Race and Place in Post-Reconstruction America: How the Cleveland Bar Became Segregated, 1870-1930

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At the beginning of the twentieth 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 choice for a young man looking to
advance himself in the legal profession. Phibbs might have
assumed that Green would be a sympathetic and congenial mentor
as a recently minted lawyer, whose career began in 1870. Since
then, Green had become an established lawyer, and his political
star was on the rise. He had been elected a Justice of the Peace in

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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).
1873. Phibbs was undoubtedly aware that Green had narrowly failed in his first attempt to win election to the Ohio General Assembly and that there was talk of another run for that office. Indeed, Phibbs would prove correct in his expectations that Green had a promising future. 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 future became even brighter with the election of fellow Ohio Republican, William McKinley, as President in 1896. Friends, acquaintances, and in some instances strangers sought his help and influence in their efforts to find patronage jobs 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 Superintendent of the Stamp Division of the Postmaster General’s office.

The story of a young ambitious man seeking to advance himself by attaching himself to someone more established is hardly novel. Notably, however, Phibbs was an Irish-American immigrant and Green, a transplanted North Carolinian, was Cleveland’s first

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3 WILLIAM GANSON ROSE, CLEVELAND: THE MAKING OF A CITY 355 (2d ed. 1990)
4 GREEN, supra note 2, at 150-54, 171, 186-93.
5 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.
6 GREEN, supra note 2 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.
African American lawyer. Their professional 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.  

From the vantage point of over a century, the arrangement between Green and Phibbs may seem surprising—the lucky coincidence of two unusual men who were able to cross racial boundaries. Such surprise, however, is borne of misperception due to our knowledge of more recent history. The partnership 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, had formed a partnership with Frank Sykora, a white Clevelander of Bohemian descent. Over the next quarter of a century, other black and white Cleveland lawyers would establish interracial practices.

In a number of 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 was integrated, if minimally populated by black lawyers, at the turn of the century. By 1930, however, African Americans who aspired to

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7 Eventually Phibbs left Ohio for Los Angeles. There, he practiced law and eventually became a breakfast cereal magnate. He maintained his friendship with through correspondence. GREEN, supra note 2 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.

8 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. CLEVELAND GAZETTE, Dec. 21, 1901.

9 See infra notes 45-48 and accompanying text.
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. The institutions of the bar remained formally open to them. Nevertheless, even setting aside the impact of the Depression, a new black lawyer in 1930 was likely to follow a limited and difficult career path.

Historians have paid little attention to the work lives of most American lawyers. This is especially true of lawyers who did not gain prominence on the bench, in politics, or at large corporate law firms. Minority lawyers in particular have been understudied. We will not begin to have a picture of lawyers’ experiences in the past until we have undertaken a series of community studies that look closely at the day-to-day professional lives of lawyers. This article represents the beginnings of one such study. Its focus is on Cleveland, Ohio, whose recent misfortunes as a prototypical rustbelt city locked in the downward spiral of a slumping economy should not obscure its earlier importance as one of America’s great industrial, political, and legal centers. During the period described in this article, Cleveland grew from the tenth to the fifth largest city in America. It was the home not only of John D. Rockefeller’s Standard Oil Company, but a center of steel and iron production, as well as a major producer of automobiles, chemicals, machine tools, and apparel. To meet the needs of its corporations and trusts, Cleveland’s legal community developed large corporate firms. These firms attracted lawyers to a practice requiring a high level of sophistication about the law, the needs of the business community, and the exercise of political influence. Such firms as Squire, Sanders and Dempsey, and Tolles, Hogsett, Ginn & Morley (one of the parents of today’s Jones, Day) followed the model of
New York firms in recruitment and organization. Meanwhile the vast majority of Cleveland’s lawyers went about the less glamorous, but important daily work of offering legal services to all comers. This article examines the experiences of one group of those lawyers: African Americans.

The standard account of the earliest generations of African American lawyers derives from studies conducted by prominent lawyer and civil rights champion Charles Hamilton Houston and by Carter G. Woodson, an historian generally credited as the father of black history.¹⁰ Both Woodson and Houston were rather dismissive of the abilities, motivations and community commitment of most black lawyers who 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 later, when a younger cohort succeeded them did a significant number of African American lawyers display a high level of professional skill and a growing civil rights consciousness.¹¹

The history 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


¹¹ 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).
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 these early lawyers. However, from what materials do exist, it is possible to discern a group of talented and professionally able men.\textsuperscript{12}

Part I paints a portrait of Cleveland’s African American bar from 1870 until 1910. It describes the path that these men took toward 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 or more years earlier. It offers an explanation for this constriction of opportunity 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 practiced had started to become two cities: one white and one black, and new African American lawyers became invisible to most Clevelanders.

I. An Integrated Bar

A. Becoming a Lawyer

\textsuperscript{12} At this point, they were all men.
A young man seeking a career in law in turn-of-the-century Cleveland faced various discouraging impediments. 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 of bar examination and required that all applicants take a single test administered in Columbus. The Ohio Supreme Court adopted a bar admission rule in 1897 that required at a minimum a common school diploma. 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 working-class residents of Northeast Ohio, both white and black.

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. 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

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13 In turn-of-the-century Cleveland, such an aspirant would almost invariably be a man. [cite to census data on female lawyers].
17 GREEN, supra note 2 at ___.

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Williamson, he read law for two years before admission to the bar.\textsuperscript{18}

For the overwhelming majority of Cleveland’s black lawyers, however, law school was the avenue to professional advancement.\textsuperscript{19} Union Law College folded in 1876, but other schools opened to fill the vacuum that it left. Cleveland’s law schools were open to black students, at least to those who could afford the price of a legal education and meet the entrance requirements.\textsuperscript{20}

When Western Reserve University opened its law school in 1892, it counted one African American, Samuel Wallace Hansberry, among its twenty-four entering students. There was a black student in two of the next three entering classes.\textsuperscript{21} In subsequent years, Reserve would continue to graduate black students, though not in the same numbers as the two local 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.\textsuperscript{22} Under his leadership Western

\textsuperscript{18} HELEN M. CHESNUTT, CHARLES WADEL 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.

\textsuperscript{19} 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.

\textsuperscript{20} 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. GREEN, supra note 2 at 118.

\textsuperscript{21} 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. Hansberry’s brother-in-law, Dr. Welcome Turner Jones, was graduated from Western Reserve University School of Medicine in 1893 and may have been that school’s first black graduate. Email from Jane Campbell Arrington to Robert Strassfeld, Feb. 27, 2010 (describing the results of some of her genealogical research) (on file with author). Variations on the spelling of Hansberry’s last name include Hansbarry and Hansbury.

\textsuperscript{22} Wilson Record, Negro Intellectual Leadership in the National Association for the Advancement of Colored People: 1910-1940 PHYLON 375, 377 (1956).
Reserve’s colleges and professional schools welcomed black students. 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 the University of Michigan and the University of Cincinnati. 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. The standards became more restrictive during the next 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, schools emerged to provide a pathway to a legal career 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

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23 During the 1890s Western Reserve Medical School graduated several black students. In 1894 there were four black students at Western Reserve Medical School. DAVIS, supra note 8 at 177.
26 Id. at 25-26; SAMAD, supra note 14, 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.
27 As late as 1940 only 1.4% of black males, and only 5.8% of white males, held a college degree. ABEL, supra, note 25 at 252 (table 3b).
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 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 joined Cleveland Law School in the business of part-time legal education in 1916.

John Marshall and Cleveland Law School were typical of the 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

28 SAMAD, supra note 14, at 182-87.
29 DAVIS, supra note 8 at 132-3.
30 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.
31 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.
32 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).
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 were a daunting obstacle. In his 1934 study of African American lawyers, Carter Woodson found that many of his respondents delayed their legal education because of similar 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. Amongst this early group of lawyers, the average age at the beginning of their legal career was twenty-six.

Many of these men did face significant challenges financing their legal education and worked for several years before beginning law school. As a supplement to scholarships from Western

33 SAMAD supra note 14 at 184.
34 Id. at 190.
35 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 2 at 279.
36 WOODSON, supra note 10 at 195.
37 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 8 at 132-3.
Reserve, Alexander Martin managed the costs of college and law school by offering his services as a barber to his fellow students. Martin qualified to take the bar after his second year of law school, and upon admission, he established a partnership with John M. Anderson, another 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. Others also capitalized on their skill as barbers, then one of the elite crafts in which a black Cleveland might prosper, to accumulate sufficient resources to attend law school. Both Samuel Hansberry and Thomas Fleming had been barbers before they became lawyers. Others black Clevelanders worked as stenographers prior to turning to law. Both Augustus Eubanks and Robert Ray Cheeks took this path to the law.

As Jerold Auerbach has shown, the bar exam, and determination of character and fitness, have sometimes been significant barriers to 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 State’s bar

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38 *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.

39 *Id.*

40 Davis, *supra* note 8 at 143; cite City Directories on Hansberry.

41 Davis, *supra* note 8 at 173, cite census on Eubanks.


43 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
admission requirements undoubtedly deterred many black Clevelanders from even considering a legal career, these obstacles related to class, not race. Still, perhaps because of these barriers the number of black lawyers in Cleveland grew slowly, increasing from six to eleven between 1900 and 1910.44

B. The Landscape of Opportunity

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.45 Following his partnership with Frank Sykora, Leon Wilson formed a partnership with Edward David, another white Cleveland lawyer.46 Charles W. Chesnutt began his legal career associated with Henderson, Kline and Tolles, one of the ancestors through reorganization and merger 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.

44 IV THIRTEENTH CENSUS OF THE UNITED STATES TAKEN IN THE YEAR 1910 at 549 (date?) (find cite for 12th census).
46 DAVIS, supra note 8 at 99.
of the modern-day firm, Jones, Day.\textsuperscript{47} 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{48}

The institutions of the bar, the County Law Library and the
Cleveland Bar Association, were open to African American
lawyers.\textsuperscript{49} The Bar Association was founded in 1873. Though not
a charter member, African American lawyer Leon Wilson joined
the Bar Association later that year.\textsuperscript{50} From time to time
afterwards, some, but not all, black lawyers joined the Bar
Association, and African American members participated fully in
meetings and events.\textsuperscript{51} 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 black lawyers
served on Bar Association committees.\textsuperscript{52} The Association also

\textsuperscript{47} H. Chesnutt, supra note 18 at 41; Rose, supra note 3 at 613. 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. William Rose suggests something akin to an
associate’s position. On this ancestor of Jones, Day, see, Albert Borowitz,

\textsuperscript{48} The connection between Martin and Pfister is gleaned from the Cuyahoga
County Common Pleas Court Docket Books and from the Cleveland City
Directories.

\textsuperscript{49} Woodson, supra note 10 at 199, 203.

\textsuperscript{50} Records of the Cleveland Bar Association, Container 2, Folder 2, “Records” p.
12, at Western Reserve Historical Society.

\textsuperscript{51} See, e.g., Id., Minutes of Dec. 4, 1915 meeting of the Association (C.W.
Chesnutt); Id., Minutes of December 6, 1919 meeting of the Association (Alex H.
Martin); Woodson, supra note 10 at 199.

\textsuperscript{52} 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); Id.,
Minutes of May 27, 1926 Executive Committee Meeting p. 4 (Announcement of
Committees, including Committee on Memorials, which included John P.
noted the passing of black members with the usual memorials at their meetings. Sometime in the 1920s, Cleveland’s black lawyers established an association for black lawyers, which they named the John Harlan Club in honor of Justice John Harlan, the dissenter in *Plessy v. Ferguson*. Woodson recounts that Cleveland’s black lawyers, deliberately referred to their organization as a club to distinguish it from a bar association and avoid the suggestion of Jim Crowism.

Although an integrated Cleveland bar opened meaningful career paths to black lawyers, it is important not to overstate what this meant for their lives and professional opportunities. Historians including Jerold Auerbach and Robert Gordon have described the emergence of an elite bar in the late nineteenth and early twentieth century, which served the needs of large corporate clients. This bar, wherever it emerged, was virtually closed to ethnic lawyers, and to non-whites. As Cleveland became a major industrial center in the late nineteenth century, an elite bar

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55 *Woodson, supra* note 10 at 200.
developed there to meet the need of large corporations.\textsuperscript{57} This elite bar was indeed segregated and remained so until the late twentieth century.\textsuperscript{58} 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. Other than Green’s elections to the petty judicial position of Justice of the Peace in the 1870s, no African American would win a judgeship until the 1940s.\textsuperscript{59} 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 practice.\textsuperscript{60} Approximately 25\% of their cases were matrimonial, almost 20\% were criminal, and the rest ran the gamut of civil litigation including property disputes, 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.

\textsuperscript{57} For a description of the growth of industry in Cleveland in the late nineteenth century, see Carol Poh Miller & Robert A. Wheeler, Cleveland: A Concise History, 1796-1996 at 77-82 (1997).
\textsuperscript{58} Cite to Borowitz.
\textsuperscript{59} Cite Perry Jackson entry in Dictionary of Cleveland Biography
\textsuperscript{60} The Cuyahoga County Court of Common Pleas Dockets and Journals are located at the Cuyahoga County Archives in Cleveland, Ohio.
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, representing 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.61

61 This phenomenon was not unknown (even if the statistics were) to contemporary observers, including Woodson and Houston. Houston, Tentative Findings, supra note 10, at 6-7; Woodson, supra note 10 at 225-29. While cities varied, the experience was replicated to varying degrees in other northern cities. Census manuscripts are fraught with problems, but in most instances, the only means to collect information about these lawyers’ clients. The information is dependent on the accuracy of the census workers, and, as with other documents, is therefore subject to error. In addition, the census has been plagued by the problem of undercounts, especially, but not only, of minorities. It is hard to gauge the impact of this latter problem. The Census Bureau first became aware of the undercount problem in the 1940 census. MARGO J. ANDERSON & STEPHEN E. FLENSBERG, WHO COUNTS? THE POLITICS OF ADJUSTMENT AND THE DECENNIAL CENSUS IN CONTEMPORARY AMERICA 29-31 (1999). One study of the 1960 census concluded that the net undercount for white males was 2.8% and that for nonwhite males was 10.9% while the undercount for white females was 1.6% and nonwhite females was 8.1%. Jacob S. Siegel, Completeness of Coverage of the Nonwhite Population in the 1960 Census and Current Estimates, and Some Implications,” in SOCIAL STATISTICS AND THE CITY 42-43 (David M. Heer ed. 1968) quoted in NATIONAL ACADEMY OF SCIENCES, AMERICA’S UNCOUNTED PEOPLE 28 (1972). My analysis relies on the 1900, 1910, 1920, and 1930 censuses. While there is good reason to assume that they were also impaired by undercounts, there is no reliable way of measuring the extent of the problem. Moreover, depending on the reason that undercounts occur, it is possible that the problem has become more pronounced in the later half of the 20th century. One explanation of the problem is the difficulty or unwillingness of census workers to vigorously pursue the count in densely populated inner city neighborhoods. To the extent that that unwillingness contributes to the undercount, we can assume that the undercount was smaller during the period that this article describes, especially during the earliest decades of the twentieth century. The undercount also varies greatly by gender, age, and other demographic characteristics. Thus, the undercount is most pronounced among less educated nonwhite young males with very transitory residential patterns. NATIONAL ACADEMY, AMERICA’S UNCOUNTED PEOPLE at 29-32. As a consequence of the Great Migration, the northern migration of southern African Americans in
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>
</table>

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.\(^{62}\)

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.\(^{63}\) 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

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the 1920s, the demographics of Cleveland’s black community changed. By 1930 young adults made up two-thirds of Cleveland’s black population. IRA BERLIN, *THE MAKING OF AFRICAN AMERICA: THE FOUR GREAT MIGRATIONS* 167 (2010). To the extent that this was the group least likely to be counted in Cleveland, their absence from the census may have less of an impact on my data, since such a group was also less likely to seek legal assistance. At any rate, the undercount problem is likely to have produced a greater overstatement of white clients for the 1920s than for the first decade of the twentieth century. It is, nonetheless, fair to assume that my numbers overstate slightly the percentage of clients who were white because of the undercount problem.


\(^{63}\) Houston, Tentative Findings, *supra* note 10 at 6-7.
anywhere, the only advertisements that I have found were in the local black newspaper or in the NAACP’s journal *The Crisis*. 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.

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. As early as 1879, the Cleveland Press commented that Green was quickly 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 in 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

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64 *GREEN, supra note 2 at ___.*
65 *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).
66 *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”).*
67 *Homes of Some of Cleveland’s Leading Colored Citizens, CLEVELAND PLAIN DEALER, Oct. 14, 1900, Sect 4. p. 5.; cite also to census.*
68 *Law office addresses were found in the Cleveland City Directories and in Martindales lawyer directories.*
and Fogg\textsuperscript{71} and Smith, Taft, and Arter.\textsuperscript{72} 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.

Office Location of Cleveland’s Black Lawyers circa 1909

Office location mattered for both practical and symbolic reasons. One of the mysteries of the history of the legal profession is the question of how clients and lawyers found each other. In trying to answer that question we are relegated to occasional accounts in lawyers’ memoirs and to speculation. There is reason to think, for instance, that would-be clients sometimes turned to lawyers who were fellow members of fraternal organizations or churches. Ministers and physicians may have played a role in steering people to lawyers. In cases of accidental death, doubtless

\textsuperscript{71} Today, Calfee, Halter and Griswold

\textsuperscript{72} This is one portion of what became through merger the firm Tucker Ellis & West.
funeral directors played a similar function. Cleveland lawyer and sometime author, Ezra Brudno, in his 1920 novel, *The Jugglers*, described a network of runners dispatched by personal injury lawyers at first word of an industrial accident to sign up the injured as clients.\textsuperscript{73} Doubtless, Brudno exercised a measure of literary license in his description, but there is no reason to doubt that the practice existed. Advertisements, even when the practice was permitted by bar regulations, were not a common practice in Cleveland.\textsuperscript{74} Given the competition for clients and limited number of ways that a lawyer could promote himself, presence in the downtown office buildings was significant beyond the easy access it provided to the courts and library resources. These buildings were where people went to find lawyers, whether they were looking for a generic lawyer or someone specifically. They were also a place where lawyers came to know each other and developed referral networks. One can easily imagine that some clients who came to the American Trust Building or the Williamson Building seeking to employ one lawyer found themselves referred by the lawyer to the African American lawyer down the hall, because the first lawyer was overwhelmed by his caseload or simply did not do the sort of work the client needed.

Presence downtown in and around Public Square was important for a second reason. Writing about his experience as the first African American lawyer in Selma, Alabama, J.L. Chestnut describes his perplexity in 1958 about where he was supposed to

\textsuperscript{73} Ezra Brudno, *The Jugglers* (1920).
\textsuperscript{74} The City Directories contained listings by profession, which permitted lawyers to advertise their services. Aside from a handful of advertisements in Cleveland’s African American newspapers, I have found no advertisements in the Cleveland papers that I have looked at (primarily the Cleveland Plain Dealer).
sit as he waited for his case to be called.\textsuperscript{75} The courthouse was
informally, but rigidly segregated. The custom of the attorneys
was to sit “inside the rail” in the section reserved for lawyers and
their clients, apart from mere spectators. Fearing the
consequences of violating segregation taboos, of treading, in other
words, where he did not belong, Chestnut would sit in the African
American section of the courtroom with his client until his case
was called. It was not until a veteran Alabama African American
lawyer, Peter Hall, came to Selma to try a case and confidently sat
himself down inside the rail and as close to the jury box as
possible, that Chestnut allowed himself to do the same. Recalling
the event, Chestnut writes that this was not simply a matter of
prestige to be had by sitting with the white lawyers. Rather it was
an issue of self-definition as someone worthy of the designation,
lawyer. He writes: “It was a matter of being where the lawyers
were.”\textsuperscript{76} Lacking a system of state-imposed segregation, the issue
of where black lawyers could be found was not as pointed in
Cleveland. Nevertheless, there presence in the downtown office
buildings signaled to skeptical potential clients, whether black or
white, that these men were also worthy members of the bar.

\textsuperscript{75} J.L. CHESTNUT, JR., BLACK IN SELMA: THE UNCOMMON LIFE OF J.L. CHESTNUT, JR. 94-98 (1991). Chestnut demonstrates that geography was central to the Southern system of racial domination, which paid close attention to where blacks could and could not go and the consequences of crossing these boundaries. When Chestnut first arrived in Selma and started practicing law, he breached one of these boundaries by becoming a presence in the courthouse. The local judge responded by summoning Chestnut to the courthouse where with great display before a gathering of all the white women who worked in the building, he lectured Chestnut on the need to show respect to these women, a lecture he would have been spared had he stayed in his expected place. \textit{Id.} at. From Chestnut’s perspective geography also mattered. He notes the importance of having found an office across from the court house. \textit{Id.} at.

\textsuperscript{76} \textit{Id.} at 98 (original emphasis).
C. Why Cleveland?

Because the history of African American lawyers during the late nineteenth and early twentieth centuries remains largely unexplored, it is impossible to say with confidence how typical or unusual the experience of Cleveland’s black lawyers was. As noted above, historian Carter Woodson and African American lawyer and educator Charles Hamilton Houston conducted early investigations of the African American bar. Houston’s studies, undertaken in 1927 and 1928, were underwritten by the Laura Spelman Rockefeller Memorial. They remain unpublished, but influential. Woodson drew on Houston’s work for his discussion of lawyers in *The Negro Professional Man and the Community*, which he published in 1934. Both Houston and Woodson noted that African American lawyers in the North had significant numbers of white clients. Nonetheless, they also noted that in many instances the bar was relatively inhospitable to African Americans and that its institutions, such as bar associations, excluded them.

The evidence regarding the status and opportunities of African American lawyers is scant in studies of African American communities and in memoirs. The picture they paint is varied and incomplete. Like Cleveland, Philadelphia had a strong Abolitionist tradition, but whatever commitment to racial justice may have derived from that tradition does not appear to have translated into significant opportunity for black lawyers. In his study of black Philadelphia, *The Philadelphia Negro*, W.E.B. DuBois reported that at the end of the nineteenth century only two of the city’s ten black lawyers had achieved a measure of success with a “small but

77 August Meier & Elliot Rudwick, *Attorneys Black and White: A Case Study of Race Relations within the NAACP*, 62 J. AM. HIST. 913, 916 n. 7 (1976).
steady practice.” Three others were struggling to make a living with petty criminal cases, while the rest had little to no practice. DuBois explained that these men were not lacking in ability. Rather, failures:

...principal cause is that the Negroes furnish little lucrative law business, and a Negro lawyer will seldom be employed by whites. Moreover, while the work of a physician is largely private, depending on individual skill, a lawyer must have co-operation from fellow lawyers and respect and influence in court; thus prejudice or discrimination of any kind is especially felt in this profession.79

No African American lawyer had an office in Philadelphia’s downtown business district until the 1960s.80

The record in other cities seems mixed. David Katzman concludes in his history of nineteenth century black Detroit that opportunities for black lawyers were quite limited until the twentieth century when a sharp increase in black business activity created opportunity for lawyers.81 Nevertheless, some black lawyers in Detroit were able to draw clients from outside the African American community.82 In her autobiography Constance Baker Motley recalls that during her childhood in the 1920s and 1930s there were two African American lawyers in New Haven.

79 Id. at 114-15.
80 Find this cite.
82 Id. at 78 (African American attorney Charles Roxborough lived in a predominantly Polish immigrant community, spoke fluent Polish, and mostly represented Polish clients). Another African American lawyer who gained success in Detroit, both as a lawyer and in political and other business ventures was D. Augustus Straker, described by Katzman as Detroit’s “leading black attorney” and as a political leader. Id.; 189-94. Before coming to Detroit Straker was the Dean of the Allen University Law School, which the AME church established in reconstruction South Carolina, as well as an unsuccessful candidate for Lieutenant Governor in that state. Id. at 191.
One, who had remained in New Haven upon his graduation from the Yale Law School in 1903, had a predominantly white client base and maintained an office downtown. The other represented black clients and had his office in the heart of New Haven’s black neighborhood.\footnote{CONSTANCE BAKER MOTLEY, EQUAL JUSTICE UNDER THE LAW 34 (1998).} Our information from Chicago dates from the 1930s and 1940s, by which time, according to my argument, the situation for African American lawyers had significantly changed from earlier in the century. It, too, paints a mixed picture. The Chicago Bar Association excluded African Americans from membership, as did all other bar groups in Chicago except the National Lawyers Guild.\footnote{ST. CLAIR DRAKE & HORACE R. CAYTON, 2 BLACK METROPOLIS: A STUDY OF NEGRO LIFE IN A NORTHERN CITY 552 (rev. ed. 1962).} In a doctoral dissertation entitled \textit{The Career Development of the Negro Lawyer in Chicago}, William Henri Hale found that the experience of African American lawyers defied a simple pattern. Most lawyers maintained their offices in the African American community and represented black clients exclusively. Nevertheless, the opportunity to be near the courts in the Loop was available to black lawyers, and some availed themselves of that opportunity. Moreover, for a variety of reasons, some African American lawyers attracted white clients, although only eight percent of them reported that more than a tenth of their clients were white.\footnote{WILLIAM HENRI HALE, THE CAREER DEVELOPMENT OF THE NEGRO LAWYER IN CHICAGO 67-69, 71-73 (Dissertation, Department of Sociology, University of Chicago, Sept. 1949).} Given the pattern that I describe below for Cleveland, it is possible that the experience of African American lawyers in turn of the century Chicago was reasonably close to that of their Cleveland counterparts.

\footnote{CONSTANCE BAKER MOTLEY, EQUAL JUSTICE UNDER THE LAW 34 (1998).} The first of these lawyers, George W. Crawford, was appointed corporate counsel of New Haven in the 1930s. Motley recounts that New Haven’s African Americans found him rather aloof, while the second lawyer, Earley E. Caples, “was an integral part of the black community.” \textit{Id.}

\footnote{ST. CLAIR DRAKE & HORACE R. CAYTON, 2 BLACK METROPOLIS: A STUDY OF NEGRO LIFE IN A NORTHERN CITY 552 (rev. ed. 1962).}

\footnote{WILLIAM HENRI HALE, THE CAREER DEVELOPMENT OF THE NEGRO LAWYER IN CHICAGO 67-69, 71-73 (Dissertation, Department of Sociology, University of Chicago, Sept. 1949).}
While the record elsewhere is too scant to draw firm conclusions, it appears that Cleveland was unusual if not unique in the degree of openness of its bar to African Americans. 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.\textsuperscript{86} Moreover, Cleveland, along with Boston, had earned reputations as the most racially progressive cities in the country.\textsuperscript{87} 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.\textsuperscript{88} The region’s racial liberalism 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.”\textsuperscript{89} According to Kusmer, African American businesses thrived in the commercial downtown, relying on a mostly white clientele.\textsuperscript{90} For example, African Americans dominated the barbering trade, and they owned the barber shops in the major downtown hotels.

\textsuperscript{86} \textsc{Woodson, supra} note 10 at 204, 237-39. As described \textsc{supra} note ___, both Carter Woodson and Charles Hamilton Houston described this phenomenon.  
\textsuperscript{87} \textsc{Kusmer, supra} note 45 at 55 (1978); \textsc{David A. Gerber, Black Ohio and the Color Line, 1860-1915} at 54-7 (1976).  
\textsuperscript{88} For discussions of the politics of race in 19\textsuperscript{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, \textit{An Ohio Dilemma: Race, Equal Protection, and the Unfulfilled Promise of a State Bill of Rights}, 51 CLEV. ST. L. REV. 395 (2004); Paul Finkelman, \textit{The Strange Career of Race Discrimination in Antebellum Ohio} 55 CASE W. RES. L. REV. 373 (2004).  
\textsuperscript{89} \textsc{Kusmer, supra} note 45 at 17.  
\textsuperscript{90} \textit{Id.} at 81-3; \textsc{Gerber, supra} note 87 at 82-3.
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.\footnote{FRANK U. QUILLIN, THE COLOR LINE IN OHIO 154 (1913).} Green served in the state legislature under a state Constitution that reserved suffrage to whites, a provision that was necessarily neglected, but was not removed until 1923.\footnote{OHIO CONST. art V., § 1 (amended 1923); Entin, supra note 88, at 398.} Charles Chesnutt’s daughters desperately wanted to leave Cleveland to attend college because of their feeling of social isolation among their white classmates.\footnote{H. CHESNUTT, supra note 18 at 75.}

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.\footnote{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.\footnote{GERBER, supra note 87 at 260-62; KUSMER, supra note 45 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).} Despite passage of a civil rights statute prohibiting discrimination in places of public accommodation, discrimination occurred with increasing frequency. Most of the better downtown restaurants excluded African Americans, and at least two of Cleveland’s black lawyers, Charles Sutton and Harry E. Davis, developed reputations as experts in Ohio civil rights law fighting such practices in court.\footnote{GERBER, supra note 87 at 260-62; KUSMER, supra note 45 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).}

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 not 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{96} Cleveland had a tradition of biracial unionism, and while this was changing, few of the trade unions discriminated against black tradesmen.\textsuperscript{97} 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{98} 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 white students alike without public complaint.\textsuperscript{99} The school system’s doctor was also black.\textsuperscript{100} 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

\textsuperscript{96} \textit{Kusmer}, \textit{supra} note 45 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{98} 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.

\textsuperscript{99} \textit{Drake & Cayton, supra} note 84.

\textsuperscript{100} \textit{Id.}
Theodore barely lost his bid to be elected a Cleveland Municipal Court judge.\(^{101}\) 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.\(^{102}\)

II. Black Lawyers in a Segregating City

A. New Lawyers and Shrinking Opportunities

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 from 1.6\% of overall population to 8\%.\(^{103}\) 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.\(^{104}\)

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\(^{101}\) GREEN, supra note 2 at 356.
\(^{102}\) Id.
\(^{103}\) KUSMER, supra note 45 at 10 (from U.S. Census Bureau Decennial Reports).
\(^{104}\) Cite to census data.
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.105 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 Common Pleas Court.106 The docket books reveal that the professional lives of African American lawyers had changed from

106 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.
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.107 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.108 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 race of 362 clients from Census Schedules and Military Draft

107 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 ___.

108 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 23rd 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).
Registration records. Of those clients, 35% were white, 56% were black, and the rest were listed in census records as mulatto.109

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>Mixed Race</td>
<td>33</td>
<td>9%</td>
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</table>

If anything, these 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 other words, it appears that the disinclination of white Clevelanders to enlist the services of African American lawyers grew over the course of the decade.

B. How the Cleveland Bar Became Segregated

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

109 Because of changing residential patterns, and perhaps changes in the demographics of the African American community, it is likely that the undercount problem was more pronounced for the census years 1920 and 1930. Consequently, the percentage of white clients is likely overstated by some amount.
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. This trend manifested itself in a variety of well-known ways. In the South, states rewrote their constitutions to eliminate black suffrage and to solidify Jim Crow. In both the South and the North, the Ku Klux Klan was reborn, and it became a political force in such northern states as Indiana and Oregon. Within the academy “scientific racism” became firmly established, though not without dissenting voices such as anthropologist Franz Boas. Proponents of scientific racism such as E.A. Ross, author of *The Old World in the New*, Madison Grant, author of *The Passing of the Great Race*, and Lothrop Stoddard, author of *The Rising Tide of Color against White World-Supremacy* gave a supposed scientific veneer to racist sentiments and a justification for such policies as eugenic sterilization and restrictive immigration laws. On the national level, the Wilson administration segregated the federal workforce and replaced African Americans with whites in most of the political patronage jobs that had been reserved for African Americans in the preceding years.

\[\text{\begin{footnotesize}
110 Cite to Klarman, etc. and to Gerber and Kusmer on Cleveland.
113 1914
114 1916.
115 1920.
116 Weiss, supra note 112 at 63-6.
\end{footnotesize}}\]
Cleveland was not immune to this tendency. This trend towards segregation and discrimination and to a white supremacist ideology did not occur there 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.\textsuperscript{117} 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 civil rights era Birmingham, Alabama.\textsuperscript{118} 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.\textsuperscript{119} Soon after, African American lawyer, Harry Davis, reported to national NAACP on behalf of the Cleveland branch on conditions in Cleveland. Davis balanced the optimism of the past,

\textsuperscript{117} The five-day riot in Chicago left at least thirty-eight people dead and over a thousand homeless. \textsc{St. Clair Drake & Horace R. Cayton, 1Black Metropolis: A Study of Negro Life in a Northern City} 65 (rev. ed. 1962).

\textsuperscript{118} \textit{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). \textit{Id.} at 63. In addition to the two deaths, several injuries and property damage occurred. \textit{Id.} at 178. Birmingham earned the nickname, “Bombingham.”

\textsuperscript{119} Constitution and Bylaws of Cleveland Branch, NAACP, Series II Records, 1913, Mss. 4475 Western Reserve Historical Society (hereinafter NAACP Branch Papers).
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 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.\textsuperscript{120}

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.\textsuperscript{121}

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

\textsuperscript{120} Report of Harry E. Davis (April 25, 1914) in Papers of the NAACP, Part 12: Selected Branch Files 1913-39; Series C. The Midwest (Cleveland Branch Files) Reel 22.

\textsuperscript{121} See, 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).
civil rights law. While Cleveland's black lawyers responded with an increasing number of civil rights actions, the battle could be exhausting. 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.” Cleveland's hospitals began the practice of segregating white and black patients, and they limited the number of beds available for black patients.

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. 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. 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.

122 Cite Kusmer and Chesnutt on this.
123 KUSMER, supra note 45 at 180
124 Id. at 181
125 Id. at 181-2.
126 Id. at 197-8; PHILLIPS, supra note 97 at 114-26.
127 PHILLIPS, supra note 97 at 104-06.
128 KUSMER, supra note 45 at 75-6, 198.
Discrimination limited other opportunities, as well. African Americans who attempted to move to the Cleveland suburbs met strong, sometimes violent, resistance.\textsuperscript{129} Opportunities for black entrepreneurship diminished rapidly, or shifted away from white clientele.\textsuperscript{130} 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{131}

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 population.\textsuperscript{132} 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.\textsuperscript{133} A few years earlier, when the same office had hired African American lawyer, Selmo Glenn, the Prosecutor did not put any such restrictions on Glenn, who prosecuted white defendants.\textsuperscript{134} In addition to segregating their wards, Cleveland hospitals adopted the practice of barring black

\begin{footnotesize}
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    \item[\textsuperscript{129}] Id. at 165-71; Phillips, \textit{supra} note 97 at 134-35.
    \item[\textsuperscript{130}] Kusmer, \textit{supra} note 45 at 75-78.
    \item[\textsuperscript{131}] 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, \textit{Encyclopedia of Cleveland History}
    \item[\textsuperscript{132}] 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 \textit{The Birth of a Nation}. \textit{Birth of a Nation Film is Opposed by Mayor, Cleveland Plain Dealer}, Feb. 7, 1917 at 8.
    \item[\textsuperscript{133}] The Encyclopedia of Cleveland History repeats this anecdote but does not document it.
    \item[\textsuperscript{134}]
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interns and black students in their nurses training.\textsuperscript{135} In the 1930s, the Cleveland School Board would reassign most of its black teachers to schools in the “black belt” of its system.\textsuperscript{136}

David Bernstein has argued that a principal source of discrimination against African Americans in labor markets was government interventions such as licensing laws and labor protective legislation, as well as such legislation as the National Labor Relations Act.\textsuperscript{137} According to Bernstein, laws that strengthened the crafts or unions enabled white workers to close labor markets to minorities. Labor protective legislation precluded opportunity for those workers, often minorities, who were willing to work under the most onerous of circumstances in order to find employment. Under this view, \textit{Lochner v. New York}\textsuperscript{138} and \textit{Coppage v. Kansas}\textsuperscript{139} might be regarded as civil rights milestones.\textsuperscript{140} The Norman Minor incident aside, discrimination against Cleveland’s black lawyers was not a product of state action or of quasi-governmental entities like the Ohio State Bar. Neither the state nor the bar association created new restrictions on law practice by African American lawyers. The experience of these lawyers suggests that contrary to David Bernstein’s thesis private discrimination was sufficient to produce exclusion of African

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\item \textsuperscript{135} \textsc{kusmer}, \textit{supra} note 45 at 181-82.
\item \textsuperscript{136} \textsc{Jane Edna Hunter, A Nickel and a Prayer} 193 (1940).
\item \textsuperscript{137} \textit{See}, \textsc{David E. Bernstein, Only One Place of Redress: African Americans, Labor Regulations, and the Courts from Reconstruction to the New Deal} (2001).
\item \textsuperscript{138} 198 U.S. 45 (1905).
\item \textsuperscript{139} 236 U.S. 1 (1915) (Kansas law prohibiting yellow dog contracts an unconstitutional interference with the freedom of contract under the 14\textsuperscript{th} Amendment).
\item \textsuperscript{140} My critique of Bernstein’s argument is similar to the more thorough critical review by Davison Douglas. \textit{See} Davison M. Douglas, \textit{Contract Rights and Civil Rights}, 100 Mich. L. Rev. 1541 (2002).
\end{itemize}
Americans from some markets and opportunities without legislative assistance.

While growing racism partly explains the diminishing opportunities for black lawyers 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.\textsuperscript{141} From the recapture of fugitive slaves, to labor agent laws (which restricted the ability of labor recruiters to lure African Americans away from peonage and sharecropping in the South), 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 a predominantly black neighborhood. During the 1920s a ghetto emerged in Cleveland to the East of downtown.\textsuperscript{142}

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.\textsuperscript{143}

\textsuperscript{141} DAVID DELANEY, RACE, PLACE AND THE LAW, 1836-1948 (1998).
\textsuperscript{142} KUSMER, supra note 45 at 161-65.
\textsuperscript{143} PHILLIPS, supra note 97 at 128-35.
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.\textsuperscript{144} 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 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{145} 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 Clevelanders, one black and one white, began to emerge during the 1920s.\textsuperscript{146}

\textsuperscript{144} Id. at 130-34, 147-50.
\textsuperscript{145} C. CHESNUTT, Negro in Cleveland, supra note 94 at 535.
\textsuperscript{146}
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, then the
tallest skyscraper west of Manhattan, created another glut of downtown office space. Instead, new lawyers could be found in the emerging ghetto, two to three miles east of downtown. 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.

Location of the Majority of Black Law Offices, Primarily along Central Avenue and East 55th Street circa 1929

Travelers within the greater Cleveland area 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, the main east/west artery at the heart of the black community and a center of community commercial and civic activity, or on East 55th Street, the black community’s other center of commerce and social
life, which ran north/south, 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 black neighborhood. Direct routes from the primarily white west or south of Cleveland or beyond to downtown did 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

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147 HARRY CHRISTIANSEN, TROLLEY TRAILS THROUGH GREATER CLEVELAND 258-64 (1975).
148 JAMES A. TOMAN, JIM TOMAN & BLAINE HAYS, HORSE TRAILS TO REGIONAL RAILS: THE STORY OF PUBLIC TRANSIT IN GREATER CLEVELAND 114 (1996);
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.\footnote{For a discussion of the drawing of routes, see GERBER, \textit{supra} note 87 at 317. On the failure to employ African Americans, see, C. CHESNUTT, \textit{Negro in Cleveland}, \textit{supra} note 94 at 537.} 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.\footnote{GERBER, \textit{supra} note 87 at 317.} People from outside of the neighborhood thus 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 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 tentative 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 by orienting themselves to the growing black community?

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.\textsuperscript{151}

Houston may be correct that ideology 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 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.\textsuperscript{152} Yet, a heavy dose of pragmatism tempered the position of most of Cleveland’s black leaders,
including the lawyers.\textsuperscript{153} 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.\textsuperscript{154}

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 their neighbors would have for legal services. Nevertheless, like all choices, they made this choice in light of available alternatives. 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.

\begin{footnotes}
\textsuperscript{153} KUSMER, supra note 45 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.
\textsuperscript{154} Id. at 145.
\end{footnotes}
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, a block west of Public Square, in 1919, he had always needed to rely on the intervention of a white person to help him rent his office space.\textsuperscript{155} 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.\textsuperscript{156}

\section*{III. Conclusion}

The creation of two Cleveland\textapos;s, 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\textapos;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

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\footnote{\textsuperscript{155} GREEN, \textit{supra} note 2 at \underline{___}.}
\footnote{\textsuperscript{156} Gillespie v. Citizens Bldg. of Cleveland, 16 Ohio Supp. 82 (Ohio Com. Pl. 1945).}
\end{footnotes}
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. Counterfactual history is as perilous as it is intriguing. We can only make reasonable guesses at what might have been. Nonetheless, it is hard to avoid the conclusion that Cleveland lost

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157 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.

158 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.
significant ground regarding racial justice in the 1920s and that the city still has a distance to go to reach what might have been.