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Pioneers in the Legal Profession

Some of the First African-American and Women Lawyers in Tennessee

By Dwight Aarons

Today, there are thousands of attorneys licensed to practice in Tennessee, and about 7,000 are members of the Tennessee Bar Association. Someone had to be the first member of the bar, and someone had to be the first member of the bar association. A modest percent of the members of the present state bar are African-Americans and a significantly larger percentage of licensed lawyers are women. Someone from each of these demographic groups had to be the "first" member of the state bar. This article largely relies on available recorded information to suggest which individuals may have been the first African-American and woman lawyers in this state. Concededly, there may have been others who were practicing law without having achieved as much prominence as the individuals discussed in the following pages.

Since the earliest days of the territory, who can practice law in the courts has been regulated. In 1772, the first "court" west of the Alleghenies was established under the Watauga Association compact, which provided that five appointed commissioners were to decide all matters of controversy arising in the settlement.[1] In 1777, while the land that eventually became Tennessee was part of North Carolina, a North Carolina statute established courts and regulated court proceedings in the territory.[2] It permitted those who already had been licensed to practice under "the later government" to practice in the newly established courts without any further examination. Every other person, however, had to undergo an examination before two or more superior court judges and if he or she were found to "possess a competent share of law knowledge and be such a person of upright character," the judges were to give the applicant a certificate to practice in any court of the state for which he was judged qualified. Those who arrived in the territory intending to practice law had to have either resided in the territory for a year or produce a testimonial from the chief magistrate of the jurisdiction from which the applicant had migrated.[3]

As an apparent indication of its importance, in the first session of the General Assembly of Tennessee, a law was passed that continued the one-year residency requirement as a condition for becoming an attorney. That law eliminated the testimonial substitute by which a newly arrived resident could be authorized to practice law.[4] Preparation for the practice of law in the early years of the state was consistent with the practices in most jurisdictions: prospective lawyers studied law by serving as apprentices in law offices.[5] During this period, the profession relied heavily on the black-letter treatises in serving their clients. Undoubtedly because of their genealogy and social connections, some early lawyers did not have much trouble either securing a sponsor under which to serve an apprenticeship or in being admitted to practice law.[6] Two notable early attorneys were Luke (or Lew) Bowyer, who was the state's first lawyer,[7] and William Cocke, reportedly the first great orator of East Tennessee.[8]

African-American lawyers in Tennessee

Although the original admission requirements were neutral on their face, women and African-Americans generally were not permitted to practice law. In fact, it took nearly a century before some African-Americans gained that privilege, and it took a little longer than that for women to be licensed to practice law in Tennessee. It is not entirely clear who was the first African-American lawyer in Tennessee. It is doubtful that there were many African-Americans practicing law before 1868 in Tennessee. Moreover, even after that date, there were very few. Although the General Assembly in 1859 adopted a law that permitted anyone with a diploma from a law school to become a lawyer,[9] probably few African-Americans were in a position to take advantage of this provision. One historian has speculated that because of the limited social status of African-Americans, including severe legal restrictions placed on the conduct of freemen,[10] and the rather limited educational opportunities that were available to African-Americans, there were probably no African-Americans practicing law in Tennessee before the Civil War.[11]

In 1868, admission requirements for practicing law were somewhat liberalized. The General Assembly passed an act that permitted anyone over 21 years old and in good standing to practice law "in all causes arising or coming before any Justice or Justices of the Peace in this State, and before the County Court of his county."[12] An applicant was required to take an oath to support the federal and state constitutions, to "be true to his client" and to pay a license fee of $5. The clerk, in turn, was required to endorse upon the license that "he really believes that the applicant is a person of good standing, or character, in the county, and is entitled to the license." The applicant was then required to pay the clerk a fee of 25 cents.[13] Because of this comparatively generous admission policy and the lack of adequately preserved court records, it may never be known definitively who were the first African-American lawyer and the first woman lawyer in Tennessee.[14]

Horatio N. Rankin

Research has uncovered a few African-Americans — mostly men — who were somewhat prominent lawyers in the late 1860s. These lawyers were apparently well-regarded members of the bar. Horatio N. Rankin is the earliest documented African-American admitted to any bar in Tennessee, contrary to a popular perception that it was another attorney. Rankin had attended the preparatory department of Oberlin College from 1861 to 1864.[15] In December 1867, *The Memphis Daily Appeal* reported:

Application for Admission to the Bar. — On Saturday an application was made in the Municipal Court for the admission of H.N. Rankin, the colored Principal of the Rankin High School, to the bar. The application was accompanied by the usual certificate from the County Clerk, as to age, character etc. Messrs. J.B. Woodward, W. Vernon and D.L. Griffin, Esqs., were appointed by the Court a [sic] committee to examine and report upon the qualifications of the applicant.[16]

Two weeks later, in January of 1868, the following account was published:

Admitted to the Bar. — In the Municipal Court to-day the committee appointed on the 22 December on the application of H.N. Rankin Esq., (colored), Principal of the Rankin High School, for admission to the bar, made a favorable report in regard to his qualifications, and was duly admitted to practice in the Court.[17]

Rankin practiced law in Memphis from Linden and Causey Streets. He helped establish an African Methodist Episcopal Church, create the West Tennessee Colored University in 1876, and advised

Congress on the freedmen's laws.[18] Rankin was a registered Republican in Shelby County and later became a justice of the peace.

Alfred Menefee

In the late 1860s, Alfred Menefee made a name for himself in Nashville. Menefee was reportedly the first "colored man" admitted to practice at the Nashville bar and was elected magistrate several times.[19] He apparently owned a fair amount of real property. Menefee served as a member of the advisory board of the Nashville branch of the Freedman's Savings and Trust Company, an entity that was established by Congress in 1865 to provide former slaves with an opportunity to save systematically.[20]

Edward Shaw

Edward Shaw was another early African-American lawyer in Tennessee. Shaw was admitted to the Tennessee bar in the late 1860s, and he entered the field of politics. In the 1880s, Shaw became one of the most controversial African-American men in the state. He was viewed by a prominent white Republican judge in Memphis as "a man of strong force and character, one of the most cogent speakers I have ever heard, and a clear thinker," and as "a very bright and able colored man."[21] From their enfranchisement in 1867 through the 1880s, African-Americans had little opportunity or incentive to venture outside of the auspices of the Republican Party.[22] Shaw's own career was illustrative. He enjoyed some minor patronage from the local Republicans, and was a Republican candidate for sheriff of Shelby County in 1880. Shaw lost that election partly because the local Democratic press waged a "smear" campaign against him. Despite this negative experience, Shaw later aligned himself with a portion of the Democratic Party. The impetus for Shaw's change of affiliation was that in the 1880s a rift developed within the Democratic Party. Basically, the Democrats disagreed over the amount of bonded indebtedness that the state should carry. One faction wanted a reduction of the debt to terms that were acceptable to bondholders.[23] The other faction was comprised of individuals who favored lower taxes and thought that objective could be achieved either by a repudiation of the debt or a sharp reduction of the debt, provided that the voters had a say on the terms of any agreement between the state and its bondholders.[24]

At about the same time, in the 1880s, a sizable number of African-American Republican voters believed that their votes were being taken for granted. The national Republican leadership thought that the party could be fortified by distributing patronage to white Independents and Democrats, and by downplaying most racial issues, including the passage of Jim Crow laws. Thus, despite playing a role in electing a Republican governor and president, African-American Republicans in Tennessee were not being awarded the benefits of patronage. Shaw seized on both this growing dissatisfaction with the Republicans and the factionalism within the Democratic Party to align himself with the low tax Democrats in 1881. In doing so he became one of the few African-American members of the Democratic Party prior to 1900. Despite the role that he played in the successful gubernatorial campaign of William B. Bates in 1882, and although others approached Bates on his behalf, Shaw failed to receive from the Bates administration an appointment to office. Shaw was generally successful in creating an alliance with the low tax Democrats and was personally criticized in some partisan press reports. In 1885, while undergoing another series of personal attacks, including his exoneration on an indictment for committing perjury in a civil case, Shaw challenged his critics to produce evidence that "I ever said anything about burning southern homes" or "spoke disrespectfully of the white women of the south."[25]

William Francis Yardley

William Francis Yardley may have been the first African-American judicial officer of Tennessee. He was the son of an African-American father and an Irish mother and became an affluent lawyer-businessman.[26] By 1876 he had served as a justice of the peace in Knox County for the preceding five or six years and prior to that had practiced law in Knoxville.[27] Yardley was a native of Knox County and was 35 years old when, in September 1876, as a Republican, he announced his candidacy for governor of Tennessee.[28] Some Republican organizations announced their support of Yardley's candidacy; there was, however, considerable disagreement among African-Americans over whether Yardley's candidacy represented a bona fide option.[29] Yardley finished last in a four-man contest. The 1876 gubernatorial election results were: James Porter, the Democratic candidate, received 123,740 votes; followed by Dorsey Thomas, Independent, with 73,695 votes; George Meany, Republican, garnered 10,436 votes and Yardley had 2,165 votes.[30] One historian has remarked that the "vote showed conclusively that the white Republicans of Tennessee were not prepared to elevate a Negro to the governorship" and that African-American Republicans "were not influenced by the element of racial loyalty in the gubernatorial election."[31]

G. F. Bowles and Joseph H. Dismukes

G. F. Bowles was 24 years old when he was admitted to the Tennessee bar in 1868. He practiced in Tennessee until 1871, when he moved to Natchez, Miss. Bowles studied law on his own, probably because, like most of the early African-American lawyers, he may have been unable to obtain a sponsor.[32] To accommodate African-Americans interested in becoming lawyers, law schools were specifically established for African-Americans because predominately white law schools generally did not admit African-Americans.[33] Howard University's School of Law opened its doors in 1869 and offered the only law school for African-Americans in the South. The second law school in the South was at Central Tennessee College in Nashville, which began in 1879.[34] Central Tennessee required that its law students attend the local Nashville courts and observe some of the debates in the General Assembly.[35] Joseph H. Dismukes, the school's first graduate, joined the faculty in 1883, becoming Tennessee's first African-American law professor.[36] In 1900 Central Tennessee College was succeeded by Walden University, and the law school kept its doors open until about 1920.[37]

Lewis, Napier, Cassels and Lowery

In 1873 John Sinclair Lewis, a graduate of Howard University Law School, settled in Fayetteville and reportedly was the first African-American admitted to practice before the Tennessee Supreme Court.[38] James Carroll Napier and Thomas Frank Cassels are perhaps two of the more widely known early African-American attorneys. In 1872, Napier graduated from Howard University's law school and was admitted to the bar in Nashville. Cassels was admitted to practice around 1876. Cassels was apparently the first African-American lawyer admitted to practice before the state Supreme Court in West Tennessee,[39] but, contrary to popular perception, he was not the first African-American lawyer admitted to practice in Tennessee.[40] Cassels' and Napier's contributions to the profession and to Tennessee are nonetheless noteworthy. Napier was a prominent city leader in Nashville. Cassels was an assistant attorney general of Memphis and later a member of the General Assembly from 1881 to 1883.[41] Samuel R. Lowery, a Nashville native, studied law in Tennessee in the 1870s, and later practiced in both Tennessee and Alabama.[42] He was the first southern African-

American man admitted to practice before the United States Supreme Court.[43] He argued before that court on Feb. 2, 1880.[44]

Adolpho A. Birch

On May 16, 1996, Adolpho A. Birch Jr. was sworn in as Tennessee's first African-American chief justice. He served in that position until July 1997, when the position rotated to another member of the court. Birch is the second African-American to serve on the state high court.[45] He is a 1956 graduate of Howard University Law School, and in his career he has achieved a number of racial milestones.[46]

Women lawyers in Tennessee

Belle Babb Mansfield and Myra Colby Bradwell

In the late 1800s, nationally, there were some promising developments toward the entrance of women into the legal profession. In June 1869, Belle Babb Mansfield passed the Iowa state bar and became the nation's first officially recognized woman lawyer.[47] Two months after Mansfield's triumph, Myra Colby Bradwell passed the Illinois bar exam. Her examiners found her qualified and recommended to the Illinois Supreme Court that she be licensed. The Illinois Supreme Court declined. Bradwell filed a writ of error in the U.S. Supreme Court. In 1873, the U.S. Supreme Court relied on its interpretation of the privileges and immunities clause rendered that same day in the Slaughterhouse Cases,[48] in ruling that Illinois' refusal to issue the license did not implicate Bradwell's rights as a federal citizen and thus did not violate the privileges and immunities clause of the Constitution.[49]

Alta M. Hulett

Before the Bradwell decision, Alta M. Hulett, an unmarried 18-year-old who was studying with an Illinois attorney, had been denied admission to practice in Illinois solely on account of her sex. Hulett wrote a bill that removed the sex limitation, and it was enacted into law. In March 1872, Hulett became the first woman lawyer in Illinois.[50] Consequently, by 1873 Bradwell's appeal before the U.S. Supreme Court was arguably moot.[51] Nonetheless, Bradwell's case basically established that if women were going to become lawyers it had to be through the removal of the sex prohibition and on a case-by-case determination of their qualifications. The state legislatures generally responded by passing legislation authorizing women to practice law, only after a court had denied an otherwise qualified woman that opportunity.[52]

Lutie A. Lytle

Tennessee courts were experiencing similar challenges during this period. There was no statewide rule in Tennessee prohibiting the admission of women as lawyers. Thus, it remained within the prerogative of the judges on each court to decide whether to grant each application to practice. Lutie A. Lytle achieved a number of historic firsts. In 1897, Lytle graduated from Central Tennessee College's law school.[53] On Sept. 8, 1897, Lytle, at the age of 23, became the first African-American woman lawyer in Tennessee, upon her admission to the Criminal Court in Memphis.[54] This admission to practice is the earliest record of a woman lawyer — of any race — in Tennessee; thus it appears that Lytle was the first woman lawyer in Tennessee. Lytle joined her alma mater's

school's law faculty. In doing so, Lytle became the first African-American woman lawyer in the South and the first female law professor of a chartered law school. Lytle taught domestic relations, evidence, real property and in the criminal law area.[55] She did not practice law, however.

Marion S. Griffin

Marion S. Griffin did practice law. Griffin is generally thought to be the first woman licensed to practice law in Tennessee. Lytle's admission, in 1897, however, predates Griffin's successes. Griffin was a pioneer in that she desired to be licensed by the state Supreme Court. In 1900 she was denied admission to practice in that court. The next year she reapplied. Griffin's application stated that she had been certified to practice law by both the chancellor of the Shelby County court and a judge of the Shelby County criminal court, was unmarried, older than 21, had a good reputation, and was qualified by her legal acquirements to be admitted. Both years her applications were denied. The 1901 denial was not unanimous and did not pass without comment. Justice Wilkes, joined by Justice Caldwell, filed a dissent from the order denying Griffin's application.[56] The dissent noted that the "chief objection made by the courts to the admission of women to the bar is that it would be contrary to the common law."[57] The common law rule was based on the custom of excluding women from participating in any share of the government or public affairs. Lawyers, under the common law, were considered officers of the court. Justice Wilkes noted, however, that this principle applied in specified, limited situations. Thus, while attorneys were officers of the court they should not be considered governmental officials because they were not elected or appointed in a manner prescribed by a constitution. Accordingly, Justice Wilkes concluded that the common law did not prohibit the admission of women to the bar.

Wilkes then considered the effect that the most pertinent statutes had on the issue. There were six statutes that regulated the licensing of attorneys. None of the statutes were directly on point. According to Wilkes, the General Assembly had repeatedly considered whether it should legislate in the area and had declined to do so. The trend of both court decisions and statutes was, Justice Wilkes wrote, to admit women to the bar. He then addressed most of the reasons put forth why women should not be admitted. "Some of them pertain to her in the marriage relation, and others because of her sex, without regard to whether she is or is not married. The present applicant is unmarried; but we consider the question in its broader aspect."[58] One objection against licensing married women was that they could nullify their debts by pleading coverture, which would be a complete bar to all their contractual obligations.[59] This possibility could be minimized, Justice Wilkes opined, by courts striking from their rolls any attorney who had engaged in acts of immorality or impropriety, which were inconsistent with the faithful discharge of their duties. A married woman lawyer could also plead duress from her husband if she was impleaded into a suit or charged with contempt of court. These were risks that clients assumed in hiring a married woman lawyer, according to Justice Wilkes. Accordingly, Wilkes believed that the question of permitting a woman to practice law was whether it was the "best policy for her to do so from a social and pecuniary point of view." He concluded:

Certainly the legal arena is not more foreign to her tastes, capacity, and disposition than many places which she now fills with credit and profit. She should be given every chance to make an honest and independent living; and, whether she makes it from necessity or choice, she should not be debarred from it except for good legal reasons. We are not able to see such reasons.[60]

As in a number of other states, it required legislative authorization before women were more regularly admitted to practice before the Tennessee Supreme Court. In February 1907, a law was

passed that said, "Any woman of the age of twenty-one years and otherwise possessing the necessary qualifications, who shall hereafter apply for the same, may be granted a license to practice law in the courts of this State."[61] In 1907, Griffin's persistence was rewarded and she reportedly became the first woman admitted to the bar of the state Supreme Court.[62] Griffin was a general practitioner until she retired in 1949.[63] Perhaps due to animosity among the Justices of the Supreme Court and Griffin, there does not appear in the Supreme Court's public record a recognition of Griffin's accomplishment. In 1923, Griffin achieved another first when she was the first woman elected to the General Assembly.

Eleanor Coonrod

Eleanor Coonrod's name in the 1909 minutes of the Tennessee Bar Association was the first descriptively recognized female member of that organization, as "Miss" preceded her name in the list of members of that group.[64] In 1998 — 89 years later — Pamela L. Reeves became the TBA's first woman president.

Law practices of the pioneers

By the early 1900s a small number of African-Americans and women had obtained the authority to practice law in some Tennessee courts. The actual law practice of these pioneers in the profession was somewhat limited.[65] The documented increase in the number of African-American lawyers after the Civil War was likely because of the emancipation of the former slaves and the promulgation of laws formally providing legal rights to these newly freed slaves. These two factors meant that there was an increased need for legal services by the newly freed slaves. African-American lawyers were probably marginally accepted by whites, and it is likely that most of the African-American lawyers' clients were other African-Americans, particularly less literate freedmen. Discrimination in the practice of law was sufficiently pervasive that one commentator has suggested that many early African-American lawyers turned to teaching and other pursuits.[66]

The practice of law is a learned profession. However, in the mid-1800s, African-Americans, like their white counterparts, became lawyers with only the equivalent of a grade-school education. In fact, around the end of the Civil War most states did not require prospective lawyers to have studied the law for a prescribed period of time. Consequently, local judges possessed virtually unchecked authority in determining which applicants would be admitted to the practice before each court. Some African-Americans were likely admitted even when the opportunity to practice law was most restricted. "Occasionally, during the Reconstruction era, 'almost white blacks, those with 'Anglo-Saxon blood in their veins, were entitled to study and be admitted to practice law.' Such a status was a different kind of favoritism; it favored the progeny of former slavemasters against pure African descendants."[67]

African-American lawyers frequently practiced criminal law, partly because a fair number of criminal defendants were either African-Americans or more recent immigrants from Southern Europe. African-American attorneys were probably expected to defend a capital defendant, even if the defendant lacked sufficient resources to pay for legal services. It has also been speculated that African-Americans hired lawyers of their own race "in almost hopeless criminal matters."[68] Some of these same prejudices faced early women lawyers. Records exist of women lawyers pleading their own cases in the colonial courts, dealing mostly with property or estate matters.[69] Consequently, by the mid-1800s women had been practicing law for centuries; they rode circuit on horseback,

crossed the West in covered wagons and held court in log cabins.[70] Because of their inability to gain admission to practice before some courts, however, they were relegated to office practice as legal clerks.[71] Nonetheless, there appears to be little documented material of the work of some of these pioneers in the legal profession.

Future prospects

What this brief history might suggest is that in Tennessee, as in most other states, the regulation of the practice of the law has always been an important issue, and, on occasion, formal policies excluded otherwise qualified candidates from serving as lawyers because of the candidates' gender or race. The barriers that faced some of the early African-American and women lawyers in Tennessee still appear to exist for some lawyers. In the past two years, three commissions — composed of lawyers, judges, court officials and others interested in the state legal system — issued extensive reports that document some of the problems experienced by and concerns expressed by African-American and women in accessing the legal system.

In March 1996, after four years of studying various aspects of how issues involving race and sex arose in Tennessee's legal system, the Tennessee Bar Association's Commission on Women and Minorities issued a report with findings and recommendations on how to eliminate all vestigates of racial and gender bias in the state's legal profession. While the TBA Commission was completing its work, the state Supreme Court appointed two other Commissions to study similar issues. In January 1997, the Report of the Commission on Gender Fairness was submitted to the Tennessee Supreme Court and found that gender bias in the state's legal system prevented the full participation of women in the system. That report included 10 general recommendations on steps that should be taken to facilitate the fuller participation of women and minorities in the legal system. The next month saw the submission of the Final Report of the Tennessee Supreme Court Commission on Racial and Ethnic Fairness. That report included two general recommendations and 44 more specific recommendations. The Racial and Ethnic Fairness Commission's recommendations are designed to ensure that decisions emanating from the state courts were unaffected by the race or ethnicity of the litigants and that the legal environment allow for equal access to the courts regardless of ethnicity or race. All three commissions recommended that the court continue to study how issues of race, ethnicity and gender affected the state's legal system.

In September 1998, the Supreme Court followed that suggestion and appointed a committee to implement the recommendations of the Racial and Ethnic Fairness Commission and Gender Fairness Commission. The court requested that the committee develop a plan for implementing each recommendation. The committee was further charged with specifying the body responsible for such implementation and offer guidance to the court, the General Assembly, bar associations, law firms, law schools, government agencies and instrumentalities on effectively implementing the commissions' recommendations. The commission is now in the process of fulfilling its charge. It remains to be seen, however, whether the work of any of the commissions will have a long-term, significant impact on how African-American and women lawyers are treated in Tennessee. It is a start, as for the first time in this state's history, collective effort is being directed toward eliminating gender, racial and ethnic biases in the legal system.

Endnotes

1. Samuel Cole Williams, "The Washington County Bar — The First Bar West of the Alleghenies," Proceedings of the Sixteenth Annual Meeting of the Bar Association of Tennessee 95, 95 (1897).

2. Act of Nov. 15, 1777, ch. 2 §7, reprinted in Edward Scott, 1 *The Laws of Tennessee,* pt.1, at 168 (1821).

3. *Id.*

4. Act of Sept. 29, 1794, ch. 1, §4, reprinted in Edward Scott, 1 *The Laws of Tennessee,* pt.1, at 168 (1821).

5. *See* J. Clay Smith Jr., *Emancipation: The Making of the Black Lawyer 1844-1944*, at 8-9 (1993).

6. Samuel C. Williams, "Tennessee's First Lawyer," Proceedings of the Forty-fifth Annual Session of the Bar Association of Tennessee 116, 116 (1926).

7. *Id.*; *see also* Clyde Conley Street, "A History of Legal Education in Tennessee" 5 (1941) (unpublished M. Arts thesis, University of Tenn.).

8. Joshua W. Caldwell, *Sketches of the Bench and Bar of Tennessee* 24-27 (1898).

9. 1859-1860 Tenn. Pub. Acts 73.

10. In 1806 a law was passed that required free Negroes to register with the county court clerks. As part of the registration there was a description of the person, which included the name, age, color and any distinctive scars on the person. One copy of the registration was filed with the county clerk and the other was given to the free Negro, who was required to carry the registration papers at all times. Free Negroes could sue and be sued, enter into contracts and inherit property, and legally marry. But they could not vote after 1834, were ineligible to hold office, could not associate with whites and could keep the company of slaves only by permission. Caleb Perry Patterson, *The Negro in Tennessee,* 1790-1865, at 153-75 (1968). In short, although free blacks were provided with some formal legal rights, in actuality, their position in Tennessee life was more precarious.

11. Lewis L. Laska, "A History of Legal Education in Tennessee," 1770-1970, at 684 (1978) (Ph.D. diss., George Peabody College of Teachers).

12. 1868 Tenn. Pub. Acts 24.

13. *Id.*

14. Court employees at the offices of the Supreme Court in each of the grand divisions were kind enough to review the court's admission rolls from this era, and did not find any indication that any of the admitted attorneys were African-Americans.

15. Letter dated Dec. 20, 1994, from Oberlin College to Prince Chambliss, Esq. (copy on file with author).

16. *Memphis Daily Appeal,* Dec. 23, 1867, at 8 col. 1.

17. *Memphis Daily Appeal,* Jan. 6, 1868, at 8 col. 4.

18. Jerry Huston, "Researcher Uncovers Misleading History on First Black Lawyer," *Commercial Appeal* (Memphis), Apr. 7, 1994, at CE3.

19. Smith, *supra* note 5, at 335.

20. Alrutheus Ambush Taylor, *The Negro in Tennessee, 1865-1880,* at 162-64 (1941)

21. Joseph H. Cartwright, *The Triumph of Jim Crow: Tennessee Race Relations in the 1880s,* at 25 (1976).

22. *Id.* at 23-61.

23. *Id.* at 23.

24. *Id.*

25. Cartwright, *supra* note 21, at 50 (citing *Memphis Avalanche*, July 8, 1885).

26. Laska, s*upra* note 11, at 687.

27. Mingo Scott Jr., *The Negro in Tennessee Politics and Governmental Affairs: The Hundred Years Story, 1865-1965* at 51 (1964) (quoting *Nashville Daily American,* Sept. 3, 1876).

28. *Id.*

29. Taylor, *supra* note 20, at 255-58.

30. *Id.* at 258.

31. *Id.* at 258-59.

32. Smith, *supra* note 5, at 337.

33. For instance, in Tennessee, African-Americans were not admitted to the University of Tennessee's College of Law until ordered to do so by a federal court in 1951. *See Gray v. Univ. of Tennessee,* 97 F. Supp. 463 (E.D.Tenn. 1951), vacated and dismissed, 342 U.S. 517 (1952) (per curiam) (case mooted by announcement that blacks would be admitted to University of Tennessee). In 1955, the Board of Regents informed the Vanderbilt University School of Law faculty that otherwise qualified African-American applicants should not be denied admission because of race. Laska, *supra* note 11, at 707. When two African-Americans, Fred T. Work and E. M. Porter, were admitted the next year Vanderbilt School of Law became one of the first private law schools in the South that voluntarily desegregated. *Id.* See Maurice T. Van Hecke, "Racial Desegregation in the Law Schools," 9 *J. Leg. Educ*. 283, 284 (1956).

34. Laska, *supra* note 11, at 688.

35. Smith, *supra* note 5, at 57.

36. Laska, *supra* note 11, at 689.

37. *Id.* at 688.

38. Charles S. Johnson, *The Negro College Graduate* 333 (1938).

39. Smith, *supra* note 5, at 338.

40. Rankin is the earliest documented African-American attorney. *See* text accompanying notes 14 to 18. The Tennessee Historical Commission has erected a historical marker on Second Street (between Union and Peabody Place) in Memphis that states that Cassels "is considered the first Black to practice law in Memphis." Huston, supra note 18, at CE1.

41. *See* Cartwright, *supra* note 21, passim; Scott, *supra* note 25, passim; Taylor, *supra* note 20, passim.

42. William J. Simmons, *Men of Mark: Eminent, Progressive and Rising* 144-45 (1887); W. Augustus Low and Virgil A. Clift (eds.), *Encyclopedia of Black America* 499 (1981).

43. Frances A. Cook, Belva Ann Lockwood, *For Peace, Justice, and President* (1997) (visited June 14, 1999) http://www.stanford.edu/ group/ WLHP/ papers/ lockwood.htm.

44. Low and Clift, *supra* noted 42, at 499.

45. George Brown of Memphis was appointed to the Supreme Court by Gov. Lamar Alexander in June 1980 to fill the vacancy created by the death of Justice Joseph Henry. Justice Brown wrote two opinions while on the Supreme Court. *See* Peggy Reisser, "Court Opinions by Brown Told," *The Nashville Banner,* Sept. 8, 1980, at 23. Only one opinion, *Hall v. Hall,* 604 S.W.2d 851 (Tenn. 1980), is contained in the case reporter. Brown was defeated by Frank Drowota in August 1980 in the first election in which he was on the ballot. Tom Humphrey, "Yes-no Vote May Unseat Some State Justices," *Knoxville News-Sentinel,* Aug. 31, 1997, at B1.

46. *See generally* John Egerton, "New Day in Court," *The Tennessean,* May 12, 1995, at 1D.

47. Karen Berger Morello, *The Invisible Bar: The Woman Lawyer in America, 1638 to the Present* 11-14 (1986).

48. 83 US. (16 Wall.) 36 (1873).

49. *Bradwell v. Illinois,* 83 U.S. (16 Wall.) 130 (1873).

50. Morello, *supra* note 44, at 21.

51. The U.S. Supreme Court's mootness doctrine requires that an actual controversy exist at all stages of court review, including when the complaint is filed and while the case is on appeal. *See United States v. Musingwear Inc.,* 340 U.S. 36 (1950). The doctrine had not been firmly established by the time of Bradwell's suit. *See Honig v. Doe,* 484 U.S. 503, 330 (Rehnquist, C.J., concurring) (claiming that *Mills v. Green,* 159 U.S. 651 (1895) is "the earliest case I have found discussing mootness").

52. *See, e.g., In re Thomas,* 16 Colo. 441, 27 P. 707 (1891) (discussing trend).

53. Smith, *supra* note 5, at 344.

54. *Id.*

55. Lewis Laska, "Our Sordid Past: Anecdotes of Tennessee's Legal Folklore," 31 *Tenn B. J.* 26, 28 (May/June 1995).

56. Ex Parte Griffin, 71 S.W. 746 (Tenn. 1901).

57. *Id.* at 747.

58. *Id.* at 748.

59. Under this common law doctrine, once a woman married she lost the right to inherit property on her own, to enter into contracts on her own and to independently obtain goods and services. These decisions about property and lifestyle were to be made by the husband.

60. *Id.* at 749.

61. 1907 Tenn. Pub. Acts 69.

62. Larry Berkson, "Women on the Bench: A Brief History," 65 Judicature 286, 290 (Dec- Jan. 1982) (Table 1) (relying on "a search of the literature, state bar associations, state court administrators and other local authorities").

63. "Miss Marion Griffin, Woman Lawyer, Dies," *The Commercial Appeal* (Memphis), Feb 1, 1957 at 43.

64. List of Members, Proceedings of the Twenty-eighth Annual Meeting of the Bar Association of Tennessee 217, 219 (1909).

65. *See* Smith, *supra* note 5, at 1-15.

66. *Id.* at 5.

67. Smith, *supra* note 5, at 9 (ellipses, brackets and footnote omitted).

68. *Id.* at 4.

69. Morello, *supra* note 44, at 9

70. *Id.* at 8.

71. Charles W. Wolfram, *Modern Legal Ethics* 12 n. 79 (1986).

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For more information, look up the Stanford Legal History Biography Project (http://www.stanford.edu/group/WLHP), which deals with some of the first women lawyers.

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