful.272

the country criticized Chapman,” and noting that press, both African American and white, did not buy into Chapman’s “reasons” for his actions).


269. Robinson, supra note 16, at 68. This, according to Roger Kahn, is the quintessential Jackie Robinson: “Robinson lines a double into the left-field corner. He steals third. He scores on a short passed ball, sliding clear around the catcher, Del Rice. The stands erupt. The Dodgers win. We beat the Cardinals. That colored guy’s got balls, I tell you that.” Kahn, The Boys of Summer, supra note 27, at xvii (emphasis in original).


272. “Successful” is used here in a relative sense. As Arthur Ashe explains, “The period from Jackie Robinson’s debut in April 1947 to 1953 can best be described as one of token integration,” with the National League adding African American players at the rate of three players every two years and the American League doing so at the even slower rate of one player every two years. Ashe, supra note 73, at 44-45. Even by 1959, there remained an unwritten limit on the number of African American players who could exist on any one team. Id. at 45. By 1973, fully 25 years after Jackie Robinson first played and 17 years after he retired, Monte Irvin, working in the commissioner’s office, represented the only African American in the hierarchy of organized baseball. The excuse for not having a greater African American presence was, according to Howard Cosell, that the owners could not find a “qualified” African American. Howard Cosell, Cosell 81-82 (1973) [hereinafter Cosell]. It was on the fortieth anniversary of Jackie Robinson’s entry into major league baseball that Dodger executive Al Campanis indicated that African Americans did not have the “necessaries” to be good major league managers. See Howard Cosell, What’s Wrong With Sports 102-03 (Pocket Books 1992). Following the 1992 season, Cincinnati Reds’ owner Marge
CONCLUSION—THE PAST AS MORAL GUIDE TO THE PRESENT

As moral teaching, the use by Jackie Robinson and Branch Rickey of what would later become Dr. King’s elements in a nonviolent direct action campaign can only be understood in the context of the sociological phenomenon known as “the Baby Boom.” Beginning with the end of World War II in 1945, Landon Jones in GREAT EXPECTATIONS: AMERICA AND THE BABY BOOM GENERATION indicates that “pregnancy was patriotic.” Ultimately, 75 million people would be counted among the Baby Boomers.

Baseball had a major impact on the lives of the Baby Boom children. During what became a rapidly changing period in American history, this largest of American generations found in baseball the “objective correlative” of change, something that, unlike their own lives, was “stable, predictable, and timeless.” What these growing children saw at the ballparks of the 1950s and early 1960s was the direct result of Jackie Robinson’s direct action — spectacular performance by African American athletes. In the history of

Schott allegedly made racist remarks about players on her team. While organized baseball investigated, civil rights advocate Jesse Jackson charged that any such investigation would be “paralyzed” by the fact that Schott’s conduct mirrored unreported behavior by other owners. Jackson also reported the results of his own investigation showing that only 3.9% of executive positions and only 8% of front office positions in baseball are filled by African Americans. Danny Robbins, Jesse Jackson Outlines Boycott; Baseball: Schott Case Provides Him a Platform to Call for Improvement in Minority Hiring, L.A. TIMES, Jan. 13, 1993, at Cl.

In terms of initial integration, organized baseball did little to embrace what Jackie Robinson and other African Americans brought to the game. In fact, baseball integration was accomplished largely from external pressure. For example, after Cardinal games were picketed by members of the NAACP, the club was sold in 1953 to August Busch, who instituted a new policy toward black players by immediately adding an African American coach and signing an African American player. Similarly, the Chicago Cubs ended several years of intense local criticism by adding Ernie Banks and Gene Baker in 1954. See Tygiel, supra note 107, at 293.

Until 1955, New York Yankee management refused to waver from their view that “our box seat customers from Westchester County don’t want to sit with a lot of colored fans from Harlem.” FALKNER, supra note 16, at 45.

Clearly, baseball has done an inadequate job in making post-baseball positions available to African American players, managers, and junior executives. This Article should not be read as a brief in favor of organized baseball’s underwhelming efforts.


274. The American birthrate ballooned during the late 1940s and early 1950s. By 1964, four out of every 10 people in the United States were under 20 and there were more children under 14 than there had been people in the entire nation in 1881. Id.

275. JONES, supra note 273, at 241-42. Unlike the “more volatile and technocratic professional football, baseball . . . offered a reassuring tintype of an unchanging world of small-town values.” Id. at 242.
baseball, only fourteen men have hit 500 or more lifetime home runs. Six of them, including all-time leader Hank Aaron and numbers three, four, and six, are African Americans who began play during the 1950s and 1960s. Between 1947, when Robinson joined the Dodgers, and 1963, the year of the Birmingham demonstrations, seventeen National League Most Valuable Player awards were presented, eleven of them to African Americans. The Rookie of the Year Award was started in 1947, with Jackie Robinson its first recipient. It was not separated into a National League and American League recipient until after Don Newcombe won in 1950. Among National League winners of the Rookie of the Year between Robinson and 1963, ten of seventeen were African American.

With sportscasters like "Red" Barber of the Dodgers "just" reporting what took place on the field, these players were able to lead a nonviolent movement toward integration, and it was done painlessly. When spectators of the 1950s applauded Jackie Robinson, they may not have thought they were making a racial statement because "for an instant, [they] had accepted Robinson simply as a hometown ball player." But it was more: "To disregard color, even for an instant, is to step away from the old prejudices, the old hatred. That is not a path on which many double back."

Howard Cosell, who filmed a television special when Jackie Robinson was elected to the Hall of Fame in 1962, took Robinson back to the site of Ebbetts Field, which had begun the transition into an apartment building. From a bare steel girder, fifteen stories above the street, an iron worker "saw the pigeon toes and the white hair and sang out — you could hear it loud and clear — 'Hey, Jackie, wait till next year.'"


279. Barber learned from Rickey in 1945 that Rickey intended to place an African American on the Dodgers. Like some of the players, Barber was a southerner. He thought of quitting the Dodgers, but ultimately decided to continue. Falkner, supra note 16, at 151.

280. Kahn, The Boys of Summer, supra note 27, at xvii.
Many Americans of the 1950s and early 1960s thus developed tremendous respect for African American baseball stars such as Robinson, Willie Mays, Hank Aaron and Ernie Banks. Writing about the 1972 funeral of Gil Hodges, Cosell described watching the crowd reaction to Hodges’ Dodger teammates arriving for the funeral at a Brooklyn church. Cosell noted that “[y]ou could hear, abruptly, the whispers. The thing that struck me first was that it was the youngsters, kids under fifteen: ‘There’s Jackie Robinson.’” Cosell went on to describe how “the noise began to swell — and the applause — and the cheers — and ‘Hey, Jackie.’”

For these children, love of baseball, and respect for its players, knew no bounds of race, economics, politics or class.

And what became of these children? And of some of the parents who raised them? “Some Boomers, white and black, became Freedom Riders,” willing to ride in the back of buses while their African American colleagues rode in the front in nonviolent protest throughout the south and through a gauntlet of southern violence. Civil rights, it seems, was “the one history lesson that stuck” to the Baby Boom generation. Unable to discriminatorily deal with their baseball heroes, this generation could not then apply a different standard to their neighbors. Perhaps this is why more than 60,000 of the quarter million people who participated in the March on Washington were white.

How does any of this relate to Jackie Robinson’s integration of the Brooklyn Dodgers? Again, Howard Cosell provides a partial answer in writing that Robinson “helped inspire the image that this

281. Cosell, supra note 272, at 84. He writes:

For a fleeting moment it was my entire young-adult life coming back to me, an age when baseball mattered as a sport in this country and, more importantly, when it symbolized to all the world that America could cope with its most terrible of all problems — the problem of race. This was what Jackie Robinson symbolized. He helped inspire the image that this nation was capable of racial amity instead of racial anguish, and that was the best thing that ever happened to baseball.


283. See, e.g., Williams, supra note 10, at 147-61.

284. Jones, supra note 273, at 64.

285. See Williams, supra note 10, at 199.
nation was capable of racial amity instead of racial anguish.” As the United States Supreme Court has told us: “Baseball’s status in the life of the nation is so pervasive . . . that baseball is everybody’s business.” As a result, the question that should be asked is: What if Jackie Robinson had failed? What if, upon the creation of the “tension” that existed when he turned the other cheek, he had retaliated?

Dr. King answered those questions when he told Don Newcombe that the efforts of Newcombe, Campanella and Robinson had made King’s job easier. The historical fact is that Jackie Robinson’s direct action campaign served as a “how-to” manual for nonviolent integration through “militant confrontation, economic pressure and moral suasion.”

In his autobiography, Jackie Robinson wrote: “As much as I loved him, I never would have made a good soldier in Martin’s army. My reflexes aren’t conditioned to accept nonviolence in the face of violence-provoking attacks.” On this issue, Jackie Robinson was wrong. Reflexes are a product of conditioning. From his signing through the 1948 season, Jackie Robinson conditioned his reflexes to accept blows without retaliating. The African American athletes who followed Robinson similarly earned justified respect nonviolently by allowing their on-field play to be their demonstration of equality.

When Dr. Martin Luther King, Jr. looked for his nonviolent army almost two decades later, he did so with the knowledge that much of the nation had already been shamed into embracing African American athletes. Joel Oppenheimer, Jewish son of a Manhattan leather goods store owner, went to Ebbetts Field on Robinson’s opening day, and he remarked that “I remember standing behind

286. Cosell, supra note 272, at 90.
288. TygIEL, supra note 107, at 343. In 1949, the Dodgers scheduled an exhibition game against an Atlanta minor league team. When the then usual death threats were issued, Rickey called Martin Luther King who indicated that the Dodgers should indeed come to Atlanta and play. The Dodgers did come, and they did play without incident. Robinson, Newcombe and Campanella stayed at the King home. Golenbock, supra note 106, at 224. African American journalist Sam Lacy took this occasion to call the “Great Experiment” a success. Id.

Unclear is whether the players stayed with Martin Luther King, Jr. or Martin Luther King, Sr., “Daddy” King as he was later known. In 1949, Martin, Jr., would only have been 20 years old. Although he had been ordained at his father’s Ebenezer Baptist Church in 1947, he had not yet earned his doctorate. D’Emilio, supra note 24, at 82.
289. TygIEL, supra note 107, at 9.
290. Robinson, supra note 16, at 211.
third base in a thick crowd of people, and for the first time in my life I was in a crowd of blacks." At a point in the game when Robinson made a good fielding play, the crowd began to yell "‘Jackie, Jackie, Jackie,’" and Oppenheimer found himself yelling right along with them. “And suddenly I realized that behind me someone was yelling ‘Yonkel, Yonkel, Yonkel,’ which is Yiddish for Jackie . . . . I realized that here was this little Jewish tailor . . . the only white face in a crowd of blacks aside from me, and he’s yelling ‘Yonkel, Yonkel, Yonkel.’”

In the passion of America for baseball in the 1950s and 1960s, in the love of its fans for excellence on the field, the number of potential recruits for Dr. King’s nonviolent army grew. When the time came for that army to march, in Birmingham and elsewhere, it was ready and largely indoctrinated in nonviolence.

Jackie Robinson had been their instructor.

291. Id.