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## **(Extra)ORDINARY MEN: African-American Lawyers and Civil Rights in Arkansas Before 1950**

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*“The remarkable thing is not that black men attempted to regain their stolen civic rights, but that they tried over and over again, using a wide variety of techniques.”*<sup>1</sup>

### I. INTRODUCTION

Arkansas has a tradition, beginning in 1865, of African-American attorneys who were active in civil rights. During the eighty years following the Emancipation Proclamation, at least sixty-nine African-American men were admitted to practice law in the state.<sup>2</sup> They were all men of their times, frequently hold-

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1. Tom W. Dillard, *Perseverance: Black History in Pulaski County, Arkansas - An Excerpt*, 31 PULASKI COUNTY HIST. REV. 62, 68 (1983).

2. Supreme Court records of admission to practice are available for 32 of the lawyers noted here. Except for one microfilm noting admission of William H. Grey, Thomas P. Johnson, and Wathal G. Wynn, which is located at the Arkansas History Commission, state supreme court admission records are in the possession of the Office of the Court Clerk, Little Rock, Arkansas. They consist of three ledgers. The first is approximately 10 inches high by 7-1/2 inches wide with a red cover and numbered pages, quite tattered. [Hereinafter SUPREME COURT ENROLLMENT BOOK 1]. The first admission recorded was 11/3/1865, the last 7/12/1920. The second ledger is approximately 9 inches high by 11-1/2 inches wide with a tan corduroy cover. Its pages are not numbered and names are entered behind alphabetical section markers provided by the manufacturer. Within each section, names are entered approximately in date order. The first page contains the note “Roll revised Aug. 1920” and the names are initially typewritten (probably indicating the “revis-

ing elitist views, as did educated whites of the day,<sup>3</sup> and working with the tools available to them – initially, political action and, later, the courts – to secure their new citizenship rights. None of these attorneys devoted themselves exclusively to civil rights. In fact, personal ambition may have been the primary motivation for some of those who entered the law. However, a look at the circumstances and history of the period provides evidence that demonstrates the courage, steadfastness, and strength with which these early African-American lawyers met overwhelming challenges to their civil rights. They understood that legal rights were paramount to full citizenship and that lawyers were essential to achieving them.

This article is subdivided chronologically into three periods. The first focuses on the years 1865 to 1891, beginning with the Reconstruction period and ending with the passage of laws that decimated the African-American franchise in Arkansas and confirmed the Democratic Party's return to total political control in state politics. Approximately thirty African-American

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sion"). Later admissions are entered by hand. Listings date from 3/27/1878 to 7/11/1938. Not every name listed in the first ledger appears in the second, apparently indicating the death of the attorney, and a few early admissions appear in Book 2 that are not recorded in Book 1. [Hereinafter SUPREME COURT ENROLLMENT BOOK 2]. The third ledger is the same size as the second and contains the same alphabetical section markers, but with a black leather cover. Its pages also are not numbered. Listings are initially typewritten, with handwritten additions. The earliest admission listing is 1/25/1885 and the last is 4/13/1973. On the first page appears the following note:

ROLL REVISED, JULY 1938.

This roll is to be used in connection with the preceding one. It was not the intention to include all attorneys who are licensed, but only such as were known or thought to be actively engaged in the practice. As a basis for the revision the Hubbell-Martindale [sic] Directory was used. There are no doubt a number of errors of omission, but these will be corrected as they are discovered. C.R. Stevenson.

[Hereinafter SUPREME COURT ENROLLMENT BOOK 3].

Additional admissions to practice were made by the individual circuit courts until 1917. At times, there would be a circuit court admission, with a later admission to the supreme court. Circuit court records were not available and other lawyers have been identified through city directories, newspaper reports, and other printed sources.

The supreme court records and other sources sometimes, but not always, identified attorneys as African-American by the use of notes such as "(Colored)," "col'd," or "c." In some instances, these notations were italicized. The genesis of this list, 25 names, came from J. CLAY SMITH, *EMANCIPATION: THE MAKING OF THE BLACK LAWYER 1844-1944* (1993) [hereinafter *EMANCIPATION*].

3. C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* 30-32 (1957) (commenting on class differences in attitudes toward African-Americans) [hereinafter *WOODWARD*].

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attorneys were active during this time. The second period includes the years between 1891 and 1923, when the adoption of "Jim Crow" laws made race relations in the state more fraught, and ends with the United States Supreme Court's decision concerning the 1919 Elaine, Arkansas, "riot" defendants in *Moore v. Dempsey*.<sup>4</sup> During this period, an additional twenty-seven African-American attorneys were admitted. The final period looks at activities during the period from 1924 to 1950 when the Great Depression, World War II, and the United States Supreme Court decision in *United States v. Allwright* brought major societal changes to the United States and to Arkansas. In this last period, twelve new African-American attorneys were admitted.

The article describes activist African-American lawyers in each of these periods who used and adapted to different tactics in a common goal of achieving equality in civil rights. Some of them became well-known for their efforts to establish and protect the rights that came with the 13th Amendment and for waging a continuing struggle against racism and intolerance in Arkansas. Initially, these lawyers relied almost entirely on political action, the vehicle that had brought citizenship and was seen as offering the most hope for equal status and treatment. The practice of law was generally subordinated to party activities. In the second period, politics became unreliable (although it still was used). Mass public demonstrations and formal legal action were adopted as forms of protest and lawyers provided the representation. In the third period, there was increasing reliance on the legal system and lawsuits in efforts to secure civil rights, including political ones. This latter period provides a preview of the era after World War II, when use of the courts and public demonstration became predominant, and protest became more confrontational.<sup>5</sup> The work of these lawyers created a path that leads directly to the civil rights legal battles of the 1950s and 1960s.

Not all African-American lawyers were activists, of course. In each period, many lawyers toiled quietly in the handling of legal affairs for clients. Although these men did not make headlines, they, too, deserve much credit. An African-American

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4. 261 U.S. 86 (1923).

5. Of course, the periods do not segment so neatly. A few of the attorneys overlapped two, or even three, of the periods.

lawyer representing other African-Americans in a society controlled by the white majority, sometimes against white citizens, needed a full measure of courage. This was particularly true after 1891 when there was little outward evidence that justice would prevail in a climate of increasing hostility toward the rights of African-Americans.

## II. PERIOD ONE: EMANCIPATION TO 1891 AND “JIM CROW”

Thirty (approximately 43%) of the African-American lawyers admitted in Arkansas before 1950 were active during this first period after the Civil War. Only five of them were Arkansas natives; all of whom were admitted after 1887.<sup>6</sup> Another eighteen arrived in Arkansas as adults, part of a wave of migration into the state from both north and south.<sup>7</sup> The origins of

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6. Benjamin Frank Adair (identified as an attorney in the 1887 Little Rock City Directory); Lewis Jenks Brown (admitted 5/15/1887, SUPREME COURT ENROLLMENT BOOK 1 at 10 with notation “Colored”); John A. Robinson (6/15/1889, Tom Dillard, *Scipio A. Jones*, 31 ARK. HIST. Q. 201, 204 (1972) [hereinafter Dillard, *Scipio A. Jones*]); Nelson H. Nichols (identified as an attorney in the 1888-89 Little Rock City Directory; licensed 10/21/1899, enrolled 10/14/1901, SUPREME COURT ENROLLMENT BOOK 1 at 212); and Alexander L. Burnett (practicing 1891, Willard B. Gatewood, Jr., ed., *Arkansas Negroes in the 1890s: Documents*, 33 ARK. HIST. Q. 293, 305 (1974) [hereinafter Gatewood]). Burnett is listed as from Arkansas in the 1900 Census Report, but from Mississippi in the 1910 Census. Hereinafter, references to various editions of the Little Rock City Directory will appear as “[year] LRCD.” All Little Rock directories are on file with the Butler Center, Little Rock Public Library, Little Rock, Arkansas, in hard copy or microfilm versions.

7. John H. Johnson (LEWELLYN W. WILLIAMSON, *BLACK FOOTPRINTS AROUND ARKANSAS* 62-63 (1979) [hereinafter WILLIAMSON]) was born in Ohio. *Id.* William H. Grey (admitted 7/6/1869, Records of the Arkansas Supreme Court: Government Records, Supreme Court, “Supreme Court Records 1832-1874; Ledger Judge’s Docket 1856-1859 pl 44; Description of Civil and Criminal Precedents 1864” about half-way through microfilm roll #1, at 42, on file with the Arkansas History Commission, Little Rock) [hereinafter Supreme Court Records: Microfilm] was born in Washington, D.C. WILLIAMSON, *supra* at 61. Thomas P. Johnson (admitted 7/25/1870, Supreme Court Records: Microfilm at 120) was born either in North Carolina (1900 Census Report) or Kentucky (1870 Census Report). Tabbs Gross (identified as a lawyer in 1871, 1871 LRCD) and Daniel Webster Lewis (practicing 1880, EMANCIPATION *supra* note 2, at 324) were born in Kentucky. 1870 Census Report and 1880 Census Report, respectively. Mifflin Wistar Gibbs (admitted 1872, MIFFLIN WISTAR GIBBS, *SHADOW & LIGHT, AN AUTOBIOGRAPHY* 129-30 (1995) [hereinafter GIBBS]) and Abraham W. Shadd (admitted 3/25/1872, EMANCIPATION, *supra* note 2, at 323) were born in Pennsylvania. GIBBS, *supra* note 7; ERIC FONER, *FREEDOM’S LAWMAKERS: A DIRECTORY OF BLACK OFFICEHOLDERS DURING RECONSTRUCTION* 192 [hereinafter FONER]. George Napier Perkins (practicing, 1885-86 LRCD) was born in Tennessee. 1870 Census Report. J. Pennoyer Jones (practicing early 1870s, Carl H. Moneynon, *Black Politics in Arkansas During the Gilded Age, 1876-1900*, 44 ARK. HIST. Q.

seven lawyers are unknown.<sup>8</sup> Those who migrated to Arkansas probably selected it because Arkansas was considered by many African-Americans to offer more freedom and opportunity than other states.<sup>9</sup> As a Confederate border state located on the edge

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222, 233 (1985) [hereinafter Moneyhon]) was born in Virginia. 1880 Census Report. J. Gray Lucas (admitted 1887, Willard G. Gatewood, Jr. ed., *Negro Legislators in Arkansas, 1891: A Document*, 31 ARK. HIST. Q. 220, 232 [hereinafter Gatewood, *Legislators*]) and Scipio Africanus Jones (admitted 1889, Dillard, *Scipio A. Jones, supra* note 6, at 204; admitted 11/26/1900, SUPREME COURT ENROLLMENT BOOK 1 at 144) were born in Texas. Gatewood, *Legislators, supra* at 232; 1900 Census Report, respectively. Samuel J. Hollingsworth (admitted 10/28/1887, SUPREME COURT ENROLLMENT BOOK 1 at 114) was probably born in New York. Proceedings of the National Convention of Colored Men, Syracuse, New York, on October 4–7, 1864 [hereinafter Syracuse Proceedings]. Julian Talbot Bailey (licensed and enrolled 5/21/1888, SUPREME COURT ENROLLMENT BOOK 1 at 10) and Charles T. Lindsay (practicing, 1890 LRCD) were born in Georgia. BIOGRAPHICAL & HISTORICAL MEMOIRS OF CENTRAL ARKANSAS 795 (Goodspeed Publ. Co., Easley, S.C. 1889) [hereinafter Goodspeed of Central Arkansas]; 1900 Census Report. Japheth F. Jones (practicing for 15 years, *Colored Section, HENDERSON'S ILLUSTRATED INDUSTRIAL 1906* (on file with the Pine Bluff Library, Pine Bluff, Arkansas) [hereinafter HENDERSON'S]) was born in Alabama. 1900 Census Report. Richard A. Dawson (admitted about 1870, EMANCIPATION, *supra* note 2, at 323 n.21) and Lloyd G. Wheeler (practicing, 1871 LRCD) came to Arkansas from Illinois (birthplaces unknown). EMANCIPATION, *supra* note 2, at 323. Wathal G. Wynn (admitted 9/25/1871, Supreme Court Records: Microfilm at 71) came to Arkansas from Virginia. EMANCIPATION, *supra* note 2, at 322.

8. A.D. Jones (practicing, 1872 LRCD); Charles A. Otley (practicing, 1872, EMANCIPATION, *supra* note 2, at 323); John E. Patterson (practicing 1873, EMANCIPATION, *supra* note 2, at 324); K. Gibbs (practicing 1876-77 LRCD); J.F. Ford (practicing 1881-82 LRCD); S.H. Scott (practicing 1883-84 Pine Bluff City Directory, on file with Pine Bluff Public Library, Pine Bluff, Arkansas [hereinafter, these directories will be cited as “[year] PBCD”]; and W.R. Anthony (practicing 1891, *id.*).

9. Tom W. Dillard, *Three Important Black Leaders in Phillips County History*, 19 PHILLIPS COUNTY HIST. Q. 10, 15-16 (Dec. 1980 – Mar. 1981) [hereinafter Dillard, *Phillips County*] (noting that:

[f]or many years after the Civil War this state was viewed by many Southern blacks as a haven from social and economic oppression. . . . [It] had a great labor shortage and black immigrants were eagerly welcomed . . . farmers and businessmen, especially the railroad promoters, actively sought out black immigrants from the deep South. Some of the promotional literature even portrayed Arkansas as a new Africa, replete with a tropical climate, “where cocoanuts [sic], oranges, lemons, and bananas grew”).

Encouragement of immigration was a constant theme, even after Democrats had regained control of state offices. Beverly Nettles Watkins, Augustus Hill Garland, 1832-1899: Arkansas Lawyer to the United States Attorney-General 128-29 (1985) (unpublished Ph.D. dissertation, Auburn University) (on file with the Auburn University Library) [hereinafter Watkins]; Marvin Frank Russell, The Republican Party of Arkansas at 79-80 (1985) (unpublished Ph.D. dissertation, University of Arkansas) (on file with the University of Arkansas Library) [hereinafter Russell]. One man was quoted as having “heard that ‘money grew like apple on a tree in Arkansas.’” RANDY FINLEY, FROM SLAVERY TO UNCERTAIN FREEDOM, THE FREEDMAN'S BUREAU IN ARKANSAS 1865-1869 100 (1996) [hereinafter FINLEY].

of the frontier, Arkansas had never been as committed to the use of slave labor as other states in the Confederacy. One of these men, Mifflin Wistar Gibbs, was recruited to Arkansas by two prominent African-American residents, Richard A. Dawson and J.H. Johnson, at a South Carolina convention in 1871.<sup>10</sup> All three were or became attorneys.<sup>11</sup>

The “draw” of Arkansas continued for some time. Fifteen years later, law student J. Gray Lucas would be quoted in newspapers as saying that Arkansas was a land of opportunity for blacks.<sup>12</sup> While other southern state legislatures immediately passed numerous “black code” laws restricting rights of African-Americans after the war, Arkansas did not. This is not to say that Arkansas did not have its share of racial violence and intimidation, but compared with other states, it appeared less hostile. As of 1860, Arkansas had a total population of 435,450,<sup>13</sup> of which 111,259, or 26%, was African-American.<sup>14</sup> Fewer than one percent of the African-American population was free.<sup>15</sup> In 1870, African-American citizens totaled 122,169, or 25%, in a population of 484,471.<sup>16</sup>

The practice of law was “a boom industry” after the Civil War.<sup>17</sup> Nationally, the number of lawyers went from 23,939 in

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10. GIBBS, *supra* note 7, at 126.

11. *Id.*

12. John William Graves, *Jim Crow in Arkansas: A Reconsideration of Urban Race Relations in the Post-Reconstruction South*, 55 J. OF S. HIST. 421 (1989) [hereinafter Graves, *Jim Crow*]. Historian Graves suggests that the growth of urban areas in Arkansas, where the town merchant and urban booster praised enterprise, initiative, bustle, and ability, particularly the ability to raise capital and make money, more than they thought about who was making it, led to a lessening of the racism and segregationist tendencies that were pronounced in the rural areas, and that it was only when election laws were changed to provide more representation to rural areas that the move to separate blacks and whites was begun. *Id.* at 422-23. He believes the move was a reaction to what the more conservative and racist rural visitors to places like Little Rock saw in operation. *Id.*

13. 1860 United States Census Data, (visited Feb. 1, 2000) <<http://fisher.lib.virginia.edu/cgi-local/censusbin/census/cen.pl>>. Only one town in Arkansas had a population of more than 2,500. James L. Roark et. al., *THE AMERICAN PROMISE, A History of the United States* 440 (Bedford Books, Boston 1998) [hereinafter *AMERICAN PROMISE*].

14. 1860 United States Census Data (visited Feb. 1, 2000) <<http://fisher.lib.virginia.edu/cgi-local/censusbin/census/cen.pl>>.

15. *Id.* Of the African-American total, 111,115 were slaves and 144 were free. *Id.*

16. 1870 United States Census Data (visited Feb. 1, 2000) <<http://fisher.lib.virginia.edu/cgi-local/censusbin/census/cen.pl>>.

17. ROBERT STEVENS, *LAW SCHOOL, LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* 22 (1983) [hereinafter *STEVENS*].

1850 to 40,376 in 1870 to 64,137 in 1880, increases of 60% and 63%, respectively.<sup>18</sup> One historian saw the increase as “directly related to the economic expansion and social restructuring” that occurred after the War.<sup>19</sup> “In both north and south there was a feeling . . . that law was the ideal training for a gentleman.”<sup>20</sup> Not only that, but law provided a means to get ahead in life.<sup>21</sup> It is not surprising that a group of smart, ambitious men, members of a group that had new citizenship status, would gravitate to a profession that was becoming increasingly important to society.<sup>22</sup> It seemed that the opportunities were limitless.

Admission to practice law in Arkansas during this period was governed by a statute enacted when the Territory became a state in 1836. Licensing authority was granted to the state supreme court and the (then) six circuit courts.<sup>23</sup> No license could be issued unless a court of record had certified the applicant as male, at least twenty-one years of age, and of “honest and good moral character . . . .”<sup>24</sup> Thereafter, an examination “touching his qualification, fitness, and ability to discharge the duties of his profession” must find the applicant “well qualified.”<sup>25</sup> These examinations were conducted by persons “learned in the law” and appointed by the particular court to which application for admission was made.<sup>26</sup> The oral examination occurred in open court.<sup>27</sup> Citizenship was not a requirement, nor need the applicant be a white man. This system effectively made admis-

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18. *Id.*

19. *Id.* at 23.

20. *Id.* at 21.

21. *Id.*

22. STEVENS, *supra* note 17, at 23.

23. Acts passed at the first session of the General Assembly of the State of Arkansas, “An Act concerning Attorneys at Law,” (1836) [hereinafter 1836 Act]. The state supreme court had authority to license attorneys to appear before it and all inferior courts. *Id.*, Secs. 1-2. The circuit courts could license for practice before all the courts within that circuit. *Id.* Sec. 1 (1836).

24. 1836 Act, Sec. 1.

25. 1836 Act, Sec. 2.

26. 1836 Act, Sec. 2.

27. Tom W. Campbell, *Reminiscences of a Lifetime*, ARK. LAW. 80 (1952) (describing his admission in 1904) [hereinafter Campbell]. See also Irwin C. Mollison, *Negro Lawyers in Mississippi*, 15 J. OF NEGRO HIST. 38, 44-45 (1930) [hereinafter Mollison].

sion to the bar a “local option” dependent on the mores of the particular legal community.<sup>28</sup>

The admission applications of these early African-American lawyers probably benefited from the authority to appoint state officers given by the Military Reconstruction Act of March 1867 to Union General E.O.C. Ord, who was in charge of the district that included Arkansas and Mississippi.<sup>29</sup> Those appointed by him likely were non-Confederates sympathetic to African-American interests.<sup>30</sup> Another benefit might have been the disfranchisement of ex-Confederates at this time, which left Republican politics dominant within the state. Some white Republicans were supportive of African-Americans who wished to “read” the law.<sup>31</sup> Barriers to admission also were less stringent on the frontier and in larger towns.<sup>32</sup>

Unlike today, there were no criteria that specified how a candidate must gain the knowledge needed to pass an oral bar examination. Reading the law on your own or apprenticing with a practicing lawyer was probably the most common route to admission for any lawyer before 1900.<sup>33</sup> “Professional standards in 1860 [were] largely nonexistent.”<sup>34</sup> Only nine of thirty-nine jurisdictions had any formal apprenticeship requirements.<sup>35</sup> Arkansas was not one of them.<sup>36</sup> In fact, the “mood” of the country and a large proportion of lawyers was to increase access to the profession for everyone,<sup>37</sup> not just for African-Americans. Explicit information on their legal education is known about only thirteen of the thirty African-American attorneys in Arkansas.

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28. These admission provisions remained in place until well after the Civil War. Compare Gould Digest, Statutes of Arkansas, Ch. 19, §§ 1-4 (1858) with Gantt Digest, Statutes of Arkansas, Ch. 13, §§ 485-487 (1879). The system was centralized in the state supreme court by statutory amendment in 1917. 1917 Ark. Acts 361.

29. William A. Russ, Jr., *The Attempt to Create a Republican Party in Arkansas During Reconstruction*, 1 ARK. HIST. Q. 206, 212-13 (1942) [hereinafter Russ].

30. This was the case in Mississippi. Mollison, *supra* note 27, at 44.

31. For example, Mifflin Wistar Gibbs was one who apprenticed in an office of white attorneys who were fervent Republicans. GIBBS, *supra* note 7, at 129-30.

32. See Graves, *Jim Crow*, *supra* note 12.

33. STEVENS, *supra* note 17, at 23. At this time, most apprenticeships were not the closely supervised ideal, but rather a clerkship in which the student performed work for the lawyer and obtained what education he could from observing and reading books. *Id.* at 24.

34. *Id.* at 25.

35. *Id.*

36. *Id.* at 15 n.44.

37. *Id.* at 9.



On the whole, this first group of Arkansas lawyers was probably as well-educated as their white compatriots. Approximately nine had attended or graduated from a law school or department. In 1870, law school meant something different than it does today. The profession disregarded book-learning in favor of apprenticeship, and legal study was focused on "expository lectures, supplemented by examinations, recitations, quizzes, and moots. The system called for exposition in the grand scale."<sup>38</sup> Howard University, which three of this group attended, was established in 1868 by the District of Columbia to serve the poorer classes.<sup>39</sup> Until 1923, it had only a night program and only required "the equivalent of a high school education for admission."<sup>40</sup>

Of those who attended law school, Richard A. Dawson is reputed to be the first African-American graduate of the University of Chicago School of Law.<sup>41</sup> Lloyd G. Wheeler is said to have attended a law school in Chicago, graduating in 1869.<sup>42</sup> Mifflin Gibbs attended the law department of Oberlin College, receiving a degree.<sup>43</sup> George Napier Perkins attended a night law school.<sup>44</sup> John Grey Lucas graduated from Boston University School of Law in 1887.<sup>45</sup> Alexander L. Burnett attended Central Law School in Nashville, Tennessee.<sup>46</sup> Three men in this early group studied under the supervision of other lawyers: Scipio Africanus Jones and Daniel Webster Lewis studied under

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38. STEVENS, *supra* note 17, at 24.

39. GENNA RAE MCNEIL, *GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS 20-21* (1983). See also STEVENS, *supra* note 17, at 81 (commenting that the school flourished initially because of the numerous government clerks who attended its part-time night program). The three were Lewis Jenks Brown, LL.B. 1886, EMANCIPATION, *supra* note 2, at 325; Wathal G. Wynn, *id.* at 322; and Abraham W. Shadd, FONER, *supra* note 7, at 192; the latter two about 1871.

40. STEVENS, *supra* note 17, at 195-96.

41. EMANCIPATION, *supra* note 2, at 323. Another publication states that the first African-American graduate of the University of Chicago was Earl B. Dickerson in 1920. GERALDINE R. SEGAL, *BLACKS IN THE LAW, PHILADELPHIA AND THE NATION 133* (1983) [hereinafter SEGAL]. An inquiry to the University of Chicago was not answered.

42. EMANCIPATION, *supra* note 2, at 323; GIBBS, *supra* note 7, at 128.

43. GIBBS, *supra* note 7, at 108.

44. BUCK COLBERT FRANKLIN, *MY LIFE AND AN ERA 126, 150-51* (1997) [hereinafter FRANKLIN].

45. Gatewood, *supra* note 6, at 297.

46. HENDERSON'S, *supra* note 7.

white lawyers,<sup>47</sup> and Nelson H. Nichols studied with an African-American lawyer.<sup>48</sup> The final member, Thomas P. Johnson, had received legal instruction from his owner prior to emancipation that was sufficient for him to pass the examination.<sup>49</sup>

In addition to the above-noted paths, collateral sources provide help in determining what were the likely routes to practice for the remaining seventeen lawyers. A 1902 publication containing biographical sketches of prominent African-American lawyers lists legal education obtained at Central Tennessee College, Union College of Law (Illinois), Chicago College of Law (Illinois), and Kansas State University.<sup>50</sup> Buck Colbert Franklin, an African-American attorney who was admitted to practice in Oklahoma in 1907, studied law through a correspondence course from Sprague Law School of Detroit.<sup>51</sup> Three autobiographies of white attorneys, two in Arkansas and one in Oklahoma, indicate that their paths to law practice were quite similar.<sup>52</sup>

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47. J. H. Carmichael, in *SCRAPBOOK OF ARKANSAS LITERATURE* 312 (1st ed. Octavius Coke ed., Am. Caxton Soc. Press 1939) [hereinafter Carmichael]. Apparently, Jones took this route after having been denied admission to the law school of the University of Arkansas. RICHARD C. CORTNER, *A MOB INTENT ON DEATH, THE NAACP AND THE ARKANSAS RIOT CASES* 51 (1988) [hereinafter CORTNER]. Lewis studied under a judge and an attorney in Marion, Arkansas. *EMANCIPATION*, *supra* note 2, at 324-25.

48. E.M. WOODS, *BLUE BOOK OF LITTLE ROCK AND ARGENTA* 55 [hereinafter WOODS].

49. *SURVEY OF NEGROES IN LITTLE ROCK AND NORTH LITTLE ROCK* 30 (1941) (The Writers' Project of the Work Projects Administration in the State of Arkansas) [hereinafter *SURVEY*].

50. J. W. GIBSON & W. H. CROGMAN, A. M., *PROGRESS OF A RACE OR THE REMARKABLE ADVANCEMENT OF THE AMERICAN NEGRO* 565-79 (1969) [hereinafter *PROGRESS OF A RACE*].

51. FRANKLIN, *supra* note 44, at 126, 135. By 1934, formal education was the primary route for African-American lawyers. A study of African-American professionals that included lawyers found that 84.8% had received law school degrees, 7.8% had obtained degrees through correspondence courses, "1 per cent had taken home-study courses but had received no degrees; an equal number had studied at home or in a law office; and 2.1 per cent had been trained by tutors." CARTER GODWIN WOODSON, *THE NEGRO PROFESSIONAL MAN AND THE COMMUNITY* 188 (1934) [hereinafter WOODSON]. Others had "read law" in law offices, "had served as law clerks, been understudies to lawyers, or had had experience in law offices as apprentices, assistants, or junior associates after obtaining a professional degree." *Id.*

52. Tom W. Campbell, who began his practice in Pocahontas in 1904, obtained a list of 18 recommended books from a lawyer in town and read them while he farmed, taught school, served as a state legislator, and worked at a lumber mill to support his family. Campbell, *supra* note 27, at 78. Judge Sam Robinson, who began practice in 1924, had attended law school at the University of Arkansas. *JUDGE SAM ROBINSON, WINNING*

The pool of potential clients for these African-American attorneys was small. Most of Arkansas' population was rural and poor, including the African-Americans. It was not a community from which substantial legal fees could be expected. The attorneys known to be practicing in this first period were located in the larger cities and in the "Black Belt" counties, where African-Americans constituted more than half of the population. Fifteen were located in Pulaski County, the location of Little Rock, the state's largest city and home to its largest African-American community.<sup>53</sup> Thirteen of the remaining fifteen practiced in Mississippi River Delta counties with significant African-American majorities.<sup>54</sup> One author, writing about the early African-American bar in Mississippi, which shared military governance and had a decentralized attorney admission system similar to Arkansas, noted a similar pattern.<sup>55</sup>

Little information exists about the daily law practices of African-American lawyers.<sup>56</sup> It is unlikely that they served many white clients. Although there are references to African-American lawyers with white clients in Arkansas in this period,<sup>57</sup> none has been documented with a lawyer's name.

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AGAINST THE ODDS 84 (1993) [hereinafter ROBINSON]. O. A. Cargill, who practiced in Oklahoma from 1916, initially began study through a correspondence course "with the La-Salle Institute" and later attended night law school in Oklahoma City. O. A. CARGILL, *MY FIRST 80 YEARS* 58 (1965) [hereinafter CARGILL].

53. In 1870, the county's population totaled 32,066, of which 13,708 (42.7%) were African-American. 1870 United States Census Data (visited Jan. 21, 2000) <<http://fisher.lib.virginia.edu/cgi-local/censusbin/census/cen.pl>>.

54. In 1870, eight counties in Arkansas had populations that were majority African-American. African-American attorneys are known to have practiced in five of them. These five counties contained 26.6% of Arkansas' African-American citizens: Chicot (5393, 74.7%), Phillips (10,501, 68.3%), Crittenden (2575, 67.2%), Jefferson (10,167, 64.6%), and Desha (3934, 64.2%). 1870 United States Census Data (visited Jan. 21, 2000) <<http://fisher.lib.virginia.edu/cgi-local/censusbin/census/cen.pl>>. These five, plus Pulaski, contained 38% of Arkansas' African-American citizens (46,278 of a total 122,169). 1870 United States Census Data, (visited Jan. 21, 2000) <<http://fisher.lib.virginia.edu/cgi-local/censusbin/census/cen.pl>>.

55. Mollison, *supra* note 27, at 42-43.

56. Only one attorney, Mifflin Gibbs, left a record of his life and he said very little about his law practice and client representation. When he discussed his Arkansas years, he wrote primarily of his political activities. Gibbs mentions the practice of law only in passing, despite the fact that his practice was reputed to be a successful one. Tom W. Dillard, "Golden Prospects and Fraternal Amenities": *Mifflin W. Gibbs's Arkansas Years*, 35 *ARK. HIST Q.* 307, 323 (Wint 1976) [hereinafter Dillard, *Golden Prospects*].

57. See, e.g., Graves, *Jim Crow*, *supra* note 12, at 428 (quoting the report of an African-American newspaper man that said "While in Little Rock I have visited the offices of .

Given the lack of financial resources of the majority of African-Americans during this first period, even those in cities, it was difficult to succeed as a lawyer.<sup>58</sup> African-American lawyers also faced discrimination from their own communities.<sup>59</sup> Those who could afford to pay lawyers understandably assumed that “justice” from a system in which judges and jurors were white could be obtained more easily if they used a white lawyer.<sup>60</sup> Mifflin Gibbs felt that the judges were “eminently fair,” but that jurors often “bowed to the prevailing bias” when parties were of different races.<sup>61</sup> African-American lawyers therefore were “confined to petty cases with corresponding fee” and “handicapped” in their efforts to build a reputation.<sup>62</sup>

There is no official record of cases involving any of the thirty-one lawyers practicing in Arkansas during this first period.<sup>63</sup> It is likely that their practices were similar to those of

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. . . successful negro lawyers and have seen white men go in to consult them.”). On the other hand, Buck Franklin, practicing in Oklahoma Territory around the turn of the century, noted “In almost six years I’d never had but one white client, a lady bootlegger at Chickasha that Judge James M. Shackleford asked me to represent. She was without funds, and no other lawyer would take her case.” FRANKLIN, *supra* note 44, at 145.

58. Howard Holman Bell, *A Survey of the Negro Convention Movement 1830-1861*, in the Arno Series, *THE NEGRO AMERICAN: HIS HISTORY AND LITERATURE* 263 (1969) (stating:

[u]nder these circumstances [discrimination, lack of public education] it was only the privileged few who managed to secure a good education, and these often found themselves in an isolated position – a white collar class without an adequate middle class following to command support. Negro lawyers, artists, and even doctors and school teachers often found it difficult to capitalize on their professions.)

[hereinafter Bell].

59. In his introduction to his father’s autobiography, historian John Hope Franklin notes:

I came to learn that our poverty resulted not from poor management but from the inability of my father to convince would-be clients that a black lawyer could prevail in a court of law regardless of the deep-seated prejudices of those who administered justice. . . . Sad to say, the would-be clients were realists who did not want to risk their fate in the hands of one for whom the judge and jurors might have little or no respect.

FRANKLIN, *supra* note 44, at xvii.

60. GIBBS, *supra* note 7, at 131 (noting that because of this, where fees could be paid, litigants would go to white lawyers even if they respected the ability of the African-American lawyer).

61. *Id.*

62. *Id.*

63. Not until 1901 are there published state supreme court cases brought by an African-American attorney. The first two cases were brought by Scipio Africanus Jones, who was admitted at the end of this first period. See *infra* notes 473-75 and accompanying text.

white lawyers who also were providing general services to a poor rural population.<sup>64</sup> Buck Franklin mentions actions in replevin for return of a horse, criminal defense, contract law, and insurance.<sup>65</sup> A white Arkansas attorney, Sam Robinson, began a general practice in 1904 consisting of criminal defense, breach of contract, personal injury, and real property law.<sup>66</sup> Another white Arkansas attorney, Tom Campbell, beginning practice in the 1920s, primarily handled criminal defense work.<sup>67</sup>

A 1934 study of African-American professionals found that lawyers' practices were primarily "what is called office work. In most of such cases he is confining himself mainly to real estate matters, the drawing up of papers for the sale and transfer of property and the handling of insurance, loans, and rents for his own people."<sup>68</sup> Other areas of legal work, still on behalf of the African-American community, were "criminal law, then domestic relations, personal injuries, small claims, and matters growing out of the conduct and management of churches and fraternal associations."<sup>69</sup> It is unlikely that these tasks were much different in earlier decades, except that fraternal organizations did not appear until after 1880.<sup>70</sup>

Despite these limitations, African-American attorneys in the larger towns apparently were relatively pleased with the treatment accorded them within the legal profession.<sup>71</sup> Their

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64. The autobiographies mentioned herein involve practices beginning after 1900. No earlier reports of Arkansas lawyers, aside from Gibbs, were located.

65. FRANKLIN, *supra* note 44, at 135.

66. ROBINSON, *supra* note 52 (reporting that he "would just take any kind of case that came along").

67. Campbell, *supra* note 27, at 38. Tom Campbell ultimately became a prominent attorney for railroads.

68. WOODSON, *supra* note 51, at 193.

69. *Id.* at 228.

70. See, e.g., A.E. BUSH & P.L. DORMAN, HISTORY OF THE MOSIAC TEMPLARS OF AMERICA—ITS FOUNDERS AND OFFICIALS (1924).

71. D.B. GAINES, RACIAL POSSIBILITIES AS INDICATED BY THE NEGROES OF ARKANSAS 86 (Philander Smith College, Little Rock, 1898) [hereinafter GAINES] (stating "[w]e have it from the attorneys themselves that they are received at the bar with great cordiality and are accorded all the rights and privileges of any of the great lawyers of the state."). In Pulaski County, Mifflin Gibbs, George Napier Perkins, C. T. Lindsay, and Thomas P. Johnson were noted as "colored members" of the bar of Little Rock. Goodspeed of Central Arkansas, *supra* note 7, at 379. In Jefferson county, S. J. Hollingsworth was said to be "the most notable among the colored bar," while "[c]olored lawyers were not generally in practice until during the 70's." Goodspeed of Central Arkansas, *supra* note 7, at 133.

treatment varied from town to town, as was noted by a 1934 study: "It is reported by an outstanding lawyer there that in some towns in Arkansas the treatment of the Negro attorney is exceptionally good while in others the Negro lawyer can hardly get recognition."<sup>72</sup> Until the late 1930s, African-American lawyers could not appear in court in Pine Bluff, Arkansas, unless accompanied by a white attorney.<sup>73</sup> This variation of treatment in different counties was also reported in Mississippi.<sup>74</sup>

A number of the early African-American attorneys spent the major part of their energies on politics and supported themselves through political appointments.<sup>75</sup> Others admitted in this first period probably supplemented their income with other work or, depending on their political fortunes, moved in and out of law practice.<sup>76</sup>

#### A. Politics as a Vehicle for Pursuing Civil Rights

It made sense for African-Americans in Arkansas, including lawyers, to focus on politics for advancing their civil rights following the Civil War. Their freedom and citizenship had been obtained by the "party of Lincoln"<sup>77</sup> and, although southern Democrats, on the whole, rejected their participation, the Republican Party welcomed them. During this period, violence against African-Americans was ever-present, providing another

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72. WOODSON, *supra* note 51, at 217.

73. Interview with Leo Branton, former resident of Pine Bluff, in Los Angeles, California (June 11, 1998). However, this rule may have begun with Jim Crow segregation during the second period.

74. Mollison, *supra* note 27, at 53.

75. See *infra* notes 401-68 and accompanying text. Much of the political success of these early lawyer/politicians depended on their ability to organize the votes of the community. Tom W. Dillard, *The Black Moses of the West: A Biography of Mifflin Wistar Gibbs, 1823-1915* (1975) (unpublished M.A. thesis, University of Arkansas) (on file with the University of Arkansas Library) [hereinafter Dillard, *Black Moses*]. Later generations complained that these lawyers had lived "on the community but [did] not live with it." WOODSON, *supra* note 51, at 240.

76. For example, Mifflin Gibbs moved between practice and political appointments. See *infra* notes 155-67 and accompanying text. William H. Grey and John H. Johnson owned farms. GIBBS, *supra* note 7, at 126. J.P. Jones had business interests. Moneyhon, *supra* note 7, at 233. T. P. Johnson moved between the ministry and law. See *infra* note 125.

77. In Arkansas, the Republican legislature passed a state civil rights law in 1868, 1868 Acts of Arkansas, 39-40, and an even stronger one in 1873, 1873 Ark. Acts 15-19, which was repealed in 1907. 1907 Ark. Acts 728.

reason to adhere to Republican power in exercising their civil rights.<sup>78</sup> Although judges had admitted African-Americans to the practice of law, the courts often did not provide an independent support for African-American civil rights.<sup>79</sup> In addition, African-Americans never had the numbers to overcome prejudice by force of votes or violence without the assistance of the Republican Party.<sup>80</sup> As noted by one historian, “the Republican Party provided the only realistic outlet for black political ambition and the only political forum for fighting racism.”<sup>81</sup>

The first recorded African-American attorney in Arkansas after the Civil War, John H. Johnson, was elected to the state legislature in 1866.<sup>82</sup> His election is somewhat startling, since the voter registration lists for this election excluded African-

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78. LEON F. LITWACK, *BEEN IN THE STORM SO LONG, THE AFTERMATH OF SLAVERY 277-78* (1980) (relating reports from Freedmen’s Bureau officers and commenting “[w]hat proved even more alarming were the numerous instances of violence in which no reason could be easily ascertained, except perhaps the frustration of military defeat and emotional and recreational deprivation.”) [hereinafter LITWACK]. “Between 1868 and 1871, political violence reached astounding levels. Arkansas experienced nearly three hundred political killings in the three months before the fall elections in 1868, including Little Rock’s U.S. Congressman, J.M. Hinds.” AMERICAN PROMISE, *supra* note 13, at 629. Although they were outnumbered, African-Americans sometimes retaliated. LITWACK, *supra*, at 289-90 (reporting mob action when the law failed to secure justice against white criminals). In Arkansas, the 1871 death of attorney Wythal Wynn in Chicot county after an argument with three white men led to African-American violence against his murderers. ARKANSAS GAZETTE, Dec. 12, 1871, at 2. Efforts to educate the freedmen also led to violence. LITWACK, *supra*, at 487 (quoting from a letter written by a white teacher in Little Rock). See also Elizabeth L. Wheeler, *Isaac Fisher: The Frustrations of a Negro Educator at Branch Normal College, 1902-1911*, 41 ARK. HIST. Q. 3, 32 (1982) [hereinafter Wheeler].

79. Juries were not particularly friendly and, when an African-American was accused of crimes constituting “disrespect,” white mobs were often uncontrolled. C. Calvin Smith, *John E. Bush of Arkansas, 1890-1910*, 2 OZARK HIST. REV. 48, 53 (1973) (noting that, in 1883, after African-Americans demonstrated for improved working conditions and one white man was killed, 33 African-American men were arrested and convicted of first-degree murder) [hereinafter Smith]. See also other similar events described *infra*.

80. In 1867, the first year African-Americans were registered to vote, they made up less than 35 percent of voters. Eugene G. Feistman, *Radical Disfranchisement in Arkansas, 1867-68*, 12 ARK. HIST. Q. 126, 137 (1953) [hereinafter Feistman]. Even that percentage did not remain. In 1870, the African-American population was only 25% of the total. 1870 U.S. Census Data (visited Feb. 21, 2000) <<http://fisher.lib.virginia.edu/cgi-local/censusbin/census/cen.pl>>. In 1880, it was 26%. 1880 U.S. Census Data (visited Feb. 8, 2000) <<http://fisher.lib.virginia.edu/cgi-local/censusbin/census/cen.pl>>. In 1890, it was 27%. 1890 U.S. Census Data (visited Feb. 21, 2000) <<http://fisher.lib.virginia.edu/cgi-local/censusbin/census/cen.pl>>.

81. Russell, *supra* note 9, at 2.

82. WILLIAMSON, *supra* note 7, at 62-63.

Americans.<sup>83</sup> There is no documented explanation of this anomaly. Perhaps his success was due to the fact that former confederate soldiers and sympathizers were prohibited from voting and Republican candidates easily won seats. Johnson was active in the Republican Party and became quite prominent, presiding “on several occasions over the Republican State Convention.”<sup>84</sup> He also may have been a generous financial contributor to the party, as he was described as a “prominent planter and leader” in 1871,<sup>85</sup> despite having arrived in Arkansas at the age of twenty-five only six years before.<sup>86</sup>

Johnson apparently had high political connections, as his life reportedly was saved by Postmaster General William Dennison in Washington, D.C., where he was “taken as a spy and condemned to be shot” after escaping from forced service in the Confederate army.<sup>87</sup> Johnson also may have benefited by settling in a county where anti-African-American sentiment was particularly low among white residents.<sup>88</sup> In any event, the 1866 legislature did not do much to promote African-American rights. African-Americans were not granted citizenship and, although a free public school system was established, it excluded African-American children.<sup>89</sup>

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83. A state constitution drafted by Arkansas Republicans in 1864 did not give African-Americans the franchise, although it called for the abolition of slavery. Sidney Crawford, *Arkansas Suffrage Qualifications*, 2 ARK. HIST. Q. 331, 333 (1943) [hereinafter Crawford]; James Harris Fain, *Political Disfranchisement of the Negro in Arkansas*, 3 (1961) (unpublished M.A. thesis, University of Arkansas) (on file with the University of Arkansas Library) [hereinafter Fain]. Woodruff County, from which Johnson was elected, had a total population of 6,891 in 1870, of which 39% was African-American. 1870 Census Data (visited Apr. 8, 2000) <<http://fisher.lib.virginia.edu/cgi-local/censusbin/census/cen.pl>>.

84. WILLIAMSON, *supra* note 7, at 63. Johnson also served as a delegate to the 1883 Republican national convention, Dillard, *Golden Prospects*, *supra* note 56, at 315, and later ran for Congress. WILLIAMSON, *supra* note 7, at 62-63.

85. GIBBS, *supra* note 7, at 126.

86. WILLIAMSON, *supra* note 7, at 62-63.

87. *Id.* at 62 (reporting that Dennison had known Johnson as a child in Ohio). Johnson then returned to Cincinnati, “where he soon joined the Union Army and served under Commander Foote until the end of the war.” *Id.* at 63.

88. Graves, *Jim Crow*, *supra* note 12, at 425 (noting that some areas of the state exhibited little discrimination against African-Americans while in others they were prohibited from settling).

89. *Id.* at 422-23.



In 1868, two men who would soon become lawyers – William H. Grey<sup>90</sup> of Phillips County and Thomas P. Johnson of Pulaski County – were among eight African-American members elected to the second post-Civil War constitutional convention in 1868.<sup>91</sup> Grey, who never experienced slavery,<sup>92</sup> had arrived in Arkansas in 1863, established himself as a businessman, and quickly became active and influential in state politics.<sup>93</sup> At the time of the 1868 convention, he was about thirty-eight years of age.<sup>94</sup> Although he was said to have had only a rudimentary formal education,<sup>95</sup> Grey had “served as a free servant of Virginia governor Henry A. Wise and accompanied him to sessions of Congress” some time before 1856.<sup>96</sup>

William H. Grey was deemed the most “articulate” of the eight African-American representatives.<sup>97</sup> As “the leader of the assembly’s Negro delegates,”<sup>98</sup> Grey took the convention floor more than twenty-five times, introducing one resolution and offering several motions.<sup>99</sup> “His resolution, offered on January 23, requested, among other things, federal aid for the ‘suffering poor of the state.’ It also asked for an investigation into the possibility of locating freedmen as homesteaders on government-owned land.”<sup>100</sup> Grey was chair of the committee on Organization of Government of Cities and Villages, whose report to the convention contained a clause that “asserted the voting rights of freedmen.”<sup>101</sup>

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90. Grey is spelled variously “Gray” in some publications.

91. Fain, *supra* note 83, at 4. This was the first time that the bulk of the African-American population had voted. *Id.* at 3-4. “Of the 66,805 registered voters eligible to vote in the election 21,969, or 32.9 per cent (sic), were identified as Negroes.” *Id.* at 4. Virtually all voted Republican. *Id.* at 9-10.

92. Joseph M. St. Hilaire, *The Negro Delegates in the Arkansas Constitutional Convention of 1868, A Group Profile 7* (1970) (unpublished M.A. thesis, Washington State University) (on file with the Arkansas History Commission) [hereinafter St. Hilaire].

93. *Id.* at 6-8.

94. FONER, *supra* note 7, at 91-92.

95. WILLIAMSON, *supra* note 7, at 61.

96. William H. Grey, *Justice Should Recognize No Color*, in LIFT EVERY VOICE, AFRICAN AMERICAN ORATORY 1787-1900 473 (Phillip S. Foner & Robert James Branham eds., 1998) [hereinafter Foner & Branham].

97. St. Hilaire, *supra* note 92, at 29 (citing Cypert, “Constitutional Convention of 1868,” p. 10, as calling Grey a “man of unusual attainments as a speaker”).

98. *Id.* at 13.

99. *Id.* at 29.

100. *Id.*

101. *Id.* at 29-30.

Thomas P. Johnson was a Little Rock minister at the time of his election as one of four delegates representing Pulaski County.<sup>102</sup> He had been brought to Arkansas as a slave in 1859,<sup>103</sup> when he was about thirty-eight years old.<sup>104</sup> Johnson, although not as dominating as Grey, spoke seven times during the convention and served on two of its committees.<sup>105</sup> In arguments about the provision of free schooling for African-American children, Johnson “angrily retorted [to Bouldin Duvall, who attempted to disfranchise the Negro with an objection ‘to being taxed to educate the propertyless Negroes’]: ‘You forget how long we worked for you, in a state of slavery, to give you the means by which you have been educated; and now we want to come upon [sic] a level with you.’”<sup>106</sup> In the final vote regarding continued operation of the Freedmen’s Bureau, Johnson “spoke in favor of the continuation of the [Freedmen’s] Bureau” and suggested that fifty more agents be appointed to Arkansas.<sup>107</sup> He said, “I do not think I ever would vote for the Freedmen’s Bureau to be done away with, until the country is reconstructed. We need reconstruction – universal suffrage. Give us that, and we don’t ask for more – give us that, and we will not need the Freedmen’s Bureau.”<sup>108</sup>

Grey and the other representatives voted as a block on a number of issues important to African-American civil rights. They voted against a minority report that would have allowed only white males to vote.<sup>109</sup> When voting rights for African-Americans were on the table, Grey spoke eloquently, declaring:

[t]he right of franchise is due the Negroes bought by the blood of forty thousand of their race shed in three wars. . . . The government has made a solemn covenant with the Negro to vest him with the right of franchise if he would

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102. St. Hilaire, *supra* note 92, at 9.

103. *Id.* at 8.

104. FONER, *supra* note 7, at 119. *See also* FINLEY, *supra* note 9, at 64.

105. St. Hilaire, *supra* note 92, at 31.

106. Fain, *supra* note 83, at 6-7.

107. St. Hilaire, *supra* note 92, at 17-18.

108. *Id.* at 18 (quoting from DEBATES & PROCEEDINGS OF THE CONVENTION WHICH ASSEMBLED AT LITTLE ROCK, JANUARY 7TH, UNDER THE PROVISIONS OF THE ACT OF CONGRESS OF MARCH 2D, 1867, & THE ACTS OF MARCH 23D & JULY 19TH, 1867, SUPPLEMENTARY THERETO, TO FORM A CONSTITUTION FOR THE STATE OF ARKANSAS 447 (Little Rock: J.G. Price, 1868).

109. St. Hilaire, *supra* note 92, at 15.

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throw his weight in the balance in favor of the Union and bare his breast to the storm of bullets; and I am convinced that it would not go back on itself. . . . Give us the franchise, and if we do not exercise it properly, you have the numbers to take it away from us. It would be impossible for the Negro to get justice in a State whereof he was not a full citizen. . . . Justice should be like the Egyptian statue, "blind and recognizing no color."<sup>110</sup>

The eight also voted for continuation of the Freedmen's Bureau,<sup>111</sup> and for an amendment that would allow the legislature to pass anti-miscegenation laws.<sup>112</sup>

The miscegenation discussion during the convention is of interest because of the delicacy of the position taken by the African-American group. White conservatives at the convention brought this subject up several times during the proceedings.<sup>113</sup> Irritated by the continual harping on the subject, Grey said, "there is no gentleman here, whatever may be his opinions, that objects to it more than I. I am willing that you should make any enactment on the subject, outside of the organic law; but, sir, let that be, *equality before the law*."<sup>114</sup> It was not that the African-Americans were in favor of racial mixing, but that the proposals by white representatives would punish only African-Americans.

When the new state constitution was passed on March 14, 1868,<sup>115</sup> with the vote of all eight African-Americans and fifty-two other delegates,<sup>116</sup> African-Americans had obtained the franchise and legal rights to full citizenship under the law.<sup>117</sup> It "was perhaps the most liberal constitution in the state's history,

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110. Foner & Branham, *supra* note 96, at 473-75.

111. St. Hilaire, *supra* note 92, at 19.

112. *Id.* at 23-25.

113. It was raised on January 29, January 30, and February 5. *Id.* at 20, 22-23.

114. *Id.* at 23-24. Grey was not the only representative who felt the tenor of the arguments was unfair. James White, one of the other African-American representatives, sarcastically asked "who is to blame for the present state of affairs? When I look around, I see innumerable company of mulattoes, not one of them heir of a white woman." *Id.* at 24.

115. Feistman, *supra* note 80, at 153.

116. St. Hilaire, *supra* note 92, at 20, 26. *See also* Graves, *Jim Crow*, *supra* note 12, at 424. Grey was ambivalent about the constitution, believing it "was not strong enough in disfranchising whites [who had served the Confederacy], but he voted for it because it did enfranchise the Negro." Fain, *supra* note 83, at 8.

117. Fain, *supra* note 83, at 9. African-Americans voted, held office, and had an opportunity for equal education with whites, "although [their] public schools were segregated (apparently with [their] approval)." *Id.*

guarantee[ing] the equality of all persons before the law.”<sup>118</sup> These rights had been won with difficulty and did not come with the approval of all white citizens.<sup>119</sup> Despite the fact that the African-American franchise was a prerequisite to reentry to the Union, fifteen conservatives refused to sign the constitution.<sup>120</sup>

William H. Grey later was elected to the legislature from Phillips County in 1868 and 1870,<sup>121</sup> and to the state senate in 1875.<sup>122</sup> “He was also chosen as a Republican presidential elector in 1868.”<sup>123</sup> After the convention, Thomas P. Johnson served as a Little Rock Justice of the Peace for a number of years,<sup>124</sup> alternating between the practice of law, and preaching for the rest of his life.<sup>125</sup> Johnson did appear in court on occasion, for in December 1871, he was cited for contempt of court and sentenced to jail for three days. He was released the same

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118. St. Hilaire, *supra* note 92, at 26 (noting that “[w]ith exceptions in the case of only a few persons who had supported the Confederacy, it also enfranchised all male citizens”).

119. Fain, *supra* note 83, at 10. In the period before legislative elections in the fall of 1868, the Klan had “operated against blacks and whites alike, its purpose apparently being to prevent Republicans from polling enough votes to carry elections.” *Id.* Despite this backlash, “black political power in [Little Rock] was evident – they won [in the 1868 election] the marshal and street commissioner positions and five of eight city council seats.” Diane Neal, *Seduction, Accommodation, or Realism?*, 48 ARKANSAS HIST. Q. 57, 60 (1989) [hereinafter Neal].

120. St. Hilaire, *supra* note 92, at 28.

121. WILLIAMSON, *supra* note 7, at 61; *see generally* St. Hilaire, *supra* note 92, at 30.

122. Dillard, *Phillips County*, *supra* note 9, at 12.

123. St. Hilaire, *supra* note 92, at 30.

124. FONER, *supra* note 7, at 119; 1871, 1872-73 LRCDS. Under the 1874 Arkansas Constitution, justices of the peace were to assist the county judge in “levying the county taxes, and in making appropriations for the expenses of the county.” ARK. CONST. of 1874, art. VII, § 30. They were elected for a term of two years in the county where they lived, *id.* at § 38, with original jurisdiction in contract matters valued under \$100 and concurrent jurisdiction with the circuit court in contract and personal property recovery matters worth under \$300 and damages to personal property valued under \$100. *Id.* at § 40. These positions were very similar to today’s small claims court judges. Appeals from the county court went to the circuit court. *Id.* at § 33.

125. In the 1872-73 and 1873-74 LRCDS, Johnson is listed as an attorney. In 1876 and 1878 LRCDS, he is listed as a Reverend. He does not appear in the 1880 and 1881-82 LRCDS. He reappears in the 1883-84 and 1885-86 LRCDS as an attorney. In the 1887 LRCDS, he is listed both in the attorneys’ section and alphabetically as Minister of the Baptist Church. In the 1888-89 and 1890 LRCDS, he is identified as a lawyer. In the 1893-94 LRCDS, he is listed as Reverend, Methodist Church. In the 1895-96, 1897-98, 1899, and 1900-01 LRCDS, he is listed as a lawyer. By this time, he was 75 years old. 1900 U.S. Census (scheduling inhabitants of 3d Ward, Little Rock, Pulaski County, Ark., June 7, 1900). He disappears from the directories thereafter.

day by order of another judge who found an error in the contempt citation.<sup>126</sup>

Although the future of African-Americans was tied to the Republican Party in Arkansas, the reverse was true only to a point.<sup>127</sup> When Republicans battled against a resurgent Democratic Party and various populist third parties from 1870 to 1891, almost half of the African-American attorneys would be active in these struggles.<sup>128</sup> Unfortunately, internal dissension within the Arkansas Republican Party also began almost immediately after its 1868 election successes. This dissension would divide African-American Republicans and ultimately would have a profound effect on their relationship with the party.

The internal discord initially pitted “regular” Republicans (known as “Minstrels”), led by Powell Clayton, against “reform” Republicans (known as “Brindle Tails”), led by minister Joseph M. Brooks, for control of the party, culminating in the 1872 elections where Clayton supported Elisha Baxter, who vied with Brooks for the party’s nomination for governor.<sup>129</sup> One part of

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126. ARKANSAS GAZETTE, Dec. 27, 1871. There was no indication what Johnson had done to earn the ire of the judge.

127. Dillard, *Black Moses*, *supra* note 75, at 88-90 (commenting that “Southern Plans” created by both President Rutherford Hayes (1877–1881) and President Chester Arthur (1881–1885) involved limiting African-American power within the party and making alliances with third parties who were composed of “outright racebaiters,” both of which aspects made these men unpopular with African-Americans). In 1888 (after the term of a Democratic president), Republican President Benjamin Harrison was elected. He sought allegiance with African-Americans and “also supported the hitherto extreme idea of federal protection of black voters from white intimidation and disfranchisement.” *Id.* at 90.

128. *See infra* notes 129-277 and accompanying text.

129. GIBBS, *supra* note 7, at 135-36; JOHN M. HARRELL, *THE BROOKS AND BAXTER WAR, A HISTORY OF THE RECONSTRUCTION PERIOD IN ARKANSAS* 96, 107-08 (1893) [hereinafter HARRELL]. These efforts included an attempt by Brooks’ Brindle Tails to have Clayton prosecuted for election fraud that caused an investigation of his election to the U.S. Senate. HARRELL, *supra*, at 108. The disputes between the Minstrels and Brindle Tails became known as the “Brooks-Baxter War” and led to separate primaries in 1872 in which Clayton supported Elisha Baxter for governor and Brooks was his opposition. GIBBS, *supra* note 7, at 140. Brooks won, but the election was contested with charges of corruption. *Id.* at 149.

Brooks supporters even turned to violence in an effort to prevail. In Phillips County, the rousing of African-American “troops” for Brooks was thwarted. Fain, *supra* note 83, at 15 (noting that stifling of the efforts to mobilize troops was accomplished by “James T. White, the most respected Negro leader in the county, if not in the state.”). Pine Bluff adherents did arrive in Little Rock. Dillard, *Golden Prospects*, *supra* note 56, at 312 n.29 (citing HARRELL, *supra* note 129, at 235). Gibbs reported that he was selected to meet with the group, led by Gen. King White, to explain that they were mistaken, but was stopped and turned around on pain of arrest before he reached them. GIBBS, *supra* note 7, at 152-55.

the dispute was over the question of how closely to work with ex-Confederate Democrats.<sup>130</sup> The dispute otherwise had nothing to do with issues surrounding African-Americans, the African-American vote or membership in the party.

The African-American contingent split their allegiances. Attorneys who sided with Brooks included Tabbs Gross, George Perkins,<sup>131</sup> and (for a short time) Mifflin Gibbs.<sup>132</sup> William H. Grey, John H. Johnson,<sup>133</sup> and Lloyd G. Wheeler remained Clayton supporters.<sup>134</sup> There were charges of massive voting fraud by both sides.<sup>135</sup> In something of a farce after Brooks apparently won the election for governor, Baxter occupied the state house, while Brooks supporters held the state seal captive (intending to prevent Baxter from signing any laws into effect).<sup>136</sup> Only the intervention of President Grant (to whom both sides applied) resolved the matter in Baxter's favor.<sup>137</sup> The fact that African-Americans did not feel compelled to vote as a block in this matter is an indication that their opinions differed on how the Republican Party was serving their constituency.

Tabbs Gross came to Arkansas in 1867.<sup>138</sup> Born a slave in Kentucky in 1820,<sup>139</sup> he purchased his freedom before the Civil War and moved to Ohio.<sup>140</sup> In 1869, he began publishing Arkansas' first African-American newspaper, the *Freeman*, in Little Rock.<sup>141</sup> Gross' newspaper editorials criticized the Republi-

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Trigger-happy persons on both sides began to shoot and a mini-skirmish resulted, with several people being killed. *Id.* at 153. The African-American troops thereupon returned to Pine Bluff. *Id.*

130. Dillard, *Black Moses*, *supra* note 75, at 76 (commenting that Baxter almost immediately began "to deal amiably with the Democrats and former Confederates").

131. HARRELL, *supra* note 129, at 110.

132. GIBBS, *supra* note 7, at 136. Gibbs notes that, while he was "an ardent advocate for Brooks, I could not follow his supporters." *Id.* at 149. By the time of the election, he was again with Clayton's faction.

133. HARRELL, *supra* note 129, at 116.

134. *Id.* at 140.

135. James H. Atkinson, *The Brooks-Baxter Contest*, 4 ARK. HIST. Q. 124 (1945).

136. GIBBS, *supra* note 7, at 152-55.

137. Fain, *supra* note 83, at 16. *See generally*, GIBBS, *supra* note 7, at 154-56, for a detailed account of these events.

138. Neal, *supra* note 119, at 58.

139. 1870 U.S. Census (scheduling inhabitants of 4th Ward, Little Rock, Pulaski County, Ark., July 29, 1870).

140. Neal, *supra* note 119, at 58.

141. *Id.* at 57. The ARKANSAS GAZETTE, Aug. 22, 1869, stated:

[t]he *Arkansas Freeman* made its appearance on Saturday morning, somewhat in advance of the time promised in its prospectus. Tabbs Gross [a Negro lawyer] is

can Party's treatment of its African-American supporters and pushed for more access for African-Americans to power within the party.<sup>142</sup> In an odd twist, he also supported the restoration of political rights to former Confederates.<sup>143</sup> These articles touched off a battle in white newspapers, with the *Little Rock Daily Republican*, which had initially endorsed the paper, rapidly reversing course and the *Democratic Daily Gazette* supporting Gross, "noting that such a paper would demonstrate the political independence of black Arkansans."<sup>144</sup>

Gross was denounced for his positions by some African-Americans loyal to the Republican Party.<sup>145</sup> However, his goading helped convince Republicans to cede more political power to African-Americans,<sup>146</sup> and despite his criticism of traditional Republicans, Gross was an active member of the Brooks' faction of the party.<sup>147</sup> Ultimately, Gross did not "build a base of support among city blacks" and his paper could not succeed without

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the editor and proprietor. The *Freeman* makes quite a handsome appearance, mechanically, and in the expression of its sentiments does credit to both the head and heart of its conductor. He demonstrates that he understands correctly the true relations which exist between the white and colored people of the country and what is best for the interest of each class of our population. In politics he plants himself upon the *republican* platform but declines to indorse *radicalism* . . . So long as the *Freeman* shall remain true to the programme which its first number has foreshadowed, it will be worthy of success. We commend it to the patronage of all men of all colors.

See Neal, *supra* note 119, at 57 n.1.

142. Tom Dillard, *To the Back of the Elephant: Racial Conflict in the Arkansas Republican Party*, 33 ARK. HIST. Q. 3, 4 (1974) [hereinafter Dillard, *Back of the Elephant*].

143. Neal, *supra* note 119, at 57. Gross' prospectus emphasized "the need for 'peace and harmony' between the races, [and] it called for the removal of political disabilities from former Confederates and other actions advocated by the Arkansas Democratic party." *Id.* at 59. Neal suggests that these sentiments were an exploration of alternatives available to African-Americans, noting "he was willing to use the Democrats and their courting of the black vote as a lever to compel his own party to accord blacks a larger share of elective offices." *Id.* at 63.

144. *Id.* at 58-59. At least one Republican paper published approving words to demonstrate its own independence from the Daily Republican. *Id.* at 59.

145. *Id.* at 58.

146. *Id.* at 60. Democrats began courting the vote of African-Americans in 1872, hoping to capitalize on Republican troubles, when they joined with the Brooks faction during the Brooks-Baxter struggle. HARRELL, *supra* note 129, at 130. On the whole, they were not very successful, although there was enough concern about their votes that when Democrats took control of the state house in 1874, "redeemer" governor Augustus H. Garland welcomed "people of all parties, races and colors . . . to our State." GIBBS, *supra* note 7, at 159.

147. Neal, *supra* note 119, at 60.

party support.<sup>148</sup> The newspaper soon began publishing irregularly and disappeared in 1870.<sup>149</sup> Surprisingly, his gadfly stance did not destroy him politically. He remained a member of the Republican Party, was a delegate to the state conventions in 1876, and “was narrowly defeated for a seat in the state legislature that same year.”<sup>150</sup> His criticisms must have voiced the concerns of a substantial number of African-Americans.<sup>151</sup>

Gross retired from politics after his defeat in 1876 and became a law partner of Mifflin Gibbs for about one year.<sup>152</sup> Gross returned to directory listings in 1877-78 and 1878 as a sole practitioner.<sup>153</sup> He died on January 10, 1880.<sup>154</sup>

Mifflin Gibbs had returned to the regular Republican fold after his brief stint as a “Brindle” during the 1872 elections. He entered into a partnership with Lloyd G. Wheeler.<sup>155</sup> Wheeler brought a thriving practice with him,<sup>156</sup> and the partnership apparently was successful, though short-lived.<sup>157</sup> Very shortly thereafter, Gibbs was appointed attorney for Pulaski County.<sup>158</sup> He served in that role for several months, then resigned when he

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148. *Id.* at 62.

149. *Id.*

150. *Id.* at 63.

151. His “flirting with the Democrats,” is echoed *infra* notes 432-54 and accompanying text, when the “Black-and-Tans” challenge the Republican Party for power. Gross may have been prescient, anticipating the Republican “Lily-White” movement to rid the party of African-Americans.

152. Dillard, *Golden Prospects*, *supra* note 56, at 326.

153. 1877-78 & 1878 LRCDs.

154. *Obituary*, ARKANSAS GAZETTE, Jan. 13, 1880, at 8. *See also* Neal, *supra* note 119, at 57, 63.

155. GIBBS, *supra* note 7, at 128 (describing Wheeler as “a graduate from a law school in Chicago, popular and an able lawyer. . .”).

156. *Id.* Wheeler had been Pulaski county attorney in 1871 and also may have served in that position for Chicot County. EMANCIPATION, *supra* note 2, at 323. He was reported to have appeared in the United States Circuit Court in 1871, *id.*, although no documentation of that fact has been located. Wheeler had been asked to run for state attorney general in 1872, but declined. *Id.* He does not appear to have been extremely politically active. Wheeler had previously been in a firm with attorney A.D. Jones. 1872-73 LRCD. A.D. Jones is counted in this list of 69 lawyers, although it is not known whether he was African-American or white.

157. “With only a handful of black lawyers in Pulaski County, the Wheeler & Gibbs firm had little competition.” Dillard, *Golden Prospects*, *supra* note 56, at 326 (citing WASHINGTON [AR] BEE, July 17, 1915). “Symbolic of Gibbs’s financial aptitude was the fact that his law firm also advertised itself as a real estate agency.” *Id.*

158. GIBBS, *supra* note 7, at 136.



was elected a municipal judge for Little Rock in 1873-74,<sup>159</sup> reportedly becoming “the first colored man ever elected to such a position in the United States.”<sup>160</sup> In 1877, Gibbs was appointed Register of the United States Land Office for the Little Rock District of Arkansas,<sup>161</sup> a position he held until 1886.<sup>162</sup> After a brief practice interlude,<sup>163</sup> Gibbs was named Receiver of Public Moneys at Little Rock, Land District, by President Harrison in 1889,<sup>164</sup> a position he held until 1897 when he was appointed American consul to Madagascar.<sup>165</sup> After he resigned that position in 1901,<sup>166</sup> Gibbs returned to Little Rock, where he continued to be influential in the Republican Party until his death.<sup>167</sup>

Gibbs’ appointment to so many responsible federal positions indicates very strong personal connections with very important people. There are a number of factors that may explain his success. First, Gibbs was an impressive personality. He was both self-educated and wealthy by his own endeavors in a period that extolled such achievements.<sup>168</sup> Having been himself a suc-

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159. *Id.* (noting with satisfaction that “a large majority of [votes] were not of my race.”). While described by Gibbs as a “municipal” judgeship, it is unclear precisely what he meant. Tom W. Dillard described the judgeship as that of “city police judge.” Dillard, *Golden Prospects*, *supra* note 56, at 310. The Arkansas Constitution provides for county judges, justices of the peace, municipal corporation courts, and courts of common pleas. Art. VII, § 1. The state historical record of officers does not list Gibbs as a “county” judge. HISTORICAL REPORT OF THE SECRETARY OF STATE OF ARKANSAS 1998 (State of Arkansas 1998) [hereinafter 1998 HISTORICAL REPORT]. Justices of the peace and municipal corporation courts were given similar, concurrent jurisdiction with municipal corporation courts to be created by the legislature where needed and having the possibility of adding criminal jurisdiction for offenses “not punishable by death or imprisonment in the penitentiary . . . .” ARK. CONST., art. VII §§ 40-43. Most likely, Gibbs was officially a judge of the municipal corporation court.

160. WILLIAM J. SIMMONS, *MEN OF MARK: EMINENT, PROGRESSIVE & RISING* 410 (1970) [hereinafter SIMMONS].

161. GIBBS, *supra* note 7, at 185.

162. 1878, 1880, 1881-82, 1883-84, 1884-85, and 1885-86 LRCDs.

163. 1887 LRCD.

164. GIBBS, *supra* note 7, at 222. “Gibbs was a presidential elector for Harrison in 1888. . . .” Dillard, *Golden Prospects*, *supra* note 56, at 318.

165. GIBBS, *supra* note 7, at 223.

166. Dillard, *Golden Prospects*, *supra* note 56, at 319.

167. *Id.* at 321 (noting that his position as secretary of the state central committee and his “customary selection as one of the four at-large delegates to the Republican national convention meant that a Negro occupied one of the ‘Big Four’ positions in the organization”).

168. Born on April 17, 1823, in Philadelphia, Pennsylvania, the son of free blacks, he had had a full life before arriving in Arkansas. GIBBS, *supra* note 7, at 3. His father, a Methodist minister, died when he was eight, and Gibbs became the sole support of his mother

cess, he was a great believer in Booker T. Washington's economic "uplift" ideas<sup>169</sup> and devoted much of his time to efforts at promoting opportunity for African-Americans.<sup>170</sup> On the other hand, his federal appointments may have resulted as much from the play of national politics as it did from his loyalty to the party. Gibbs played the game of "clientage politics." Clientage politics "involv[ed] a small group of blacks who fashioned 'personalized links with influential whites, becoming clients of the whites for a variety of sociopolitical purposes.' Clayton depended upon Gibbs to keep black delegates in line, an important task since the party in Arkansas relied so heavily upon black votes."<sup>171</sup> Historian Tom Dillard suggests that Gibbs' 1877 appointment was an effort by President Hayes to "pacify black Republicans who were angered at the president's newly devised 'Southern Plan.'"<sup>172</sup>

and three younger siblings. *Id.* at 4. Despite this responsibility, he managed to train, and later practiced, as a carpenter/contractor in Philadelphia. *Id.* at 7. Having little opportunity for formal education, he joined the Philadelphia Library Company, "a literary society of colored men," where he learned about the abolition movement and the fight for freedom. *Id.* at 11. An intelligent man and a good speaker, he became active in the cause. *Id.* at 12. In 1840, he met and heard Cinguez, one of the enslaved Africans from the ship *Amistad* who fought for his freedom in the Pennsylvania courts. *Id.* at 29-30. Gibbs came to the notice of activists like Frederick Douglass, and Gibbs joined Douglass in a speaking tour in western New York state. *Id.* at 32.

In 1850, he decided to go to California [where the Gold Rush was in full swing] to seek his fortune. *Id.* at 37. There, he became wealthy selling boots and shoes, and again became involved in protests against the harsh treatment of Blacks, and in California politics generally. *Id.* at 44-45, 47-48. He founded the first African-American newspaper in Oakland, California. KENNETH G. GOODE, CALIFORNIA'S BLACK PIONEERS 73 (1974).

Gibbs moved his business interests to (what is now) British Columbia, Canada, in 1858, again becoming involved in politics. GIBBS, *supra* note 7, at 59, 85. There, Gibbs began studying "the English Common Law . . . under Mr. Ring, an English barrister." *Id.* at 110. In 1869, he returned to the United States and settled in Oberlin, Ohio, with his family. *Id.* at 108. He "entered the law department of an Oberlin business college, and after graduation proceeded South, [seeing it for] the first time since emancipation." *Id.* at 111.

169. Dillard, *Golden Prospects*, *supra* note 56, at 325 (noting that "Gibbs saw in himself proof that diligence and labor could bring financial security. In turn, financial security would bring political and physical security to the black man, or so Gibbs believed. In essence, then, Gibbs was a firm believer in the black business ethos").

170. See *infra* notes 307-14 & 602-08 and accompanying text.

171. Dillard, *Golden Prospects*, *supra* note 56, at 316.

172. Dillard, *Golden Prospects*, *supra* note 56, at 317. This plan involved strengthening the party against the Democrats by making it "predominantly white in composition and totally white in leadership." *Id.* After Hayes named a former Confederate as postmaster general, African-Americans protested. *Id.* Gibbs' appointment was one of several to a "select group" of leaders. *Id.* Gibbs was reappointed by President Arthur, who was in a similar situation. *Id.* at 318.

Four other African-American attorneys participated in the Republican success in the 1870 and 1872 elections. Charles A. Otley was elected city attorney in Phillips County in 1872.<sup>173</sup> John H. Johnson, who had served in the constitutional convention of 1866, was a delegate to the National Republican Convention in 1872.<sup>174</sup> Johnson was elected to the state legislature in 1873, when he was described as “a bright mulatto and a man of some ability. He may be regarded among the leading colored members. He is a champion of the civil rights bill, and is one of those who would like to thrust himself into white society by that means.”<sup>175</sup> Johnson was appointed to the post of Commissioner of Internal Revenue for the First District of Arkansas around 1885.<sup>176</sup>

William H. Grey followed his legislative service in 1868 with an appointment by Republican Governor Powell Clayton as Clerk of the Circuit Court in Phillips County and Ex-Officio Recorder of Deeds for several counties in 1870.<sup>177</sup> Republican Governor Baxter appointed Grey as Commissioner of Immigration and State Lands for 1872-74.<sup>178</sup> In 1875, he was elected to fill a vacancy in the state senate.<sup>179</sup> Grey was stricken with paralysis and disappeared from statewide politics after his state senate service.<sup>180</sup> In 1876, he was elected Clerk of the Phillips County and Probate Court.<sup>181</sup> Grey died on November 8, 1888.<sup>182</sup>

Richard A. Dawson was elected state senator from Jefferson County to the 19th General Assembly in 1873.<sup>183</sup> He was identified as a Republican and a crony of Powell Clayton, and described as “quite a young man – aged about twenty-five. He is a bright, copper-colored man, low of stature, a good talker,

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173. EMANCIPATION, *supra* note 2, at 323.

174. WILLIAMSON, *supra* note 7, at 63.

175. LITTLE ROCK DAILY GAZETTE, February 1, 1873.

176. WILLIAMSON, *supra* note 7, at 63.

177. *Id.* at 61.

178. *Id.* at 62.

179. 1998 HISTORICAL REPORT, *supra* note 159, at 239.

180. Grey was either stricken on his way to Vienna, Austria, to handle the state's exhibits at the World's Exposition in Vienna, Austria, in 1873, WILLIAMSON, *supra* note 7, at 62, or in September 1878. Dillard, *Phillips County*, *supra* note 9, at 12.

181. Tombstone, Magnolia Cemetery, Helena, Arkansas.

182. *Id.*

183. 1998 HISTORICAL REPORT, *supra* note 159, at 237.

and we believe a lawyer by profession.”<sup>184</sup> As state senator, Dawson was inconspicuous,<sup>185</sup> although the fact of his election indicates good standing with the party and African-American voters. Dawson was clerk of the Jefferson County Court in 1874-76<sup>186</sup> and again represented Jefferson County in the Arkansas Assembly for the 1879 session.<sup>187</sup>

During Baxter’s term as governor in 1872-74, the franchise was restored to most Democrats and they soon began exerting their voting strength.<sup>188</sup> With Baxter’s support, the legislature voted to hold a referendum on a new state constitutional convention in May 1874.<sup>189</sup> The African-American community was mixed in its reaction. Although it seemed fairly likely that a new constitution would not be good for African-Americans, African-American voters could not prevent a constitutional convention even with Republican support. Voting was split between those who wanted to make the best of the situation by electing delegates who would support African-American concerns and those who hoped to prevent the convention from being held at all.<sup>190</sup> William H. Grey “warned Negroes against cooperating with the Democrats in the adoption of a constitution under which they might be disfranchised.”<sup>191</sup>

Despite Grey’s warning, six counties with majority African-American populations passed the measure.<sup>192</sup> In all, voters sent eight African-American representatives to the convention, including two lawyers – J. Pennoyer Jones (Desha County) and

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184. ARKANSAS GAZETTE, February 1, 1873, at 2.

185. He introduced “a bill to allow convicts in the penitentiary a diminution of time on certain conditions.” ARKANSAS GAZETTE, Feb. 1, 1873, at 1, but was not otherwise noteworthy. The bill apparently failed to pass.

186. 1998 HISTORICAL REPORT, *supra* note 159, at 594.

187. *Id.* at 243.

188. Fain, *supra* note 83, at 17-19.

189. *Id.* at 16.

190. *Id.* at 16-18. “On June 13, the *Gazette* [sic, a Democratic newspaper] reported that the Negroes in various counties were breaking away from the Republicans and working with Conservative-Democrats for the purpose of electing delegates.” *Id.* at 17. On the other hand, African-Americans provided most of what opposition there was to the convention. *Id.* at 18 (noting that “[n]early one-half of the opposition votes were cast in Jefferson and Lafayette counties . . .”).

191. *Id.* at 21-22 (quoting Grey as saying “[t]he republican party is the friend of the black man, . . . not the Democracy.”).

192. Fain, *supra* note 83, at 18 n.26.

George Napier Perkins (Pulaski County).<sup>193</sup> Passage of the referendum did not mean concurrence with the idea of change. Even those representing counties in which the measure had passed were suspicious of white motives. “[George N.] Perkins said in no uncertain terms that, ‘the rights we acquired in 1868 we expect to maintain. It is a premeditated plan by this convention to take as many of them away as they can.’”<sup>194</sup>

On July 14, 1874, delegates began meeting.<sup>195</sup> On August 2, African-American suspicions were proved correct when a poll tax voting requirement was suggested.<sup>196</sup> African-American representatives to the convention led a successful amendment to strike the poll tax requirement.<sup>197</sup> The resulting constitution was approved by a 2-to-1 margin overall on October 13.<sup>198</sup> The six counties with an African-American majority voted against it, 9004 to 5144.<sup>199</sup>

J. Pennoyer Jones first came to political notice on his election to the 1874 convention.<sup>200</sup> His activities continued until at least 1895 when he is reported as a leader of African-American battles in the Republican Party.<sup>201</sup> Born in Virginia in 1842,<sup>202</sup> he arrived in Arkansas City (Desha County) early in the 1870s.<sup>203</sup> Jones was already known as a successful businessman when he went into politics.<sup>204</sup> After the convention, Jones was

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193. *Id.* at 18. The other six delegates came from Jefferson (2), Phillips (2), Crittenden (1), and one other from Pulaski. *Id.* at 18 n.27.

194. *Id.* at 19.

195. *Id.*

196. *Id.*

197. Fain, *supra* note 83, at 19. A majority of white delegates also voted against the poll tax, but since the Act that had readmitted Arkansas to the union prohibited any move “to deprive any citizen or class of citizens . . . of the right to vote . . .,” it has been suggested that a fear of negative reaction from Congress impelled that position. *Id.* at 19-20.

198. *Id.* at 23 n.41 (noting 78,697 “for” votes and 24,807 against).

199. *Id.* at 23 (commenting that “[e]very one of these counties except Jefferson had voted ‘for’ convention”).

200. Moneyhon, *supra* note 7, at 234. “Jones’ ties to the white Republicans in Desha County are not clear, but he repeatedly served with Henry Thane, chairman of the local Republican organization during this period, despite occasional conflicts.” *Id.*

201. Dillard, *Golden Prospects*, *supra* note 56, at 320.

202. 1880 U. S. Census (v. 4, e.d. 74, sh. 28, 1.30); Moneyhon, *supra* note 7, at 233. There is no information on whether or not he was born free.

203. Moneyhon, *supra* note 7, at 233.

204. *Id.* (noting that Jones “set himself up in the practice of law and was already considered something of a railroad speculator and developer” when he went into politics).

elected sheriff of Desha County for one two-year term.<sup>205</sup> Thereafter, he served as Desha County clerk for ten years, until 1886.<sup>206</sup> Jones, along with Mifflin Gibbs, “stood out as organizers and leaders” at a state convention of black men in Little Rock in 1883 to discuss the political future of African-Americans.<sup>207</sup> In 1890 he was elected county judge in Desha County, serving one term.<sup>208</sup> In 1895, Jones was a member of the “Black and Tans,” a group of African-American Republicans who, with a few whites, “put up a fierce battle against exclusion from the party.”<sup>209</sup>

Judge George Napier Perkins reputedly was born a slave in 1841 in Tennessee and fought in the Civil War.<sup>210</sup> Thereafter, he moved to Arkansas where, in 1870, he was a Justice of the Peace, a position he held for six years.<sup>211</sup> In 1874, Perkins was elected to the city council of Little Rock and served for four

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205. 1998 HISTORICAL REPORT, *supra* note 159, at 548; Moneyhon, *supra* note 7, at 234.

206. 1998 HISTORICAL REPORT, *supra* note 159, at 548; Dillard, Black Moses, *supra* note 75, at 94 n.72; Moneyhon, *supra* note 7, at 235.

207. Moneyhon, *supra* note 7, at 234. ARKANSAS GAZETTE, Aug. 28, 1883 (regarding a speech Jones made at the convention: “It won’t do to present alone the grievances we have received from the democratic party . . . ; for I believe – *I know* – we have grievances from the republican party. . . . And now we *demand* a portion of the rights which are ours.”).

208. 1998 HISTORICAL REPORT, *supra* note 159, at 548; Gatewood, *supra* note 6, at 301-02; Moneyhon, *supra* note 7, at 235. County court judges held “exclusive original jurisdiction in all matters relating to county taxes, roads, bridges, ferries, paupers, bastardy, vagrants, the apprenticeship of minors, the disbursement of money for county purposes, and in every other case that may be necessary to the internal improvement and local concerns of the respective counties.” ARK. CONST. art. VII, § 28. The county judge worked with justices of the peace to handle county administration, *id.* at § 30, and might hold quarterly courts of common pleas, which were courts of record, “with such jurisdiction in matters of contract and other civil matters not involving title to real estate . . . .” *Id.* at § 32. Appeals from both county courts and courts of common pleas went to the circuit court. *Id.* at § 33.

209. Dillard, *Golden Prospects*, *supra* note 56, at 320 (commenting that “. . . J.P. Jones [was a] young black leader[] who, unlike [other African-Americans of the period], did not hold patronage positions; therefore, [he did not] owe[] political debts to the white leadership of the party.”)

210. 1 WHO’S WHO OF THE COLORED RACE 214 (Frank Lincoln Mather ed., 1915) [hereinafter WHO’S WHO]. The 1870 U. S. Census, 098, confirms the Tennessee birthplace. He served in the U.S. 57th Colored Infantry, Co. C, as a 1st Sergeant. ROSTER OF UNION SOLDIERS 1861-1865, 214 (Janet B. Hewitt ed., 1997).

211. 1870 U.S. Census, 098; WHO’S WHO, *supra* note 210, at 214. See *supra* note 124 for description of the duties of a Justice of the Peace.

years.<sup>212</sup> He represented Arkansas at a National Conference of Colored Men held in Nashville, Tennessee on May 6-9, 1879.<sup>213</sup> He was listed as an attorney until 1890.<sup>214</sup> During the Brooks - Baxter political wars in Arkansas in 1874,<sup>215</sup> George N. Perkins was one of the “‘captains’ in the Brooks militia.”<sup>216</sup>

Both nationally and in Arkansas, the 1876 elections tolled the end of the Reconstruction period. Democrats gained control of the United States House of Representatives, while Republicans continued in control of the Senate. Republican president Rutherford B. Hayes was elected only after a major battle and a compromise that abandoned support for African-Americans in the south.<sup>217</sup> One result of this compromise was the withdrawal of federal troops from southern states, which signaled to many white southerners a diminution of interest – particularly those relating to African-Americans – in southern affairs.<sup>218</sup> Another factor substantiating such a conclusion was a series of decisions by the United States Supreme Court that “drastically curtailed the privileges and immunities recognized as being under federal protection.”<sup>219</sup> A third factor was the United States victory in the Spanish-American war, in which domination was exerted

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212. WHO’S WHO, *supra* note 210, at 214; Gatewood, *supra* note 6, at 302-03 (stating that Perkins was “a powerful figure in Little Rock’s third ward who figured prominently in state Republican circles and served for a time as a city alderman”).

213. National Conference of Colored Men, Nashville, Tennessee, May 6-9, 1879, at 16 [hereinafter Conference].

214. 1885-86, 1887, and 1890 LRCDs.

215. See *supra* notes 129-37 and accompanying text.

216. Dillard, *Golden Prospects*, *supra* note 56, at 312 n.29.

217. That compromise was similar to those on slavery prior to the war:

The South’s price for peace was, for blacks, high indeed. The demand was that the Hayes administration must: (1) remove all remaining federal troops from the South; (2) include at least one Southerner in the cabinet; (3) give conservative Southern Democrats control of part of local patronage; and (4) support generous appropriations for internal improvements, particularly railroads, in the South.

2 EBONY PICTORIAL HISTORY OF BLACK AMERICA 48 (1971) [hereinafter EBONY PICTORIAL HISTORY]. “As in previous crises, whites had found a way to bridge their differences and retain the peace, and again blacks had paid the price.” AMERICAN PROMISE, *supra* note 13, at 639.

218. WOODWARD, *supra* note 3, at 51-52 (citing the compromise as one factor that allowed the rise of forces devoted to extreme racism).

219. *Id.* at 53. This trend began in 1873 with the *Slaughterhouse* cases, 83 U.S. 36, (1872), and culminated in *Plessy v. Ferguson*, 163 U.S. 537 (1896), which created the “separate but equal” doctrine. In between, the court decided *Civil Rights Cases of 1883*, 109 U.S. 3 (1883), which created the distinction between state action, which the Congress could control, and private action, which it could not. 109 U.S. at 26.

over other “colored races” but citizenship denied.<sup>220</sup> This action was justified by arguments that echoed those of southern whites about African-Americans and made it difficult for northerners and the federal government to take a high moral ground with regard to increasingly racist conduct by governments in the southern states.<sup>221</sup>

At the local level, state government effectively was transferred from Republicans to Democrats in Arkansas in 1874.<sup>222</sup> However, despite the political turnover, Democratic control was not secure. Both major parties feared inroads in their membership from various populist third parties that were coming into existence as an agricultural depression impoverished small farmers.<sup>223</sup> To avoid this possibility, Democrats and Republicans reached their own compromise in some counties, whereby the two parties “split” county offices on the ballot.<sup>224</sup> Under this “fusion” system, a few African-Americans would continue to serve in various state offices and in federal appointments over the next twenty years.<sup>225</sup> In addition to the positions held by Gibbs, Jones, Perkins, Dawson, Grey, and Johnson, African-Americans also benefited from the government service of other attorneys.

Attorney S.J. Hollingsworth was Deputy Collector of Internal Revenue in 1883.<sup>226</sup> Daniel Webster Lewis and Samuel H. Scott were elected to the legislature, Lewis from Crittenden County and Scott from Jefferson County in 1883 and 1885, respectively.<sup>227</sup> John Gray Lucas was appointed assistant prosecuting attorney by the Pine Bluff prosecuting attorney “[s]oon

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220. WOODWARD, *supra* note 3, at 54.

221. *Id.* at 54-55.

222. Dillard, Black Moses, *supra* note 75, at 81. By 1874, the Brooks-Baxter political war within the Republican Party had “brought an end to Reconstruction in Arkansas,” Dillard, *Golden Prospects*, *supra* note 56, at 312, and allowed the Democrats an opening.

223. WOODWARD, *supra* note 3, at 58-60.

224. For example, see James W. Leslie, *Ferd Havis: Jefferson County's Black Republican Leader*, 37 ARK. HIST. Q. 240, 245 (Aug. 1978) [hereinafter Leslie]. “The ‘compromise’ or fusion ticket [in Jefferson County] conceded to the Democrats the offices of state senator, one of three representatives in the legislature, county judge, county clerk, county treasurer, county assessor, and half the ‘magistrates,’ or justices of the peace.” *Id.*

225. Graves, *Jim Crow*, *supra* note 12, at 430-32.

226. 1883-84 PBCD.

227. 1998 HISTORICAL REPORT, *supra* note 159, at 246, 248. Lewis was thereafter elected judge of Crittenden county probate court and served until 1888. EMANCIPATION, *supra* note 2, at 325.



after being admitted to the bar . . . .”<sup>228</sup> He was reappointed to that position by the next prosecuting attorney.<sup>229</sup> Lucas thereafter was appointed as United States Commissioner for the Eastern District of Arkansas.<sup>230</sup> Lucas obtained his education in the Pine Bluff, Arkansas, schools,<sup>231</sup> then attended Boston University Law School in Massachusetts, where he obtained his degree in 1887.<sup>232</sup> An active Republican, Lucas served on state, county, and federal central committees, including one for the Eleventh Judicial District.<sup>233</sup>

In 1891, both Lucas and attorney Benjamin Frank Adair (Pulaski) served in the state house of representatives – on opposite sides of the aisle.<sup>234</sup> Adair was unusual for the time; he was a Democrat.<sup>235</sup> Born in Arkansas in 1853, he was identified as a “sawyer” living in Woodruff county in 1880.<sup>236</sup>

Attorney Alexander Burnett was appointed United States Commissioner for the Post Office in the western division of the eastern district of Arkansas about 1894<sup>237</sup> and retained that post until his death in 1929.<sup>238</sup> He was educated at Branch Normal College in Pine Bluff and returned to Pine Bluff after law

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228. Gatewood, *Legislators*, *supra* note 7, at 232 (commenting that Lucas “submit[ed] to a rigid examination,” and did so well that “the board of examiners sa[id] [it] was one of the very best examinations ever passed by a young man at the bar in that county – not missing a question”).

229. *Id.*

In the course of his three years [of] practice, he has handled several very important cases. The case of Jordan Foushee, sentenced to the penitentiary for twenty-one years, is one of the notable and important cases in point of view. The able and brilliant manner in which he handled this case did more, perhaps to win the high reputation of merit, as a lawyer that he enjoys than any other case.

*Id.*

230. *Id.* at 233.

231. *Id.* at 232.

232. *Id.* (noting that Lucas was the only African-American in his class and one of seven graduates who received “honorable mention”).

233. Gatewood, *Legislators*, *supra* note 7, at 233.

234. 1998 HISTORICAL REPORT, *supra* note 159, at 252-53.

235. Gatewood, *Legislators*, *supra* note 7, at 223. Another historian suggests that Adair was sponsored by the Democrats as a defense against “a new coalition of traditional Republican voters and rebellious third-party agrarians” and to sow increasing dissent within the Republican Party. Graves, *Jim Crow*, *supra* note 12, at 431-32.

236. 1880 U. S. Census, vol. 14, e.d. 298, sh. 11, l.33.

237. HENDERSON’S, *supra* note 7.

238. 1929 PBCD where, in the alphabetical section, “Burnett, Laura C” is listed as “(c & wid A L).”

school.<sup>239</sup> Burnett is mentioned as an attorney in Pine Bluff in 1891.<sup>240</sup>

Although not in the high echelons of African-American Republicanism, Julian Talbot Bailey added his voice to the African-American struggle when he began publishing the *Little Rock Sun* in 1885.<sup>241</sup> Bailey was born March 22, 1859, near Barnett, Warren County, Georgia.<sup>242</sup> He moved to Arkansas in 1884 where he combined teaching and newspaper work.<sup>243</sup> As an editor, Bailey was highly independent politically and a strong proponent of civil rights for African-Americans.<sup>244</sup> He was apparently an effective political speaker, as well.<sup>245</sup> Bailey expanded his newspaper work until 1888,<sup>246</sup> then disappeared.<sup>247</sup>

The results of the “fusion” compromise with Democrats were not enough to satisfy some white Republicans. Although African-Americans experienced the successes noted above, they also faced increasing hostility and a lessening of influence in the Republican Party after 1874.<sup>248</sup> Some Republicans, known as the “Lily-Whites,” blamed the loss of control over state government on the party’s support of African-Americans and urged their elimination from the membership.<sup>249</sup> On July 6, 1888,

239. HENDERSON’S, *supra* note 7.

240. Gatewood, *supra* note 6, at 305.

241. I. GARLAND PENN, *THE AMERICAN NEGRO: HIS HISTORY AND LITERATURE* 244 (Arno Press and the NYT, 1969) (noting “[t]he *Sun* began publication in 1885, an independent paper, with Prof. Bailey as editor”) [hereinafter PENN]. Bailey, along with Tabbs Gross, was among a number of African-American publishers active in Arkansas from 1869 to 1941. SURVEY, *supra* note 49, at 26-27.

242. Goodspeed of Central Arkansas, *supra* note 7, at 795.

243. *Id.*

244. PENN, *supra* note 241, at 244 (quoting one publication that commented that “[the *Sun*] is noted for its out-spoken sentiments in advocacy of the rights of the race”).

245. Goodspeed of Central Arkansas, *supra* note 7, at 796 (stating “[a]s a speaker he is pleasing, interesting and eloquent. He is a man of strong convictions, tender sympathies, great firmness and decision of purpose, with high personal character. He possesses severe earnestness, pluck, manly courage, aims high, is ambitious and far-reaching, with great self-reliance and self respect.” The latter three sentences are an unattributed quote from an article in *The New York Freeman*, according to PENN, *supra* note 241).

246. PENN, *supra* note 241, at 244 (noting that “[s]ince September 1st, 1888, Prof. Bailey has published two other papers, *The Hot Springs Sun* and *The Texarcana Sun*, (Texas,) three separate and distinct papers, the combined weekly ‘bona fide’ circulation of which is over six thousand”).

247. Bailey last appears in the 1888-89 LRCD.

248. Fain, *supra* note 83, at 33.

249. *Id.* Internal dissension between the “regular” party members and those called the “Lily-Whites” reached a climax at the Republican state convention meeting in April 1888,

“white Republicans of Pulaski County met in Little Rock and formed a Harrison-Morton Club. Negroes were excluded from membership . . . .”<sup>250</sup> “Thomas P. Johnson, an attorney, told a reporter that: ‘They don’t want any colored men in the club; none of the colored men ought to want to belong to it. I don’t, I’m sure.’”<sup>251</sup> Mifflin Gibbs attempted, but was unable, to mediate a satisfactory resolution between the white Republicans and angry African-Americans.<sup>252</sup>

African-American adherence to the Republicans during this period was not absolute. Not only did they fight within the party for more equal status, but some flirted with membership in a number of the political third parties that developed between 1874 and 1891.<sup>253</sup> However, nothing hindered the Democrats’ success at accommodating their rhetoric to the increasing racism of rural whites and using racebaiting tactics to create fear of African-Americans and improve their membership numbers.<sup>254</sup> Democratic state control became virtually complete with the 1890 election. No longer concerned about negative African-American reactions, Democrats began to carry through on anti-African-American campaign promises. The first issue was a “separate car” bill that proposed segregating railway coaches.<sup>255</sup> The few African-Americans still in the legislature and many more in Little Rock mobilized to oppose the bill after it was introduced.

Representative John Gray Lucas, especially, was instrumental in legislative opposition to the separate coach bill in

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after a battle for the temporary chairmanship pitted a white Republican against an African-American. John Williams Graves, *the Arkansas Negro & Segregation 1890-1903*, 70-71 (1967) (unpublished M.A. thesis, University of Arkansas) (on file with the University of Arkansas Library) [hereinafter Graves, Thesis]. Political expedience, and perhaps something more, was gaining headway on Powell Clayton’s Black-and-white policy.

250. *Id.* at 34.

251. *Id.*

252. Dillard, *Golden Prospects*, *supra* note 56, at 320-21.

253. Graves, *Jim Crow*, *supra* note 12 (noting that Populists had added planks to their position that favored equal rights for African-Americans). One African-American legislator in 1879 was self-identified as a supporter of the Greenback party. Fain, *supra* note 83, at 28 n.59. There is no evidence that African-American attorneys joined in this activity. They appear to have remained outwardly loyal to the Republicans, however much they may have fought with them internally.

254. Graves, *Jim Crow*, *supra* note 12, at 436; Moneyhon, *supra* note 7, at 240-41; J. Morgan Kousser, *A Black Protest in the “Era of Accommodation:” Documents*, 34 *ARK. HIST. Q.* 149, 152 (Summer 1975) [hereinafter Kousser].

255. Graves, *Jim Crow*, *supra* note 12, at 437; Kousser, *supra* note 254, at 152.

1891.<sup>256</sup> He was selected by the Republican Party, despite his youth, to give the major speech against that bill.<sup>257</sup> He “chided the Democracy for deserting the ideals of their party’s founder, Thomas Jefferson, and demanded that white America make good on its promises of equality.”<sup>258</sup> “[He] noted pointedly, ‘[w]e are opposed to the measure because it seeks to pander, not to the convenience of the people, but to gratify and keep alive a prejudice among our citizens, fast becoming extinct.’”<sup>259</sup>

Outside the legislature, African-American attorneys were instrumental in mass meetings held in Little Rock to protest the coach bill. The first meeting gathered about 600 people and was held at the First Baptist Church in Little Rock.<sup>260</sup> The meeting resulted in a set of resolutions opposing the bill, to be presented to the legislature and publicized in newspapers.<sup>261</sup> J. Gray Lucas was a member of the committee that drafted them,<sup>262</sup> and G.N. Perkins was one of the signatories.<sup>263</sup> A second protest meeting took place in the Representatives’ Hall of the Legislature and had about 400 in attendance.<sup>264</sup> Perkins was chair of the second meeting.<sup>265</sup> J.A. Hibbler and Scipio A. Jones also were in attendance.<sup>266</sup>

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256. Gatewood, *Legislators*, *supra* note 7, at 222.

257. *Id.* at 224.

258. Kousser, *supra* note 254, at 153.

259. Graves, *Jim Crow*, *supra* note 12, at 437; also quoted in Kousser, *supra* note 254, at 169-78. Given the evidence to the contrary, it is not clear why Lucas declared that prejudice against African-Americans was “becoming extinct.” Perhaps it was wishful thinking. Another legislator attempted to use sarcasm to make his point: J.N. Donohoo “urged white members to pass not only the Tillman bill but other such bills as quickly as possible so that blacks would realize there were ‘two races in Arkansas that had nothing in common with each other.’” Moneyhon, *supra* note 7, at 243.

260. John William Graves, *The Arkansas Separate Coach Law of 1891*, 7 J. OF THE W. 531, 536 (1968) [hereinafter Graves, *Separate Coach Law*].

261. Kousser, *supra* note 254, at 157-59 (noting that they appeared in the *Arkansas Gazette* of January 20, 1891).

262. Gatewood, *supra* note 6, at 302-03.

263. *Id.*

264. Kousser, *supra* note 254, at 160.

265. JOHN WILLIAM GRAVES, TOWN AND COUNTRY, RACE RELATIONS IN AN URBAN-RURAL CONTEXT, ARKANSAS, 1865-1905, 154 (1990) [hereinafter GRAVES, TOWN & COUNTRY].

266. EMANCIPATION, *supra* note 2, at 325.

Despite these efforts, the separate coach bill was passed by an overwhelming vote.<sup>267</sup> All but one of twelve African-American legislators voted against it.<sup>268</sup> That led to frustration on the part of Lucas. Before the final vote on the coach bill was entered, an amendment to extend its effect to city streetcars was proposed and Lucas supported it, saying “he knew the (coach) bill would pass, and hoped it would be so amended . . . [as] he did not want to associate with white people any more than they desired to associate with him.”<sup>269</sup> Possibly as a consequence of this defeat for African-Americans, Lucas left the state soon thereafter, moving to Chicago where “he established a lucrative law practice which included white as well as black clients. . . . By the early twentieth century the Negro press was referring to him as a ‘black millionaire.’”<sup>270</sup>

A second campaign promise met by Democrats was a revision of election laws to prevent the election fraud that had been rampant since the Civil War.<sup>271</sup> The new law passed on March 4, 1891,<sup>272</sup> and contained provisions that might, with honest application, have improved the rights of the African-American minority.<sup>273</sup> Unfortunately, the law was used to centralize control

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267. Moneyhon, *supra* note 7, at 243 (noting that “[i]n the house only two whites voted with the black members against the bill and in the senate only one voted with Senator Bell (African-American)”).

268. Graves, *Jim Crow*, *supra* note 12, at 437.

269. Graves, *Separate Coach Law*, *supra* note 260, at 540 (quoting the ARKANSAS GAZETTE, Feb. 14, 1891). Lucas’ sarcasm went further:

he would also be in favor of having streets and sidewalks limited by some line so that the colored people could go on one side and the white people on the other. He would like to see an end put to all intercourse between white and colored people by day, and especially by night.

ARKANSAS GAZETTE, Feb. 14, 1891, at 6.

270. Gatewood, *Legislators*, *supra* note 7, at 224. In 1900, Lucas was noted as President of The Choral Study Club in Chicago. MAUD CUNEY-HARE, NEGRO MUSICIANS AND THEIR MUSIC 243 (1936).

271. John William Graves, *Negro Disfranchisement in Arkansas*, 26 ARK. HIST. Q. 199, 209-10 (Autumn 1967) [hereinafter Graves, *Negro Disfranchisement*]. There had been very public scandals involving election fraud by both Democrats and Republicans and the election platforms of all three parties in 1890 had included election reform planks.

272. Fain, *supra* note 83, at 39.

273. Graves, Thesis, *supra* note 249, at 92.

The law [took] election supervision out of the hands of the county judges, prohibit[ed] last-minute transfers in the location of polling places, and provid[ed] for voting booths and standard, uniform ballots. One section even attempted to prohibit racial discrimination by specifying that Negroes and whites should be admitted alternately to the polling places in all precincts where more than a hun-

“of the election machinery exclusively in the hands of the Democratic party.”<sup>274</sup> Although the law provided for representation from minority parties on local election commissions, Democrats ignored that aspect almost entirely.<sup>275</sup> The law included special provisions for voting by illiterates, so that only precinct judges could mark ballots for illiterates.<sup>276</sup> While this could eliminate the practice of third parties controlling the actual voting of an ignorant citizen, the procedure established was not only embarrassing to those individuals, it was so time-consuming that many were denied any right to vote at all.<sup>277</sup> There is no indication that African-Americans objected to this law as they did to the coach law, either because they believed that it would reduce fraud by Democrats or that they could not prevent it. Passage of the new law would have a significant effect on their voting strength in the 1892 election and would serve to usher in a new generation of lawyers and civil rights tactics.

### B. The Practice of Law and Civil Rights

As noted earlier, there is little evidence of legal work performed by any African-American attorneys during this period.<sup>278</sup> For those attorneys who gained fame as politicians, there is little evidence that the practice of law played a large role in their careers. Some men were recognized by the legal community to some extent, e.g., newspapers in 1888 referred to Mifflin Gibbs’ attendance at meetings of the bar association.<sup>279</sup> In 1898, one publication listed Gibbs, G.N. Perkins, C.T. Lindsay,

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dred votes had been cast in the last preceding election.

*Id.*

274. Fain, *supra* note 83, at 210.

275. *Id.* at 211.

276. *Id.* At the time, about 26.6% of the population (93,090 whites and 116,665 African-Americans) could not read or write. *Id.* at 211. This was about 53% of the African-American population. Moneyhon, *supra* note 7, at 226. The fact that the law worked to reduce African-American voting was celebrated, while its effect on white illiterates was rarely mentioned. Graves, *Negro Disfranchisement*, *supra* note 271, at 212-13.

277. Graves, *Negro Disfranchisement*, *supra* note 271, at 211-12 (stating that in practice, someone who needed help now had to ask two precinct judges for help, “who would then order all other electors to vacate the polling place” while they did so.).

278. See *supra* notes 56-70 and accompanying text.

279. Graves, *Jim Crow*, *supra* note 12, at 429.

and Thomas P. Johnson as “colored members” of the Little Rock bar.<sup>280</sup>

Although no published opinions involving the firm of Wheeler & Gibbs have been discovered, it was the source of the only conviction under the Civil Rights Act of 1873. On June 2, 1873, Wheeler & Gibbs represented Richard A. Dawson (then a member of the state legislature), James R. Roland, W. Hines Furbush (another state legislator), and S.Y. Wheeler, all African-Americans, against a Little Rock barkeeper for violating the 1873 Civil Rights Bill in refusing to serve them.<sup>281</sup> “In something of a landmark case, nearly one hundred years before the Civil Rights Bill of 1964, the black law partners prosecuted the barkeeper who was assessed fines and court costs of \$46.80.”<sup>282</sup> There was no appeal by the defendant, so we know of this case only through newspaper accounts. The law was repealed in 1907.<sup>283</sup> Lloyd Wheeler left Arkansas in 1879 to operate a business in Chicago.<sup>284</sup>

There is no evidence that Gibbs spent much energy on legal work, although he described the trepidation of the neophyte attorney handling his first case with some personal feeling in his autobiography.<sup>285</sup> Gibbs also discussed the importance of judges adhering to the law rather than to any individual’s favor, noting that while he was a city judge he had fined himself for assaulting another member of the court after an argument about proper procedures and, on another occasion, had ignored suggestions that he dismiss the prosecution’s case against an influential citizen.<sup>286</sup> Gibbs was sitting as a judge during the Brooks-

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280. Goodspeed of Central Arkansas, *supra* note 7, at 379. It is not clear that they were members of a bar *association*, but that may be the case.

281. Dillard, *Golden Prospects*, *supra* note 56, at 323 (trial documents reprinted in 5 PULASKI COUNTY HIST. REV. 47-48 (Sept. 1957)).

282. *Id.* at 323.

283. 1907 Ark. Acts 728; Graves, *Jim Crow*, *supra* note 12, at 425.

284. PROGRESS OF A RACE, *supra* note 50, at 571 (stating that the business came from his wife’s deceased uncle). Corroboration comes from Mifflin Gibbs, who mentions L.G. Wheeler as a speaker on “Merchant Tailoring” during a meeting of Booker T. Washington’s National Negro Business Men’s League in Chicago in August 1901. GIBBS, *supra* note 7, at 325.

285. GIBBS, *supra* note 7, at 128-29 and 131. As noted earlier, *see supra* notes 61-62 and accompanying text, Gibbs felt that conditions made it very difficult for an African-American attorney to succeed in the practice of law.

286. GIBBS, *supra* note 7, at 138-39.

Baxter conflict.<sup>287</sup> In that role, he signed a search warrant authorizing the state militia to intercept a duplicate of the state seal en route to Baxter (who ultimately won the office of governor), while factions of the Republican Party were still contesting his election.<sup>288</sup> Since Gibbs was aligned politically with the Republican forces opposing Baxter's election at the time, Gibbs' warrant authorization probably would be a conflict of interest under today's rules for judicial conduct. At that time, however, politics was not limited to the executive and legislative branches.

Newspaper editor Julian Talbot Bailey is said by one historian to have "actively engaged in . . . a large and growing practice . . ." although there is no other evidence supporting the statement.<sup>289</sup> J. Gray Lucas, in his two terms as prosecuting attorney for Jefferson County, and Charles A. Otley, as city attorney for Phillips County in 1872, would have represented their respective counties in court and are the only lawyers in this group who were in official positions that would have required the application of legal skills, but no appellate opinions bearing either name as attorney of record have been discovered.

One may assume that the majority of African-American attorneys admitted to the bar during this period did practice law to some extent. The style of practice in frontier states would have required them to travel to different courts.<sup>290</sup> Many lawyers, both African-American and white, supplemented income from legal work with other employment, e.g., farming or business.<sup>291</sup> Given the times, these lesser-known attorneys were probably Republican voters, but they did not leave their mark on the political or legal history of the times. Most likely they toiled on behalf of ordinary clients in offices and the lower courts, as did most white attorneys. Few facts beyond their existence in practice have been uncovered about most of them.

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287. See *supra* notes 129-37 and accompanying text for a brief description of that conflict.

288. GIBBS, *supra* note 7, at 154-55.

289. Goodspeed of Central Arkansas, *supra* note 7, at 795 (providing no particulars of the practice).

290. Mollison, *supra* note 27, at 53 (describing Mississippi practice during this period) and STEVENS, *supra* note 17, at 22.

291. For example, Tabbs Gross and Julian Bailey operated newspapers, see *supra* notes 141, 241, and Thomas Johnson was a clergyman. See *supra* note 102 and accompanying text.



Wathal G. Wynn was killed in a racial incident that December, shortly after his arrival.<sup>292</sup> Abraham W. Shadd, although admitted to practice in Chicot County, Arkansas, was not properly an Arkansas resident and became a well-known politician in Mississippi.<sup>293</sup> In the 1880 census, Daniel Webster Lewis is reported to be twenty-eight years old, born in Kentucky, and both a Justice of the Peace and a merchant.<sup>294</sup> If the information about his admission is accurate, Lewis would have been twenty-one years of age when admitted to practice. Attorneys K. Gibbs, John E. Patterson, W.R. Anthony, and J.F. Ford did not make news in any respect. The first Arkansas native in this group, Lewis Jenks Brown, was born in Little Rock in 1855<sup>295</sup> and would become active in the second period. John A. Robinson began a shared practice with Scipio A. Jones immediately after admission in 1899.<sup>296</sup>

A few of the lawyers achieved long and relatively quiet legal practices. Alexander L. Burnett, as noted earlier, was a Post Office Commissioner between 1894 and 1929.<sup>297</sup> Japheth F. Jones appeared regularly in city directories until 1936.<sup>298</sup> Nelson H. Nichols began working for J. Pennoyer Jones in 1879, when Jones was clerk and ex-officio recorder for Desha County.<sup>299</sup> Pennoyer Jones encouraged Nichols to study law and acted as his mentor both while Jones remained in his clerk's position and after Jones was elected a county judge in 1890-92.<sup>300</sup> This is the first instance discovered of mentoring by an African-American attorney of an African-American in Arkansas.

Scipio Jones had little impact on the profession in the two years immediately following his admission, although he did par-

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292. Wynn settled in Lake Village, Chicot County, and was murdered by John M. Sanders (with aid of two other white men) after an argument about a "proposition to subscribe \$100,000 to each of the two railroads – the L.R.P.B. and N.O. road and the M.O. & R.R. road." ARKANSAS GAZETTE, Dec. 21, 1871, at 2.

293. Mollison, *supra* note 27, at 62.

294. 1880 Census Report, vol. 4, e.d. 58, sh. 42, 1.9. See *supra* note 124 for description of the duties of a justice of the peace.

295. WHO'S WHO, *supra* note 210, at 43-44.

296. Dillard, *Scipio A. Jones*, *supra* note 6, at 204; 1895-96 LRCD.

297. See *supra* notes 237-38 and accompanying text; 1903-1929 PBCDs; 1900 Census Report, vol. 19, e.d. 105, sh. 12, 1.10.

298. 1910, 1913, 1917-18, 1920-21, 1922-23, 1925-26, 1927, 1929, 1931, and 1936 PBCDs.

299. WOODS, *supra* note 48, at 54-55.

300. *Id.* at 55.

ticipate in the 1891 protests against the separate coach bill. He would become a leader of African-American attorneys in the second and third periods.<sup>301</sup>

### C. Civil Rights Through Civic Action

Politics and officeholding were not the only way African-American attorneys in Arkansas acted on their own behalf and for others in the community. They participated in a number of national initiatives that were communicated through the press and statewide or regional conventions. These included an “exodus movement” of African-Americans around 1879-80 and efforts to create an economic base in their communities through business development.

The Democratic Party’s revival across the south after 1874 made life so precarious in most southern states that “Negroes were urged by certain of their leaders to migrate from the South and take up homesteads on the public lands in Kansas and elsewhere.”<sup>302</sup> In Arkansas, too, there was interest in searching for a better life. Two conventions at which the idea of African-Americans removing to western lands and territories was discussed were held in Little Rock and Texarkana in 1879.<sup>303</sup> A third convention in Nashville, Tennessee, in 1879, included George N. Perkins. He was a member of the convention’s Migration Committee that recommended an investigation of and report on the western lands to which African-Americans were migrating.<sup>304</sup> Mifflin Gibbs was named to participate in the in-

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301. See *infra* notes 396-400 and accompanying text for personal details of Jones’ life and, generally, Parts II and III, for his political, professional, and other activities.

302. Fain, *supra* note 83, at 25-26. Although Arkansas had instituted minimal segregation requirements before 1891, at least in its larger towns, Graves, *Jim Crow*, *supra* note 12, at 424-25, it had not escaped entirely the results of racism. See *supra* note 78 and accompanying text.

303. Fain, *supra* note 83, at 26. One convention met in Little Rock on April 12, 1879. *Id.* Another was held on July 4, 1879, in Texarkana, Arkansas. *Id.*

304. Conference, *supra* note 213, at 16. In his own way, Perkins provided some homeland for African-Americans in Arkansas. In 1881, he founded the town of Woodson on property he owned in Saline county. FRANKLIN, *supra* note 44, at 50-51. See *Pyburn v. Campbell*, 158 Ark. 321, 250 S.W. 15 (1923) (involving an action to quiet title to real property in the town and referring to “G. N. Perkins and other citizens” who petitioned for its incorporation). Perkins originally owned the property on which the town was built. *Id.*

vestigation by United States Senator William Windon.<sup>305</sup> Another outcome of the 1879 Nashville convention was an effort to create an “American Protective Society to Prevent Injustice to the Colored People” to which George Perkins was named as representative from Arkansas.<sup>306</sup>

Gibbs was active in promoting economic progress within Arkansas, as well. As Register of the Little Rock Land Office between 1877 and 1886, Gibbs advertised the availability of land to African-American communities and spoke at conferences urging them to acquire land and prosper.<sup>307</sup> While he was Receiver of Public Moneys at Little Rock in 1889, Gibbs was appointed Special Commissioner to “conduct the sale of unsold lots on the Hot Springs Reservation at auction” and “contributed in inducing thousands of immigrants and others to homestead the virgin soil of Arkansas, who have now good homes, comprising 40, 80 or 160 acres of land, besides assisting them in establishing schools for their children.”<sup>308</sup> He also devoted much energy to African-American education, working to create “industrial” schools that would train African-Americans in business skills.<sup>309</sup> He and others across the country promoted an unsuccessful call for a national conference on trade schools for blacks.<sup>310</sup> Gibbs was, “[f]or a time in the 1880’s [sic]. . . a member of the Board of Visitors of the Little Rock school system.”<sup>311</sup> “He was well aware that . . . a nationwide battle must be waged through national organizations” and participated in a number of African-American national conventions and protest meetings.<sup>312</sup>

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305. GIBBS, *supra* note 7, at 180-82. They visited western lands and territories to see if they might provide a place for African-American land-ownership. *Id.* (stating they were to “visit Western States and Territories and report . . . upon the health, climate, and productions of said States and Territories . . .” as appropriate for the immigration of African-Americans out of the South).

306. Conference, *supra* note 213, at 67. Perkins was registered as residing in Campbell, Arkansas.

307. Dillard, *Golden Prospects*, *supra* note 56, at 325.

308. GIBBS, *supra* note 7, at 222.

309. Dillard, *Golden Prospects*, *supra* note 56, at 330-31. “Gibbs was a firm believer in the black business ethos.” *Id.* at 325.

310. GIBBS, *supra* note 7, at 202-04.

311. Dillard, *Black Moses*, *supra* note 75, at 111.

312. Dillard, *Golden Prospects*, *supra* note 56, at 324.

Gibbs worked to make the products created by African-Americans more widely known. He was named an Honorary Commissioner for Arkansas to promote the state's goods at the 1885 Louisiana World's Exposition.<sup>313</sup> Gibbs welcomed "the great opportunity offered to show our progress in industry and culture, on the fields of nature or within the realms of art" to the white community and to "stimulate race pride for greater achievements."<sup>314</sup>

Several of the African-American lawyer-politicians joined in efforts to aid others in obtaining equal rights and fair treatment. In 1883, African-American men held a state political convention "to discuss the situation for blacks in the state and to try to devise a course of action to alleviate what they considered to be a worsening situation."<sup>315</sup> At this meeting, Gibbs bitterly indicted the lack of due process legal safeguards for his race.<sup>316</sup> The convention passed a resolution proposed by Gibbs protesting violence against African-Americans.<sup>317</sup> Gibbs also "called for the enactment of protective labor laws to aid the black farmer caught up in the stranglehold of tenancy."<sup>318</sup> That same year, Gibbs was also at the forefront in attempts to provide legal protection to others. He and others were active in raising funds for the defense of three men convicted of first-degree murder in Howard County after a riot that left one white dead and thirty-three African-Americans in custody.<sup>319</sup> These efforts were suc-

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313. GIBBS, *supra* note 7, at 196. One day of the Exposition was devoted to the work of "Colored-People's Day." *Id.* at 198.

314. *Id.* at 197.

315. Moneyhon, *supra* note 7, at 235.

316. Dillard, *Golden Prospects*, *supra* note 56, at 323.

317. GIBBS, *supra* note 7, at 175-76 (stating:

Be it resolved, [t]hat this convention of colored men of the state of Arkansas have still to complain that violence and injustice to their race still exists to an alarming extent. In most cases the perpetrators go unwhipped of justice. That when they are arraigned the law is administered with such laxity and partiality that the escape of the criminal is both easy and possible. In no instance is the penalty of the law enforced against a white man for the murder of a Negro, however palpable the case may be; whilst in most instances the bare accusation of a Negro committing a homicide upon a white man is sufficient for law, with all its forms, to be ruthlessly set aside and the doctrine of lynch, swift and certain to be enforced.")

318. Dillard, *Golden Prospects*, *supra* note 56, at 323.

319. *Id.* at 323-24 (describing "[a] 'State Executive Committee' was formed with Gibbs as chairman to 'leave no stone unturned to secure executive clemency for the unfortunate Howard County convicts'").

cessful in having the sentences of two men reduced, although the third was hanged.<sup>320</sup> It was a sign of the times in African-American law practices that this group obtained white counsel to represent the defendants.<sup>321</sup>

Passage of the separate coach and voting laws in 1891 reflected changes occurring throughout the south and discouraged many African-Americans about their prospects in Arkansas. One of them was George Perkins who, after visiting the African-American town of Guthrie, Oklahoma, and “after looking over the situation and seeing that his race needed a constant mouth-piece, [] bought a printing press and other equipment and established a weekly newspaper in 1892, which he named the *Oklahoma Guide*.”<sup>322</sup> Perkins served on the Guthrie city council for four years.<sup>323</sup> He also served the town as a justice of the peace who “meted out exact justice to all who came before his court,” and had “colored and white constables work[ing] out of his court. He presided over and tried cases involving subject matters within the jurisdiction of his court without regard to racial origin or class.”<sup>324</sup> As noted, other African-American attorneys left Arkansas or died around this time.<sup>325</sup>

#### D. Summary of Period One

During this first period after the Civil War, African-Americans had embraced and supported the Republican Party against the revival of the Democratic party while they fought furiously within Republican ranks to achieve influence equal to their voting strength.<sup>326</sup> For a short time, they were successful in achieving some measure of power. The inability of the Democrats to consolidate their political control between 1874 and

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320. *Id.*; see also Smith, *supra* note 79, at 53.

321. Dillard, *Golden Prospects*, *supra* note 56, at 323-24.

322. FRANKLIN, *supra* note 44, at 50. The *Guide* “influenced many Negroes from the Deep South to move to Oklahoma, which [Perkins] called ‘God’s Country.’” *Id.* (noting “[h]e carried on a never-ceasing battle against racial prejudice and intolerance; but in all his battles, he was fair and square and had the respect – and often the support – of all the races.”).

323. *Id.*

324. *Id.* at 50-51.

325. See *supra* notes 270, 284 and accompanying text; see *infra* notes 336-40 and accompanying text.

326. See *supra* notes 77-277 and accompanying text.

1890 led to “fusion” politics that provided a number of political positions for African-Americans, including lawyers, into the 1890s.<sup>327</sup> At the same time, a portion of the Republican Party was gradually withdrawing its support of African-Americans after the loss of political dominance to the Democrats.<sup>328</sup>

The year 1891 was a watershed for African-American political expression in Arkansas. At this time, African-Americans comprised 27% of the state’s population.<sup>329</sup> There were 69,572 African-American men over the age of twenty-one who could have voted, as opposed to 188,296 white men,<sup>330</sup> comprising 37% of all voters. The election law passed in 1891 required literacy to fully exercise the vote.<sup>331</sup> Although state law provided for segregated public schooling for African-Americans,<sup>332</sup> and the Freedmens’ Bureau had established schools during its existence,<sup>333</sup> 53% of the African-American population could not read or write in 1890.<sup>334</sup>

The omens for equality that seemed so favorable at the beginning of Reconstruction had all but disappeared by 1891 and, although violence and racist acts against African-Americans continued during this entire period,<sup>335</sup> some portions of the African-American community were beginning to develop an identity. State-supported schools, although segregated, were available to educate many of the younger generation and a middle-class was slowly becoming established. Although African-American voters could not prevail against an increasingly hostile white majority, they were able to develop resources that would aid in withstanding the storms to come. Lawyers were in the midst of this change.

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327. See *supra* notes 224-34 and accompanying text.

328. Dillard, *Back of the Elephant*, *supra* note 142, at 9.

329. 1890 U.S. Census Data (visited Jan. 21, 2000) <<http://fisher.lib.virginia.edu/cgi-local/censusbin/census/cen/pl>> (stating a total population of 1,128,179 with 309,117 African-Americans).

330. *Id.*

331. See *supra* notes 276-77 and accompanying text.

332. Graves, *Jim Crow*, *supra* note 12, at 422.

333. *Id.* (stating that about 26.6% of the total population, “93,090 whites and 116,665 Negroes could neither read nor write”).

334. Moneyhon, *supra* note 7, at 226.

335. See *infra* notes 363-73 and accompanying text.

### III. PERIOD TWO: 1891 AND "JIM CROW" THROUGH THE "ELAINE RACE RIOTS" OF 1919 AND THEIR AFTERMATH

This second period saw a shift of generations and tactics in the African-American legal community in Arkansas. The political system had become less responsive to them. This was probably due primarily to changes in voting requirements, although the political weakness of Republicans in the state and the growing strength of the "Lily-Whites" within the party also were factors that reduced the power of earlier African-American leaders. The departure of several influential African-American leaders, by death or migration, contributed as well. J. Gray Lucas left the state in 1893 and settled in Chicago.<sup>336</sup> George Perkins, as noted above, had already left for Oklahoma. Several had died: Tabbs Gross of tuberculosis on January 10, 1880,<sup>337</sup> John H. Johnson in 1885,<sup>338</sup> and William H. Grey on November 8, 1888.<sup>339</sup> Others merely disappeared from records. For example, nothing is known of Richard A. Dawson after 1876, when the Pine Bluff city directory listed him as clerk of the county court.<sup>340</sup> Of the activist lawyers, only Mifflin Gibbs, Thomas P. Johnson, J. Pennoyer Jones, Julian Talbot Bailey, B.F. Adair, L.J. Brown, R.A. Dawson, J.A. Robinson, S.H. Scott, and Scipio Jones were still practicing, and only four of them would continue their involvement in the larger affairs of this period in Arkansas.<sup>341</sup>

In 1890, African-Americans comprised 27% of Arkansas' total population,<sup>342</sup> slightly more than the 25% they held in 1870.<sup>343</sup> That percentage would remain the same between 1900 and 1920, even though Arkansas' African-American population

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336. See *supra* note 270 and accompanying text.

337. *Obituary*, ARKANSAS GAZETTE, Jan. 13, 1880, at 8; see also Neal, *supra* note 119, at 63.

338. WILLIAMSON, *supra* note 7, at 63.

339. Dillard, *Phillips County*, *supra* note 9, at 12. The date appears on Grey's tombstone in the "old" Magnolia Cemetery in Helena, Arkansas.

340. 1876-77 PBCD. He is not listed in the next available directory, 1883-84.

341. Other lawyers remained active in providing legal services, but were not named in published reports on civil rights issues, e.g., A.L. Burnett, S.J. Hollingsworth, J.F. Jones, C.T. Lindsay, and Nelson H. Nichols.

342. See *supra* note 329 and accompanying text.

343. See *supra* note 16 and accompanying text.

increased from 366,984 to 472,220.<sup>344</sup> It was still a poor population. As of 1900, only one percent of the African-American population in Arkansas was considered middle class.<sup>345</sup>

Somewhat fewer new African-American lawyers practiced law during this period. Twenty-seven attorneys joined those remaining from the first group. It is a bit surprising that almost as many men became lawyers in the second period as in the first. "Jim Crow" brought many changes that might have made law less desirable or accessible. For example, although the formal criteria for admission had not changed, the politics of most of those who administered it had. Instead of Republicans sympathetic to the African-American, new judges were Democrats unlikely to encourage African-American admissions to the bar.<sup>346</sup> Second, Arkansas' white lawyers were a part of a movement in the profession toward tightening the application of admission laws across the country.<sup>347</sup> Third, restrictions on access to public services, begun with the separate coach law, increased, and occupations requiring interaction with the white majority would be more uncomfortable.<sup>348</sup> That they were admitted and, on the

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344. Historical Census Data for 1900 (visited April 9, 2000) <<http://fisher.lib.virginia.edu/cgi-local/censusbin/census/cen.pl>>. In 1920, there were ten counties in which African-Americans constituted the majority: Chicot, Crittenden, Desha, Jefferson, Lee, Lincoln, Monroe, Phillips, St. Francis, and Woodruff. Historical Census Data for 1920 (visited April 9, 2000) <<http://fisher.lib.virginia.edu/cgi-local/censusbin/census/cen/pl>>.

345. Moneyhon, *supra* note 7, at 225 (noting, that 71 percent of working adults were "either farmers or farm laborers" and "[i]n 1900, this middle class included . . . 27 lawyers . . . ." *Id.*

346. On the other hand, sitting judges of the day, if well-respected in the community, may have been difficult to dislodge. The hold-overs might have been responsible for these numbers.

347. Stevens, *supra* note 17, at 92-93. The American Bar Association was created in 1878, and "the raising of the standards of the profession was high on its agenda from the beginning." STEVENS, *supra* note 17, at 27. Arkansas sent four representatives to the meeting at which the American Bar Association was created. EDSON R. SUNDERLAND, HISTORY OF THE AMERICAN BAR ASSOCIATION 10 (1953) [hereinafter SUNDERLAND].

348. WOODSON, *supra* note 51, at 24 (noting "the records of the time show that the Negro had not given any serious consideration to the structure of the social or economic order and to the functioning of the various element which make possible or impossible the opportunity for work in certain spheres"). Most people had not changed their opinion of African-Americans and African-Americans could not hide in the melting-pot as other disadvantaged groups would do. Woodson continued "[a] few Negroes finally realized that they had not even begun to solve their problem when they had professionally equipped themselves." *Id.* at 25.



whole, successful, indicates that they could compete on a par with white lawyers for legal business.

No information on the birthplaces of fifteen of the twenty-seven new lawyers has been located. Of the remaining twelve, four were Arkansas natives.<sup>349</sup> The other eight came from a variety of states.<sup>350</sup> As to their legal education, three are known to have attended law schools,<sup>351</sup> one is known to have apprenticed with another African-American lawyer,<sup>352</sup> and one studied law through a correspondence course.<sup>353</sup> No information was located about the education of the remaining twenty-two. Fifteen of the lawyers are known only through listings in Little Rock

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349. John Robert (J.R.) Booker is listed in SUPREME COURT ENROLLMENT BOOK 1 at p. 20 as admitted in 1919; William E. Gay (1916 LRCD); John A. Hibbler (listed as an attorney in the 1916 LRCD and appearing in SUPREME COURT ENROLLMENT BOOK 1 at p. 126 as admitted in 1919. Hibbler is referred to as an attorney in newspaper reports about internal struggles between Republicans in 1914. See Dillard, Back of the Elephant, *supra* note 142); and Stuart C. Pryce (identified as an attorney in the 1900 Census Report).

350. Robert S. Bowers (admitted, 1907, SUPREME COURT ENROLLMENT BOOK 1 at p. 14, with the notation "Colored") was born in Louisiana (1910 Census Report, #024 0089 0084); Peter Beasley (practicing 1909, HCD) was born in Mississippi (Interview with Ora Beasley Quarles, daughter, Helena, Arkansas (Feb. 10, 2000)); Archie V. Jones (licensed by the circuit court before 1900, 1900-01 LRCD, and admitted to the state supreme court in 1901, SUPREME COURT ENROLLMENT BOOK 1 at p. 144, with the notation "Colored") was born in the District of Columbia (1900 Census Report, vol. 22, e.d. 78, sh. 8, l. 57); Waters McIntosh (listed as an attorney practicing as "Gay and McIntosh" in the 1916 LRCD and admitted to the state supreme court in 1920, SUPREME COURT ENROLLMENT BOOK 1 at p. 210 with the notation "Colored") was born in South Carolina (10 THE AMERICAN SLAVE: THE ARKANSAS NARRATIVES, Parts 5 & 6, 17 (George P. Rawick ed., Greenwood Publ'g Co., 1972) [hereinafter Rawick]); Thomas J. Price (admitted before the state supreme court in 1908, SUPREME COURT ENROLLMENT BOOK 1 at p. 232 with the notation "Colored") was born in Connecticut (WHO'S WHO IN COLORED AMERICA 424, 1938-39-1940 (Thomas Yenser ed., 5th ed. 1940) [hereinafter 1938 WHO'S WHO]); William Augustus Singfield (listed as attorney in the 1912 LRCD and admitted to state supreme court in 1916, SUPREME COURT ENROLLMENT BOOK 2, with handwritten notation "Col.") was born in Georgia (WOODS, *supra* note 48, at 101); Neely W. Shelton (listed as attorney in 1903 PBCD under "lawyers") was born in Mississippi (1910 Census Report, #032 0121 0063); and Andrew W. Spears (admitted to state supreme court in 1906, SUPREME COURT ENROLLMENT BOOK 2 with the notation "Colored") was born in Florida (1910 Census Report, # 032 0121 0043).

351. John Robert Booker received an LL.B. from Northwestern University in 1917, WHO'S WHO IN COLORED AMERICA 41 (Supp. 1950) [hereinafter 1950 WHO'S WHO]; Thomas J. Price obtained his LL.B. from Howard University in 1906, 1938 WHO'S WHO, *supra* note 350; and Neely W. Shelton attended a law course at the University of West Tennessee, HENDERSON'S, *supra* note 7.

352. Stuart C. Pryce, with G.N. Perkins in Oklahoma. HENDERSON'S, *supra* note 7.

353. Waters McIntosh, with the "American Correspondence Course in Law." Rawick, *supra* note 350, at 23.

city directories for periods of one to four years, or through their enrollment as attorneys by the state supreme court.<sup>354</sup> It is likely that they could not make a living in the city, so they either moved to other places where prospects were better or simply left the practice of law.<sup>355</sup> Most of the remaining twelve, although long-time and stable practitioners, did not build public reputations as civil rights activists. Segregation would require this next group of attorneys to handle more adverse conditions and be expected to surmount higher barriers than those lawyers admitted before 1891. It would not be a time for men of weak character.

With the separate coach law of 1891, Arkansas joined a southern trend to establish laws and policies that would almost completely segregate the lives of whites and African-Americans by 1920.<sup>356</sup> Some segregation had already existed, both formally<sup>357</sup> and in practice.<sup>358</sup> African-Americans themselves had created their own segregated churches soon after emancipa-

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354. Henry Avant (1917, 1920, 1923-24 HCD); Walter F. Clark (1916 LRCD); Winfield F. Clark (1917 LRCD); Edward D. Dobbins is listed as practicing in Fort Smith, Arkansas, in 1920 (EMANCIPATION, *supra* note 2, at 327); Oscar M. Farrington (1908-1912 LRCD); J. Early Green (1916-1920 LRCD); George H. Greene (1910-1912 LRCD); M.W. Guy (1915 LRCD); John A. Hiller (Dillard, *Scipio A. Jones*, *supra* note 6, at n.173); A. Jackson (1920 LRCD); Jno D. Page was admitted to the supreme court in 1908 (SUPREME COURT ENROLLMENT BOOK 1 p. 232, with the handwritten notation "Colored"), after having been a Justice of the Peace in Hot Springs in 1884 (1884-85 LRCD); W. E. Parker (1908 LRCD); J. D. Royce (practicing 1895, EMANCIPATION, *supra* note 2, at 327); and William L. Scott (1920, 1923-24 HCD). A W.F. Clark was reported to be a member of the Jackson County (Missouri) Bar Association in 1930, and may indicate the destination of one of the attorneys on this list. EMANCIPATION, *supra* note 2, at 609.

355. WOODSON, *supra* note 51, at 197 (commenting on the frequent relocations among African-American attorneys).

356. See generally WOODWARD, *supra* note 3.

357. The legislature of 1868 adopted a law to provide segregated public schools for African-Americans. See *supra* note 117 and accompanying text; Graves, *Jim Crow*, *supra* note 12, at 422. This was an advance over the 1866 legislature, which had refused to allow African-Americans to attend the common school system it created, although it also exempted them from paying school taxes. *Id.* Despite the fact that Republican power was at its high point in the state and that eight African-American served in the house of representatives, opposition to the 1868 law was minimal. *Id.* at 423 (noting that the measure passed unanimously in the senate and by a vote of 37 to 19 in the house). Graves also notes that by 1877 some African-Americans "had acquiesced in separation to the degree that they were requesting that only black teachers be employed in black schools." *Id.*

358. Graves, *Jim Crow*, *supra* note 12, at 423 (citing admissions to the Arkansas School for the Blind, the Arkansas Deaf Mute Institute, and the state mental hospital).

tion.<sup>359</sup> The two civil rights acts passed in 1868 and 1873 apparently had little effect and less enforcement.<sup>360</sup> Reports of the day indicate that joint use of public facilities was common before 1891, at least in Little Rock.<sup>361</sup> As one historian noted, “[w]idespread and pervasive racial discrimination continued, yet Arkansas blacks had managed to avoid a system of either total exclusion or total separation in public facilities . . . . [T]he opportunity for mobility and advancement remained.”<sup>362</sup>

The physical violence against African-Americans did not abate during this second period. In fact, it worsened.<sup>363</sup> Between 1891 and 1918, there were almost 2437 lynchings of African-Americans in the United States, 165 of them in Arkansas.<sup>364</sup> Much of the justification given for this and other violence was the failure of African-Americans “to show proper respect to a white man.”<sup>365</sup> A “Report from Arkansas, 1892,” originally published in the *Christian Recorder* (Philadelphia) of March 24, 1892, stated:

There is much uneasiness and unrest all over this State among our people, owing to the fact that the people (our

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359. *Id.* at 424.

360. The first, established in 1868, was considered too weak, so the 1873 law was made more expansive. *Id.* at 424-25. The latter “covered public carriers, hotels, salons, restaurants, and ‘places of public amusement’ and required that owners or proprietors provide all persons ‘the same and equal’ services at equal costs, regardless of race” or be subject to strong penalties. *Id.* See *supra* notes 281-83 and accompanying text for the only known case under the statute.

361. Graves, *Jim Crow*, *supra* note 12, at 426-27.

362. *Id.* at 427.

363. LITWACK, *supra* note 78, at xiv (commenting that the first generation of African-Americans born in freedom, “more questioning of their ‘place’ and less inclined to render absolute deference to whites, encountered (and in a certain sense helped to provoke) the most violent and repressive period in the history of race relations in the United States”).

364. NEGRO YEAR BOOK, AN ANNUAL ENCYCLOPEDIA OF THE NEGRO 1918-1919 at 374 (Monroe N. Work ed., The Negro Year Book Publishing Company, 1918) [hereinafter *Work*]; see LITWACK, *supra* note 78, at 306:

The offenses that precipitated mob violence related less to sex crimes (as sensationalized in the press) than to physical assault and murder (the most common charge), theft, arson, violations of the racial code, economic competition, and disputes over crop settlements. Many of the transgressions by blacks would have been regarded as relatively trivial if committed by whites and were not grounds anywhere else for capital punishment: using disrespectful, insulting, slanderous, boastful, threatening, or ‘incendiary’ language; insubordination, impertinence, impudence, or improper demeanor . . . .

365. RACIAL VIOLENCE IN THE UNITED STATES 23 (Allen D. Grimshaw ed. 1969) [hereinafter *Grimshaw*].

race variety) all over the State are being lynched upon the slightest provocation; some being strung up to telegraph poles, others burnt at the stake and still others being shot like dogs. In the last 30 days there have been not less than eight colored persons lynched in this State.<sup>366</sup>

The Report continues, mentioning a convention of African-Americans in Little Rock “a few days ago” to discuss the drafting of an appeal to the state governor for redress and noting the presence of representatives of “the Negro bar.”<sup>367</sup> In 1898, “whites in Lonoke, Arkansas, tried to expel the town’s black population.”<sup>368</sup> In 1903, thirteen African-Americans, and not a single white, were killed in St. Charles, Arkansas, during what was called a “riot.”<sup>369</sup> The African-American community spoke out in protest numerous times.<sup>370</sup> In 1910, Mifflin Gibbs joined other African-Americans in Washington, D.C., in a national demonstration against the slaughter of more than twenty African-Americans in Anderson County, Texas.<sup>371</sup> A public letter to President Taft by a committee of protesters included Gibbs as a signatory.<sup>372</sup> Perhaps worse than physical violence, however, was “the quiet violence practiced by whites who rigidly controlled [African-Americans’] daily lives.”<sup>373</sup>

Historian John William Graves suggests that public action against African-American rights came partly as a reaction to the public successes of some African-Americans in Arkansas’ cities while the lot of rural whites was worsening.<sup>374</sup> A national depression in farm product prices<sup>375</sup> subjected small white farmers

366. A DOCUMENTARY HISTORY OF THE NEGRO PEOPLE IN THE UNITED STATES 793 (Herbert Aptheker ed., 1969) [hereinafter Aptheker].

367. *Id.* at 793-94.

368. LITWACK, *supra* note 78, at 423.

369. *Id.* at 427-28.

370. *Id.* at 427.

371. Aptheker, *supra* note 366, at 15-19.

372. *Id.* at 15-19 (noting that no action “was taken by either the federal or the state authorities”).

373. LITWACK, *supra* note 78, at 411 (continuing:

[f]rom their personal experiences, most black knews how the landlord, the merchant, the banker, the judge, the sheriff, and the local politicians interacted to make certain the machinery of domination functioned effectively. This kind of violence devastated lives by depriving people of choices, dramatizing how little black men and women could do to make changes in their lives).

374. Graves, *Jim Crow*, *supra* note 12, at 436.

375. AMERICAN PROMISE, *supra* note 13, at 766-67.

to “economic mechanisms” similar to those suffered by African-Americans – “the crop lien, verbal contracts between sharecroppers and landlords, and the convict-lease system.”<sup>376</sup>

While they did not desert politics entirely,<sup>377</sup> African-American lawyers began to use the appellate court system in efforts to obtain justice. For the first time, African-American attorneys appeared as counsel of record in the official reports of state supreme court cases.<sup>378</sup> Most of the appeals involved ordinary disputes between citizens, but several demonstrated significant efforts to obtain equal treatment and civil rights. It was a frustrating business and there would be more defeats than victories. A belief in the ultimate justice of their positions kept a few lawyers active,<sup>379</sup> and they received increasing psychological and financial support from others as the economic position of the African-American community improved in the early 1900s.<sup>380</sup> Though they still primarily served clients of their own race,<sup>381</sup> African-American attorneys were coming into their own as legal professionals. As one African-American attorney stated, “in 1900, ‘the average colored attorney was paying rent and “riding a hobby,” but to-day [1915] . . . they are owning their own homes and in many instances riding to their office in an automobile.”<sup>382</sup>

Another distinction between the first and second groups of attorneys was their cohesiveness. While lawyers in the first period certainly knew and interacted with one another, there is no evidence of efforts to associate in a formal organization. This may not have been seen as necessary, since they were part of the political councils of the day and, at least in Little Rock, attended

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376. Graves, *Jim Crow*, *supra* note 12, at 436.

377. See *infra* notes 401-69 and accompanying text.

378. Two lawyers from the first group – Scipio Africanus Jones and Lewis Jenks Brown – and six from the second – John Robert Booker, Robert S. Bowers, John Arthur Hibbler, Waters McIntosh, Thomas J. Price, and William Augustus Singfield – are represented. See *infra* notes 473-542 and accompanying text.

379. See *infra* notes 473-542 and accompanying text.

380. See *infra* notes 599-621 and accompanying text.

381. Scipio Jones, the most well-known and successful of the group and, as will be shown, with the most contacts with white society, is most likely to have had white clients. However, there is no indication in any of his published cases, or elsewhere, that this was so. A recent newspaper article on Jones stated that it had found no evidence of white clients. *Scipio Africanus Jones*, ARKANSAS DEMOCRAT-GAZETTE, June 8, 1999, at 1E.

382. EMANCIPATION, *supra* note 2, at 554 (quoting Perry Howard, president of the National Negro Bar Association).

meetings of the white bar. As segregation took hold, interest in local and national associations of African-Americans grew.<sup>383</sup> The Wonder State Bar Association was created in 1900, with Lewis Jenks Brown as its first president.<sup>384</sup> It was active until 1928.<sup>385</sup>

Scipio Jones, like Mifflin Gibbs, was a member of the National Negro Business League (NNBL) and was instrumental in creating a "black lawyers' auxiliary" in 1909.<sup>386</sup> The organizational meeting of the National Negro Bar Association (NNBA) was held in Little Rock and Jones was selected as its first treasurer.<sup>387</sup> The initial goal of the organization was to support African-American businessmen,<sup>388</sup> but it also provided a forum for a national exchange of ideas among its members. Soon, a broader goal was established. In 1914, it was articulated as "to make ourselves valuable . . . to members of our race who have rights, liberties, and properties to protect . . ."<sup>389</sup> Very quickly it became evident that the lawyers were more assertive than the businessmen in their ideas of what their duties to the race were, and the lawyers eventually separated from the NNBL in 1925.<sup>390</sup> The National Negro Bar Association (NNBA) was incorporated in 1926.<sup>391</sup>

This new generation of African-American lawyers was headed by Scipio Africanus Jones. Although he began practice in 1899,<sup>392</sup> he was very different from other lawyers in the first

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383. Although the question of membership for African-American attorneys in the American Bar Association was not raised at its first meeting, the ABA quickly added a "race" question to its application form in 1912 when it learned that three African-American lawyers had been accepted by the group through mailed submissions. EMANCIPATION, *supra* note 2, at 541-43. The ABA did not formally change its policy of segregation until 1943. SEGAL, *supra* note 41, at 97.

384. EMANCIPATION, *supra* note 2, at 573.

385. *Id.*

386. *Id.* at 552.

387. *Id.*

388. *Id.*

389. EMANCIPATION, *supra* note 2, at 554.

390. *Id.* at 555.

391. *Id.* at 557.

392. 5 AFRO-AMERICAN ENCYCLOPEDIA, 1380-81 (Educ'l Book Pubs. 1974) [hereinafter AFRO-AMERICAN ENCYCLOPEDIA]. This was a circuit court admission, and he was admitted to practice before the state supreme court on November 26, 1900. SUPREME COURT ENROLLMENT BOOK 1, p. 144, with note "Colored." Jones was later admitted to the United States District and Circuit Courts in 1901, to the United States Supreme Court in 1905, and to the United States Court of Appeals in 1914. *Id.*

group. Jones was more skeptical of political patronage than were many members of the earlier group,<sup>393</sup> although he was active in Republican Party struggles throughout his life.<sup>394</sup> He also was the first African-American lawyer to become thoroughly familiar with the court system and to use it tactically in efforts to change the status quo.<sup>395</sup>

Scipio Jones' background and personal contacts also helped him provide that leadership.<sup>396</sup> His white father paid for his education and such financial support clearly aided Jones in his career.<sup>397</sup> Scipio Jones obtained his legal education by studying under the mentorship of several prominent white lawyers in Little Rock.<sup>398</sup> He borrowed law books from Judge Henry C. Caldwell (U. S. District Court), Judge T.B. Martin ("well-known attorney of Little Rock who afterwards became chancellor"), S.A. Kilgore ("prominent lawyer of Magnolia, Arkansas"), and Judge R.J. Lea (Dallas County).<sup>399</sup> His bar examination was administered by three other members of the Little Rock bar.<sup>400</sup>

#### A. Politics as a Vehicle for Pursuing Civil Rights

In the 1892 elections, the new voting law cut African-American voting strength significantly.<sup>401</sup> A look at the votes cast in the six counties with African-American majorities revealed that "large numbers of Negroes were absent from the polls."<sup>402</sup> "From almost twenty-six thousand votes in 1890, the

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393. Dillard, *Back of the Elephant*, *supra* note 142, at 8.

394. *See infra* notes 432-54 and accompanying text.

395. Judge R.J. Lea of Dallas County "once said that Scipio Jones was the finest cross-examiner of Negro witnesses of any one he had ever heard cross-examine a witness." Carmichael, *supra* note 47, at 312.

396. ARKANSAS DEMOCRAT-GAZETTE, June 8, 1999, at 1E.

397. *Id.*

398. CORTNER, *supra* note 47, at 51. Prior to his admission, in what was his first known action against discrimination, Scipio Jones had attempted to enroll in the law school of the University of Arkansas. *Id.*; MARY WHITE OVINGTON, PORTRAITS IN COLOR 92 (1927) [hereinafter OVINGTON]. He was not admitted. Instead, he followed the more traditional route of studying law under the mentorship of several prominent white Little Rock lawyers. Carmichael, *supra* note 47, at 312. *See also* OVINGTON, *supra*, at 92-93.

399. OVINGTON, *supra* note 398, at 92-93.

400. Dillard, *Scipio A. Jones*, *supra* note 6, at 204 (naming attorneys T.B. Martin, F.T. Vaughan and F.P. Dunn).

401. Graves, *Negro Disfranchisement*, *supra* note 271, at 217.

402. Fain, *supra* note 83, at 46. Fain offers two possible reasons for this event: that the lily-white Republican movement had kept African-Americans from supporting Repub-

Republican balloting dropped to 9,061.”<sup>403</sup> This drop in African-American voting led to a disastrous result regarding one particular item on the ballot.

The Democrats’ 1891 election agenda had included the institution of a poll tax requirement for voting.<sup>404</sup> However, as this issue required a constitutional amendment for implementation, the proposal appeared on the ballot in the 1892 election.<sup>405</sup> The poll tax amendment established a residence requirement, refused voting rights to felons, and required citizens to show proof of payment of poll taxes at the polling place in order to vote.<sup>406</sup> It was advertised by Democrats as a way in which to assure that those who voted also contributed to the cost of government,<sup>407</sup> including the school system,<sup>408</sup> and to prevent multiple voting fraud in elections.<sup>409</sup>

Although Republicans and Populists opposed the poll tax as an effort to limit the franchise and improve the political dominance of the Democratic party,<sup>410</sup> the poll tax amendment received 75,847 favorable votes on election day and was declared passed.<sup>411</sup> An analysis indicated that many remaining African-American voters supported the amendment.<sup>412</sup> In addition to their success with the poll tax amendment, the Democrats won a heavy majority of the legislative seats after a campaign that had exacerbated racial fears.<sup>413</sup> Only four African-Americans were

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lican candidates and “not having made new political affiliations, the Negro had apparently become apathetic about voting (or perhaps had been suppressed through intimidation during this period of rising white supremacy).” *Id.* at 47.

403. Moneyhon, *supra* note 7, at 244.

404. Fain, *supra* note 83, at 40.

405. *Id.* at 43.

406. Graves, *Negro Disfranchisement*, *supra* note 271, at 216-17.

407. Fain, *supra* note 83, at 42 (noting, however, that at least one Democratic newspaper editor, in urging support of the measure, proclaimed that it would “compel thousands of worthless negroes to show a ‘poll tax receipt’ or be denied the sweet privilege of voting”).

408. Graves, *Negro Disfranchisement*, *supra* note 271, at 218.

409. Fain, *supra* note 83, at 36-38.

410. *Id.* at 41-42.

411. *Id.* at 43. This number actually was insufficient to constitute a majority of those voting in the election. *Id.* at 44. However, the president of the state senate overrode protests and declared it passed. *Id.*

412. Graves, *Negro Disfranchisement*, *supra* note 271, at 217; Fain, *supra* note 83, at 45 (noting “the amendment carried in the six [African-American majority] counties by a vote of 7,874 to 1,797”).

413. Graves, Thesis, *supra* note 249, at 48, 56. Democrats used the Populists’ anti-lynching plank and a proposed bill in Congress that would impose federal supervision over



ected to the general assembly (none of them lawyers) and local African-American officials “even in the heart of the black belt, went down to defeat.”<sup>414</sup>

The 1894 elections completed the elimination of African-Americans from political office. For the first time since 1866, except for a few minor posts,<sup>415</sup> there were no African-Americans in elected state office.<sup>416</sup> In 1898, the Democratic Party replaced its system of county conventions for selecting delegates with a state convention and primary system that allowed party members, rather than local “bosses,” to select candidates.<sup>417</sup> At the same time, various county organizations “began to prescribe rules excluding Negroes from voting in primaries.”<sup>418</sup> County by county, similar rules were adopted<sup>419</sup> until, in 1906, the Democratic party passed a resolution adopting the “white primary” on a state-wide basis.<sup>420</sup>

Most African-Americans who could vote continued to support the Republican Party, and particularly its boss, Powell Clayton.<sup>421</sup> The Republican Party itself, however, was virtually

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federal elections in the southern states to achieve its success. *Id.* at 50-51. The federal bill ultimately was defeated by concerted efforts of southern senators after passing in the House of Representatives. *Id.*

414. Moneyhon, *supra* note 7, at 244 (noting that Democratic tickets won in Chicot, Desha, Phillips, and St. Francis counties, which had been traditional Republican strongholds).

415. Graves, Thesis, *supra* note 249, at 61.

416. *Id.* “Fusion” efforts ended, except at the county level in Phillips and Jefferson counties where African-Americans still were in the majority and where their middle-class was concentrated. *Id.* at 59-60 (noting that Democrats even supported white Republican independents in these counties).

417. Graves, *Jim Crow*, *supra* note 12, at 221.

418. Fain, *supra* note 83, at 61 (commenting that no particular reason, other than generally “maintaining white supremacy and the one-party system,” seem to have caused this move).

419. *Id.* at 60-63. The gradual expansion created anomalies in its effect. For example, African-Americans were barred from voting in Pulaski county primaries in April 1900, while the Little Rock city central committee (within the county) “rejected a similar whites only proposal by a vote of eighteen to five. Graves, *Negro Disfranchisement*, *supra* note 271, at 222-23.

420. Fain, *supra* note 83, at 64; Wheeler, *supra* note 78, at 6; Graves, *Negro Disfranchisement*, *supra* note 271, at 223. “[A]gitation for complete segregation of the races was so widespread that the Democratic state platform of 1904 denounced the Republicans for ‘trying to make the Negro believe that he is socially equal to the white man.’” Fain, *supra* note 83, at 63.

421. Graves, Thesis, *supra* note 249, at 88.

neutralized after 1894 by its growing “lily-white” movement.<sup>422</sup> Although the Republican Party never took formal action to ban African-Americans in the same way the Democrats did, it was no longer responsive to African-American needs and goals. A few of the earlier African-American Republicans continued to hold offices within the party and in appointive positions outside it. For example, Mifflin Gibbs continued in his Receiver position,<sup>423</sup> and remained Secretary of the Republican state central committee, until 1897.<sup>424</sup>

Between the new voting laws, the political dominance of the Democrats in Arkansas politics, and the Democrats’ decision to restrict primaries to white voters, African-Americans were effectively disfranchised.<sup>425</sup> Democratic primaries were the only path to elective office and African-Americans were prohibited from voting in them.<sup>426</sup> A study by the Union League Club of New York “found that the decrease in the average vote of Negroes in Arkansas from 1892 to 1902 has been 75 per cent, from 23,026 (1892) to 5,632 (1902).”<sup>427</sup>

Although he was himself well-respected within the party, Mifflin Gibbs could not ignore the increasing strength of the lily-whites. He knew they must be opposed. In 1896, “at the . . . Pulaski county Republican convention he took the floor to refute Lily White charges that black Republicans opposed prohibition.”<sup>428</sup> He was instrumental in helping to establish the Frederick Douglass club in 1905, which was intended to coordinate efforts by African-American Republicans and to improve their

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422. Dillard, *Back of the Elephant*, *supra* note 142, at 7 (noting that “[b]y 1896, the Pulaski County Republican Committee was so racially divided that blacks and whites could not even agree on nominating a ticket for county offices . . . . In a self-defeating compromise, no Republican candidates were nominated at all”). Long-time African-American Republicans were showing dissatisfaction with their limited roles within the party by then. Graves, Thesis, *supra* note 249, at 82.

423. See *supra* note 165 and accompanying text.

424. Dillard, *Scipio A. Jones*, *supra* note 6, at 214.

425. Fain, *supra* note 83, at 64 (commenting that the Democratic “white primary” completed the work of previous measures to “rob all Negroes of the franchise”).

426. Graves, Thesis, *supra* note 249, at 113. It would be more than 20 years before legal challenges against white primaries were filed by African-American Arkansans and 30 years beyond that before such restrictions were eliminated in the state. See *infra* notes 645-46, 655 and accompanying text.

427. Fain, *supra* note 83, at 51 (noting that “the poll tax did not rob all Negroes of the franchise. The Democratic ‘white primary’ in effect did.”).

428. Dillard, *Black Moses*, *supra* note 75, at 94.

leverage in bargaining for Republican power.<sup>429</sup> In 1908, Gibbs showed his increasing frustration with the party when he “endorsed” the Democratic nominee for president, William Jennings Bryan.<sup>430</sup> In 1911, “he was named treasurer of the Independent National Political League,”<sup>431</sup> another step away from the Republican center.

Throughout the mid-1890s and into the 1920s, Republican African-Americans and some whites, often called the “Black and Tans,” fought to influence candidate selection and issues.<sup>432</sup> The “Black and Tans” held separate conventions and proposed their own slates of candidates in 1900,<sup>433</sup> 1902,<sup>434</sup> 1904,<sup>435</sup> 1908,<sup>436</sup> 1912,<sup>437</sup> 1914, and 1916.<sup>438</sup> Scipio Jones became prominent both as a leader of the dissident group and, partly as a result of the pressure they created, within the regular party.<sup>439</sup> J.

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429. Graves, Thesis, *supra* note 249, at 90; Dillard, Black Moses, *supra* note 75, at 95.

430. Dillard, *Golden Prospects*, *supra* note 56, at 321; Dillard, Black Moses, *supra* note 75, at 95.

431. Dillard, Black Moses, *supra* note 75, at 97.

432. Dillard, *Golden Prospects*, *supra* note 56, at 320 (citing the 1895 example of J. Pennoyer Jones, a member of the “Black and Tans,” a mixed group of African-American Republicans, who “put up a fierce battle against exclusion from the party.”).

433. In 1900, Scipio Jones “helped white Republican W.S. Auten organize his followers into separate ward and county conventions, and send a separate slate of delegates to the Republican state convention.” Graves, Thesis, *supra* note 249, at 83. While the group was not seated, the pressure did lead to the selection of an African-American as one of four at-large delegates and two others as congressional district delegates to the national convention. *Id.* at 85.

434. In 1902, dissidents including Scipio Jones, Archie V. Jones (no relation), and J. A. Robinson created a separate Independent Political League and proposed a slate for county offices. Graves, Thesis, *supra* note 249, at 86; Tom W. Dillard, *Perseverance: Black History in Pulaski County, Arkansas, an Excerpt*, 31 PULASKI COUNTY HIST. REV. 62, 68-69 (Winter 1983) [hereinafter Dillard, *Perseverance*]. Attorney Archie Jones was nominated for state senate in 1902. Graves, Thesis, *supra* note 249, at 87.

435. Russell, *supra* note 9, at 255.

436. *Id.* at 272-73.

437. *Id.* at 284.

438. Jones and other prominent African-American Republicans, including John A. Hibbler, worked to hold separate state conventions in 1914 and 1916, when the regular party refused to allow their participation. PERSISTENCE OF THE SPIRIT DESCRIPTIVE GUIDE: THE BLACK EXPERIENCE IN ARKANSAS 34 (Tom Baskett, Jr. ed., 1986) (noting that African-Americans “protested, but the white establishment stood firm.”) (on file with author) [hereinafter PERSISTENCE OF THE SPIRIT].

439. Jones held various important positions. He was the Republican member of the Pulaski County Election Commission in 1898, Dillard, *Scipio A. Jones*, *supra* note 6, at 214-15, and secretary of the Pulaski County Republican central committee in 1900. Graves, Thesis, *supra* note 249, at 83. Jones was one of four Arkansas delegates to the

Pennoyer Jones was active in this group until about 1895, but disappeared from records thereafter.<sup>440</sup> By 1920, the Republican Party had become almost as restrictive as the Democrats where African-Americans were concerned,<sup>441</sup> but they had nowhere else to go if they were to participate in elections at all. In 1920, the party had refused to respond to written protests from Scipio Jones, noting the contributions African-Americans had made to the World War I effort and asking for equal rights within the party.<sup>442</sup> When it then scheduled its 1920 convention in a segregated hotel,<sup>443</sup> a number of African-Americans, including Scipio A. Jones and J.A. Hibbler, took more direct action. They “boldly marched in the hotel where they stayed until someone turned out the lights.”<sup>444</sup>

John A. Hibbler was born in Arkansas in 1884.<sup>445</sup> He first appeared in politics while working with Scipio Jones in opposing the “separate car bill” in 1891.<sup>446</sup> Later, in 1914, 1916, and 1920, Hibbler participated in the separate state conventions held by African-American Republicans when the regular party refused to allow their participation.<sup>447</sup>

After their hotel protest, Scipio Jones, Hibbler and other sympathizers held a separate county convention, nominating a slate of African-American delegates.<sup>448</sup> Appearing at the state

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1912 Republican National Convention from the fifth district of Arkansas. Work, *supra* note 364, at 208-09. See also Dillard, *Scipio A. Jones*, *supra* note 6, at 215.

440. Although he was listed in the 1880 Census Report (vol. 4, e.d. 74, sh. 28, l.30) he does not appear in the 1900 census data. He was noted as having disappeared before 1905. Moneyhon, *supra* note 7, at 245.

441. Russell, *supra* note 9, at 287.

442. Tom W. Dillard, *Fighting the Lily Whites: Racial Confrontation in the Arkansas Republican's Party, 1920-1924 Documents*, 4 RED RIVER VALLEY HIST. REV. 65-68 (Spring 1979) [hereinafter Dillard, *Fighting the Lily Whites*]. Jones complained about the Republican practice of holding county conventions in segregated places and limiting the delegates to very few (none from black districts). In the first letter, Jones stated “we will appreciate it if you will inform the writer, whether it is the intention of the Arkansas Republican organization to recognize the Colored voters’ rights, or are they to be ignored as in 1916?” *Id.* at 66. In drafting and sending this letter, Jones was clearly acting on behalf of all African-American Republicans. A second letter had 25 signatories, including Jones and W.A. Singfield. *Id.* at 67.

443. Dillard, *Back of the Elephant*, *supra* note 142, at 12.

444. *Id.*

445. 1920 Census Report, vol. 52, e.d. 115, sh. 44, l.48.

446. EMANCIPATION, *supra* note 2, at 325.

447. See *supra* note 438.

448. Dillard, *Scipio A. Jones*, *supra* note 6, at 216.

convention, the group (including attorneys Scipio Jones, J.R. Booker, W.A. Singfield and John A. Hibbler) listed their grievances against the white county organization and asked that their group be seated as the official representatives from Pulaski County.<sup>449</sup> Their appeal was rejected, leading to “a walkout of black delegates and observers.”<sup>450</sup>

The group held a separate state convention and “[a] committee of eight prominent blacks, including J.A. Hibbler . . . and W.A. Singfield, was elected to serve as officers of the black Republican organization.”<sup>451</sup> Scipio Jones was elected to present their case for recognition as the official Arkansas delegation to the Republican national convention.<sup>452</sup> Although the national body rejected the African-American delegation, the fight ultimately was resolved in 1924 after their gubernatorial candidate was more successful than that of the regular party in the 1920 elections in Pulaski County.<sup>453</sup> A resolution presented to the Republican state central committee, signed by Jones, Hibbler, and W.L. Purifoy, succeeded in obtaining a “settlement” that reserved two positions on the state Central Committee for African-Americans.<sup>454</sup> The efforts of Jones, Hibbler and others had assured that African-American voices would be heard, at least, at the internal Republican councils.

William Augustus Singfield was born in Georgia in 1872,<sup>455</sup> and arrived in Arkansas in 1898.<sup>456</sup> Prior to becoming a lawyer, he worked as a carpenter and founded the weekly *Little Rock Reporter* in 1901.<sup>457</sup>

African-American successes from Republican in-fighting had little effect on the external political scene. The Democrats and their racist rhetoric continued to control elections and legislation. Increasing sophistication in African-American organizing efforts did not turn the tide when Scipio Jones ran for a va-

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449. Dillard, *Fighting the Lily Whites*, *supra* note 442, at 69-70.

450. Dillard, *Scipio A. Jones*, *supra* note 6, at 216 (noting that “[s]ome whites joined the blacks in the walkout”).

451. *Id.* at 217.

452. *Id.* at 216.

453. *Id.* at 217.

454. *Id.* at 218.

455. 1900 Census Report, vol. 32, e.d. 76, sh. 7, l.24.

456. WOODS, *supra* note 48, at 101.

457. *Id.* at 101-02.

cant position on the Little Rock School Board in 1903; he lost after a “Black fear” campaign pursued by the Democratic *Arkansas Gazette*.<sup>458</sup> In 1903, a law was passed to “requir[e] separation of white and black passengers on the state’s urban street-car systems.”<sup>459</sup> As they had in 1891, African-Americans generated a mass public protest and “boycotts of the car lines . . . in Little Rock, Pine Bluff, and Hot Springs.”<sup>460</sup> The boycotts continued for several weeks, with ridership dropping by over ninety percent in Little Rock, and “precipitously” in Pine Bluff and Hot Springs.<sup>461</sup> Mifflin Gibbs, at least, spoke at one of the meetings.<sup>462</sup> Unfortunately, there was little white opposition to the law and African-Americans were unable to force its rescission.<sup>463</sup>

Concerted action in the African-American community did succeed on two other occasions. In January 1905, Governor Jeff Davis suggested that public school taxes be segregated to make African-American free schools dependent on taxes paid by African-Americans.<sup>464</sup> African-Americans were able to show that “[t]he 334,000 Negroes in the state paid taxes on \$15,000,000 worth of real and personal property, \$250,000 of which went directly into the State Treasury,” and were successful in defeating the bill.<sup>465</sup> Passage would have had adverse effects on the operation of a number of segregated white institutions,<sup>466</sup> although African-American schools might have benefited from the focus of the community’s tax dollars. Democrats apparently were unwilling to push segregation efforts to their own cost. Similarly, in 1911, efforts to amend the state constitution to require a “grandfather clause” and other educational requirements for vot-

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458. Dillard, *Scipio A. Jones*, *supra* note 6, at 215.

459. Graves, Thesis, *supra* note 249, at 135.

460. Graves, *Jim Crow*, *supra* note 12, at 442.

461. *Id.* at 443.

462. Graves, Thesis, *supra* note 249, at 135 (citing ARKANSAS GAZETTE, March 12, 1903).

463. Transit managements were able to wait out the boycott. Graves, *Jim Crow*, *supra* note 12, at 443-44. Some examples of white protest are cited in Graves, Thesis, *supra* note 249, at 136-38.

464. Smith, *supra* note 79, at 53.

465. *Id.* at 54.

466. *Id.* (listing a pension fund for ex-Confederate soldiers and “many public facilities from which Negroes were barred”).

ing failed after “a huge turnout of the Negro vote”<sup>467</sup> resulting from organized opposition by the Negro State Suffrage League headed by Scipio Jones.<sup>468</sup>

The revised voting laws, the poll tax amendment, and the white-only primary had severe consequences to the African-American franchise. However, the white-only primary “was the last major instrumentality of Negro disfranchisement ever adopted in Arkansas . . . .”<sup>469</sup> The unity of the African-American community and its ability to “present its case” through its leaders prevented many of the disfranchising laws that appeared in other southern states.

### B. The Practice of Law and Civil Rights

In addition to becoming more organized and taking a more aggressive stance with regard to political action, African-American lawyers became more active within the court system. Despite increasing segregation and race hate from the white society, some lawyers were conducting trials and appealing adverse verdicts to the state supreme court.

Scipio Jones’ political concerns about racial equality carried over to his law practice. While he quickly developed a good business practice and might have remained quietly in that area of the law,<sup>470</sup> he also devoted much of his time to cases in-

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467. Fain, *supra* note 83, at 67. Graves, Thesis, *supra* note 249, at 117.

468. Dillard, *Scipio A. Jones*, *supra* note 6, at 213; Fain, *supra* note 83, at 66-67. The proposal also failed in part because the Democratic party was afraid to campaign too heavily for this proposal during a presidential election year when African-Americans could be expected to vote in higher numbers. Fain, *supra* note 83, at 66-67.

469. Graves, *Negro Disfranchisement*, *supra* note 271, at 223.

470. Jones appears as counsel of record in ten civil cases between 1909 and 1923. Most involved disputed claims on life insurance policies for African-American fraternal organizations that Jones represented. Jones was appointed as national attorney general for the Mosaic Templars of America about 1895. AFRO-AMERICAN ENCYCLOPEDIA, *supra* note 392, at 1380. He also acted as counsel to the Knights of Pythias (another African-American fraternal group) and other black-owned insurance companies, including the International Order of Twelve, the Knights and Daughters of Tabor, the Royal Circle of Friends of the World, the Order of Eastern Star, the Household of Ruth, and the Grand Court of Calanthe. Dillard, *Scipio A. Jones*, *supra* note 6, at 205-06.

In three of the ten cases he is opposed by another (identified) African-American lawyer: L.J. Brown and T.J. Price (his former partner) in *Knights of Pythias of North America v. Bond*, 109 Ark. 543, 160 S.W. 862 (1913); Robert S. Bowers (Jones is co-counsel with T.J. Price) in *Mosaic Templars of America v. Austin*, 126 Ark. 327, 190 S.W. 571 (1916); and T.J. Price (again) in *Baker v. Mosaic Templars of America*, 135 Ark. 65, 204 S.W. 612 (1918).

volving racial and other discrimination. Very early in his career, his reputation led the court to appoint him as counsel in criminal cases involving indigents, giving Jones good legal experience and helping to build his legal reputation.<sup>471</sup> Many of these latter cases likely provided no income,<sup>472</sup> but they allowed him the opportunity to develop legal defenses that presaged later efforts by lawyers for the National Association for the Advancement of Colored People and others.

For example, in two separate cases in 1901, Jones first presented to the state supreme court an argument that the convictions of the African-American defendants should be overturned because the grand juries that had indicted them included no African-Americans, making the verdicts discriminatory and unconstitutional.<sup>473</sup> In the second of those cases, *Castleberry v. State*, the court specifically held that the trial court had erred in refusing to hear Jones' motion challenging the exclusion of blacks from the grand jury and remanded the matter for a new trial.<sup>474</sup> No report has been uncovered concerning the ultimate result of this case on remand, but apparently the evidence was not persuasive. These cases represent the first time in Arkansas that this question had been raised.<sup>475</sup>

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471. OVERTON, *supra* note 398, at 93. The official Reports reveal 11 criminal law cases in which Jones is counsel of record, six of which occurred before 1923. Seven opinions arising out of his defense of 12 men convicted of murder in prosecutions resulting from the 1919 "riots" in Elaine, Arkansas, Phillips County, are discussed *infra* notes 484-514 and accompanying text. In one of the other criminal defense cases before 1923, Jones is co-counsel with another African-American lawyer, *Gans v. State*, 132 Ark. 481, 201 S.W. 823 (1918), where he worked with Archie V. Jones (no relation).

472. A friend, Will Sheppard, noted that Jones had "no great desire for money. Often his clients were indigent blacks who could not spare money for attorneys' fees." Dillard, *Scipio A. Jones*, *supra* note 6, at 209.

473. *Eastling v. State*, 69 Ark. 189, 62 S.W. 584 (1901) (involving a murder charge); *Castleberry v. State*, 69 Ark. 346, 63 S.W. 670 (1901) (involving a charge of larceny). Both verdicts were overturned, although in *Eastling*, the court found there was no discrimination and the case was reversed on other grounds. 69 Ark. at 189, 62 S.W. at 584. This holding came despite evidence that no African-Americans had been selected as jurors in the county for eighteen years, *Id.* at 194, 62 S.W. at 585, and the testimony of one jury commissioner who stated that he would never select an African-American to serve on the grand jury so long as there was a white man qualified to serve. *Id.* at 195, 62 S.W. at 585.

474. *Castleberry*, 69 Ark. at 349, 63 S.W. at 670.

475. Carmichael, *supra* note 47, at 313. The argument came from *Strauder v. West Virginia*, 100 U.S. 303 (1880) in which the Supreme Court had held discrimination against African-Americans in jury selection violated the Equal Protection Clause of the Fourteenth Amendment.



A year later, in a third case in the lower courts, Jones again objected to the exclusion of blacks from juries in a criminal case.<sup>476</sup> He was allowed to present testimony on the issue from several witnesses – Col. John G. Fletcher, Postmaster W.S. Holt, and J.T. O’Hair, all white men, and J.M. Bush, Professor J.A. Booker, and D.G. Hill, all African-Americans.<sup>477</sup> However, the presiding judge, R.J. Lea, ultimately overruled Jones’ motion to quash the indictment, stating that the evidence presented was insufficient to prove deliberate discrimination.<sup>478</sup> In 1918, Jones made the same argument in a motion to quash the indictment against a man for forging divorce decrees.<sup>479</sup> This, too, was unsuccessful.

Jones did not focus solely on the jury composition issue in all of his civil rights arguments. He is reported to have won a civil case against white Shriners who sold organization regalia to African-American Shriners, then tried to prevent them from using it.<sup>480</sup> In 1905, Scipio Jones was part of a successful “fight to expose the unfairness of the county convict labor system” that benefited both African-American and white convicts.<sup>481</sup> “In one case [Scipio Jones] sued a planter for \$75,000 in the Federal Court” for mistreating convicts leased to him.<sup>482</sup> By 1915, Scipio Jones had established such a good reputation in the Little

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476. *Negroes as Jurors*, ARKANSAS GAZETTE, May 2, 1902. The case involved African-American defendant Will Hawkins charged with murder of another African-American, Jess Davis. *Id.*

477. *Id.* The witnesses testified that no African-Americans had served on juries in Pularski County in 18 years, that no African-American jury commissioners had been appointed by the circuit judges, and that at least one-third of the inhabitants of the county (comprising at least one-fourth of its voters) were African-Americans. *Id.*

478. *Id.*

479. Work, *supra* note 364, at 107 (noting that the case was heard on January 15, 1918). This case was not appealed and does not appear in the supreme court reports.

480. Carmichael, *supra* note 47, at 313 (noting that Jones assisted in a similar Texas case that went to the United States Supreme Court where blacks won.). Apparently, the Arkansas case did not reach the state supreme court, as there is no official record available.

481. EMANCIPATION, *supra* note 2, at 325-26. At that time, Arkansas’ county convict labor system required prisoners to work for 50 cents per day, and charged them for each day they could not work. Carmichael, *supra* note 47, at 312-13. The court ruled that “prisoners sent to the county jail were entitled to 75 cents a day whether they worked or not.” EMANCIPATION, *supra* note 2, at 326 (citing *Study Law, Says Scipio Jones*, PITTSBURGH COURIER, Feb. 25, 1929). This result, too, apparently was not appealed.

482. OVINGTON, *supra* note 398, at 93.

Rock legal community that he was elected as a special judge to preside over a case.<sup>483</sup>

The case that made Scipio Jones a national legal figure, however, arose out of the "riots" of 1919 occurring near Elaine, Arkansas.<sup>484</sup> The facts surrounding the matter are quite confusing. Although initial reports stated that the riots had been precipitated by the actions of African-American "communists,"<sup>485</sup> other information indicates that tenant farmers resisted the white planters' attempt to prevent organizing efforts by a tenant farmers' union.<sup>486</sup>

Three days of fighting between whites and African-Americans between September 30 and October 4 resulted in, "according to various reports, [the deaths of] five whites and somewhere between twenty-five and several hundred Negroes. . . ."<sup>487</sup> One hundred twenty-two African-American men were by a grand jury, seventy-three of whom were charged with murder.<sup>488</sup> Twelve African-American men were convicted of first-

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483. EMANCIPATION, *supra* note 2, at 326; AFRO-AMERICAN ENCYCLOPEDIA, *supra* note 392, at 1380-81; OVINGTON, *supra* note 398, at 93. By common practice, when a judge disqualified himself in a particular case, attorneys in the courtroom would select one of their number to preside over the matter. *Scipio Jones Special Judge*, ARKANSAS DEMOCRAT, Apr. 8, 1915, at 5. It was reportedly "one of the first instances in the history of Little Rock, if not in the entire state, that a negro has acted as a [special] judge." *Id.* When questioned on why a white attorney was not chosen, the judge noted that all parties and witnesses were African-American, that Jones was "nominated by the city attorney and voted for by [the] deputy prosecuting attorney, and all of the lawyers in attendance." *Id.* The judge was quoted as saying that "Jones was peculiarly fitted [to handle the matter] by environment as well as marked ability as a lawyer, and in recognition of his reputation and standing in the community and in the bar of Little Rock." *Id.* The defendant was represented by another African-American attorney, W.A. Singfield. *Id.*

484. Extensive accounts of the events appear in ARTHUR I. WASKOW, FROM RACE RIOT TO SIT-IN, 1919 AND THE 1960S, A STUDY IN THE CONNECTIONS BETWEEN CONFLICT AND VIOLENCE 12, 128 (1966) [hereinafter WASKOW] and CORTNER, *supra* note 47, at 45-46. See also OVINGTON, *supra* note 398, at 97; Dillard, *Perseverance*, *supra* note 434, at 63; Dillard, *Scipio A. Jones*, *supra* note 6, at 206-09; Ralph H. Desmarais ed., *Military Intelligence Reports on Arkansas Riots: 1919-1920*, 33 ARK. HIST. Q. 175 (Summer 1973) [hereinafter Desmarais]. This event was one of a series of black-white confrontations across the country after World War I. See Grimshaw, *supra* note 365, at 60 (describing them briefly).

485. CORTNER, *supra* note 47, at 45-46.

486. *Id.* at 28-29.

487. WASKOW, *supra* note 484, at 12, 128.

488. CORTNER, *supra* note 47, at 15. Only one white man was arrested during the affair. CORTNER, *supra* note 47, at 39-40. O.S. Bratton was the son of liberal Arkansas lawyer and former state Attorney General U.S. Bratton, and was there to discuss the grievances of tenant farmers against white planters after the farmers asked U.S. Bratton to represent

degree murder and sentenced to death in five brief trials conducted on three different days.<sup>489</sup> As the facts of the Elaine events became known, the hasty conviction and death sentences of the twelve men raised concerns across the country and in Arkansas.<sup>490</sup> Arkansas African-Americans organized a Citizens Defense Fund Commission (CDFC) to work for the defendants, with attorneys Scipio Jones and J.A. Hibbler among the leaders.<sup>491</sup> The National Association for the Advancement of Colored People (NAACP) independently investigated the situation.<sup>492</sup>

The CDFC and the NAACP, separately, hired attorneys George W. Murphy and Scipio Jones to defend the twelve Elaine defendants sentenced to death.<sup>493</sup> Murphy was a white man, an ex-confederate Colonel, a former Arkansas Attorney General, and a member of the firm of Murphy, McHaney and Dunaway.<sup>494</sup> After failing in a motion for new trials, the two attorneys appealed the convictions to the Arkansas Supreme Court.<sup>495</sup> Among their arguments was one based on the Fourteenth Amendment and the absence of African-Americans on the juries, the same argument Jones had made in *Eastling* and *Casleberry* in 1901.<sup>496</sup>

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them. *Id.* O.S. Bratton was charged with the crime of barratry (stirring up quarrels and legal suits), although he was not tried, and after a month in jail he was escorted out of town. *Id.* at 42.

489. WASKOW, *supra* note 484, at 137-39. Local white attorneys were appointed for the defendants. *Id.* Six of them were tried and convicted of first-degree murder in two trials on the first day, five more (in two trials) were convicted on the second, and the last man was convicted two weeks later. CORTNER, *supra* note 47, at 16-18.

490. CORTNER, *supra* note 47, at 16-18.

491. *Id.* at 48.

492. *Id.* at 25. The NAACP sent its (white-looking) assistant secretary Walter F. White on a fact-finding mission to Phillips County, Arkansas, from which he emerged just ahead of a lynch mob. WASKOW, *supra* note 484, at 143-44. Based on his findings and correspondence with blacks and whites who had information on the facts, White issued a report charging that there was no riot, but rather an effort by whites to cheat blacks of their earnings from tenant-farming. *Id.* at 144-47.

493. CORTNER, *supra* note 47, at 49-50. There is some confusion about exactly when and by whom Murphy was hired, as Scipio Jones is said to have approached him on behalf of the local defense fund, which had "agreed to pay Scipio Jones and Colonel Murphy twelve thousand dollars for their legal services . . ." while the NAACP agreed to pay Murphy \$3,000 plus expenses at the urging of former Arkansas attorney U.S. Bratton. *Id.* at 50, 44.

494. CORTNER, *supra* note 47, at 43.

495. *Id.* at 86. *See also* OVINGTON, *supra* note 398, at 97.

496. *See supra* notes 473-75 and accompanying text.

The original five cases were consolidated into two opinions by the state supreme court – *Banks v. State*<sup>497</sup> (involving Alf Banks, Jr., John Martin, Albert Giles, Joe Fox, Will Wordlow, and Ed Ware) and *Hicks v. State* (involving Frank Hicks, Frank Moore, Ed Hicks, J.E. Knox, Ed Coleman, and Paul Hall).<sup>498</sup> The court affirmed the judgment in *Hicks* and reversed the judgment in *Banks*.<sup>499</sup> At this point, the fates of the two sets of defendants began running on separate tracks,<sup>500</sup> for which both Jones and Murphy’s partner, E.L. McHaney, were responsible after Murphy died during the second trial of the *Banks* defendants.<sup>501</sup> Jones has been given the majority of the credit for subsequent work on the cases.<sup>502</sup> He did receive help from McHaney, whose name appeared on all pleadings and who made some

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497. 143 Ark. 154, 219 S.W. 1015 (1920).

498. 143 Ark. 158, 220 S.W. 308 (1920).

499. The only difference between the cases, as derived from the opinions, is that in *Hicks* the trial judge had added the “degree” of murder, which was held to be allowable, *id.*, 220 S.W. at 309-10, and in the *Banks* trial he did not. *Id.* at 155-56, 219 S.W. at 1014-15.

500. A second trial of the *Banks* defendants on May 3, 1920, ended in a second conviction. CORTNER, *supra* note 47, at 92. That judgment was appealed to the state supreme court, which again reversed on December 6, 1920, in (now-styled) *Ware v. State*, on the ground that the trial court had erred in refusing to hear evidence on defendants’ motion to set aside the trial jury for lack of African-Americans in the panel. 146 Ark. 321, 335, 225 S.W. 626 (1920). After a third conviction, defendants were granted a change of venue to Lee County on June 21, 1921, and trial was set for October 10, 1921. CORTNER, *supra* note 47, at 108. On the date set for the third trial, it was continued to April 1922. *Id.* at 134. Jones informed the NAACP of his opinion that the state was unable to produce evidence that could win the case. *Id.*

In the meantime, Jones and Murphy petitioned for a writ of certiorari on behalf of the *Hicks* defendants to the United States Supreme Court, which was denied on October 11, 1920. *Id.* at 90, 93. To forestall the executions, and lacking an available federal court judge, Jones and Murphy filed a petition for habeas corpus in Pulaski County Chancery Court on June 8, 1921. *Id.* at 115-16. An injunction was issued, but the state appealed to the supreme court, which heard the question of the chancery court’s jurisdiction on June 12, 1921. *Id.* at 116-18. The court held, in *State v. Martineau*, 149 Ark. 237, 232 S.W. 609 (1921), that the chancery court had no jurisdiction and Jones appealed that decision to the United States Supreme Court. *Id.* at 119-20. The Supreme Court refused to review the state court’s decision on August 4, 1921. *Martineau v. State*, 257 U.S. 665 (1921); CORTNER, *supra* note 47, at 125. On September 21, Jones filed a proper petition for writ of habeas corpus in the United States District Court, Eastern District of Arkansas. CORTNER, *supra* note 47, at 127. The State demurred. *Id.* at 131. The petition was denied after hearing, but Jones was allowed to appeal the decision to the United States Supreme Court. *Id.* at 132.

501. CORTNER, *supra* note 47, at 90.

502. See, e.g., Dillard, *Scipio A. Jones*, *supra* note 6, at 207; OVERTON, *supra* note 398, at 98; WASKOW, *supra* note 484, at 157.

of the major arguments.<sup>503</sup> African-American attorneys Thomas J. Price, Jones' former Little Rock law partner,<sup>504</sup> and Peter Beasley of Helena, Arkansas, worked with Jones from behind the scenes.<sup>505</sup>

Almost four years after their conviction and sentence of execution, the *Hicks* defendants were the subjects of a United States Supreme Court decision in *Moore v. Dempsey*, holding that the district court should have heard defendants' motion for habeas corpus because the demurred facts, if true, made their original trial void.<sup>506</sup> The briefs to the United States Supreme Court were solely the work of Scipio Jones, although the case was argued by NAACP constitutional lawyer Moorfield Storey and former Arkansas attorney U.S. Bratton, both white men.<sup>507</sup> Jones was listed as a counsel of record.

The *Moore* defendants never faced a second trial. After a great deal of maneuvering, Jones engineered a settlement with the state in November 1923 whereby the defendants' death sentences were commuted to twelve years in prison.<sup>508</sup> The *Banks* group (later termed *Ware*), whose third trial had been delayed by legal maneuverings, was released after Jones and McHaney successfully argued that the delay violated a state statute requiring the state to give the men a speedy trial.<sup>509</sup> The *Moore* defen-

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503. Griffin J. Stockley, Address at Helena, Ark. Conference, Rumors & Reaction: Reconsidering the Elaine Race Riots of 1919 (Feb. 11, 2000).

504. WASKOW, *supra* note 484, at 156; CORTNER, *supra* note 47, at 48-49.

505. Interview with Ora Beasley Quarles, daughter of Peter Beasley, Helena, Ark. (Feb. 10, 2000).

506. 261 U.S. 86, 92 (1923). The decision was based on the inability of defendants to obtain a fair trial, given the public passion and mob domination exhibited at the time and the failure of the state to provide corrective machinery to avoid the wrong. *Id.* at 91.

507. Dillard, *Scipio A. Jones*, *supra* note 6, at 207 (stating "[a]lthough some said Jones was not a 'sharp technical lawyer,' his preparation of appeal arguments was noteworthy" and Moorfield Storey, who presented the Elaine defendants' arguments to the United States Supreme Court, used Jones' briefs). The full text of the briefs appeared in two issues of the NAACP's official publication. *The Arkansas Peons*, 23 THE CRISIS 72 (Dec. 1921) and 23 THE CRISIS 115 (Jan. 1922).

508. CORTNER, *supra* note 47, at 181. Neither the Phillips County prosecutor nor Jones wanted to have the District Court hear the matter. *Id.* at 176-78.

509. *Ware v. State*, 159 Ark. 540, 252 S.W. 934 (1923); CORTNER, *supra* note 47, at 161-63. The men were transported by the Lee County sheriff to the state prison, where the defendants were refused entry. CORTNER, *supra* note 47, at 164. After standing around for several hours, Jones and J.R. Booker, who had met with the defendants, took the men to Little Rock for safekeeping until the court's order was final. *Id.* at 164-66. (Note: The newspaper article cited by Cortner identified Jones' companion as attorney "Robert L.")

dants ultimately were pardoned by Governor McRae on January 13, 1925.<sup>510</sup> Jones was stalwart in his defense despite being in significant personal danger during the Elaine representation.<sup>511</sup>

Although the twelve men sentenced to death received the most attention from newspapers and the public, Jones was also deeply involved in seeking freedom for the other African-American men sentenced to prison terms after the riots.<sup>512</sup> By the summer of 1923, all had been freed except for eight who had received the heaviest sentences of twenty-one years.<sup>513</sup> Those eight were finally granted indefinite furloughs by Governor McRae in December 1924.<sup>514</sup>

The Elaine cases were not the end of Jones' legal career or his civil rights efforts. In 1923-24, Scipio Jones handled another "hotly contested" murder case in which he won a stay of execution.<sup>515</sup> In 1924, Jones was again elected by other attorneys to preside over a case in the Pulaski County Chancery Court.<sup>516</sup>

Thomas Jewell Price was born April 2, 1884, in New Haven, Connecticut.<sup>517</sup> He attended law school at Howard University School of Law, where he received an L.L.B. in 1906.<sup>518</sup> During school and after his graduation, he clerked for African-American judge Robert H. Terrell in Washington, D.C.<sup>519</sup> There is no information on how he arrived in Arkansas, but he apparently made an immediate association with Scipio A. Jones that lasted, on and off, until at least 1928.<sup>520</sup> As noted, Price worked with Jones on the Elaine Riots case, although behind the

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Booker, but it must have been an error. J.R. ("John Robert") Booker was assisting Jones during this time.)

510. CORTNER, *supra* note 47, at 183.

511. OVINGTON, *supra* note 398, at 98-99 (noting that during the retrial of *Hicks*, "[n]o two nights were spent in the same house. No one knew where Scipio Jones put up").

512. CORTNER, *supra* note 47, at 166.

513. *Id.*

514. *Id.* at 182.

515. EMANCIPATION, *supra* note 2, at 327.

516. *Id.* at 327 n.51.

517. 1938 WHO'S WHO, *supra* note 350, at 424.

518. *Id.*

519. *Id.* Price also was admitted in the United States Supreme Court, and the Seventh and Eighth Circuit Courts of Appeal. *Id.*

520. Price and Scipio Jones were listed as the firm of Jones & Price in the lawyers' section of city directories in 1908, 1910 and 1911 LRCDS. They are joined by John W. Gaines in 1912-14. 1912-1914 LRCDS. In 1915 and until 1928, Price is listed as a sole practitioner, at a different address. *See, e.g.*, 1915-17, 1919-20, 1922-23, 1925-26, 1928 LRCDS.

scenes.<sup>521</sup> For most of his Arkansas career, though, he was a legal advisor to a variety of insurance and fraternal business organizations,<sup>522</sup> often appearing as co-counsel with Scipio Jones for these entities. Price was listed as attorney of record in ten published Arkansas opinions, in eight of which he was to co-counsel with Scipio Jones.<sup>523</sup> Price moved to Chicago about 1930, where he continued in the practice of law.<sup>524</sup> Just before he left Arkansas, he was editing and publishing the weekly *Arkansas Times*.<sup>525</sup>

Peter Beasley first appears as an attorney in Helena, Arkansas, in 1909.<sup>526</sup> He apparently moved his practice to Little Rock two years later,<sup>527</sup> but had returned to Helena by 1917.<sup>528</sup> Beasley remained in general practice in Helena until his death in 1943.<sup>529</sup> According to his daughter, Scipio Jones used Beasley's office and consulted with him at various times during Jones' representation of the Elaine defendants and they remained friends thereafter.<sup>530</sup> She did not know whether Beasley met Jones for the first time in Helena in 1920 or if they had become acquainted when Beasley was in Little Rock. As noted earlier, although attorneys had been appointed to represent the Elaine defendants during their first trials in November 1919, all of those attorneys were white.<sup>531</sup> There is no indication that the two African-American lawyers practicing in Helena between 1917 and 1920 were considered, asked, or refused to act as defense

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521. WASKOW, *supra* note 484, at 156.

522. 1938 WHO'S WHO, *supra* note 350, at 424.

523. See, e.g., *Baskins*, 176 Ark. 940, 4 S.W.2d 932; *Mosaic Templars of Am. v. Miller*, 176 Ark. 345, 2 S.W.2d 1094 (1928); *Mosaic Templars of Am. v. Woolfolk*, 165 Ark. 273, 262 S.W. 681 (1924); *Blakely v. Newton*, 157 Ark. 351, 248 S.W. 907 (1923); *State v. Knights of Pythias of N. Am.*, 157 Ark. 266, 247 S.W. 1068 (1923); *Mosaic Templars of Am. v. Bean*, 147 Ark. 24, 226 S.W. 525 (1921); *Royal v. Mosaic Templars of Am.*, 143 Ark. 596, 219 S.W. 752 (1920); *Baker v. Mosaic Templars of Am.*, 135 Ark. 65, 204 S.W. 612 (1918); *Mosaic Templars of Am. v. Austin*, 126 Ark. 327, 190 S.W. 571 (1916); *Knights of Pythias of N. Am. v. Long*, 117 Ark. 136, 174 S.W. 1197 (1915).

524. 1938 WHO'S WHO, *supra* note 350, at 424. He was last listed in the 1944 edition of WHO'S WHO IN COLORED AMERICA.

525. WHO'S WHO IN COLORED AMERICA 162 (Thomas Yenser ed., 1927).

526. 1909 HCD.

527. 1911-12 LRCD. Beasley was admitted to practice in Pulaski County Circuit Court on December 23, 1910. Photocopy of license on file with author.

528. 1917 HCD.

529. Interview with Mrs. Ora Beasley Quarles, daughter, Helena, Ark. (Feb. 10, 2000).

530. *Id.*

531. See *supra* note 489.

attorneys.<sup>532</sup> Beasley's willingness to help Jones with the case suggests that he was not asked.

Other than Jones, the most active African-American attorney in the civil rights area during this second period was J.A. (John Arthur) Hibbler who, as noted above, was active in the group that raised defense funds in the Elaine cases and in politics. Between 1920 and 1923, Hibbler appealed trial verdicts in three criminal cases, one in which he raised the novel argument that police should have given the defendant a *Miranda*-type warning at the time of his arrest.<sup>533</sup>

*Logan v. State* was the appeal of a conviction for violating a liquor-manufacturing law.<sup>534</sup> Hibbler argued unsuccessfully that the defendant had been coerced into making a confession at a time when he was without counsel, and was not cautioned about his right to remain silent or that his statements might be used against him.<sup>535</sup> Although there was no *Miranda* law at the time, Hibbler argued that the policemen's promise of leniency *extorted* the confession and rendered it involuntary and inadmissible.<sup>536</sup> J.A. Hibbler would continue his civil rights activities into the third period of African-American attorneys.

In all, ten African-American attorneys appear in the official reports of the state supreme court between 1901 and 1924. Of them, Scipio Jones was the most prolific with twenty-one appearances.<sup>537</sup> Thomas J. Price appeared in ten cases, eight of which he shared with Jones.<sup>538</sup> Hibbler appealed the three cases mentioned above. J.R. Booker appeared before the court on two

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532. Beasley and Henry Avant both are listed in the "Attorneys at Law" section of the 1917 and 1920 HCDs.

533. *Anderson v. State*, 161 Ark. 46, 255 S.W. 319 (1923); *Logan v. State*, 150 Ark. 486, 234 S.W. 493 (1921); *White v. State*, 145 Ark. 170, 224 S.W. 435 (1920).

534. *Logan*, 150 Ark. at 488, 234 S.W. at 493.

535. *Id.* at 488-89, 234 S.W. at 493.

536. *Id.*

537. Jones appeared in both civil and criminal defense cases. *See supra* notes 470-71 for the categorization of his cases.

538. In all ten cases, Price represented fraternal organizations - e.g., the Mosaic Templars, Knights of Pythias, and the Odd Fellows - on business matters. *See supra* note 523. It is possible that Price helped Jones by taking over some of his civil cases when Jones was concentrating on the Elaine defendants, although some of the cases also show other co-counsel.



occasions.<sup>539</sup> Robert S. Bowers and L.J. (Louis Jenks) Brown appear in only one civil case, where they are co-counsel with Scipio Jones and Thomas J. Price.<sup>540</sup> William Augustus Singfield handled four civil cases in the high court during this second period, one in which he opposed C.T. Lindsay and Nelson H. Nichols.<sup>541</sup> Waters McIntosh, admitted in 1920, brought a suit on his own and other attorneys' behalf claiming exemption from an occupational tax on lawyers.<sup>542</sup> As far as can be determined from the opinions, except for McIntosh's challenge, all of these cases involved disputes between African-Americans.

These opinions demonstrate the increasing access of African-Americans to the court system and more use of their own lawyers to achieve it. Except for J.A. Hibbler and contributions to Jones' efforts from Thomas Price, other lawyers' cases do not add to the civil rights record established by Scipio Jones. Mifflin Gibbs died in 1915, and his name does not appear in any official records of court opinions, nor was he listed as an attorney in city directories between 1891 and 1915.

J.R. Booker was the son of J.A. Booker, a civil rights activist minister who was named by Governor Charles H. Brough to a bi-racial Commission on Race Relations to investigate the Elaine Race Riots in 1919.<sup>543</sup> As noted earlier, J.R. Booker provided some assistance to Scipio Jones in the representation of the Elaine defendants.<sup>544</sup> Booker did not appear prominently in the reports of this second period, but would go on to create his own civil rights record as one of the active attorneys in the third period.<sup>545</sup>

Scipio Jones had working relationships with a number of attorneys in the second group, both with his peers and with

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539. These cases were both civil matters. *State v. Knights of Pythias of N. Am.*, 157 Ark. 266, 247 S.W. 1068 (1923); *Knights of Pythias of N. Am. v. Bond*, 109 Ark. 543, 160 S.W. 862 (1913).

540. *Blakely v. Newton*, 157 Ark. 351, 248 S.W. 907 (1923).

541. *Ex Parte Dukes*, 155 Ark. 24, 243 S.W. 863 (1922); *Walker v. Walker*, 147 Ark. 376, 227 S.W. 762 (1921); *Moorehead v. Dial*, 134 Ark. 548, 204 S.W. 424 (1918). The fourth case was handled on his own behalf, *Gibbs v. Singfield*, 115 Ark. 385, 171 S.W. 144 (1914), in which he was opposed by the other two lawyers.

542. *McIntosh v. Little Rock*, 159 Ark. 607, 252 S.W. 605 (1923).

543. WASKOW, *supra* note 484, at 151.

544. *See supra* note 509.

545. *See infra* notes 645, 667 and accompanying text.

younger men.<sup>546</sup> At the beginning of his career, Jones went into partnership with J.A. Robinson.<sup>547</sup> Later, between 1900 and 1903, he shared an office with Archie V. Jones.<sup>548</sup> City directories show attorney John W. Gaines in a partnership with Scipio Jones between 1906 and 1908.<sup>549</sup> In 1908, Thomas J. Price began a six-year partnership with Jones.<sup>550</sup> In 1912, John Gaines rejoined Scipio Jones and Thomas J. Price to create Jones, Price & Gaines.<sup>551</sup> That relationship lasted until 1915, when Price left the office<sup>552</sup> and Milton Wayman Guy arrived, changing the firm name to Jones, Gaines & Guy.<sup>553</sup> This union lasted only one year. In 1916, Guy was on his own.<sup>554</sup> In 1917, John Gaines returned to solo practice.<sup>555</sup> After 1917, Scipio Jones was never again listed in a partnership, but only as a sole practitioner.<sup>556</sup> However, his support of younger African-Americans who wished to become attorneys continued.<sup>557</sup>

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546. City directories frequently show attorneys sharing the same office address and, later, the same telephone numbers. It is unclear whether all of these were legal partnerships. One publication noted that Scipio Jones' private practice "necessitated his having a large corps of highly trained assistants." AFRO-AMERICAN ENCYCLOPEDIA, *supra* note 392, at 1381. It is not clear whether these other attorneys were true partners, merely shared offices and some work, or were salaried associates. Likely, all three associations were represented at different times. See also THE NATIONAL CYCLOPEDIA OF THE COLORED RACE 459 (Clement Richardson ed., 1919) [hereinafter Richardson].

547. Dillard, *Scipio A. Jones*, *supra* note 6, at 204.

548. LRCD's 1900-01, 1902-03. Archie Jones was practicing in 1900 in the circuit court, *id.*, and was admitted in 1901 by the state supreme court. SUPREME COURT ENROLLMENT BOOK 1, p. 144, with note "Colored." Archie Jones was not listed in city directories between 1903-1916. He reappears in the listings as a sole practitioner from 1916 to 1920. 1916, 1917, 1919, 1920 LRCD. Thereafter, he again disappears.

549. 1906, 1907 LRCDs. Gaines first appeared in Little Rock in 1903. 1903-04 LRCD. Between 1908-11, John Gaines advertised a solo practice. 1908, 1910, 1911 LRCD.

550. Dillard, *Scipio A. Jones*, *supra* note 6, at 204; 1915 LRCD.

551. 1912 LRCD.

552. Price is not formally associated in practice with Jones after 1915. He continued a solo practice in Little Rock until about 1929. 1929 LRCD.

553. 1915 LRCD.

554. 1916 LRCD. Guy continues to be listed as an attorney in city directories, with one exception, until 1934. 1934 LRCD. The exception is a listing as a "teacher" in 1922 and the listing may refer to another man. 1922 LRCD.

555. 1917 LRCD. Gaines disappears from records after 1917.

556. 1916-43 LRCDs.

557. LOIS PATTILLO, LITTLE ROCK ROOTS 57 (1981) [hereinafter PATTILLO] (recording the story of J.C. Oliver, who worked with Jones on several community projects in his youth). Apparently, "Jones was impressed with Oliver's potential and asked him to attend Chicago Law School, pass the bar, return and practice law with him." *Id.* By the time

Most of the men in this second generation did not become famous, but a number of them maintained lengthy, and apparently successful, law practices. Scipio Jones practiced in Little Rock until his death in 1943, a total of fifty-four years.<sup>558</sup> Alexander L. Burnett, properly a member of the first group of attorneys, practiced in Jefferson County until his death in 1929.<sup>559</sup> In a 1906 publication, Burnett is said to have been a United States Commissioner for the Western Division of the Eastern District of Arkansas for twelve years.<sup>560</sup> Charles T. Lindsey was listed in city directories between 1888 and 1914.<sup>561</sup> John W. Gaines practiced in Little Rock between 1903 and 1917.<sup>562</sup> William E. Gay also was in Little Rock from 1916 to 1934.<sup>563</sup>

Neely W. Shelton practiced in Pine Bluff from 1903 to 1925.<sup>564</sup> Shelton was born in Mississippi.<sup>565</sup> He taught school before attending a law course at the University of West Tennessee.<sup>566</sup> Shelton was admitted to practice in Tennessee before coming to Arkansas, where he was admitted in 1903.<sup>567</sup> Stuart C. Pryce practiced in Pine Bluff from 1903 until 1929.<sup>568</sup> He

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Oliver completed his legal education in 1934, however, Jones discouraged him from returning to Little Rock, explaining "that West Ninth Street, the only leading business street for blacks, was failing." *Id.* After practicing law in Chicago, Oliver returned to Arkansas and ultimately became President of the Arkansas Baptist College in Little Rock. *Id.*

558. The last case on which Jones' name appears as counsel of record was published after his death. *Morris v. Williams*, 59 F. Supp. 508 (E.D. Ark. 1944) (asking for equal treatment in salary determinations of white and African-American teachers). Fittingly, it is a case involving civil rights and equality. Unfortunately, it was a loss, although it led to changes that ultimately provided a victory. *See infra* note 687-97 and accompanying text.

559. Gatewood, *supra* note 6, at 305 (noting that Burnett and other African-American attorneys "all receive due appreciation and recognition at the bar"). The 1929 Pine Bluff City Directory indicates his wife is now his widow, "Burnett, Laura C" is listed as "(c & wid A L)."

560. HENDERSON'S, *supra* note 7. He is listed in 1910 and until 1929 as "U S Comr P O" in city directories.

561. 1888-89, 1893-94, 1895-96, 1897-98, 1899, 1900-01, 1902-03, 1903-04, 1906, 1907, 1908, 1910, 1911, 1912, 1913, 1914 LRCDs. The 1915 LRCD indicates that Lindsey died on November 20, 1914, at the age of 64. LRCD.

562. *See supra* notes 549, 551, 553, 555.

563. 1916, 1917, 1919, 1920, 1922, 1925, 1926, 1928, 1929, 1930, 1931, & 1934 LRCDs. Gay was admitted to practice before the state supreme court in 1919. SUPREME COURT ENROLLMENT BOOK 1, at 106.

564. 1903 PBCD. Shelton also appears in the 1910, 1913, 1917-18, 1920-21, 1922-23, & 1925-26 directories.

565. 1920 Census, vol. 30, e.d. 142, sh. 6, l.83.

566. HENDERSON'S, *supra* note 7.

567. *Id.*

568. 1903, 1910, 1913, 1917-18, & 1929 PBCD.

was listed as United States Land Attorney and notary public in 1917.<sup>569</sup> Pryce was born a slave<sup>570</sup> in Arkansas in 1855.<sup>571</sup> He attended high school in Pine Bluff and at least part of his legal education took place in Oklahoma where he apprenticed with George Perkins.<sup>572</sup> Pryce was admitted to the bar in Oklahoma and practiced there for some time before beginning practice in Pine Bluff, Arkansas.<sup>573</sup> Pryce disappeared from city directories after 1929.

Andrew W. Spears was admitted to practice in the state supreme court in 1906.<sup>574</sup> He is listed in city directories until 1925,<sup>575</sup> when he is noted as having died.<sup>576</sup> Nothing else was discovered about Spears. Japheth Jones was originally admitted to practice about 1891.<sup>577</sup> He was an immigrant to Arkansas.<sup>578</sup> He continued his practice in Pine Bluff until 1936.<sup>579</sup> He died on September 4, 1937.<sup>580</sup>

Waters McIntosh began a legal practice in Pulaski County in 1916,<sup>581</sup> and was admitted to the state supreme court in 1920.<sup>582</sup> He was an ex-slave, born in South Carolina, who arrived in Arkansas in 1888.<sup>583</sup> He farmed, then became a minister until 1915.<sup>584</sup> He attended Philander Smith College in Little Rock between 1891 and 1897, ultimately graduating.<sup>585</sup> He stu-

569. 1917-18 PBCD.

570. HENDERSON'S, *supra* note 7.

571. 1920 Census, vol. 30, e.d. 141, sh. 11, l.19.

572. HENDERSON'S, *supra* note 7.

573. *Id.*

574. SUPREME COURT ENROLLMENT BOOK 2, with note "(Colored)."

575. 1910, 1913, 1917-18, 1920-21, 1922-23, & 1925-26 PBCD.

576. SUPREME COURT ENROLLMENT BOOK 2 contains the note "died 6/29/25."

577. HENDERSON'S, *supra* note 7.

578. The 1900 Census states his place of birth as Alabama in 1863, while the 1920 Census states it to be Mississippi in 1866. 1920 Census, vol. 30, e.d. 137, sh. 19, l. 64.

579. 1910, 1913, 1917-18, 1920-21, 1922-23, 1925-26, 1927, 1929, 1931, & 1936 PBCDs.

580. Arkansas Death Record Index, 1934-40, on file with the Arkansas History Commission, Little Rock.

581. 1916 LRCD, listing a partnership with William E. Gay.

582. SUPREME COURT ENROLLMENT BOOK 1, at 210, with noted "(Colored)." SUPREME COURT ENROLLMENT BOOK 2 contains the same information, plus the handwritten note "Dead." Waters has a final city directory listing in 1939. 1939 LRCD.

583. Rawick, *supra* note 350, at 17. In his interview, McIntosh stated that his father was a white Confederate officer who was killed in the Civil War. *Id.*

584. *Id.* at 22-23.

585. *Id.* at 23.

died law through a correspondence course, which he completed when he was fifty years old.<sup>586</sup> As noted earlier, he is among the group who handled appeals in the state supreme court.<sup>587</sup> In the 1930s, an interviewer commented that McIntosh subscribed to several publications and was “an omnivorous reader and a clear thinker” though he must have been in his seventies.<sup>588</sup> McIntosh was listed in practice with William E. Gay between 1916 and 1919.<sup>589</sup> McIntosh was last listed as an attorney in 1937.<sup>590</sup> Except for Peter Beasley, who practiced law in Phillips County from 1908 to 1943, with three years in Little Rock,<sup>591</sup> the long-term African-American practitioners were located either in Little Rock or Pine Bluff (Jefferson County), each of which had a substantial African-American middle class population.

As noted at the beginning of this section, a number of lawyers in this second period appear briefly and then disappear.<sup>592</sup> Several others left a bit more history than a directory listing: J.D. Royce (or Royes) is said to have been a criminal defense lawyer in Hot Springs, Arkansas, around 1895.<sup>593</sup> Robert S. Bowers practiced in Hot Springs County about 1907.<sup>594</sup> Edward D. Dobbins was admitted to practice in the circuit court in Fort Smith, Arkansas, about 1920.<sup>595</sup> In 1917, Winfield F. Clark briefly joined with J. A. Hibbler in practice.<sup>596</sup>

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586. *Id.* (calling it the “American Correspondence course”).

587. *See supra* note 542.

588. Rawick, *supra* note 350, at 24.

589. 1916, 1917 & 1919 LRCDs.

590. 1937 LRCD. His last listing of any sort was in the 1944-45 Little Rock directory.

591. *See supra* notes 526-29.

592. Henry Avant, Walter F. Clark, Oscar M. Farrington, J. Early Green, George H. Greene, John A. Hiller, A. Jackson, G.A. Johnson, W.E. Parker, and William L. Scott.

593. EMANCIPATION, *supra* note 2, at 327. Royce was apparently treated on an equal basis with other attorneys, in that he was appointed by the court to defend a white man charged with murder. Gatewood, *supra* note 6, at 319. Nothing else has been discovered about him.

594. Bowers was admitted to practice in October 1907 in Malvern, Hot Springs County. SUPREME COURT ENROLLMENT BOOK 1, at 14, with note “Colored.”

595. EMANCIPATION, *supra* note 2, at 327

596. 1917 LRCD.

### C. Civil Rights Through Civic Action

This second period saw the beginning of a national conflict among African-Americans between the philosophies of Booker T. Washington, W.E.B. DuBois and others on how to respond to civil rights violations and segregation.<sup>597</sup> African-American lawyers in Arkansas, as might be expected from their choice of careers, initially seem to have adopted Washington's ideas about the elite "demonstrating equality" within current society and were active in efforts to improve education and create wealth in their communities. In the third period, we see a shift toward organizing the masses of African-Americans toward change.<sup>598</sup>

Economic activity was tremendous among African-Americans during this period. As noted earlier, they were able to document payment of taxes on \$15,000,000 of real and personal property in 1905, despite the fact that in 1900, seventy-one percent of African-Americans were farmers or farm laborers and only one percent was considered middle-class.<sup>599</sup> Some African-Americans were quite wealthy. Few of them were lawyers, although some lawyers were involved in entrepreneurial enterprises. Miffin Gibbs continued his work toward economic independence of African-Americans by founding Arkansas' second African-American-owned bank, the Capitol City Savings Bank, in 1903.<sup>600</sup> Despite Gibbs' extensive business background, the bank did not survive long before the national financial picture and mismanagement required it to declare insolvency.<sup>601</sup>

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597. JOHN BROWN CHILDS, LEADERSHIP, CONFLICT, AND COOPERATION IN AFRO-AMERICAN SOCIAL THOUGHT 10-48 (1989) (distinguishing the "vanguard" perspective, which viewed the masses as dependent on specific leaders to direct their action, from the "mutuality" concept, which recognized the value of independent groups cooperating toward the same goals) [hereinafter CHILDS].

598. See *infra* notes 659-62 and accompanying text.

599. See *supra* notes 345, 465 and accompanying text.

600. Graves, Thesis, *supra* note 249, at 79. A non-lawyer politician named Jacob N. Donoho founded the first African-American bank – the United Bank and Trust Company – in 1902 in Pine Bluff. *Id.* at 327 n.85.

601. Dillard, *Golden Prospects*, *supra* note 56, at 327. Scipio Jones and others represented claimants against Gibbs. See, e.g., *Jones v. Harris*, 90 Ark. 51, 117 S. W. 1077 (1909). In late May 1909, "Gibbs reached a settlement in an out-of-court decision on the \$28,000 claims against him . . . . Several local black leaders, such as John E. Bush and Scipio Jones, repudiated Gibbs' lax administration of the bank." Dillard, *Golden Prospects*, *supra* note 56, at 330. Gibbs ultimately held on to his personal fortune, despite this setback. At the time of his death, Gibbs owned stock valued at \$30,000 in several corporations. Dillard, *Black Moses*, *supra* note 75, at 103.

Gibbs also was active in Booker T. Washington's National Negro Business League (NNBL), founded in 1909,<sup>602</sup> and helped to create an Arkansas branch of the organization.<sup>603</sup> As noted earlier, Scipio Jones was also a member and, with other lawyers, helped to create the National Negro Bar Association (NNBA) as an auxiliary of the NNBL.<sup>604</sup> Gibbs endorsed "buy black" campaigns as a way to strengthen the African-American community.<sup>605</sup> A long-time interest in African-American education was recognized shortly before his death when Gibbs was honored by having a Little Rock high school named after him.<sup>606</sup> He contributed "very largely" to the library of that school.<sup>607</sup> He was also said to have made donations to "[s]chools, colleges and churches in and out of Arkansas."<sup>608</sup>

Scipio Jones, too, was involved in business ventures. In addition to his work representing and promoting African-American insurance companies and fraternal organizations, both of which provided economic benefit to the community, in February 1908 he created the Arkansas Realty and Investment Company with Thomas J. Price and others, with the purpose of aiding African-Americans in acquiring homes and "affording the race a better opportunity to develop its mechanical skill and grow prosperous."<sup>609</sup> The venture failed after three years, and the company was dissolved in June 1911.<sup>610</sup>

William Augustus Singfield, also active in Republican politics and law practice,<sup>611</sup> fared better. In addition to founding the weekly *Little Rock Reporter* in 1901,<sup>612</sup> he was vice president of Mifflin Gibbs' bank during its existence,<sup>613</sup> and later began real

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602. EMANCIPATION, *supra* note 2, at 552.

603. Dillard, *Black Moses*, *supra* note 75, at 110.

604. *See supra* note 387 and accompanying text.

605. Dillard, *Black Moses*, *supra* note 75, at 110.

606. *Obituary, Judge M. W. Gibbs Called by Death*, ARKANSAS DEMOCRAT, July 12, 1915.

607. *Id.*

608. *Id.*

609. Dillard, *Scipio A. Jones*, *supra* note 6, at 209-10. One commentator noted that "he spent most of his life in advising and fostering enterprises among his people, particularly fraternal organizations." *Obituary*, ARKANSAS DEMOCRAT, Mar. 29, 1943.

610. Dillard, *Scipio A. Jones*, *supra* note 6, at 209.

611. *See supra* notes 451, 541 and accompanying text.

612. WOODS, *supra* note 48, at 102.

613. *Id.*

estate and grocery businesses and operated a printing plant.<sup>614</sup> These ventures brought him sufficient income to own several real properties in Little Rock and Argenta (now North Little Rock) and a farm in the country.<sup>615</sup> Gibbs, Scipio Jones, and Singfield may have been the exceptions among lawyers in the scope of their economic activities, but they were in the mainstream of the times.<sup>616</sup>

Like Mifflin Gibbs, Scipio Jones was comfortable with whites and interacted regularly with them in affairs of the larger community. As noted, he ran for a position on the Little Rock school board in 1902. Asked for help by Little Rock Mayor Brickhouse, Jones used his influence on behalf of all Little Rock citizens when, as the attorney for several wealthy black fraternal groups, he threatened to withdraw fraternal funds from local banks unless they provided a loan to the City of Little Rock.<sup>617</sup> During World War I, as the African-American community enlisted in the armed services and otherwise contributed heavily to the war effort,<sup>618</sup> Scipio Jones engineered the purchase of \$125,000 in liberty bonds for the Mosaic Templars to demonstrate the patriotism of the African-American community.<sup>619</sup> Scipio Jones also was among the fifty prominent Little Rock African-Americans who founded the first state NAACP chapter in 1918.<sup>620</sup> In addition, Jones served as director of the United Charities drive (a forerunner of the United Fund); was a volunteer at the Aged and Orphans Industrial Home in Dexter, Arkan-

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614. *Id.* at 102-03. Singfield is listed as "lawyer and R E Dealer" in the 1915 LRCD.

615. *Id.* at 103. As of 1907, Singfield's wealth was estimated at \$7-8,000. *Id.*

616. "While there were only two functioning black-owned banks [in Arkansas] in 1899, there were twenty-eight by 1910." Dillard, *Golden Prospects*, *supra* note 56, at 327 n.86 (citing ABRAM L. HARRIS, *THE NEGRO AS CAPITALIST: A STUDY OF BANKING AND BUSINESS AMONG AMERICAN NEGROES* (Philadelphia, 1936)).

617. Dillard, *Scipio A. Jones*, *supra* note 6, at 211; Carmichael, *supra* note 47, at 313.

618. Randy Finley, *Black Arkansans and World War One*, 49 *ARK. HIST. Q.* 249 (Autumn 1990) [hereinafter Finley, *Black Arkansans*].

619. Dillard, *Scipio A. Jones*, *supra* note 6, at 212. See also Finley, *Black Arkansans*, *supra* note 618, at 267; Richardson, *supra* note 546, at 459.

620. John Kirk, *Dr. J. M. Robinson, the Arkansas Negro Democratic Association and Black Politics in Little Rock, Arkansas, 1928-1952*, 41 *PULASKI COUNTY HIST. REV.* 2, 4 (1993) [hereinafter Kirk, *Robinson*]. The NAACP did not fare well in Arkansas despite his sponsorship. See, e.g., John Kirk, *He Founded a Movement: W. H. Flowers, the committee on Negro Organizations and the Origins of Black Activism in Arkansas, 1940-57*, in *THE MAKING OF MARTIN LUTHER KING AND THE CIVIL RIGHTS MOVEMENT* 31 (Brian Ward & Tony Badger, eds., 1996) [hereinafter Kirk, *He Founded a Movement*].



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sas; and served on Board of Trustees at Shorter College, his alma mater.<sup>621</sup>

#### D. Summary of Period Two

Throughout this second period, African-Americans struggled against overwhelming odds to retain their civil rights. Lawyers were among the leaders in this fight. Initially, they attempted to work within the political system to bring reason to the law and to demonstrate the value of their participation. As these efforts failed and they comprehended the enormity of the social regression that had occurred, African-Americans began to build their own institutions and communities. In this, they were aided by national developments such as the founding of the NAACP in 1909, the availability of national African-American newspapers for communicating with other communities, the NNBL, and the NNBA.

As has been demonstrated, the decision to work within the system of segregation with efforts to improve the economic situation of the African-American community did not prevent its lawyers from direct political and legal action in efforts to obtain equal treatment. While these confrontations themselves were, on the whole, not violent or bloody, they took place in an era of extreme violence against African-Americans and were not without significant danger. Men like Scipio Jones, J.A. Hibbler, Mifflin Gibbs, and others made strong public statements and used their legal skills to work against segregation and the unequal application of law. That they did not succeed in making major changes is not to their discredit, given the overwhelming strength of the opposition. "The reality of the situation was that there were too few black lawyers to fight and win the war against *de jure* racism."<sup>622</sup>

The lawyers, with Scipio Jones leading the way, expanded their use of the justice system, and provided access to it beyond the trial court level in the first decade of the twentieth century. The work of Scipio Jones and J.A. Hibbler in criminal defense cases were valiant efforts that, while not always successful, provided a preview of what was to come – an almost total reliance

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621. Dillard, *Scipio A. Jones*, *supra* note 6, at 211.

622. EMANCIPATION, *supra* note 2, at 558.

on the courts, particularly the federal system, to vindicate constitutional rights. The African-American community's participation in World War I changed its perception of what was possible and made it impossible to tolerate a continuation of their pre-war status; however,<sup>623</sup> there was violence as white communities lashed out in fear and anger.<sup>624</sup> African-Americans fought back, using the education and experience acquired over the preceding sixty years. The next period would demonstrate continued growth and power, and African-American lawyers would continue to be an integral part of the movement.

#### IV. PERIOD THREE: *MOORE V. DEMPSEY* (1923) THROUGH WORLD WAR II

By the time of the United States Supreme Court's decision in the Elaine cases, many of the attorneys who made up the first and second waves of African-American lawyers had died, left the state, or otherwise disappeared from the records. One of the earliest and most prominent of them, Mifflin Gibbs, had died in 1915.<sup>625</sup> Only sixteen men from the first two groups are known to have continued into the third period.<sup>626</sup> Of these, four – Scipio Jones, Thomas Price, J.R. Booker, and J.A. Hibbler – would continue their activity in political and legal affairs.

Admission to the profession in this third period was more difficult than in prior periods. In addition to the movement toward increased education and training began during the 1870s, the bar examination process had been centralized in 1917 and was administered under the auspices of the state supreme court.<sup>627</sup> No longer could personal contacts sway examiners in

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623. Finley, *Black Arkansans*, *supra* note 618, at 268-69 (noting “[a] new aura of self-determinism slowly emerged . . . [and] [t]he black community . . . grew more solidified during the war.”).

624. WASKOW, *supra* note 484, at 10.

625. Dillard, *Black Moses*, *supra* note 75, at 131.

626. Scipio Jones, Nelson Nichols, Alexander Burnett, Japheth Jones, Stuart Pryce, Neely Shelton, Andrew Spears, Thomas Price, W.A. Singfield, J.R. Booker, Waters McIntosh, J.A. Hibbler, Peter Beasley, Lewis Jenks Brown, William E. Gay, and George H. Greene.

627. 1917 Ark. Acts 361. All attorneys admitted after 1917 received a statewide license and admission to practice in all courts. Supreme court records should be considered definitive as to attorneys admitted to practice in Arkansas during this period. However, supreme court records for this last period were maintained in ledger books by hand and seem unreliable. *See supra* note 2. They identified some African-American admissions

local circuit courts, even if their inclinations would allow it. Instead, a statewide examination was administered<sup>628</sup> and both subjects and minimum grades were designated.<sup>629</sup> Only twelve new attorneys are known to have been admitted or practiced in Arkansas between 1923 and 1950.<sup>630</sup> One of them – W. Harold Flowers – would make history in the state by taking both political and courtroom justice approaches to new heights of civil rights activity.

Education in the general population was increasing, so the reduction in new attorneys during this period cannot be assigned entirely to higher admission standards. Migration to northern states during World War I also significantly decreased the pool.<sup>631</sup> World War I deaths in battle probably reduced the ranks of those who might have sought bar admission in this pe-

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through various notations, e.g., “col’d,” “c,” “col.” It is not clear how the determination was made and whether court clerk notations were sanctioned by the court. Some African-American attorneys were not so identified.

628. ARK. SUP. CT. R. IV (1917).

629. ARK. SUP. CT. R. VI (1917).

630. The twelve were William A. Booker (J.R.’s brother, admitted July 13, 1925, SUPREME COURT ENROLLMENT BOOK 2 with the notation “Col.”); Marion R. Perry (admitted February 16, 1925, SUPREME COURT ENROLLMENT BOOK 2, with the handwritten notation “Colored”); Walker H. Clark (1931 PBCD); Theodore X. Jones (Japheth’s son, admitted February 15, 1932, SUPREME COURT ENROLLMENT BOOK 2, with handwritten notation “Col.”); Augustus Arvis Latting (admitted January 1, 1933, SUPREME COURT ENROLLMENT BOOK 2, with the handwritten notation “Col.”); Joseph Atkins (admitted July 8, 1935, SUPREME COURT ENROLLMENT BOOK 2, with handwritten notation “Colored”); William Harold Flowers, Sr. (admitted October 21, 1935, SUPREME COURT ENROLLMENT BOOK 2); Wallace L. Purifoy, Jr. (practicing in Forrest City in 1938 according to EMANCIPATION, *supra* note 2, at 603-04); I.H. Spears (practicing in El Dorado in 1938 according to EMANCIPATION, *supra* note 2, at 604); Myles A. Hibbler (J.A.’s son, admitted January 26, 1942, SUPREME COURT ENROLLMENT BOOK 3); and Vince M. Townsend, Jr. (admitted July 6, 1942, SUPREME COURT ENROLLMENT BOOK 3). Latting and Townsend left Arkansas very soon after admission; neither established a practice in the state. One other man was mentioned as an attorney during this period, but no verification or other information about him was recovered: G.A. Johnson (EMANCIPATION, *supra* note 2, at 327 (citing *Negro Lawyer will Speak at Colored Church Here*, MONROE LA. NEWS STAR, Mar. 13, 1929)).

631. Finley, *Black Arkansans*, *supra* note 618, at 250-51 n.173 (stating that more than “23,000 Arkansas blacks joined the nation-wide throng . . . that sojourned northward”). Finley provides a list of reasons why people left:

a desire for political privileges, a yearning for better wages and a more humane standard of living, a flight from Jim Crowism, more job openings caused by immigration decline in the North, the lure of the city, inducements by labor agents and the black press, natural disasters such as the boll weevil infiltration and floods of the period, and southern lynchings and continued violence.

*Id.* at 252-53. Better educational opportunities were also a draw. *Id.* at 253 (stating that Arkansas was spending \$12.95 per white student and only \$4.59 per black student in 1915).

riod. Those who left the state were more likely young and single and ambitious. In addition, the Great Depression added their weight to oppress.

As of 1920, African-Americans constituted twenty-seven percent of Arkansas' population.<sup>632</sup> Over the next thirty years, that percentage would decrease. In 1940, only twenty-five percent of the state's population was African-American.<sup>633</sup> Between 1940 and 1950, Arkansas' African-American population decreased by 55,299 (11%) while the white population increased by 15,423 (1%).<sup>634</sup> By 1950, African-American citizens made up only twenty-two percent of Arkansas' total population.<sup>635</sup>

Lynchings and violence still abounded in the south, although not at the level found during the second period. Between 1924 and 1950, only 244 African-Americans were lynched in the United States,<sup>636</sup> compared with 2437 during the second period.<sup>637</sup> However, in 1927, "one of the worst incidents of racial violence ever to occur in Little Rock, the macabre burning of a lynched man on West Ninth Street," took place.<sup>638</sup> "Jim Crow" still held sway, and sometimes reached absurd heights.<sup>639</sup>

In this third period, political efforts largely would be made through legal action. Democratic primaries remained closed to African-Americans and the Republican Party, although it still had African-American members, continued virtually powerless in the state. In addition, many of the African-American fraternal organizations, insurance companies, and other businesses would fail during the Depression, causing a loss of existing economic power within the community. Despite these factors, a few law-

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632. 1920 State Level Census Data (visited Apr. 9, 2000) <<http://fisher.lib.virginia.edu/cgi-local/censusbin/census/cen.pl>>.

633. Michael F. Sylva, Black Population in Arkansas, 1900-1970 31 (1981) (unpublished M.A. thesis, University of Arkansas) (on file with author) [hereinafter Sylva].

634. *Id.* at 31. Between 1940 and 1950, the national population increased by 14.5% (the national black population by 16.9%), while Arkansas' total population decreased by 2% (the African-American population decreased by 11.4%). *Id.* at 15.

635. *Id.* at 31.

636. Lynching Statistics handout from, Rumors & Reaction: Reconsidering the Elaine Race Riots of 1919 Conference (Feb. 10-11, 2000) (on file with author).

637. *See supra* note 364 and accompanying text.

638. Kirk, *Robinson*, *supra* note 620, at 4.

639. Taxicab operators in Pine Bluff were ordered to use different automobiles for transporting white and African-American customers. Interview with Leo Branton, Los Angeles, Cal. (June 11, 1998) (whose family owned a taxi company in Pine Bluff during the 1920s through 1950).

yers in the third group managed to achieve victories on behalf of civil rights. Even the defeats made a statement about their fortitude.

#### A. Politics as a Vehicle for Pursuing Civil Rights

Scipio Jones was the state's most prominent African-American Republican after Mifflin Gibbs' death in 1915. Under the informal settlement reached with the Republican Party in 1924, he served as a delegate to the Republican National Convention in 1928 and in 1940.<sup>640</sup> These appearances reflected his prominence, but did not indicate much real influence wielded by African-Americans in the party. There was no place in either party for African-Americans, and participation in such activities lessened for younger African-American attorneys. None of the third group of lawyers appears to have devoted much energy to party politics, although they continued to engage in political acts. All of the significant political activity was aimed at the Democrats' white primary.

Despite the continuous denial of franchise rights by the Democrats, some African-Americans refused to give up. In this third period, two organizations were created in Arkansas with the goal of regaining political and other legal rights – the Arkansas Negro Democratic Association (ANDA) and the Conference on Negro Organizations (CNO). These two organizations benefited from the development of national organizations like the NAACP. Among other goals, the NAACP worked to generate a groundswell of moral indignity against the violence inflicted on African-Americans.<sup>641</sup> During the 1930s and 1940s, the NAACP “forged cross-class alliances that encouraged new expressions of black dissent.”<sup>642</sup> “[B]y the beginning of World War II, blacks could tap the resources of a growing array of organizations dedicated to abolishing white supremacy and the violence that undergirded it.”<sup>643</sup> ANDA and CNO illustrate a transition from group dependence on a small elite for representation to a multi-class approach. ANDA was formed in 1940 by a

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640. Dillard, *Scipio A. Jones*, *supra* note 6, at 218.

641. W. Fitzhugh Brundage, *The Roar on the other Side of Silence*, UNDER SENTENCE OF DEATH, LYNCHING IN THE SOUTH 277-78 (W. Fitzhugh Brundage ed., 1997).

642. *Id.* at 282.

643. *Id.*

group of African-Americans to support Democrat Alfred E. Smith for president.<sup>644</sup> They were aided by African-American lawyers in a merger of politics and the judicial system in Arkansas. Scipio Jones, J.A. Hibbler, and the firm of Booker & Booker represented ANDA in 1930, suing the Democratic City Central Committee and various of its officials “seeking ‘to establish their rights as Negroes and Democrats to vote in Democratic primary elections’ [sic] in Arkansas.”<sup>645</sup> The case was *Robinson v. Holman*.<sup>646</sup>

Although *Robinson* was the only legal effort by African-Americans to open primary elections in Arkansas during this period, it did not represent their total efforts. The group “encourag[ed] payment of the poll tax and [built] a reservoir of qualified black voters. . . .”<sup>647</sup> ANDA also took other measures in efforts to obtain the right to vote Democrat. In 1940, it petitioned the Democratic Party of Arkansas for a change in its voting rules “to allow blacks to vote in the summer primaries for Democratic Senators, Congressmen, and National Democratic Committee members” on the ground that “it had the right to vote in the primaries for national officials under the Fifteenth Amendment.”<sup>648</sup> When that petition was ignored, ANDA made a request in 1942 to “United States Attorney General Francis Biddle to intervene in Arkansas politics and force the DPA to allow blacks to vote in the upcoming primaries.”<sup>649</sup> There was no federal response either.

Finally, ANDA attempted a physical approach. It “urged its members to try to cast votes in the July Democratic primaries of 1942 without federal protection.”<sup>650</sup> Although they attempted only to vote for national offices, “when blacks appeared at the

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644. C. Calvin Smith, *From “Separate but Equal to Desegregation”: The Changing Philosophy of L.C. Bates*, 42 ARK. HIST. Q. 254, 259 (Autumn 1983) [hereinafter Smith, *Separate but Equal*].

645. Fain, *supra* note 83, at 72-73.

646. 181 Ark. 428, 26 S.W.2d 66 (1930). See *infra* notes 679-86 and accompanying text for discussion.

647. Kirk, *Robinson*, *supra* note 620, at 2.

648. C. Calvin Smith, *The Politics of Evasion: Arkansas’ Reaction to Smith v. Allwright*, 1944, 67 ARK. HIST. Q. 40 (1982) [hereinafter Smith, *Politics of Evasion*].

649. *Id.* at 43-44.

650. *Id.* at 44.

polls, they were met by election officials armed with large posters that read “white Democrats only,”<sup>651</sup> and were turned away.

When the United States Supreme Court decided *Smith v. Allwright*<sup>652</sup> in 1944, holding that all-white primaries violated the Fourteenth Amendment,<sup>653</sup> the struggle of African-American Arkansans did not end. After *Allwright* was decided, Arkansas, “in an effort to circumvent the decision and keep state politics all-white, developed a complicated separate primary scheme” that provided separate ballots for state and federal offices.<sup>654</sup> It would not be until 1950 that the Democratic Party would finally eliminate the all-white primary rule.<sup>655</sup>

The second organization that challenged white political domination in Arkansas was the brainchild of a young attorney of the third generation, W. Harold Flowers of Stamps, Arkansas. Flowers was the son of a businessman and an activist school-teacher.<sup>656</sup> He graduated from the Robert H. Terrell Law School in Washington, D.C.,<sup>657</sup> and was admitted to Arkansas practice in 1935. He opened his office in Pine Bluff, Jefferson County.<sup>658</sup>

Flowers created the Committee on Negro Organizations (CNO) in 1940,<sup>659</sup> an act that changed the face of African-American political action in Arkansas.<sup>660</sup> The “cornerstone of the CNO’s whole programme was to secure widespread, organized political participation” by coordinating all African-American group efforts and reaching out to the ordinary citizen.<sup>661</sup> Flowers had proposed the idea to the NAACP, but that group was not prepared to support a new way of garnering public participation.<sup>662</sup> Despite facing initial reluctance and fear of his tactics from the community, the CNO immediately engaged

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651. *Id.*

652. 321 U.S. 649 (1944).

653. *Smith*, *Separate but Equal*, *supra* note 644, at 260.

654. *Id.* at 261; *see also Smith*, *Politics of Evasion*, *supra* note 648, at 44.

655. Graves, Thesis, *supra* note 249, at 116 (noting that it occurred during liberal Governor Sid McMath’s administration).

656. Kirk, *He Founded a Movement*, *supra* note 620, at 32, 30.

657. EMANCIPATION, *supra* note 2, at 327.

658. Kirk, *He Founded a Movement*, *supra* note 620, at 30.

659. *Id.* at 32.

660. *Id.* at 34.

661. *Id.*

662. *Id.* at 278.

in a number of investigations and actions against discrimination.<sup>663</sup> These ultimately drew community support to the organization.

The CNO investigated discrimination in public works employment, acted to remove a ban on black participation in the National Youth Administration, obtained the appointment of a Negro census enumerator in St. Francis County, and held sixteen meetings “with a total attendance of over four thousand people” during its first year.<sup>664</sup> In 1941, the CNO began coordinating poll-tax drives to make more African-Americans eligible to vote, increasing the number of African-American voters from 1.5% of those eligible to vote to 17.3% by 1947.<sup>665</sup> Incorporating litigation into its efforts, the CNO encouraged African-American school teachers to sue for equal pay in 1942.<sup>666</sup> Scipio Jones, J. R. Booker, Myles Hibbler, and the NAACP (through Thurgood Marshall) argued the case in the United States district court.<sup>667</sup>

Both older and newer approaches to political action were in evidence with regard to another important issue – state support for African-American higher education. In 1941, through apparent serendipity (as no coordination has been documented), CNO lobbied the governor,<sup>668</sup> while Scipio Jones pressured the University of Arkansas directly,<sup>669</sup> to provide tuition assistance

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663. Kirk, *He Founded a Movement*, *supra* note 620, at 34-35 (stating that African-Americans were afraid such actions would draw fire from the white community).

664. *Id.* at 34-35.

665. *Id.* at 36-37. CNO’s efforts were co-existent with those of ANDA, and it may be unfair to give CNO entire credit for the increased number of voters.

666. *Id.*

667. *Morris v. Williams*, 59 F. Supp. 508 (E.D. Ark. 1944). See *infra* notes 687-97 and accompanying text for discussion.

668. Kirk, *He Founded a Movement*, *supra* note 620, at 36.

669. Dillard, *Scipio A. Jones*, *supra* note 6, at 213 (noting that “[i]n 1943 Jones’s plan was given legislative approval in Act 345”). Scipio Jones earlier had attempted to obtain his own legal education from the University, but had been rejected. CORTNER, *supra* note 47, at 51; OVINGTON, *supra* note 398, at 92. This 1943 approach was on behalf of a client “inquiring as to the possibility that the university might pay tuition fees for Hilburn to attend law school at Howard University, adding that he thought that would be the best way of handling the matter and then apologizing for hinting that there might be other possibilities.” Guerdon D. Nichols, *Breaking the Color Barrier at the University of Arkansas*, 27 ARK. HIST. Q. 3, 5-6 (1968) [hereinafter Nichols]. Initially, the university rejected the idea as fiscally impossible. “But after a visit by Jones to the university for a conference, and further deliberation which took into account the *Gaines* decision, the university administra-



for African-American graduate students who could not obtain education in the state because of segregation. These actions were successful and the legislature voted to provide tuition funds.<sup>670</sup> However, the money appropriated was deducted from the budget of Arkansas Mechanical & Normal College, which provided the only state-supported higher education in Arkansas for African-Americans, so that there was no net gain in educational funding.<sup>671</sup>

J.R. Booker was also involved in these efforts. When African-American Clifford Davis applied for admission to the University of Arkansas School of Law in March 1946, law school dean Robert A. Leflar

advised that Davis discuss the matter with [ ] Booker, well known Negro lawyer of Little Rock, who understood the university's position and the efforts that were being made. A number of other Negro leaders in the state at that time were exhibiting various degrees of cooperation with the university on the issue.<sup>672</sup>

In 1948, Flowers shepherded African-American student Silas Hunt in a successful effort to integrate the law school of the University of Arkansas in Fayetteville, Arkansas.<sup>673</sup>

## B. The Practice of Law and Civil Rights

As noted earlier, the Wonder State Bar Association for African-American attorneys ceased activity after 1928. "In 1938 J. R. Booker reactivated the group and . . . announced that the bar group would 'fight discriminatory legislation and . . . seek passage of laws for the full enforcement of the rights and

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tion furnished \$134.50 for paying Hilburn's tuition fees." *Id.* at 6. A month later, the legislature acted. *Id.*

670. 1943 Ark. Acts 345. Fourteen awards of \$100 were given to students that year. Among those receiving awards was Flowers' brother who was attending medical school in Tennessee. Kirk, *He Founded a Movement*, *supra* note 620, at 36.

671. Fredrick Chambers, (Abstract) Historical Study of Arkansas Agricultural, Mechanical and Normal College, 1873-1893, at 321-22 (1970) (unpublished Doctoral dissertation, Ball State University) (on file with the Ball State University Library) [hereinafter Chambers]. Although the governor disapproved of the idea, it was clear that the state African-American college could not provide graduate education and the legislature later approved a yearly fund of \$5,000 for the purpose. *Id.*

672. Nichols, *supra* note 669, at 11.

673. Kirk, *He Founded a Movement*, *supra* note 620, at 38.

privileges of citizenship.”<sup>674</sup> Other members and officers were Joseph Atkins (Camden), W. Harold Flowers (Pine Bluff), G.H. Green (Hot Springs), J.A. Hibbler (Little Rock), Scipio A. Jones (Little Rock), Theodore X. Jones (Pine Bluff), Wallace A. Purifoy, Jr. (Forrest City), William A. Singfield (Little Rock), and I. H. Spears (El Dorado).<sup>675</sup> Arkansas lawyers were active regionally and nationally, as well. In 1940, Flowers was elected vice-president of the regional Southwestern Bar Association, which included members from Arkansas, Oklahoma, Texas, and Kansas.<sup>676</sup> J.R. Booker was elected president of the African-American National Bar Association in 1949-50.<sup>677</sup>

Trial work involving civil rights expanded its scope in this period and benefited from knowledge of what was occurring across the country. Of the earlier attorneys, Scipio Jones continued to be the most active. He brought another twenty-four state court appeals before his death in 1943. In three criminal defense appeals, he protested the lack of African-American representation on the juries.<sup>678</sup>

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674. EMANCIPATION, *supra* note 2, at 573-74.

675. *Id.* at 603-04, n.247.

676. *Id.* at 584.

677. J. Clay Smith, *The Black Bar Association and Civil Rights*, 15 CREIGHTON L. REV. 651, 666 (1982).

678. *Bone v. State*, 200 Ark. 592, 140 S.W.2d 140 (1940); *Bone v. State*, 198 Ark. 519, 129 S.W.2d 240 (1939); *Austin v. State*, 193 Ark. 833, 103 S.W.2d 56 (1937). In *Austin v. State*, Jones and J.R. Booker argued that the indictment against the defendant should have been quashed, as was that against his partner in crime (who was tried separately) because there were no African-Americans on the grand jury that returned the indictment. 193 Ark. at 833-34, 103 S.W.2d at 56. The court rejected the argument because there was nothing in the trial court record showing that the other indictment was quashed or that any exception to the indictment against this defendant had been noted by defendant's attorney. *Id.* at 834, 103 S.W.2d at 56. Any objection to the jury composition had been waived. *Id.*

The other two cases involving this issue, both titled *Bone v. State*, arose out of the same criminal acts. In the first trial, co-defendants Bone and Bone were convicted of first-degree murder. *Bone*, 198 Ark. at 520, 129 S.W.2d at 242. Before the trial began, the entire jury panel was white. *Id.* Anticipating defendant's motion to disqualify the panel, the court excused three whites and replaced them with three African-Americans who then were peremptorily challenged by the prosecution. *Id.* On appeal, the state supreme court found that the jury panel selection process was determinative, and that the court's substitutions were ineffective to erase the original error of failing to hear and rule on the defendant's motion. *Id.* at 527, 129 S.W.2d at 244-45. The convictions were reversed and the case was remanded for a new trial. *Id.* at 528, 129 S.W.2d at 245. The court's opinion referred to, without mentioning that it was another Jones case, *Ware v. State*. *Id.* at 522, 129 S.W.2d at 242. The opinion also included a fairly extensive discussion of United States Supreme

On the civil side, with J.A. Hibbler and J.R. Booker sharing counsel status, Jones pursued *Robinson v. Holman* on behalf of ANDA in 1930. The *Robinson* plaintiffs initially obtained a temporary restraining order in chancery court, which allowed African-Americans to vote in the 1948 Democratic primary but kept their ballots separated from those of white voters.<sup>679</sup> Nine months later, the trial court rejected plaintiffs' position and "dismissed the restraining order for want of equity."<sup>680</sup>

On appeal, plaintiffs argued that the rule prohibiting their vote in the primary was a violation of the Fourteenth and Fifteenth Amendments of the United States Constitution.<sup>681</sup> Defendants responded that primary elections were not covered by the amendments because the Democratic party was a private association and no state action was involved.<sup>682</sup> State law merely set the date on which any such elections might be held.<sup>683</sup> The trial court decision was affirmed by the state supreme court.<sup>684</sup> On November 24, 1930, the United States Supreme Court refused to hear an appeal on the ground that "it failed to raise a constitutional question."<sup>685</sup> Plaintiffs' attorneys had had a personal stake in the outcome of this case. "Booker and Hibbler were forced to spend their own funds to get the case docketed

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Court opinions on the subject of appropriate jury selection procedures, seeming to give a warning to all state trial courts. *Id.* at 526, 129 S.W.2d at 244 (stating "[w]e think it perhaps unnecessary to do more than cite and call attention to these numerous decisions").

When the matter was retried, African-Americans were included in the original jury panel, but Jones objected to the fact that none of the men called for the "by-stander" list of potential jurors were African-American. *Bone*, 200 Ark. at 594, 140 S.W.2d at 142. After hearing testimony as to how a "by-stander" jurors after the first panel was exhausted were selected, the trial court overruled the objection. *Id.* at 594, 140 S.W.2d at 142. Testimony of the deputy sheriff had been that he called voters, not knowing which was white or black until they appeared in the courtroom, and he was not prejudiced against calling African-Americans for jury duty. *Id.* at 595, 140 S.W.2d at 142. On appeal, the court held that there was no error. Defendant was not entitled to have African-Americans represented on the jury, but only that they not be discriminated against in the jury panel selection. *Id.* That appeared to put the matter to rest.

679. *Robinson v. Holman*, 181 Ark. 428, 26 S.W.2d 66 (1930).

680. Kirk, *Robinson*, *supra* note 620, at 6.

681. *Robinson*, 181 Ark. at 429, 26 S.W.2d at 67.

682. *Id.* at 431, 26 S.W.2d at 67-68.

683. *Id.* at 432-33, 26 S.W.2d at 68 (citing and distinguishing Texas cases in which a state statute prohibiting African-Americans from voting in primaries was declared unconstitutional but a similar Democratic party rule was not).

684. *Id.*

685. *Robinson v. Holman*, 282 U.S. 804 (1930).

before the Supreme Court and pay the costs of printing the records and briefs.”<sup>686</sup>

In the federal court, Jones participated as co-counsel in *Morris v. Williams*.<sup>687</sup> It was an action by African-American teacher Susie Morris, against the Board of Directors and Superintendent of the Little Rock Special School District.<sup>688</sup> Attorneys Scipio Jones, J.R. Booker, and Myles Hibbler were the local attorneys of record.<sup>689</sup> Jones had died by the time the case was argued and Thurgood Marshall appeared with plaintiffs’ other counsel.<sup>690</sup> The suit alleged that it was district policy to pay African-American teachers and principals less than white ones, despite their possession of the same professional qualifications, and that this decision was made solely on the basis of race and color in violation of the Fourteenth Amendment to the United States Constitution.<sup>691</sup> Ignoring statistics provided by the plaintiffs on the disparate salary ranges for white and African-American teachers, the district court held that plaintiffs had failed to “establish the existence and maintenance of a policy, custom and usage to pay colored teachers and principals less than white teachers and principals, and thereby discriminate against them solely on account of race and color.”<sup>692</sup> The court did not deem the constitutional question raised “essential to a final disposition of the case” and dismissed the complaint.<sup>693</sup>

On appeal, the case was argued by Thurgood Marshall and J.R. Booker, with Myles A. Hibbler listed on the brief. The Eighth Circuit panel reviewed the district court’s two findings of fact and the evidence on which they were based and held that “the record compels the conclusion that such discrimination did exist.”<sup>694</sup> Rejecting defendant’s statement that “a complete

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686. Smith, *Politics of Evasion*, *supra* note 648, at 40.

687. *Morris*, 59 F. Supp. at 508.

688. *Id.*

689. *Id.* at 509.

690. *Id.*

691. *Id.* at 509-10.

692. *Morris*, 59 F. Supp. at 516.

693. *Id.* at 517.

694. *Morris v. Williams*, 149 F.2d 703, 708 (8th Cir. 1945). The Eighth Circuit noted that “very substantial inequalities have existed between the salaries paid to colored teachers and those paid to white teachers and that such inequalities have continued over a period of years . . . . [T]he minutes of the Board record that the gap between the payments to and the salaries of white and colored teachers was based upon race and color.” *Id.* at 707-08.

readjustment of the salaries” had been completed, thus mooting the appeal,<sup>695</sup> the court reversed the lower court judgment and remanded the matter with instructions to the trial court to enter a declaratory judgment in favor of the plaintiffs.<sup>696</sup> The district court also was directed to allow plaintiffs to move for an injunction should defendants not respond favorably to the judgment.<sup>697</sup>

Although J.A. Hibbler and J.R. Booker remained extremely active attorneys, with nineteen and six published opinions, respectively, between them,<sup>698</sup> in the civil rights area Hibbler participated only in the *Robinson* and *Morris* cases, while Booker was co-counsel in those two cases and in one of the three criminal defense cases handled by Jones.<sup>699</sup>

W. Harold Flowers, William A. Booker, and Myles Hibbler are the only members of the third generation of African-American attorneys whose names are connected with civil rights cases. Myles Hibbler joined his brother, J.A. Hibbler in practice after J.A. had already established some record in the civil rights area. Myles died in March 1946,<sup>700</sup> probably due to service in World War II. William Booker appears only in his role as part of the firm of Booker & Booker.<sup>701</sup> Harold Flowers intentionally focused his practice on civil rights cases, believing that “aggressive Negro attorneys can render a vitally needed service to Negroes in the South and at the same time build a profitable practice.”<sup>702</sup> He really comes to the fore as a civil rights trial lawyer after World War II. By 1950, Flowers had appeared before the state supreme court in nine cases, six of them criminal

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695. *Id.* at 708.

696. *Id.* at 709.

697. *Id.*

698. Fourteen of Hibbler’s cases were civil matters and five involved criminal defenses.

699. *Austin v. State*, 193 Ark. 833, 103 S.W.2d 56 (1937).

700. SUPREME COURT ENROLLMENT BOOK 3 (notation at admission record).

701. J.R. was joined in practice by his brother, William A., in 1925. Thereafter, the firm of Booker & Booker and J.R. Booker, individually, are listed in city directories until 1944-45. William A. Booker is listed also as a “clk [clerk] PO,” indicating that law was not his main means of support. 1942, 1944-45, 1947 & 1949 LRCDs.

702. *Southern Lawyer*, EBONY 67, 69 (1949) (noting that he created a “virtual one-man campaign” with “an assembly-line succession of law suits to force [authorities] to provide better schools for Negroes”). He differentiated himself from previous African-American leaders who he felt had not been interested in organizing the mass of African-Americans. Kirk, *He Founded a Movement*, *supra* note 620, at 33.

defense cases.<sup>703</sup> In five of the criminal cases and one civil case, Flowers raised civil rights issues on behalf of his clients.<sup>704</sup>

In 1949, Flowers argued *Pitts v. Board of Trustees of De Witt Special School District*,<sup>705</sup> the first African-American school support case in the state of Arkansas. Flowers obtained a declaratory judgment from the district court, after it found that the facilities of the local African-American grade school and the rating of the local high school were unequal to those available to white students, and ordered the school district to upgrade both.<sup>706</sup>

In two criminal cases, Flowers unsuccessfully raised Scipio Jones' argument concerning African-American participation on jury panels.<sup>707</sup> In a third case, Flowers obtained reversal of a judgment of death on grounds that the trial court erred in refusing to hear witnesses in support of a motion for change of venue.<sup>708</sup> He had offered evidence that public sentiment against the African-American defendant was so negative that no fair trial could be held, and included reports that members of the jury panel had said they could not be fair and that African-American residents of the town refused to make written statements on this topic for fear of retribution.<sup>709</sup> In making this argument, he fol-

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703. The criminal defense cases were *Hildreth v. State*, 214 Ark. 710, 217 S.W.2d 622 (1949); *Branton v. State*, 214 Ark. 861, 218 S.W.2d 690 (1949) (including *Branton v. Arkansas*, 338 U.S. 878 (1949)); and on remand in *Hildreth v. State*, 215 Ark. 808, 223 S.W.2d 757 (1949); *Brown v. State*, 213 Ark. 989, 214 S.W.2d 240 (1948); *Washington v. State*, 213 Ark. 218, 210 S.W.2d 307 (1948); *Wilkerson v. State*, 212 Ark. 603, 206 S.W.2d 758 (1947). The civil matters were *Cole v. Williams*, 215 Ark. 366, 220 S.W.2d 821 (1949) and *Pitts v. Board of Trustees of De Witt Spec. Sch. Dist.*, 84 F. Supp. 975 (E.D. Ark. 1949).

704. See *infra* notes 705-17 and accompanying text.

705. 84 F. Supp. at 975.

706. See *id.* at 980-81. Unfortunately, the defendant district was in the final stages of construction on a new white grade school and, although the court ordered that no new monies could be devoted entirely to the white school, it allowed the district to complete construction, merely restraining the district from making capital improvements to white school facilities until it had "brought [the elementary school physical plant] up to a state of substantial equality with the white system . . ." *Id.* at 985. The court gave the district a "reasonable time . . . within which the facilities of [the African-American high school] may be improved and its rating increased." *Id.* at 987.

707. See *Washington v. State*, 213 Ark. 218, 210 S.W.2d 307 (1948) and *Brown v. State*, 213 Ark. 989, 214 S.W.2d 240 (1948).

708. See *Hildreth v. State*, 214 Ark. 710, 217 S.W.2d 622 (1949).

709. *Id.* at 712, 217 S.W.2d at 623. In a second trial in another venue, defendant again was convicted and sentenced to death. *Hildreth v. State*, 215 Ark. 808, 223 S.W. 2d 757 (1949).

lowed the reasoning of the United States Supreme Court in *Moore v. Dempsey*.<sup>710</sup>

One of the last civil rights case Flowers handled before the end of this period was *Branton v. State*, in which Wiley Austin Branton was convicted of violating a state law that prohibited the printing and distribution of unofficial ballots.<sup>711</sup> The arguments on appeal of this misdemeanor conviction were that the documents in question were not “ballots” within the terms of the statute and that the statute itself was a violation of free speech under the constitution.<sup>712</sup> The judgment was affirmed by the state supreme court and a petition for writ of certiorari was denied by the Supreme Court of the United States.<sup>713</sup>

In a final criminal defense case handled by Flowers in 1950, he successfully presented Scipio Jones’ argument in a murder case, *Maxwell v. State*,<sup>714</sup> moving to quash the entire jury on the grounds that there had been no black jurors in that county in more than twenty-five years.<sup>715</sup> The motion was granted and a new trial ordered on this specific ground.<sup>716</sup> This case gained Flowers credit for representing “the first black man not executed upon conviction in the death of a white.”<sup>717</sup>

While the number of civil rights cases brought during this last period may seem sparse, they were notable. There were other factors, notably the Depression and World War II, that reduced energies for civil rights activities. Many of the fraternal

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710. See *supra* note 506 and accompanying text.

711. *Branton v. State*, 214 Ark. at 861, 218 S.W.2d at 690.

712. *Id.* at 863-66, S.W.2d at 691-92.

713. *Branton v. Arkansas*, 338 U. S. 878 (1949). Years later, Wiley Branton explained that he had been attempting to educate African-American voters on how to exercise their franchise, but that particular argument was not raised in the case. Kenneth L. Adelman, *You Can Change Their Hearts*, THE WASHINGTONIAN 107, 110 (Mar. 1988) [hereinafter Adelman]. Branton was the only person ever prosecuted under the statute. Wiley Branton thereafter became the third African-American admitted to the University of Arkansas School of Law, in 1950. Records of the University of Arkansas School of Law, Fayetteville, Arkansas. He devoted his career to civil rights. Adelman, *supra* note 110.

714. 217 Ark. 691, 232 S.W.2d 982 (1950). In an earlier appeal in this case, Flowers successfully argued that defense attorneys had had insufficient time to prepare. *Maxwell v. State*, 216 Ark. 393, 225 S.W.2d 687 (1950).

715. *Obituary, W. Harold Flowers, Lawyer and Minister*, WASHINGTON POST, Apr. 9, 1990, at B4.

716. 217 Ark. at 692-94, 232 S.W.2d at 982-83.

717. *Obituary, W. Harold Flowers, Lawyer and Minister*, WASHINGTON POST, Apr. 9, 1990, at B4.

organizations whose fees provided funding for Scipio Jones' various projects in the second period had failed during the Depression,<sup>718</sup> and African-American attorneys, like other citizens, were finding it difficult to earn a living.<sup>719</sup>

The remaining lawyers in this period, both new and continuing, apparently supported various group efforts but predominantly focused on their law practices or other endeavors. Marion R. Perry was noted as both an attorney and an executive in several insurance companies.<sup>720</sup> As noted earlier, Augustus Latting and Vince Townsend both left Arkansas soon after their admission, the first to Tennessee<sup>721</sup> and the latter to California.<sup>722</sup> Alexander L. Burnett, Lewis J. Brown, Japheth F. Jones, Nelson Nichols, Stuart Pryce, Andrew Spears, Waters McIntosh, and Wallace Purifoy, Jr. were primarily practitioners. Nothing is known of the legal practices of Walker H. Clark, Joseph Atkins, I.H. Spears, G.A. Johnson and G.H. Greene.

## V. CONCLUSION

Lawyers are, by training, capable of objectivity and long-range vision. They are taught to weigh the credibility of multiple points of view and to make decisions that may not result in immediate gain. It has been said by some that previous generations of African-American leaders lacked the courage and identification with the race required to work on behalf of the entire group, that they were almost solely interested in distinguishing themselves from the mass of African-Americans, and that they sacrificed others for personal ambition. The history of Arkansas' African-American lawyers belies those statements. Although these lawyers personally were ambitious men, many recognized that their future was tied to that of all African-Americans, and they worked to expand political and educational opportunities for the entire group in the midst of difficult times.

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718. See, e.g., Dillard, *Perseverance*, *supra* note 434, at 71 (noting the failure of the Woodmen of Union Order of Hot Springs); Kirk, *Robinson*, *supra* note 620, at 5.

719. Kirk, *Robinson*, *supra* note 620, at 7.

720. 1933-37 WHO'S WHO IN COLORED AMERICA 411.

721. 1950 WHO'S WHO, *supra* note 351, at 331.

722. Arkansas Supreme Court, Clerk's Office, Little Rock, Arkansas, computer records listing a Los Angeles address. Townsend paid dues to keep his Arkansas license active until 1991.



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Not all African-American lawyers were heroes, but in each generation a few stood at the forefront of efforts to improve the lot of all African-American citizens. These few were supported by other lawyers.

External factors controlled what they could accomplish. African-Americans, as a whole, never constituted more than twenty-seven percent of the state's total population. Even during the Reconstruction period, when the doors to integration and advancement seemed most widely open, African-Americans could prevail only with help from whites. As events progressed, fewer opportunities existed and fewer whites helped. Some lawyers fought hard but, sickened by frustration, ultimately fled to more hospitable surroundings. Many lawyers remained to do what they could.

Over the eighty-five years covered here, one can see a pattern in their efforts that indicates perception and adaptation to reality. African-American lawyers used the means available to them at any given time. When political rights were abundant, they took advantage of them and made efforts to secure more substantial gains. When those rights were denied, they adapted. Other routes were located and taken. Initially, few African-Americans had any formal education and leaders acted paternalistically. As a second generation of lawyers appeared, even the minimal mass education available changed the way in which they were able to act on behalf of all African-Americans. Group efforts began, although still focused on a few leaders. By the third generation of attorneys, educational foundations were sufficient for a grass-roots organization to have some success.

World-shaking events in civil rights did not occur in Arkansas during this period, but seeds were planted that later would reach fruition. African-American lawyers were cultivators.

## BLACK LAWYERS IN ARKANSAS BEFORE 1950

- Adair, Benjamin Frank (1) (1887 LRCD) b AR @ 1853; d 1932.  
Anthony, W. R. (1) (PB @ 1891, Gatewood).  
Atkins, Joseph\* (3) (adm SCt 7/8/1935) Ouachita County.  
Avant, Henry\* (2) (1917 HCD, adm SCt 2/7/1921).  
Bailey, Julian Talbot\* (1) (adm SCt 5/21/1888) b GA 1859; d bef 1920.  
Beasley, Peter\*\* (2) (1909 Helena CD) b MS 1870; d 1943.  
Booker, John Robert\* (2) (adm SCt 6/30/1919) b AR 1895; d 1960.  
Booker, William A.\* (3) (adm SCt 7/13/1925) b AR 1901; d 1966.  
Bowers, Robert S.\* (2) (adm SCt 10/21/1907) Hot Springs county. b LA.  
Brown, Lewis Jenks\* (1) (adm SCt 5/15/1887) b AR 1855; d @ 1945-46.  
Burnett, Alexander L. (2) (PB@1891, Gatewood) b AR 1858; d 1928.  
Clark, Walker H.\* (3) (1931 PBCD; adm SCt 7/31/1931).  
Clark, Walter F.\*\* (2) (1916 LRCD) moved MO (1930).  
Clark, Winfield F. (1917 LRCD).  
Dawson, Richard A. (1) (EMANCIPATION @ 1870).  
Dobbins, Edward D. (2) (EMANCIPATION @ 1920) Sebastian County.  
Farrington, Oscar M.\*\* (2) (1908 LRCD).  
Ford, J. F. \*\* (1) (1881-82 LRCD).  
Flowers, William Harold, Sr.\* (3) (adm SCt 10/21/1935) b AR 1911; d 1990.

- Gaines, John W.\* (2) (1903 LRCD; adm SCt 12/31/1906).  
Gay, William E.\* (2) (1916 LRCD; adm SCt 7/14/1919) b AR.  
Gibbs, K.\*\* (1) (1876-77 LRCD).  
Gibbs, Mifflin Wistar (1) (adm @ 1872, autobiography) b PA 1823, d 1915.  
Grey, William H.\* (1) (adm SCt 4/6/1869) Phillips County. b DC 1829; d 1888.  
Green, J. Early\*\* (2) (1916 LRCD).  
Greene, George H.\*\* (2) (1910 LRCD), moved Hot Springs (1938).  
Gross, Tabbs (1) (@ 1869, Neal) b KY 1820; d 1880.  
Guy, Milton Wayman\* (2) (1915 LRCD; adm SCt 6/11/1915).  
Hibbler, John A.\* (2) (adm SCt 6/30/1919) b AR, 1886; d aft 1949.  
Hibbler, Myles A.\* (3) (adm 1/26/1946) b AR.  
Hiller, John A. (2) (active during WWI).  
Hollingsworth, S. J.\* (1) (adm SCt 10/28/1887) b NY; d 1917.  
Jackson, A.\*\* (2) (1920 LRCD).  
Johnson, G. A. (3) (EMANCIPATION @ 1938) Ashley County.  
Johnson, John H. (1) (adm @ 1865) b OH 1840; d 1885.  
Johnson, Thomas P.\* (1) (adm S. Ct. 7/25/1870) b NC @ 1825-30; d 1915.  
Jones, A. D.\*\* (1) (1872-73 LRCD).  
Jones, Archie V.\* (1) (lic 1/15/1899; adm SCt 10/15/1901) b DC 1877; d 1934.  
Jones, J. Pennoyer (1) (@ 1870) Desha County, b VA 1842.  
Jones, Japheth F.\* (2) (1910 PBCD; adm SCt 6/4/1917) b AL 1863; d 1937.  
Jones, Scipio Africanus\* (1) (1899, Dillard; adm SCt 11/26/1900) b TX, 1868; d AR 1943.  
Jones, Theodore X.\* (3) (adm SCt 2/15/1932) b AR 1904; d 1968.  
Latting, Augustus Arvis\* (3) (adm SCt 1/2/1933) b AR 1905; moved TN (1938).  
Lewis, Daniel Webster (1) (EMANCIPATION @ 1873) Crittenden County. b KY @ 1852.  
Lindsay, Charles T.\*\* (1) (1890 LRCD) b GA 1850; d 1914.  
Lucas, J. [John] Gray (1) (EMANCIPATION @ 1887) Jefferson County. b TX 1864; moved IL 1893.  
McIntosh, Waters\* (2) (1916 LRCD; adm SCt 2/23/1920) b SC

1863; d @ 1947-48.

Nichols, Nelson H.\* (2) (lic 10/21/1899; adm SCt 3/27/1900) b AR 1865; d 1935.

Otley, C. A. (1) (EMANCIPATION @ 1872) Lee County.

Page, Jno D.\* (2) (adm SCt 1/20/1908) d bef 7/1938.

Parker, W. E.\*\* (2) (1908 LRCD).

Patterson, John E. (1) (EMANCIPATION @ 1873).

Perkins, George Napier\*\* (1) (1885 LRCD) b TN @ 1845.

Perry, Marion R.\* (2) (adm SCt 2/16/1925) b AR 1892; d aft 1970.

Price, Thomas J.\* (2) (adm SCt 6/15/1908) b CN 1884; d aft 1940.

Pryce, Stuart C.\*\* (2) (1903 PBCD) b AR 1855; d 1929.

Purifoy, Wallace Leon, Jr.\* (adm SCt 1/17/1938) St. Francis county, d bef 1973.

Robinson, J. A. (1) (adm @ 1889, Dillard) b AR 1869.

Royce, J. D. (2) (EMANCIPATION @ 1895) Hot Springs county.

Scott, Samuel H. (1) (1883-84 PBCD) later in Sebastian county.

Scott, William L.\*\* (2) (1920 Helena CD).

Shadd, Abram [Abraham] W. (1) (EMANCIPATION @ 1872) Chicot county. b PA 1844; d MS 1878.

Shelton, Neely W.\*\* (2) (1903-29 PBCD) b MS 1872; d 1929.

Singfield, William Augustus\* (2) (adm SCt 5/13/1916) b GA, 1872; d 1950.

Spears, A. W.\* (2) (adm SCt 7/23/1906) b FL, 1878; d 1925.

Spears, I. H. (EMANCIPATION @ 1938) Union county.

Townsend, Vince M., Jr.\* (3) (adm SCt 7/6/1942) moved CA 1940s.

Wheeler, Lloyd G. (1) (1872 LRCD) moved IL @ 1893.

Wynn, Wathal G.\* (1) (adm SCt 9/25/1871) Chicot county. d 1871.

\* Indicates state supreme court admission record.

\*\* Indicates city directory source for law practice.

(#) Indicates period in which practiced.

