PREFACE

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The title alone—"*Annual Review of Criminal Procedure*"—plants a flag. It is not conditioned. There are no caveats. It swings for the fences. Referring to it as merely "authoritative" seems kind of shabby. At close to 1,300 pages and footnoted to within an inch of its life, it could well be the print embodiment of *sui generis*. Upwards of 11,000 copies are produced and distributed each year. Judges read and refer to it. So do prosecutors and defense attorneys. Pro se litigants—many of them prisoners—rely on it. In a pinch it could double as a doorstop. Which begs the question: Why spend the next few pages discussing its shortcomings? After all, most are baked in. Its yearly publication date, for example, coincides with the exact start of its obsolescence. But its most prominent shortcoming is worth some time. It's also built in. But it's less like a minor-flaw-not-of-its-own-making and more like a tragic one. Think of it as the inevitable result of its doomed mission: documenting the law as it is, not necessarily as it should be.

Sometimes the law as it is and the law as it should be are one and the same; other times they're more like overlapping Venn diagrams. Often, they are neither. Sometimes the law as it is can be settled. Other times not. Sometimes it's correct; often it is flawed. Occasionally it is just; often it isn't. The law as it should be is both more static than the law as it is, but also more elusive. Static in the sense that what is just and true can be envisioned and articulated; elusive, because the legal path to getting there is often ill-defined, dimly lit. Until the day that it's not. To get to that place—to truth, to justice, to the law as it should be—"we need all angles, all distances, all perspectives," U.S. District Court Judge Carlton W. Reeves recently observed.[1] "[W]hat Judge A. Leon Higginbotham called 'a multitude of different experiences.' *That* is what justice requires."[2]

Judge Reeves made these remarks in 2019 when he was awarded the Thomas Jefferson Foundation Medal in Law from the University of Virginia. At the presentation ceremony, he first acknowledged that as the award recipient he was honored beyond measure, but also noted that as a Black lawyer and judge, as a Black graduate of Mr. Jefferson's university, and as a native Mississippian, the situation was complex.[3] "Thomas Jefferson was complicated," Judge Reeves said. "There is so much to admire about him: his genius, his curiosity, and his industry."[4] He mentioned that he was pleased to have quoted from Jefferson's *Notes on the State of Virginia* in one of

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1. Honorable Carlton W. Reeves, Defending the Judiciary: A Call for Justice, Truth, and Diversity on the Bench, Prepared Remarks upon Receiving the Thomas Jefferson Foundation Medal in Law 3 (Apr. 11, 2019).

2. *Id.* (quoting LINN WASHINGTON, BLACK JUDGES ON JUSTICE: PERSPECTIVES FROM THE BENCH 11 (1994) (interview with Honorable A. Leon Higginbotham (Oct. 20, 1993))).

3. *Id.* at 1–4.

4. *Id.* at 1.

his recent decisions.[5] "It captured something true about the case, despite being more than 200 years old," he said.[6] But, he added:

> that truth requires us to recognize the complication of Jefferson the slaveholder. Because in *Notes on the State of Virginia*, he also wrote that black people were "much inferior," among many other things. To him, people like me were best fit to give our labor, blood, and sweat to build this great University. We certainly were not fit to attend it, let alone be honored by it.[7]

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On February 7, 1962, Robert Swain, a nineteen-year-old Black day laborer, was running an errand for his boss, Clarence Cook. Cook was the owner of City Motor Company, a used car dealership in Talladega, Alabama.[8] When Cook wasn't hawking cars, he was making trouble, sometimes as a bootlegger.[9] Late that morning, Cook handed Swain $450 to make the ninety-mile run—for exactly what remained murky—to Opelika. Swain drove the dealership's green and white Pontiac. He left just before noon.[10] When Swain returned, he told Cook that he had been stopped about halfway to Opelika at a license-check roadblock. Three highway patrol cars were stopping travelers going both ways.[11] When Cook asked him if he had gotten a citation—he knew Swain's license had expired—Swain said he hadn't, that the patrolman had cut him a break, sympathetic to his story that he had inadvertently left his license in another pair of pants.[12]

According to Jimmie Sue Butterworth Sizemore, however, a seventeen-year-old white girl, the real reason Swain was late returning to Talladega was because earlier that afternoon he had forced his way into her home just off the Millerville-Goodwater Highway in a rural part of the county and sexually assaulted her. Swain was arrested in Talladega later that evening.[13] "White Girl Tells of Rape; Negro Suspect Charged," the front page of *The Montgomery Advertiser* read the following day.[14]

Of the 455 defendants convicted for rape and then executed between 1930 and 1972, 405 of them were Black.[15] Former Confederate states, Alabama among them, carried out almost all of those executions.[16] Prosecutors in Swain's case announced that if Swain were convicted, they would ask that he be executed in the state's bright

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5. *Id.* at 1 (citing Campaign for S. Equal. v. Bryant, 64 F. Supp. 3d 906, 922 (S.D. Miss. 2014)).

6. *Id.*

7. *Id.* at 1 (footnote omitted) (quoting THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA 146 (Lilly and Wait 1832) (1785) (referring to Black people as "'much inferior' in reason, 'dull, tasteless, and anomalous' in imagination, and incapable of 'utter[ing] a thought above the level of plain narration'")).

8. *See Rape Trial Here Moves Into Second Day Tuesday*, TALLADEGA DAILY HOME (Ala.), June 12, 1962, at 1–2.

9. *Three First Degree Murder Cases Are Docketed for Trial*, TALLADEGA DAILY HOME (Ala.), Oct. 7, 1956, at 1.

10. Transcript of Testimony of Trial at 253–54, Swain v. State, No. 6134 (Ala. Ct. App. 1962).

11. *Id.* at 255; *Rape Trial Here Moves Into Second Day Tuesday*, *supra* note 8, at 2.

12. *See* Transcript of Testimony of Trial, *supra* note 10, at 255.

13. *Id.* at 259; Swain v. State, 156 So. 2d 368, 370–71 (Ala. 1963).

14. *White Girl Tells of Rape; Negro Suspect Charged*, MONTGOMERY ADVERTISER (Ala.), Feb. 8, 1962, at 1.

15. Brief for The ACLU et al. as Amici Curiae Supporting Petitioner at 10, Kennedy v. Louisiana, 554 U.S. 407 (2008) (No. 07-343) (citing NAT'L PRISONER STAT., BUREAU OF PRISONS, U.S. DEP'T OF JUST., BULL. NO. 45, CAPITAL PUNISHMENT 1930-1968 (1969)).

16. *Id.* (citing James W. Marquart, Sheldon Ekland-Olson & Jonathan R. Sorensen, THE ROPE, THE CHAIR, AND THE NEEDLE: CAPITAL PUNISHMENT IN TEXAS, 1923–1990 39 (1994)).

yellow electric chair.[17] Their prosecution theory was simple: when Robert Swain left City Motor Company, he had sex on his mind.[18]

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Judge Reeves received his honor and delivered his remarks in Charlottesville, just a few miles from Thomas Jefferson's home at Monticello. Monticello is an inarguably beautiful place. UNESCO has named it a World Heritage Site.[19] But, as Judge Reeves remarked, "we don't see the beauty of Monticello by looking at it from one angle, nor the horror of its slave quarters by observing them from a distance."[20]

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Swain's lawyers objected to the prosecution's theory, arguing that no proof existed about Swain's state of mind. The court overruled the objection, finding that "counsel for either side can argue any reasonable inference to be drawn from the evidence in the case."[21] "Reasonable" and "inference" are loaded words. Their meanings depend in large part on what listeners are willing to ascribe to them. As for who the listeners—the jury—would be at Swain's trial, his lawyers had filed a pretrial motion in which they produced proof that Black citizens of Talladega County had been systematically excluded from grand juries, including the one that had indicted Swain, "since the days of Reconstruction."[22] Their first witness, a prosecutor from that same circuit, testified that he had "never observed a negro serving on a petit jury in this county since 1950, since I have been coming to this courtroom."[23] His memory appeared sound; he clearly recalled a Black lawyer who several years before had represented a Black client—a "one-eyed taxi driver charged with driving drunk" and killing two people.[24] That lawyer had challenged the way the all-white jury was seated in the case, but nothing had come of it.[25]

Several others offered similar testimony; none could recall a Black juror ever serving.[26] William Taylor, a local Black man who had lived in Talladega almost fifty years testified. He had retired from the military because of complications from serious arthritis. He limped through the well of the courtroom to the witness stand with the aid of a cane.[27] He said he had been summoned twice to serve as a juror but had never been chosen to serve and didn't know of a fellow Black who ever had.[28] The prosecutor attempted to suggest that he had been disqualified because of his disability, not his race. Taylor told the court that, in fact, his arthritis wasn't disqualifying.[29] When challenged about how long he'd been relying on his cane, he told the court, "I walk with this stick sometimes and sometimes I lay it down, according to how I feel."[30] Despite evidence of significant under-representation of Black citizens on

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17. *See History of the ADOC*, ALA. DEP'T OF CORR., http://www.doc.state.al.us/History (last visited June 28, 2023) (describing the state electric chair as "Yellow Mama").

18. Transcript of Testimony of Trial, *supra* note 10, at 352.

19. *Monticello and The University of Virginia in Charlottesville*, UNESCO WORLD HERITAGE CONVENTION, https://whc.unesco.org/en/list/442/ (last visited June 28, 2023).

20. Reeves, *supra* note 1.

21. Transcript of Testimony of Trial, *supra* note 10, at 353.

22. Motion to Quash Indictment at 3–5, Swain v. State, No. 6134 (Ala. Ct. App. 1962).

23. Testimony of Motion to Quash Indictment at 13, Swain v. State, No. 6134 (Ala. Ct. App. 1962).

24. *Id*. at 22.

25. *See id*. at 22–23.

26. *See id*. at 26–42.

27. *See id*. at 69–70, 74.

28. *Id*. at 74–75.

29. *See id*. at 75.

30. *Id*. at 77.

the county's grand juries, Swain's lawyers lost their motion. When the prosecutor used six of his peremptory strikes to remove all of the qualified Black jurors from the petit jury, they challenged that, as well, and lost again.[31]

Swain's trial lasted two days. The jury reached a guilty verdict in forty-five minutes.[32] Except for his hands, which he constantly moved, Swain remained impassive.[33] Before sentencing him, the judge asked Swain whether there was anything he wanted to say.[34] "I didn't do it," Swain replied, his voice "so low, that few persons in the courtroom heard it."[35]

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"People go to church to find peace," Judge Reeves said during the award ceremony, "to the hospital to be healed, and to school to be educated. But they go to courts to get justice."[36] So Swain and his lawyers went to the United States Supreme Court. But the Supreme Court ruled against him, writing that Black prospective jurors who had been summoned to his trial were subject to "being challenged without cause," just like any other juror.[37] Black or white, rich or poor, Catholic or Protestant were all valid bases for exercising a peremptory strike, the Court held.[38] "Any other result . . . would establish a rule wholly at odds with the peremptory challenge system as we know it."[39]

In 1965, when *Swain* was decided, there was no *Annual Review of Criminal Procedure* (It celebrated its fiftieth anniversary in 2021). But had there been, it would've included *Swain*, of course, and by doing so, it would've documented the law as it was.[40] As Stanford Law School Professor Pamela Karlan has observed, *Swain* "denied protection to people like Robert Swain precisely *because* prosecutors might believe that excluding blacks from juries in black-on-white rape cases might make conviction more likely."[41] As a Black defendant charged with raping a white woman in the Deep South, Swain was the type of defendant who would most benefit from a fair cross-section of listeners; he was also the type of defendant "least entitled to it."[42]

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Swain's lawyers refused to give up. One of the first things they did was hire Frankie L. Fields.[43] Fields was a newly-minted lawyer, a graduate of Howard Law School and native Alabamian, the second oldest of seven children. Her father worked in the shipyards on the nearby coast.[44] She attended Alabama A&M for college and would often gather in the school cafeteria with fellow students who were interested in the burgeoning Civil Rights Movement. One of her professors—Randolph T. Blockwell,

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31. Motion for New Trial at 365–66, Swain v. State, No. 6134 (Ala. Ct. App. 1962).

32. *Death Sentence Meted*, TALLADEGA DAILY HOME (Ala.), June 13, 1962, at 1.

33. *Id.*

34. *Id.*

35. *Id.*

36. Reeves, *supra* note 1, at 2.

37. Swain v. Alabama, 380 U.S. 202, 221 (1965).

38. *Id.*

39. *Id.* at 222.

40. *See* Justin Driver, *The Constitutional Conservatism of the Warren Court*, 100 CALIF. L. REV. 1101, 1130–39 (2012).

41. Pamela S. Karlan, Batson v. Kentucky: *The Constitutional Challenges of Peremptory Challenges*, *in* CRIMINAL PROCEDURE STORIES 381, 382 (Carol S. Steiker ed., 2006).

42. *Id.*

43. Raymond L. Johnson, Jr., *Black Pioneer Lawyers in Alabama: Living Legends*, ALA. LAW., May 1993, at 156, 166–67.

44. Interview with Frankie Fields Smith (May 19, 2021) (on file with author).

Field Director of the Voter Education Project, who was the target of an attempted murder in Greenwood, Mississippi in 1963—noticed her passion and suggested that she go to law school.[45] She applied and gained admission to Howard but declined to show up on the first day of classes because she didn't feel like she or her family could afford it.[46] As a consequence of her absence, she received a call from the dean—Spottswood W. Robinson III, who would later become chief judge of the U.S. Court of Appeals for the D.C. Circuit—asking where she was and why she hadn't registered.[47] When she explained her dilemma, he gave her a full scholarship on the spot, textbooks included, and told her to hurry up and come to D.C. because Howard had a strict attendance policy.[48]

Fields' task was to gather evidence that could take advantage of the small window of opportunity that the Court had left open in *Swain*. While prosecutors were allowed to exercise peremptory strikes however they wished, the Court limited that right to a discrete trial. In other words, prosecutors were prohibited from deploying peremptory strikes "in case after case"—no matter the circumstance, regardless of the crime, or the race of the defendant or the victim—with the goal of seating an all-white jury.[49] Proof of that type of serialized behavior, the Court said, would violate the right to a fair trial.[50]

Fields made multiple trips from NAACP offices in New York—flying from John F. Kennedy airport to Birmingham, where she would acquire a car and then drive to Talladega County. Given the work that she was doing, it seemed prudent that she find a secure place to stay for the night after she was done combing through the records at various county courthouses. Through NAACP contacts, she used the home of a local Black minister and his family as a safe house.[51]

The data collection was painstaking. Fields would locate old case files, search through hundreds of pages for the strike sheets from jury selection, and then copy the names and try and match them to citizens in the community.[52] On more than one occasion, her host was helpful. His role as community minister meant that he knew just about everyone. About her time in Talladega, Fields says, "I was nice, but I was persistent."[53] Somewhat to her surprise, the court personnel were welcoming. "People in the local courthouses were extremely friendly and helpful to me," she recalls, adding:

> [i]n fact, in the Talladega County courthouse the district attorney who had prosecuted Mr. Swain was helpful—ran into me in the clerk's office and showed me where to

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45. *See* Johnson, *supra* note 43, at 166–67.

46. *See id.*

47. *See id.*

48. *See id.* Fields would go on to become a pioneer in the Alabama Bar. She was one of the first Black females admitted to the state bar, and the first Black female municipal judge. Her kindness never wavered; she is affectionately referred to as "The Jewel of Mobile." Among her many significant achievements is the successful representation of Alabama Black truck drivers who were cut out of interstate hauling contracts in favor of white truckers. *Id.*

49. *See* Swain v. Alabama, 380 U.S. 202, 223 (1965).

50. *See id.* at 223–24. The Court did not explain—nor could it have—how indigent criminal defendants were supposed to engage the services of lawyers who would have the time and resources to marshal that type of evidence, assuming that it was routinely kept in the regular course of business anyway. *See The Supreme Court, 1964 Term—Use of Peremptory Challenges to Exclude Negroes from Trial Jury*, 79 HARV. L. REV. 135, 137 (1965) ("It is also possible that no records are kept of the exercise of peremptory challenges in past cases. The only other likely sources of such information are white lawyers and courthouse personnel, none of whom can be expected to exert his memory to help a Negro defendant secure reversal of an otherwise valid conviction.").

51. *See* Interview with Frankie Fields Smith, *supra* note 44.

52. *See id.*

53. *Id.*

> look for jury data from past trials. The judge was nice, too, when I saw him in the hallway or somewhere else in the courthouse.[54]

On her last night in Talladega, word in the community was that the Klan was organizing a cross burning. Some thought that it was in reaction to Fields herself, to the work that she was trying to do on Swain's behalf. Fields says she never knew for sure, but she does recall that the family she was staying with moved her out of the house that night and found her a bed in a dorm room at a nearby college. "You know how it all ended?" she says when recalling the story. "That night—the night of the rumored cross-burning—it came a flood! Rained as hard as I've ever seen it rain!"[55]

The data that Fields collected was robust enough for Swain's lawyers to mount another challenge, one that appeared to exceed the level of proof that the Supreme Court had set to demonstrate systemic race bias on jury selection over time.[56] Swain's newly developed claim alleged "systematic and arbitrary exclusion of negroes from service on petit juries . . . or a token inclusion which amounted to racial discrimination," and that the prosecutor had:

> for a period of twelve years preceding appellant's trial consistently and systematically struck negroes from petit jury venires, or entered into agreements with defense counsel to eliminate all negroes from the venires, thus preventing negroes from serving on petit juries because of their race, and not for reasons related to the trial of a particular case.[57]

More particularly, Fields' painstaking work demonstrated that "[f]rom the lists of 1950 through 1955 . . . negroes were on some of the [jury lists] since the designation 'col' appeared after their names. [But f]rom August 1955 through 1962 the abbreviation 'col' did not appear after any name on the venire."[58] In other words, the record revealed that not a single Black juror had served for at least a seven-year period. Or, put more succinctly—Swain had established the benchmark the Court articulated: that "no Negro within the memory of persons now living has ever served on any petit jury in any civil or criminal case tried in Talladega County, Alabama."[59] At the hearing the State objected to

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54. *Id.*

55. *Id.*

56. The relatively new field of data science, developed long after Swain's trial, provides fascinating empirical proof of exactly this. Data science amasses large amounts of known data and extracts from it information that has useful application. What it demonstrates with respect to Swain's situation is that Swain was almost never going to receive a jury trial with his Black citizen peers as jurors in any number approaching the demographic breakdown of Talladega County, Alabama. Economics and Data Science professors at UCLA and Berkeley have applied this methodology to the jury—or potential juries—at Swain's trial. At the time of his trial, jury eligible Blacks comprised approximately 26% of Talladega County's population. Using this data point, variables can be created to represent potential compositions of eligible jurors. Then, using a mathematical function, random juror pools of 100 potential jurors can be created and scaled up, in this particular study, 100,000 times. Swain's jury pool had eight Blacks. When 100,000 possible juror pools are created, the following question can be answered: Given the demographics of Talladega, how likely is it that a given jury pool has eight or fewer Black jurors? The answer is stunning: just one. What the data shows is that Talladega officials were almost certainly manipulating the venires by race. What they couldn't quite achieve—a venire of no Blacks at all—the tactically deployed peremptory strike could finish. Gabriel Butler, *Tutorial 7: The Central Limit Theorem*, ECON 41 LABS: BOOKDOWN, https://bookdown.org/gabriel_butler/ECON41Labs/tutorial-7-the-central-limit-theorem.html#simulating-jury-pools-from-swain-v.-alabama (last visited June 28, 2023). This simulation is adapted from a lecture given by University of California, Berkeley Professor Ani Adhikari in her course, Data Science 8. Ani Adhikari, John DeNero & David Wagner, *11.1 Assessing a Model: Jury Selection*, COMPUTATIONAL AND INFERENTIAL THINKING: THE FOUNDS. OF DATA SCI., https://inferentialthinking.com/chapters/11/1/Assessing_a_Model.html (last visited June 28, 2023).

57. Swain v. State, 231 So. 2d 737, 738 (Ala. 1970).

58. *Id.* at 739.

59. Swain v. Alabama, 380 U.S. 202, 231–32 (1965) (Goldberg, J., dissenting).

the admission of Fields' data. The Court sustained it, ruling that all of the evidence Fields had amassed was unreliable and inadmissible.[60] Swain lost once again.[61]

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Immediately after Judge Reeves underscored what seems obvious—that people go to court to get justice—he elaborated, adding something remarkable, especially for an Article III judge who enjoys a lifetime appointment. "Deciding what is fair, what is reasonable, what is owed," he said.[62] "[T]hese questions are too important to be decided by position, power, or tradition. Only truth can resolve them."[63] That's what Frankie Fields attempted to do. Her efforts weren't for nothing.

As a preliminary but hardly minor matter, she succeeded in keeping the issue alive, and Swain, too.[64] In 1972, the Supreme Court struck down the application of the death penalty in part because of the racialized way it was being used in the prosecution of rape cases.[65] Swain's death sentence was vacated and he was sentenced instead to life.[66] Closer to the point, in 1986 the Supreme Court overruled *Swain* in *Batson v. Kentucky*, which prohibited the use of peremptory strikes based solely on race to remove jurors.[67] Most importantly, when *Swain* was handed down, his lawyers, with Fields doing the hard work on the ground, refused to settle for anything other than the truth, for anything other than the law as it should be. As Judge Reeves pointed out fifty-odd years on, that truth was more important than people in positions of power or tradition wanted to acknowledge. As a direct consequence, it remains quite difficult to tell Fields' truth even now. The only legal record of her efforts—the matter reported out of the Alabama Supreme Court—patronizingly misstates her role as that of a "legal intern."[68] It also gets her name wrong—referring to her as "Jackie Fields."[69] Her story may be hard to find, but not impossible.

Telling her story—telling the truth about what happened—changes things, assuming we're willing to listen. *Swain* was demonstrably bad law.[70] As soon as the Court decided the case, a number of commentators said as much. "There seems to be no rational basis for the Court's insistence on blinding itself to the continuing total white control of the processes of justice in most of the South," one such comment from the *Virginia Law Review* surmised.[71] But the story of Fields' work turns the surmise into a bracing reality. In *Batson*, the case that overruled *Swain*, Justice Lewis Powell wrote that the Court had "no reason to believe that prosecutors will not fulfill their duty to exercise their challenges only for legitimate purposes. Certainly, this Court may assume that trial judges, in supervising *voir dire* in light of our decision today, will be alert to identify a prima facie case of purposeful discrimination."[72] Fields' work makes

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60. *See Swain*, 231 So. 2d at 739–40 (the court also found that Swain's claim was procedurally barred).

61. *Id.* at 743.

62. Reeves, *supra* note 1, at 2.

63. *Id.*

64. It would be a decade-and-a-half after Swain stood trial—1977—before the Supreme Court would rule that executing a convicted defendant for rape violated the Eighth Amendment. *See* Coker v. Georgia, 433 U.S. 584, 592 (1977).

65. *See* Furman v. Georgia, 408 U.S. 238, 249–54 (1972) (Douglas, J., concurring); *id.* at 364–65 (Marshall, J., concurring).

66. Swain v. State, 274 So. 2d 305, 306–07 (Ala. 1973).

67. *See* Batson v. Kentucky, 476 U.S. 79, 89 (1986).

68. Swain v. State, 231 So. 2d 737, 739 (Ala. 1970).

69. *Id.*

70. *See* Driver, *supra* note 40, at 1133–36.

71. Comment, Swain v. Alabama: *A Constitutional Blueprint for the Perpetuation of the All-White Jury*, 52 VA. L. REV. 1157, 1159 (1966).

72. Batson v. Kentucky, 476 U.S. 79, 99 n.22 (1986).

Justice Powell's words seem naïve, even cynical. In his concurrence in *Batson*, Justice Thurgood Marshall predicted that the majority decision would leave prosecutors "free to discriminate against blacks in jury selection provided that they hold that discrimination to an 'acceptable' level."[73] Fields' work turns Marshall's prediction into prophecy. Finally, Justice Brett Kavanaugh recently wrote that "*Batson* immediately revolutionized the jury selection process that takes place every day in federal and state criminal courtrooms throughout the United States."[74] Fields' work—the truth—reveals the craven lengths that the Court will still go to in order to avoid it.[75]

In the end, the *Annual Review's* most problematic shortcoming—documenting the law as it is—is also baked in. After all, what is contained in the pages that follow is an accurate reflection of the law that has developed outside of them. It's the readers and consumers of this *Annual Review*, not its editors, who have ultimate control of what ends up between its covers. So, let's make no mistake. There is a lot of truth in this book; there is also a lot of justice. But in spite of its bold title, the 1,300 plus pages, and the endless footnotes there is still room for much more of both—available space for the law as it should be.

73. *Id*. at 105 (Marshall, J., concurring).

74. Flowers v. Mississippi, 139 S. Ct. 2228, 2242–43 (2019).

75. From 2011 to 2017, in more than 5,000 Louisiana jury trials, prosecutors struck Black jurors at disproportionate rates, regardless of the defendant's race, and struck Black jurors far more frequently than whites when the defendant was Black. *See* Thomas W. Frampton, *The Jim Crow Jury*, 71 VAND. L. REV. 1593, 1621 (2018).