

TENNESSEE BAR JOURNAL



NOVEMBER 2015 | VOLUME 51, NO. 11

TBA.ORG

A Guide to the Independent Child Custody Evaluation

ALSO: (Not) Summary Judgment

Consular Non-Reviewability Doctrine



Ida B. Wells at the Tennessee Supreme Court

Ida B. Wells was one of the earliest and most eloquent pioneers of civil rights in America. Her long and courageous struggle for racial equality commenced in a Tennessee railroad car in 1884. Before Rosa Parks there was Ida B. Wells. And, sadly, before *Plessy v. Ferguson*,¹ there was *Chesapeake, Ohio & Southwestern Railroad Co. v. Wells*.²

Sometimes, as Ida Wells's life proves, an unjust defeat can be the foundation of subsequent victories.

Let us look at the beginnings of Wells's great crusade for human rights and dignity, a crusade that took her to the Tennessee Supreme Court. Her journey through our judicial system of the Gilded Age shows the value and nobility of even the lost cause in court, for honor, humanity, and justice demand that some battles be fought no matter the odds or the outcome. And, sometimes, as Ida Wells's life proves, an unjust defeat can be the foundation of subsequent victories.

The United States Supreme Court's constitutional jurisprudence signaled the end of Reconstruction as much as the removal of the last federal troops from the South in 1877. The court invented legal theories that struck down many newly won rights of black Americans.³ For instance, in the *Civil Rights Cases* (1883)⁴ the justices, by an eight-to-one vote, declared the Civil Rights Act of 1875, the landmark law forbidding segregation in public accommodations, unconstitutional. Over the lone dissent of Justice John Marshall Harlan, the court held that the Fourteenth Amendment prohibited the violation of civil rights only by state governments, not individuals or corporations.⁵ As Ida B. Wells explained:

"The gist of that decision was that Negroes were not wards of the nation but citizens to the individual states, and should therefore appeal to the state courts for justice instead of the federal courts."⁶ She would do so.

Her case arose from discrimination on railroads. Some black female passengers wanted to ride in "ladies' cars," which were non-smoking first-class coaches reserved for women and the men accompanying them. In 1881 the Tennessee General Assembly responded by neither requiring integration nor expressly sanctioning segregation, but required railroads to make available separate first-class cars or areas in first-class cars "which all colored passengers who shall pay first-class rates of fare may have the privilege to enter."⁷

On May 4, 1884, a 21-year-old, college-educated Ida Bell Wells boarded a Chesapeake, Ohio & Southwestern Railroad train for a 10-mile trip from Woodstock to Memphis. She had been born a slave in 1862 at Holly Springs, Mississippi, and moved to Memphis to take a county school teaching position in rural Woodstock following the death of her parents in the yellow fever epidemic of 1878. As

Continued on page 30



Ida B. Wells (1862-1931)

the sole support of two of her siblings, she was studying to receive a teaching certificate so that she could get a better paying post with the Memphis public schools.⁸ She had purchased a first-class ticket and passed through the smoking second-class car and entered the first-class ladies' car at the rear of the train. She later testified that one of the six second-class passengers was smoking and the car was "filled with tobacco smoke."⁹ A witness disagreed, testifying that "there was no one smoking, nor was there any tobacco smoke."¹⁰ In any event, there was no separate first-class car or section for black passengers as mandated by state law, and she took a seat in the only first-class car and began to read a book. She described in her autobiography what happened next:



Thomas Frank Cassels, Wells's first lawyer

When the train started and the conductor came along to collect tickets, he took my ticket, then handed it back to me and told me that he couldn't take my ticket there. I thought that if he didn't want the ticket I wouldn't bother about it so I went on reading. In a little while when he finished taking tickets, he came back and told me I would have to go in the other car. I refused, saying that the forward car was a smoker, and I was in the ladies' car and I proposed to stay.¹¹

Wells went on to describe a violent altercation where the conductor attempted to drag her from the car while she held onto the seat in front of her and braced her feet against it. He

finally summoned two other railroad employees to aid him in dragging her to the second-class car while white passengers applauded. When they got her to the other car, which was now filled with smokers and black passengers, she decided to get off the train with her dress torn and her first-class ticket still in hand, a ticket she kept the rest of her life.¹² The Tennessee Supreme Court would later describe the scene very differently as follows: "The conductor told her he would have to put her off. The train was stopped at about 400 yards, when she was politely assisted from the car by a colored porter."¹³

Wells proceeded to hire an attorney, Thomas Frank Cassels, Memphis' first black lawyer and a former member of the Tennessee House.¹⁴ An action was filed against the railroad and a jury demanded. However, she fired Cassels later stating: "After months of delay I found he had been bought off by the road, and as he was the only colored lawyer in town I had to get a white one. This man, Judge Greer, kept his pledge with me and the case was finally brought to trial in the circuit court."¹⁵ She would repeat her allegation against Cassels for years and defamation actions were threatened back and forth, but she was undeterred.¹⁶



James M. Greer, a former judge and Union soldier, was Wells's second lawyer

In light of the clear violation of the statute, the Memphis jury returned a verdict against the defendant railroad for \$500.¹⁷ This was big news. The headline of the *Memphis Appeal* read: "A DARKY DAMSEL OBTAINS A VERDICT FOR DAMAGES AGAINST THE CHESAPEAKE & OHIO RAILROAD."¹⁸ The railroad appealed to the Tennessee Supreme Court in Jackson, for the decision could cost far more than the judgment. Railroads would have to provide first-class accommodations on all trains to black passengers as dictated by law,



Chief Justice Peter Turney

especially if the Supreme Court affirmed the verdict and issued a controlling opinion. Hence, while pending appeal, the attorney for the railroad, Holmes Cummins, continually

tried to settle the case but Wells refused.¹⁹ She hoped to set an important precedent. "It was the first case," she said, "in which a colored plaintiff in the South had appealed a state court since repeal of the Civil Rights Bill by the United States Supreme Court."²⁰ Wells recorded her high hopes in her diary saying, "I will wait and watch and fear not,"²¹ but fretted over the unspecified "dirty method Mr. Cummins is attempting to quash my case."²²

Chief Justice Peter Turney of Winchester, who would later be elected governor, drafted the opinion of reversal for a unanimous Supreme Court finding that in compliance with the statute, the "offered" second-class smoking car and first-class non-smoking car "were alike in every respect."²³ And "the company had done all that could rightfully be demanded."²⁴ Turney went on to write, "We know of no rule that requires railroad companies to yield to the disposition of passengers to arbitrarily determine as to the coach in which they shall take passage."²⁵



Holmes Cummins, the railroad's lawyer

The court then focused on Wells: "The conduct of the plaintiff below was upon an idea without the slightest

reason.”²⁶ And, without any citation to the record in support, the court concluded, “We think it is evident the purpose of [Wells] ... was to harass with a view to this suit, and that her persistence was not in good faith to obtain a comfortable seat for the short ride.”²⁷ One historian has written: “The court cast a blind eye on discriminatory practices and the absence of first-class facilities for black passengers.”²⁸ The railroads could now sell black customers first-class tickets and force them to ride in second-class in direct contravention of their statutory and contract rights. Costs of \$200 were also assessed against her.²⁹

Upon learning of the decision Wells wrote in her diary:

The Supreme Court reversed the decision of the lower court in my behalf, last week. Went to see Judge G[reer] this afternoon & he tells me four of them cast their personal prejudices in the scale of justice & decided in face of all the evidence to the contrary that the smoking was a first class coach for colored people as provided for by the statute that calls for separate coaches but first class, for the races. I felt so disappointed, because I had hoped such great things from my suit for my people generally. I have firmly believed all along that the law was on our side and would, when we appealed to it, give us justice. I feel shorn of the belief and utterly discouraged, and just now if it were possible would gather my race in my arms and fly far away with them. O God is there no redress, no peace, no justice in this land for us? Thou hast always fought the battles of the weak & oppressed. Come to my aid at this moment & teach me what to do, for I am sorely, bitterly disappointed. Show us the way, even as Thou led the children of Israel out of bondage into the promised land.³⁰

Continued on page 32

Ask the TBA Membership Maven

Dear Maven,

Fall is such a nice time of year...the leaves are changing colors, the air is getting cooler and college football is in full swing. And, then BAM, it's time to get health insurance! I need a quick solution to this dilemma. What can I do???

Signed,
Dilemma

Dear Emma,

The easiest way to find a health plan that works for you is to check out the **TBA Health Insurance Exchange!** Yep, this TBA member benefit was created with you in mind! Here's how it works.

- Starting Nov. 1, call or go online to get a quote for 2016 health insurance rates
- Find out in seconds if you qualify for subsidies
- Shop the best of three worlds on one platform: On Exchange Plans, Off Exchange Plans and Non-ACA Plans
- Enroll in 15 minutes or less
- Choose from top-rated carriers across the country
- No medical questions asked
- Talk to a live agent for FREE

It just doesn't get any easier than that! However, you need to do this sooner rather than later.

Open enrollment starts Nov. 1 and ends Jan. 31, 2016. In order to receive coverage starting January 1st, you MUST enroll by December 15.

Enroll over the phone by calling 866-907-2763 or go online at www.TBAHealthInsuranceExchange.com.



To ask the TBA Membership Maven a question please email maven@tnbar.org or her alter-ego, Kathy Prescott, the Tennessee Bar Association's membership director.





Stuart W. Bayne

1143 Oak Ridge Turnpike
Suite 107A-136
Oak Ridge, TN 37830

www.TheFirePI.com

TheFirePI@TheFirePI.com
(865) 435-6042
(865) 435-5410 (Fax)

**Specializing in
Fire/Explosion Origin &
Cause Investigations**

**Testimony delivered
65 times over 30 years**
(for Plaintiffs and Defendants)

**Experienced, Licensed,
Certified, and Objective.**

**Questions?
Ask The Fire PI!**


References available
upon request

TN PI/Co. Lic. 0501/0328

History's Verdict *continued from page 31*

Ida B. Wells then turned her disappointment into determination. "Despite the setbacks," observed one historian, "the resistance initiated by Wells became a symbol of African-American resistance to the Jim Crow laws of the South."³¹ And another noted that "[t]he incident gained her sufficient notoriety, however, to guarantee that her words and actions would make an impact."³²

Wells began a new career as a journalist and purchased an interest in a Memphis newspaper. She was fired as a teacher after publishing an editorial criticizing the inferiority of the city's black schools. In 1892 she launched her tireless campaign against lynching, following the murder of three black Memphis grocers, arguing that lynching was a strategy to remove successful and politically active black leaders. In response, her newspaper office was raided and burned while she was away in Chicago, and she was warned not to return to Memphis.

She relocated to New York then Chicago, married a prominent lawyer, and traveled the nation and Great Britain exposing and denouncing lynching in countless speeches and publications and helped found the NAACP. For decades she investigated lynchings and urged the federal government to act because the states would not.³³ She also worked on behalf of women's suffrage and has been called "one of the outstanding African-American women of the nineteenth century."³⁴ 

RUSSELL FOWLER is associate director of Legal Aid of East Tennessee (LAET) and since 1999 has been adjunct professor of political science at the University of Tennessee at Chattanooga. He served as the law clerk to Chancellor C. Neal Small in Memphis and earned his law degree at the University of Memphis in 1987. Fowler has more than 50 publications on law and legal history, including many in this *Journal*.

Notes

1. 163 U.S. 537 (1896).

2. 85 Tenn. 613, 4 S.W. 5, 1 Pickle 613 (1887).

3. See Russell Fowler, "Supreme Court, U.S.," in 3 *Encyclopedia of the Gilded Age and Progressive Era* 935 (John D. Buenker et al., eds. 2005).

4. 109 U.S. 3 (1883).

5. See Fowler at 935.

6. Ida B. Wells, *Crusade for Justice: The Autobiography of Ida B. Wells* 20 (Alfreda M. Duster, ed. 1970).

7. James W. Ely Jr., "The Tennessee Supreme Court, 1886-1910," in *A History of the Tennessee Supreme Court* 177 (James W. Ely Jr., ed. 2002).

8. See Miriam DeCosta-Willis, "Wells-Barnett, Ida B." in *The Tennessee Encyclopedia of History & Culture* 1046-47 (1998).

9. *Chesapeake, O, & S. R. Co. v. Wells*, 4 S.W. 5, 6 (Tenn. 1887).

10. *Id.*

11. Wells, *Autobiography*, at 18.

12. *Id.* at 18-19.

13. *Chesapeake v. Wells* at 6.

14. See Robert A. Lanier, *The History of the Memphis & Shelby County Bar* 41 (1981).

15. Wells, *Autobiography*, at 19.

16. See Mark Elliott, *Color-Blind Justice* 239 (2006).

17. See DeCosta-Willis at 1047.

18. Ida B. Wells, *The Memphis Diary of Ida B. Wells* 56 (Miriam DeCosta-Willis, ed. 1995).

19. Wells, *Autobiography*, at 20.

20. *Id.*

21. Wells, *Diary*, at 57.

22. *Id.* at 66.

23. *Chesapeake v. Wells* at 6.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. Ely at 177.

29. Wells, *Autobiography*, at 20.

30. Wells, *Diary*, at 140-41.

31. Jaime Ramon Olivares, "Wells-Barnett, Ida" in 3 *Encyclopedia of African American History* 1092 (2010).

32. Jennifer Harrison, "Wells-Barnett, Ida Bell (1862-1931)" in 3 *Encyclopedia of the Gilded Age and Progressive Era* 1012 (John D. Buenker et al, eds. 2005).

33. DeCosta-Willis at 1046-48.

34. *Id.* at 1046.