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How the Cleveland Bar Became Segregated: 1870-1930

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At the turn of the century, the Cleveland bar could fairly be described as racially integrated. The openness of the bar and the response of African American lawyers shaped the day-to-day professional lives of those lawyers. This openness manifested itself in a number of interracial law practices, in a client base for black lawyers that was predominantly white, in the court appointment practices of white judges, and in the general openness of the institutions of the Cleveland legal community to black participation. The bar was also geographically integrated. African American lawyers opened their offices in the same downtown office buildings as their white counterparts.

By 1930 a new African American lawyer in Cleveland faced a different professional landscape. While a small African American presence still existed downtown, consisting of the remnants of the earlier generation of lawyers and the handful of younger lawyers they had brought into their practices, most black lawyers could now be found in the emerging black neighborhoods of Cleveland. Increasingly, African American lawyers were invisible to non-black Cleveland. While a number of causes contributed to this invisibility, residential segregation leading to the division of the city into white and black space played an especially important role. The increasing segregation of the bar did not only result from such external forces, however. It also reflected a division within the African American legal community regarding the value of integration versus the merits of building institutions within the black community. While this division was not purely generational, members of the older generation of lawyers were the primary advocates of a robust integrationist strategy. In this way, the experience of Cleveland lawyers turns on its head the standard characterization of early twentieth century African American lawyers first described by historian Carter Woodson and by Charles Hamilton Houston.

Sometime in the late 1870s a barkeep named George Phibbs began an apprenticeship as a law clerk to Cleveland lawyer John P. Green. Green was a sensible

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1 Professor of Law, Case School of Law. B.A., 1976, Wesleyan University; M.A., 1980, University of Rochester; J.D., 1984, University of Virginia. I have a large contingent of people to thank for their help with this project. I thank Gordon Hylton, Ken Ledford, Ken Mack, Ann Southworth, and Ted Steinberg for their advice and helpful suggestions along the way. I had the good fortune to present this work at various stages at the American Society of Legal History 2007 Annual Conference and at the LatCrit VIII Conference. My thanks for the helpful comments that I received from the audience in both instances. My thanks, as well, to the law faculties of Arizona State University, Case Western Reserve University, University of Cincinnati, Cleveland-Marshall, and Seton Hall University, for the opportunity to present my work at faculty workshops and for their thoughtful responses. My research builds on a data base of cases litigated by African American lawyers in Cleveland from 1900-1907 and from 1920-1926. Compilation of that data base required working through approximately 150,000 pages of Court of Common Pleas Docket Books. Needless, to say, that, and various other aspects of this project, in turn required nearly a battalion of research assistants. My thanks to Tamia Collins, Tracy Malloy, Victoria Marquard, Anup Misra, Jonathan Strassfeld, Mussie Teklezghi, Max Thomas, and Christine Tomko for their research assistance at various stages of this project, and for their good humor no matter how tedious the task I assigned them. Much of their work took place at the Cuyahoga County Archives. I am deeply indebted to archivist Dr. Judith Cetina for opening up the archives to us, even during non-public hours and for her continuing help. I am also grateful to the Western Reserve Historical Society and their archivists and staff, along with the Cleveland Police Archives, the Ohio Historical Society, the Map and Photographs Department of the Cleveland Public Library, and the Case Western Reserve University and Cleveland State University archives and special collections. Lei Moore at the Ohio Supreme Court was tremendously helpful in supplying an historical database of admitted Ohio attorneys and for helping me to gain access to the bar admission cards in the Supreme Court’s archives. Finally, I am deeply grateful for the research support provided by Case Western Reserve University School of Law and by Deans Gerald Kornegold and Gary Simson.
choice for a young man looking to advance himself into a legal career. He was a recently enough minted lawyer, having begun his career in 1870, that Phibbs might assume that he would be a sympathetic and congenial mentor. Yet, in those few years Green had become an established lawyer, and his political star was on the rise. He had served a number of terms as a Justice of the Peace. Phibbs was undoubtedly aware that Green had narrowly been beaten in his first attempt to win election to the Ohio General Assembly and that there was talk of another run for that office. Indeed, Green would win election to the Assembly for the first time in 1882, and in the 1890s he would serve a term as a state senator. His political star ascended further with the election of fellow Ohio Republican, William McKinley in 1896. Friends, acquaintances, and in some instances strangers, sought his help and influence in their efforts to find a patronage job in the new administration. Green also sought an appointment in the McKinley administration, and his political ally Senator Mark Hanna arranged for his selection as the Superintendent of the Stamp Division of the Postmaster General’s office.

What is notable about the arrangement is that Phibbs was an Irish-American immigrant and Green, a transplanted North Carolinian, was Cleveland’s first African American lawyer to serve in the federal government.

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2 JOHN P. GREEN, FACT STRANGER THAN FICTION: SEVENTY-FIVE YEARS OF A BUSY LIFE, WITH REMINISCENCES OF MANY GREAT AND GOOD MEN AND WOMEN 167 (1920).
3 Id. at 150-54, 171; 186-93.
4 E.g., A.M. Middlebrook, Letter to John P. Green (Dec. 30, 1896) (on file with John Patterson Green Papers (hereinafter J.P. Green Papers), Western Reserve Historical Society, Cleveland Ohio, Roll 2). Middlebrook, an Arkansas Republican who knew Green, sought Green’s help in obtaining a position. He reported that in correspondence with McKinley, the President Elect (a term that was not used in any of the correspondence of the time in Green’s Papers) had said that what Green had to say “will have its weight and influence with him.” One correspondent whom apparently Green did not know was Albion Tourgee, the former Radical Republican North Carolina judge, author of the novel A Fool’s Errand, and lead counsel for Homer Plessy in Plessy v. Ferguson, 163 U.S. 537 (1896). Tourgee, who had grown up in northeast Ohio, asked for Green’s intervention to help him obtain a consular position. Albion Tourgee, Letter to John P. Green (Jan. 29, 1897) (J.P. Green Papers, Roll 2). Whether or not with Green’s help, Tourgee was appointed U.S. consul to France.
5 GREEN, supra note ___, at 266-67. M.A. Hanna, Telegram to John P. Green (July 10, 1897) (J.P. Green Papers, Roll 2). Green had sought appointment as the Recorder of Deeds for the District of Columbia, but accepted the Post Office Department appointment.
American lawyer. The relationship lasted approximately ten years, during which time Phibbs gained admission to the bar and became Green’s partner. Green attributed much of his political and professional success among Cleveland’s Irish to his association with Phibbs, and he described Phibbs as his best friend outside of his family. Eventually, Phibbs moved to Los Angeles where he practiced law and later became a breakfast cereal magnate.\(^6\)

Though notable, the arrangement between Green and Phibbs was not unique. Indeed, it was not the first interracial law practice in Cleveland. Several years earlier Leon Wilson, Cleveland’s second black lawyer, formed a partnership with Frank Sykora, a white Clevelander of Bohemian descent.\(^7\) Over the next quarter of a century, other Cleveland lawyers would establish interracial practices.\(^8\)

In this and a number of other ways the Cleveland bar was open to African Americans seeking a legal career and presented them with opportunities that were roughly equivalent to those available to white would-be lawyers. Put simply, the Cleveland bar at what we used to call the turn of the century, was integrated, if minimally populated with black lawyers. By 1930, however, African Americans who aspired to a legal career in Cleveland faced a very different landscape of opportunity. To be sure, the number of black lawyers had increased considerably, as had the black population of Cleveland, and the institutions of the bar were not formally closed to them. Nevertheless,

\(^6\) \textit{GREEN, supra} note ____ at 167-8. Marble & Phibbs, Letter to John P. Green (January 21, 1893) (J.P. Green Papers, Roll 1) (announcing new partnership); George Phibbs, Letter to John P. Green (March 29, 1893) (J.P. Green Papers, Roll 1). As they were admitted to the bar, Green then brought his two sons into the practice.

\(^7\) \textit{RUSSELL H. DAVIS, BLACK AMERICANS IN OHIO’S CITY OF CLEVELAND} 99 (1972); Cite to city directory. This was not Wilson’s only partnership. He also married Sykora’s sister. \textit{CLEVELAND GAZETTE}, Dec. 21, 1901.

\(^8\) \textit{See infra} notes ____ and accompanying text.
even setting aside the impact of the Depression, a new black lawyer in 1930 was likely to follow a limited and difficult career path.

The standard account of the earliest generations of African American lawyers derives from studies conducted by Carter G. Woodson, an historian generally credited as the father of black history, and Charles Hamilton Houston. Both Woodson and Houston were rather dismissive of much of the black bar that came of age before the 1920s and 1930s. By their account, the older generations of black lawyers had narrow professional interests, limited professional skill, and little civil rights or community consciousness. Only the younger cohort that succeeded them showed a growing race and civil rights consciousness.

The experience of Cleveland’s black lawyers challenges this standard generational account. Perhaps emboldened by their professional experiences, the earliest generations of African American lawyers in Cleveland were deeply race conscious, and numbered amongst them were some of the earliest supporters of the NAACP in Cleveland. Generally, this early group was firmly committed to an integrationist civil rights agenda, and a number of these lawyers became expert in civil rights litigation. Nor would it be accurate to minimize this group’s talent or professional skills. In many instances, the historical record is simply too scant to make a judgment about the ability of

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10 Other studies of the black community and black professionals echoed this consensus. For a discussion see, Kenneth W. Mack, Rethinking Civil Rights Lawyering and Politics in the Era Before Brown, 115 YALE L.J. 256, 265-67 (2005).
these early lawyers. Where we do know more, however, it is possible to discern a group of talented and professionally able men.\textsuperscript{11}

Part I paints a portrait of Cleveland’s African American bar from 1870 until 1910. It describes the path that these men took toward their legal careers, the impediments that they had to overcome, and the range of professional opportunities that were available to them. As noted above, these men encountered a lay and legal community that was generally welcoming of their professional efforts, and they achieved a reasonable measure of success. Part II explores the gradual narrowing of these opportunities. It demonstrates that African American lawyers who entered the profession after 1920 were likely to have a very different experience than those who had entered the profession twenty years earlier or more. It offers an explanation for this change that draws on the changing racial attitudes of Cleveland and the United States, as well as closely related geographic constraints, as the Cleveland in which these lawyers (no longer all men) practiced had in a significant way become two cities: one white and one black, and new African American lawyers became largely invisible to most Clevelanders.

I. An Integrated Bar

A young man seeking a career in law in turn-of-the-century Cleveland faced various discouraging impediments.\textsuperscript{12} As the Ohio bar tried to gain greater control over entry into the profession and to upgrade its status, the pathway to a career in the law became more difficult. In the 1890s, in response to a campaign by the Ohio State Bar Association to raise and regularize admissions standards, Ohio created a uniform system

\textsuperscript{11} At this point, they were all men.
\textsuperscript{12} In turn-of-the-century Cleveland, such an aspirant would almost invariably be a man. [cite to census data on female lawyers].
of bar examination and required that all applicants take a single test administered in Columbus.\(^{13}\) The Ohio Supreme Court adopted a bar admission rule in 1897 that required at a minimum a common school diploma.\(^{14}\) When the Court amended that rule two years later, to require a high school diploma or its equivalent, a legal career became virtually unobtainable to a great many residents of Northeast Ohio, both white and black.\(^{15}\) Nevertheless, the barriers that the bar erected were grounded in class, not race.

While most of Cleveland’s black lawyers were law-school trained, a few read for the bar in law offices. Green, for instance, who finished his preparation for the bar with a short course of study at Cleveland’s Union Law College, began his preparation in the law office of Judge Jesse Bishop.\(^{16}\) Charles W. Chesnutt was employed by the bookkeeping department of the Nickel Plate Railroad, which then transferred him to its legal department. There, under the tutelage of railroad counsel, Judge Samuel Williamson, he read law for two years before admission to the bar.\(^{17}\)

For the overwhelming majority of Cleveland’s black lawyers, however, law school was the avenue to professional advancement.\(^{18}\) All of Cleveland’s law schools were open to black students, at least to those who could afford the price of a legal

\(^{13}\) **STANLEY A. SAMAD**, *A HISTORY OF LEGAL EDUCATION IN OHIO* 65-66 (1972).


\(^{15}\) Ohio S. Ct. R. XIV, “Admission to the Bar,” § 4, 65 Ohio St. xxxi-xxxii (1902).

\(^{16}\) GREEN, *supra* note _____

\(^{17}\) HELEN M. CHESNUTT, CHARLES WADDELL CHESNUTT: PIONEER OF THE COLOR LINE 39-40 (1952). Chesnutt would, of course, become best known for his fiction and essays, and his law practice was not nearly as successful as his stenography service.

\(^{18}\) This choice may have partly been due to the limited number of white lawyers willing to act as patrons and the scant number of African American lawyers at the time.
education and meet the entrance requirements.\(^\text{19}\) Union Law College folded in 1876, but others then emerged.

When Western Reserve University opened its law school in 1892, it numbered one African American, Samuel Hansbary, among its twenty-four entering students. There was a black student in two of the next three entering classes.\(^\text{20}\) In subsequent years, Reserve would continue to graduate black students, though not in the same numbers as the two part-time evening programs that would soon open. Western Reserve President, Charles Thwing, was a racial progressive, and later a founding member of the NAACP.\(^\text{21}\) Under his leadership Western Reserve’s colleges and professional schools welcomed black students.\(^\text{22}\) Nevertheless, the tuition and increasingly stringent admissions standards, as well as its three-year course of study, limited the pool of applicants. In 1892 Western Reserve’s annual tuition was $100 an amount that exceeded the tuition charged by its regional rivals Michigan and the University of Cincinnati.\(^\text{23}\) Reserve’s admission standards were also more stringent than either Michigan’s or Cincinnati’s. In 1896, it tightened its entrance requirements, limiting admission to students who had, at a minimum, a high school diploma from a school rated by the state in its first rank of schools. At the time, this prerequisite was unusual and constricted the applicant pool considerably.\(^\text{24}\) The standards became more restrictive during the next

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\(^\text{19}\) In Green’s case, John Crowell, then the owner of the Union Law College, deferred Green’s tuition until he was established in practice and able to pay. \textit{Green, supra note} \textit{at} 118.

\(^\text{20}\) Information about Western Reserve School of Law is drawn from the Western Reserve University Yearbooks, Photographs, and other memorabilia in the Case Western Reserve University Archives.

\(^\text{21}\) \textit{Wilson Record, Negro Intellectual Leadership in the National Association for the Advancement of Colored People: 1910-1940 PHYLON} \textit{375, 377 (1956)}.

\(^\text{22}\) During the 1890s Western Reserve Medical School graduated several black students. In 1894 there were four black students at Western Reserve Medical School. \textit{Davis, supra note} \textit{at} 177.


\(^\text{24}\) According to Richard Abel only seven of seventy-six law schools required a diploma from any sort of high school in 1896. \textit{Richard L. Abel, AMERICAN LAWYERS} \textit{48 (1989)}. 
decade and a half until Reserve limited admission to college graduates in 1911. This requirement closed Reserve’s doors to the overwhelming majority of Clevelanders, both black and white.

As in other cities, other institutions emerged to provide a pathway to law school for those to whom apprenticeship or full-time law school were unavailable or unaffordable. Catering to those who could not afford the costs of Western Reserve, or could not meet its admission requirements, a number of proprietary part-time evening schools opened their doors to working Clevelanders. Over the years, these schools, which like Reserve, welcomed black students, would produce the majority of Cleveland’s black lawyers. Cleveland Law School, which for many years was owned and operated by Judge Willis Vickery, but which was affiliated with Baldwin-Wallace College, opened its doors in 1897. As early as 1902 it had graduated an African American student, William H. Clifford, a former member of the state assembly, who used his political connections to obtain a position in the War Department. Other black graduates quickly followed. John Marshall School of Law followed Cleveland Law School into the business of part-time legal education in 1916.

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25 Id. at 25-26; SAMAD, supra note ____, at 125-26. The law school partly exempted Western Reserve undergraduates from this requirement. They could enter law school in their final year of college.
26 As late as 1940 only 1.4% of black males, and only 5.8% of white males, held a college degree. ABEL, supra, note ____ at 252 (table 3b).
27 SAMAD, supra note _____, at 182-87.
28 DAVIS, supra note ____ at 132-3.
29 For example, in 1906, Cleveland Law School graduates, Edward Dunjill, Augustus Eubanks, and Thomas Fleming, all joined the ranks of Cleveland’s black lawyers. Id. at 133-34; 143-44; 147; 173.
30 Id. at 193-96. The two schools merged in 1946, and exist today as Cleveland-Marshall School of Law, which is a part of Cleveland State University. The short-lived Rufus P. Ranney Law School, later the Lake Erie School of Law, was affiliated with Cleveland’s Spencerian College, a business college established by Platt Spencer, creator of Spencerian penmanship. No records of the school appear to exist. The school struggled and produced a limited number of students. To the best of my knowledge, none were African American.
John Marshall and Cleveland Law School were typical of part-time night programs that sprang up across the nation. They provided students with a low-cost alternative to full-time legal education, and the opportunity to continue working during their legal studies. Additionally, both schools operated three-year courses of study, rather than the four-year program called for by the American Bar Association in its standards for part-time law schools. Finally, since the Ohio bar admission rules only required a high school diploma at the time of admission to the bar, Cleveland’s proprietary schools affiliated themselves with preparatory schools, thereby enabling their students to complete high school during their course of legal studies.

Whether at Western Reserve or one of the proprietary schools, both the tuition and incidental costs and the opportunity costs of pursuing a law degree must have seemed like a daunting obstacle. Carter Woodson found that many of his respondents delayed their legal education because of these obstacles. Only 57% of his respondents were younger than thirty when they became lawyers, with the greatest number of these falling in the twenty-five to twenty-nine age range. By contrast, only two of Cleveland’s black lawyers who entered the profession before 1910 were over thirty when they were admitted to the bar. Thomas Fleming, was thirty-one, and John Anderson was thirty-two.

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31 For a discussion of the important role proprietary law schools played in opening up the profession to otherwise often excluded ethnic and minority lawyers and to the less well to do and for their struggle for acceptance by the organized bar, see JEROLD S. AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA 95-101; 111-19 (1976); ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850s TO THE 1980s 73-84; 96-103 (1983).
32 SAMAD supra at 184.
33 Id. at 190.
34 With the exception of Theodore B. Green, John P. Green’s youngest son, this earliest group of African American lawyers was all locally trained. Theodore Green attended Howard Law School at the time his parents were living in Washington, D.C. GREEN, supra note at 279.
35 WOODSON, supra note at 195.
Amongst this early group of lawyers, the average age at the beginning of their legal career was twenty-six. 36

Many of these men did face significant challenges financing law study. Whether in an effort to accumulate the necessary resources, or because they only recognized an interest in becoming a lawyer later, many of them worked for several years before beginning law school. As a supplement to scholarships from Western Reserve, Alexander Martin managed the costs of college and law school by keeping his barber’s chair close at hand and giving his fellow students shaves and haircuts. 37 Martin qualified to take the bar after his second year of law school, and upon admission, he established a partnership with John M. Anderson, a black Reserve student who was a year ahead of him. Martin balanced his new law practice with his third year of law school, and was graduated in 1898. 38 Others also capitalized on their skill as barbers, then one of the elite crafts in which a number of black Clevelanders prospered, to accumulate sufficient resources to attend law school. Both Samuel Hansberry and Thomas Fleming had been barbers before they became lawyers. 39 Others worked as stenographers prior to turning to law. Both Augustus Eubanks and Robert Ray Cheeks took this path to the law. 40

Having successfully completed law school, Cleveland’s would-be lawyers still faced the hurdle of the bar admission. As Gerald Auerbach has shown, the bar exam, and determination of character and fitness, has sometimes served as a significant barrier to

36 I determined the ages of these lawyers at the time of admission from City Directories, Yearbooks and Class Pictures for the three Cleveland law schools, and census records. I have not included William Clifford in my count, since he did not practice in Cleveland. Clifford was forty when he was graduated from law school. DAVIS, supra note ____ at 132-3.
37 Id. at 173 (1972); GWENDOLYN G. JOHNSON, LEGACY OF PRIDE: DISTINGUISHED AFRICAN AMERICAN ALUMNI FAMILIES OF CASE WESTERN RESERVE UNIVERSITY 30 (1990); Meet Alexander H. Martin Our Candidate for Judge of the Municipal Court, CLEVELAND ADVOCATE, Oct. 20, 1917, at p. 3.
38 Id.
39 DAVIS, supra note ____ at 143; cite City Directories on Hansberry.
40 DAVIS, supra note ____ at 173, cite census on Eubanks.
entry for ethnic and minority lawyers. Such does not appear to be the case, however, for Cleveland’s early black lawyers, who were almost always successful in taking this last step toward becoming a lawyer. Though the barriers to entry created by the State’s admission requirements undoubtedly deterred many black Clevelanders from even considering a legal career, the obstacles related to class, not race. Perhaps because of these barriers the number of black lawyers in Cleveland grew slowly. In 1900 there were six black lawyers in town. That number had grown to eleven in 1910.

Cleveland’s bar was integrated in other senses beyond the absence of racial barriers to admission. As noted above, there were several interracial law practices in late nineteenth and early twentieth century Cleveland in addition to the Green and Phibbs and the Wilson and Sykora partnerships. John P. Green took on at least one other white apprentice, Charles W. Snider, who was with Green for five years, and who later played a role in Green’s nomination to run for the Ohio Senate. Following his partnership with Frank Sykora, Leon Wilson formed a partnership with Edward David, another white

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41 Auerbach, supra note _____ at 125-28.
42 I base this conclusion on a comparison between the Western Reserve, Cleveland Law School, and John Marshall yearbooks, bulletins, and graduating class pictures with Cleveland City Directories for the immediately following year. Only a very few graduates are not listed as lawyers in those city directories. I also examined the bar admission cards on file at the Ohio Supreme Court. The cards record the date or dates of examination (some of Cleveland’s African American lawyers took the examination more than once) and of admission. Because the Court only keeps these cards on record for admitted attorneys, it is impossible, in most instances, to learn the fate of the handful of African American graduates who do not have cards on file and who do not appear in the city directories as lawyers. In some instances, they might have left town, but in at least one instance the graduate remained in town and at one point worked at a law clerk, but never as a lawyer. Two of Cleveland’s early female African American law graduates, Hazel Mountain (the pioneer in this regard) and Jane Edna Hunter chose other career paths. Both had successful careers and gained a fair measure of prominence in Cleveland.
43 IV Thirteenth Census of the United States Taken in the Year 1910 at 549 (date?) (find cite for 12th census).
Cleveland lawyer.\textsuperscript{45} Charles W. Chesnutt began his legal career associated with Henderson, Kline and Tolles, one of the ancestors through reorganization and merger of the modern-day firm, Jones, Day.\textsuperscript{46} Finally, for much of the first decade of the twentieth century, Alexander Martin and Max Pfister, an immigrant from Switzerland, shared office space and clients, sometimes serving as co-counsel. It is not clear what the precise nature of their arrangement was, which also included Martin’s representation of Pfister in a number of cases.\textsuperscript{47}

The institutions of the bar, the County Law Library and the Cleveland Bar Association, were open to African American lawyers.\textsuperscript{48} The Bar Association was founded in 1873. Though not a charter member, Leon Wilson joined the Bar Association later that year.\textsuperscript{49} From time to time, some, but not all, black lawyers joined the Bar Association, and African American members participated fully in meetings and events.\textsuperscript{50} While no black lawyers were within the upper tiers of power in the Association as either officers or members of the executive committee, by the 1920s some black lawyers served

\begin{footnotes}
\footnote{45 DAVIS, \textit{supra} note \_\_ at 99.}
\footnote{46 H. CHESNUTT, \textit{supra} note \_\_ at 41. As is often the case, it is hard to tell the precise nature of the association. At a minimum, it involved shared office space whether or not it also involved referrals of clients and work, or, perhaps, something akin to an associate’s status with the firm is unclear from available records.}
\footnote{47 The connection between Martin and Pfister is gleaned from the Cuyahoga County Common Pleas Court Docket Books and from the Cleveland City Directories.}
\footnote{48 WOODSON, \textit{supra} note \_\_ at 199, 203.}
\footnote{49 Records of the Cleveland Bar Association, Container 2, Folder 2, “Records” p. 12, at Western Reserve Historical Society.}
\footnote{50 See, e.g., \textit{Id.}, Minutes of Dec. 4, 1915 meeting of the Association (C.W. Chesnutt); \textit{Id.}, Minutes of December 6, 1919 meeting of the Association (Alex H. Martin); WOODSON, \textit{supra} note \_\_ at 199. Woodson noted that while Cleveland’s black lawyers had also established a John Harlan Club, they chose to call it a “club” and not a “bar association” so as not to suggest any Jim Crowism in the Cleveland legal community. \textit{Id.} at 200.}
\end{footnotes}
on Bar Association committees.\textsuperscript{51} The Association noted the passing of black members with the usual memorials at their meetings.\textsuperscript{52}

Most important, the Cleveland bar was integrated in the opportunities that were available to black lawyers. It is important not to exaggerate what this meant for the lives and opportunities of most lawyers. An elite bar which served large corporate clients was emerging in Cleveland, just as it was in other cities. As elsewhere, this bar was virtually closed to ethnic lawyers, and to non-whites.\textsuperscript{53} The elite bar was indeed segregated and remained so until the late twentieth century, and its members had access to both governmental and private power that was not available to non-elite lawyers. Moreover, the electoral successes that some black politicians had achieved in the Ohio General Assembly, and would soon achieve in Cleveland city government, was not matched by black lawyers seeking election to judgeships. Otherwise, however, practice opportunities were open to black and white lawyers, alike.

This openness manifested itself in a variety of ways. An examination of the docket books and civil and criminal docket journals of the Cuyahoga County Court of Common Pleas for the years 1900-1907 reveals that Cleveland’s black lawyers enjoyed a varied docket.\textsuperscript{54} Approximately 25\% of their cases were matrimonial, almost 20\% were criminal, and the rest ran the gamut of civil litigation including property disputes,

\textsuperscript{51} See, e.g., Records of the Cleveland Bar Association, Minutes of March 2, 1922 Executive Committee Meeting (appointment of “Committee to use all honorable means to bring about the re-election of Common Pleas Judges Homer G. Powell, Maurice Bernon and Frederick P. Walther,” including Alexander H. Martin); \textit{Id.}, Minutes of May 27, 1926 Executive Committee Meeting p. 4 (Announcement of Committees, including Committee on Memorials, which included John P. Green). The deaths of black members of the Association were noted with eulogies and resolutions.

\textsuperscript{52} See, e.g., \textit{Id.}, Minutes of [get date] Meeting of the Association (Perry B. Jackson’s Memorial of Robert R. Cheeks).

\textsuperscript{53} \textit{Auerbach, supra note\textsubscript{\textsuperscript{11}}}, at 25-6 and \textit{passim}.

\textsuperscript{54} The Cuyahoga County Court of Common Pleas Dockets and Journals are located at the Cuyahoga County Archives in Cleveland, Ohio.
personal injury claims, litigation on behalf of government entities, and representation of small businesses. Judges, who were at the time all white, did not hesitate to appoint black lawyers to represent white criminal defendants. In capital cases, where the practice appears to have been to appoint two lawyers, they similarly did not hesitate to appoint an interracial legal defense team.

Most clients did not come to these lawyers through court appointment. Rather, whether by referral, perusal of the city directory, chance, or other means, they sought out and hired their lawyers. During the first eight years of the twentieth century, Cleveland’s black lawyers were involved in 296 cases in the Cuyahoga County Common Pleas Court. Eliminating repeat clients, these lawyers collectively represented 255 clients. Using census schedules and, to a lesser extent Cleveland police blotters, it is possible to identify the race of 116 of these clients with a high degree of certainty. Of these 116 clients, 92, or 79%, were white.55

Table 1: Clients in Cuyahoga County Common Pleas Court 1900-1907

<table>
<thead>
<tr>
<th>Characteristics of Client</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Race Identified</td>
<td>116</td>
<td>45% of total</td>
</tr>
<tr>
<td>White</td>
<td>92</td>
<td>79%</td>
</tr>
<tr>
<td>Black</td>
<td>23</td>
<td>20%</td>
</tr>
<tr>
<td>Mulatto</td>
<td>1</td>
<td>&gt;1%</td>
</tr>
</tbody>
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55 While this phenomenon is a surprise to most people that I mention it to, it was well-known (even if the statistics were not) to contemporary observers, including Woodson and Houston. Houston, Tentative Findings, supra note __, at 6-7; WOODSON, supra note ____ at 225-29. While cities varied, the experience was replicated to varying degrees in other northern cities.
Indeed contemporaries noted the composition of the client base. Writing in 1915, Robert Drake, an African American journalist writing for the Cleveland Advocate, noted that all of the city’s black lawyers had both white and black clients and that some of them represented more whites than blacks.\textsuperscript{56} According to Charles Hamilton Houston, northern black lawyers discouraged African American patronage because they thought that white clients would be better paying and, perhaps, because they feared that black clients would discourage white business.\textsuperscript{57} I have not found evidence of this among Cleveland’s black lawyers. While the total number of identified African American clients is small, their percentage of the total number of identified clients well exceeds their representation in the population. Moreover, while the lawyers seldom advertised anywhere, the only advertisements that I have found were in the local black newspaper or in the NAACP’s journal The Crisis.\textsuperscript{58} Both Woodson and Houston also found that African Americans were reluctant to take their business to black lawyers. I have found no evidence of this in Cleveland, though it certainly could have occurred without leaving an historical trace.\textsuperscript{59}

While direct evidence of income is mostly unavailable, it appears that these lawyers earned enough to live a reasonably comfortable life. Perhaps most successful amongst them was John Green. The Greens took frequent vacations, including European tours.\textsuperscript{60} As early as 1879, the Cleveland Press commented that Green was quickly

\textsuperscript{56} Robert I. Drake, The Negro in Cleveland, CLEVELAND ADVOCATE, Sept. 18, 1915.
\textsuperscript{57} Houston, Tentative Findings, supra note ___ at 6-7.
\textsuperscript{58}
\textsuperscript{59}
\textsuperscript{60} GREEN, supra at ____.
becoming rich. Business, of course, came and went, and could be slow at times. Nevertheless, most of these lawyers earned enough to purchase their own homes.

In one other important way the Cleveland bar at the beginning of the twentieth century was integrated. In 1909, one would not have had to walk very far to visit all of the African American lawyers Cleveland. They all maintained their offices in the city’s major downtown office buildings, either on or adjacent to Public Square, the city’s commercial center. Charles Chesnutt and Harry Davis, for instance, could be found in the Williamson Building, the same building where one would have found Calfee and Fogg and Smith, Taft, and Arter. Similarly, one would have found Alexander Martin, Edward Dunjill, and Green, Green and Green in the American Trust Building, along with the Cleveland corporate firm, Griswold and White.

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61 J.P.: A Truthful Account of His Career, His Personal Appearance, His Mental Calibre, His Financial Standing, Etc., THE PENNY PRESS, Nov. 10, 1879 at 1 (noting that Green was earning $2500 annually and describing him as the best of the justices of the peace).
62 See letter from William Green to Parents, July 19, 1897, in J.P. Green Papers, Roll 2 (complaining that “[b]usiness is dull, but I am making expenses”).
63 Homes of Some of Cleveland’s Leading Colored Citizens, CLEVELAND PLAIN DEALER, Oct. 14, 1900, Sect 4. p. 5.; cite also to census.
64 Law office addresses were found in the Cleveland City Directories and in Martindales lawyer directories.
65 Today, Calfee, Halter and Griswold
66 This is one portion of what became through merger the recently defunct, Arter & Hadden.
Office Location of Cleveland’s Black Lawyers circa 1909

The openness of the Cleveland bar is not altogether surprising. In varying degrees black lawyers in New England, New York, and the Upper Midwest reported significant white clientele to Woodson.\(^\text{67}\) Moreover, Cleveland, along with Boston, had earned reputations as the most racially progressive cities in the country.\(^\text{68}\) This racial liberalism had a variety of roots, but drew most importantly on the Western Reserve’s history of abolitionism and support for radical reconstruction.\(^\text{69}\) The region’s racial liberalism

\footnotesize{
\(^{67}\) WOODSON, supra note _______ at 204, 237-39. See also DAVID KATZMAN, BEYOND THE GHETTO: BLACK DETROIT IN THE NINETEENTH CENTURY 78 (African American attorney Charles Roxborough lived in a predominantly Polish immigrant community, spoke fluent Polish, and mostly represented Polish clients). Judge Constance Baker Motley recalls that two black lawyers practiced in New Haven when she was growing up. One primarily represented African American clients, but the other mostly represented whites. CONSTANCE BAKER MOTLEY, EQUAL JUSTICE UNDER THE LAW ___ (1998). As described supra note ___, both Carter Woodson and Charles Hamilton Houston described this phenomenon.


\(^{69}\) For discussions of the politics of race in 19\(^{th}\) century Ohio, and the divisions between Northern and Southern Ohio, and Ohio Democrats and Republicans, see in addition to Gerber and Kusmer, Jonathan L. Entin, An Ohio Dilemma: Race, Equal Protection, and the Unfulfilled Promise of a State Bill of Rights, 51
}
manifested itself in a variety of ways. Historian Kenneth Kusmer has described the status of black Clevelanders in much of the nineteenth century as, “almost equal.” He writes: “If blacks in nineteenth-century Cleveland achieved near-equality in access to public facilities, they also found the door of economic opportunity open wider in the Forest City than most other communities.” According to Kusmer, African American businesses thrived in the commercial downtown, relying on a mostly white clientele. African Americans dominated the barbering trade, and they owned the barber shops in the major downtown hotels.

To be sure, sociologist Frank Quillin’s description of Cleveland as “the negro’s Paradise” reflected his minimalist notion of paradise as much as it did social conditions. Green served in the state legislature under a constitution that reserved suffrage to whites, a provision that was necessarily neglected, but was not removed from the Constitution until 1923. Charles Chesnutt’s daughters desperately wanted to leave Cleveland to attend college because of their feeling of social isolation among their white classmates. And Chesnutt, himself, despite his growing literary renown, felt the sting of discrimination when he was denied membership in the Rowfant Club, a Cleveland literary society in 1902. Despite passage of a civil rights statute prohibiting discrimination in places of public accommodation, discrimination occurred with increasing frequency to the point that black Clevelanders commented that most of the

70 KUSMER, supra note ____ at 17.
71 Id. at 81-3; GERBER, supra note ____ at 82-3.
72 FRANK U. QUILLIN, THE COLOR LINE IN OHIO 154 (1913).
73 OHIO CONST. art V., § 1 (amended 1923); Entin, supra note ____ at 398.
74 H. CHESNUTT, supra note ____ at 75.
75 Introduction xxxv in CHARLES W. CHESNUTT: ESSAYS AND SPEECHES (Joseph R. McElrath, Jr., et. al. eds. 1999). Chesnutt exacted his revenge by skewering the club in his story, Baxter’s Procrustes in 1904. In 1910, the club admitted Chesnutt to membership.
better downtown restaurants excluded them and at least two of Cleveland’s black lawyers, Charles Sutton and Harry E. Davis, developed reputations as experts in Ohio civil rights law.\textsuperscript{76}

Nevertheless, Cleveland’s reputation for racial fairness, at least relative to much of the nation, was well deserved. Much of Cleveland’s society and economy was integrated. Cleveland’s churches were no longer nearly as biracial as they had been through most of the nineteenth century as new black immigrants gravitated to Cleveland’s black churches, but a number of Cleveland’s churches remained integrated.\textsuperscript{77} Cleveland had a tradition of biracial unionism, and while it this was changing, few of the trade unions discriminated against black tradesmen.\textsuperscript{78} John Green’s commitment to organized labor earned him frequent invitations from unions throughout the state to speak at their Labor Day celebrations, and at least one union retained Green as their counsel.\textsuperscript{79} Cleveland schools had long been integrated, and in 1915 they numbered 30 African American teachers who were widely dispersed in the school system and taught black and

\textsuperscript{76} GERBER, supra note ____ at 260-62; KUSMER, supra note ____ at 130; Young v. Pratt, 11 Ohio App. 346 (1919) (civil rights action regarding refusal to serve at a restaurant brought by Harry Davis on behalf of Francis Young); Attorney Sutton Wins Civil Rights Suit, CLEVELAND ADVOCATE, Aug. 14, 1915, at 1; Along the Color Line—Courts, THE CRISIS, Aug. 1915 at 168 (Ohio Supreme Court sustains judgment against restaurant in case litigated by Harry Davis); Id., October 1915 at 273 (Sutton wins discrimination case against Cleveland restaurant); Id., July 1917 at 145 (Sutton wins discrimination case against Cleveland taxi company that refused service to an African American woman).

\textsuperscript{77} KUSMER, supra note ____ at 30, 92-3; My former colleague, Oliver C. Schroeder, Jr., recalls that the church he attended, probably in the 1920s was integrated and that prominent black lawyer Harry E. Davis would sit with his family toward the very front of the church.


\textsuperscript{79} James L. Stout, Letter to John P. Green, July 17, 1893 in John P. Green Papers, Roll 1 (inviting Green on behalf of the Amalgamated Council of Building Trades of Cincinnati to participate in their Labor Day Parade and outing); Thomas Winning, Letter to John P. Green, July 24, 1893 in John P. Green Papers, Roll 1 (inviting Green on behalf of the Order of the Knights of Labor, Butler Assembly, No. 10,535, to give Labor Day address and participate in their Labor Day celebration in Glouster, Ohio). Green had introduced the bill designating the first Monday in September as Labor Day in Ohio, the first state to have such a holiday, and is generally regarded as the “father of labor day.” His strong support for organized labor in the state legislature was recognized by Ohio unions.
white students alike without public complaint.\textsuperscript{80} The school system’s doctor was also black.\textsuperscript{81} In addition to Green, this overwhelmingly white city sent two black legislators to the Ohio General Assembly, one of whom, Harry C. Smith, was far more outspoken and militant than the generally cautious Green. In 1916, Green’s son Theodore barely lost his bid to be elected a Cleveland’s Municipal Court judge.\textsuperscript{82} Surveying the condition of blacks in Cleveland in 1915, Robert Drake did not employ the word “paradise,” but he wrote that he could not imagine a better place to live.\textsuperscript{83}

\textbf{II. Black Lawyers in a Segregating City}

The portrait of Cleveland that Drake enthusiastically advanced was already becoming a thing of the past when he wrote. The northern manifestation of Reconstruction died more slowly in Cleveland than it had elsewhere, but by 1915 it was dying, as commitments to racial equality dimmed. The city was changing in many ways. Most notably its population was growing rapidly, and its black population was growing at an even quicker pace. Between 1900 and 1920, Cleveland’s population more than doubled, growing from 381,768 to 796,841. During this same period Cleveland’s black population grew from 5,998 to 34,451, due in large measure to the beginnings of the Great Migration. By 1930, total population had grown to 900,429, and black population had grown to 71,899. Between 1900 and 1930, the black share of the population grew

\textsuperscript{80} Drake, \textit{supra}
\textsuperscript{81} \textit{Id.}
\textsuperscript{82} \textit{GREEN, supra} note\textsubscript{___} at 356.
\textsuperscript{83} \textit{Id.}
from 1.6% of overall population to 8%. After a decrease of one lawyer between 1910 and 1920, the number of black lawyers also began to grow rapidly. By 1930, there were 38 black lawyers in Cleveland.

How did the professional lives of Cleveland’s black lawyers of the 1920s compare to those of the first decade of the twentieth century? Comparisons are complicated by a change in the Common Pleas Courts’ record keeping, making it impossible to identify the lawyers in any criminal case. As noted above, in the first decade, criminal cases constituted approximately 20% of these lawyers’ dockets. In addition to John Green, who had a reputation as an effective criminal defense lawyer, Henry Thomas was developing a similar reputation as a skillful defense lawyer. There is no reason to assume that both Green and Thomas did not carry heavy criminal dockets, and there is every reason to believe that they were not alone. In addition to the changed record keeping of the criminal dockets, the Ohio court system had undergone a significant change. In place of the old Justice of the Peace Courts, Ohio created a system of municipal courts. Writing in 1930, Charles Chesnutt observed that the bulk of legal work for Cleveland’s black bar took place in the Cleveland Municipal and Police Courts. Because the Cleveland Municipal Court records no longer exist, it is impossible to capture that part of the professional lives of Cleveland’s black lawyers.

Nevertheless, it is possible to say something about professional opportunity based on the civil dockets of the Cuyahoga Court of Common Pleas. During the period 1920 through 1926, African American lawyers appeared in 1,188 civil cases in the County

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84 KUSMER, supra note ____ at 10 (from U.S. Census Bureau Decennial Reports).
85 Cite to census data.
86 Charles W. Chesnutt, The Negro in Cleveland reprinted in CHESNUTT, supra note ____ at 537.
Common Pleas Court. The docket books reveal that the professional lives of African American lawyers had changed from twenty years before. Immediately striking is the overwhelming number of divorce cases. In the earlier period, matrimonial cases (divorces or alimony disputes) constituted approximately a quarter of the civil docket of Cleveland’s black lawyers. In the 1920s, however, Cleveland’s black lawyers served primarily as divorce lawyers, and perhaps criminal lawyers, in the Court of Common Pleas. From 1920 to 1926, matrimonial cases, almost all of them divorces, made up 72% of their work. The usual array of civil cases, and a small number of habeas petitions made up the rest of their work. According to the Heinz and Laumann study of Chicago Lawyers divorce ranked second to last of thirty practice areas, in a ranking of prestige. From a fairly varied practice, the black bar was now largely relegated to an area of practice that was generally regarded as among the least prestigious.

The demographics of the client base were also changing. Among the 1,155 clients in these cases, it is possible to identify the client’s race of 362 clients from Census Schedules and Military Draft Registration records. Of those clients, 35% were white, 56% were black, and the remainder were listed in census records as mulatto.

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87 These records are contained in the Cuyahoga County Court of Common Pleas Civil Docket Books, which are housed at the Cuyahoga County Archives in Cleveland, Ohio.
88 Assuming that Charles Chesnutt was correct in his observation that much of the practice of African American lawyers was in the Municipal and Police Courts, there is good reason to assume that criminal practice made up a significant portion of that docket. See supra text accompanying note 88.
89 JOHN P. HEINZ & EDWARD O. LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR 91 (table 4.1) (1982); see also JEROME E. CARLIN, LAWYERS ON THEIR OWN: A STUDY OF INDIVIDUAL PRACTITIONERS IN CHICAGO 91-101 (1962) (Discussing the low status ascribed to divorce lawyers and noting that a substantial portion of the divorce bar consisted of Jewish and black lawyers) In Heinz and Laumann’s study, only poverty law ranked lower than divorce lawyers. Criminal defense work was also regarded as low prestige work, ranking 23d out of 30. While the Heinz and Lauman study based its prestige ranking on contemporary surveys rather than historical materials, there is little reason to assume that the low ranking was a recent development. See Kenneth W. Mack, A Social History of Everyday Practice: Sadie M. Alexander and the Incorporation of Black Women into the American Legal Profession, 1925-1960, 87 CORNELL L. REV. 1405, 1430-36 (discussing the low status associated with divorce work).
Table 2: Clients in Cuyahoga County Common Pleas Court 1920-1926

<table>
<thead>
<tr>
<th>Characteristics of Client</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Race Identified</td>
<td>362</td>
<td>31%</td>
</tr>
<tr>
<td>White</td>
<td>125</td>
<td>35%</td>
</tr>
<tr>
<td>Black</td>
<td>204</td>
<td>56%</td>
</tr>
<tr>
<td>Mulatto</td>
<td>33</td>
<td>9%</td>
</tr>
</tbody>
</table>

If anything, this aggregated data overstate the extent to which black lawyers could count on having white clients during the 1920s, since 41 of the cases that involved white clients occurred in 1920, and only 20 of the cases occurred in the years 1925 and 1926 combined.

In response to the question how did the Cleveland Bar become segregated, one might say, steadily but slowly. As the client data suggests, many white Clevelanders were not averse to seeking legal representation from black lawyers. Nonetheless, the trend was toward a disappearing white client base.

The explanation of why this happened obviously begins with the growing inclination toward race discrimination and racism that was endemic in the United States both North and South during these years. What historian Rayford Logan described as “the betrayal of the Negro” was a northern as well as a southern phenomenon. Cleveland was not immune from this tendency. This trend towards segregation and

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90 Cite to Klarman, etc. and to Gerber and Kusmer on Cleveland.
discrimination and to a white supremacist ideology did not occur with the level of ferocity that it displayed in some other cities. Unlike Chicago, East St. Louis, and a number of other major cities, Cleveland did not suffer a murderous race riot. In their classic study of Chicago’s ghetto, sociologists St. Clair Drake and Horace Cayton, reprint a chilling map showing the location of Chicago house bombings between 1917 and 1921 targeting black families that moved into various white neighborhoods and the realtors who dealt with them. The fifty-eight bombings and two resulting deaths suggest that the Chicago of that era was not so different from early 1960s, Birmingham, Alabama. Violence occurred in Cleveland, also, but not nearly on this scale. But while it may have taken a milder and gentler form than in some other cities, Cleveland was clearly turning away from its earlier openness to African Americans.

On December 1, 1913, twenty-one Clevelanders, many of them unhappy postal workers concerned about discrimination in the Postal Service, gathered to form a branch chapter of the NAACP. Soon after, Harry Davis reported to national NAACP on behalf of the Cleveland branch on conditions in Cleveland. Davis balanced the optimism of the past, and, perhaps, some Cleveland boosterism with the realities that he knew as an African American lawyer in Cleveland. He wrote:

To date no specific local problem has been presented to the Branch for action. Cleveland is, to a large degree, free from the baneful prejudice with which some of our brethren must contend. But there has been some

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92 The five-day riot in Chicago left at least thirty-eight people dead and over a thousand homeless. St. Clair Drake & Horace R. Cayton, 1Black Metropolis: A Study of Negro Life in a Northern City 65 (rev. ed. 1962).
93 Id. at 63-4; 178. The map shows 51 individual dots suggesting either that some houses were targets of multiple bombings or that some targets were outside of the area shown (perhaps, instances where the realtor was the target). Id. at 63. In addition to the two deaths, several injuries and property damage occurred. Id. at 178. Birmingham earned the nickname, “Bombingham.”
94 Constitution and Bylaws of Cleveland Branch, NAACP, Series II Records, 1913, Mss. 4475 Western Reserve Historical Society (hereinafter NAACP Branch Papers).
trouble in theatres, restaurants, and other places of public accommodation, and some attempt at discrimination in institutions supported by public funds. Also there is a noticeable tendency toward inserting clauses in real estate deeds restricting the transfer of the property to colored people, Jews and foreigners generally. However, we are not deceived by the apparent condition of security but, on the contrary, have noticed the steady encroachment of prejudice and expect to be able to combat every inch of this sort of retrogression. One of the first aims of our Branch is the creation of a legal defense fund, as with this weapon we will be in a position to invoke the strong arm of the law to its fullest extent.\footnote{Report of Harry E. Davis (undated) in \textit{Id.}}

Soon enough, Davis, on behalf of the Cleveland Branch, would find himself very busy documenting and litigating or assisting in a steady stream of discrimination cases.\footnote{See, \textit{e.g.}, George A. Mundy, October 14, 1920 Letter to Mary White Ovington, Chair of the Board of National NAACP in \textit{id.} (report from Executive Director of the Cleveland Branch recounting how Branch had dealt with a railroad that was segregating its cars and with the refusal of a Cleveland prosecutor to prosecute violations of the public accommodations law); Undated document in \textit{id.} apparently circa 1921 ("Ten Cases involving discrimination in theatres and other public cases were investigated and in nine of these, the legal advisor was able to report satisfactory settlement. One case was dropped through lack of having a good legal case (sic) of action."); \textit{Id.} (reporting successful negotiations with the mayor regarding discrimination in the City Hospital and regarding prosecutorial refusals to prosecute violations of public accommodations law).}

Social discrimination became much more widespread. Restaurants refused to serve black patrons with minimal fear of sanctions as judges and juries showed little desire to enforce Ohio’s civil rights law.\footnote{Cite Kusmer and Chesnutt on this.} While Cleveland’s black lawyers responded with an increasing number of civil rights actions, the battle could be exhausting.\footnote{\textit{KUSMER}, \textit{supra} note \underline{____} at 180} Charles Chesnutt wondered about the psychic cost of having to “bring a lawsuit or swear out a warrant every time one wants a sandwich or a cup of coffee.”\footnote{\textit{Id.} at 181} Cleveland’s hospitals began the practice of segregating white and black patients, and they limited the number of beds available for black patients.\footnote{\textit{Id.} at 181-2.}

Discrimination limited opportunities that went well beyond eating in a downtown restaurant or skating at a roller rink. While the experience within the labor movement
remained mixed, some biracial unions were replaced by discriminatory craft unions, while others became less open to African Americans.\textsuperscript{101} There were instances of interracial solidarity within the movement. Black workers supported the 1919 steel strikes, which were part of the nationwide Great Steel Strike of 1919, and their efforts dissuaded the employers from resorting to the use of black strikebreakers.\textsuperscript{102} Yet more typical were the experiences of black workers in a variety of trades and industries from waiters to the trainmen and engineers who confronted unions that worked to push them out of the trade. Positions as waiters in the large downtown hotels, and especially positions as headwaiters were considered relatively high status. The efforts of white waiters to force employers to fire their black workers led to a strike and violence in 1917 and to a decline in hotel employment for black waiters over the next decade.\textsuperscript{103}

Discrimination limited other opportunities, as well. African Americans who attempted to move to the Cleveland suburbs met strong, sometimes violent, resistance.\textsuperscript{104} Opportunities for black entrepreneurship diminished rapidly, or shifted away from white clientele.\textsuperscript{105} Black barbers lost their shops in the downtown hotels, the last holdout being George Myers’ shop in the Hollenden hotel, which continued to employ a large number of black barbers until his death in 1930.\textsuperscript{106}

With the end of the Newton Baker mayoralty, as he entered the Wilson administration, Cleveland’s mayor’s office became openly hostile to the black

\textsuperscript{101} Id. at 197-8; PHILIPS, supra note ____ at 114-26.
\textsuperscript{102} PHILIPS, supra note ____ at 104-06.
\textsuperscript{103} KUSMER, supra note ____ at 75-6, 198.
\textsuperscript{104} KUSMER, supra note ____ at 165-71; PHILIPS, supra note ____ at 134-35.
\textsuperscript{105} KUSMER, supra note ____ at 75-78.
\textsuperscript{106} Id. at 75-6. The Hollenden’s decision in 1923 that upon Myers’ retirement it would not continue with a black-owned barbershop and would not retain his employees apparently pushed Myers toward greater militance on race matters. George A. Myers, ENCYCLOPEDIA OF CLEVELAND HISTORY
The deterioration of race relations, not surprisingly, negatively affected the city’s black professionals. According to Cleveland legal folklore, when the Cuyahoga County Prosecutor’s office hired Norman S. Minor, who would become the preeminent black trial attorney of his day, it assigned him to prosecute black criminal defendants only, since it was considered demeaning to white criminal defendants to be prosecuted by a black man. A few years earlier, when the same office had hired black lawyer, Selmo Glenn, the Prosecutor did not put any such restrictions on Glenn, who prosecuted white defendants. In addition to segregating their wards, Cleveland hospitals adopted the practice of barring black interns and black students in their nurses training. In the 1930s, the Cleveland School Board would reassign most of its black teachers to schools in the “black belt” of its system.

The Norman Minor incidents aside, discrimination against Cleveland’s black lawyers was not a product of state action or of quasi-governmental entities like the Ohio State bar. The experience of these lawyers suggest that contrary to the argument of David Bernstein that occupational discrimination flowed from government interventions in the market through licensing laws and labor protective legislation, private discrimination was sufficient to produce exclusion from some markets and opportunities.

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107 Mayor Harry L. Davis (not to be confused with lawyer Harry E. Davis), did support Cleveland African Americans, however, in an effort to block the showing of the film The Birth of a Nation. “Birth of a Nation” Film is Opposed by Mayor, CLEVELAND PLAIN DEALER, Feb. 7, 1917 at 8.

108 The Encyclopedia of Cleveland History repeats this anecdote but does not document it.

109 KUSMER, supra note ____ at 181-82.

110 JANE EDNA HUNTER, A NICKEL AND A PRAYER 193 (1940).

While growing racism explains much of why the opportunities for black lawyers were changing in Cleveland, there is an important and related additional cause. As David Delaney has shown, central to the history of race relations and to the struggle over equality have been contests over space. From the recapture of fugitive slaves, to emigrant immigration laws, to residential segregation and segregation in schools and public accommodations, the battle has been over control of where African Americans and sometimes other non-whites might go. Similarly, a battle over space played an important role in determining the professional opportunities of Cleveland’s black lawyers.

Before 1920, there had been some black enclaves in Cleveland, but the black population was dispersed, and small, and no section of the city could properly be described as a ghetto, or as predominantly black. During the 1920s a ghetto emerged in Cleveland to the East of downtown.

The emergence of Cleveland’s ghetto resulted both from choices made by its residents and by constraints on their choice. Proximity to their industrial workplaces and the prohibitive expense of most alternatives certainly motivated many African Americans to live where they did. As migrants arrived from the South, they gravitated to the streets and neighborhoods where their kin and friends who had preceded them to Cleveland lived. With the continued flow of black migrants from the South, Cleveland’s African Americans found themselves crammed into housing that was overcrowded, overpriced, and typically shockingly bad. Those who tried to move further east, however, especially those who tried to move to the suburbs in the Heights and to the Wade Park

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114 KUSMER, supra note ____ at 161-65.
115 PHILIPS, supra note ____ at 128-35.
116 Id. at 130-34, 147-50.
area near University Circle, met considerable resistance. Charles Chesnutt commented that: “It is about as difficult for a Negro to buy property on the Heights, except in one village, as it is for the traditional camel to pass through the eye of the traditional needle.”\textsuperscript{117} Residents of most of Cleveland’s ethnic communities also resisted home purchases or rentals by blacks. No residential segregation statutes existed in Cleveland or its suburbs. Instead, Cleveland’s geography was reconfigured into black and white space through private choices and actions, albeit much of it done in the shadow of the law through the extensive adoption of restrictive covenants. By refusals to sell or rent in certain neighborhoods, the adoption of restrictive covenants, and resort to harassment and violence where all else had failed, two Clevelands, one black and one white began to emerge during the 1920s.\textsuperscript{118}

\begin{center}
\includegraphics[width=\textwidth]{Emerging_Ghetto.png}
\end{center}

\textit{Shaded Area East of Downtown Marks the Emerging Ghetto}

\textsuperscript{117} Chesnutt, \textit{Negro in Cleveland}, supra note ____ at 535.

\textsuperscript{118}
If one were to make a journey in 1929 to visit the black lawyers of Cleveland a short walk around Public Square in downtown Cleveland would no longer suffice. Instead, in addition to a much longer walk, the adventure would require at least one change of streetcars. A black presence remained downtown. With one important exception, lawyers who had been downtown in 1909 remained downtown, though the area was no longer as compact, and some black lawyers would find themselves in less choice locations at its fringes. Perhaps because of a building boom after World War I, which created considerable new office space, new black lawyers continued to open practices in the downtown offices in the early 1920s. After 1923, however, no newly admitted African American lawyer would open an office downtown until the mid-1930s when the opening of the Terminal Tower created another glut of downtown office space. Instead, new lawyers could be found in the emerging ghetto. In 1929, of thirty-seven black lawyers, only ten were located downtown. Those who had instead opened their offices in the black neighborhoods were essentially invisible to most of white Cleveland.
Northeast Ohioans who wished to get somewhere in Cleveland relied on a series of streetcars and interurban railways. The Cleveland transit system helped to enforce the growing separation of Cleveland into two cities, one white and one black. For those lawyers who situated themselves along the Central Avenue corridor or on East 55th Street, the Cleveland transit system was a further source of isolation and invisibility. Only interurban lines or streetcars that ran from downtown to the eastern parts of the city or to the communities beyond would have had reason to traverse the main commercial thoroughfares of the ghetto. Direct routes from the west or south of Cleveland or beyond to downtown do not cross the black community. Even most commuters from Cleveland’s East Side would have been unlikely to have seen from a passing streetcar or train an “Attorney at Law” sign posted in a Central Avenue window. The transit companies mostly bypassed the heart of the emerging ghetto. Consequently, nearly all area residents
who chose to seek out an African American lawyer in the black neighborhoods would have found his or her route by public transportation to be vexingly roundabout. None of the seven interurban lines traveled along Central Avenue or East 55th Street. Those coming from the East Side either skirted to the north, along Euclid Avenue or above, or traveled along the southern edge of the ghetto on Woodland Avenue.

The Cleveland Electrical Railway Company provided streetcar service to Cleveland and some of its near suburbs. Its lines crisscrossed the city and led downtown, but it, too, helped to carve Cleveland into white and black space and to isolate Cleveland’s new black lawyers from potential clients beyond their neighborhood. Among its several East Side lines, only the streetcar line from Cleveland Heights traveled along Central Avenue. Avoidance of the heart of the black community was by design. The Company, which employed no black motormen or conductors, responded to white concerns about riding a streetcar with a crowd of African Americans and drew their routes accordingly to discourage heavy African American ridership. Black passengers were discouraged from riding the one line that did run along Central Avenue by the scarcity of stops spaced at a considerable distance. People from outside of the neighborhood were not likely to serendipitously come upon and retain the black neighborhood lawyers.

Of the 125 white clients who engaged black lawyers during the early and mid-1920s, all but 13 hired a downtown lawyer. Of those thirteen, the majority hired Thomas

119 HARRY CHRISTIANSEN, TROLLEY TRAILS THROUGH GREATER CLEVELAND 258-64 (1975).
120 JAMES A. TOMAN, JIM TOMAN & BLAINE HAYS, HORSE TRAILS TO REGIONAL RAILS: THE STORY OF PUBLIC TRANSIT IN GREATER CLEVELAND 114 (1996); CLEVELAND AUTOMOBILE CLUB, DETAIL STREET MAP OF CLEVELAND AND ENVIRONS (1930).
121 For a discussion of the drawing of routes, see GERBER, supra note ____ at 317. On the failure to employ African Americans, see Chesnutt, Negro in Cleveland, supra note ____ at 537.
122 GERBER, supra note ____ at 317.
Fleming, who as Cleveland’s first, and at the time only, black city councilman, did not suffer from the same invisibility within white Cleveland as did his colleagues.

The experience of Fleming raises an important question, to which I can only suggest possible answers. Why did these lawyers locate their practices where they did? Was the decision one of choice, or necessity? Or, did limited opportunities lead new black lawyers to make a virtue of their limited choices?

In some instances, the decision to locate within the black community may have been driven by ideological commitments. Charles Hamilton Houston appears to have concluded that this was the case, and he praised Cleveland’s younger African American lawyers (along with lawyers in a number of other cities) for locating their offices in the black community. In contrast to the older generation of lawyers, who he generally saw as uninterested in taking leadership roles within the black community outside of electoral politics, this younger generation, he argued, looked to represent community interests through a variety of organizations.\(^{123}\)

Houston may be correct that ideology may have played a role, but I think he draws too stark and misleading a picture of the generations, at least regarding Cleveland. Many black communities were deeply divided between advocates of an uncompromising struggle for integration and an “accommodationist” camp that adhered to the approach of Booker T. Washington and believed that rather than focusing on the integration fight, blacks should develop economic and civic strength within their community. To some extent, that divide played out in Cleveland, with the older generation devoted to the ideal of integration and the younger generation skeptical of the continuing relevance of the integration ideal or fight. This dispute came to a head in 1910-11 in a fight over

\(^{123}\) Houston, Tentative Findings, \textit{supra} note ___ at 2-7.
establishing a black YMCA branch in the face of increasing exclusion of African American men from other YMCA branches. Community leadership split largely along a generational divide before the effort was abandoned. Older black leaders rejected a black YMCA branch as submission to Jim Crow, while younger leaders emphasized the valuable community services that a YMCA branch could provide. Yet, a heavy dose of pragmatism tempered the position of most of Cleveland’s black leaders, including the lawyers. And lawyers from the newer generation, such as Chester Gillespie and John Ballard, both of whom were admitted to practice in the 1920s continued the civil rights work of Harry Davis, Theodore Green and Charles Sutton of the earlier generation.

The likeliest instance of a lawyer who located in the emerging ghetto at least in part for ideological reasons is that of Thomas W. Fleming. Fleming was a leader of the accommodationists, and he was the only black lawyer to move out of downtown to what would become the ghetto. Fleming’s choice almost certainly reflected both an ideological commitment to building an economic power base within the black community and a desire to position himself to build a political base. In 1909, Fleming was the first African American elected to Cleveland City Council.

Did other black lawyers who opened their offices in the black neighborhoods adhere to a similar philosophy? Perhaps some did, but I have discovered no evidence of such ideological motivation. Instead, I believe they responded to their perceptions of available opportunity. These lawyers may have seen the growing black community as a potential market opportunity and chose to take advantage of the predictable need that

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124 GERBER, supra note ___ at 125 KUSMER, supra note ___ at 113-52. One such example of complexity is Harry E. Davis. For a discussion of his career and his evolving stand on these questions, see Id. at 248-9.
126 Id. at 145.
their neighbors would have for legal services. Nevertheless, like all choices, they made this choice against the backdrop of their alternative opportunities. For most of these lawyers, those alternatives appear to have been stunted and limited, and they opted for what was available, as some doors slammed shut to them.

Further, there is evidence that the downtown was aggressively closed. Indeed, perhaps it had always been to a greater degree than a simple census of law office locations would suggest. Writing in 1920, Green noted that before he came to the Blackstone building in 1919, he had always needed to rely on the intervention of a white person to get into his office space.\footnote{GREEN, supra note ____ at ___.} Perhaps fewer willing white patrons existed for new African American lawyers in the 1920s, especially to new lawyers who could not draw on connections to white civic or business leaders. Black lawyers who were excluded from downtown offices on account of their race would eventually turn to the courts for relief. By then, Cleveland had much changed, though the statute of frauds, which helped to thwart their efforts, had not, and they found themselves relegated to the other Cleveland.\footnote{Gillespie v. Citizens Bldg. of Cleveland, 16 Ohio Supp. 82 (Ohio Com. Pl. 1945).}

The creation of two Clevelands, one black and one white, did much to circumscribe the professional landscape for black lawyers. Needless to say, the story does not end there. Energy, creativity, tenacity, hard work, and the desire to get ahead on the part of some of Cleveland’s newer black lawyers led to successful careers, in law and in other endeavors. People adapt to the constraints of their environment, and these lawyers did not differ in that regard. While these lawyers may have borne the burden of narrowed opportunity, their location within the ghetto meant ready access to legal
services for Cleveland’s growing black community. It also meant that some lawyers succeeded in their profession, earned a good living, and, in some instances, gained economic or political power, within and without the black community. In time Cleveland elected a lawyer, Carl Stokes, the first black mayor of a major U.S. city.

While lawyers found ways to make the best of their opportunities, one cannot help but feel a sense of lost opportunity, as well. Invisibility meant fewer opportunities and fewer choices. It is not necessary that any particular black lawyer have a white partner, or white clients, or have her office down the hall from white lawyers, in order to have a successful and fulfilling career or to do work that matters. Clearly, experience has proven to the contrary. What is important, however, is that her career opportunities be as open as any other lawyer’s without regard to race. To the extent that the city was open to black lawyers in that way around 1900, much had changed for the worse in thirty years. Moreover, while Cleveland was never close to the paradise that Frank Quillin thought it to be and was a good distance from becoming the “beloved community” of which Dr. Martin Luther King spoke, the city squandered an important opportunity to be a better place, which, at least, looked toward those goals. We pay the price to this day.

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129 Whether or not the community would have been less adequately served had these lawyers not situated themselves along Central Avenue and East 55th Street, is a difficult counterfactual. Given the growing population of lawyers, who, especially in the 1930s, struggled to make a living, it is hard to imagine a vacuum in their place. It is easy to imagine, though, that for some clients, their presence made all the difference in the world.

130 Stokes was elected mayor in November 1967. His brother, Louis, also a lawyer, was elected to the U.S. House of Representatives the following year.