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## Munger Tolles Partner Helps Save Archive of U.S. Black History

Munger, Tolles & Olson partner George Fatheree III recently succeeded in preserving for the public an invaluable visual archive of 20th century black America—and he and his colleagues only had 48 hours to pull it off.

Fatheree represented the J. Paul Getty Trust in an eleventh hour bid it made along with a consortium of other foundations to acquire the archive in July. The trove of more than four million images and 10,000 hours of video and audio recordings belonged to Johnson Publishing, the founder of Ebony and Jet magazines, and span over seven decades of the black experience in America.

“These magazines really played an important role in black American life,” said Fatheree, who joined the Los Angeles-based firm from Skadden, Arps, Meagher & Flom in May 2018.

“They kind of captured and documented and told the stories of our heroes from artists and entertainers to political leaders to scholars to every day folks. They celebrated everyday black life.”

The foundations were determined to keep the archive out of the hands of private collectors, as private ownership might prevent the public from viewing it. Foundation ownership also helps preserve the collection for future generations.

For Fatheree, who specializes in commercial real estate transactions but also has worked with museums and nonprofits, the race to purchase the archive was unlike anything he’d ever experienced.

“It’s easily the coolest thing I ever worked on,” Fatheree said.

**Auction Pending** Johnson Publishing was founded by John H. Johnson in 1942 and was once the largest African American-owned publishing firm in the country. It launched Ebony magazine in 1945 and Jet in 1951.

After Johnson’s death in 2005, the company struggled. It sold Ebony and Jet in 2016 and in April of this year filed for Chapter 7 protection.

Soon after, Johnson Publishing announced it would sell the archive to repay debts owed to Capital Holdings V, a San Francisco-based company owned by Star Wars filmmaker George Lucas and his wife, Mellody Hobson, which had also expressed interest in acquiring the archive.

An auction was initially scheduled for July 17, but was delayed until July 22.

On the morning of Sunday, July 21, Fatheree and Munger Tolles partner Luis Lee got a call from the

Getty Trust explaining they wanted to buy the archive and put together a bid with the Ford Foundation, the Andrew W. Mellon Foundation and the John D. and Catherine T. MacArthur Foundation.

Munger Tolles bankruptcy partner Thomas Walper, Fatheree’s co-lead on the deal, contacted the bank trustee who ran the auction, explained the circumstances and asked that the auction be delayed a few weeks in order to line up funding and partnership agreements.

Instead of a two-week delay, they got two days. “I don’t think there was time to panic,” Fatheree said.

With the auction set for July 24th, Fatheree and Walper worked to complete a purchase agreement and negotiate a memorandum of understanding between the four foundations. The duo then had to conduct diligence on the asset itself, which contained over four million images, three million of which still existed in negative form.

The two Munger Tolles partners had to “maintain focus on the overarching goal, which was to acquire the archive on behalf of the foundations so that it could be preserved in perpetuity for academic and scholarly purposes,” Fatheree said.

“There’s a tremendous amount at stake here because this is 80 years of black American history and it’s imperative that it be preserved, catalogued, digitized, made available [and] safely kept,” he added.

Fatheree said the deal wouldn’t have happened without the collective commitment of the four foundations and their respective general counsel.

“We talked probably on an hourly basis with the GCs of each of the foundations,” he said.

Another critical part of the group were their Munger Tolles colleagues, who Fatheree said would drop whatever they were doing at a moment’s notice to pitch bring their respective expertise to bear on the transaction.

The auction mechanics were kept confidential, but in the end the foundations won with a bid of \$30 million. The archive will be housed and preserved at the National Museum of African American History and Culture in Washington and the Getty Research Institute in Los Angeles.

“The opportunity to play even a small role to help preserve and protect this singular piece of our history, it was frankly the opportunity of a professional lifetime,” Fatheree said.

**Preserving the Past for the Future** Once the auction was over, Fatheree said he had the chance to visit the archive which is currently stored on Chicago’s West Side. The curator brought him up to the sixth floor of a

nondescript building filled with file cabinets and bankers' boxes.

The curator asked Fatheree which photos he would like to see and he requested some pictures of Marvin Gaye and the Jackson Five. As she was searching for the images, Fatheree spotted a file sitting nearby. He began flipping through some of the photos.

They were of African American men who had been beaten, shot and killed by police officers. Some of the photos were taken in the morgue, he recalled. Others were in the streets, their homes and, in one case, in the hallway of a waiting room at a police station.

On the back of each photo were handwritten notes with the date and details about the men and how each had been victimized. They had been sent to the publishers of the magazine with the request that they'd be run to expose the country to what was happening to black men, Fatheree said.

"What struck me immediately was that these photos could've been taken yesterday," he said. "This is still an issue that we're having. It was chilling and haunting to have that realization."

And at that point, the transaction became all the more significant for him.

"I had some hope that maybe through the exposure of these historical images it will invite us as society to have a renewed commitment to eradicating these practices," Fatheree said.

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