

BY HANDS NOW KNOWN

Los Angeles Times
BOOK PRIZES
WINNER

JIM CROW'S LEGAL EXECUTIONERS

"Shocking, moving, and thought-provoking. . . . One of those rare books that forces us to consider in new ways the nature of our politics and society and the enduring legacy of our troubled past." —Eric Foner, *New York Review of Books*

MARGARET A. BURNHAM

A Bus in Hayti

Two years later, on another hot summer Saturday, in another town, an irritated bus driver shot another soldier.

In the 1940s, Durham, North Carolina, was slightly smaller than Mobile: 60,000 in Durham to Mobile's 78,000. Both towns were near GI training grounds, and so, in Durham as in Mobile, the bus could be a lethal space. Walton H. Craft had complained to Alabama governor Chauncey Sparks about the deteriorating "condition" on Mobile buses since the war began. A year earlier, in June 1943, an official of the North Carolina Utilities Commission, Stanley Winborne, wrote to North Carolina governor J. Melville Broughton, warning, like Craft, that Durham faced "a bad situation" on the public buses. "On the local bus line between Durham and Camp Butner," he observed, "it was utterly impossible . . . to enforce the segregation laws and . . . the police of Durham stated that they could not assist." Durham, Winborne noted, was "one of the worst places we have [in eastern North Carolina] due to the large negro population . . . and the Northern negro soldiers at Camp Butner."

WHILE MOST OF THE NATION endured the economic collapse of the Depression years, Durham remained relatively insulated as tobacco prices soared and Americans glorified the cigarette as a sexy symbol of

personal liberty. They smoked while they listened to the radio, while they drank their coffee and liquor, and while they drove their cars, all to the joy of the North Carolina tobacco barons.

Durham was host to three large tobacco factories. Black people migrating from the moribund Deep South plantations, including large numbers of women and children, found work in these factories and warehouses, and they created an "inner city" they defiantly called Hayti after the Caribbean island of revolutionary lore. Some Black aspirants to the American dream prospered. Many more, a disproportionate number of whom were women, were the cheap labor—consigned to backbreaking menial work on the factory floor—that kept the tobacco industry humming. It was they who, working in filthy, unventilated spaces, sorted, stemmed, and folded the big dusty leaves while white workers rolled the Chesterfields and Lucky Strikes. Turning to their advantage the rigid economic segregation that denied Black people access to insurance, home mortgages, loans, and educational opportunities, a Black business elite built their own insurance companies, independent schools, churches, a hospital, a library, and a college, sometimes with the support of the tobacco giants.

At its height, Hayti was home to over a hundred Black businesses. Indeed, when the North Carolina Mutual and Provident Association (the "Mutual") became the largest Black-owned insurance company in the world, the artists and intellectuals of the Harlem Renaissance declared Durham to be the economic hub of the "Negro Renaissance." In the early decades of the century, E. Franklin Frazier, W. E. B. DuBois, and others often extolled Durham to illustrate what Negro thrift, cooperation, and entrepreneurship could accomplish. In 1910, Booker T. Washington described it as "the City of Negro Enterprise," while in 1912, DuBois noted that the economic standing of Black people in Durham was "perhaps more striking than that of any similar group in the nation." These institutions helped restrict white access to Black lives, but they also reinforced the fallacy of separate but equal. While Durham's Black Wall Street induced awe, hidden from view were the cramped and unforgiving quarters where tobacco

workers, 25 percent of whom were Black, made their homes. It fell to people like Charles Clinton Spaulding, president of Mutual, and other prominent members of the upper class to hold at bay the smoldering anger of these residents.

Right after Pearl Harbor, the War Department selected this thriving New South region to locate a base. Camp Butner was situated twelve miles north of Durham on forty thousand acres of lush farmland, where tobacco would otherwise have flourished. In just six months, the War Department built the camp to accommodate thirty-five thousand soldiers, of whom roughly seven thousand were Black. As Brookley was to Mobile, so Butner was to Durham. The base transformed the area, bringing energy and industry to Bull City (named after Bull Durham Smoking Tobacco). Segregated bus routes were established to transport the soldiers from Camp Butner into Durham to shop and play. Looking for home cooking and companionship, the Black soldiers would spend their days in Hayti. And, as was typically the way of southern cities, Hayti hosted—willingly or not—many businesses for nocturnal pleasure.

With its vibrant working-class and transient soldier population, Durham in the 1940s was a center of Black musical creativity. In a three- or four-block area in Hayti known as “Mexico,” at a segregated little-known theatre or at the famous Biltmore Hotel, “America’s finest colored hotel,” a soldier could hear great jazz bands like the all-women’s (and predominantly Black) International Sweethearts of Rhythm, or the renowned ensembles led by Duke Ellington, Cab Calloway, and Eubie Blake. And there was music to be heard in Durham even if your money was short. The Piedmont bluesmen performed on street corners, where Black workers, barred from the whites-only cafeterias, would eat their midshift meals outside the factories. In the 1940s, guitarist Brownie McGhee and harmonica player Sonny Terry were Durham regulars, following in the tradition of Blind Boy Fuller and Reverend Gary Davis.

In the Piedmont style, a blues guitarist runs a base line with one hand against a fast melody picked with the other hand. One must

look to the Wolof and Mandingo tribes and the banjo traditions they brought with them to America for the roots of this music. Slaves who were lord of the banjo would strum with a thumb at the base of the instrument and pick out the tune higher on the neck. It was this instrumentation, transplanted to the guitar and designed to show off a musician's ambidexterity on the strings, that later became known as the Piedmont style. Because it lacks the deep brooding moans and groans of the Mississippi blues—the kind Henry Stuckey played in Benton—*it has a lighter feel to it.* These up-tempo ragtime sounds coming out of the Carolinas and upper Georgia were exuberant tunes that would make a person want to “shake a leg.” In the 1930s and early ’40s, itinerant musicians would play in private spaces that turned into juke joints on the weekends. Black men and women from the factories around town would gather to drop the weight of a week’s grueling work, the insults flung at them by the white bosses, and their disappointing paychecks. As Glenn Hinson, a Durham native, described it:

The party might be at a friend’s place down in Bugs Button, or over at Peachtree Alley, or maybe out at Camel Grove. Or perhaps at one of the “houses” run by Minnie the Moocher, Big Mattie, or any of the other local bootleggers who worked in and out of Durham. The room you’re in is large, with a few chairs off against the walls and a battered upright piano in the corner. . . . In a small room off to one side there’s a table laden with barbecue, fried chicken and fish, chitlins, cakes and maybe some ice cream, all for sale. Behind that, a woman pours bootleg from a jar into small glasses. There’s a one-eyed man tinkling the keys on the piano—that would be Murphy Evans—a guitarist picking a rag lead, a second guitarist playing the blues lines, and a washboard player rubbing his board with thimbles on his fingers . . . The room is crammed with people dancing the “Charleston Strut” or the “Hollywood Skip.”

County; some were free and some not. Lazarus and Alberta settled in Blackstone (so named to honor the English legal scholar), where they lived on Center Street and worshipped at the Shiloh Baptist Church-Dinwiddie, established immediately after the Civil War. In the late 1920s some of Spicely's sisters and brothers moved to Philadelphia, Pennsylvania. His eldest brother, Robert, established himself as a prominent chef in the city while his younger sister, Ruth, worked as a licensed practical nurse. Active in social and business circles—Robert was a member of the Omega Psi Phi fraternity and Ruth was an officiant in the Order of the Eastern Star—the family belonged to Philadelphia's Black elite. Eventually Booker joined his siblings there. He worked as a chauffeur for a white Philadelphia family until December 1942 when, at age thirty-four, he enlisted in the army. In 1943, Spicely was sent to Camp Butner.

On Saturday, July 8, 1944, Spicely, dressed in uniform, had visited some friends in Hayti, and in the early evening he boarded a return-trip Durham-Butner bus. He sat in a rear row next to a woman with a child. About twenty minutes later, as the bus made its way through the white neighborhood of Five Points, the driver picked up a group of white soldiers—including Private Robert C. Martin—who also appeared to be heading back to the base. Herman Lee Council, the thirty-six-year-old bus driver, ordered Spicely and the woman to move farther back to make room for Martin and the other white soldiers. The young woman quickly complied, but Spicely protested, saying, according to Martin, "I thought I was fighting this war for democracy. I'm from Pennsylvania. I'm not used to seeing things like this."

Council told Spicely he would have to leave the bus if he could not "keep cool." Reluctantly, the soldier moved to the last row. The bus had traveled for a few more minutes when Spicely and the woman stood up to exit at the upcoming stop. As he got off the bus, Spicely said something like, "Hey, driver, when you get into uniform we will argue about this," infuriating Council. A few more heated words were

exchanged between them, and then, as Spicely stepped onto the street, Council grabbed his pistol and also disembarked. He fired two shots, striking Spicely in the heart and stomach.

Council, who was a good deal shorter and smaller than Spicely, climbed back in the driver's seat and drove away, leaving the soldier bleeding in the gutter. Police officers from Durham and Camp Butner took Spicely, still alive, to nearby Watts Hospital, where he was refused admittance because of his race. The Watts medics, presumably on the instructions of the law enforcement officers, first drew blood to perform an alcohol test. Only afterward did they send Spicely to Duke Hospital, which had "Negro" beds. At this second hospital, Spicely took his last breath, amid strangers. The alcohol test was negative.

Four days after Spicely's death, an army intelligence officer from Camp Butner filed a report based on interviews he had conducted with five passengers on the bus. The report unequivocally established that Council shot the unarmed soldier without provocation and, leaving him bleeding to death in the street, went on to finish his route. Private Martin, the white soldier, told the investigator that he was so distressed that he got off the bus at the next stop, presumably to go to Spicely's aid. The woman who disembarked with Spicely, stunned, grabbed her baby and ran away as fast as she could. In this brief period, the army official also interviewed a few local authorities, but he did not obtain any written reports from them. It was a shoddy investigation, designed, apparently, more to conceal than to reveal.

The army's actions following this preliminary investigation hint at the true concerns of the War Department: it initiated a wide-scale intelligence operation to manage African American reaction to Spicely's murder. Colonel Willis M. Everett Jr., the director of the army's Security and Intelligence Division in the Fourth Service Command in Atlanta, took a personal interest in the investigation. Indeed, three days after the shooting, Everett chastised the intelligence officers at Camp Butner for failing to inform him immediately of the killing. Prior to

his service, Everett had been a successful attorney in Atlanta; he would later become well known for defending German soldiers charged with war crimes at proceedings in Dachau. In 1944 he was in charge of the army's surveillance operations in the southeastern United States, whose mission, in part, was to monitor and contain any pro-Axis activities or protest among communists or African Americans.

Everett's office sent a Black undercover investigator from Savannah to Durham to snoop around, seeking to determine, as the investigator put it, "whether or not negroes were being influence or encourage by agitators to misconduct themselves." The investigator dutifully visited "the establishments that Negroes frequent," posing as a civilian seeking a job in the war industry. His report about activities in Hayti led the army to conclude that "Durham Negro residents are not actively interested in the occurrence," that is, the killing of Spicely. The army, not content to investigate the response of Durham's "Negroes," also snuck around to gauge the pulse of Black communities in Philadelphia and in Blackstone (where Spicely was buried), and in his segregated unit at Camp Butner.

Everett's office notified the commanding officer at Camp Pickett, in Virginia, of potential protests in his area. Another undercover investigator, having visited with Mary Collier and Jayfus Ward, two leaders of the local NAACP in Blackstone, reported back to Camp Butner and Camp Pickett that no protest action was planned. Ward did tell the investigator that Spicely's brother, Robert, had urged the funeral congregants at Shiloh Baptist Church to "join the NAACP and help stop this sort of thing."^{*} The investigator also paid a visit to the Blackstone chief of police to obtain Spicely's criminal history. The army's files on

* There is no evidence that Robert Spicely was politically active before his brother's death, although he was well known in the Philadelphia business community. That changed when Booker was killed. In December 1944 Robert, then working at Tuskegee Institute, along with Louis E. Burnham and six others, represented Alabama at one of the founding conferences of the Southern Regional Council at Atlanta University.

the incident contain no information about the reputation or history of the death-dealing bus driver, Herman Council, but do note the opinion of the Blackstone police chief that Booker Spicely had a "reputation as a trouble maker" as well as a misdemeanor record.

In Philadelphia, the army relied on yet a third undercover investigator to monitor the activities of Ruth Ida Spicely, the sister with whom Booker had lived. Ruth had sought to engage the NAACP and other organizations in Philadelphia in her brother's defense. The army's investigator related in great detail Ruth's appeal to the executive secretary of the local NAACP branch. He sent on to Atlanta articles from the Black press about the case, adding to the mound of clippings, mostly from the African American papers, that already filled the Intelligence Department's file on Spicely. Ironically, several of the stories in the Black press reported that the army was "investigating" the killing, as if to suggest that findings would be forthcoming, perhaps condemning the slaying; little did the newspapers' readers know that Spicely's supporters and loved ones—not his killer—were the targets of that investigation.

Finally, the army interrogated "trusted informants from the colored organizations" at Camp Butner to monitor any plans for an uprising. The FBI followed up on a report that Black people had stored munitions on the outskirts of Durham, but an army inventory revealed that everything was in order. Army intelligence officers agreed to search through Black soldiers' mail to track what they were receiving from home about the killing and to monitor for protests. Spicely had been a driver assigned to a segregated truck company at Camp Butner. Popular, he enjoyed a good reputation on the base and, according to the army's first undercover investigator, was "considered a high type negro in his outfit." There was no one in Spicely's unit who was under suspicion for being "a trouble maker" or "agitator," the investigator wrote. Those Black soldiers who had lost their friend reported, ever hopeful, ever loyal, that they expected the North Carolina courts to mete out justice fairly.

This far-reaching intelligence operation reflected White House apprehensions that racial protests, particularly in cities hosting military bases, would erupt in the summer of 1944 as they had in Detroit, Harlem, and Beaumont, Texas, in 1943. Indeed, the army's security units were, for good reason, worried about what impact Spicely's killing would have on African American soldiers and civilians. Events shortly before the slaying showed that across the South, seething Black soldiers were not too timid to fight against what they perceived to be the "enemy at home." On February 8, 1944, over three hundred Black soldiers from Camp Sutton, near Monroe, North Carolina, clashed with military police and civilian authorities. And in April, a white civilian employee at Camp Sutton threw a thirteen-year-old Black youth from a bridge into a creek, evoking wide-scale protests.

Federal surveillance reports about Black protests and predictions about likely hot spots were generated on an almost daily basis at the direction of the FBI's J. Edgar Hoover, and the naval and army intelligence services contributed to these files. In April 1944, Walter W. Breen, the director of intelligence of the Army Service Forces, informed his superiors that "there are indications that widespread disturbance is likely to develop, within the next three or four months, in several areas." He was in turn advised to undertake "an appropriate program of measures to prevent the occurrence of overt racial disturbances." The War Department, perhaps coincidentally, had, on the day of Spicely's murder, issued an order to desegregate buses, trucks, and other vehicles operated by the government or government contractors. It also prohibited restricting Blacks to designated sections of public vehicles "either on or off a post, camp, or station, regardless of local custom."

While the War Department was investigating Spicely's past and his family members, Thurgood Marshall, in the NAACP's national office, was weighing whether to participate in the criminal trial of the bus driver. Charged with manslaughter, Council was due to be tried by a jury, and North Carolina law allowed private attorneys to associate with the public prosecutor during a trial. Asked by the Spicely family to appear in the case, Marshall sent NAACP attorney Edward Dudley

to Durham in his stead. However, Spaulding, the president of Mutual and an unelected Black spokesman, persuaded Robert Spicely that the family should reject lawyers from the national NAACP—"outside counsel," he called them—in favor of "a high type white attorney in Durham" and a local African American lawyer. Spaulding argued, "We who live in the south can appreciate the all-white courts including the jurors and it is going to take evidence more than anything else to win the case. . . . A local white attorney could assist in securing evidence . . . to better advantage." Marshall eventually backed off, but not without a fight. Having dealt with Spaulding and Durham's Black elite in a desegregation case a decade earlier, Marshall was familiar with their opinion that they could best mediate between the Black community and white Durham. With the clarity and bluntness for which he was by then legendary, Marshall observed:

whole trouble around the Spicely case is the same trouble we have around all cases in North Carolina . . . certain Negro groups in North Carolina . . . believe that the only way to handle the problem is to handle it "without outside influence." One thing is certain and that is that the NAACP will not itself be intimidated by anyone, whether he be white or Negro. One of these days, North Carolina will realize that none of us can handle our problems alone.*

In September 1944, Herman Council was tried for manslaughter. The bus driver claimed that Spicely had his hand in his pocket when he got off the bus, putting the driver in fear for his life. After two days of testimony and thirty minutes of deliberation, the jury rendered a "not guilty" verdict to a shocked (and segregated) courtroom.

The War Department rushed to get ahead of the inevitable calls for action from the Black press and the national NAACP. Camp Butner

* Marshall was referring to a clash between the NAACP and Spaulding on the role of the national lawyers in *Hocutt v. Wilson*, N.C. Super. Ct. (1933) (unreported), a suit to desegregate the pharmacy school at the University of North Carolina.



The cartoon above is the work of Gow M. Bush, North Carolina artist, who here depicts the slaying of Pvt. Booker T. Spicely, Camp Butner soldier, by Herman L. Council, white, Durham, N.C., bus driver, who was found not guilty last week by an all-white jury which deliberated only 28 minutes. Many white citizens shared in the general disgust attending the verdict. Sign at right says:

ATTENTION NEGROES!

1. SEAT FROM REAR OF BUS. (STATE LAW)
2. DON'T TALK BACK TO BUS

- DRIVER. (HE IS WHITE).**
3. NO MUTTERING OR "MOUTH-ING." YOU ARE NOTHING
4. DO NOT APOLOGIZE.
IT'S AN INVITATION TO BE MURDERED.

Private Booker T. Spicely was shot to death in 1944 in Durham, North Carolina, by a bus driver for protesting segregated seating. The *Carolina Times* covered the case and published this image.

and the quartermaster in Philadelphia renewed contact with Everett's office in Atlanta and its counterpart in Blackstone, Virginia. The North Carolina investigator assured Everett there was "no trouble or racial disturbance as a result of the verdict" in Durham or at Butner. Everett's office nevertheless took steps to ensure the Durham and North Carolina police were prepared to respond to any unrest.

THOUGH NEITHER the army's nor the FBI's probes found any evidence of Negro "belligerence" at Camp Butner, or in Philadelphia, or Virginia, some linked a strange happenstance to Spicely's slaying. At

about 9 o'clock on July 8, just two hours after Spicely was shot, fires ripped through Durham's downtown warehouse district, and in less than three hours three warehouses—property valued at \$250,000—were destroyed. Considered one of the worse conflagrations in the city's history, the fire was said to have started in the basement of one of the Big Four warehouses. The *Daily Charlotte Observer* reported that "other establishments burned to earth included the Central leaf redrying plant and the Dillard livery stables, where twelve cows and four horses burned to death." No one was ever arrested for arson in connection with the blazes. However, the coincidence of the conflagration and the casualty was not lost on the residents of Hayti.

Robert Spicely and his younger sister Ruth waged a long and ultimately fruitless battle to make sense of their brother's murder. Ruth had raised money among her coworkers in Philadelphia for his defense, and had persuaded the Philadelphia NAACP to launch a campaign. Robert, who had attended college, represented the family's interests. He corresponded with the well-known civil rights advocates of the day, including Charles Hamilton Houston, Thurgood Marshall, and William Henry Hastie. In one such letter to Houston, he revealed deep pain and pessimism, but also hope that the NAACP could secure a modicum of justice. "I cannot bring my brother back," he wrote. "The best that can be done now is (1) serve notice on bus drivers that they cannot murder Negro soldiers with impunity, (2) focus the eyes of the country . . . on this problem of Negro soldier treatment, (3) give the Negro courage and belief in a force that he can depend upon to fight for him." In a letter to Marshall, Robert wrote, "Nothing I or anyone else can do can erase from my memory the sight of my aged mother groping her way to me and falling upon my shoulder dry-eyed . . . as she mumbled, 'My child. My child.'" He confessed that he was confused about whether to bring in Marshall in light of Spaulding's objections. "The whole situation would be far less confusing if one had a brother murdered every day, or had to deal with the courts as intimately . . . as he dealt with the grocer or barber. My course of action would be much easier if . . . there were not so many conflicting interests, urges, emo-



In 1944, Private Booker T. Spicely, stationed at Camp Butner near Durham, was killed by a bus driver after he commented that he deserved the same treatment as the white soldiers on the bus.

... nothing further to be done.

Robert Spicely and his sister Ruth Ida each passed away in 1983. They never achieved for their brother the recognition he deserved.

tions, responsibilities and desires." And he wondered whether following Spaulding's recommendation to retain a local white lawyer was the right thing to do: "That much power is dangerous in the hands of any group so small and so far divorced from the problems of the masses and yet able to speak for them as the 'good Negroes of Durham.' . . . This holds whether the persons are Dr. Shepard and Mr. Spaulding or anyone else."

Five years after a jury freed Council, in 1949, Robert Spicely asked the NAACP to reopen his brother's case. Constance Baker Motley, who would later become a federal judge in New York City, reminded the distraught man that the NAACP's efforts to participate in the criminal trial had been rebuffed by the local lawyers. There