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CONSTANCE BAKER MOTLEY, 1921-2005: Lawyer's calling was civil rights

BYLINE: ANNE S. EMANUEL**SECTION:** Editorial; Pg. 13A;**LENGTH:** 939 words

When I think of Constance Baker Motley, I think of pay phones, the old-fashioned pay phones that took only coins for calls, local or long distance.

Every courthouse had one. That was important to her. She was often representing clients in courthouses that stood square in the center of a Jim Crow zone. No black lawyers had offices nearby; no white lawyers who did were likely to offer her use of their office. She might have to walk for blocks before crossing an invisible line, on the other side of which she could walk up to a counter and order a glass of iced tea.

I think of the rest, too. I think of her standing by James Meredith's side, or Medgar Evers', or the Rev. Martin Luther King Jr.'s. I remember that she was "Connie" to Thurgood Marshall --- who as legal director for the NAACP sent her, a very young attorney, to the Deep South to handle litigation as intense as any the world has known. He sent her because a black woman was safer than any man.

Motley walked through fire as if it were not there. She was tall, always well dressed, even as a young woman stately in her manner. She carried herself like the professional she was as she walked into Southern courtrooms where local black people never ventured. They knew they would not be welcome. In some cases, they knew they would enter at their own risk.

Her demeanor seemed to say there was nothing at all unusual about her being there, about her walking inside the bar, about her cross-examining the white patriarchs.

Motley, who died Sept. 29 at age 84, was an excellent trial attorney, well prepared, thoughtful, good on her feet. She was appropriately deferential to the bench, but not so deferential that she ever failed to make an important point.

When she represented Hamilton Holmes and Charlayne Hunter in their effort to desegregate the University of Georgia, she had to cross-examine the chancellor of the Board of Regents, the president of the University of Georgia and the registrar of the university as they all insisted under oath that race did not play any part in admissions decisions at the University of Georgia.

This was in 1960, at a time when state law provided that if any educational institution served both white and black students, all state funding would be withheld.

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On the one hand, her job was preposterously easy. On the other --- a black woman facing this pantheon of the old South--- her job was impossible.

She held her ground. She presented her case well, and she won. U.S. District Court Judge Walter "Gus" Bootle in Macon ruled that it appeared from all the evidence that the only reason these two bright young people were denied admission was their race.

He ordered them admitted. Jubilation, for the young students and their lawyer.

Then, a few days later, Bootle entered an order staying the resolution of the matter pending appeal. Des-pair --- even if an appeal were expedited, registration for the semester was about to close. Time was of the essence. Enter the pay phone.

Motley went to the pay phone and called Judge Elbert Tuttle, chief judge of the Court of Appeals for the 5th Circuit in Atlanta. She told him she was appealing Bootle's decision and asked when the appeal could be heard.

"When can you get here?" he asked. By 2 p.m., she calculated. "Then tell opposing counsel that the appeal will be heard in my courtroom at 2 p.m.," he advised her.

She did, and then, with her co-counsel, Atlanta attorney Donald Hollowell, at her side, she drove to Atlanta. Even as Gov. Ernest Vandiver and his lieutenants were celebrating their victory, Tuttle ruled from the bench: the stay was lifted, the two young applicants could register at once. It was a turning point not only in their lives, but also in the life of the nation.

Three years later, Motley would have occasion to find another pay phone and make another emergency call to Tuttle. In May 1963, Birmingham was a tinderbox. The civil rights revolution was at a critical turning point.

In near desperation, King had agreed to let the children of Birmingham join in peaceful protest. Some 1,100 children, many well under 18, were arrested. They were not held long, but the Board of Education announced that everyone arrested was expelled, or suspended for the remainder of the school year. Any appeals would be heard starting in June.

Motley sought an injunction on their behalf. They were being penalized for the exercise of First Amendment rights, she argued. This time her plea fell on deaf ears: Judge Clarence Allgood denied any relief.

Once again, Motley went to a pay phone and called Tuttle. It would be evening before the attorneys could make their way to Atlanta. When they did, Tuttle was waiting.

The hearing began at 7 p.m. Tuttle heard arguments from both sides. Then he ruled from the bench: Allgood had erred; the school board's mass expulsion was a denial of the children's constitutional rights and they were entitled to an injunction pending appeal.

Tuttle asked the school board's attorney if they used local radio stations for school announcements. Yes, the attorney responded, they did. It is the order of this court, Tuttle told him, that you call those stations as soon as you leave this courtroom. Tell them to broadcast that all the children are to come to school tomorrow.

Motley would remember that as her most satisfying achievement, even after she became the nation's first African-American federal judge. The rest of us celebrate her entire career.

Anne S. Emanuel, associate dean of the Georgia State University School of Law, is writing a biography of Judge Elbert Tuttle.

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GRAPHIC: Anne S. Emanuel ; File President Lyndon B. Johnson poses at the White House with Constance Baker Motley in 1966 after Johnson nominated her to be a federal judge in New York. Motley, the first African-American to hold such a judgeship, was also an attorney known for her successes in civil rights cases.

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