

OF PROTEST AND PROPERTY: AN ESSAY IN PURSUIT OF JUSTICE FOR BREONNA TAYLOR

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ABSTRACT—In March 2020, Louisville police officers fatally shot Breonna Taylor in her apartment while executing a no-knock warrant. There was great outrage over the killing of the innocent woman, and Kentucky Attorney General Daniel Cameron led an investigation of the officer-involved shooting.

Activists protested in Louisville after Taylor’s killing, and when Cameron’s investigation appeared stalled, these activists even conducted a sit-in on Cameron’s front lawn. They demanded immediate justice for Taylor. Cameron sharply responded, lecturing the activists on how to achieve justice. He contended that neither trespassing on private property nor escalation in tactics could advance the cause of justice.

Cameron’s bold assertion invites a discussion of how civil rights activists have and continue to use trespassing and escalation to pursue justice. This Essay explores the relationship between civil rights and property rights and finds parallels between the sit-in movement of the 1960s and the Black Lives Matter Movement. This Essay also finds parallels between Cameron’s criticisms of the Black Lives Matter Movement and criticisms of the sit-in movement of the 1960s. The Essay concludes by suggesting paths forward in the struggle to find justice for Taylor.

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“Justice is not achieved by trespassing on private property, and it’s not achieved through escalation.”

—Kentucky Attorney General Daniel Cameron¹

INTRODUCTION

In July 2020, dozens of peaceful protesters conducted a sit-in outside of Kentucky Attorney General Daniel Cameron’s Louisville home. The protesters were demanding that Cameron criminally charge the police officers who shot and killed Breonna Taylor during the execution of a no-knock warrant at Taylor’s apartment. Cameron was livid. When the protesters did not leave Cameron’s lawn, eighty-seven of the protesters were arrested and charged with criminal trespass, disorderly conduct, and intimidating a participant in a legal process.² These charges were far from mundane. Intimidating a participant in a legal process is a Class D felony in Kentucky and can carry a five-year prison term.³

¹ Jordan Freiman, *87 People Charged with Felonies After Breonna Taylor Protest at Attorney General’s House*, CBS NEWS (July 15, 2020, 4:36 PM), <https://www.cbsnews.com/news/87-arrested-outside-kentucky-ags-house-during-breonna-taylor-protest> [<https://perma.cc/5FQT-U8R9>]. A group of white senior citizens seeking justice for Taylor replicated this sit-in strategy. They carried signs like “Grannies for Breonna,” and they made stirring appeals to justice. One of the elderly demonstrators said, “We felt like elderly white people standing up for justice, for Black families and Black people was worth the risk of arrest, the risk of being cited.” Another elderly protester declared that Louisville needs “to wake up and make sure we’re on the right side of history.” Six of these protesters were given citations for trespassing, and one protester was arrested and charged with criminal trespassing. Bruce Schreiner, *Kentucky: Elderly Whites Protest for Slain Black Woman*, AP NEWS (Aug. 20, 2020), <https://apnews.com/article/019f6eab1f2c7b8fcaa95f9bc8a5ff3> [<https://perma.cc/2UZN-N72G>].

² Jacey Fortin & Allyson Waller, *87 Face Felony Charges After Protesting Breonna Taylor’s Death*, N.Y. TIMES (July 17, 2020), <https://www.nytimes.com/2020/07/15/us/protesters-arrested-breonna-taylor-kentucky.html> [<https://perma.cc/5JTB-ARPM>].

³ David Mattingly, *Felony Charges for Cameron Protesters Could Be Hard to Prove*, WAVE 3 NEWS (July 15, 2020, 6:54 PM), <https://www.wave3.com/2020/07/15/felony-charges-cameron-protesters-could-be-hard-prove> [<https://perma.cc/49TW-53Q9>] (explaining the felony charges and the difficulty of proving the charges). The felony charges raised serious concerns that local officials were merely seeking to chill the free speech rights of the protesters, and prosecutors later conceded the point, dropping the felony charges “in the interest of the justice and promotion of the free speech ideas.” Vandana Rambaran, *Prosecutors Drop Felony Charges Against 87 Breonna Taylor Protesters Arrested at Home of Kentucky AG*, FOX NEWS (July 17, 2020), <https://www.foxnews.com/us/prosecutors-drop-felony-charges-against->

Shortly after the arrests, Cameron issued a press statement decrying the sit-in. “The stated goal of today’s protest at my home was to ‘escalate,’” he declared.⁴ “That is not acceptable and only serves to further division and tension within our community.”⁵ Cameron maintained that the demonstrators seeking justice for Breonna Taylor did not understand justice at all. “Justice is not achieved by trespassing on private property,” Cameron lashed out, “and it’s not achieved through escalation.”⁶

Cameron’s assertions about how justice is achieved offer us a window to explore a broader, theoretical question for justice seekers. How might people, who are witnessing justice delayed and justice denied, leverage trespassing to create the context for political and legal change? Put slightly differently, why do activists often flout private property rights to advance civil rights?

The history of the Civil Rights Movement offers powerful insights to answer these questions—questions that Cameron and many others might well appreciate. Cameron is Kentucky’s first Black Attorney General and only its second Black statewide officeholder.⁷ Moreover, Cameron strongly believes that he is continuing the work of civil rights icons. He has stated that he “think[s] often about [his] ancestors who struggled for freedom,”⁸ and considers civil rights leaders, like Dr. Martin Luther King, Jr. and former civil rights activist and Congressman John Lewis, his heroes.⁹

Yet both the content and timing of Cameron’s comments on protest and property are deeply ironic; he made them during the 60th anniversary of the 1960 sit-in movement.¹⁰ When civil rights activists could not sufficiently advance their claims for full citizenship through courts or legislatures, many

87-breonna-taylor-protesters-kentucky-attorney-general [https://perma.cc/5EDZ-8952]; Dennis Romero, *Nearly 100 Breonna Taylor Protesters Arrested on Kentucky Attorney General’s Lawn*, (July 14, 2020, 11:44 PM), <https://www.nbcnews.com/news/us-news/nearly-100-breonna-taylor-protesters-arrested-kentucky-attorney-general-s-n1233848> [https://perma.cc/QTA2-833Y] (quoting the director of the ACLU of Kentucky: “The only purpose these charges seem to serve is to potentially chill the free speech rights of the protesters.”).

⁴ Freiman, *supra* note 1.

⁵ *Id.*

⁶ *Id.*

⁷ Joe Sonka, *Daniel Cameron Wins Kentucky Attorney General Race in Historic Victory*, COURIER-J. (Nov. 6, 2019, 9:27 AM), <https://www.courier-journal.com/story/news/politics/2019/11/05/kentucky-election-results-2019-cameron-wins-attorney-general-race/4155926002> [https://perma.cc/6EYP-T5HS].

⁸ Daniel Cameron (@DanielCameronAG), TWITTER (Aug. 25, 2020, 9:31 PM), <https://twitter.com/DanielCameronAG/status/1298447848586059776> [https://perma.cc/PB96-ATA7].

⁹ Attorney General Daniel Cameron (@kyoag), TWITTER (Jan. 20, 2020, 8:06 AM), <https://twitter.com/kyoag/status/1219259952579207168> [https://perma.cc/935K-4EUF]; Attorney General Daniel Cameron (@kyoag), TWITTER (July 18, 2020, 9:06 AM) [hereinafter Cameron, July 18 Tweet], <https://twitter.com/kyoag/status/1284489831498895360?lang=en> [https://perma.cc/P2MK-XHKB].

¹⁰ Freiman, *supra* note 1.

sought redress at lunch counters and other public accommodations, often trespassing during sit-ins.¹¹ Ownership of private property has long been considered a cornerstone of U.S. citizenship. Given the alleged sanctity of private property, transgressing this powerful symbol's bounds offered one way for disempowered people to dramatize their plight and draw overdue attention to their cause. Trespassing simultaneously forced an array of private and public actors—proprietors, police officers, judges, lawyers, governmental officials, and civic leaders—to become more involved in these disputes and to consider the demonstrators' core concerns in order to end the trespassing.¹² The idea behind the sit-ins was to literally disrupt business as usual. The demonstrators' actual possession of food or beverages was beside the point. The demonstrators wanted to possess first-class citizenship. Trespassing was a powerful means of escalating these concerns to a broader political audience that was otherwise happy to ignore them.

The irony of Cameron's statements is apparent in yet another respect. For movement activists of the 1960s, protesting on politicians' front lawns to reform law and to challenge criminal injustice was well within bounds. During the drive for the Civil Rights Act of 1964, for example, demonstrators protested on Atlanta Mayor Ivan Allen's front lawn.¹³ The demonstrators were seeking justice for twenty-one other demonstrators who, ironically, had just been jailed for trespassing during an earlier demonstration.¹⁴ In other words, demonstrators trespassed on the mayor's front lawn to find justice for a group already in jail for trespassing. Cameron should additionally note that one of the demonstrators, then in jail for trespassing, was the Chairman of the Student Nonviolent Coordinating Committee (SNCC), John Lewis.¹⁵ Escalation is central to any social movement, and escalation through trespassing is a staple in the social movement repertoire. Just ask Daniel Cameron's purported heroes.¹⁶

This Essay makes three moves. First, it highlights Cameron's poor understanding of the relationship between civil rights and property rights by

¹¹ CHRISTOPHER W. SCHMIDT, *THE SIT-INS: PROTEST AND LEGAL CHANGE IN THE CIVIL RIGHTS ERA* 8, 11 (2018); *see also* TOMIKO BROWN-NAGIN, *COURAGE TO DISSENT: ATLANTA AND THE LONG HISTORY OF THE CIVIL RIGHTS MOVEMENT* 134–35 (2011) (chronicling activists' extrajudicial attempts to seek redress during the sit-in movement).

¹² *See* Jim Bentley, *Caroling Protesters Visit Allen: Talk with Mayor on Rights Issues*, ATLANTA CONST., Dec. 24, 1963, at 9 (demonstrating how a protest put pressure on a mayor to support public accommodations legislation).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *See* Cameron, July 18 Tweet, *supra* note 9 (praising “[t]he life and legacy of Rep. John Lewis” and “[h]is fight against injustice”).

examining the claims made by civil rights litigants and activists—in particular, those made by Black Louisvillians—during the push to desegregate public accommodations. Louisville has historically been a key site for reshaping America’s understanding of protest and property—from the city’s position as a stop on the Underground Railroad¹⁷ to Black Americans’ streetcar demonstrations during Redemption¹⁸ to the U.S. Supreme Court’s landmark decision in *Buchanan v. Warley*.¹⁹ Cameron, like far too many Americans, has failed to acknowledge how activists’ willingness to privilege racial justice over narrow conceptions of private property transformed civil rights law in the United States. This transformation is particularly evident in the region where Cameron was born, raised, attended college and law school, and now lives.²⁰ In turn, the sit-in on Cameron’s lawn might be viewed in a broader historical light. Inasmuch as the campaign seeking justice for Breonna Taylor—and indeed, the entire Black Lives Matter Movement—are typically conceptualized as efforts to reform the criminal justice system, these campaigns are also part of a much older and more extensive struggle that relies on escalations on private property to advance the cause of racial justice. This Part also discusses the responses that these escalations elicited outside of Louisville in the Supreme Court and Congress.

Second, this Essay uses Cameron’s unfortunate response to situate the backlash to the sit-ins in a broader context. Some might simply explain Cameron’s response to the sit-in as a response made by a man furious that activists conducted a sit-in on his front lawn. Others believe that Cameron is a political opportunist or that, while Cameron regularly invokes the fact that he is Black and thus truly understands racial justice, he is actually trafficking in rampant anti-Blackness.²¹ We might also explain Cameron’s unfortunate statements on property and protest as expressions of free-market idolatry—the sacredness of private property—or of the types of appeals to law and order that spurred mass incarceration. Either might be true, but in response,

¹⁷ J. Blaine Hudson, “*Upon This Rock*”—*The Free African American Community of Antebellum Louisville, Kentucky*, 109 REG. KY. HIST. SOC’Y 295, 321–22 (2011).

¹⁸ See generally Marjorie M. Norris, *An Early Instance of Nonviolence: The Louisville Demonstrations of 1870–1871*, 32 J.S. HIST. 487 (1966) (detailing Black streetcar activism during a major rise in white supremacy).

¹⁹ 245 U.S. 60, 82 (1917) (declaring that a Louisville ordinance which mandated residential segregation violated the Due Process Clause of the Fourteenth Amendment).

²⁰ *Attorney General Daniel Cameron*, KY. ATT’Y GEN., <https://ag.ky.gov/about/Pages/Attorney-General.aspx> [<https://perma.cc/ZF3Z-RP5T>] (describing Cameron’s background); see *infra* Part I.

²¹ See, e.g., Adrian Florido, *Why Kentucky’s Black Attorney General Faces Scorn from Black Activists*, NPR (Sept. 28, 2020, 5:05 AM), <https://www.npr.org/2020/09/28/917656995/why-kentuckys-black-attorney-general-faces-scorn-from-black-activists> [<https://perma.cc/7RZM-EP6F>] (“But he’s not for us. . . . [H]is skin is Black, not the way he thinks, you know?”).

we should ask Cameron: what about the sanctity of Breonna Taylor’s property? Better yet, what about the sanctity of Breonna Taylor’s life? And why is Cameron so eager to crack down on protesters but refuses to hold officers accountable or force them to respect law and order too?²²

In any case, what is so striking here is that the very content of many of Cameron’s lines of argument have deep and ugly historical roots.²³ So, if some of Cameron’s arguments seem familiar, it is because they are. The sit-in movement’s opponents made eerily similar types of claims about protest and property.²⁴ But this situation is, in some ways, more troubling. Cameron, as state attorney general, has more judicial power than Eugene “Bull” Connor, Birmingham’s commissioner of public safety,²⁵ or the Birmingham clergymen who criticized King.²⁶ He has wielded this power to delay and deny justice to Taylor and scores of demonstrators. Then he audaciously proclaimed how justice is really achieved—namely, that it is *not* achieved through escalation tactics and trespass—all while ignoring history in the process. The Civil Rights Movement’s history illustrates how effective trespass and escalation tactics can be in the pursuit of justice, as shown in this Essay’s third Section. Cameron would be wise to revisit this history.

I. THE HISTORICAL LINKS BETWEEN CIVIL RIGHTS ACTIVISM AND THE USE OF PRIVATE PROPERTY

On May 24, 1954, seven days after the U.S. Supreme Court’s landmark decision in *Brown v. Board of Education*, the Court issued a per curiam order

²² See Marty Johnson, *Kentucky Attorney General Didn’t Recommend Any Murder Charges to Breonna Taylor Grand Jury*, HILL (Sept. 30, 2020, 12:11 PM), <https://thehill.com/homenews/administration/518951-ag-cameron-didnt-recommend-any-homicide-charges-to-breonna-taylor> [<https://perma.cc/ACY2-ZS8M>] (explaining that Cameron refused to even recommend homicide charges to the grand jury in the Taylor case); see also Paul Butler, *I’m a Former Prosecutor. The Charge in Breonna Taylor’s Death Is Pathetically Weak*, WASH. POST (Sept. 24, 2020, 5:36 PM), <https://www.washingtonpost.com/opinions/2020/09/24/im-former-prosecutor-charge-breonna-taylors-death-is-pathetically-weak/> [<https://perma.cc/H6HK-6J92>] (“I’m a former prosecutor, and I would have charged all three officers with manslaughter.”).

²³ Cameron has argued that we should reject the reasoning that one’s “skin color must dictate your politics.” See Florido, *supra* note 21. I agree. Skin color should never dictate one’s politics. Hence, the focus of this Essay is on the content of Cameron’s arguments rather than the color of his skin. For more on the parallel rhetoric between Cameron and Martin Luther King’s critics, see *infra* Part II.

²⁴ See *infra* Part II.

²⁵ MARTIN LUTHER KING, JR., *WHY WE CAN’T WAIT* 67 (Signet Classics 2000) (1963).

²⁶ *Statement by Alabama Clergymen*, STAN. UNIV. MARTIN LUTHER KING, JR. RSCH. & EDUC. INST. (Apr. 12, 1963), <https://kinginstitute.stanford.edu/sites/mlk/files/lesson-activities/clergybirmingham1963.pdf> [<https://perma.cc/GS2Z-J3DZ>].

in *Muir v. Louisville Park Theatrical Association*.²⁷ The Louisville Park Theatrical Association (the Association), a privately operated business, leased an amphitheater in a city-owned park.²⁸ The Association denied James Muir, a Black Louisvillian, admission to the amphitheater because of his race.²⁹ Muir's subsequent lawsuit, which was part of a larger group of suits that challenged segregated public accommodations in Louisville, claimed that the city violated the Equal Protection Clause when it allowed its lessee, the Association, to exclude Black patrons.³⁰ The case, in its own way, raised a profound question about how segregationists used the public-private divide to defeat claims for racial justice.³¹

Muir eventually reached the Supreme Court, but the Court did not discuss the merits of the case. It instead remanded *Muir* to the Sixth Circuit Court of Appeals in light of the Court's declaration in *Brown* and the "conditions that now prevail."³² The Court's order reflected not only the potential application of *Brown*'s antidiscrimination principle to other areas of life but also the Court's recognition that racial segregation at the amphitheater was no longer a problem for James Muir or any Black Louisvillian. The *Courier-Journal*, the city's most widely circulated newspaper,³³ reported that during the appellate process, the Association had "lifted all racial bars" at the amphitheater and decided that tickets "will be offered for sale to the general public."³⁴ The Association's decision, to be sure, was no mere act of altruism; it required a very public battle. "The decision to admit 'the general public[.]'" the *Courier-Journal* emphasized, "climaxes a fight by Negro groups to gain admission to the theater."³⁵ In other words, in *Muir*, racial escalation, by raising a provocative question to the courts and to society, led to racial justice.

Muir's example, by itself, might be enough for Cameron to rethink his comments on the relationship between racial escalation and racial justice.

²⁷ 347 U.S. 971, 971 (1954) (per curiam) (vacating and remanding "for consideration in the light of the Segregation Cases decided May 17, 1954, *Brown v. Board of Education*, etc., 347 U.S. 483 . . . and conditions that now prevail").

²⁸ *Sweeney v. City of Louisville*, 102 F. Supp. 525, 528 (W.D. Ky. 1951), *aff'd sub nom.* *Muir v. Louisville Park Theatrical Ass'n*, 202 F.2d 275 (6th Cir. 1953), *vacated*, 347 U.S. at 971.

²⁹ *Id.* at 527.

³⁰ *Id.* at 526–27.

³¹ *Id.*

³² *Muir*, 347 U.S. at 971.

³³ Keith L. Runyon, *The Specter of George Prentice Is Not Welcome Here Anymore*, *COURIER-J.* (Aug. 20, 2018, 12:54 PM), <https://www.courier-journal.com/story/opinion/contributors/2018/08/17/george-prentice-statue-louisville-free-public-library/993950002/> [<https://perma.cc/B8LV-Y2HT>].

³⁴ *Amphitheatre Racial Bars Are Lifted*, *COURIER-J.*, Mar. 11, 1954, at 1.

³⁵ *Id.*

Cameron might, however, appreciate *Muir* for another reason. James Muir paved the way for Daniel Cameron to attend law school. Muir was in the first class of Black students who desegregated the University of Louisville School of Law, Cameron's law school alma mater.³⁶

Muir helped lay the foundation for midcentury protests challenging segregated public accommodations in Louisville. During the 1950s, Black activists in Louisville held small and sporadic protests at segregated businesses, and Louisville's Black state representative introduced public accommodations legislation.³⁷ These efforts received little traction, but they nonetheless raised new questions about the relationship between the pursuit of civil rights and the protection of property rights. Local white leaders balked. As a 1957 editorial in the *Courier-Journal* highlighted, city leaders "[saw] only a danger to progress . . . in the effort to force desegregation by statute in private business."³⁸ While they could "readily sympathize with the eagerness of Negroes to achieve a full measure of acceptance as American citizens[,] this fight to "compel private businesses to accept Negroes" could stop and even reverse the trend of racial progress in the city.³⁹

Massive demonstrations over segregated public accommodations erupted in 1960 throughout the South. In early 1960, students descended on Jim Crow five-and-dime stores. They made constitutional claims with their bodies at lunch counters over the scope of private property rights, the potential uses of the Commerce Power, and the meaning of the Equal Protection Clause.⁴⁰ As Ella Baker famously wrote after SNCC's founding conference, the student "demonstrations are concerned with something much bigger than a hamburger or even a giant-sized Coke."⁴¹ The students were letting "the world [] know that we no longer accept the inferior position of second-class citizenship."⁴² Baker explained that the students were willing to

³⁶ *Central Law School, 1890–1941*, UNIV. OF LOUISVILLE, <https://louisville.edu/lmc/history5.html> [<https://perma.cc/P852-X7BP>]. The University of Louisville became the University of Louisville Louis D. Brandeis School of Law in 1997 to honor Louis Brandeis, former U.S. Supreme Court Justice. *Our History and Traditions*, LOUIS D. BRANDEIS SCH. OF L., <https://louisville.edu/law/about/history-and-traditions> [<https://perma.cc/KL5G-NMFG>].

³⁷ See also TRACY E. K'MEYER, *CIVIL RIGHTS IN THE GATEWAY TO THE SOUTH: LOUISVILLE, KENTUCKY, 1945–1980*, at 80–82 (2009).

³⁸ *Pressure Ill-Placed for the Negro Cause*, *COURIER-J.*, Oct. 31, 1957, at 8.

³⁹ *Id.*

⁴⁰ H. Timothy Lovelace, Jr., *Making the World in Atlanta's Image: The Student Nonviolent Coordinating Committee, Morris Abram, and the Legislative History of the United Nations Race Convention*, 32 L. & HIST. REV. 385, 392 (2014).

⁴¹ Ella Baker, *Bigger Than a Hamburger*, *S. PATRIOT* (May 1960), <https://www.crmvet.org/docs/sncc2.htm> [<https://perma.cc/CC46-ZEJU>].

⁴² *Id.*

go to jail to end discrimination “not only at lunch counters, but in every aspect of life.”⁴³

The highly publicized sit-ins quickly spread throughout the South and sparked fresh demonstrations in Kentucky.⁴⁴ Bold activists confronted segregated establishments with demands for service. When the activists did not leave voluntarily, reprisals—including trespass or disorderly conduct charges—often followed.⁴⁵ In early 1961, the protests hit a fever pitch in Louisville.⁴⁶ Police arrested hundreds of protesters, and the local turmoil made national news.⁴⁷ King also visited Louisville during this period, where he delivered five speeches, met with the mayor and the city’s civic and religious leaders, and championed the new spirit of sit-in activism.⁴⁸ In one speech, King proclaimed the sit-ins demonstrated that Black people were “willing to suffer to destroy segregation [and] ‘to die if necessary.’”⁴⁹ For King, the sit-ins had become a first-class method for gaining first-class citizenship.⁵⁰

That spring, local activists launched a new phase in their demonstrations. The Louisville branch of the National Association for the Advancement of Colored People (NAACP) led a “Nothing New for Easter” boycott.⁵¹ The boycott targeted segregated merchants during an important shopping season.⁵² This strategy escalated the concerns of boycotters, making them also the concerns of local shop owners whose properties and businesses were injured. The boycott put substantial financial pressure on local establishments, and several injured businesses decided to desegregate.⁵³ However, the boycott did not fully desegregate the city’s public accommodations.⁵⁴

⁴³ *Id.*

⁴⁴ CATHERINE FOSL & TRACY E. K’MEYER, *FREEDOM ON THE BORDER: AN ORAL HISTORY OF THE CIVIL RIGHTS MOVEMENT IN KENTUCKY* 84 (2009).

⁴⁵ See, e.g., The United Press, *2 Coeds Link Firing to Henderson Sit-In*, *COURIER-J.*, June 15, 1961, at 17 (noting that some protesters were fired and criminally charged for trespassing after a Henderson, Kentucky sit-in).

⁴⁶ K’MEYER, *supra* note 37, at 88–92 (describing the escalation in protests during this period).

⁴⁷ See, e.g., *177 Jailed in ‘Lively’ Ky. Jim Crow Protest*, *PHILA. TRIB.*, Mar. 25, 1961, at 14 (illustrating how police targeted Black leaders with disorderly conduct charges); see also *162 Seized in Louisville*, *N.Y. TIMES*, Apr. 26, 1961, at 26 (noting that there had been more than 600 arrests during this wave of protests).

⁴⁸ *King Warns Against ‘2nd-Class Methods,’* *BALT. AFRO-AMERICAN*, Apr. 29, 1961, at 10.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ K’MEYER, *supra* note 37, at 89.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

For the next two years, Louisville was mired in spells of protests, arrests, and negotiations.⁵⁵ Black Louisvillians also pressed city officials to adopt a public accommodations ordinance, but to no avail.⁵⁶ The response was predictable. As one city official sighed, the city “has no control over private property rights nor can it pass any laws in conflict with constitutional guarantee [*sic*] of private property rights.”⁵⁷

During this time, the boycotters’ escalations and concerns, however, made their way to the U.S. Supreme Court. The Court wrestled with the tension between civil rights and property rights in a series of cases known as “the sit-in cases.” The earliest cases involved trespassing⁵⁸ and disorderly conduct.⁵⁹ Civil rights lawyers argued hundreds of these cases every year, and some of the cases that reached the Supreme Court—namely the consolidated cases of *Hamm v. City of Rock Hill* and *Lupper v. Arkansas*—had far-reaching consequences.⁶⁰ Both rulings would impact the convictions of large swaths of movement centers throughout the South.

The sit-in cases were, in the eyes of some, the most significant civil rights cases in the post-*Brown* years,⁶¹ and they came to shape the careers of civil rights icons like Constance Baker Motley. In fact, most of Motley’s arguments before the Court were sit-in cases, and she won nearly every case she argued before the Court.⁶² Of all of her arguments to the Court, regardless of legal issue, Motley considered *Lupper*, which stemmed from trespass convictions, “the most difficult case [she] argued” and perhaps her “most stunning Supreme Court victory.”⁶³ Motley remembered that *Lupper*

⁵⁵ *Id.* at 97–103 (chronicling the tensions in the city).

⁵⁶ *Id.*

⁵⁷ *Id.* at 83.

⁵⁸ See *Mitchell v. City of Charleston*, 378 U.S. 551 (1964); *Hamm v. City of Rock Hill*, 379 U.S. 306 (1964); *Barr v. City of Columbia*, 378 U.S. 146 (1964); *Bouie v. City of Columbia*, 378 U.S. 347 (1964); *Shuttlesworth v. City of Birmingham*, 373 U.S. 262 (1963); *Blow v. North Carolina*, 379 U.S. 684 (1965); *Abernathy v. Alabama*, 375 U.S. 963 (1964); *Thompson v. Virginia*, 374 U.S. 99 (1963); *Bouie v. City of Columbia*, 374 U.S. 805 (1963); *Bell v. Maryland*, 374 U.S. 805 (1963); *Gober v. City of Birmingham*, 373 U.S. 374 (1963); *Peterson v. City of Greenville*, 370 U.S. 935 (1962).

⁵⁹ Some states similarly used breach of peace statutes to prosecute activists. See *Henry v. City of Rock Hill*, 376 U.S. 776 (1964); *Fields v. South Carolina*, 375 U.S. 44 (1963); *Edwards v. South Carolina*, 372 U.S. 229 (1963); *Wright v. Georgia*, 370 U.S. 935 (1962); *Garner v. Louisiana*, 368 U.S. 157 (1961).

⁶⁰ *Hamm*, 379 U.S. at 307. The Court decided these sit-in cases after the passage of the Civil Rights Act of 1964, and the case raised the issue of applying the Act retroactively. *Id.* at 312. The Court issued a momentous ruling, vacating the convictions and dismissing the prosecutions in the sit-in cases, although the conduct occurred before the Act’s enactment. *Id.* at 317.

⁶¹ *Rights Cases in High Court*, CHI. DAILY DEF., Nov. 1, 1962, at 6; *Legal Defense Fund Keeps U.S. Supreme Court Busy*, CLEV. CALL & POST, June 30, 1962, at 4C.

⁶² Raymond J. Lohier, Jr., *On Judge Motley and the Second Circuit*, 117 COLUM. L. REV. 1803, 1804–05 (2017) (noting that Motley won nine out of the ten cases she argued before the Court).

⁶³ CONSTANCE BAKER MOTLEY, EQUAL JUSTICE UNDER LAW: AN AUTOBIOGRAPHY 199 (1998).

determined the fate of “thousands of sit-in students involved in cases pending in the South.”⁶⁴ Motley added that had she lost the case, these sit-in students “would have remained in the clutches of angry local police, prosecutors, and jailers.”⁶⁵ Cameron might do well to recognize a takeaway point here. The sit-ins did not simply transform civil rights activism in the 1960s; they transformed civil rights lawyering as well.⁶⁶

The tension between racial justice and the alleged sanctity of private property was also at the heart of Congress’s debates over Title II of the Civil Rights Act of 1964. Everett Dirksen, a Republican senator from Illinois and the senate minority leader, for example, argued that Congress lacked the authority to pass Title II. Dirksen called any congressional attempt to “force business . . . to accept integration a violation of constitutional protection of property rights.”⁶⁷ Dirksen was not alone in advancing this argument in the Capitol. On this front, he found common cause with congressmen like Strom Thurmond, Barry Goldwater, and James Eastland—politicians whose views on racial justice and property rights have properly cast them in an awful historical light.⁶⁸

And if Cameron wondered whether escalation or trespassing was important to advancing racial justice, he might revisit the highlights of King’s legacy. In 1963, the Southern Christian Leadership Conference (SCLC) launched a project marked by escalation in Birmingham, Alabama.⁶⁹ In fact, the SCLC was so invested in racial escalation in Birmingham that, in King’s words, the SCLC named their crusade “‘Project C’—the ‘C’ for Birmingham’s *Confrontation* with the fight for justice and morality in race relations.”⁷⁰ Project C featured marches on city hall, lunch counter sit-ins, and boycotts of segregated downtown merchants.⁷¹ The peaceful protesters were met with incredible violence. Bull Connor, Birmingham’s commissioner of public safety, unleashed high-pressure fire hoses and snarling police dogs on thousands peacefully demonstrating.⁷² These horrific

⁶⁴ *Id.* at 199–200.

⁶⁵ *Id.* at 200.

⁶⁶ *See id.*

⁶⁷ Marjorie Hunter, *Dirksen Imperils Civil Rights Plan*, N.Y. TIMES, June 18, 1963, at 1; *see also* Al Kuettner, *29 States Already Have Strong Rights Laws, but They’re Snubbed*, CHI. DAILY DEF., Aug. 1, 1963, at 6.

⁶⁸ *Roll Call Tally on Civil Rights Act 1964*, NAT’L ARCHIVES (June 19, 1964), <https://www.archives.gov/legislative/features/civil-rights-1964/senate-roll-call.html> [<https://perma.cc/5PQU-X5AK>].

⁶⁹ KING, *supra* note 25, at 40.

⁷⁰ *Id.*

⁷¹ *Id.* at 40–42.

⁷² ADAM FAIRCLOUGH, *TO REDEEM THE SOUL OF AMERICA: THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE & MARTIN LUTHER KING, JR.* 126 (2001).

images of brutality in Birmingham not only circulated the United States but also became a source of international embarrassment for the country.⁷³

II. THE PARALLEL RHETORIC OF DANIEL CAMERON AND MARTIN LUTHER KING'S CRITICS

The many parallels between Cameron's attacks on the Louisville demonstrations and critics' attacks on King are fascinating. For the sake of simplicity and to give Cameron the benefit of the doubt, we might use King's "moderate" critics in Birmingham as the baseline for comparison, rather than Bull Connor and his supporters. Cameron denounced "out-of-state celebrities"⁷⁴ and "irresponsible" civil rights leaders for their calls for racial justice in Louisville.⁷⁵ King was regularly called an "outside agitator,"⁷⁶ and his critics in Birmingham blasted the demonstrations that were purportedly "directed and led in part by outsiders" and took matters out of the hands of the city's "[r]esponsible citizens."⁷⁷ Cameron argued that the "escalation" on his front lawn "serves to further division and tension within our community."⁷⁸ King's critics charged that the demonstrations had "not contributed to the resolution of our local problems," but only incited "hatred."⁷⁹ According to the critics, the demonstrations should be abandoned so that people could "unite locally in working peacefully for a better Birmingham."⁸⁰ And though Cameron's investigation was lagging, Cameron urged demonstrators calling for justice for Breonna Taylor to wait and let the legal process work.⁸¹ In Birmingham, "wait" was a watchword. King's critics

⁷³ *Id.* at 126–27.

⁷⁴ Attorney General Daniel Cameron (@koyoag), TWITTER (Oct. 6, 2020, 9:00 AM), <https://twitter.com/koyoag/status/1313509320294686721> [<https://perma.cc/52TZ-TXGM>] (regarding the Taylor case) ("I joined @foxandfriends this morning to discuss comments from out-of-state celebrities . . .").

⁷⁵ KYOAG Daniel Cameron, *Interview on Fox & Friends – 10/6/20*, YOUTUBE (Oct. 6, 2020), <https://youtu.be/XzGfZfVfzA> [<https://perma.cc/FH52-YGRC>] (providing Cameron's full interview).

⁷⁶ See Jacey Fortin, *The Long History of the 'Outside Agitator,'* N.Y. TIMES (June 9, 2020), <https://www.nytimes.com/2020/06/08/us/outside-agitators-history-civil-rights.html> [<https://perma.cc/JY2C-MJSU>] (the term "outside agitator" was often used to attack civil rights activists).

⁷⁷ *Statement by Alabama Clergymen, supra* note 26.

⁷⁸ Freiman, *supra* note 1.

⁷⁹ *Statement by Alabama Clergymen, supra* note 26.

⁸⁰ *Id.*

⁸¹ Emily Czachor, *Kentucky AG Asks for Patience in Breonna Taylor Case 97 Days After Shooting*, NEWSWEEK (June 18, 2020, 5:53 PM), <https://www.newsweek.com/kentucky-ag-asks-patience-breonna-taylor-case-97-days-after-shooting-1511992> [<https://perma.cc/QS2L-V95T>].

pressed the demonstrators to be more patient and allow the legal system more time to resolve the situation.⁸²

Many of the responses that justice-minded people might offer Cameron today are similar to King's responses to his critics in yesteryear. While Cameron criticized "irresponsible" outsiders for the demonstrations, Breonna Taylor's family invited many thoughtful activists and lawyers to Louisville in the same way that the Alabama Christian Movement for Human Rights invited King to demonstrate in Birmingham.⁸³ Perhaps more importantly, in the words of King: "Injustice anywhere is a threat to justice everywhere. . . . Never again can we afford to live with the narrow, provincial 'outside agitator' idea."⁸⁴ While Cameron rebuked the demonstrations on his front lawn and many others throughout the city, Cameron, to use King's words again, has "fail[ed] to express a similar concern for the conditions that brought about the demonstrations."⁸⁵ Indeed, Cameron's own inaction in Taylor's case spurred the demonstrations. And his appeals to wait for justice sounded a familiar alarm to demonstrators. In Birmingham, King wrote, "[t]his 'Wait' has almost always meant 'Never.'"⁸⁶ King's insight has proven to be true in Louisville. Taylor's loved ones and other justice seekers waited more than 200 days for Cameron to file charges against the officers for Taylor's death. To this day, the only charges filed are wanton endangerment charges brought against one of the three officers whose stray bullet hit a nearby apartment.⁸⁷ Cameron's call for Taylor's family and supporters to "wait" for justice, sadly, seems to be turning into "never."⁸⁸

III. MAKING PUBLIC ACCOMMODATIONS LAW A REALITY

The demonstrations in Birmingham created the political context for legislative reform. President John F. Kennedy had been relatively uninterested in passing new civil rights legislation until he appreciated how

⁸² *Statement by Alabama Clergymen*, *supra* note 26 (calling for civil rights activists to practice patience and stating that the activists should pursue justice through courts and political negotiations rather than through "unwise" and "untimely" demonstrations).

⁸³ KING, *supra* note 25, at 64–65 (publishing King's 1963 letter from Birmingham Jail).

⁸⁴ *Id.* at 65.

⁸⁵ *Id.*

⁸⁶ *Id.* at 69.

⁸⁷ Nicholas Bogel-Burroughs, *What is 'Wanton Endangerment,' the Charge in the Breonna Taylor Case?*, N.Y. TIMES (Sept. 23, 2020), <https://www.nytimes.com/2020/09/23/us/wanton-endangerment.html> [<https://perma.cc/U65R-42SG>].

⁸⁸ *See id.* ("Mr. Cameron said on Wednesday that the F.B.I. was still investigating whether Mr. Hankison or any of the other officers involved in the raid committed a federal crime, such as violating Ms. Taylor's civil rights.").

racism, like the racism the world witnessed in Birmingham, undermined America's position in the Cold War.⁸⁹ People around the world asked how America could talk about spreading democracy abroad when it practiced racism at home.⁹⁰ Segregation gave fodder for Soviet propaganda machines and raised serious doubts in the Third World about the United States' commitment to its creed.⁹¹ As protests in Birmingham raged, President Kennedy finally moved into action. He proposed new civil rights legislation that would prohibit racial discrimination in public accommodations.⁹²

While the Birmingham demonstrations were forcing federal officials to rethink the relationship between civil rights and property rights, they were also forcing Louisville officials to do the same. White Louisvillians watching Birmingham unravel became fearful that Birmingham-style protests might come to Louisville, and for good reason. Local activists who had traveled to Birmingham to support the SCLC advertised their plans to invite Fred Shuttlesworth and King's lieutenants to Louisville. An editorial in the *Courier-Journal* captured the sentiments of many white Louisvillians when they learned of local activists' plans. The editorial was aptly titled, "Why the Aldermen Should Act Now on the Anti-Bias Law."⁹³ The *Courier-Journal* recounted the long struggle for racial justice in Louisville but soon turned to what officials in Louisville could learn from the struggle in Birmingham. "The lesson of Birmingham is clear[,]” the editorialists underscored.⁹⁴ "Negroes are no longer content to let the white community decide when they will be given certain rights."⁹⁵ The editorialists then borrowed from King, offering insights enshrined in his *Letter from Birmingham Jail*. They stressed that "mere expressions of good will" could no longer delay justice and that "Negroes are setting their own timetable now."⁹⁶ The editorialists added that Black Americans knew that "little or nothing has happened until they took direct action."⁹⁷ It had been "nine years since the Supreme Court decision on desegregation" and "colonialism [was] breathing its last gasps in most of

⁸⁹ Mary L. Dudziak, *Birmingham, Addis Ababa, and the Image of America: International Influence on U.S. Civil Rights Politics in the Kennedy Administration*, in *WINDOW ON FREEDOM: RACE, CIVIL RIGHTS, AND FOREIGN AFFAIRS, 1945–1988*, at 181, 183–84 (Brenda Gayle Plummer ed., 2003).

⁹⁰ *Id.* at 182–83.

⁹¹ *Id.*

⁹² President John F. Kennedy, *Excerpt from a Report to the American People on Civil Rights*, JOHN F. KENNEDY PRESIDENTIAL LIBR. & MUSEUM (June 11, 1963), <https://www.jfklibrary.org/learn/about-jfk/historic-speeches/televised-address-to-the-nation-on-civil-rights> [<https://perma.cc/A2MC-Y623>].

⁹³ *Why the Aldermen Should Act Now on the Anti-Bias Law*, *COURIER-J.*, May 14, 1963, at 8.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

Africa and Asia.”⁹⁸ Meanwhile, “in parts of the United States—including a few places in Louisville—an American Negro [could not] get a cup of coffee.”⁹⁹ The editorialists’ conclusion was straightforward: passing a public accommodations ordinance would be “the most effective means of insuring Louisville against the dangers of demonstrations and boycotts.”¹⁰⁰

The tactics of Black activists worked. Escalation—activism in Louisville, activism in Birmingham, and the growing ties between activism in Louisville and Birmingham—led to significant legal and social results in the city. Louisville officials enacted an ordinance banning racial discrimination in public accommodations on May 14, 1963, more than a year before Congress adopted the Civil Rights Act of 1964 (the Act).¹⁰¹

When Congress eventually adopted the Act, the Bill’s advocates recognized the legacy of civil rights activism in Louisville. In the Senate Commerce Committee’s report on the Act, the Committee cited *Muir* and discussed Louisville’s struggle against segregated public accommodations to help illustrate the long history of this activism.¹⁰² Soon thereafter, the Court upheld the Act in *Heart of Atlanta Motel v. United States* and *Katzenbach v. McClung*.¹⁰³ While segregationists like Lester Maddox, one of the Atlanta business owners who challenged the Act in *Heart of Atlanta*, and Ollie McClung, the Birmingham restaurant owner who challenged the Act in *Katzenbach*, continued to gripe about the invasion of their property rights, one thing was evident from this relatively swift transformation in law. Trespassing and escalation were central to achieving racial justice.

The important links between protest, property, and racial justice were not lost on commentators of that time. After the Court’s rulings in *Heart of Atlanta* and *Katzenbach*, the *New York Times* editorialized, “The defenders of segregation and racially based discrimination had relied heavily upon a sweeping view of property rights to defend their morally reprehensible treatment of Negroes.”¹⁰⁴ The editorialists praised the Court for “[sweeping] aside this antiquated and presumptuous assertion of the sanctity of private property.”¹⁰⁵ The *Times* concluded by praising the decisions as “a profoundly important victory for the cause of justice.”¹⁰⁶ After the Court’s rulings, a

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ K’MEYER, *supra* note 37, at 104.

¹⁰¹ *Id.* at 105.

¹⁰² S. REP. NO. 88-872, at 139–40 (1964).

¹⁰³ *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 243 (1964); *Katzenbach v. McClung*, 379 U.S. 294, 295 (1964).

¹⁰⁴ *The Civil Rights Cases*, N.Y. TIMES, Dec. 16, 1964, at 42.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

writer for the *Washington Post* asked, “What did the sit-ins and the direct action movement accomplish?”¹⁰⁷ His response was unequivocal. “The direct action movement showed that force was needed to provoke a quicker pace in civil rights.”¹⁰⁸ The article recognized that the sit-in was a “technique of protest which may remain with us,” highlighted that sit-ins “applied the leverage and created the climate that made the change possible and mandatory,” and concluded that “if the property owner’s rights are thereby abridged by forcing him to serve Negroes, so be it.”¹⁰⁹ And if the *New York Times* and the *Washington Post* are insufficiently compelling sources for Cameron, as they have been for conservatives for more than a half-century, Cameron might take heed of John Lewis’s understanding of the relationship between protest and law reform. Lewis declared that *Heart of Atlanta* and *Katzenbach* “vindicated the thousands of demonstrators who made the civil rights bill not only possible but imperative.”¹¹⁰

CONCLUSION

Breonna Taylor’s killers have still not been brought to justice, but the escalations stemming from Taylor’s homicide have not been in vain. Louisville passed an ordinance known as “Breonna’s Law,” which banned the use of no-knock warrants, established clearer guidelines for officers’ execution of all search warrants, and mandated that officers activate their body cameras when serving a warrant.¹¹¹ The law has inspired other official actions.¹¹² Louisville’s mayor recently signed an executive order that declared that racism is a public health crisis in Louisville, and he offered an extensive plan to better the lives of the city’s Black residents.¹¹³ This plan

¹⁰⁷ Robert E. Baker, *Sit-ins Gave Equality; Where’s Opportunity?*, WASH. POST, Dec. 20, 1964, at E3.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *LBJ, Rights Leaders, Hail Court’s Decision*, N.Y. AMSTERDAM NEWS, Dec. 19, 1964, at 1.

¹¹¹ See Tessa Duvall, *Louisville Mayor Signs ‘Breonna’s Law’ Banning No-Knock Search Warrants*, COURIER-J. (June 12, 2020, 3:02 PM), <https://www.courier-journal.com/story/news/politics/metro-government/2020/06/12/louisville-mayor-signs-breonnas-law-banning-no-knock-warrants/3176830001> [<https://perma.cc/5QDY-7SE4>].

¹¹² Nadia Ramiagan, *Breonna’s Law Prohibiting No-Knock Warrants to Be Introduced in Legislature; Other States Support It*, N. KY. TRIB. (Jan. 3, 2021), <https://www.nkytribune.com/2021/01/breonnas-law-prohibiting-no-knock-warrants-to-be-introduced-in-legislature-other-states-support-it> [<https://perma.cc/VZ7P-RGHW>].

¹¹³ Office of the Mayor, Louisville, Ky., Exec. Order No. 2020-022 (Dec. 1, 2020), <https://louisvilleky.gov/resilience-and-community-services/document/ea2020-022racismasapublichealthcrisis1> [<https://perma.cc/6H77-9BWR>].

features criminal justice reform inspired by the demonstrations.¹¹⁴ And the demonstrations themselves have been transformative beyond Louisville's borders. People around the world took to the streets throughout 2020 and have continued to do so in 2021. Demonstrators, often invoking Taylor's memory, have also emphasized that anti-racist efforts must be inclusive of Black women.¹¹⁵

There remain other options in the pursuit of justice for Taylor and, more broadly, in the pursuit of ending systemic racism in law enforcement. On November 7, 2020, then-President-elect Joe Biden declared that U.S. voters had given him a mandate "to achieve racial justice and root out systemic racism in this country" and that his Administration would seek to "restore the soul of America."¹¹⁶ More than a half-century earlier, the SCLC adopted the motto, "To Redeem the Soul of America."¹¹⁷ The organization's president was Dr. King,¹¹⁸ and the organization blossomed through the toils of countless foot soldiers and the unsung leadership of staffers like Ella Baker.¹¹⁹ Biden put his campaign in clear conversation with the SCLC's mission.

On the campaign trail, President Biden pledged to end systemic racism in policing, and he spoke directly about Taylor's death. "We must continue to speak Breonna Taylor's name, support her family still in grieving, and never give up on ensuring the full promise of America for every American," President Biden said.¹²⁰ Moreover, Vice President Kamala Harris, a Black woman and former prosecutor, has stated that she does not believe justice has been done in Taylor's case. "I've talked with Breonna's mother, Tamika

¹¹⁴ Darcy Costello, *Mayor Declares Racism a Public Health Crisis in Louisville After Breonna Taylor Killing*, COURIER-J. (Dec. 1, 2020, 7:06 PM), <https://www.courier-journal.com/story/news/politics/metro-government/2020/12/01/louisville-mayor-fischer-lays-out-path-racial-equity-after-breonna-taylor-death/6464926002> [<https://perma.cc/4FQL-ERG2>].

¹¹⁵ Melissa Brown & Rashawn Ray, *Breonna Taylor, Police Brutality, and the Importance of #SayHerName*, BROOKINGS (Sept. 25, 2020), <https://www.brookings.edu/blog/how-we-rise/2020/09/25/breonna-taylor-police-brutality-and-the-importance-of-sayhername> [<https://perma.cc/8RXX-CLJ6>].

¹¹⁶ Matt Stevens, *Read Joe Biden's President-Elect Acceptance Speech: Full Transcript*, N.Y. TIMES (Nov. 9, 2020), <https://www.nytimes.com/article/biden-speech-transcript.html> [<https://perma.cc/VN8A-AKFU>].

¹¹⁷ FAIRCLOUGH, *supra* note 72, at 32.

¹¹⁸ KING, *supra* note 25, at 64.

¹¹⁹ FAIRCLOUGH, *supra* note 72, at 5.

¹²⁰ Ledyard King & Michael Collins, *Joe Biden Urges Peace, Patience Following Breonna Taylor Grand Jury Decision*, USA TODAY (Sept. 24, 2020, 10:08 AM), <https://www.usatoday.com/story/news/politics/elections/2020/09/23/breonna-taylor-decision-joe-biden-urges-action-policing-reforms/3511616001> [<https://perma.cc/AY45-TAJK>].

Palmer, and her family, and her family deserves justice,” Harris commented.¹²¹ “She was a beautiful young woman.”¹²²

If the Biden Administration sincerely seeks to hold officers accountable and plans to work in the tradition of the SCLC—and I am hopeful that it does—the Department of Justice must bring charges against the officers who killed Breonna Taylor and help to reimagine the very concept of public safety. And contrary to Daniel Cameron’s calls for protestors not to escalate, protestors must be willing to do so peacefully in order to ensure that the Department follows through on its responsibility to the American people. Justice can no longer wait.

¹²¹ Brie Stimson, *Harris, Pence Disagree over Whether Justice Was Served for Breonna Taylor*, FOX NEWS (Oct. 8, 2020), <https://www.foxnews.com/politics/harris-pence-disagree-over-whether-justice-was-served-for-brenonna-taylor> [<https://perma.cc/MVM9-92JV>].

¹²² *Id.*