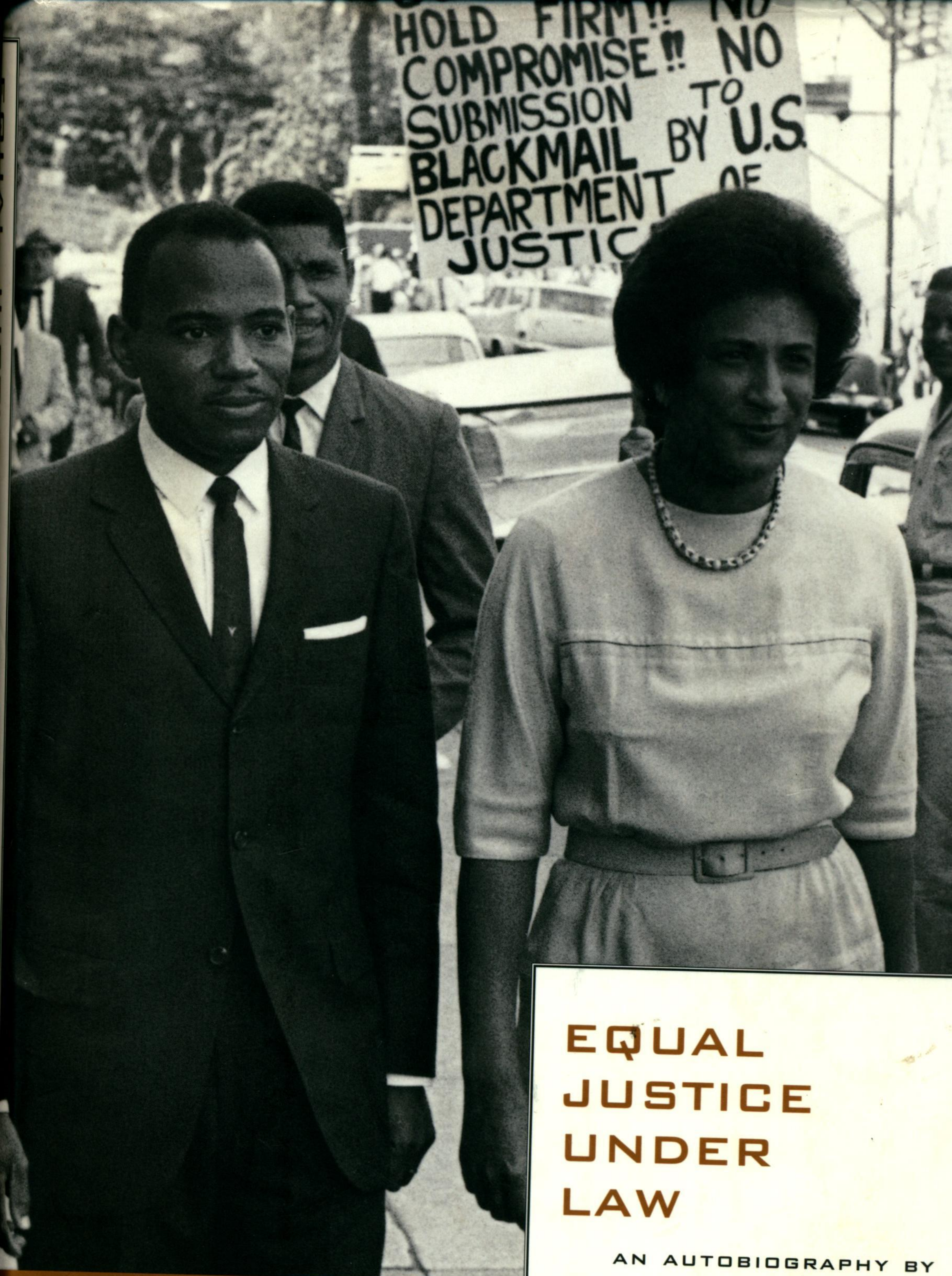

EQUAL JUSTICE UNDER LAW

AN AUTOBIOGRAPHY BY

CONSTANCE BAKER MOTLEY

EQUAL JUSTICE
under law

An Autobiography

Constance Baker Motley

FARRAR, STRAUS AND GIROUX
New York

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MASSIVE RESISTANCE AND THE IMMEDIATE POST-*BROWN* ERA

THE UNIVERSITY OF FLORIDA

WE HAD OUR FIRST BRUSH WITH MASSIVE RESISTANCE IN OCTOBER 1955, ABOUT SIX YEARS AFTER A SUIT HAD BEEN FILED TO OPEN THE UNIversity of Florida Law School to black students. The case was filed in the Florida Supreme Court by Horace E. Hill, a local NAACP lawyer in Daytona Beach who sought an original writ of mandamus against the university's board of control. The state's highest court ruled against admission of the sole plaintiff, Virgil Hawkins, on August 1, 1952, on the ground that the board of control had afforded him a substantially equal education at Florida Agricultural and Mechanical College, as required by *Plessy v. Ferguson.*[1] (This ruling was made after the Supreme Court's 1950 decision against the law school of the University of Texas in *Sweatt.*)

Hawkins, a graduate of Lincoln University in Pennsylvania, had been an administrator for many years at Bethune Cookman College in Daytona Beach (a private black college founded by Mary McLeod Bethune), so he was forty-two when he applied to the law school in 1949 and had been out of college a long time. He volunteered to act as plaintiff since no other applicants had approached the NAACP in Florida seeking admission to the university. Because he worked at a black institution, Hàwkins did not fear

economic retaliation. He also understood that his was a test case, as most such cases were.

After the Florida Supreme Court's 1952 ruling, Horace Hill asked Robert Carter to petition the U.S. Supreme Court for a writ of certiorari to review the decision. Carter did so at about the same time that LDF first sought review in the Supreme Court of the lower-court decisions that eventually formed the basis of *Brown*. On May 24, 1954, one week after its decision in *Brown*, the Supreme Court granted the petition for certiorari, vacated the judgment of the Florida Supreme Court, and sent the case back to that court for reconsideration in light of its *Brown* decision.[2]

I entered the case at this time. While preparing for Supreme Court arguments in *Brown* in 1952, 1953, and 1954, we LDF staffers had not been able to take summer vacations as usual. We had to take our vacations in the winter, after the briefs were filed. In January 1955, I decided to go to Florida, where my eldest brother was then working. Since I was going there, Thurgood and Bob Carter decided I should argue the case that the U.S. Supreme Court had remanded to the Florida Supreme Court.

My husband, our son, Joel (who was then two years old), and I drove to Florida from New York. We stopped first in Durham, North Carolina, where we stayed overnight with NAACP lawyer Conrad Pearson and his wife. Conrad, a member of Marshall's inner circle, had been local counsel in a University of North Carolina case in which Floyd McKissick, former head of the Congress of Racial Equality (CORE), had been a plaintiff in 1950.[3] We stayed with the Pearsons because the hotels and motels en route did not accommodate blacks. In South Carolina, my son was denied use of the bathroom at a gas station even after we had purchased gas. (We learned later to ask to use the restroom first: if the answer was "yes," we would purchase gas; if the answer was "no," we would go to the next station.)

In Tallahassee, where the Florida Supreme Court is located, I argued the case before a group of stone-faced white male judges. On October 19, 1955, the Florida Supreme Court rendered its opinion that the U.S. Supreme Court's *Brown II* decision (rendered in the interim) applied to Hawkins's case involving a single black applicant at the law school level, although his case had not been brought as a class action.[4] The Florida Supreme Court appointed a Florida circuit judge as a special commissioner of that court to take testimony from Hawkins, the board of control, and other witnesses as to when Hawkins could be properly admitted after all necessary adjustments had been made by the board as required by *Brown II*. The court simply ignored the Supreme Court's ruling in *Sweatt*,

where the University of Texas was ordered to admit the plaintiff immediately.

Two of the judges on the Florida Supreme Court—Sebring and Thomas—dissented, reflecting Florida's division on desegregation. They ruled that Hawkins should have been admitted as directed by the Supreme Court. Justice Roberts wrote the majority opinion, with three judges concurring: Drew, the chief judge, Hobson, and Thornal. One judge, Terrell, concurred specially with Roberts. His special concurrence is a classic reflection of segregationist thought and anxieties about the new era *Brown I* had ushered in. He said, in part:

> *[I]f "equitable principles characterized by practicable flexibility" is to be the guide, does desegregation mean that attendance at these institutions is to be scrambled and one of them abandoned and the other enlarged at great expense in order that white and Negroes may attend the new school? A negative answer to this question would appear to be evident. I might venture to point out . . . that segregation is not a new philosophy generated by the states that practice it. It is and has always been the unvarying law of the animal kingdom. The dove and the quail, the turkey and the turkey buzzard, the chicken and the guinea, it matters not where they are found, are segregated; place the horse, the cow, the sheep, the goat and the pig in the same pasture and they instinctively segregate; the fish in the sea segregate into "schools" of their kind; when the goose and duck arise from the Canadian marshes and take off for the Gulf of Mexico and other points in the south, they are always found segregated; and when God created man, he allotted each race to his own continent according to color, Europe to the white man, Asia to the yellow man, Africa to the black man, and America to the red man, but we are now advised that God's plan was in error and must be reversed despite the fact that gregariousness has been the law of the various species of the animal kingdom.*[5]
>
> . . .

It was thus in 1955 that massive resistance made its debut.

Hawkins, through Bob Carter, again petitioned the U.S. Supreme Court for a writ of certiorari. This time, in an unprecedented move, the Court denied the writ, but it recalled and vacated its prior 1955 mandate and entered a new mandate vacating the judgment of the Florida Supreme Court and directing the prompt admission of Hawkins to the state's law school, citing *Sweatt*.[6]