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## Colored Lawyer, Topeka: The Legend and Legacy of Elisa Scott

Jeffery Scott Williams

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COLORED LAWYER, TOPEKA: THE LEGEND AND LEGACY OF ELISA SCOTT

by

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Juris Doctorate

Thomas Jefferson School of Law, 2005

Bachelor of Arts

University of Wyoming, 2013

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## ABSTRACT

Attorney Elisha Scott's reputation for fighting injustice grew so large he received letters addressed only, "Colored Lawyer, Topeka, Kansas." He was born in obscurity in 1890, but his death made national news in 1963. Scott's story may not be known at all if his name was not often listed as counsel in *Brown v. Board of Education*, the 1954 case that desegregated public schools. But it was his sons who filed the case and helped fight it from Topeka to the United States Supreme Court. He was never officially part of the legal team. He had, however, won a string of Kansas desegregation cases that paved the way for *Brown*. His legacy is not the *Brown* case but the hundreds of criminal and civil cases he won in the decades before *Brown*. This dissertation uses Scott's story to examine the experience of African Americans from enslavement to the civil rights revolution. It argues that between World War I and World War II local African American lawyers like Scott constructed the foundation later civil rights gains stood upon. The story of his family leaving the South and achieving success in Topeka demonstrates what African Americans could achieve even in Jim Crow America. But his experiences with horrific violence and racism demonstrate how difficult it was for African Americans to first achieve human rights and later win civil rights. Elisha Scott is at the center of the story, but it is a family story beginning with enslaved relatives in Tennessee and ending with the family's efforts to make the promise of the *Brown* decision a reality.

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## INTRODUCTION

At some point in his career Elisha Scott became so well-known that he began receiving mail addressed only “Colored Lawyer, Topeka.”<sup>1</sup> This meant he was famous enough for fighting for the underdog that unfortunates who did not even know his name sought his help, but he remained obscure enough that those who sought his help did not know his name.

Scott lived his life on the fringes of two contradictory worlds. He was a Black man in a white profession, and his life was full of unexpected contradictions. He was the son of formerly enslaved parents who enjoyed enough success as a lawyer to attract a large white clientele. He was born, raised, and lived in abolitionist Kansas, but he suffered the indignity of racism every day. He fought hard against segregation in myriad courtrooms, arguing that African Americans should be treated the same as everyone else, and he fought hard to maintain segregation in order to save African American jobs. He was the quintessential defense attorney who crossed the thin blue line and prosecuted rape and murder cases for the states of Kansas and Oklahoma. He was so good in the courtroom, students from his alma mater would often watch him work, but many of his opponents complained that he played on emotion better than he argued law. It was true he could make a jury laugh or cry almost at will, but he was also expert at deciphering and

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<sup>1</sup> Samuel C. Jackson, interview by Richard Kluger, June 11, 1969, and June 21, 1969, MS 759, Box 3, Folder 53, *Brown v. Board of Education Collection*, Yale University Library; *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* (New York: Vintage Books, 2004), 387.



using complex legal concepts. He could fill courthouse hallways with a booming baritone voice that came from inside a clarinet sized body. Despite his small stature, he was fearless in the face of any confrontation, and he was just as willing to fight with his fists as he was with his voice. By way of his education and reputation, he was a member of Topeka's elite, but his color would never allow him to be seen as such. In African American newspapers, he was lionized; while white owned newspapers often treated him as if he were a jester. His friend Thurgood Marshall called him the "greatest attorney in his part of the country."<sup>2</sup> But Marshall was also often annoyed with Scott's refusal to let the National Association for the Advancement of Colored People's (NAACP) New York lawyers know how he was handling cases. When Scott's name is mentioned, it is most often in conjunction with the NAACP and its most famous case: *Brown v. Board of Education*. But his direct involvement in the case was small; it was his sons, Charles and John, who saw *Brown* through its earliest stages.

Scott was more independent contractor than NAACP man. He argued cases in conjunction with the NAACP, and he served as Topeka's chapter president for a time. But he was too independent, too dedicated to his clients' day to day well-being, and just plain too stubborn to ever be a company man for anybody. He was first and foremost an advocate for his clients then for what he thought was right for his race and country. The NAACP, the Republican Party, his church, and other organizations fit in the calculus somewhere, but what mattered most was winning that day's legal battle.

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<sup>2</sup> Thurgood Marshall, interview by Richard Kluger, December 28, 1973, MS 759, Box 5, Folder 65-67, *Brown v Board of Education* Collection, Yale University Library.

He did not have time to look much further ahead. He probably could not have seen much through the avalanche of papers on his desk. But when it was clean, he could not find a thing on it. He would fire his secretary for cleaning it, then insist she return the next day.<sup>3</sup> He fired and rehired his secretary almost as much as he objected—and he objected a lot. He objected to the treatment of his people and to American courts' refusal to recognize that the Fourteenth Amendment was more than a rhetorical flourish. He provided all of the flourish any court case could handle. Opposing counsel once said, "his wit was often devastating; his acting was first rate melodrama or, if the situation demanded, side-splitting comedy."<sup>4</sup> From memory, he could quote from the law books when the law was on his side and from the scripture when the law was against him. His home was a law office open twenty-four hours a day. He adored the smell of food but often forgot to eat, and he suffered from malnutrition as a result.<sup>5</sup> Malnourished or not, Scott fought hard for his clients. He battled as hard over the rights to possession of a chicken or a pig, as he did when he represented deep pockets the likes of Rube Foster, founder of Black baseball's Negro National League, and heavyweight boxing champion Jack Johnson. Scott's sons remembered guests as venerable as W.E.B. DuBois, Walter White, Charles Houston, and Thurgood Marshall visiting the Scott's home on Lane Street

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<sup>3</sup> Inza Brown, interview by Richard Kluger, undated, MS 759, Box 1, Folder 11, *Brown vs. Board of Education* Collection, Yale University Library; John Scott, interview by Richard Kluger, August 18, 1969, MS 759, Box 5, Folder 90, *Brown vs. Board of Education* Collection, Yale University Library.

<sup>4</sup> Hall Smith, "The Unforgettable Elisha Scott," Charles Scott file, MS 759, Box 5, Folder 89, *Brown vs. Board of Education* Collection, Yale University Library. This article is undated, and its place of publication is unidentified.

<sup>5</sup> Interview with John Scott, August 18, 1969.

in Topeka.<sup>6</sup> But the family patriarch was much more often in the company of petty thieves, whiskey makers, madams, and craps shooters in Topeka's downtown courthouse.

Anyone who has heard of Scott was probably introduced to him by Richard Kluger in his epic history of the fight to desegregate American education, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality*. In a 789-page book, Scott appeared sporadically between pages 385 and 424. But his appearance was memorable. Kluger called Scott, who began practicing law in 1916, "a legendary black Clarence Darrow," and noted his courtroom exploits on behalf of down and out clients made him famous.<sup>7</sup> Scott became famous because he was as much Laurence Olivier as he was Clarence Darrow. Kluger wrote, "he could be shamelessly emotional, quoting scripture lavishly and falling to his knees dramatically during two-and three-hour-long summations," and "his impassioned defenses in murder trials drew big crowds."<sup>8</sup> Kluger also recognized Scott was a tragic hero. He fought so hard that "he was always paying fines for being out of order."<sup>9</sup> And "he was a sociable, funny man...but his drinking, everyone knew, was habitual. He was a sipper, not a belter, and he sipped all his adult life, starting first thing in the morning."<sup>10</sup> But, Kluger found, he never let his drinking stop him from fighting, and Scott's fighting nature has attracted readers to him since *Simple Justice* was published. When Christopher Lehmann-Haupt reviewed the book for the *New York Times*, he wrote, "while the book's hero is unquestionably

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<sup>6</sup> Charles Scott, interview by Richard Kluger, October 21, 1970, MS 759, Box 5, Folder 89, *Brown vs. Board of Education* Collection, Yale University Library.

<sup>7</sup> Kluger, *Simple Justice*, 386-87.

<sup>8</sup> Kluger, *Simple Justice*, 387.

<sup>9</sup> Kluger, *Simple Justice*, 387.

<sup>10</sup> Kluger, *Simple Justice*, 388.

Thurgood Marshall, its most passionate and unforgettable minor character is Elisha Scott.”<sup>11</sup> Yet, more than forty-eight years after *Simple Justice* was published little more is known about Scott than what Kluger learned from interviewing a few people who knew him later in life.

Scott’s life has remained unexamined because a fire destroyed his files, and a lawyer’s files are the key to understanding his or her life. I started this project with the naïve idea that records of cases Scott argued would be found in courthouses all over Kansas. Numerous emails, letters, phone calls, and several personal visits to courthouses have revealed that when records can be found, they are merely dockets that reveal nothing more than the dates of court appearances. The only transcripts that exist are of hearings regarding a few well-known school desegregation cases. Therefore, Scott’s story is told using newspaper articles, NAACP correspondence, the transcripts of interviews conducted to document *Brown v. Board of Education* available courtesy of the Kansas Historical Society, and Kluger’s interview notes which are available at Yale University.

Scott was born in Topeka, Kansas, in 1890, to parents who were born enslaved in Tennessee and still made their living doing jobs traditionally performed by the enslaved. His mother washed clothes. His father was a farm laborer. They left Tennessee when it became apparent life after enslavement was far more similar to life in bondage than they were willing to stand. Many African Americans who migrated to Kansas saw the trip as a second biblical exodus. They intended to leave their former enslavers behind just as the Jews had escaped from the Egyptians. The Exodusters left the South with little more than

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<sup>11</sup> Christopher Lehman-Haupt, “Complicated Litigation,” *New York Times*, February 3, 1976.

faith to fuel them—and they were certain Kansas would be their salvation. For Scott’s parents and countless other African American immigrants, Kansas provided both opportunities and hardships. Scott’s family did little more than scrape by. But they provided him with an education, and he used it to forever change the lives of the Scott family and uncountable others.

It was the opportunity for African Americans to gain a first-class education that separated Kansas from the South. Topeka’s schools were segregated, but Scott was fortunate to attend an excellent kindergarten, then an industrial school run by the educational arm of Booker T. Washington’s Tuskegee machine, then Washburn University where he obtained an outstanding legal education alongside the same white lawyers who he would practice with for more than forty years.

As Scott was being educated at Booker T. Washington’s Kansas Industrial Institute, W.E.B. DuBois was replacing Washington as the voice of Black America. Washington’s leadership was focused on educating the masses of African Americans in agriculture and the trades. He once famously claimed Black and white Americans were separate yet together like the thumb and fingers on a hand. The truth was Black and white people were never on the same hand. They lived in the same building, and it was clear who lived in the penthouse and who lived in the cellar. Around the turn of the century, DuBois became a voice not so much in opposition to Washington but in opposition to America’s racial status quo. He was articulating a view that asserted subsistence as second-class citizens was not enough for African Americans. He was certain they should demand full American citizenship. When Scott obtained his law degree from Washburn,

he became part of a small group of elites who DuBois expected to accept the obligation to use their education and experience to improve the lives of all African Americans.

DuBois envisioned the path to citizenship rights would be paved by exceptional African Americans he called the Talented Tenth. The first Black person to earn a PhD from Harvard University, he insisted other elite African Americans had a duty to work for the betterment of the race. In 1903, in what amounted to a seventy-five-page manifesto on racial uplift entitled *The Talented Tenth* he wrote, the best of the race needed to gain the education necessary to “guide the Mass away from the contamination and death of the Worst.”<sup>12</sup> In *The Talented Tenth*, DuBois also recognized the need for educating workers in agriculture and the trades, but asserted it was the members of the Talented Tenth who provided education in those areas. Much of DuBois’s vision for the Talented Tenth involved the work of educating the masses of African Americans not just to be good workers, but to be good citizens of the Republic. But the key for DuBois was the fact that the Talented Tenth had a duty to help those who had not acquired the same skills. He insisted, “The Talented Tenth rises and pulls all that are worth the saving up to their vantage ground.”<sup>13</sup> The number of people DuBois expected to pull as they rose was extremely small. He counted 2,304 Black college graduates in America as of 1899.<sup>14</sup>

To be part of the Talented Tenth an individual had to be among Black America’s educational elite, and they had to use their superior education for the betterment of the race. Scott fit both criteria. He was one of about 1000 African Americans with a license

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<sup>12</sup> William Edward Burghardt DuBois. *The Talented Tenth* (New York: James Pott and Company, 1903), 33.

<sup>13</sup> DuBois, *The Talented Tenth*, 45.

<sup>14</sup> DuBois, *The Talented Tenth*, 50.

to practice law.<sup>15</sup> He used that license to demand that African Americans should receive the same treatment as any other American citizen in every interaction they had with local, state, and federal government. Getting the courts to listen was another problem altogether, but Scott knew well he gained a responsibility not an occupation when he hung his shingle. Throughout the course of his career, he handled numerous cases for either filing fees and incidentals only or no money at all.

In the final paragraph of *The Talented Tenth* DuBois explained the problem African Americans faced and provided the solution. He wrote,

Men of America, the problem is plain before you. Here is a race transplanted through the criminal foolishness of your fathers. Whether you like it or not the millions are here, and here they will remain. If you do not lift them up, they will pull you down. Education and work are the levers to uplift a people. Work alone will not do it unless inspired by the right ideals and guided by intelligence. Education must not simply teach work—it must teach Life. The Talented Tenth of the Negro race must be made leaders of thought and missionaries of culture among their people. (No others can do this work and Negro colleges must train men for it.) The Negro race, like all other races, is going to be saved by its exceptional men.<sup>16</sup>

In the only existing statement on his view of the responsibility of a lawyer, Scott made an argument in favor of legal education that is downright DuBoisian. By 1936, he understood he was one of the exceptional people DuBois described, and he fully accepted his responsibility to work for the public good. Scott wrote,

It seems to me that what our young men today need to have emphasized is the importance of education in its broadest and fullest significance. Our ultimate aim should be to make the world a better place to live by educating our group along the lines that have heretofore been inaccessible to them. The undisputed evidence shows that legal training prepares a man for every avenue of life in that; it reaches a strong power of reasoning and

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<sup>15</sup> 1920 United States Census, Volume 4, Occupations in the Census Population Report (Chapter 3, Table 5); 1930 United States Census, Volume 4, Population.

<sup>16</sup> DuBois, *The Talented Tenth*, 74-75.

sympathy, wisdom of economy, influence of example, improvement of talent, joy of originating, worth of kindness, pleasure of working, success of perseverance, dignity of simplicity, obligation of duty, virtue of patience, and the value of time. These are the things that our group must attain before we can have complete unity, and they may only be obtained through the study of law...the legal profession is the bulwark which protects the Negro's future status. Thus, the legal profession is a necessity in the race's progress.<sup>17</sup>

This dissertation is a record of the fight for African American progress as seen through the life of one of the fighters. Kluger stated of Scott, "He was a foot soldier in the fight for racial equality, not a general."<sup>18</sup> If there was an organized national army of civil rights soldiers, Scott was not a general. But there was never such an army; therefore, Scott and others like him were generals in their own respective armies. "Colored Lawyer, Topeka," views all of the individuals who fought for social justice from the first days of slavery to the present as generals in their own individual armies. Scott and others like him who were brave and stubborn enough to attack Jim Crow chose their own battles. They aligned with organizations like the NAACP. However, stating that anyone was a foot soldier assumes there was one grand plan to achieve civil rights and people at the grassroots level, like Scott, faithfully carried out the orders of their superiors. Scott, and thousands of other fighters, had their own opinions of how the country could make racial progress, and they acted as generals in their own personal wars against racial oppression. While Scott was a member of the Black elite, his humble background and record of working to help the most unfortunate African Americans mean studying his life is an

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<sup>17</sup> Elisha Scott, "Law as a Profession for Negroes," in *The Colored Situation: A Book of Vocational and Civic Guidance for the Negro Youth*, ed. Faye Philip Everett (Boston: Meador Publishing Company, 1936), 85.

<sup>18</sup> Kluger, *Simple Justice*, 388.



excellent way to personalize the struggle against Jim Crow. Studying Scott's life can help us understand the daily struggles of African Americans under Jim Crow.

At its essence this work is the story of one person as told through the stories of many people. It is biographical, but Scott is not the work's only subject. Because Scott did not leave behind legal papers and correspondence it is necessary to understand the people around him in order to understand Scott. But that is not the only reason this work focuses on the individuals who he influenced and was in turn influenced by. Because "Colored Lawyer, Topeka" seeks to personalize the struggle for racial justice, it is important that the work delves as deeply as possible into how Scott was personally influenced by those around him. Each chapter introduces individuals who were part of Scott's life, but more importantly help us to understand Scott.

Chapter one provides the historical background of Kansas and roots Scott in both freedom in Kansas and slavery in Tennessee through his family. The chapter helps to explain how the struggle between those who wanted Kansas to enter the Union as a free state and those who wanted Kansas to establish a foothold for slavery in the West was the true beginning of the Civil War. The abolitionist John Brown is an important individual in Scott's story because Kansans made Brown's violent reaction against slavery a part of the state's mythology. Throughout his career, Scott would remind Kansas jurors that the Sunflower state was where the seed that ended slavery was first planted; therefore, it was their patriotic duty to continue to protect the rights of African Americans.

Scott's mother lived a quiet life as a washerwoman raising her children without the help of her partner, because Scott's father died when he was just five months old. But her family left enough of a record to help us to understand the old influence of Tennessee

and the new influence of Kansas on Scott's life. The story of the women in Scott's family perfectly embodies Laurel Thatcher Ulrich's lamentation that "well-behaved women seldom make history."<sup>19</sup> While little is known about Scott's mother, Diana, a few run-ins with the law helped to make her sister who worked as an herbal healer a Topeka celebrity. Scott's Aunt Lucinda Knott Thompson's somewhat mysterious work as a healer demonstrates the family brought some of the old ways with them from Tennessee. Meanwhile, the lives of Scott's uncles, who gained employment in Topeka's city government and actively participated in civic matters demonstrate how the family found success by adapting to the opportunities available to them in Topeka.

Outside the family, Scott's two most important early mentors were Charles Sheldon and James Guy. Chapter two explains how Sheldon, a white minister, helped Scott to gain an education and Guy, a Black lawyer, helped Scott to gain a foothold in Topeka's legal world. Sheldon helped Scott to gain the education he needed to become a lawyer. But he is also key to Scott's story because he demonstrated to Scott that religion could be a way to bridge the racial divide. In 1897, Sheldon published a book called, *In His Steps: What Would Jesus Do?* The book challenged Christians to make all of their decisions by simply asking themselves, "what would Jesus do?" Sheldon was certain one clear answer was that Christians should help the formerly enslaved to build up their communities. His efforts in Topeka led to numerous community projects including the first kindergarten for African Americans west of the Mississippi.<sup>20</sup> Scott was a star pupil,

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<sup>19</sup> Laurel Thatcher Ulrich, "Vertuous Women Found: New England Ministerial Literature, 1668-1735," *American Quarterly* Vol. 28, No. 1 (Spring 1976): 20.

<sup>20</sup> Timothy Miller, *Following In His Steps: A Biography of Charles M. Sheldon* (Knoxville, TN: University of Tennessee Press, 1987), 51. The kindergarten opened April 3, 1893.

therefore, Sheldon helped him to attend the Kansas Industrial Institute and Washburn University. Upon his graduation from Washburn, Scott practiced law with James Guy who had been a mentor since Scott began working in his law office at age fifteen. Guy's mentorship is one of the few aspects of Scott's life that Kluger was not aware of. He stated, Scott was "almost the sole legal arm of the black community in his part of the country," and "it was not until after the Second World War that he received any reinforcements."<sup>21</sup> In fact, Scott modeled his career on Guy's. From social clubs, to the Republican Party, to the proper way for a Black lawyer to promote his practice, Scott followed Guy's blueprint. Scott emerged from Guy's shadow when a third important mentor, Nick Chiles the editor and owner of the *Topeka Plaindealer*, helped to shape Scott's legend.

Chapter three is entitled, "Legend," and it demonstrates how Chiles and Scott worked together to fight for social justice and make Scott famous. Chiles was Scott's spiritual soulmate. The firebrand editor and the fiery lawyer had no fear of fighting Jim Crow, and they both constantly made headlines for their brave fight against racial injustice. Chiles is a large part of the chapter because he helps us to understand the Topeka in which Scott was raised and the way in which Scott became a legendary figure in Kansas. Most importantly, the chapter deals with the limitations placed on an effort to tell the story of a lawyer with very few legal papers. The fire destroyed Scott's papers and left me with no choice but to embrace the legend of Elisha Scott. He was glorified by Chiles and other members of the Black press, and the stories that emerge from Kluger's interviews only contribute to his legend. And those stories are in fact legends—they are

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<sup>21</sup> Kluger, *Simple Justice*, 388.

impossible to verify at this point. Therefore, as a historian, I recount them as legends, and I ask the reader to understand that sixty years after his death the only story that can be told about Scott is his legend.

Chapter four explains the unfortunate fact that one of the reasons Scott became a legend was because he lived and worked in an era plagued by violence against African Americans. As Scott was making his reputation as a lawyer in the years after World War I, racist violence was common in the United States. Between 1917 and 1927 Scott was involved in several incidents of racial violence that made national headlines. Two of the largest race massacres of the twentieth century were the 1919 attack on African Americans attempting to unionize in Elaine, Arkansas, and the 1921 attack on a Black enclave of Tulsa, Oklahoma, called Greenwood. Scott was the only lawyer in the country who represented clients who were involved in both incidents. He was also at the center of things when Coffeyville, Kansas was the site of a race riot after Black men were falsely accused of rape in 1927. The chapter demonstrates the kind of violent vitriol that African Americans faced when they attempted to improve their lives even minimally; furthermore, the chapter shows that African Americans who achieved success during the Jim Crow era were always in danger of violent reprisal. As a lawyer, Scott was constantly in danger of becoming the target of angry and/or jealous whites, but he was always willing to enter the next fight.

Scott's willingness to fight and his methods for doing so are the subject of chapter five. Entitled "Litigator," the chapter explores Scott's unique methods of fighting against a Jim Crow legal system that was often rigged against him. While African American lawyers of Scott's era were often criticized for playing on emotion rather than arguing

law, “Colored Lawyer, Topeka” finds that Scott was fully capable of arguing legal doctrine, but he was also more than willing to rely on emotional arguments when they benefited him. Therefore, his appeals to emotion should be studied as a tactic and his ability to turn a Kansas courtroom into a Broadway stage should be viewed as an important tool, he could use to win cases. Other tools in Scott’s toolbox included his ability to connect with jurors through religion and his ability to push his arguments further than most lawyers because he could always use humor to extract himself from awkward or even dangerous situations.

Chapter six finally brings the reader to the educational desegregation cases Scott is best known for. The chapter chronicles Scott’s important victories in desegregation cases in 1924 and 1949, as well as his efforts to stop Topeka from integrating its junior high schools because he and others knew integration would cost excellent Black teachers their jobs. The chapter, therefore, demonstrates the complexity of the decision to fight for integration when it would unquestionably cost many African Americans their jobs. The chapter also demonstrates that Scott and other lawyers were key to keeping Kansas from becoming more segregated. The sad truth about Scott’s school desegregation victories is that they did not strike down laws that kept children segregated. Kansas law had forbidden most schools from segregating since 1881, and Scott’s victories simply kept school districts from expanding segregation. In other words, Scott and other lawyers like James Guy spent more than seventy years fighting to force Kansas’s courts to uphold laws that were already on the books. But Scott’s story is not negative. He raised three sons who became excellent lawyers and two of them were on the team that argued and won *Brown v. Board of Education* before the United States Supreme Court in 1954.

The *Brown* decision brought his remarkable career to the attention of historians, and nearly seventy years later, his story is told here.

## CHAPTER ONE: TENNESSEETOWN

The *Daily Democrat* called it “Tennesseetown: A City of the Blacks.” The neighborhood had sprung up almost overnight in the area southwest of Topeka.<sup>1</sup> Between 1875 and 1880 Topeka’s Black population grew 323 percent more than the white population. By 1880, there were more than 3600 African Americans in Topeka. They represented about twenty-three percent of the total population, and while residential segregation was far from complete, many were beginning to reside in easily identifiable Black communities like Redmonsville and Tennesseetown.<sup>2</sup> The latter was so named because a large portion of its residents came from Tennessee. In 1881, it was reported Tennesseetown’s residents were all Black save for two white prostitutes who were promptly reported to the authorities and removed.<sup>3</sup> It was also reported that all of its residents hailed from Tennessee except for three families who were allowed to stay.<sup>4</sup>

Throughout the 1870s, freedpeople had migrated to Kansas in search of their version of the American dream. While that dream differed from person to person as did their motivation for leaving the South, they were all certain what they desired could not be found there. At minimum, the American dream meant freedom; and freedom for the formerly enslaved everywhere was too often just a word. W.E.B. DuBois saw it as a cruel

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<sup>1</sup> “Tennesseetown: A City of the Blacks,” *Topeka Daily Democrat*, December 2, 1881.

<sup>2</sup> Thomas Cox, *Blacks in Topeka, Kansas 1865-1915: A Social History* (Baton Rouge, Louisiana State University Press, 1982), 42-43.

<sup>3</sup> *Daily Commonwealth* (Topeka, KS), February 18, 1881.

<sup>4</sup> “Tennesseetown: A City.”

joke. He wrote that the Civil War destroyed the lives of people from all walks of life, but “the most piteous thing amid all this was the black freedman who threw down his hoe because the world called him free. What did such a mockery of freedom mean? Not a cent of money, not an inch of land, not a mouthful of victuals—not even ownership of the rags on his back. Free!”<sup>5</sup> A United States Senate investigation of the Kansas immigrants recognized the dream meant the kind of freedom that constitutional amendments could not provide. The report stated, “We have questioned hundreds of exodites (sic) as to why they come, and nearly all of them tell use the same story: ‘We come because we wanted to be free.’ ‘Yes,’ we reply, ‘but you have been free ever since the war.’ ‘We know dat bery well, but twasn’t the right kind ob free.’”<sup>6</sup> In the late 1870s, word that the right kind of freedom could be found in Kansas spread across the South and prompted thousands of African Americans to quit Dixie and “Ho For Kansas.”<sup>7</sup> By late 1881, there were at least one thousand people living in Tennesseetown, and the “City of the Blacks” was still growing.<sup>8</sup>

Tennesseetown quickly became a thriving community, with most of its early residents owning their own homes and placing a high value on the education of their children. After the Civil War, African American citizens trickled into Kansas looking for work in the cities and homesteading the rural plains. In 1879, the trickle became a

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<sup>5</sup> W.E.B. DuBois, *The Souls of Black Folks* (New York: Penguin Books, 1989), 119-120.

<sup>6</sup> Report and Testimony of the Select Committee of the United States Senate to Investigate the Cause of the Removal of the Negroes from the Southern States to the Northern States, 46th Cong., 2nd sess., 1880, 369. Hereinafter Senate Report.

<sup>7</sup> “Ho for Kansas! Flyer,” Benjamin Pap Singleton Scrapbook, Page 2, Kansas Historical Society, retrieved February 20, 2023,

<https://www.kansasmemory.org/item/211642/page/2>.

<sup>8</sup> “Tennesseetown: A City.”



tsunami. Those who came before 1879, like most immigrants, had a plan for their new life on the high plains and enough money and supplies to give themselves a chance to succeed. However, many of those who migrated to Kansas in 1879 were different. Thousands came with little more than hope and faith to feed and clothe them. So many came and so many who came had so little that Kansans created privately funded aid societies to help them. The Kansas Freedman's Relief Association (KFRA) purchased a large number of vacant lots in Tennesseetown, which was already a Black neighborhood, at a low price from a "bankrupt estate."<sup>9</sup> The organization then sold the lots to the new immigrants at cost.<sup>10</sup> Therefore, as Tennesseetown was being settled most everyone owned their own home. The homes were little more than shacks made of cheap pine wood, but they were theirs. Sometimes as many as three houses stood on one small, city lot. On at least one street, the houses ran "directly across the road leaving but a narrow alley for the passage of vehicles."<sup>11</sup> All of the streets were packed down dirt and there were no sidewalks; thus, "following every rainy spell or spring thaw streets and footpaths were almost impassable."<sup>12</sup> And the streets were full of children. As the *Daily Democrat's* reporter was making his inspection, "a whole 'raft' of funny little colored urchins came pouring out" of Tennesseetown's lone school. The school only served the lower grades, but all of the children were made to attend and were "as a rule...as far advanced in the

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<sup>9</sup> Cox, *Blacks in Topeka*, 62.

<sup>10</sup> Mark Fiege, *The Republic of Nature: An Environmental History of the United States* (Seattle: University of Washington Press, 2012), 325.

<sup>11</sup> "Tennesseetown: A City."

<sup>12</sup> Robert Swan, *The Ethnic Heritage of Topeka Kansas: Immigrant Beginnings* (Topeka, Kansas Historical Society, 1974), 68.

three R's as white children of the same age." One "future Jay Gould" was smart enough to ask the reporter for five cents in exchange for answering a question.<sup>13</sup>

The efforts of the future magnate to become a nickel richer were a sure sign of progress. If he was like most of those who left Tennessee, one of his family's main reasons for leaving was to avoid indiscriminate and unpunished violence at the hands of white people. Whereas in the South he would have learned a white person's question was fraught with danger, that same question was an opportunity in Topeka. In the South he would have been taught "the arts of survival and accommodation, the posture and demeanor of deference...the hat in hand, the downcast eyes, the shuffle and scrape, the fumbling words, the head scratching and grin suggesting incomprehension."<sup>14</sup> In Topeka he had learned free market capitalism. His ancestors might have run at the sight of a white man in their neighborhood, and they certainly would not have tried to rook him for a nickel. But the young man had clearly developed a different *modus operandi* in Topeka. He was far safer in Topeka than he would have ever been in Tennessee. He probably knew that Topeka whites helped many in his neighborhood obtain homes. Maybe he knew that when other cities turned their backs on Black immigrants a large group of Topekans did their best to provide them with food and shelter. If he had spent any time in school, he knew that African Americans considered Kansas a special place. It was bleeding Kansas, the free state where John Brown—a white man—fought for the freedom of Black folks. It was a place where a Black man could vote without fear of violence and work land that his family owned. Racism was extant everywhere in the United States

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<sup>13</sup> "Tennesseetown: A City."

<sup>14</sup> Leon F. Litwack, *Trouble in Mind: Black Southerners in the Age of Jim Crow* (New York: Alfred A. Knopf, 1998), 39.

including Kansas, and many in Tennesseetown were dirt poor. But in Topeka there was opportunity. Even if he desperately needed that nickel to get something to eat, that he was hungry in Kansas was progress.

Born October 14, 1890, Elisha Scott took the opportunity his Tennessee born, formerly enslaved parents provided him and proved that their move to Kansas was an inspired choice. Before he was thirty, he was a nationally known leader of his race. Scott was born at 1154 Lane Street in the heart of Tennesseetown when the neighborhood was a settlement southwest of the city, the streets were dirt, there were no sidewalks, and violence and vice were common. When he died seventy-three years later, Scott still lived on the same block. By then it was the middle of town, the streets were blacktop, the sidewalks were concrete, and Tennesseetown was the neighborhood where the most well-established African Americans in Topeka lived.<sup>15</sup> He had obtained a first class legal education, argued cases in so many states that nobody could make an accurate count, and spread his legend even farther, all while maintaining his roots in the same state, in the same city, in the same neighborhood, and on the same block where he was born. Tennesseetown was good to him.

Both sides of his family moved from middle Tennessee to Topeka in the late 1870s or early 1880s and settled in Tennesseetown. The “future Jay Gould” could have been one of Scott’s half-brothers, as they would have been attending the Tennesseetown school at that time.<sup>16</sup> Jefferson Scott, more commonly known as Jeff, was around forty

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<sup>15</sup> Works Projects Administration Federal Writer’s Project, *The WPA Guide to 1930s Kansas* (Lawrence: University of Kansas Press, 1984), 277; John Scott, interview by Richard Kluger, MS 759, Box 5, Folder 90, *Brown v. Board of Education* Collection, Yale University Library.

<sup>16</sup> U.S. Census 1880. The 1880 U.S. Census lists John aged seven and Jerome five.

years old and the head of a large household when he and his family abandoned Tennessee, where he had worked as a farm laborer, for Kansas.<sup>17</sup> As of 1880, he was living with his first wife Parlee and their four children in Topeka. It is not clear if Parlee died or the couple was divorced, but by the fall of 1883 Jeff was ready to marry again. Jeff Scott and Diana Knott were married in Topeka on October 10, 1883.<sup>18</sup> Diana had been born enslaved in Bedford County, Tennessee in 1856, raised in the Nashville area, and migrated to Topeka around 1879.<sup>19</sup> Their marriage license states he was forty-four and she was twenty-seven.<sup>20</sup> Their first born was a daughter named Birdie, next came Viola, and then their only son Elisha. Jeff died about five months after Elisha was born.<sup>21</sup> Therefore, Diana raised Elisha with his half-sister Carrie, Birdie, and Viola in the three-room house in which he was born. The rest of Jeff's children who would have been between ten and twenty-two years old at the time of his death do not appear in subsequent records of the Scott household. Diana never remarried, but her family was a solid source of support.

Martha Knott Ransom was matriarch of the Knott family. She was born enslaved in Tennessee in 1827. As of 1870, she was raising four children along with her husband Henry, a farm laborer, and working as a housekeeper in the Nashville area in a place

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<sup>17</sup> U.S. Census Bureau. 1870.

<sup>18</sup> Marriage License, Topeka, Kansas, Jefferson Scott age 44 and Diana Knott age 27, Shawnee County, Kansas Marriages Licenses, June 1, 1876 to December 31, 1887, ARKK76, #1889, microfilm reel 2, Kansas Historical Society, Topeka.

<sup>19</sup> "Mrs. Diana Scott Dead," *Topeka Plaindealer*, July 17, 1931; Associated Press, "Negro Woman Takes Needle from Body after 63 Years," *Hutchinson News*, October 24, 1929.

<sup>20</sup> Marriage License.

<sup>21</sup> Faye Phillip Everett, *The Colored Situation: A Book of Vocational and Civic Guidance for the Negro Youth*, (Boston: Meador Publishing Company, 1936), 84.

called Shelbyville in Bedford County, Tennessee.<sup>22</sup> They were also supporting a 100-year-old woman named Margaret Manie who may have been Martha or Henry's grandmother.<sup>23</sup> The Knotts do not appear in any census between 1870 when they lived in Bedford County, Tennessee and 1885 when they were in Topeka.<sup>24</sup> However, a listing for an undelivered letter placed Martha Knott in Topeka in September 1880, and Diana's obituary stated she came to Topeka in 1879.<sup>25</sup> Family history says that Martha Knott Ransom came to Topeka ahead of the rest of the family as part of a party of fifty families meaning she may have been in Topeka prior to 1879.<sup>26</sup> Martha Knott sued Henry Knott for divorce in 1906 stating that the couple had not lived together since 1901.<sup>27</sup> Her maiden name may have been Ransom, as she went by Martha Ransom for several years before she filed for divorce.<sup>28</sup> She lived on King street, and she was an active participant in the civic and social life of Tennesseetown for many years.

Precious little is known about why the Knotts and Scotts left Tennessee, but it is not difficult to see why a Black person would choose to leave the South in the 1870s. Tennessee's short and ineffective period of Reconstruction meant those who had been enslaved in the state learned quickly that freedom was not what they desired it to be. Today Reconstruction is viewed as a period of time after the Civil War, but when it was

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<sup>22</sup> U.S. Census Bureau. 1870.

<sup>23</sup> U.S. Census Bureau. 1870

<sup>24</sup> U.S. Census Bureau. 1870; 1885 Kansas State Census.

<sup>25</sup> "On the 19<sup>th</sup> day of Sept., 1880: Ladies' List," *Daily Commonwealth* (Topeka, KS), September 19, 1880.

<sup>26</sup> John Scott, interview; Kluger, *Simple Justice*, 385.

<sup>27</sup> "Divorce Business is Again Active," *Topeka Daily Capital*, October 17, 1906.

<sup>28</sup> Martha first appeared in a newspaper article under the name Martha Ransom in 1898. See, "Much Improvement: Tennesseetown is Being Slowly Transformed," *Topeka Daily Capital*, October 19, 1898.

implemented, it was a federal government program designed to help the freedpeople and bring the rebellious states back into the United States government. Characterized by the presence of federal troops and the Freedman's Bureau in the states that had left the Union. Reconstruction helped many of the formerly enslaved to begin their post-war lives before it was forced out of existence. Unfortunately, since Tennessee did not leave the Union, its freedpeople did not share in those triumphs. In South Carolina for example what has been called Radical Reconstruction was a brief but beautiful success. In 1868, between seventy-one and seventy six of 124 delegates to the state constitutional convention were people of color.<sup>29</sup> The constitution they created granted universal male suffrage which led to a Republican controlled government that passed freedperson friendly bills such as the one that allowed children of all races to attend any school they chose. Such policies helped to develop some of the first Black lawyers in the country. Before 1868, a handful of Blacks became lawyers by reading law under the tutelage of an established lawyer, but there is no record that any of them were educated in a law school.<sup>30</sup> By 1873, the University of South Carolina was a desegregated institution, and by 1877, when Democrats closed the integrated university, eleven African Americans had graduated from the law school.<sup>31</sup> Reconstruction was a brief moment of opportunity for

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<sup>29</sup> James Lowell Underwood, "African American Founding Fathers: The Making of the South Carolina Constitution of 1868," in *At Freedom's Door: African American Founding Fathers and Lawyers in Reconstruction South Carolina*, ed. James Lowell Underwood and W. Lewis Burke (Columbia: University of South Carolina Press, 2000), 2.

<sup>30</sup> J. Clay Smith Jr., *Emancipation: The Making of the Black Lawyer 1844-1944* (Philadelphia: University of Pennsylvania Press, 1993), 33.

<sup>31</sup> W. Lewis Burke, *All for Civil Rights: African American Lawyers in South Carolina, 1868-1968* (Athens: University of Georgia Press, 2017), 48. The first African Americans to graduate from an American law school probably did so at Howard University in Washington D.C. in 1871.

African Americans in places like South Carolina, but it was more than they got in Tennessee. Since Tennessee had not left the Union, there were no real Reconstruction programs in the state. Furthermore, while African Americans were in the majority in South Carolina they were far outnumbered in Tennessee. Due to this lack of a federal presence and voting power, Nell Irvin Painter argued Reconstruction in Tennessee was “superficial and ephemeral,” and it was over by 1870.<sup>32</sup>

The freedpeople who left the South in the 1870s and 1880s had virtually no political power, but they made a powerful political statement by migrating. After the Civil War, many freedpeople fled the violence, disenfranchisement, and pseudo re-enslavement they suffered in the South. As soon as they could free themselves during the war, formerly enslaved individuals began to slowly move away from the old slave states, and by the late 1870s they were leaving for Northern states in droves, with Kansas being a popular destination. Migrants who left the South in the late 1870s and early 1880s were called Exodusters after the Biblical exodus of the Israelites from their enslavement in Egypt. The Exodusters’ only political power was in their feet, and they voted with them by leaving the South. As hundreds of African Americans were arriving in Kansas every day in the spring of 1879, freedperson John L. Waller explained the mass migration to Kansas Governor John P. St. John.

This is a revolution, but a peaceable and quiet one. Do you ask what has caused such a step? Then listen while I answer as only a black man, and former slave can answer...we are robbed of our freedom in the South, our manhood is not even respected, our people are murdered without mercy, our school houses are burned, our families are outraged. We are in debt at the end of every year because white men take advantage of our ignorance and prey upon our generosity...The colored race, loving justice as we do has settled upon this plan to liberate ourselves...Every black man and woman is hungry

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<sup>32</sup>Nell Irvin Painter, *Exodusters: Black Migration to Kansas after Reconstruction*, (New York: W.W. Norton and Company, 1992), 109-110.

for liberty in its broadest sense and in striking for it one can almost see old Patrick Henry of the Old Dominion when he said, “I care not what course others may take as for me give me liberty or give me death.” This sir is the sentiment of the colored race today in America.<sup>33</sup>

When viewed together the migrants represented “the first, massive repudiation of the Democratic South.”<sup>34</sup> Migration away from the South never reached great enough numbers to cause any change in the Southern system, but the people who abandoned their old masters and the old Southern ways improved their prospects. And Kansas was changed by the migration.

After the Civil War Kansas quickly became a destination for Black and white people, and many early migrants came for land. Historian Thomas Cox found “Kansas was a synonym for frontier opportunity.”<sup>35</sup> With its fertile soil and 160 acre plots of land available for a ten-dollar filing fee and some hard work, thanks to the Homestead Act of 1862, Kansas was attractive to agriculturalists of all colors. In fact, while the Black population of Kansas grew by about twenty-six thousand residents during the 1870s, the percentage of African Americans in the total populations actually fell.<sup>36</sup> Whites mainly from Indiana, Illinois, and Ohio and African Americans mainly from Kentucky, Missouri, and Tennessee dotted the prairies with new homesteads in the decades following the war.<sup>37</sup> Both Black and white immigrants settled on the rural prairies and near or in towns across the state. Many freedpeople came to Kansas with high hopes of farming their own

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<sup>33</sup> John L. Waller to Hon. J.P. St. John, April 22, 1879, in Governor John St. John Exoduster Received Correspondence, [kansasmemory.org](https://www.kansasmemory.org), Retrieved March 7, 2023, <https://www.kansasmemory.org/item/210296>

<sup>34</sup> Painter, *Exodusters*, 4.

<sup>35</sup> Cox, *Blacks in Topeka*, 35.

<sup>36</sup> Painter, *Exodusters*, 146-47.

<sup>37</sup> Painter, *Exodusters*, 158-59 and 146.



land, but they soon found they did not have enough money or experience to make a living farming the relatively dry prairies of Kansas; therefore, many wound up working labor jobs in cities like Topeka.<sup>38</sup>

The fact that Kansas took a neutral stance when it came to Black immigration after the Civil War was akin to rolling out the red carpet for freedpeople. Kansas “made no special inducements,” to attract African Americans; “but old abolitionist, temperance Republicans ruled the state, and they held out precisely the same welcome mat to Black settlers as to white.”<sup>39</sup> Kansas also drew immigrants of all colors because its officials and businesspeople aggressively promoted the state. In 1879, the *St. Louis Post Dispatch* complained, “If Missouri were half as well advertised as Kansas a large portion of the tide of emigration which now flows over Missouri into Kansas would be arrested in this state.” After all, according to the writer, Missouri had better soil, more timber, more coal, more rain, and less wind than Kansas. Kansas’s lone advantage was the fact that the state agricultural board and its railroad companies constantly touted the state in “millions of circulars.”<sup>40</sup> While the state’s aggressive advertising campaigns drew both Black and white migrants, African Americans had a deeper connection to Kansas.

In the years before the Civil War as western migration reached the plains of Kansas, the state became a battleground in the fight between slave holding states and those that forbade slavery. The fight was of a relatively recent vintage as American lawmakers had been acquiescing to the demands of the slave states since the Constitution

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<sup>38</sup> Eric Foner, *Reconstruction: America’s Unfinished Revolution, 1863-1877* (New York: Perennial Classics, 2002), 600.

<sup>39</sup> Painter, *Exodusters*, 159.

<sup>40</sup> “Missouri and Kansas,” *St. Louis Post-Dispatch*, April 25, 1879.

was drafted. The Constitution itself contained three provisions that supported the continued ownership of individuals in contrast to the claim that all men were created equal. The Apportionments Clause encouraged slave ownership by allowing the enslaved to count as three-fifths of a person when determining population for congressional representation providing the slave states greater numbers in Congress than their population of eligible voters warranted. The Constitution also forbade Congress from banning the international slave trade until 1808. Along with the guarantee that each state will have an equal number of senators, the slave trade clause is one of only two constitutional provisions that expressly states the requirement cannot be amended. Finally, the Fugitive Slave Clause granted enslavers the unfettered right to pursue and capture their human chattels anywhere in the country. Thirty-three years after the Constitution was drafted, the Missouri Compromise of 1820 allowed Missouri to enter the Union as a slave state only if Maine entered as a free state thereby keeping the number of slave and free states equal. With the exception of Missouri, The Missouri Compromise forbade slavery in the areas acquired via the Louisiana Purchase north of the 36° 30' parallel, but the Kansas-Nebraska Act of 1854 repealed that provision. The Kansas-Nebraska Act was another example of the nation bending to the will of the slave states. When Southern leaders threatened to halt western expansion by refusing to approve new territorial governments in areas that would be bound by the Missouri Compromise to ban slavery, a new agreement was reached that allowed Western states to determine whether they would be free states or slave states on the basis of popular sovereignty. W.E.B. DuBois stated, "Thereupon ensued one of the strangest duels of

modern times—a political battle between two economic systems.”<sup>41</sup> The country had struck a delicate balance between the two systems for decades, but popular sovereignty meant that Kansas would be either free or slave with no compromise possible. The result was the first battles of the Civil War were fought in Kansas six years before the attack on Fort Sumter.

The first violence in Kansas took place in the fall of 1854 when pro-slavery settlers from Missouri clashed with members of the New England Emigrant Aid Company (NEEAC) over land in Lawrence.<sup>42</sup> But most of 1854 and 1855 saw both sides attempting to win the popular sovereignty contest peacefully—if not always lawfully. If the popular sovereignty contest in Kansas was a basketball game, pro-slavery forces won the first quarter behind an immediate rush of slave owners and their supporters across the border from Missouri.<sup>43</sup> But Missouri did not have a large population and the NEEAC immediately sought to tip the scales to the side of freedom by sending as many as “20,000 to 150,000 persons from the Eastern States to Kansas” in the fall of 1854.<sup>44</sup> Those lofty goals were not met, and most of the free staters who settled in Kansas were from the Midwest, but the NEEAC was a key player in the politics of Kansas. Originally the NEEAC intended to build a peaceful society in Kansas, but such utopian ideas did not last long. Relying on reports from Kansas, NEEAC organizer Eli Thayer recognized as early as August 1854 that violence would be part of the fight for control of the state. He claimed threats had already been made; therefore, “it might be well for the Emigrant to be

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<sup>41</sup> W.E. Burghardt DuBois, *John Brown* (New York: International Publishers, 1962), 136.

<sup>42</sup> Nicole Etcheson, *Bleeding Kansas: Contested Liberty in the Civil War Era* (Lawrence: University Press of Kansas, 2004), 37-38.

<sup>43</sup> Etcheson, *Bleeding Kansas*, 30-31.

<sup>44</sup> “Emigrant Aid Company,” *New York Times*, June 22, 1854.

furnished with his Bible and his rifle; and if he were not protected in his rights according to the principals of the first, let him rely on the execution of the latter.”<sup>45</sup> Eventually the NEEAC chose to arm its settlers. While “the wolves of the prairie” were mentioned as money was raised to supply settlers with Sharp’s Rifles it was clear the weapons were for “self-defense against the attacks of” proslavery forces.<sup>46</sup> While NEEAC made the headlines, settlers from the Midwest helped to provide anti-slavery forces with a numeric advantage over settlers from the sparsely populated South.<sup>47</sup> Everyone recognized popular sovereignty meant gaining a numeric advantage at the ballot box, but that did not mean Kansas Territory was the site of free and fair elections.

Missourians who did not reside in the territory filed into Kansas Territory in order to vote for the pro-slavery cause. The result was the election of a pro-slavery delegate to Congress in 1854 and a pro-slavery legislature in 1855.<sup>48</sup> An investigation of the 1854 election revealed 1,729 illegal votes were cast, and in 1855, 4,908 of 6,318 votes cast were fraudulent.<sup>49</sup> The proslavery legislature “proceeded to pass a series of deliberately provocative laws that made it a felony to criticize slavery, imposed the death penalty on anyone who aided runaway slaves, and prohibited antislavery men from holding office or serving as jurors.”<sup>50</sup> Free staters responded by organizing the Free State party in

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<sup>45</sup> “Emigration to Kansas,” *New York Times*, August 4, 1854.

<sup>46</sup> “Kansas: Sharp’s Rifles in New Haven,” *New York Times*, March 22, 1856.

<sup>47</sup> Etcheson, *Bleeding Kansas*, 43.

<sup>48</sup> Brent M.S. Campney, *This is Not Dixie: Racist Violence in Kansas 1861-1927* (Urbana, IL: University of Illinois Press, 2018), 12.

<sup>49</sup> David S. Reynolds, *John Brown, Abolitionist* (New York: Vintage Books, 2005), 141; Samuel A. Johnson, *The Battle Cry of Freedom: The New England Emigrant Aid Company in the Kansas Crusade* (Lawrence: University of Kansas Press, 1954), 101.

<sup>50</sup> Elizabeth R. Varon, *Disunion: The Coming of the American Civil War, 1789-1859* (Chapel Hill, NC: University of North Carolina Press, 2008), 260-61.

September 1855. It was far from an egalitarian organization. The party platform specifically opposed interfering with slavery in other states and banned free Blacks from settling in Kansas.<sup>51</sup> But the party took a revolutionary step by refusing to recognize the territorial government or territorial laws. The Free State party subsequently refused to participate in the next territorial election and instead held its own Congressional election and a constitutional convention in Topeka.<sup>52</sup> The Topeka convention invoked the rhetoric of the Declaration of Independence essentially claiming the right to abolish a government that was injurious to its citizens.<sup>53</sup> Such high minded ideals were again forgotten when it came to African Americans, as the Topeka Constitution also banned free Blacks from the state.<sup>54</sup> Conveniently forgetting how they won the legislature in the first place the proslavery men met in Leavenworth and created a party referred to as either the State's Rights party or the Law and Order party. Now both sides were armed, organized, angry, and each side denied that the other had a legal right to govern Kansas. It was only a matter of time before violence erupted.<sup>55</sup>

From the fall of 1855 until the free state faction won the popular sovereignty battle in 1859 blood flowed in Kansas. It began as a trickle on November 21, 1855, when a dispute over land led a proslavery man to shoot and kill a free state man. When the free staters responded by threatening witnesses, burning homes, and "rescuing" one of their brethren from territorial authorities, Governor Wilson Shannon appealed to President Franklin Pierce for help. No federal help was forthcoming; therefore, Shannon called on

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<sup>51</sup> Johnson, *Battle Cry Freedom*, 107.

<sup>52</sup> Johnson, *Battle Cry Freedom*, 108.

<sup>53</sup> Etcheson, *Bleeding Kansas*, 74-5.

<sup>54</sup> Etcheson, *Bleeding Kansas*, 75.

<sup>55</sup> Johnson, *Battle Cry Freedom*, 110; Varon, *Disunion*, 260.

the people of the territory to help maintain order. The result was thousands of armed and aggressive men on both sides gathered around the free-soil city of Lawrence, and a siege that lasted until December 8. During the siege, a free stater named Thomas Barber was shot and killed. He was immediately deemed a martyr.<sup>56</sup> The free staters election on January 15, 1856, was marred by violence when Missourians claiming they were upholding law and order interfered with the election and one free state man was killed.<sup>57</sup> In February, President Pierce finally entered the fray. He publicly denounced both sides but demonstrated his allegiances by putting federal troops stationed at Fort Leavenworth at the disposal of the proslavery governor.<sup>58</sup> The *New York Courier and Enquirer* sardonically asked if this meant Governor Shannon would be arming his men with federal search warrants for the *New York Tribune* or *Uncle Tom's Cabin*, as possession of antislavery publications was punishable by up to five years at hard labor under the proslavery legislature's draconian rules.<sup>59</sup>

In May 1856, the violence moved to Washington D.C. The Democrats introduced a bill to admit Kansas as a slave state and Republicans responded with a bill to admit Kansas as a free state. On May 19 and 20 abolitionist Senator Charles Sumner delivered his famous "Crime Against Kansas" speech. In the speech, Sumner made an impassioned plea for Kansas to be admitted as a free state and defended the actions of the NEEAC deeming their resistance to slavery patriotic. According to Sumner, the crime against Kansas was "the rape of a virgin Territory, compelling it to the hateful embrace of

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<sup>56</sup> Etcheson, *Bleeding Kansas*, 79-88.

<sup>57</sup> Etcheson, *Bleeding Kansas*, 89-91.

<sup>58</sup> Etcheson, *Bleeding Kansas*, 92.

<sup>59</sup> "What Will Congress do?," *New York Courier and Enquirer* reprinted in *Kansas Herald of Freedom* (Wakarusa, KS), March 22, 1856.

Slavery.”<sup>60</sup> And those responsible for upholding an institution “the whole world alike Christian and Turk, is rising up to condemn” were amongst his colleagues in the Senate.<sup>61</sup> Therefore, he launched a personal attack against South Carolina Senator Andrew Butler and his home state. He stated, that Butler “believes himself a chivalrous knight, with sentiments of honor and courage. Of course he has chosen a mistress to whom he has made his vows, and who, though ugly to others, is always lovely to him, though polluted in the sight of the world is chaste in his sight;—I mean the harlot Slavery.”<sup>62</sup> In answer to an earlier threat by Butler for South Carolina to succeed from the Union, Sumner sarcastically called him a “Heroic knight! Exalted Senator! A second Moses come for a second exodus.”<sup>63</sup> Butler’s cousin Congressman Preston Brooks would not allow such an attack on his relative to stand. On May 22, he walked into the Senate chambers holding a gutta percha walking stick with a gold head and proceeded to use it to beat Sumner unmercifully until Sumner was unable to speak and the cane was “shattered to pieces.”<sup>64</sup> Sumner was unable to return to the Senate for two and a half years.<sup>65</sup> Brooks received hundreds of canes from elated Southerners, and he was branded a conquering hero in Southern newspapers.<sup>66</sup> Historian Elizabeth Varon summarized Southern views when she stated, “Brooks had not met Sumner in a duel, the way he would have an honorable

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<sup>60</sup> Senator Charles Sumner, “The Crime Against Kansas. The Apologies for the Crime. The True Remedy: In the United States Senate 19 and 20 May 1856,” (Boston: John P. Jewett & Company, 1856), 5.

<sup>61</sup> “Crime Against Kansas,” 5.

<sup>62</sup> “Crime Against Kansas,” 9.

<sup>63</sup> “Crime Against Kansas,” 10.

<sup>64</sup> *Kansas Weekly Herald* (Leavenworth, KS), May 31, 1856.

<sup>65</sup> Etcheson, *Bleeding Kansas*, 100.

<sup>66</sup> Varon, *Disunion*, 270. Etcheson, *Bleeding Kansas*, 100.

opponent; instead, he beat him like a slave.”<sup>67</sup> Slavery had caused the United States Senate to devolve into a world in which violence in the name of one’s beliefs was acceptable behavior, and Kansas was about to do the same.

On May 21, 1856, the day after Sumner’s speech, the most intense period in the fight for Kansas began. The violence started under color of law. Armed with warrants to arrest members of the free state government for treason, a ragtag posse of 500 to 700 proslavery men sacked Lawrence.<sup>68</sup> The people of Lawrence had attempted to surrender, but the posse was much more mob than police force. Free state men made no effort to resist, and arrests were made on the warrants, but the angry proslavery men were hell bent for violence and a few lawful arrests did not satisfy their desire. Mob justice was inflicted on the town’s two firebrand newspapers, and the Free State Hotel which was seen as a symbol of the free state movement was burned to the ground. Members of the mob also looted nearby homes, but except for one proslavery man who was struck in the head by a falling object no one was killed.<sup>69</sup>

The free staters response to what happened in Lawrence was decidedly more deadly, and it made the name John Brown synonyms with the struggle for abolition. Upon hearing of the pending attack on Lawrence, John Brown Jr. led a volunteer rifle company of thirty-four men to aid in the town’s defense but learned they were too late before reaching Lawrence.<sup>70</sup> At that point, John Brown Sr. separated from the company and took a small band of men to Pottawatomie Creek. The passive reaction of the free state men in

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<sup>67</sup> Varon, *Disunion*, 270.

<sup>68</sup> Johnson, *Battle Cry Freedom*, 157-160; Etcheson, *Bleeding Kansas*, 104-5.

<sup>69</sup> Etcheson, *Bleeding Kansas*, 105.

<sup>70</sup> Etcheson, *Bleeding Kansas*, 107; Reynolds, *John Brown, Abolitionist*, 157.



Lawrence was in keeping with the abolitionist movement's commitment to nonviolence, but the older Brown had been committed to a violent attack on slavery for many years and Pottawatomie Creek was where he intended to start. Brown led a party of seven other men who knocked on the doors of proslavery men in the area, took them from their homes, and bludgeoned them to death with swords.<sup>71</sup> The killing of five men who did not own slaves but openly sided with the proslavery cause, the attack on Lawrence, and the caning of Sumner helped to touch off a guerrilla war in Kansas. The war was over popular sovereignty, but often resulted in violent men murdering one another to settle old and new vendettas.<sup>72</sup> Brown was indicted for murder, but the chaos of law and order in the state allowed him to participate in the guerrilla war until he left Kansas in September.<sup>73</sup> Between 1855 and 1858 the battle for Kansas resulted in fifty-two deaths, However, only eight free state men and five proslavery men died in battle; the remaining deaths were the murders of twenty-eight free staters and eight proslavery men.<sup>74</sup> The five murders committed by Brown's band were therefore atypical of the free state settlers but common in the context of the overall conflict.

Contemporary and historical accounts have recognized that Brown's use of violence adopted the tactics of slavery's supporters. Until Pottawatomie Creek antislavery activism was defined by pacificism; it was slavery's supporters who had administered vigilante justice without any real fear of legal or personal reprisal. Historian David S. Reynolds stated, "At Pottawatomie, John Brown gave the South some of its own

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<sup>71</sup> Reynolds, *John Brown Abolitionist*, 171-73.

<sup>72</sup> Etcheson, *Bleeding Kansas*, 113.

<sup>73</sup> Reynolds, *John Brown Abolitionist*, 174.

<sup>74</sup> Reynolds, *John Brown Abolitionist*, 163.

medicine.”<sup>75</sup> More important was the fact that Brown’s ruthlessness demonstrated abolitionists were willing to fight fire with fire. Before John Brown, Southerners mocked and attacked abolitionists with the same impunity Brooks showed when he walked into the United States Senate and beat a seated and unsuspecting man with a cane.<sup>76</sup> Pottawatomie Creek signaled a new willingness on the part of abolitionists to die and kill for their cause. DuBois wrote that Brown’s attack “brought to the fore in free state councils the men who were determined to fight for freedom and it meant the end of passive resistance. The carnival of crime and rapine that ensued was a disgrace to civilization but it was the cost of freedom, and it was less than the price of repression.”<sup>77</sup> While the fighting foreshadowed the passions that would start the Civil War a few years later, the fate of Kansas was eventually settled at the ballot box.

Kansas entered the Union as a free state in 1861, because settlers from the Midwest greatly outnumbered those from the South; therefore, after all of the bloodshed and chaos, popular sovereignty finally did win out.<sup>78</sup> In October 1857, the proslavery faction drafted a Constitution in Lecompton, Kansas that allowed slavery. However, it was never approved in Washington. In the meantime, the free staters finally won control of the territorial legislature. They adopted a constitution in Leavenworth in April 1858, but the bitterly divided U.S. Congress did not admit Kansas as a free state. On October 4, 1859, the people of the state voted to ratify a new antislavery constitution created in Wyandotte. Congress finally approved the Wyandotte Constitution on January 21, 1861,

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<sup>75</sup> Reynolds, *John Brown Abolitionist*, 159.

<sup>76</sup> Reynolds, *John Brown Abolitionist*, 162.

<sup>77</sup> DuBois, *John Brown*, 140.

<sup>78</sup> Reynolds, *John Brown Abolitionist*, 176.

after several Southern legislators had abandoned their positions following the election of Abraham Lincoln. President James Buchanan made statehood official on January 29, 1861, and six days later seven Southern States formed the Confederate States of America.<sup>79</sup>

The newest state in the Union represented itself well in the Civil War. Numbers indicate that almost every eligible Kansan volunteered for service; however, those numbers are skewed by men from neighboring states who mustered into the Army in Kansas. Close to twenty-five percent of Kansas enlistees were from other states.<sup>80</sup> This was because “Union refugees from Missouri and Arkansas” swelled the ranks.<sup>81</sup> Overall Kansas contributed 20,149 troops to the Union cause including 2,080 Black troops.<sup>82</sup> The war in Kansas and Missouri was a continuation of bleeding Kansas with both sides seeking revenge for past actions.<sup>83</sup> Missouri slaves took advantage of the opportunity to flee to Kansas, and Kansans reversed their previous policy of banning free Blacks. They mustered Black men into the army and setup schools for Blacks in Osawatomie and Lawrence. An aid society was organized to assist the destitute former bondsmen, and many were helped to find work as farm laborers.<sup>84</sup> Many also served in the military, as Kansas was at the forefront of using Black troops. The first Black troops to fight and die in the Civil War were from Kansas. They first fought in Missouri in October 1862, more

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<sup>79</sup> Legends of Kansas, “Territorial Kansas & the Struggle for Statehood,” Accessed March 1, 2023, <https://legendsofkansas.com/kansas-territory/>

<sup>80</sup> Gary L. Cheatham, “Divided Loyalties in Civil War Kansas,” Kansas History Vol 11, No. 2 (Spring 1988), 96.

<sup>81</sup> “The Troubles in Kansas,” *New York Times*, September 20, 1863.

<sup>82</sup> Cheatham, “Divided Loyalties,” 96.

<sup>83</sup> Etcheson, *Bleeding Kansas*, 219.

<sup>84</sup> Etcheson, *Bleeding Kansas*, 228-29.

than two months before the Emancipation Proclamation took effect allowing them to officially enter the United States Army.<sup>85</sup> By the time the war ended in 1865, Kansas had been in a state of civil war for more than ten years. While relatively few men died in the bleeding Kansas portion of the fighting, the American Civil War took a heavy toll on Kansas. 8,498 Kansas soldiers died during the war. This meant that among the Union states Kansas had the highest per capita casualty count.<sup>86</sup> Kansas had paid a heavy price to earn an egalitarian reputation.

Kansas's connection to the abolitionist movement and the war made it a preferred destination for many Black migrants. In the minds of many of the formerly enslaved, Kansas was a sacred place. It was the place where people like John Brown had fought a righteous war against human bondage.<sup>87</sup> In 1879, *Harper's Weekly* stated, "The objective point of the negroes in almost every case is Kansas...The reason probably is that this State has been more thoroughly advertised than any other, on account of the early struggles which established freedom in it when a Territory, and as having been the scene of the exploits of John Brown and other martyrs of freedom."<sup>88</sup> A Black Louisianan stated that he had wanted to migrate to Kansas since he fought in the Civil War "because of the sacredness of her soil washed by the blood of humanitarians for the cause of freedom."<sup>89</sup> Whites also saw Kansas as a special place for African Americans. One Topeka aid worker stated, "Kansas to the colored people of the South is what Utopia was

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<sup>85</sup> Etcheson, *Bleeding Kansas*, 230-31.

<sup>86</sup> Etcheson, *Bleeding Kansas*, 247.

<sup>87</sup> Painter, *Exodusters*, 158-9.

<sup>88</sup> "The Great Negro Exodus," *Harper's Weekly*, May 17, 1879.

<sup>89</sup> G.R.M. Newman to John P. St. John, September 9, 1879, Exoduster Letters.

to Sir Thomas More.”<sup>90</sup> George H. Eby who chaired a Cleveland, Ohio, committee formed to aid Black Kansas immigrants said Kansas was “the heart and hope of those black men...the historic land of freedom.”<sup>91</sup>

It is not clear exactly when or why either side of Elisha Scott’s family left Tennessee, but the mass movement of Southern African Americans into Kansas in the late 1870s and early 1880s shaped both Tennesseetown and their lives. Elisha’s son John was told that Martha Knott Ransom had come from Tennessee with a group of around fifty families who were helped to migrate by a group of “carpetbaggers.” When Richard Kluger was researching his history of *Brown v. Board of Education*, John told Kluger that she made the move in 1868 or 1869, but her presence in Shelbyville, Tennessee in the 1870 Census means her migration did not take place in the 1860s. Records indicate a more likely time for her arrival in Topeka was between 1878 and 1880. The fact that she traveled to Topeka with a large group of migrants from the Nashville area indicates she may have been shepherded to Kansas by Benjamin “Pap” Singleton the man who asserted by April 17, 1880, he had “fetched out 7,432” Southern freedpeople to Kansas.<sup>92</sup> Singleton was so proud of his efforts he arranged for a scrapbook chronicling his work to be created and left to the Kansas Historical Society.<sup>93</sup> He also claimed to be “the whole cause of the Kansas immigration,” and “The Moses of the Negro Exodus.”<sup>94</sup>

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<sup>90</sup> Mrs. S.T. Perry, “Kansas as the Utopia,” Senate Report, 363

<sup>91</sup> George H. Eby to Governor J.P. St. John, April 23, 1879, Exoduster Letters.

<sup>92</sup> Senate Report, 379.

<sup>93</sup> *Topeka Daily Capital*, October 23, 1879.

<sup>94</sup> Senate Report, 382; ““Pap” Singleton: The Moses of the Negro Exodus,” *St. Louis Globe-Democrat*, April 21, 1879.

Pap Singleton was certain his life's mission was to remove African Americans from the oppressive South, and it was a mission from God. Born and raised in Nashville, Tennessee, Singleton was literally sold down the river several times to owners in the Gulf of Mexico region, but each time he escaped and returned to Tennessee. Eventually, he fled to Canada, but he did not remain there long. He moved to Detroit, Michigan, to run a boarding house that served as a stop on the underground railroad. When the Civil War ended, he returned to Tennessee where he worked as a cabinet maker.<sup>95</sup> Singleton also made coffins, and that work convinced him that African Americans stood little chance in Tennessee. He told the United States Senate committee investigating the reasons for the mass migration to Kansas that he built two coffins for women who were raped and murdered by white attackers who went unpunished.<sup>96</sup> The *St. Louis Globe Democrat* reported that Singleton was certain the South's ruling class were "plainly determined to reduce the ex-slaves to a sort of helpless and hopeless serfdom."<sup>97</sup> Furthermore, "blacks would prefer to remain in the South if they were decently treated, but as matters now stand the only chance left them is to come North, where their lives will be safe and there is opportunity for them to secure homes and make a living."<sup>98</sup> Singleton said he suspected it was God's will that led him to believe freedpeople had to be convinced to leave Tennessee.

He began trying to convince African Americans to leave Tennessee in the late 1860s, and eventually he helped thousands of people to migrate to Kansas and form

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<sup>95</sup> "'Pap' Singleton."

<sup>96</sup> Senate Report, 382

<sup>97</sup> "'Pap' Singleton."

<sup>98</sup> "'Old Pap' Singleton Interviewed," *St. Louis Globe-Democrat*, March 27, 1879.

agricultural colonies. Nell Irvin Painter found it was hard work getting Tennessee freedpeople to leave the state of their birth. African Americans from Louisiana, Mississippi, and Texas were more likely than their brethren in Tennessee to migrate in the early years, as many of them were born in the Southeast and sold to the Gulf states as children; therefore, they had less sentimentality about the places they were leaving and they had already experienced migration. Whereas Tennesseans, like Scott's parents, who reached adulthood around the time of emancipation were more likely to have been born in Tennessee as were both of their parents.<sup>99</sup> Thus, they tended to have a greater affinity for their ancestral homes and no experience with long distance migration. Nevertheless, based upon good reports of prospects in Kansas some groups connected to Singleton began to relocate around 1870. In 1873, Singleton visited Kansas and saw the former Cherokee reservation was a good place for African Americans to homestead; therefore, he started a colony there. His work, however, did not go much beyond investigation until 1876.

From 1876 to the early 1880s Singleton was extremely active in efforts to help freedpeople to leave Tennessee and establish themselves in Kansas. In 1876, he wrote to the governor of Kansas inquiring about paying for land over an extended period of time, and in 1877 he again visited the state. Upon his return to Tennessee, he ran advertisements offering to supply free information to anyone interested in Kansas, and in 1877 and 1878 his real estate association held several large meetings for those interested in migration.<sup>100</sup> "In 1878 the association regularly conducted working class Blacks to

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<sup>99</sup> Painter, *Exodusters*, 113.

<sup>100</sup> Painter, *Exodusters*, 113-15.

Kansas,” and in 1879, Singleton formed another colony in Morris County.<sup>101</sup> Life in Kansas was not easy, but Singleton was certain those who migrated had made the right choice. He stated, “Liberty to the negro in the South is only mockery, Justice has fled...hence we attempt to better out condition by migration which is the only alternative left to us. We have counted the cost and we know it is imprudent for some of us, but why hesitate; between the two evils we have chosen the least.”<sup>102</sup> The success of the people Singleton led out of Tennessee is demonstrated by the crowds who gathered to celebrate his birthday in Topeka. Singleton had never earned much money; therefore, his large birthday celebrations were a way to raise money for his support. In 1882, almost fifty dollars was raised.<sup>103</sup> In 1883, more than 1800 Topekans paid between fifteen and twenty cents each to celebrate his birthday. The party featured barbeque, a baseball game, roller skating, dancing, and a speech by the seventy-four-year-old “founder of the exodus movement.”<sup>104</sup> Over the years he had spent \$600 dollars of his own money “flooding the country with circulars.”<sup>105</sup> Except for a small amount that were sent to North Carolina by mail, the circulars were distributed to every Southern state by boatmen and train porters.<sup>106</sup> Singleton was responsible for convincing and/or helping an uncountable number of Tennessee African Americans to migrate to Kansas. His flyers also helped to spread the word about Kansas to freedpeople in all of the former slave states. But the

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<sup>101</sup> Painter, *Exodusters*, 116.

<sup>102</sup> “An Address,” *Commonwealth* (Topeka, KS), June 18, 1879.

<sup>103</sup> “Three Score And Ten,” *Weekly Commonwealth* (Topeka, KS), August 17, 1882.

<sup>104</sup> “Reunion in Honor of Pap Singleton,” *Daily Commonwealth* (Topeka, KS), July 21, 1883; “Pap Singleton,” *Daily Commonwealth* (Topeka, KS), August 16, 1883.

<sup>105</sup> Senate Report, 380.

<sup>106</sup> Senate Report, 382.



flood of migrants who made their way to Kansas in the spring of 1879 was beyond the control of any leader.

The Kanas Fever Exodus of 1879 was an essentially spontaneous, millenarian movement of freedpeople largely from Louisiana, Mississippi, and Texas who left for Kansas with little more than faith that the state was a new Canaan and God would deliver them there.<sup>107</sup> While the migrants Singleton brought from Tennessee were required to have enough money to get a good start in Kansas, those who caught the Kansas fever in the spring of 1879 did not even have enough money to reach the state by steamer ship. In the book of Exodus, Moses helped the Israelites escape more than 400 years of slavery in Egypt by leading them to Canaan. African Americans who left the South in droves in 1879 saw themselves as Israelites escaping Egypt. An example of their thinking is contained in a letter written by two immigrants to Chetopa, Kansas. The writers stated, “the people down South reminds me of the condeation of the Children of Israel when fairo had thim! Thay have been in the eagup land so long and is now trying to come out of that aufall country in a better land.”<sup>108</sup> Another man who left the South explained, “when God set the Jews free, He did not leave them among their old Egyptian masters, because He knew that they would be oppressed by them just as we are oppressed by our old masters today...we must leave the South to live among people who will respect and protect our rights.”<sup>109</sup>

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<sup>107</sup> Robert G. Athearn, *In Search of Canaan: Black Migration to Kansas 1879-80* (Lawrence: The Regents Press of Kansas, 1978), 4-5; Painter, *Exodusters*, 184.

<sup>108</sup> H.H. Hill and Andy Adkins to Governor St. John, November 28, 1879, Exoduster Correspondence.

<sup>109</sup> Stephen A. Hackworth to His Excellency St. John, May 19, 1879, Exoduster Correspondence.

As hundreds then thousands of Exodusters found themselves stranded on docks in St. Louis or even closer to their respective starting points because they did not have enough money to reach Kansas it became clear that the migrants had left their homes with little more than faith to lead them. Their attitude was that if they could reach the new Canaan, they would find their salvation. Rumors that they would receive transportation, land, and supplies may have pushed them to start the journey, but when they were informed, they would receive no such help, they refused to turn back.<sup>110</sup> Kansas was where God wanted them, and God would see to it that they got there. The *St. Louis Globe-Democrat* reported the reaction of one group upon being informed that they would not be provided train tickets to Kansas. An elderly leader stated, “this yar gentleman forms us what we have ’ready larned—that we’ve been fooled about that railerd and land and mewl biz. And this yar gentleman asks us whether we’d not go back to Egypt.” All of his companions said, no, and one woman added, “What go back!...Oh, no; I’d sooner starve here!”<sup>111</sup>

Faith was not the reason immigrants before and after the spring of 1879 pulled up stakes and headed for Kansas. In the late 1870s prospective immigrants from all over the South sent letters to Governor John St. John inquiring about their prospects in the state. They asked about the condition of the land, the weather, voting rights, access to education, and the possibility of obtaining land by homesteading among other things. A letter from Louisiana was typical. The writer asked, “what inducement dos the laws of your State provide for the facilitation of emigration into your State. Also wheather life

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<sup>110</sup> Painter, *Exodusters*, 187-91.

<sup>111</sup> “Africa’s Exodus: Alarming Emigration of Destitute Negroes from the South,” *St. Louis Globe-Democrat*, March 14, 1879.

and property is secure, the right of franchise respected, public education facilities in the interest of all citizens alike.”<sup>112</sup> A writer from Montgomery County, Tennessee, asked whether immigrants would be helped to find land and whether there was demand for the labor of men and women in Kansas.<sup>113</sup> A Texan asked if Kansas was a good place to farm, whether grains and cotton could be grown, what was generally grown in the state, and what price land was selling for.<sup>114</sup> Wallace Partee of South Nashville, Tennessee, summarized the prospective immigrants concerns in one short note. He wrote, “I has hurd so much about Kans I thout I would brake up and com out...I have a littel place and I dont want to brake up to do better and do worse.”<sup>115</sup> Those who came in the Spring of 1879 had no such concerns. God intended for them to relocate to Kansas, and God would provide a way for them to get there.

In the minds of the Exodusters, St. Louis was the place they needed to reach to be free from Southern oppression, and God would help them the rest of the way. St. Louis was the Red Sea.<sup>116</sup> “It linked the two parts of the idea, negative and positive, slavery and freedom.”<sup>117</sup> Proof that the travelers saw St. Louis as their place of salvation is demonstrated by the vast number of Exodusters who did not have enough money to travel beyond St. Louis. In mid-May 1879 *Harper’s Weekly* estimated almost 9000 Exodusters had reached St. Louis and only about 2400 of them had enough money to cover their fare

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<sup>112</sup> Cain Sartain to John St. John, March 30, 1879, Exoduster Correspondence.

<sup>113</sup> A. Aray to Hon. John P. St. John, June 25, 1879, Exoduster Correspondence.

<sup>114</sup> S.Q. Johnson to Governor St. John, August 21, 1879, Exoduster Correspondence.

<sup>115</sup> Wallace Partee to Governor John St. John, August 25, 1879, Exoduster Correspondence.

<sup>116</sup> Painter, *Exodusters*, 195.

<sup>117</sup> Painter, *Exodusters*, 195.

to Kansas.<sup>118</sup> A man from Mississippi explained, “we’s like the chillun ob Israel whey dey was led from out o’ bondage by Moses...Dis is our Red Sea, right hyah in St. Louis, atween home an’ Kansas, an’ if we sticks togeder an’ keeps up our faith we’ll git to Kansas and be out o’ bondage for shuah.”<sup>119</sup> Painter stated, faith in the idea that Kansas was a new Canaan “offered a helping hand to the very poor, who would otherwise languish in the South condemned to damnation.”<sup>120</sup> Due to their unflappable faith, many Exodusters figured that they only needed funds enough for steamboat passage to St. Louis—God would take care of the rest.

Many of the Exodusters lacked the money to make it past St. Louis, and if God did in fact provide them a way to reach Kansas it was through St. Louis’s government officials and businesspeople who did not want them to remain in their city. As migrants who lacked the few dollars it took to go on to Kansas City by steamboat or train began to overflow St. Louis’s waterfront streets, many locals began to panic. The *Globe-Democrat* reported the influx of poor African Americans was a problem for Kansas because that was where they were all headed; and it was a problem for St. Louis because that was where they all seemed to be stuck. The paper reported, “The other day 280 landed. Of that number about fifty had enough to pay their \$2.50 boat fare to Kansas City...The aggregate cash wealth of all of them combined would not, most likely, figure up to \$5.” The fact that such landings were a near daily occurrence meant, “St. Louis is threatened with the influx of thousands of negro families who are absolutely without means. The

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<sup>118</sup> “Great Negro Exodus.”

<sup>119</sup> “Africa’s Rubicon,” *Leavenworth Times*, March 21, 1879.

<sup>120</sup> Painter, *Exodusters*, 194.

negro...is crazed with the fever of emigration to Kansas.”<sup>121</sup> When they realized that many of the migrants lacked the funds to leave St. Louis, groups of residents did what they could to help. By March 20, around 1400 impoverished and poorly clothed migrants were stranded in the city.<sup>122</sup> Providing them with food and shelter was almost exclusively the work of St. Louis’s Black community until mid-April when the exodus became national news and aid began to arrive from all over the country.<sup>123</sup> Charitable organizations initially raised money to help feed and shelter the stranded groups, but funds quickly ran low and caring for the Exodusters only got more expensive as more arrived. Furthermore, the Exodusters were bound for Kansas, and most in St. Louis did not want them to take root in their city. Therefore, they provided the stranded Exodusters with enough money to reach Missouri’s western border.<sup>124</sup> Thus began a game of hot potato in which the Exodusters were quickly passed from one city to the next.

As the Exodusters traveled west, cities and towns tried to help them, but they also actively sought to move them along to the next place. Many migrants only had passage to Kansas City, Missouri, but as Kansas City did not welcome Exodusters and it was not in Kansas, the travelers did all they could to avoid it. Most finally reached the promised land in Wyandotte, Kansas.<sup>125</sup> Its residents did their best to help the flood of immigrants, but the town of 5,000 people was ill-prepared to house and feed such a large influx of immigrants. Officials figured the only answer was to distribute the migrants throughout

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<sup>121</sup> “Africa’s Exodus.”

<sup>122</sup> Athearn, *Search of Canaan*, 20.

<sup>123</sup> Painter, *Exodusters*, 226.

<sup>124</sup> Athearn *Search of Canaan*, 22-3.

<sup>125</sup> Wyandotte is present day Kansas City, Kansas.

the state.<sup>126</sup> With around 1,700 penniless immigrants camped in churches and on the outskirts of town, Wyandotte's leaders refused to allow anymore Exodusters to disembark.<sup>127</sup> Those who were camped around town, were shipped to tiny Ellis, Kansas, at the price of one dollar per person.<sup>128</sup> The next stop up the river was Leavenworth, and its city council quickly raised funds to move the migrants further west.<sup>129</sup> Atchison was the next bottleneck in the migration, but its leaders were well aware of what had happened in St. Louis; therefore, they combined private donations and public funds to help distribute the Exodusters to different places around the state. The city that took the greatest number of weary travelers was Topeka.<sup>130</sup>

The capital city received the most Exodusters because the problem of finding homes and work for them was unequivocally a statewide problem, and the man in the governor's office was unequivocally a humanitarian. When Wyandotte became the first Kansas town to be flooded with Exodusters, its officials quickly framed the problem as an issue affecting the entire state. A.N. Moyer wrote to Governor John P. St. John and asked for help.

You have of course heard of the great stream of African immigration from the South, pouring in on us here. Yesterday during that terrific hail storm – though only of a few minutes duration, hundreds of poor refugees were without shelter on our levee, except as they helped themselves to lumber in Mr. Walcotts yard. Some of our churches are opened, the Freedmans University buildings & grounds at Quindora are crowded but still they came. We shall certainly be swamped. We are not panic stricken, although the shrill whistle of every boat which comes causes us many anxious thoughts... Suffice it to say that most of them are penniless, many are sick, and the dead are scattered along the way... Many of our citizens, white &

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<sup>126</sup> Athearn, *Search of Canaan*, 37-9.

<sup>127</sup> Athearn, *Search of Canaan*, 42-3.

<sup>128</sup> Athearn, *Search of Canaan*, 43.

<sup>129</sup> Athearn, *Search of Canaan*, 44-5.

<sup>130</sup> Athearn, *Search of Canaan*, 46-9.

colored, rich & poor are doing all they can. And it is a very nice question as to how much ought to be done. We of course want them to “move on”. And now comes the point for the Governor and State to consider: If they remain in crowds, in filth poverty, in actual want, in a very short time malignant and contagious diseases must and will break out. Shall we wait for that calamity which is certain to come unless they scatter? If disease comes it will spread...Our city Wyandotte is already crowded, we are not wealthy, we cannot establish quarantine regulations. We believe as a “war measure”, as a public necessity, the State should aid in solving this Problem.<sup>131</sup>

The Exodusters were fortunate that John P. St. John was the governor of Kansas. St. John was born in Indiana in 1833, studied law in Illinois, mined for gold in California, fought in the Civil War, and against Native Americans in the West, traveled as far away as Hawaii and South American, and eventually settled in Olathe, Kansas.<sup>132</sup> He and the Kansas of the 1870s and 1880s were a perfect match. St. John was a strict prohibitionist, an advocate of women’s rights, and a Republican in the mold of Abraham Lincoln. Later in life, he claimed to be “an old, once despised and persecuted abolitionist.”<sup>133</sup> St. John was, however, better known as a prohibitionist, and Kansas passed a statewide dry law while he was in office. His goal for Kansas was “a school house on every hill top and no saloon in the valley.”<sup>134</sup> He helped put prohibition on the national political map with a run for president in 1884. Republicans blamed him for splitting the vote, thereby, giving Grover Cleveland a narrow win.<sup>135</sup> As governor he kept the state house dry by instituting “water banquets” in which nothing stronger than high quality H2O was served to guests.

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<sup>131</sup> A.N. Moyer to Governor St. John, April 7, 1879, Exoduster Correspondence.

<sup>132</sup> Homer Socolofsky, *Kansas Governors* (Lawrence, KS: University of Kansas Press, 1990), 105-06; “The Passing of a National Character,” *Kansas City Sun*, September 8, 1916.

<sup>133</sup> Cox, *Blacks in Topeka*, 53.

<sup>134</sup> “Passing National Character.”

<sup>135</sup> “John P. St. John Dies at Olathe,” *Lawrence Daily Journal-World*, September 1, 1916.

President Ulysses S. Grant was one guest who was reported to disfavor the policy, but St. John's water only rule was enforced without exception.<sup>136</sup> As for African American immigrants—he figured there was enough water for Black and white alike in Kansas.

St. John spearheaded a humanitarian relief effort that recognized the destitute immigrants had suffered greatly in the South; therefore, they should be assisted in finding the new lives they were looking for in Kansas. He received thousands of letters from freedpeople who made it clear to him the Exodusters were not merely migrating—they were escaping the South. One letter read, “Being myself a refugee from the injustice and dangerous but cowardly bulldozers of the God forsaken South, I can but say that God will certainly give you great credit for anything you can do for the poor and oppressed robbed and swindled blacks in their efforts to free themselves from a bondage worse than slavery.”<sup>137</sup> A man who had already migrated to Chicago, Illinois, stated, “Thousands of us have been murdered by white men in cold blood since we were made free, but if any white man has ever been punished for such crimes I have never heard of it, but if one of us ever kills a white man in self defence, we are certain to be hung for it.”<sup>138</sup> As Exodusters began to enter the state at unprecedented rates, St. John called a meeting of concerned citizens at the Topeka Opera House. He told the audience it was worthless to consider why the immigrants were coming. The question was what Kansans would do to help them. He stated, “Kansas has a history devoted to liberty, and these people knowing it come here to settle. When the life of the Nation was in danger, the blood of the negro

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<sup>136</sup> “John P. St. John is Dead,” *Arkansas City Daily Traveler*, September 1, 1916. Numerous obituaries note St. John's “water banquets.”

<sup>137</sup> Unsigned to Governor St. John, April 25, 1879, Exoduster Letters.

<sup>138</sup> Stephen A. Hackworth to His Excellency St. John, May 19, 1879. Exoduster Letters.



mingled with our blood to sustain the Union.” He assured the audience the Exodusters were coming with the intention to work and work hard by explaining that he had provided free meals to many destitute individuals who came begging at his door, but he had never met a beggar who was Black. His plan, he said, was to help the Exodusters until they were “distributed through the state.”<sup>139</sup>

The Exodusters had been a national news story since they first began to stack up in St. Louis in March; therefore, numerous Northern organizations donated money to their cause. Most of New York’s major newspapers advertised that they would accept donations to be forwarded to Kansas. In Chicago, the *Inter-Ocean* spurred relief efforts. In Philadelphia, Quakers made numerous donations. And aid organizations formed in other places such as Washington D.C., and Columbus and Cincinnati, Ohio provided help.<sup>140</sup> Colorado Governor Frederick Pitkin offered any help his state could provide.<sup>141</sup> Numerous individuals sent money and supplies. A woman from Oxford, Ohio, called Kansas “another Canaan” and sent thirty-one dollars raised by her community.<sup>142</sup> A man from Burlington, Iowa, donated five dollars to benefit those “felling from the ‘Hell’ of the Effects of Slavery.”<sup>143</sup> The Exodusters plight even reached the ears of international humanitarians. A supply of blankets was shipped over from England. They were reported to be “made, as we learn by the poor women of Ireland and donated by the philanthropists of England. An arrangement by which these noble hearted Englishmen

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<sup>139</sup> “The Meeting at the Opera House,” *Daily Commonwealth*, April 22, 1879.

<sup>140</sup> Athearn, *Search of Canaan*, 120-24.

<sup>141</sup> Frederick Pitkin to Hon. John P. St. John, May 14, 1879, Exoduster Letters.

<sup>142</sup> Eliz A. McConnell to John P. St. John, October 31, 1879, Exoduster Letters.

<sup>143</sup> James Hillerary to Governor St. John, May 28, 1880, Exoduster Letters.

bless the two classes upon whose necks the oppressor's heel has trod so harshly.”<sup>144</sup> John Brown Jr. himself now living in Ohio donated \$157.85 to benefit “Colored Refugees in Kansas.”<sup>145</sup> Later he traveled to Kansas to assist in fund raising.<sup>146</sup> But most of the work fell on the citizens of Topeka.

The Exodusters never became a major problem for the city government of Topeka because numerous reformers and humanitarians worked tirelessly to aid them. On April 20, 1879, the people of Topeka formed a temporary relief committee which immediately raised about \$550 dollars to help Kansas's newest indigent residents.<sup>147</sup> St. John chaired the meeting, but the governor was not the most well-known person in the room. Susan B. Anthony spoke in favor of the immigrants, and “threw in a word in behalf of women's rights.”<sup>148</sup> She also helped get the fund-raising ball rolling by donating ten dollars.<sup>149</sup> The committee sent money to Wyandotte to provide food and to transport 600 migrants to Topeka. The Shawnee County fairgrounds were used to temporarily house those who came.<sup>150</sup> But Topeka's efforts “indicated that its doors were open to the refugees,” which “created further difficulty, for upon hearing of Topeka's hospitality” more Exodusters came.<sup>151</sup> On May 8, a permanent organization called the Kansas Freedmen's Relief

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<sup>144</sup> “A Visit to the Kansas Freedman's Relief Rooms,” undated newspaper article, page 10, Benjamin Pap Singleton Scrapbook, kansasmemory.org, Retrieved February 21, 2023, <https://www.kansasmemory.org/item/211642/page/10>

<sup>145</sup> John Brown Jr. to John P. St. John, September 3, 1879, Exoduster Letters; John Brown Jr. to John P. St. John, November 11, 1879, Exoduster Letters.

<sup>146</sup> “Grand Donation Barbecue,” *Council Grove Republican*, September 6, 1879.

<sup>147</sup> Senate Report, 358.

<sup>148</sup> “Meeting of the Citizens of Topeka for the Relief of the Colored Immigrants,” *Topeka Daily Capital*, April 21, 1879.

<sup>149</sup> Athearn, *Search of Canaan*, 53-4.

<sup>150</sup> Senate Report, 358.

<sup>151</sup> Athearn, *Search of Canaan*, 55.

Association (KFRA) was formed “to provide food, shelter, and clothing...to succor the aged, the feeble, and the sick; to aid and assist them in procuring work, and in finding homes...and to do and perform such other acts of charity and benevolence as the necessities of such freedman, refugees, and immigrants may require.”<sup>152</sup> The KFRA’s officers included African Americans, whites, and women. The most notable officer was the Quaker reformer, Elizabeth Comstock who traveled from Philadelphia to Topeka to aid the Exodusters.<sup>153</sup> The KFRA leaders stated, “the simplest dictates of humanity demanded immediate and organized effort” in aid of the immigrants. They also claimed Kansas’s residents had a duty to uphold the state’s egalitarian reputation, as Kansas “had its conception and birth in a struggle for freedom, and equal rights, for the colored man. She has lost too much blood for this cause to now turn back from her soil these defenseless people fleeing from the land of oppression.”<sup>154</sup>

While its stated goals were high minded, like all of the other places that experienced a deluge of immigrants, the Topeka group wanted to move them westward. John M. Brown a Black man who had left Mississippi as a refugee from violence a few years earlier stated, “This permanent organization was formed for the purpose of scattering the destitute people who might come there into other places...so that they could earn their own living, and not become a burden on the city of Topeka.”<sup>155</sup> Governor St. John estimated that seventy-five percent of the immigrants were without money,

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<sup>152</sup> Senate Report, 359.

<sup>153</sup> Senate Report, 359.

<sup>154</sup> KFRA to the Friends of the Colored People, June 26, 1879, Topeka, Kansas, Pap Singleton Scrapbook, 55-56, [kansasmemory.org](https://www.kansasmemory.org/item/211642/page/55), retrieved February 14, 2023, <https://www.kansasmemory.org/item/211642/page/55>.

<sup>155</sup> Senate Report, 359.

proper clothing, or food; therefore, they were completely dependent on charity.<sup>156</sup> The money to support them came from private sources. According to Brown, caring for the Exodusters was never a financial burden for the city government. He stated, “The care of all these colored people has never cost the city of Topeka twenty-five cents; the society has looked after them.”<sup>157</sup> Furthermore, Brown claimed that by March 26, 1880, the KFRA had helped 25,000 immigrants with only one ever having been arrested, and he was found not guilty of theft.<sup>158</sup> Nevertheless, many Topekans were outwardly hostile to the city’s newest residents.

Many Topekans thought providing any help only led more immigrants to come thereby compounding the problem. Mayor Milton H. Case was one who felt Topeka could not handle a large influx of indigent immigrants. His contribution to the relief effort was to spend a small amount of city funds on passage home for a handful of Exodusters who chose not to stay.<sup>159</sup> The County commissioners initially allowed the immigrants to be housed in buildings at the fairgrounds, but perhaps because of community pressure, they claimed the buildings needed to be repaired; therefore, the immigrants had to be relocated.<sup>160</sup> Since most of the Exodusters were arriving on the north side of town by way of the Kansas Pacific Railroad, it was suggested a barracks be constructed there. Not long after construction was completed a group of Topekans tore it down and tossed the lumber in the Kansas River. They claimed it was because the immigrants carried yellow fever.

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<sup>156</sup> “The Colored Refugees,” *New York Times*, July 11, 1879.

<sup>157</sup> Senate Report, 360.

<sup>158</sup> Senate Report, 359-60.

<sup>159</sup> Athearn, *Search of Canaan*, 54.

<sup>160</sup> Senate Report, 290; Cox, *Blacks in Topeka*, 58-9.

While there was an epidemic in Tennessee at that time, Topeka never had an outbreak.<sup>161</sup> The truth was the barracks were destroyed because locals saw the shelter as an incentive for the Exodusters to remain in Topeka.<sup>162</sup> Thomas Cox has noted that the refusal of Kansas, Shawnee County, and Topeka officials to expend public funds to aid the Black refugees wreaked of racism. When Kansas was ravaged by a grasshopper plague five years earlier, Governor Thomas A. Osborn called a special legislative session and the state and federal government came to the aid of distressed farmers.<sup>163</sup> In 1879, no such aid was forthcoming, therefore, the KFRA was almost solely responsible for helping the Exodusters. The organization relocated the barracks across the river and outside the city limits on the property of John M. Brown.<sup>164</sup> The new buildings were built by the Exodusters, many of whom turned out to be excellent carpenters.<sup>165</sup>

The barracks contained a dormitory, a hospital, a commissary, a warehouse, and the offices of the KFRA. The KFRA quickly became a multifaceted organization. It distributed food and materials to needy Exodusters who lived in the barracks and around the city. Those housed in the barracks were required to find work as day laborers to help defray the cost of their stay in KFRA housing. As quickly as possible Exodusters were helped to find jobs around the state. Many were sent to newly formed agricultural colonies, but many found work in Topeka. The KFRA received myriad requests from small farmers for single female and male laborers, but since most of the Exodusters had

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<sup>161</sup> Senate Report, 290; Cox, *Blacks in Topeka*, 59.

<sup>162</sup> Cox, *Blacks in Topeka*, 59.

<sup>163</sup> Cox, *Blacks in Topeka*, 50-1.

<sup>164</sup> Cox, *Blacks in Topeka*, 60.

<sup>165</sup> Cox, *Blacks in Topeka*, 61. Those who worked to build the barracks were paid by the KFRA for their labor.

come as families those requests were difficult to fill. Many families, therefore, stayed in Topeka. Those who lived in Topeka established gardens and traded produce to the KFRA in exchange for clothing and other items. Numerous Exodusters were able to purchase small lots either on their own or through the KFRA, thereby rooting their families in Topeka. Most of those who took root in Topeka worked as laborers, and they were only able to find work for about seven months of the year.<sup>166</sup> It was around this period of great activity that the Scott and Knott clans arrived in Topeka.

While there are few records of the Scott family in Topeka, the Knotts were able to take advantage of the opportunities Topeka offered African Americans. They were active in both the political and civic life of Topeka, and their lives demonstrate how Topeka's turn of the century Black community kept to some of the old Southern ways while adapting to a world that allowed them more freedom and opportunity.

Martha Ransom Knott was more than the matriarch of her family; she was also a mother figure in the community. In Topeka, she likely began working as a housekeeper. However, records show eventually she was employed as the custodian of the Tennesseetown kindergarten. The students called her Aunty Ransom, and she was known to tell them stories about slavery in Tennessee.<sup>167</sup> Ransom worked at the kindergarten until she was at least eighty-five years old, and she lived to be ninety, passing away on a Sunday in September 1917.<sup>168</sup> She was laid to rest in the Ritche Cemetery which began

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<sup>166</sup> Cox Blacks in Topeka, 61-5.

<sup>167</sup> *Topeka Plaindealer*, August 11, 1911; Timothy Miller, *Following In His Steps: A Biography of Charles M. Sheldon* (Knoxville, TN: University of Tennessee Press, 1987), 52-54.

<sup>168</sup> "Choose List Janitors," *Topeka Daily Capital*, June 4, 1912; *Topeka Daily Capital*, October 2, 1917; *Topeka State Journal*, October 1, 1917; *Topeka Plaindealer*, October 5, 1917.

as a burial place for free state whites but became a mostly Black cemetery after the Exodusters arrival.<sup>169</sup> At least four of Ransom's children also migrated to Topeka. Her daughter Emma lived west of Topeka in nearby Paxico, Kansas. It was reported she and her husband were "very happy together" in their "beautiful home."<sup>170</sup> Hers was the quietest life of the Knott children. Ransom's other three children spent their adult years living and working in Topeka and each of them led a life that helps paint a picture of the city's African American community.

Born in Tennessee around 1866, Louis Knott spent forty-three years working as a firefighter in Topeka.<sup>171</sup> He was working as a fireman at least as early as 1890 in Topeka's single African American firehouse.<sup>172</sup> In his early days, Knott's position was driver.<sup>173</sup> In 1900, he was promoted to captain of the all Black fire company number three.<sup>174</sup> The Topeka fire department was segregated, but the city's fireman demonstrated they were a close fraternity when Knott was among the pallbearers for two white fireman who lost their lives fighting fires in 1891 and 1909 respectively.<sup>175</sup> He was also a pallbearer when

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<sup>169</sup> *Topeka Daily Capital*, October 2, 1917; *Topeka State Journal*, October 1, 1917; Ritchie Cemetery Project, "An Introduction to the Cemetery and the Project," <https://www.ritchiecemetery.com/> Retrieved February 9, 2023.

<sup>170</sup> "Paxico Notes," *Western Index* (Topeka Kansas), September 5, 1913.

<sup>171</sup> "Mrs. Carrie Knott," Undated Newspaper Article found at findagrave.com <https://www.findagrave.com/memorial/83692467/caroline-knott#source> Retrieved February 9, 2023.

<sup>172</sup> "A Lie Refuted," *Topeka Daily Capital*, February 1, 1890.

<sup>173</sup> "Open to Visitors: Fireman of Station No. 3 Have Refitted Their Quarters," *Topeka State Journal*, April 8, 1899.

<sup>174</sup> "Roundtree Fails: Makes Effort to Drag Fire Department into Partisan Politics," *Topeka State Journal*, August 16, 1900. He was also reported to have been promoted to captain in 1902, see *Topeka State Journal*, November 18, 1902.

<sup>175</sup> "Lewis Knott, Captain Fire Station No. 3," Undated Newspaper Article found at findagrave.com, <https://www.findagrave.com/memorial/68869804/louis-knott> Retrieved February 7, 2023. "George Carey's Funeral," *Topeka Daily Capital*, November 29, 1891;

Topeka's fire chief died in 1914.<sup>176</sup> He may have saved a fellow firefighter's life in 1915. When Claude Sherborn fell through a floor "Knott refused to wait for an oxygen helmet but plunged into the smoke-filled basement and dragged Sherborn out."<sup>177</sup> Politically he stayed out of the fray claiming as "a member of the fire department" the only political action he took was to vote.<sup>178</sup> His political leanings were revealed in 1903, when he was reported to be making a run for city council on the Socialist ticket.<sup>179</sup> The next day he publicly denied that he knew anything about his candidacy and asserted he was a Republican.<sup>180</sup> The closest he ever came to politics or socialism was serving as treasurer of the Topeka firefighters union.<sup>181</sup> In fact, he steered so far from politics that the *Topeka State Journal* stated his promotion to captain of his company was evidence that "politics have never been in the fire department."<sup>182</sup> If partisan politics ran in the family, Scott inherited his love for the Republican party from his uncle Rufus.

Rufus Knott's life in Kansas was unremarkable, but it was a good life for that reason. He was born enslaved in Tennessee around 1858.<sup>183</sup> It is not clear where he first lived in Topeka, but in 1899, he moved to 1203 Lane Street, less than a block from the

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*Daily Topics* (Topeka, KS), November 30, 1891; "George Carey Funeral," *Topeka Daily Press*, November 30, 1891; "Funeral of Geo. E. Carey: The First Death in the Topeka Fire Department," *Topeka Daily Capital*, December 1, 1891; "A Large Crowd Attends Funeral of Harry Jones," *Topeka Daily Capital*, September 29, 1909.

<sup>176</sup> "City Will Honor Dead Fire Chief," *Topeka Daily Capital*, February 14, 1914.

<sup>177</sup> "Fire Guts Store Causing a Loss of Over \$25,000," *Topeka Daily Capital*, March 4, 1915.

<sup>178</sup> "Louis Knott Denies It," *Topeka Daily Capital*, March 10, 1903.

<sup>179</sup> "Go Lewis One Better On Taxes—Urge Manual Training—Nominate Several Union Men," *Topeka Daily Herald*, March 9, 1903.

<sup>180</sup> "Mr. Knott Denies," *Topeka Daily Herald*, March 10, 1893; "Louis Knott Denies."

<sup>181</sup> "Snap Shots: At Home News," *Topeka State Journal*, July 12, 1922.

<sup>182</sup> "Roundtree Fails."

<sup>183</sup> *Topeka Plaindealer*, March 5, 1920; *Topeka Daily Capital*, March 10, 1920.



Scott family.<sup>184</sup> His status in Topeka and the advantages Kansas had over Tennessee are reflected in the fact that he was the first member of the family to serve on a jury in 1886, and he was selected to Topeka's jury pool several times over the years.<sup>185</sup> He was an active Republican, serving as a delegate to the state Republican convention several times and regularly giving speeches at ward meetings.<sup>186</sup> Rufus's political work made him one of very few Black Topekans to succeed in obtaining patronage jobs. He worked as a deputy constable for a short time in 1897, he was also a custodian at the Topeka firehouse, and the courthouse.<sup>187</sup> An unfortunate event in Rufus' life may have helped spark Elisha's interest in the law. In January 1908, while walking to work, Rufus fell on an iron culvert that had been damaged by a Topeka fire wagon a few days earlier. His injuries from the fall turned into a serious abscess leaving him unable to work; therefore, he sued the city for \$5,000 in damages.<sup>188</sup> The jury found in favor of the city due to

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<sup>184</sup> *Topeka Plaindealer*, May 26, 1899.

<sup>185</sup> "Juries for Next January," *Topeka Daily Capital*, December 1, 1895; *Weekly Capital Commonwealth*; (Topeka, KS), December 3, 1885; "A Charge of Murder," *Citizen* (Topeka, KS), May 31, 1886; "County Auditor's Report," *Topeka Daily Capital*, July 13, 1892; "County Auditor's Report," *Kansas Semi-Weekly Capital* (Topeka, KS), July 19, 1894; "Will Have No Talesman," *Topeka State Journal*, September 1, 1903.

<sup>186</sup> "The Third Ward," *Daily Commonwealth* (Topeka, KS), March 13, 1888; "The Primaries," *Topeka State Journal*, June 9, 1890; "Swan the Man," *Topeka Daily Press*, September 1, 1892; *Topeka Daily Press*, November 22, 1893; "All in Line: Republicans Have a Love-Feast, and all Cheer Harrison and Burgess," *Kansas Semi-Weekly Capital* (Topeka, KS), November 30, 1893; "A. Sternberg Orator," *Topeka Daily Herald*, April 5, 1904.

<sup>187</sup> *Kansas Semi-Weekly Capital* (Topeka, KS), May 28 1897; *Topeka State Journal*, July 19, 1897; "Price a Constable," *Topeka Daily Capital*, July 20, 1897; "Andrew Vester, Fireman," *Topeka Daily Capital*, January 15, 1899; *Topeka Daily Capital*, October 5, 1916; *Topeka Plaindealer*, March 5, 1920.

<sup>188</sup> "Files Claim Against City for \$5,000 Damages," *Topeka Daily Capital*, April 28, 1908; *Topeka State Journal*, April 28, 1908; "Rufus Knott Sues City," *Topeka State Journal*, June 9, 1908.

contributory negligence on the part of the plaintiff.<sup>189</sup> But nearly two years after he was injured, he managed to get a new trial.<sup>190</sup> At the conclusion of the second trial the jury awarded Rufus Knott \$2,000 in damages.<sup>191</sup> The County commissioners delayed paying him for nine months, but in October 1911, he was finally paid in full.<sup>192</sup> By then Rufus was working again, first for Arthur Capper's postcard company and then as a custodian and elevator operator in the courthouse.<sup>193</sup> He worked at the courthouse until he died in 1920 at the age of sixty-two.<sup>194</sup> It was a humble life but one that won Rufus great respect. The *Topeka Plaindealer* said he was one of the city's "most highly respected citizens."<sup>195</sup> His sister did not receive such accolades when she passed, but her life was fascinating.

Lucinda Knott Thompson made her living working with the sick and injured.<sup>196</sup> Whether she was an expert in home remedies, an early practitioner of therapeutic massage, a divinely gifted healer, a witch doctor, or a con woman was dependent upon who you asked. When she died, the city's premier African American newspaper, the *Topeka Plaindealer*, described Mrs. Lucinda Thompson as a "successful herb doctor."<sup>197</sup> White newspapers viewed her with much greater suspicion. She was always Aunt

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<sup>189</sup> "Negro Loses Suit Against City," *Topeka Daily Capital*, February 17, 1909.

<sup>190</sup> "Knott Case Again in Court," *Topeka State Journal*, December 6, 1910.

<sup>191</sup> "City Must Pay Knott \$2,000: Negro Janitor Given a Verdict for Personal Injuries," *Topeka State Journal*, December 8, 1905.

<sup>192</sup> *Topeka State Journal*, July 5, 1911; *Topeka State Journal*, July 8, 1911; *Topeka Daily Capital*, October 3, 1911.

<sup>193</sup> "The Roster," *Topeka Daily Capital*, December 30, 1910; *Topeka Plaindealer*, March 5, 1920.

<sup>194</sup> *Topeka Plaindealer*, March 5, 1920.

<sup>195</sup> *Topeka Plaindealer*, March 5, 1920.

<sup>196</sup> Thompson's first name was most often said to be Lucinda, but she was also referred to as Malinda and Melinda. See *Topeka Plaindealer*, November 8, 1901; 1895 Kansas State Census, Ward 2, Vol. 347, Section 1, Page 10.

<sup>197</sup> *Topeka Plaindealer*, November 8, 1901.

Lucinda or “Doctor” Thompson, and it was reported, “The mode of treatment used by...the alleged healer, is simple. She rubs that part of the body where the affection appears to be, and whatever influence she possesses is communicated to her patients in this way. They describe the touch of her hand as similar to a slight electric current.”<sup>198</sup> One observer stated, “she is a storage battery of animal magnetism, and coupled with a touch that is like velvet a person under her hands can hardly help feeling improved.” The same observer was quick to note, “She does not pretend nor does she possess any supernatural power...She comes from a race of people that cannot have the services of a skilled physician whenever any illness overtakes them and early she learned to make liniments, liver pills, blood purifiers, and general tonics. This may have come easy to her by reason of her natural intuition.”<sup>199</sup> Medical professionals were dubious of Thompson’s skills. Dr. S.G. Stewart stated animal magnetism was by definition “a superstitious power by which persons of strong will influence those of weaker will.” He compared Thompson to the German physician Franz Mesmer who according to Stewart, “worked on the imagination” not the body; therefore, some of his patients may have felt better for a time but only those with imaginary ailments were permanently cured.<sup>200</sup> The Dean of the Kansas Medical College was certain Thompson did not possess magnetic healing power. He stated, “this thing of magnetic healing is all a humbug.” However, he did admit

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<sup>198</sup> “Blind to See: Aunt Lucinda, the Healer of Pleasant Valley,” *Topeka State Journal*, July 22, 1897.

<sup>199</sup> “She Casts Out a Devil,” *Topeka State Journal*, July 23, 1897.

<sup>200</sup> “What is this Force: Called Animal Magnetism that Aunt Lucinda is Supposed to have—Dr. Stewart’s Opinion,” *Topeka State Journal*, July 29, 1897. For a good summary of Franz Mesmer’s career see Douglas J. Lanska and Joseph T. Lanska, “Franz Anton Mesmer and the Rise and Fall of Animal Magnetism: Dramatic Cures, Controversy, and Ultimately a Triumph for the Scientific Method,” *Brain Mind and Medicine: Essays in Eighteenth Century Neuroscience* (2007), 301-320.

massage was a viable treatment and that she might be as successful with it as any other practitioner.<sup>201</sup> Thompson claimed she was gifted with a power to diagnose and heal myriad ailments, and she was always willing to heal anyone who needed help whether they had money or not.<sup>202</sup>

Her willingness to provide her services without pay is corroborated by her living situation. She lived in a rickety little house in a neighborhood called Pleasant Valley between the starch factory and the Santa Fe Railroad shops.<sup>203</sup> The neighborhoods near the Santa Fe shops were inhabited by a mixture of immigrants from several countries and African Americans. Their proximity to all of the noise, smells, and bad air the industrial parts of town produced meant they were among the worst neighborhoods in Topeka. Living in such an area she likely encountered many people who needed medical help but did not have the means to see a doctor. And it may have been her willingness to help those in distress that first brought her to the attention of Topeka's authorities.

Thompson was arrested at least three times in connection with her work as a healer. Her first arrest in 1892 was in connection with an abortion. She and George Hess a Russian immigrant were arrested and charged with manslaughter for aborting a fetus belonging to Hess's seventeen or eighteen-year-old sister-in-law, Maggie Fleming, who had already given birth to a two-year-old child by Hess. Testimony revealed that Fleming had attempted to abort the fetus herself, but that Hess eventually strangled the child and buried it in a coal house. Mrs. Hess was the one who reported the incident to the County

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<sup>201</sup> "Casts Out Devil."

<sup>202</sup> "Casts Out Devil."

<sup>203</sup> "Fear Holds Sway: There is a Lunatic in Pleasant Valley," *Topeka State Journal*, October 21, 1897; "Aunt Lucinda Dead: Magnetic Healer Who Startled Topeka is no More," *Topeka State Journal*, November 2, 1901.

attorney, and she stated the dead child was also fathered by George Hess.<sup>204</sup> The *Topeka Daily Press* claimed, “(Thompson) has an unsavory reputation in this line.”<sup>205</sup> But she may have simply come to the aid of neighbors in distress, as she was not initially arrested, and she told the coroner’s inquest that Hess strangled the baby.<sup>206</sup> Newspaper reports do not state that Thompson was tried for her involvement in the case meaning the charges may have been dropped. While Hess was acquitted on the manslaughter charge, he was found guilty of a misdemeanor, and sentenced to six months in jail.<sup>207</sup> The *Daily Press* called the case “the most revolting on record.”<sup>208</sup> Despite the bad publicity, Thompson continued to work as a healer, and she continued to run afoul of the law. In May 1894, she was fined \$85.65 “for practicing medicine without a diploma;” and in September of that year she was acquitted of the same charge.<sup>209</sup> In the second case, the jury found she could assist her friends and neighbors with their ailments as long as she was only administering patent medicines in accordance with the instructions on the bottle.<sup>210</sup> But it is clear the people who overflowed her house and her yard and spilled into the street while they were waiting for her assistance were not looking for a nurse to administer over-the-counter remedies.

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<sup>204</sup> “An Ornerly Lot,” *Topeka Daily Press*, December 3, 1892; “Beneath the Coal: The Remains of a Prematurely Born Babe Unearthed,” *Topeka Daily Capital*, December 3, 1892. “The Hess Abortion Case,” *Topeka Daily Press*, December 19, 1892; “Held For Manslaughter,” *Topeka Daily Press*, December 20, 1892.

<sup>205</sup> “Held For Manslaughter.”

<sup>206</sup> “Beneath the Coal;” “Hess Abortion Case.”

<sup>207</sup> “Only a Misdemeanor: Finding of the Jury in the Hess Case—It is the Most Revolting on Record,” *Topeka Daily Press*, April 7, 1893; “Goes to Jail for Six Months,” *Topeka Daily Press*, April 11, 1893.

<sup>208</sup> “Only a Misdemeanor.”

<sup>209</sup> *Topeka State Journal*, May 28, 1894; “Lucinda Thompson Acquitted,” *Topeka State Journal*, September 15, 1894.

<sup>210</sup> “Lucinda Thompson Acquitted.”

Thompson's homespun methods were successful enough to bring her both fame and fortune toward the end of her life. She spent many years quietly helping those who believed in her abilities, and despite her previously mentioned run ins with the law, she lived a peaceful life. That changed in the summer of 1897, when the *Topeka State Journal* made her a local celebrity. Thompson's fifteen minutes of fame began when she claimed she could heal New York millionaire Charles Broadway Rouss's blindness. She stated that after hearing Rouss was offering a reward of one million dollars to anyone who could restore his sight, she had a vision that she would cure him.<sup>211</sup> Her offer apparently did not reach Rouss, but the *State Journal* dedicated two full columns of its front page to "Aunt Lucinda, the Healer" on July 22 and another two columns of page five on July 23.<sup>212</sup> The newspaper was clearly dubious of Thompson's claims that she had healed illnesses like consumption and jaundice, but the writer also lent Thompson credibility by listing the names and addresses of twenty-six of her patients and reporting that she was so busy she had to turn people away.<sup>213</sup> The July 23 article hyped her abilities by running the headline "She Casts Out a Devil" and describing how she brought a woman out of an epileptic seizure in front of a large crowd of people waiting to be treated in her front yard.<sup>214</sup> By September, she was so busy she had to hire a bookkeeper, and her appointments were booked solid for three weeks. She was also making money. She had already purchased a phonograph which was operated by another employee for the entertainment of the patients waiting in the yard, and she had plans to build a new home with more room to

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<sup>211</sup> "Blind to See." The article incorrectly spelled Mr. Rouss's last name Rouse.

<sup>212</sup> "Blind to See;" "Casts Out a Devil."

<sup>213</sup> "Blind to See."

<sup>214</sup> "Casts Out a Devil."

work.<sup>215</sup> She received so much attention that the *Atchison Globe* complained “This great fake hasn’t paid a cent for all her advertising, while, reputable physicians have had to pay.”<sup>216</sup> Regardless of what her detractors said, people believed Thompson got results and patients continued to pour in. Eventually she mortgaged her house with the intention of building a larger one, but she was almost immediately stricken with dropsy. Unable to work, she died penniless in 1901.<sup>217</sup> A few decades later her nephew would become so well known to people who felt they could turn nowhere else for help that he would receive letters addressed only “Colored Lawyer, Topeka, Kansas;” therefore, it seems appropriate that the last mention of Aunt Lucinda in a Topeka newspaper was an unclaimed letter addressed to “Dr. Lucinda Thompson.”<sup>218</sup>

Diana Scott did not make the newspapers nearly as often as her siblings, but she demonstrated skill, toughness, and resolve in raising four children without the help of their father. After Elisha’s father passed away, Diana was the head of the household and sole fulltime breadwinner. The family subsisted by doing the same kind of work they had done when they were enslaved. Diana made her living “washing” according to an 1898 census of Tennesseetown.<sup>219</sup> And the children helped out by delivering newspapers, selling coal, and herding cattle.<sup>220</sup> They received no aid from Shawnee County or elsewhere until Diana took sick in 1897. When healthy if she was typical of a female in

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<sup>215</sup> “To Have a Brass Band: Aunt Lucinda’s Business has Grown so Largely,” *Topeka State Journal*, September 3, 1893.

<sup>216</sup> *Atchison Globe*, quoted in *Topeka State Journal*, September 10, 1897.

<sup>217</sup> “A Miracle Worker Dead: Some Years Ago Aunt Lucinda Thompson was the Health Fad but She Died Poor,” *Topeka Daily Capital*, November 2, 1901.

<sup>218</sup> “Letters Uncalled For,” *Topeka Daily Herald*, December 27, 1902.

<sup>219</sup> Tennesseetown Census of 1898, MS. Coll. 201, oversize folder, Charles M. Sheldon Collection, Kansas Historical Society.

<sup>220</sup> John Scott, interview; Kluger, *Simple Justice*, 385.

Tennesseetown she could expect to make about \$3.22 per week (this is about \$116.06 per week today).<sup>221</sup> The 1898 Tennesseetown census lists both Diana and Carrie as being employed and states their estimated household income was \$250 dollars per year which was about thirty-eight percent less than the average Tennesseetown household.<sup>222</sup> Not surprisingly, the Scott house was humble. It had three rooms aligned in single file meaning you had to walk through each of the first two rooms to reach the room in the back.<sup>223</sup> Such houses are known as “shotgun houses.”<sup>224</sup> The house was missing most of its paint, had no fence, a few grapevines, two boxelder trees, and no flowers. It did feature a small vegetable garden, and the Scott’s owned it free and clear.<sup>225</sup> This was an important advantage, as by 1898, only about forty-two percent of Tennesseetown residents owned their own homes.<sup>226</sup> The Scotts, uncle Rufus Knott, and Martha Ransom kept vegetable gardens to supplement their diets. Their neighborhood was full of people who had to rely on subsistence agriculture; therefore, the small home lots of Tennesseetown were full of vegetable gardens, fruit trees, and livestock ranging from baby chickens all the way up to full grown cows.<sup>227</sup> The Scotts did not subscribe to any

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<sup>221</sup> Tennesseetown Census; Inflation Calculator <https://www.in2013dollars.com/us/inflation/1897?amount=3.22>, Retrieved February 14, 2023.

<sup>222</sup> Tennesseetown Census. The average income for a Tennesseetown household was \$399.27.

<sup>223</sup> Tennesseetown Census.

<sup>224</sup> Fiege, *Republic of Nature*, 326.

<sup>225</sup> Tennesseetown Census.

<sup>226</sup> Tennesseetown Census. Of households who answered the homeownership question sixty-four rented while forty-eight owner their homes.

<sup>227</sup> Fiege, *Republic of Nature*, 325.



newspaper, and their home contained nine books which was substantially less the thirty-nine books owned by the average Tennesseetown home.<sup>228</sup>

In its own simple way, Tennesseetown became a thriving community. Most residents worked as laborers, cooks or housekeepers. Though a few worked in skilled trades such as stonemasonry and carpentry.<sup>229</sup> According to one resident, the Exodusters had banded together “at the edge of town...and formed a colony—like people from another country.”<sup>230</sup> And Tennesseetown did become somewhat self-sustaining. As the population grew, several residents opened local businesses like dress makers and barber shops. Eventually, there were also illegal businesses such as brothels, gambling houses, and liquor sellers.<sup>231</sup> Tennesseetown’s residents were mostly Black and as of 1898 made up almost exclusively of the formerly enslaved, as was the case with Diana, or the children of the formerly enslaved, as was the case with Elisha and his older sisters. Few made it past the eighth grade in school with most stopping around fifth or sixth grade. Most could read and write, but about seventy-five of around 585 residents, nearly thirteen percent, were illiterate.<sup>232</sup> Spiritual life was always an important part of the lives of Tennesseetown’s residents, and spiritual beliefs were wide ranging. At least one white visitor complained that the typical Tennesseetown resident “still holds to many of the superstitious notions of the ante-bellum days. The reverence for voodooism is still strong among many of them especially the women. A good many of them believe in charms and

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<sup>228</sup> Tennesseetown Census.

<sup>229</sup> “Tennesseetown: A City,” Fiege, *Republic of Nature*, 325.

<sup>230</sup> Emma Crabb quoted in, Robert Swan, *The Ethnic Heritage of Topeka Kansas: Immigrant Beginnings* (Topeka, Kansas Historical Society, 1974), 68.

<sup>231</sup> Fiege, *Republic of Nature*, 325.

<sup>232</sup> Tennesseetown Census.

spells, and fetiches are even worn by the a few of the older ones.”<sup>233</sup> However, Christian churches were a pillar of the community from the beginning. By 1881, the African Congregational Church, and Shiloh Baptist Church were serving the community.<sup>234</sup> When Elisha was growing up the Scott’s were listed as members of the Congregational Church.<sup>235</sup> And Tennesseetown was only part of a growing African American community in Topeka.

By 1905, Topeka boasted an African American professional and entrepreneurial class that could rival any small American city of that time. That year the city featured seven Baptist churches, and four methodist churches. And churches were not the only collective organizations as there were three lodges of masons, two lodges of odd fellows, and several more fraternal organizations such as the Knights of Tabor. The city had four segregated elementary schools, and Topeka High School was not segregated. Furthermore, several Black children including Elisha Scott attended the Kansas Industrial Institute from first grade to twelfth grade. And those who received an education could expect to find work in Topeka. Six individuals were listed as “stone masons and contractors,” and another three were said to be “contractors and builders.” In terms of professional jobs there were four real estate brokers, four attorneys, four physicians, one dentist, and one undertaker. There was also a shoemaker, two coal dealers, and two blacksmiths. And there were numerous business owners. There was a Black hotel, two drug stores, fourteen grocery stores, eleven restaurants, and five barber shops. The city

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<sup>233</sup> “Tennesseetown: A City.”

<sup>234</sup> “Tennesseetown: A City;” “Laying the Corner Stone,” *Topeka Daily Capital*, August 27, 1881.

<sup>235</sup> Tennesseetown Census.

also featured three Black owned and operated newspapers. Most importantly, Topeka's African Americans were able to obtain civil service positions beyond teaching in the segregated schools. There was a Black deputy County treasurer, a deputy County attorney, a deputy County clerk, and a deputy Marshall in the city court. There were also four Black police officers, one sanitary officer, and, as noted, one of the city's fire stations was made up of only Black men.<sup>236</sup> Tennesseetown was the location of many of the aforementioned businesses and the home of many of the people who were beginning to create a Black middleclass in Topeka.

Elisha Scott's family had advantages over many of their fellow immigrants that may not seem obvious today but carried great value as they attempted to build a life in Topeka. The Knott's had valuable work experience, and it is possible both the Knotts and the Scotts came from Tennessee with enough money to help them establish stable homes in Topeka. Martha Knott Ransom worked as a housekeeper in Tennessee and Diana Knott Scott appears to have had some training in that area as well. Possessing domestic skills gave them a leg up over women who worked only as field hands in the South. According to one relief worker's estimate, two-thirds of the female migrants in Topeka had worked exclusively as field hands.<sup>237</sup> This meant they had no experience in sewing or housework, which were virtually the only areas in which women could hope to find employment in Topeka. Tennessee families may also have had an advantage in obtaining home building lots. Painter stated that the Kansas Fever Exodusters who caused the KFRA and its social aid programs to be created were almost exclusively from Louisiana, Mississippi, and

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<sup>236</sup> "Negroes' Progress in Topeka," *Topeka Plaindealer*, August 11, 1905.

<sup>237</sup> Senate Report, 363-64.

Texas.<sup>238</sup> They were also almost completely without money. Yet Tennesseetown was full of migrants from Tennessee and Mississippi who were able to purchase lots and construct their own homes. Many from Tennessee would have had more money than other migrants, as Pap Singleton insisted that he never brought anyone from Tennessee who did not have enough funds to give them a good start in Kansas. Records do not indicate who purchased real estate through the KFRA program that provided lots at cost, but many from Tennessee must have seized the opportunity to obtain a cheap lot. By obtaining real estate at cost through the KFRA the Tennessee immigrants were able to take advantage of a program constructed to benefit a more impecunious group of Exodusters. This explains why Tennesseetown was inhabited mostly by families from Tennessee during a period in which most immigrants were arriving from other states, and why most Tennesseetown families had enough money to own their own homes.

Another reason Tennesseetown eventually became the preferred location for Topeka's African Americans to live was because it had geographic advantages over other Black neighborhoods. Mark Fiege's environmental study of Topeka revealed elevation played an important role in the lives of Topeka's African American neighborhoods. All of Topeka's Black neighborhoods were low lying and, therefore, susceptible to severe flooding. In 1903, a major flood killed twenty-four Topekans, and fourteen of them were Black. Thus, fifty eight percent of the fatalities were suffered by a group that made up twelve percent of the population. Tennesseetown was more desirable than other Black enclaves for the simple reason that it was on higher ground; therefore, it was less apt to flood or become engulfed in the kind of mud that made life miserable. While

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<sup>238</sup> Painter, *Exodusters*, 184.

Tennesseetown's unpaved streets had mud problems, the aptly named Mudtown was bisected by Shunganunga Creek meaning, according to Fiege, water regularly "turned its unpaved thoroughfares into quagmires." Sandtown was also low lying, and it suffered more damage than any Topeka neighborhood in the 1903 flood. The Bottoms was the Black neighborhood lowest in elevation. Many of the poorest Exodusters settled there, and it became Topeka's poorest and most crime ridden slum.<sup>239</sup> As an adult, Scott who represented a multitude of bootleggers, drug dealers, prostitutes, and petty thieves would find a lot of work in the Bottoms. His daughter-in-law went so far as to call the neighborhood "a lawyer's delight."<sup>240</sup> If Scott ever considered the part geography might play in one's upbringing, he was undoubtedly thankful his parents settled in Tennesseetown.

While Tennesseetown had economic and geographical advantages over other Black enclaves, it was not a model neighborhood. Thomas Cox found that around the turn of the century "living conditions in Tennesseetown were substandard by any criteria." In fact, "the social and economic fortunes of Tennesseetown had not improved since the Exodus period." Unemployment, vice, and juvenile delinquency were high, and "there was a lively traffic in liquor."<sup>241</sup> The most noticeable characteristic of Tennesseetown was poverty. In 1895, the *Topeka State Journal* reported a trip through Tennesseetown would leave anyone "horror stricken to see the amount of suffering there is among the poorer class and especially the colored population."<sup>242</sup> While there is no evidence that looking in

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<sup>239</sup> Fiege, *Republic of Nature*, 326-27.

<sup>240</sup> Berdyne Scott, interview by unknown, November 24, 1991, *Brown v. Board of Education* Oral History, Part 4, Box 3, Kansas Historical Society, Topeka.

<sup>241</sup> Cox, *Blacks in Topeka*, 145.

<sup>242</sup> "Topeka's Poor," *Topeka State Journal*, January 14, 1885.

on the Scott's life in Tennesseetown would leave one "horror stricken," this was the environment in which Diana Scott raised Elisha and his sisters.

The history of Topeka demonstrates that Tennesseetown gained a crucial advantage when a white pastor who abhorred the drinking and vice that he witnessed in the Black neighborhood moved in next door. Charles Monroe Sheldon's Central Congregational Church overlooked Tennesseetown, and he was not one to stand by and watch others suffer. While many in Topeka saw the crime and vice in Tennesseetown and determined its residents were unredeemable, Charles Sheldon saw the same thing and determined its suffering residents must be redeemed. He made the redemption of Tennesseetown one of his life's priorities, and it was because of his interest in Tennesseetown that he became interested in Elisha Scott when he was just a boy. It is impossible to say where Scott's life would have taken him if Sheldon was not part of it, as he was a transformative influence on Scott. Sheldon was a spiritual role model, an educational benefactor, and a life-long mentor.

## CHAPTER TWO: MENTORS

One does not normally consider a child raised without a father, in a tough neighborhood, in a segregated city to be fortunate, but fortune put Elisha Scott in the right place at the right time. In his youth, he benefited directly from his local mentors as well as many community and progressive reform programs both religious and secular that sought to make the American dream available to everyone. In his prime years, he had the talent and education to make a difference. As he aged, he had the wisdom to be a fine mentor, and those he mentored went on to make a significant difference in American history. Scott never argued a case before the United States Supreme Court, but he was a mentor to key lawyers in two landmark civil rights cases. It is well known that sons John and Charles filed the original action in *Brown v. Board of Education*, the 1954 case that desegregated public schools. Less well known is the fact that Scott was a mentor to Loren Miller, a 1928 graduate of Washburn Law School who got his start in Scott's office.<sup>1</sup> Miller and an all-star team of NAACP affiliated lawyers won *Shelley v. Kramer* (1948) in which the Supreme Court declared judicial enforcement of racially restrictive housing covenants was unconstitutional. Scott was always willing to help anyone who wanted to work to improve themselves, as he benefited from excellent mentors in his early years.

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<sup>1</sup> James M. Concannon, *The Ideal Place for the Establishment of a Great Law School: History of Washburn Law School, 1903-2003* (Topeka: Washburn University School of Law Alumni Association, 2012), 594.

Scott's legacy was made possible by two key mentors: Dr. Charles Monroe Sheldon a white minister, and James H. Guy a Black lawyer. Because Scott is very much a part of their respective legacies, and he was greatly influenced by their support and advice, their stories are told in depth here.

Charles Sheldon, the minister of Topeka's Central Congregational Church was a religious social reformer par excellence. Young Elisha benefited from several social reform programs Sheldon instituted in Topeka. He was an active participant in Sheldon's Village Improvement Society, and he gained confidence from his successes in the Society's contests and experience from competitions like its declamation contests. Most importantly, even though Sheldon was not a wealthy man he was able to help Scott gain a fine education at the Tennesseetown kindergarten, Kansas Industrial Institute, and Washburn Law School. While it was the kindergarten, founded by Sheldon to help the African American residents of Topeka gain a leg up in education, that initially brought the two together, Sheldon helped Scott with his education all the way through law school. Scott did not forget Sheldon's generosity. He returned to the kindergarten many times over the years and named one of his sons Charles Monroe Sheldon. Pastor Sheldon hoped Scott would become a minister, but Scott chose a career in law.

Scott chose the law as a profession after coming under the guidance of James Guy, one of the only African American attorneys in Topeka. Guy gave Scott his start in the business, political, social, and legal worlds. And he was the perfect exemplar for the way to build a successful law practice under the constraints of Topeka's unique version of



Jim Crow. Guy began to mentor Scott when Scott started working for him at age fifteen.<sup>2</sup> Later Guy helped Scott obtain his first adult job in insurance sales, introduced him to Republican politics, and extended his invitation to Topeka's elite social circles. Most importantly, he introduced Scott to the legal profession. Guy taught him how to build a successful legal practice, and the two worked together until Guy's death. But the story of these important mentors begins with a world-famous reverend and his interest in helping people of all colors.

The Reverend Dr. Charles M. Sheldon combined a thirst for social scientific knowledge, with a gift for creative communication, and a fierce desire to do right by his fellow man. The result was a pastor who worked hard for his Topeka congregation but dedicated countless hours to helping the city's African American community, and actively sought to spread a gospel of social responsibility and love for one's fellow man to the Christian world at large. He was also a best-selling author, and Kansas's most prominent citizen during his time. According to his biographer Dr. Timothy Miller, Sheldon was "a dedicated social reformer, sometime critic of many features of organized religion, a champion of the rights of labor, minorities and women, a powerful spokesman for prohibition and pacificism (and) a prodigiously hardworking pastor."<sup>3</sup> Furthermore, Sheldon can be counted among the very few public figures with no demerits on his record. Miller stated, "I worked on this research for several years, and I just couldn't find

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<sup>2</sup> Faye Philip Everett, *The Colored Situation: A Book of Vocational and Civic Guidance for the Negro Youth* (Boston: Meador Publishing Company, 1936), 84.

<sup>3</sup> Timothy Miller, "Charles M. Sheldon and the Uplift of Tennesseetown," Undated, Files of the Kansas State Historical Society, Topeka.

any chinks in the armor...I couldn't find a single person who had known him and didn't like him.”<sup>4</sup>

Sheldon developed his ability to connect with all kinds of people at a young age as his father followed the calling to minister to congregations all over the country. The Sheldon's had deep New England roots, as Charles Sheldon's was the seventh generation born in America; however, he spent his youth crisscrossing the country. Sheldon was born in Wellsville, New York in 1857, but by the time he reached age twelve he was living on a ranch and attending public school in present day Yankton, South Dakota. It was at least the sixth Sheldon family home in five states and territories ranging from Rhode Island to Michigan to Missouri. His minister father's itinerant religious life followed a family tradition that saw his Puritan ancestors move first from Scotland to Northern Ireland and then to the recently formed colony of Massachusetts in search of freedom from religious persecution. Sheldon's family tree shows American roots that run all the way to statesman and Revolutionary War heroes Artemus Ward and Ethan Allen.<sup>5</sup> But Charles Monroe Sheldon would become a pastor and an ardent pacifist.

Always determined to follow his father to the pulpit, Sheldon returned to New England to pursue his education at Phillips Academy—a prep school in Andover, Massachusetts—followed by Brown University, and Andover Theological Seminary. Sheldon's deep American roots did not mean his family had money. He worked his way

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<sup>4</sup> “Book Traces Origin of Phrase in WWJD Movement to Topeka Minister, Social Activist,” <https://news.ku.edu/2015/04/24/book-traces-origin-phrase-wwjd-movement-topeka-minister-social-activist>, retrieved October 1, 2021.

<sup>5</sup> Timothy Miller, *Following In His Steps: A Biography of Charles M. Sheldon* (Knoxville, TN: University of Tennessee Press, 1987), 1; Charles M. Sheldon, *Charles M. Sheldon: His Life Story* (New York: George H. Doran Company, 1925), ix.

through all three institutions.<sup>6</sup> Most summers he was employed by resorts in places like Wolfboro, New Hampshire, and Narragansett, Rhode Island.<sup>7</sup> At prep school he worked as a janitor and shined shoes. At Brown he continued to work but also began to earn around half of his living as a writer for various Christian publications. He demonstrated his interest in all of his fellow humans when, while at Brown, he founded what he described as “the first Sunday School for Chinese laundrymen in America.” Miller speculated the laundrymen, who were isolated from everyone else in Providence, were probably more interested in learning English than religion, but thanks to Sheldon’s efforts they did so via the Bible verse.<sup>8</sup> It was at Andover Theological Seminary where Sheldon truly began to rely on writing as a means of support. There he learned to produce a large volume of work suitable for publication in magazines like *Youth’s Companion*.<sup>9</sup>

Sheldon’s time at Andover Seminary was a tumultuous period for the school. Andover had been “a bastion of Congregational and Calvinist orthodoxy” since it was founded nearly one hundred years before his matriculation.<sup>10</sup> However, when Sheldon was a student, Andover became known for evangelical liberalism. Evangelical liberalism was a doctrine that stressed, Jesus’s basic humanity and put an emphasis on loving one’s fellow man through self-sacrifice.<sup>11</sup> During his final year, a great controversy over what was called “second probation” arose within the school. The argument was about whether those who did not receive the message of Jesus Christ while on earth would be able to

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<sup>6</sup> Miller, *Following In His Steps*, 14.

<sup>7</sup> Sheldon, *Charles M. Sheldon*, 56; Miller, *Following In His Steps*, 13.

<sup>8</sup> Miller, *Following In His Steps*, 11-14.

<sup>9</sup> Miller, *Following In His Steps*, 14.

<sup>10</sup> Miller, *Following In His Steps*, 14.

<sup>11</sup> Ronald C. White Jr., *Liberty and Justice for All: Racial Reform and the Social Gospel 1877-1925* (San Francisco: Harper and Row Publishers, 1990), 30.

accept the word in the afterlife. This was of course an important question for the souls of people such as African natives who died having never been exposed to Christianity. Sheldon described it as a temporary dispute, but it led to a heresy trial against one of the progressive professors.<sup>12</sup> It was a debate that went back to John Calvin, but it represented a split in thinking that divided the old orthodox Calvinists and those who believed in a more Christocentric view of theology. Sheldon for his part always claimed he had no interest in theorizing, but he sided with the progressive interpretation. The key to the debate in his view was the recognition of Jesus Christ as a role model of self-sacrifice and love for all people. Sheldon saw Christ as a person of action; therefore, he was certain actively seeking to create change was the most important thing one could do. Theorizing wasted time that could have been spent improving the world as it stood.<sup>13</sup> Sheldon's gospel was a gospel of action.

To Sheldon active efforts at social reform were part of the duty of any good pastor. He firmly "believed in the social gospel goal of the establishment of the kingdom of God on earth."<sup>14</sup> That was of course a massive mountain to move. With that much work to do, theorizing and debating about the interpretation of scripture and the goals of the social gospel movement was a job for others. As far as Sheldon was concerned the social gospel was not an idea to be discussed; it was a mission to be accomplished. Rather than reflecting on the meaning of the concept; Sheldon did his best to live his version of the social gospel. He authored stories, preached sermons, and created programs with the goal of pushing humanity toward the kingdom of God on Earth. He

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<sup>12</sup> Sheldon, *Charles M. Sheldon*, 60-61; Miller, *Following In His Steps*, 14-15.

<sup>13</sup> Miller, *Following In His Steps*, 14-15.

<sup>14</sup> Miller, *Following In His Steps*, xi.

knew only action could move the world in a more heavenly direction; therefore, to the chagrin of his critics, he never bothered to explain what the kingdom of God on Earth might look like. He simply did all he could to move humanity in the right direction. As a result, Sheldon was the social gospel's "most successful popularizer," but scholars have rarely considered him one of its key figures.<sup>15</sup>

Though he had already achieved some success and fame as a writer Sheldon always felt the call to pastor to his own congregation. He had trouble finding work as a pastor because as a student from Andover Seminary he was associated with the liberal interpretation of the "second probation" controversy. This connection meant he was suspected of being a dangerous heretic—not a qualification sought after in a potential pastor.<sup>16</sup> Eventually he was offered both a full time position as a writer for a Christian magazine called the *Outlook* and a pastorship in Waterbury, Vermont.<sup>17</sup> Determined to follow his father in ministering to his own congregation, he decided to pursue a career as a pastor in Waterbury where he remained for two years before moving to Topeka to take over Central Congregational Church in 1889.<sup>18</sup> His first Topeka service was conducted in a tiny room on the second floor of a butcher shop. A church building was under construction, and the twenty-nine-year-old pastor would quickly build a church centered community and a legacy in Kansas.<sup>19</sup>

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<sup>15</sup> Miller, *Following In His Steps*, 137.

<sup>16</sup> Sheldon, *Charles M. Sheldon*, 63.

<sup>17</sup> Sheldon, *Charles M. Sheldon*, 63.

<sup>18</sup> Miller, *Following In His Steps*, 1; George T.B. Davis, "Charles M. Sheldon, Novelist," *Our Day* Vol. XVIII No. 3. (March 1899), Box 2 Writings—Articles, Charles Sheldon Collection, Kansas Historical Society, Topeka.

<sup>19</sup> Sheldon, *Charles M. Sheldon*, 81.

In Topeka, Sheldon combined a social scientific method of collecting and analyzing data with the parable telling method of Jesus Christ to make an indelible mark on the city, the country, and the world. Sensing that his sermons were not reaching his audience he spent three months conducting a sociological survey of the people of Topeka. He talked with as many people as he could from the city's most prominent doctors to the most down and out residents of Tennesseetown and the Bottoms. He shadowed many of them at their jobs even working together with some in an effort to put himself in their place.<sup>20</sup> Sheldon's research made him certain he and other men and women of the cloth were not reaching their audiences with the standard sermon. He chose to rethink how he defined the sermon. He stated, "I have enlarged my definition of the sermon to mean almost any conveyance by means of which whatever is Christian truth to me goes from me into the daily lives of my people."<sup>21</sup> That general idea led him to begin to create parables for his parishioners particularly his Sunday evening youth group which was mostly made up of students from nearby Washburn University. The stories were read one chapter per week beginning in 1891.<sup>22</sup> They proved a resounding success. Speaking of the original idea he said, "Christ used the short religious story in the shape of the parable, as the chief vehicle for conveying His ideas to the world. Why it has been so little used for advancing the kingdom since the dawn of Christianity, it is hard to explain."<sup>23</sup> Sheldon was certain the sermon story would catch on with other spiritual leaders. Furthermore, he stated, "It is merely returning to Christ's method of teaching by the

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<sup>20</sup> "Praise C.M. Sheldon," *Topeka State Press*, December 26, 1895.

<sup>21</sup> Davis, "Charles M. Sheldon," 74-75.

<sup>22</sup> Sheldon, *Charles M. Sheldon*, x.

<sup>23</sup> Davis, "Charles M. Sheldon," 75.

concrete instead of the abstract, the parable and story, instead of the philosophic discussion, and the former is a hundred-fold more effective than the latter.”<sup>24</sup> Sheldon, therefore, adopted a method of communication that followed in the footsteps of Jesus. This new method of preaching led him to invigorate a simple old question.

“What would Jesus do?” was a question Sheldon asked himself, then his Topeka congregation, then the world via his novel *In His Steps: What Would Jesus Do* which he first read to his Sunday evening Bible study group in 1896 and 1897.<sup>25</sup> The story and the question garnered immediate rewards with Sheldon’s congregation. In 1899, he reported, “In actual practice among many members of my own church this rule of conduct has led to a complete change of old habits and a renewal of discipleship based on the very teaching which Jesus meant his disciples to obey...The results are beginning to be felt and seen in the deeper spiritual life of the members, and the growth of all the Christian graces of active service.”<sup>26</sup> It was not long before *In His Steps* was a best-selling book. In the book, Sheldon had his characters live for one year in the way Jesus Christ would live if he were alive in a town based on late nineteenth century Topeka. The pithiness of the phrase and the genuine sentiment behind it has led it to consistently resonate with Christians for more than a century.

Charles Sheldon is still well known today because of the question “What would Jesus do?”. Since the late twentieth century “WWJD?” has become omnipresent in both religious and secular thought. It can be seen “on book covers, buttons, bracelets, blue

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<sup>24</sup> Davis, “Charles M. Sheldon,” 76.

<sup>25</sup> Sheldon, *Charles M. Sheldon*, x.

<sup>26</sup> Charles M. Sheldon, “Preface to Revised Edition to *In His Steps*,” *In His Steps: What Would Jesus Do?* (Chicago: Advance Publishing Co., 1899).

jeans, board games, bumper stickers, teddy bears, T-shirts, ties, key chains, coffee mugs, pencils, and even women's underwear."<sup>27</sup> But the most popular WWJD item is the bracelet. By the year 2000 an estimated 15 to 22 million bracelets were sold and sales continue today. The bracelets were first made by Janie Tinklenberg in Holland, Michigan. Inspired by Sheldon's book, she distributed them to children at her church for free. Before long manufacturers saw their profit potential and began to make thousands of the little bracelets with nothing more than "WWJD" on them. In 1997, Paul Harvey mentioned them on his radio show every day for a week, and the bracelets became a full-blown fad. Tinklenberg holds the registered trademark; therefore, she is legally the only person allowed to profit from the slogan, but she has never made a dime from WWJD merchandise. Instead, she has chosen to allow the message to spread without interference. A century earlier Charles Sheldon and his book traveled a similar path.<sup>28</sup>

Before WWJD bracelets were ubiquitous on Christian wrists, *In His Steps* was ubiquitous on Christian bookshelves. Pulitzer Prize winning writer Richard Kluger stated, the book "was in fact a quite badly written religious soap-opera, but it had a poignancy that pleased Reverend Sheldon's listeners."<sup>29</sup> And it resonated with the public. In one twelve-month period between 1898 and 1899 it was estimated the book sold over 300,000 copies.<sup>30</sup> In 1936, the *Saturday Evening Post* reported, *In His Steps* had sold about four times as many copies as any other book since 1875. Sales of Sheldon's book topped big

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<sup>27</sup> Daniel Shore, "WWJD? The Genealogy of Syntactic Form," *Critical Inquiry* 37.1 (2010), 1.

<sup>28</sup> "WWJD Bracelets (1990's)," Mortaljourney.com, accessed November 1, 2021.

<sup>29</sup> Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* (New York: Vintage Books, 2004), 384.

<sup>30</sup> Davis, "Charles M. Sheldon," 73.



sellers of the same time period such as *Ben Hur*, *Tom Sawyer*, *The Virginian*, and *Call of the Wild*.<sup>31</sup> By the time of Sheldon's death in 1946, it had sold twenty-three million copies—sales surpassed by only the Bible.<sup>32</sup>

The sad legacy of *In His Steps* is Sheldon, who surely would have used royalties from the book to benefit countless people, received virtually no money from its sales. A problem with the copyright brought him only a tiny fraction of the royalties the book should have earned. However, Sheldon speculated, the fact that the book had as many as sixteen publishers in the United States alone was probably a reason for its huge sales volume.<sup>33</sup> Furthermore, sales numbers fall short of capturing the influence of the book, as it was the kind of book that was read and passed along to another reader multiple times. When the book was originally put in print Sheldon stated books were usually too expensive; therefore, he insisted that it sell for ten cents and it did, but soon publishers who took advantage of the copyright problems were selling it for more, and he saw none of that money.<sup>34</sup> True to form, Sheldon's only complaint about the lost revenue was the fact that he received thousands of letters over the years from needy individuals asking for help he did not have the money to provide.<sup>35</sup>

Sheldon's actions demonstrate when he asked himself, "What would Jesus do?" one clear answer was reach across the color line and help the Exodusters and their

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<sup>31</sup> Gilbert Seldes, "Over The Tops", *Saturday Evening Post*, Vol. 208 Issue 41 (April 25, 1936), 20-21.

<sup>32</sup> "Rev. Dr. Sheldon, Noted Writer Dies," *New York Times*, February 25, 1946. The number of copies sold is difficult to discern with any certainty. Sheldon estimated the book had sold twenty-two million copies worldwide by 1925. See Sheldon, *Charles M. Sheldon*, x.

<sup>33</sup> Seldes, "Over The Tops," 21.

<sup>34</sup> "In and Out of Books: Historical," *New York Times*, May 7, 1961.

<sup>35</sup> Sheldon, *Charles M. Sheldon*, 103-04.

children. His Church was adjacent to Tennesseetown, and his original survey of Topeka and an in-depth census of Tennesseetown in 1898 convinced him of the need to create community programs in the neighborhood. Sheldon developed his outreach programs in Tennesseetown around the same time Jane Addams and Ellen Gates Starr were creating Hull House in Chicago, and his vision of community uplift was similar. He later wrote a book called *The Redemption of Freetown* that was a barely disguised version of the work in Tennesseetown. In its introduction he wrote, “The moment the churches, the Endeavor societies, the Christian disciples everywhere, put themselves into any unredeemed spot in any town or city or place, the miracle of redemption will begin.”<sup>36</sup> As he recruited volunteers to work in Tennesseetown, he preached to his congregation that being saved was just the beginning. Sheldon told them, “Salvation is a very small affair if we think it consists in a man’s singing hymns and clapping his hands while he shouts ‘glory! glory! I’m saved’...The first great desire of a man who has really been saved is to save the other man in the wreck.”<sup>37</sup> Tennesseetown essentially ran right to the front steps of his church, and Sheldon certainly considered it a wreck. His view of why it was a wreck was ahead of its time.

Sheldon’s initial examination of Tennesseetown confirmed the community was crippled by poverty and crime, but he refused to blame its residents; instead, he pointed his finger at rampant racism. This was a radical opinion during that period. He recognized the problems of crime and racism were mutually perpetuating, and, therefore, pushing one another around in an inescapable circle. According to Sheldon, the widespread crime

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<sup>36</sup> Charles M. Sheldon, *The Redemption of Freetown* (Boston: United Society of Christian Endeavor, 1898), 5.

<sup>37</sup> “My Brother’s Keeper,” *Topeka State Journal*, March 15, 1897.

in the Black parts of town made it easy for the white people of Topeka to dismiss African Americans as unworthy of their attention precisely because of their reputation for lawlessness and dishonesty. He recognized Tennesseetown's problems had their roots in racism. He noted, African Americans were never given the opportunity to obtain good jobs. And he unequivocally stated the people who needed reforming were mostly white. Sheldon wrote, "I do not have much hope of Christianizing the Negro until we have Christianized the Anglo Saxon. It is a present question with me now, sometimes, which race needs it more."<sup>38</sup> By 1895, the Topeka police acknowledged Sheldon's efforts were decreasing crime in Tennesseetown.<sup>39</sup>

Sheldon's willingness to blame racism for Tennesseetown's problems was revolutionary. According to Miller, "Sheldon was the first Topekan to enunciate, at least in public...that white racism kept blacks in menial, terribly underpaid jobs when jobs were available at all."<sup>40</sup> Sheldon was also ahead of his time in recognizing that programs for the uplift of minority groups would benefit from being run by members of the minority group. His village improvement society which is discussed in more depth later in this chapter was an effort to improve Tennesseetown via contests in gardening, housekeeping, and crafts. The contests became a fall tradition in Tennesseetown, and in 1901, Sheldon announced the society should be run by a committee elected from the people of Tennesseetown rather than the Congregational Church. The people of Tennesseetown did take over, and they ran the programs for many more years. Rufus

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<sup>38</sup> Miller, *Following In His Steps*, 49.

<sup>39</sup> "Praise C.M. Sheldon" A Topeka Divine Winning Fame by His Originality," *Topeka State Press*, December 26, 1895.

<sup>40</sup> Miller, *Following In His Steps*, 48.

Knott served on one of the original committees procuring vacant lots for those who did not have space to raise their own garden.<sup>41</sup> White reformers of that period could often be paternalistic toward African Americans and Sheldon was no exception. But his willingness to turn a program he worked hard to build over to the people it was meant to benefit demonstrates Sheldon recognized the people he was trying to help needed an opportunity, not a hand-out.

Sheldon's efforts in Tennesseetown made a difference for its residents and for the young white people who helped him carry out the work. He established a library, a literary society, sewing classes, a Sunday school, and some manual training programs among other things.<sup>42</sup> He carried out his work with the help of Washburn University students who were members of his church. *In His Steps* had originally been read to his Sunday night study groups which were composed of mostly Washburn students, and he continued to work closely with students when it was time for action. He wrote, "my young people worked at tasks that might and perhaps would have discouraged and appalled any group of grown folks. They walked and ran into places where angels were hard to find."<sup>43</sup> In fact, Sheldon "gave entire credit to his college students" for the congregation's work in Tennesseetown.<sup>44</sup> He was also certain the students who worked in Tennesseetown benefited greatly from the experience. Sheldon noticed this was most

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<sup>41</sup> "To Be Their Own Affair", *Topeka Daily Capital*, March 27, 1901; "Rev Sheldon's Work," *Topeka Plaindealer*, March 29, 1901.

<sup>42</sup> Leroy A. Halbert, *Across The Way: A History of the Work of Central Church, Topeka Kansas, in Tennesseetown* (January 1, 1900), 6-21. Charles Sheldon Papers, Box 3, Tennesseetown folder, Kansas Historical Society, Topeka.

<sup>43</sup> Sheldon, *Charles M. Sheldon*, 92.

<sup>44</sup> Roy Bird, *Washburn Through the Years* (Washburn University: No Publisher Listed, 1997), 51. It appears this book was published by the University but there is no mention of a publisher other than claiming the copyright for Washburn University.

evident when they joined the residents of Tennesseetown in singing gospel hymns at what he called “model” church services. He wrote, “I have often thought that in the singing of those songs where black and white in unison rose together in the heart of that American Africa, my young people without quite knowing how, came to feel the oneness of the human family more deeply than in all the work they did for the welfare of those brothers and sisters of ours of another color but of the same blood.”<sup>45</sup>

Sheldon also enlisted the help of Topeka’s professionals to provide needed social services. He organized physicians to provide free medical care, a lawyer for legal advice, and he persuaded his father-in-law to provide interest free loans to those in need. He even arranged for a Monday morning babysitting program so that Tennesseetown’s mothers could take time to do their laundry.<sup>46</sup> All of Sheldon’s efforts led others to help on their own by assisting the sick and the elderly and providing food and clothing for those in need.<sup>47</sup>

One of Sheldon’s more popular efforts at uplift was the Village Improvement Society which mainly ran a series of contests young Elisha and his sisters often participated in. The first contests were for things like the cleanest house and best garden. The idea was to bring a sense of community and pride to the ramshackle homes of Tennesseetown. It may be because of Sheldon’s contests that the little vegetable garden next to the Scott’s home was tended solely by the precocious Elisha. After Sheldon’s second gardening contest in 1899, an eight-year-old Elisha was commended for raising a

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<sup>45</sup> Sheldon, *Charles M. Sheldon*, 95.

<sup>46</sup> Miller, *Following In His Steps*, 60.

<sup>47</sup> Miller, *Following In His Steps*, 60.

“very credible crop” with no assistance from others.<sup>48</sup> Year two of gardening was more successful for the young Kansan. In 1900, at the ripe old age of nine, he won first prize for the best bushel of Irish Potatoes in a contest not divided by age group.<sup>49</sup> His sisters were also successful in the contests that year. In competitions divided by age group, Birdie won first prize in sewing and third prize in bread making, while Viola took second place in bread making.<sup>50</sup> The first member of the family to win a prize in one of Sheldon’s contests was Grandmother Martha Ransom who won third prize for the best garden larger than twelve hundred square feet in 1898.<sup>51</sup> Uncle Rufus Knott took home third prize for his garden in 1900, and won a granite teapot for second prize in “improvements and beautifying” in 1901.<sup>52</sup>

The contests were a verifiable success. After the first contest in 1898, it was reported, “all summer there has been noticed a growing improvement in the houses and yards of Tennesseetown.” Furthermore, many residents understood the improvements the contests created were more beneficial than the prizes that could be won. The *Topeka Daily Capital* stated, “Two of the winning contestants said that the improvements they had made in their yards was its own reward and turned their prizes back for the use of the Tennesseetown kindergarten.”<sup>53</sup> And Sheldon’s work made national news. In 1900, the

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<sup>48</sup> “Dr. Sheldon’s Work,” *Topeka Plaindealer*, October 20, 1899.

<sup>49</sup> *Topeka Daily Capital*, October 6, 1900.

<sup>50</sup> “Good Work of Village Improvement Society,” *Topeka Daily Capital*, October 6, 1900.

<sup>51</sup> “Much Improvement: Tennesseetown Is Being Slowly Transformed,” *Topeka Daily Capital*, October 19, 1898; “Prizes for Gardens: Awarded Residents of Tennesseetown by Rev. Charles Sheldon,” *Topeka State Journal*, October 19, 1898.

<sup>52</sup> “Good Work;” “Prizes Awarded: Tennesseetown Improvement Society Annual Meeting,” *Topeka State Journal*, November 20, 1901.

<sup>53</sup> “Much Improvement: Tennesseetown is Being Slowly Transformed,” *Topeka Daily Capital*, October 19, 1898.

*New York Times* reported, “To-day the habits and morals of the citizens of ‘Tennesseetown’ are vastly improved over the conditions existing before he began his crusade of enlightenment.”<sup>54</sup> By 1903, the *Topeka Daily Herald* asserted no area of Topeka had improved more in the recent past than Tennesseetown. The paper credited both Sheldon and its residents for the improvements. It was reported, “Tennesseetown has a prosperous look. Where formerly weeds grew...there are cane patches or corn fields or gardens. Where a few years ago there were a few old boards nailed together to represent a house is now a respectable little cottage.”<sup>55</sup> Competition was fierce in the contests that later came to include many activities beyond gardening and vocational work. In 1901, Elisha who before his twenty-sixth birthday would be called Kansas’s greatest African American orator entered Sheldon’s Tennesseetown Fair declamation contest and finished second out of three boys.<sup>56</sup> By that time he had benefited from Charles Sheldon’s efforts at racial uplift in a much more meaningful way.

Sheldon’s most lasting influence on the people of Tennesseetown was the kindergarten—the first kindergarten for African Americans west of the Mississippi.<sup>57</sup> Its influence on Tennesseetown and its lasting influence on Topeka makes the kindergarten one of his most important legacies. His study of Topeka in 1892 pointed to the need for a kindergarten in Tennesseetown. Therefore, Sheldon convinced some of Topeka’s most

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<sup>54</sup> “Mr. Sheldon in Topeka: Good Results of His Generosity to the Kansas Town,” *New York Times*, August 5, 1900.

<sup>55</sup> “Much Improved: Tennesseetown Residents Fixing Up Their Homes,” *Topeka Daily Herald*, October 8, 1903.

<sup>56</sup> *Topeka Plaindealer*, June 30, 1916; *Topeka Daily Capital*, November 17, 1901; “Prizes Awarded.”

<sup>57</sup> Miller, *Following In His Steps*, 51.

prominent citizens to contribute money and time to make the project a success.<sup>58</sup> The kindergarten demonstrated Sheldon's ability to connect with other churches, as it was originally a joint effort by Central Congregational and the Westminster Presbyterian Church.<sup>59</sup> The group also enlisted the help of Tennesseetown's children. They "got fifteen little darky boys and, with infinite labor, trained them to sing plantation songs...to raise money."<sup>60</sup> The reference to darkies and plantation songs reveals the paternalistic nature Sheldon's programs could project, and his efforts were initially resisted by the people of Tennesseetown. But Sheldon's intentions were always good, and the big, blue-eyed preacher always kept working until he won people over. Perhaps more importantly, the working people of Tennesseetown were in desperate need of child-care and soon took advantage of the kindergarten.<sup>61</sup>

The original location of pastor Sheldon's kindergarten slayed two philistines with one stone. It eliminated a notorious den of drinking and violence and provided much needed education and childcare. Tennesseetown kindergarten opened April 3, 1893, in a building, called Jordan's Hall that formerly housed one of Tennesseetown's most infamous dance halls.<sup>62</sup> Jordan's Hall was well known for dancing inside, fighting outside, and illegal liquor fueling the actions of both dancers and fighters. The location must have been particularly satisfying to Sheldon, as his first action in regard to

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<sup>58</sup> Halbert, *Across the Way*, 4.

<sup>59</sup> "A Help To Them: The Free Library and Kindergarten Hall Open Last Night—What Two Churches Have Begun and What They Aim to Accomplish for the Colored People," *Topeka Daily Capital*, March 16, 1893.

<sup>60</sup> Halbert, *Across the Way*, 4.

<sup>61</sup> "The Sheldon Uplift."

<sup>62</sup> Halbert, *Across the Way*, 4,6.



Tennesseetown was to encourage the police to raid Jordan's Hall as a distributor of intoxicating alcohol in violation of Kansas's prohibition law.<sup>63</sup>

Sheldon's hard work and genuine love for the children caused the kindergarten to grow rapidly. In September 1893, it was reported to have two teachers and twenty-five students with more children expected. At the end of the 1897 school year the kindergarten had sixty pupils.<sup>64</sup> By 1900, "scarcely any children in Tennesseetown of kindergarten age (were) not enrolled."<sup>65</sup> The children grew to love Sheldon who paid them many visits. One former student remembered, "He would talk to us and play with us, come shake hands with us. He was very generous...If everybody in the world was like him, why, it would be a good world."<sup>66</sup> On one occasion, when the students heard Sheldon was sick in bed, they brought him a get-well basket. The gesture so touched the pastor that he penned a poem in their honor.

My brother of whatever tongue or race,  
Whatever be the color of thy skin;  
Tho' either white or black or brown thy face,  
Thou art in God's great family—my kin.<sup>67</sup>

The kindergarten was a massive success both locally and nationally. It gained attention statewide with a successful band and international notoriety by demonstrating the skills of its pupils at two world's fairs. The Tennesseetown Kindergarten Band was made up of five- to seven-year-olds, but it could play pieces like "The Star-Spangled Banner," and even an original march composed by teacher June Chapman and some band

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<sup>63</sup> Miller, *Following In His Steps*, 49.

<sup>64</sup> *Topeka State Journal*, June 14, 1897.

<sup>65</sup> "Twenty-five Pupils," *Topeka Daily Capital*, September 24, 1893.

<sup>66</sup> Minus Gentry, quoted in Miller, *Following In His Steps*, 56-7.

<sup>67</sup> "The Sheldon Uplift."

members. The band played at events like the state teacher's convention, and featured cornets, bass horns, trombones, tambourines, triangles, cymbals, and drums.<sup>68</sup> Chapman also spearheaded a project in which members of the kindergarten parent-teachers club collected neck ties and fashioned a rug that the children sat on during story time. The ties came from distinguished men such as President Taft and Booker T. Washington.<sup>69</sup> The students often worked on crafts projects, and those projects brought the kindergarten international notoriety. In 1904, the children sent a large box of their crafts for judging at the St. Louis World's Fair. Their work won the silver medal in competition against other kindergartens worldwide.<sup>70</sup> The kindergarten repeated its second-place performance again in 1907 at the Jamestown Exposition in Norfolk, Virginia.<sup>71</sup> It was for these contests that the kindergarten was renamed the Sheldon kindergarten to avoid the misconception that the school was located in Tennessee.<sup>72</sup>

The kindergarten also led to long terms success for its graduates. In 1911, Sheldon and Scott were speakers at a celebration of the first kindergarten classes. It was announced, all of the early students had gone as far as high school with some still enrolled and some having graduated and moved on to college at Washburn.<sup>73</sup> In 1925, Sheldon bragged, the kindergarten graduates were "living in modern houses...on land that once was covered with shacks," and occupied "responsible positions as lawyers and doctors and public officials and are among the substantial citizens of the state."<sup>74</sup> The

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<sup>68</sup> "Colored Children Have Cornet Band," *Topeka Daily Capital*, October 20, 1912.

<sup>69</sup> "Kindergarten has Rug made Entirely of Ties," *Topeka Daily Capital*, June 2, 1912.

<sup>70</sup> "The Sheldon Uplift."

<sup>71</sup> Sheldon, *Charles M. Sheldon*, 93.

<sup>72</sup> "The Sheldon Uplift."

<sup>73</sup> "First Kindergartners In The School Again," *Topeka Daily Capital*, January 28, 1911.

<sup>74</sup> Sheldon, *Charles M. Sheldon*, 94.

legacy of the school itself survives today. In 1909, the Topeka Board of Education took the school over from the Congregational Church appropriating six hundred dollars per year for its administration.<sup>75</sup> In 1914, the kindergarten was moved into the Buchanan School; therefore, in a different form and under a different name Charles Sheldon's Tennesseetown kindergarten exists today.<sup>76</sup>

One important legacy of the Tennesseetown kindergarten was of course its most famous alum—Elisha Scott. The school must have seemed like a God send to Diana Scott who was a single mother of three children under the age of ten.<sup>77</sup> There was no question Elisha would attend the kindergarten, as his maternal grandmother Martha Ransom was the long-time janitor there.<sup>78</sup> Ransom was active in helping Chapman promote good habits in both parents and students through the school's home extension visit program. She was known as Aunty Ransom to the students, and she always visited the class on Lincoln day to tell students stories about life under slavery.<sup>79</sup> Heretofore, histories have reported it was through the kindergarten that Elisha became known to Sheldon, but it seems likely Martha Ransom let the pastor know about her gifted grandson. Regardless, it was Sheldon along with Elisha's family who helped him gain an education worthy of his bright mind. Sheldon saw in Elisha, who first enrolled in the kindergarten in 1895 or

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<sup>75</sup> "25 Bright-Eyed Pickaninnies In A Kindergarten," *Topeka Daily Capital*, May 16, 1909.

<sup>76</sup> "Demonstrating the Value of Play and Rythm (sic) in Physical Culture," *Topeka Daily Capital*, May 16, 1915.

<sup>77</sup> Kansas Census 1895 (Ward 2, Vol. 347, Section 1, Page 10). Diana may have had help from a relative as the 1895 Kansas Census lists a Carrie Knott age 14 as a member of the household.

<sup>78</sup> *Topeka Plaindealer*, August 11, 1911; *Topeka Daily Capital*, August 16, 1914.

<sup>79</sup> "The Sheldon Uplift"; Miller, *Following In His Steps*, 52-54. Both sources misspell the name "Ransome" as opposed to the correct Ransom.

1896, an intelligent young man with a verbal gift who may one day follow him to the pulpit. He helped Elisha then clad in ragged hand-me-downs to get some new clothing and with tuition to the Kansas Industrial Institute, a vocational school for African Americans.<sup>80</sup> Scott showed his appreciation for Sheldon's assistance when he named his third born, Charles Monroe Sheldon Scott in April 1921. It was high praise considering his first born was named Elisha Jr. and his second son was called John Jefferson after Scott's father. He stated, "I named my boy Charles Sheldon because I owe my education to Dr. Sheldon. I thought it proper to honor him by having his name in my family."<sup>81</sup>

Sheldon insisted he owed his legacy to his Topeka parishioners who gave him unbridled freedom to use the power of the church to benefit outsiders. In his autobiography he wrote,

The first thing I want to say about the church is a tribute to the perfect freedom it gave the minister. During my entire pastorate of thirty years...I doubt if any pastor ever enjoyed a greater sense of independence for speech and action than I had. And for that boon I have never ceased to feel grateful, for all things that combine to make the pastor of a church contented and ambitious I do not know of anything that equals his knowledge that he is not dominated or restrained by persons or conditions in the parish that place a suspicious or restricted circle about his preaching and his parish ministrations. I can truly say that for thirty years I never felt for one moment the slightest attempt on the part of any of my parishioners to interfere with new experiments or make theological boundaries for pulpit utterances. I do not believe there was ever a freer atmosphere granted any minister in any church in America than was given to me by my people.<sup>82</sup>

The freedom Sheldon cherished so much allowed him to cross the color line and make tangible improvements in the lives of Topeka's African Americans. Subsequent chapters

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<sup>80</sup> Kluger, *Simple Justice*, 385.

<sup>81</sup> *Topeka Daily Capital*, April 28, 1921.

<sup>82</sup> Sheldon, *Charles M. Sheldon*, 163-64.

will note how Elisha Scott was able to use that same freedom to zig zag back and forth across the color line in a way that allowed him to improve the lives of later generations of African Americans. But before he could help his race, he had to help himself by obtaining an education.

The Kansas Industrial Institute was so strongly influenced by Booker T. Washington it was called the Tuskegee of the West. By the time Elisha entered Kansas Industrial, Tuskegee was a word that required no explanation in the Black community. Washington started the Tuskegee Normal Institute in 1881 in a small African American church. The school's doors opened for the first time on Independence Day. The building was so rundown that on rainy days a student held an umbrella over Washington's head while he taught.<sup>83</sup> By the turn of the century, Tuskegee was a sprawling campus of brick buildings and a word synonymous with Black education in America. Topeka's "Tuskegee" had similarly humble roots. James Guy and other members of Topeka's Black elite were in support of its formation, but it was founded by a couple of local elementary school teachers. Therefore, the school was Washingtonian in its founding and in its goals. The intention was to follow the Tuskegee Institute in training African American students in agriculture and the trades. At its founding in 1895, the institute consisted of a kindergarten, a sewing school, and a reading room.<sup>84</sup> In 1900, Booker T. Washington himself became involved in the reorganization of the school. He installed a Tuskegee graduate named William Carter as Superintendent. Carter would hold that

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<sup>83</sup> Robert J. Norrell, *Up From History: The Life of Booker T. Washington* (Cambridge, MA: Harvard University Press, 2009), 44.

<sup>84</sup> Thomas C. Cox, *Blacks in Topeka, Kansas 1865-1915: A Social History* (Baton Rouge, LA: Louisiana State University Press, 1982), 152.

position until 1917 when he was replaced by George Bridgeforth, another Tuskegee man.<sup>85</sup> The school's reorganization was a benefit to Elisha and numerous others who would receive an education there, as it was alleged that before Washington's involvement the school only had around "a half dozen *bona fide* pupils," and poor leadership.<sup>86</sup>

In Elisha's formative years Booker T. Washington was the unquestioned unofficial leader of Black America, and his support helped transform Kansas Industrial Institute from meager beginning to a campus of brick buildings sitting high on a hill—much like Tuskegee. Born into slavery in the South, Washington's vision for African American success was focused more on survival and slow progress than radical change. However, his influence on and contribution to Black America in the late nineteenth and early twentieth centuries cannot be overstated. His work built a foundation of education and self-sufficiency that individuals like Scott used to advocate for civil rights as African Americans slowly crawled up from what Rayford Logan called the nadir. Washington was criticized by both his contemporaries and later scholars for pandering to the white upper class. He was also successful in raising funds from them for programs for the uplift of African Americans. This was true of his connection to Kansas Industrial.

After Washington associated with the Institute and installed Carter as superintendent, the school improved rapidly. The Kansas Industrial Institute of Elisha's early years held classes in a hay loft and required students to fetch water from an old well.<sup>87</sup> Elisha was still a student in 1903 when it was reported the Institute had added

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<sup>85</sup> Cox, *Blacks in Topeka*, 153-54.

<sup>86</sup> "Colored People Meet," *Topeka Plaindealer*, April 20, 1900. Emphasis on *bona fide* added by the original author.

<sup>87</sup> *Kansas City Plaindealer* (Kansas City, KS), July 9, 1943.

more faculty, new trades, new property, and new buildings. The improvements brought students from five neighboring states and increased enrollment so much that boys who lived on campus had to sleep three to a bed. The overcrowding problem was quickly solved by adding even more property and buildings.<sup>88</sup> Washington was so pleased with Carter's work that he was given the honor of delivering the commencement address at Tuskegee in 1905. By that time the school had sixty-eight students and it was forced to turn away another 120 due to a lack of facilities.<sup>89</sup> By 1917, the Institute was educating 143 boys and girls. The students farmed at least sixty-three acres of crops in order to raise enough food to support their dietary needs.<sup>90</sup> The school's growth was helped by state funding. In the years after Washington became involved, the school went from being poorly funded by charity to receiving an ever-increasing appropriation from the Kansas legislature. In 1918, it received \$35,050 in state funds, and in 1919, it became a state institution, fully managed and funded by the state board of administration.<sup>91</sup> However, during Elisha's years as a student he was required to pay tuition.

Paying tuition to Kansas Industrial was not easy for the Scott family as evidenced by reports that Elisha worked throughout his youth. As a child he consistently worked along with his sisters to help support the family. He, Birdie, and Viola still worked selling

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<sup>88</sup> "A Western Tuskegee at Topeka, Kansas," *Weekly Gazette* (Colorado Spring, CO), June 18, 1903.

<sup>89</sup> "Wm. R. Carter Honored: Topeka Man Will Deliver Graduate Address at Tuskegee," *Topeka State Journal*, April 15, 1905.

<sup>90</sup> "These Schools Utilize Every Foot of Ground," *Topeka Daily Capital*, March 23, 1917.

<sup>91</sup> "Money to Industrial Institute," *Topeka Daily Capital*, March 2, 1917.

coal even after Elisha entered Washburn Law School.<sup>92</sup> And from at least age ten, he sold newspapers.

As a Topeka newsboy Scott encountered J.E. Nissley the owner of a local creamery whose brand of social engineering combined progressive reform with cutthroat capitalism. As a way of promoting his business and helping young men like Elisha who had to work to help their families Nissley created a large community uplift program for Topeka's young newspaper vendors. Nissley was quarantined for scarlet fever in November 1897, when he took note of the ragamuffin newsboys outside his window. Assuming many of the boys would have no opportunity to enjoy a Thanksgiving feast, he set out to have one for them. A good social reformer had to be a good businessman in order to fund his work; therefore, Nissley was sure to let potential customers know via the *Kansas City Gazette* and *Topeka State Journal* that the owner of the new Kansas Creamery Company had "arranged to give the newsboys of Topeka a Thanksgiving dinner."<sup>93</sup> Seventy-five boys came to Nissley's first feast at a local restaurant where they ate turkey and cranberry sauce, with fresh buttermilk from the Kansas Creamery Company of course.<sup>94</sup> The local press reported, "The idea was a novel one in Topeka and Mr. Nissley began to love the pleasure derived from giving to the boys."<sup>95</sup> He would have also noticed the business benefits of his generosity. Nissley's feast was noted in several

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<sup>92</sup> John Scott, interview by Richard Kluger, August 18, 1969, MS 759, Box 5, Folder 90, *Brown vs. Board of Education* Collection, Yale University Library.

<sup>93</sup> "Dinner For Newsboys: J.E. Nissley of the Kansas Creamery Will Entertain Tomorrow," *Topeka State Journal*, November 24, 1897; *Kansas City Gazette*, November 25, 1897.

<sup>94</sup> "One Man's Work: What J.E. Nissley Has Done For the Newsboys," *Topeka State Journal*, December 8, 1900; "Dinner For Newsboys."

<sup>95</sup> "One Man's Work."



newspapers with the *Abilene Weekly Chronicle* complimenting him for his “practical christianity and a Christ-like way of showing one’s gratitude for blessings received.”<sup>96</sup> Nissley who had formerly been mayor of Abilene, Kansas, understood that good deeds and good business fit together like cream and sugar.<sup>97</sup>

Nissley also gave each boy the chance to learn important lessons in citizenship and business by earning a new suit of clothes. In exchange for the suits, the boys signed a pledge promising to meet with Nissley twelve times and to deliver him a newspaper for a designated two weeks.<sup>98</sup> They also promised to assist their benefactor in business by pledging, “I will eat Primrose butter and say a good word for it whenever I have the opportunity to do so.”<sup>99</sup> By providing each child with the opportunity to earn a new suit, Nissley satisfied a practical need and gave “the boys a chance to do something to make them have a sense of having earned something...give them a little responsibility,” and teach them to keep their promises.<sup>100</sup> The year after Nissley’s first Thanksgiving, he provided dinner and new suits to fifty-nine newspaper boys.<sup>101</sup> At Christmas time he gave out an additional fifty suits.<sup>102</sup> The boys also received caps with ribbons lettered in gold proclaiming them “Nissley’s Newsboys.”<sup>103</sup>

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<sup>96</sup> *Abilene Weekly Chronicle*, December 3, 1897; *Kansas City Gazette*, November 25 and 26, 1897; *Smith County Pioneer*, November 25, 1897; *Leavenworth Times*, November 25, 1897.

<sup>97</sup> *Abilene Weekly Chronicle*, December 3, 1897.

<sup>98</sup> “Real Philanthropy: Mr. J.E. Nissley’s Extraordinary Generosity to Newsboys,” *Topeka State Journal*, November 25, 1898.

<sup>99</sup> “Real Philanthropy.”

<sup>100</sup> One Man’s Work.”

<sup>101</sup> “Real Philanthropy.”

<sup>102</sup> “Topeka Newsboys Take The First Steps in Forming a Union,” *Topeka Daily Capital*, January 21, 1899.

<sup>103</sup> “Real Philanthropy.”

Not only were the newsboys taught capitalism they picked up some politics. Nissley sided with the Republican's progressive agenda, and his politics were passed down to the newsboys. A 1900 article in the *Topeka State Journal* noted, when one of Elisha's newsboy colleagues was asked what party and candidate he was for, he was quick to answer the Republicans and William McKinley. When asked why McKinley his answer was swift and certain, "Why, because Mr. Nissley is for him, and Mr. Nissley knows what is right."<sup>104</sup>

Nissley's brand of social engineering fit well with the social Darwinian views of the period. He was a generous philanthropist with one eye always on the future of American business. Good businessman that he was, Nissley was interested in creating a better future for society by creating better future capitalists. He recognized while at first glance the grubby newsboys appeared inconsequential, they were actually "part and parcel of the commercial world...a necessity" to everyone in need of current information. He noted, when he arrived in a new town the first thing he did was look for a newsboy to provide him the latest news. Providing a newspaper was, in his mind, similar to the service a policeman or taxi driver might provide, and he wanted the newsboys to understand he recognized their value.<sup>105</sup> He also recognized the newsboys' life in the streets could lead them to make the wrong choices, but the younger boys had less bad habits; therefore, they were more easily influenced toward a life as productive consumers and capitalists.<sup>106</sup>

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<sup>104</sup> "One Man's Work."

<sup>105</sup> "One Man's Work."

<sup>106</sup> "One Man's Work."

Elisha received his suit of clothes from Nissley in December 1900. Considering he was ten years old, growing, and rambunctious it likely did not last him long. The melding of social uplift and business Nissley modeled stuck with Scott for much longer. Newsboys generally purchased their own papers and collected their own debts. In that way each newsboy ran his own small business; thus, it was good training for a future in business—and Elisha Scott was a businessman from the time he carried newspapers to the time newspapers carried his obituary.

While his childhood was a financial struggle, at Kansas Industrial Institute Elisha flourished. At age sixteen he was said to be leading his class in the trades.<sup>107</sup> He showed his appreciation for the school as an adult by returning to speak to the students and donating money to support them.<sup>108</sup> While he was being educated in the trades, Elisha took advantage of local programs to further his education and experience. He delivered recitations and monologues at the Lincoln Street Congregational Sunday School, Second Cumberland Presbyterian Church, and St. John Church.<sup>109</sup> When he graduated with the class of 1909, he did not move directly into a career in law.<sup>110</sup> His talent and experience as a speaker made him an excellent fit for the insurance business.

Elisha went to work for the Knights and Ladies of Protection (KLP), a Black owned and operated fraternal order that sold insurance, even before he graduated from Kansas Industrial. He also went from Elisha to Mr. Scott in the process. In late February

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<sup>107</sup> *Topeka Plaindealer*, March 29, 1907.

<sup>108</sup> *Topeka State Journal*, April 23, 1921; “Hon. Elisha Scott Addresses Students and Faculty,” *Topeka Plaindealer*, October 10, 1919.

<sup>109</sup> *Topeka Plaindealer*, April 27, 1900; “An Anniversary Program,” *Topeka Daily Herald*, March 10, 1903; *Topeka Plaindealer*, March 29, 1907.

<sup>110</sup> *Kansas City Plaindealer*, May 17, 1940.

1908, at age seventeen he had his appendix removed, and it was reported he was in “critical condition,” but “doing as well as could be expected.”<sup>111</sup> However, as he would often in his life he bounced back and began making the newspapers as a successful salesman and recruiter for the KLP. By June, to the *Topeka Plaindealer*, he was “Mr. Elisha Scott...an enterprising young man and a credit to his race,” traveling for the KLP and signing up forty new members among the farmers of tiny Wabaunsee County alone.<sup>112</sup> As a fraternal insurance order the KLP sold memberships to customers that essentially acted as insurance policies “to come to the relief of its members in times of sickness and disability.”<sup>113</sup> Mr. Scott’s title was state organizer which meant he organized meetings to inform prospective members about the benefits of joining the KLP, sold memberships, and hired new agents to expand the business across the state.<sup>114</sup> He was a natural entertainer; therefore, speaking to large gatherings of prospective clients fit him like a tailored suit. With Scott traveling the state between 1911 and 1912, it was reported the company’s finances were “three times better.”<sup>115</sup> As part of the KLP business, Scott joined Attorney James Guy, who eventually served as President of the KLP, and other Topeka businessmen in forming the Fraternal Twenty-Two Club which served as the local branch of the KLP.<sup>116</sup> Scott had been working for Guy in one capacity or another since he was fifteen, and his close relationship with Guy led him to a career in law.<sup>117</sup>

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<sup>111</sup> *Topeka Plaindealer*, February 28, 1908.

<sup>112</sup> *Topeka Plaindealer*, June 26, 1908.

<sup>113</sup> *Topeka Plaindealer*, August 13, 1909.

<sup>114</sup> *Topeka Plaindealer*, August 13, 1909.

<sup>115</sup> *Western Index* (Topeka, KS), March 15, 1912.

<sup>116</sup> *Topeka Plaindealer*, August 13, 1909; “A Warning,” *Topeka Plaindealer*, October 21, 1910.

<sup>117</sup> Everett, *The Colored Situation*, 84.

Charles Sheldon saw in Scott a future great pulpit speaker, but Scott who would quote from the Bible liberally during his legal career was not meant to follow in Sheldon's steps. The influence of Guy led Scott to pursue a career in law. Guy himself had chosen a career in law rather than following three brothers and a brother-in-law to the Lord's work. He made that choice despite the fact that "at the direction of his parents he was prepared for the ministry" at Ohio's West Geneva College.<sup>118</sup> Therefore, he could lucidly speak to Scott about the advantages of choosing law as a career over a pastorate. Guy's social status and lifestyle would have also been enticing to the ever-ambitious Scott. Guy was well respected by both Black and white Topekans, and he made a good living as a lawyer.<sup>119</sup> In fact, Guy made a good enough living to allow some luxuries, the time and money to support numerous racial uplift programs, and the freedom to fight cases that would benefit African Americans even when there was little or no chance of pay. He was also one of the most respected African Americans in the community, and he was a power in Republican politics. By 1911, Scott was ready to pursue the law as a career and a vehicle for social change.<sup>120</sup> No record of Sheldon's reaction to Scott's choice has been found, but the minister who wanted to create the kingdom of God on Earth must have understood a Black lawyer could push society in the right direction. After all the mere presence of an African American lawyer in court forcefully contradicted the racist stereotypes that helped fuel and justify Jim Crow segregation and violence. From 1911 forward Scott's preaching would be directed at a congregation of twelve

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<sup>118</sup> "Concerning These Lawyers of Ours," *Topeka Plaindealer*, May 18, 1900; Ira O. Guy, *Directory of the Afro-Americans of Topeka, Kansas 1907* (Topeka: Trapp Printer, 1907), 19.

<sup>119</sup> "Concerning These Lawyers."

<sup>120</sup> Everett, *The Colored Situation*, 84.

jurors, and his role model and later partner would be the no-nonsense attorney with an office on Kansas Avenue.

James Henry Guy, known to friends and family as Jim, was born in Fayette County, Ohio in 1861. He attended public schools in Greenfield until age fourteen, then moved on to West Geneva College where he remained for five years. From about 1879 to 1882 he taught school full time and spent every second of his spare time reading law under the tutelage of William Lawrence a white Republican Congressman. But not everyone in the Ohio legal community was as helpful as Lawrence. In order to obtain his license to practice law, Guy had to comply with a new rule that required passing an examination before the State Supreme Court; therefore, he earned “from an unsympathetic coterie of examiners the right to practice law.” He practiced in Ohio for two years before moving to Topeka. He arrived carrying letters of reference from Lawrence and a prominent white judge named John A. Price, and he was granted the right to practice in the state and federal courts on the motion of two white attorneys. He first partnered with one of Topeka’s only Black Attorneys, W.I. Jamison at 247 Kansas Avenue. Shortly thereafter, he hung his shingle at 139 Kansas Avenue, advertising a general practice with specialization in collections, estates, and pensions.<sup>121</sup>

Guy was more than a mentor to Scott; he provided him with a blueprint for making a living and more importantly creating change in Topeka. In Guy’s day an

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<sup>121</sup> “James H. Guy,” *The Blue Book of Topeka 1910* (Topeka KS: The Biographical Research Association, 1910), 229; *Colored Directory: Information, History, Facts: Also Buyer’s Guide of the Best Business Places Appreciating Your Patronage* (1928), 107-08; *Kansas Farmer Mail and Breeze* (Topeka, KS), May 22, 1896; “Concerning These Lawyers”; *Topeka Tribune and Western Recorder*, December 20, 1884; *Topeka Tribune-Recorder*, July 25, 1885.

African American lawyer in Topeka knew who his paying customers were going to be; therefore, he needed to do certain things to cultivate them. The paying customers for a Black lawyer were largely made up of the Black middle and upper class of Topeka, African Americans from smaller towns without lawyers of their race, and people connected to the Republican Party. To appeal to Topeka's upper and middleclass African Americans, a lawyer needed to be civic minded and belong to the right clubs and social circles. To cultivate business outside of Topeka, a lawyer needed to get his name known by speaking at large gatherings throughout the state. To get business and patronage from the white Republican Party establishment, a Black leader needed to campaign tirelessly for Republican candidates and causes. Guy's example taught Scott to do all of these things and do them well. By the time he was mentoring Scott, Guy had nearly three decades of experience in the capital city.

He arrived in Topeka in 1884 without a penny, but after surviving what the *Topeka Plaindealer* called the "starvation period" he became a political and business leader as well as a must have guest at the parties of Topeka's Black elite.<sup>122</sup> Guy's place in the upper echelon of Topeka's African American community was cemented when, after less than a year in the city, he was given the honor of reading The *Emancipation Proclamation* at Topeka's big annual Emancipation Day celebration at Garfield Park.<sup>123</sup> He remained a must have speaker at Emancipation Day and Lincoln Day celebrations across the state for decades. In 1905, when the *Labor Champion* listed the leading lawyers in Topeka, Guy was the only African American mentioned. His profile stated,

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<sup>122</sup> "James H. Guy," 229; "Concerning These Lawyers."

<sup>123</sup> "Emancipation Day," *Topeka Daily Capital*, September 23, 1885.

“No question which involves study and application is too hard for him to decide, and we have no hesitancy in recommending our readers to this gentleman.”<sup>124</sup>

For a Black lawyer in Kansas speaking at social gatherings, churches, schools, and public events was part of the job. It was a way to get one’s name known, and to demonstrate skills as a speaker. At a time when the only way a lawyer could advertise was to pay for an ad in the newspaper, each public speech served as a job interview with prospective clients. Guy was a consistent speaker at public events large and small for decades. These events were often connected to politics and regularly drew big crowds. There was also an educational aspect to public speaking, and Guy was always willing to contribute to the betterment of his fellow citizens. Examples of his educational efforts include a public debate in Leavenworth in which Guy argued, “Resolved, that there is no Negro Problem” in America, a paper presented to parishioners at First African Baptist Church in Topeka entitled, “Our Homes as Seen Through Legal Glasses,” and a series of lectures at Kansas Industrial Institute on the law and courts of Kansas.<sup>125</sup> As a community leader Guy regularly advocated for the Republican Party, Booker T. Washington’s Negro Business League, and the National Association for the Advancement of Colored People (NAACP).

Even before he began practicing law, Scott took every opportunity he could get to speak at public and educational events. His work for the KLP often involved speaking to groups interested in joining the organization, and Scott’s ability as a speaker drew large audiences even in his early years. When the *Western Index* stated, “Scott is a gifted talker

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<sup>124</sup> “Leading Attorneys,” *Labor Champion* (Topeka, KS), November 3, 1905.

<sup>125</sup> *Leavenworth Standard*, December 30, 1885; *Topeka State Journal*, June 25, 1898; “Guy Closes Lecture Series,” *Topeka Daily Capital*, May 15, 1920.



and people delight to hear him,” it was a common compliment.<sup>126</sup> From his late teens forward, he was constantly in front of audiences; therefore, he was well known throughout African American Kansas before he argued his first case. Scott also followed Guy in speaking at Lincoln and Emancipation days as well as smaller gatherings like the “Eudora colored baseball team” picnic and doubleheader.<sup>127</sup> Educationally Scott spoke on a wide range of subjects. He gave an oration called, “The Perpetuity of the Constitution of the United States.”<sup>128</sup> He spoke at a conference in Hutchinson on “Training for Citizenship,” and “made a great hit” when he shared the lectern with the mayor of Kansas City, Missouri at the Western Baptist Convention.<sup>129</sup> When he spoke in defense of the Sherman Anti-Trust Act his opinion aroused a lively response. It was reported, “Scott thought for a while that he and his paper both would be laid under the table; but when Lawyer Guy came to his rescue he placed his glasses back over the end of his nose and felt satisfaction.”<sup>130</sup> In 1911, he echoed Guy, Sheldon, and Booker T. Washington when he spoke on the race problem at Lane Chapel in Topeka. Scott stated, “There is no race problem. The problem we have is an individual problem. It is my duty to make a law abiding citizen, to be honest, upright and respectable. I owe it to myself to develop my highest nature to the end that humanity be uplifted and God glorified; that is my problem.”<sup>131</sup> Scott would continue giving public talks throughout his life, and it was

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<sup>126</sup> *Western Index* (Topeka, KS), October 20, 1911.

<sup>127</sup> *Eudora Weekly News*, July 7, 1912.

<sup>128</sup> *Topeka Plaindealer*, December 20, 1912.

<sup>129</sup> *Hutchinson News*, December 26, 1915; “Mr. Elisha Scott And His Task,” *Western Index* (Topeka, KS), July 19, 1912; *Western Index* (Topeka, KS), July 26, 1912.

<sup>130</sup> *Western Index* (Topeka, KS), January 26, 1912.

<sup>131</sup> “An Individual Problem Says Scott: Eloquent Young Law Student Addresses Lane Chapel Sunday School,” *Western Index* (Topeka, KS), September 29, 1911.

Guy's blueprint he followed. In many ways it was impossible not to follow Guy's example, as his was a pioneering life.

Guy broke new ground in Topeka when he was named the city's first African American assistant county attorney in 1896.<sup>132</sup> He earned the position by displaying both political acumen and the courage to make his own choices. Having failed in a brief run for justice of the peace in 1895, Guy set his sights on the appointed position of assistant county attorney.<sup>133</sup> When Aaron Jetmore launched his campaign for county attorney in 1896, according to the *Topeka Plaindealer*, "every Negro politician in Shawnee County was supporting the other fellow, 'Jim' Guy hung his coat on his arm and canvassed the county for Aaron Jetmore, and was rewarded by being appointed deputy county attorney, with full charge of justice and city court cases."<sup>134</sup> The appointment of any African American to a government position was rare in Topeka. The one job the Black community could count on filling was justice of the peace, and it was an elected position. From sometime in the 1880s to 1915 one of the city's several justice of the peace positions was passed from Black attorney to Black attorney.<sup>135</sup> It was a minor position, but the ability to continuously hold on to it demonstrated some electoral power on the part of Topeka's African American community. The *Topeka Plaindealer* reported as Guy's term was expiring in 1900 that only two other African Americans served in appointed positions at the courthouse, one was a clerk and stenographer, and the other

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<sup>132</sup> "Jetmore's Assistants: Galen Nichols and James H. Guy to be Deputy County Attorneys," *Topeka State Journal*, December 3, 1896. The news even made the newspapers in Guy's home state of Ohio. "Some Race Doings," *Cleveland Gazette*, January 2, 1897.

<sup>133</sup> "Snapshots at Home News," *Topeka State Journal*, February 21, 1895.

<sup>134</sup> "Concerning These Lawyers."

<sup>135</sup> Cox, *Blacks in Topeka*, 139.

was a janitor.<sup>136</sup> Guy's assistant county attorney position carried with it a great deal of prestige, and the job was not merely a political plum, as Jetmore was allowed only two assistant County attorneys, meaning he depended on Guy to make the office run efficiently.<sup>137</sup> Guy's intelligence in obtaining the job and carrying out his duties opened the door for further political patronage. Before the next election a committee of Black voters demanded assurances from each candidate for county attorney that Guy would be replaced by another Black lawyer.<sup>138</sup> Their efforts were rewarded when he was replaced in 1901 by his former partner, W.I. Jamison.<sup>139</sup>

Guy's ambitions did not stop at the Shawnee County Courthouse—he actively sought a national office via a presidential appointment. After leaving the county attorney's office he made a push to be appointed Minister to Haiti by Theodore Roosevelt. Kansas's Black Republicans viewed the job as one the best national political appointments they could expect and felt they earned it through their fierce loyalty to the party. Furthermore, Roosevelt had mentioned his desire to recognize Western African Americans with patronage.<sup>140</sup>

The fight for the position is demonstrative of Topeka's rough and tumble politics. Black Topekans must have felt their chances for the appointment were good because an opponent for Guy soon emerged. Guy's competitor was Edward Stephens one of the two

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<sup>136</sup> "Negro Representation," *Topeka Plaindealer*, April 6, 1906.

<sup>137</sup> "Jetmore's Assistants."

<sup>138</sup> "Must Make Pledges: Colored Voters Expect to Corner County Attorney Candidates," *Topeka Daily Capital*, January 17, 1900.

<sup>139</sup> "Political Notes," *Topeka Plaindealer*, January 18, 1901; J. Clay Smith Jr., *Emancipation: The Making of the Black Lawyer 1844-1944* (Philadelphia: University of Pennsylvania Press, 1993), 499.

<sup>140</sup> "The Haytien Ministership: The Friends of James H. Guy Are Pushing the Claims of Kansas for That Office," *Topeka Daily Herald*, December 31, 1901.

schoolteachers who founded Topeka Industrial Institute. Stephens interest in the position may have been spite. In 1900, speaking before the Topeka Board of Education he stated, “the colored people of Topeka are the most corrupt set of people I ever saw.” Never one to suffer an insult to his community, Guy led a committee that publicly accused Stephens of a laundry list of transgressions including misappropriating institute funds, being “a user of intoxicants,” and customarily referring to African Americans as “niggers,” “darkies,” and “coons.” The committee stated taxpayer money should not be used to support the institute as long as Stephens was its director and threatened to pull community support if Stephens was not removed.<sup>141</sup> It is not clear what action was taken, but Stephens was not involved with the institute after 1900.<sup>142</sup> The earlier controversy notwithstanding, Stephens seemed perfect for the position in Haiti, as his mother was a native Haitian and he personally knew “some of the leading men on the island.” He even claimed to be a relative of the famous Haitian liberator Toussaint Louverture. And he was willing to go on the attack to gain the appointment. Stephens stated, not referring to Guy by name, that no one could stop politicians from supporting a “nincompoop nonentity,” but the people of Haiti would reject such a candidate as “Persona non grata.”<sup>143</sup> Stephens’s problem was the Republicans of Kansas not the people of Haiti were the ones who would be pushing Roosevelt for the appointment, and they favored Guy.

Guy’s active involvement in Kansas Republican Party politics gave him the clear advantage. The *Topeka State Journal* figured Guy had the edge because he was “more of

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<sup>141</sup> “Colored People Meet,” *Topeka Plaindealer*, July 20, 1900.

<sup>142</sup> Cox, *Blacks in Topeka*, 153.

<sup>143</sup> “Stephens A Candidate: Another Topeka Negro in the Race For Minister to Hayti,” *Topeka State Journal*, January 3, 1902.

a practical politician” and had already obtained “a large number of indorsements.”<sup>144</sup> The *Wichita Searchlight* stated, Guy’s “appointment to the position of minister to Hayti (sic) will be a just recognition of the loyalty of the colored voters of Kansas to this grand old party. Mr. Guy...is highly competent and will do credit as minster to Hayti: besides being indorsed by most of the prominent colored people of the state he also has the indorsement of most of the prominent white Republicans.”<sup>145</sup> The battle ended with a dud when Roosevelt informed Major G.W. Ford who had traveled to Washington D.C. to seek Guy’s nomination that the current minster would be retaining the position.<sup>146</sup> Guy never again publicly sought a national appointment, but his high place among Kansas Republicans was demonstrated by the support he received for the minister position. Furthermore, the fight with Stephens made something clear: an ambitious young Black man had better respect his race and his party.

Guy was too smart and too cantankerous to support the Republicans without fail, but he understood Kansas’s African Americans best opportunities lay with the party of Lincoln. Those who followed national politics as Guy did were aware the Democratic Party of his time had little respect for Black voters. South Carolina’s United States Senator Ben “Pitchfork” Tillman did not represent all Democrats, but he and a cadre of Southern Democrats held racist views that sought to eliminate African Americans from politics if not the entire country. In 1900, before the Senate, Tillman famously stated what he claimed to be the opinion of his entire region. Speaking of African Americans he said,

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<sup>144</sup> “Stephens A Candidate.”

<sup>145</sup> “James H. Guy Endorsed: *Wichita Searchlight* Says He Should be Appointed as Minister to Hayti,” *Topeka Daily Capital*, January 19, 1902.

<sup>146</sup> “Maj. Ford In Washington,” *Topeka Plaindealer*, March 28, 1902.

“We have never believed him to be equal to the white man, and we will not submit to his gratifying his lust on our wives and daughters without lynching him. I would to God the last one of them was in Africa and that none of them had ever been brought to our shores.”<sup>147</sup> One year later speaking to more than one-thousand Black and white Republicans in Topeka, Guy explained loyalty to the Republican Party was about survival. He stated, “You never heard of a colored man committing suicide and it is nearly as rare to hear of one voting the Democratic ticket.” The reason was simple, “I understand that some colored people have been offered jobs to vote the Democratic ticket. It has been my observation that the Democrats rarely have any jobs to distribute and when they do they keep them themselves.”<sup>148</sup>

Guy’s political focus tended to remain on the practical considerations of patronage and jobs; when he did oppose the Republican Party those concerns were at the forefront. In 1895, he joined with William Eagleson, an outspoken journalist and one of a handful of Topeka African Americans who identified as a populist, in an effort to form a separate Black political party in Topeka. The reason was a dearth of jobs provided by Republican office holders and a lack of support from the Party for Black candidates. There were 4,500 African Americans in Topeka, almost fifteen percent of the total population, and they could be counted on to support the Republicans. When Guy felt that support was being taken for granted, he put the party on notice.<sup>149</sup> When a sufficient number of jobs were not forthcoming Guy joined with Eagleson who was one of the only

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<sup>147</sup> “Speech of Senator Benjamin R. Tillman,” *Congressional Record*, 56<sup>th</sup> Congress, First Session, March 23, 1900, 3223-24.

<sup>148</sup> “Republican Rally at the Auditorium: 1,000 People There in Spite of Rain,” *Topeka Daily Capital*, March 30, 1901.

<sup>149</sup> Cox, *Blacks in Topeka*, 201, Table 1.

African Americans in Topeka who consistently resisted the Grand Old Party. Eagleson once wrote a cynical verse in his *Colored Citizen* lamenting the support the Republicans continually received from Black Voters. “‘Publican’ is my name ‘Publican’ till I die, I live and die in the ‘Publican’ faith, but eat no ‘Publican’ pie.”<sup>150</sup> At the new party’s organizational meeting Eagleson stated, “We always get left when it comes to offices which have any money in them... We had two negroes on the ticket here and they were cut out because the offices had salary or fees attached...but they did not forget the negro; Oh, no, they elected six negroes on the city central committee, positions that do not pay a dollar.” Guy concurred, “I think that nothing can be more advantageous to the colored people than an organization of this kind... This is the time to organize, not to talk.”<sup>151</sup> The group did not become a separate party but rather an organization known as the Independent League which by 1898 boasted twenty-one Kansas chapters with 1,834 members.<sup>152</sup> Guy’s involvement in the Independent League did not go much beyond the initial meeting. In less than eight months he was in Emporia stumping for the Republicans.<sup>153</sup> A year later his door knocking on behalf of Republican Aaron Jetmore earned him his appointment as Topeka’s first Black assistant County attorney.<sup>154</sup>

Guy’s activity in Republican politics followed a pattern of working to keep Black voters in line and seeing that very few of his race were rewarded when the Republicans won at the polls. In 1898, just three years after his flirtation with Eagleson’s separate

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<sup>150</sup> *Colored Citizen* (Topeka, KS), May 26, 1898.

<sup>151</sup> “They’ll Break Away: Colored People Will Form an Independent Political Party,” *Topeka State Journal*, March 26, 1895.

<sup>152</sup> Cox, *Blacks in Topeka*, 133.

<sup>153</sup> *Emporia Gazette*, November 2, 1895.

<sup>154</sup> “Jetmore’s Assistants.”

party, the *Plaindealer* reported Guy and a few others had won for the Republicans Black votes originally pledged to the Democrats through “eloquent and matchless oratory.” But when the political spoils were divided, “The other fellows got the offices, and the Negro, as usual, got plenty of promises.”<sup>155</sup> He would again flirt with forming a new organization in 1922 “whose primary function is to see that part of the political spoils is distributed among the Negro population,” but again it sought to work within the current system rather than form a new party.<sup>156</sup> In fact, it became another political league of Black Republicans again asking for a fair share of the patronage pie.<sup>157</sup> Guy knew the Republicans were the only real choice. As he stated it, they were “the only political party that has ever recognized that the colored man has any rights.”<sup>158</sup> White Republican leaders may have given more promises than pork to Topeka’s African Americans, but it was preferable to pitchforks.

Scott remained a loyal Republican all his life, and he supported the party’s agenda in Kansas and nationally. Even as politics changed, and his son’s teased him about his love of the GOP he stuck with the party of Lincoln.<sup>159</sup> And he was a dedicated and active

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<sup>155</sup> “Leading Negroes of the State,” *Topeka Plaindealer*, August 25, 1899.

<sup>156</sup> “Want Share of Jobs: Colored People Organize to Demand Political Recognition,” *Topeka Daily Capital*, May 7, 1922; “To Form Political Party: James H. Guy in Charge of Lincoln Day Club Plan,” *Topeka State Journal*, February 14, 1922. The organization became known as the “Progressive League”. T.W. Bell a well-known African American lawyer from Leavenworth was its first President. See “Colored Voters Stage Meeting in K.C. Soon: T.W. Bell President of Progressive League, Appoints Executive Committee,” *Leavenworth Times*, July 13, 1922.

<sup>157</sup> “For Political Club,” *Independence Daily Reporter*, March 2, 1922; Negro Politicians to Meet: Delegate Convention to be Held in Topeka on May 6, *Arkansas City Daily Traveler*, March 2, 1922.

<sup>158</sup> “Scores Democrats for Negro Discrimination,” *Topeka Daily Capital*, October 29, 1914.

<sup>159</sup> Charles Scott to Elisha Scott, July 14, 1944, RH MS 1145, Box 9, Folder 8, Kenneth Spencer Research Library, University of Kansas, Lawrence.



Republican. In 1936, Oscar DePriest who was the first African American elected to Congress in the twentieth century when he was chosen to represent Illinois's first district in 1928, started his campaign to regain his seat by distributing letters of support from a fellow Illinois politician and Scott.<sup>160</sup> Later that year Scott traveled all the way to New York and Pennsylvania to deliver speeches in support of Alf Landon's presidential candidacy.<sup>161</sup> In 1940, he published a holiday greeting in the *Plaindealer* that thanked Republicans for voting in the November election.<sup>162</sup> And the war did not change his politics. He was among the delegates in 1944 when Black Republicans met in Chicago to plan their postwar agenda in a meeting they claimed was "the first time in the history of the country when such a conference was...designed to be in the interests of the people, rather than in the interests of some political candidates."<sup>163</sup> In 1948, the *Baltimore Afro-American* stated, Scott had not missed a single Republican Party Convention in thirty years.<sup>164</sup> In 1952, he was listed among "prominent" Black Republicans who warned Dwight Eisenhower he would lose the Black Republican vote if he did not court it more aggressively.<sup>165</sup> But he was on hand to support Eisenhower at the convention in Chicago,

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<sup>160</sup> "Campaign Fund on Huge Scale: Former Congressman in Nation-Wide Drive for Finances," *Philadelphia Tribune*, February 13, 1936; "C.C. Spaulding Heads DePriest Fund Campaign" Ex-Congressman Waging Strong Fight to Come Back," *New Journal and Guide* (Norfolk, VA), February 15, 1936.

<sup>161</sup> "Elks, Masons In Pro-Landon State Group," *New York Amsterdam News*, October 17, 1936; "Kansas Republican Leaders Confer in East," *Philadelphia Tribune*, October 29, 1936.

<sup>162</sup> *Topeka Plaindealer*, December 27, 1940.

<sup>163</sup> A.N. Fields, "GOP Leaders Will Meet To Lay Post-War Plans," *Pittsburgh Courier*, January 29, 1944.

<sup>164</sup> "Capital Spotlight," *Baltimore Afro-American*, July 3, 1948.

<sup>165</sup> John L. Clark, "Leaders Warn GOP: 'Time Running Out,'" *Pittsburgh Courier*, October 11, 1952.

and when Eisenhower won the election, Scott attended the inauguration.<sup>166</sup> By then Republicans had been losing the Black vote in presidential elections since the days of Franklin Roosevelt, but Scott stuck with the GOP. His loyalty netted him little more than notes in newspapers.

Elites like Guy fared far better with the Republican Party than most of his race, and Scott followed his path; and, like Guy, his work for the Republican Party was never justly rewarded. Scott was never appointed to a patronage position as Guy was, nor did he receive great support in his one run for public office. The closest he came to a permanent Republican position was when he ran third in a four-person race for Attorney General billing himself “a friend to the working man” in the 1930 Republican primary.<sup>167</sup> His candidacy was popular among African Americans as he was well known by then. He was also helped by the fact that legendary coach E.J. Hawkins known as “the father of colored basketball” in hoops crazy Kansas was his campaign manager.<sup>168</sup> White newspapers were flabbergasted that Scott received more than seven thousand votes. It was noted, Scott won the vote in Phillipsburg despite their being “only one negro in town.”<sup>169</sup> The *Iola Register* stated, Scott carried many precincts because “thousands of people don’t know who they are voting for.” The *Collyer Advance* called Scott’s vote total “the best joke of the primary.”<sup>170</sup> The *Hiawatha Daily World* explained his success

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<sup>166</sup> “Convention Roundup,” *Cleveland Call and Post*, July 19, 1952; “They Attended the Inauguration!” *Pittsburgh Courier*, January 24, 1953.

<sup>167</sup> *Kansas Messenger* (Topeka, KS), July 24, 1930; *Topeka Daily Capital*, August 6, 1930; “Hawkins Opened Doors for Countless African Americans,” *Fort Scott Tribune*, January 19, 2013.

<sup>168</sup> “Elisha Scott for Atty. General,” *Kansas Messenger* (Topeka, KS), July 3, 1930.

<sup>169</sup> *Hiawatha Daily World*, August 8, 1930.

<sup>170</sup> *Collyer Advance*, September 4, 1930.

by claiming people thought “they were voting for Chas F. Scott, white editor, who ran for governor two years ago.”<sup>171</sup> The almost total lack of success among Kansas Black candidates before World War II demonstrates the newspapers may not have been wrong; however, Scott’s consistent work on behalf of the Republican Party and his widespread fame by 1930 likely won him more than a few white votes. He had after all been prominent in Republican politics for eighteen years by then.

Scott’s first documented speech on behalf of the Republicans was in April 1912, when he spoke to a mixed audience at a law school Taft club meeting.<sup>172</sup> That summer he “stumped the state” organizing on behalf of incumbent Republican Senator Charles Curtis.<sup>173</sup> And that fall he supported Arthur Capper for Governor as President of the “Colored First Voters Club” despite lamenting his “alignment with the Progressive national ticket” with a promise to “elect the Republican candidate.”<sup>174</sup> Curtis was reelected to the Senate, while Capper would have to wait until 1914 to win the gubernatorial race. In 1914, Scott became President of the Young Men’s Republican Club and once again campaigned for Republican candidates.<sup>175</sup> In Winfield, it was reported Scott was “one of the talented young men of his race,” and the *Topeka Plaindealer* noted he was already “one of the state’s best political ‘spell binders,’” and mentioned he gave “two splendid lectures” in Marion that would “bear good fruit.”<sup>176</sup> By 1916, he was a

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<sup>171</sup> *Hiawatha Daily World*, September 11, 1930.

<sup>172</sup> “Opposition to Recall at a Taft Meeting,” *Topeka Daily Capital*, April 25, 1912.

<sup>173</sup> *Western Index* (Topeka, KS), August 2, 1912.

<sup>174</sup> “Colored First Voters For Taft and Capper,” *Topeka Daily Capital*, October 14, 1912.

<sup>175</sup> “The Young Men Republican Club,” *Western Index*, March 6, 1914; *Arkansas City Daily News*, October 17, 1914.

<sup>176</sup> *Winfield Daily Courier*, October 15, 1914; *Topeka Plaindealer*, October 23, 1914; *Topeka Plaindealer*, July 24, 1914.

delegate representing the sixth ward at the Republican County caucus, and a delegate for Shawnee County at the Republican state caucus.<sup>177</sup> The *Plaindealer* noted he already had a reputation for fearlessness and stated, “We believe he will enter the fight to secure recognition for the race before that body.”<sup>178</sup> Scott’s early Republican activities culminated shortly after he passed the bar exam in 1916. Before a large crowd at the Topeka Auditorium, Governor Capper introduced Scott as “the greatest Negro orator in the state of Kansas.” Scott used his time at the podium to attack democrats, advocate for greater opportunities for African Americans, and condemn segregation especially in Woodrow Wilson’s White House. Finally, he reminded the mixed audience that African Americans had fought to protect the flag, but the flag did not protect them in every state of the Union.<sup>179</sup> Scott had learned much from Guy. An African American leader in Topeka needed to be a political leader. He or she also needed to be prominent in social circles.

As one of the community’s leaders in politics Guy was naturally among Topeka’s most prominent social guests. As often as he made the newspapers for political and legal work, he was reported upon in Topeka’s Black society columns. Gossip in ink columns like “In the Best Colored Circles” were sure to note when he was a dinner guest or what was happening with the Pleasant Hour Literary Society of which he was President or the Interstate Literary Association where he served as a member of the executive committee

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<sup>177</sup> “Sixth Ward,” *Topeka Daily Capital*, February 18, 1916; *Topeka Plaindealer*, March 17, 1916.

<sup>178</sup> *Topeka Plaindealer*, March 17, 1916.

<sup>179</sup> “Atty. Elisha Scott in the Limelight!,” *Topeka Plaindealer*, June 30, 1916.

before being elected President in 1904.<sup>180</sup> The latter was said to consist “of the most intellectual and highly educated class of citizens in the West,” and it was a Topeka born organization having been founded by Fred Roundtree a former Exoduster and later Principal of Monroe Elementary, and Fifth Ward Councilman.<sup>181</sup> When famous outsiders came to Topeka, they were often guests in the Guy household. One example was Assistant U.S. Attorney General, W.H. Lewis who visited in 1912 at a time when the former Amherst and Harvard football star from Boston was said to be the highest-ranking government official of his race in the country.<sup>182</sup> Lewis, however, was not Guy’s most famous visitor—Booker T. Washington was a dinner guest on his visit to Topeka in 1905.<sup>183</sup>

Guy’s wedding to Miss Ella M. Glenn an Oberlin College graduate originally from Oberlin, Ohio and a teacher at Lane Elementary School was Topeka’s Black society event of 1895.<sup>184</sup> Rumors about the wedding swirled around town for weeks before the couple was finally married.<sup>185</sup> In mid-August Topeka newspaper the *Kansas Farmer and Mail and Breeze* stated the wedding would happen that fall “in the best colored circles of

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<sup>180</sup> *Kansas Blackman* (Topeka, KS), November 18, 1894; *Kansas City Gazette*, December 9, 1885; “James H. Guy Elected: Topeka Negro Will be President of Colored Literary Association,” *Topeka Daily Capital*, December 30, 1904.

<sup>181</sup> “James H. Guy,” *Topeka Plaindealer*, January 6, 1905; *Atchison Daily Globe*, December 27, 1913; Cox, *Blacks in Topeka*, 124 and 176.

<sup>182</sup> “Lewis Pleases Topekans! White and Black Feel Honored by his Presence—Emancipation Day Speech a Classic,” *Topeka Plaindealer*, August 9, 1912.

<sup>183</sup> “Washington In City: Noted Colored Educator Arrived at 1 O’clock,” *Topeka Daily Herald*, January 17, 1905.

<sup>184</sup> “In the Best Colored Circles,” *Kansas Farmer and Mail and Breeze* (Topeka, KS), August 16, 1895; *Topeka State Journal*, July 22, 1895.

<sup>185</sup> “Attorney Guy to Wed: Will Lead Miss Ella M. Glenn to the Altar in September,” *Topeka Daily Capital*, July 28, 1895.

the city.”<sup>186</sup> According to the story, “the whole absorbing question that has permeated the minds of all who know the contracted parties” was coming soon. It would be “the event of the autumn dawn being broken by its brilliancy.”<sup>187</sup> The big day came Tuesday September third at 8 p.m. It was the first marriage ceremony at the new St. Simon Episcopal Church. Over one hundred guests came from multiple states to see the bride in “a beautiful gown of white” with gloves and slippers.<sup>188</sup> The evening was topped with a reception at the Topeka Avenue home of a local doctor and his wife.<sup>189</sup> Scott was five years old when the Guy’s wed, but they would eventually introduce the former rag-tag kid from Tennesseetown to the elite social circles in Topeka’s Black society.

Particularly in Guy’s era most of a Black attorney’s business came from Topeka’s Black elite and middleclass; therefore, it was important for a lawyer to operate in those circles, and Guy helped Scott to achieve social success. Scott’s legal career would see him move beyond dependance on Topeka’s elite and middleclass, but it was important as he began his career to make connections with Black professionals. One clear marker of status in Topeka was membership in the Interstate Literary Association of which James Guy was elected President in 1904 and Ella Guy was elected President in 1917.<sup>190</sup> As noted, it was billed as an organization of elite African Americans from throughout the west, and it was founded by fifth ward councilman Fred Roundtree. Scott made his first presentation to the association in 1912, and he made the newspapers for talks in 1915 and

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<sup>186</sup> “Best Colored Circles.”

<sup>187</sup> “Best Colored Circles.”

<sup>188</sup> *Topeka Daily Capital*, September 8, 1895.

<sup>189</sup> *Topeka Daily Capital*, September 8, 1895.

<sup>190</sup> “James H. Guy Elected;” “Interstate Literary! Many Prominent Men and Women Attend,” *Topeka Plaindealer*, January 5, 1917; *Topeka Daily Capital*, December 28, 1917.

1916 as well.<sup>191</sup> He also connected with Kansas' elite women by speaking to the Kansas State Federation of Colored Women's Clubs in both Topeka and Kansas City.<sup>192</sup> In his early twenties Scott began to make Topeka's society pages.<sup>193</sup> One blurb mentioned he served a "two course dinner at his beautiful home," and noted, his three female guests "declared him an ideal host."<sup>194</sup> As always, his family was there to help him as he tried to climb the social ladder. His sister Viola served as hostess for dinner parties at the Lane Street house.<sup>195</sup>

In 1913, he was honored by the family when his niece named her baby Elisha.<sup>196</sup> By that time Scott had earned the respect of his family through his hard work and dedication to improving their prospects. They knew better than anyone he had worked for all of the accolades he received.

Scott, who had been working to help the family since he was a small child continued to work for his own support as a student at Washburn. Anecdotal evidence points to Sheldon as his benefactor, and Scott certainly received aid from him. But Sheldon did not possess the kind of wealth that would allow him to write a blank check for the support of anyone, and Scott's activity during his Washburn years demonstrate he was not a prodigal son on scholarship. When Scott publicly announced his intention to

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<sup>191</sup> *Topeka Plaindealer*, December 20, 1912; "A Colored Convention," *Hutchinson News*, December 28, 1915; "Interstate Literary Sessions On: Three Hundred and Fifty Delegates Are Expected to Attend Meetings Today," *Topeka Daily Capital*, December 28, 1916.

<sup>192</sup> "Federation of Women Clubs: Held Interesting Session at Second Baptist Church Wednesday and Thursday This Week," *Western Index* (Topeka, KS), June 21, 1912; *Topeka Plaindealer*, June 26, 1914.

<sup>193</sup> *Topeka Plaindealer*, March 15, 1912; *Topeka Plaindealer*, June 7, 1912.

<sup>194</sup> *Topeka Plaindealer*, August 20, 1915.

<sup>195</sup> *Topeka Plaindealer*, November 15, 1912.

<sup>196</sup> *Topeka Plaindealer*, March 14, 1913.

attend Washburn Law School he noted, his appointments for the KLP would have to take place between Friday night and Sunday night.<sup>197</sup> He was constantly at the service of the KLP somewhere: a trip to Bethel to pay a death benefit, a banquet in Kansas City, a speech in Fort Scott, a lecture in Osage City, then on to Bonner Springs, guest of honor at a banquet in Carbondale, back to Kansas City on business, in Parsons for a lecture and so on.<sup>198</sup> He never stopped. In the fall of 1912, he traveled all the way to Chicago on business twice. On the second trip he stopped to make speeches in Springfield, Illinois, on his way home.<sup>199</sup> He spoke so often that in 1913 he had to have throat surgery.<sup>200</sup> Two weeks later he was back on the road speaking on behalf of the KLP.<sup>201</sup> If the newspapers were not also full of his activity as a student and Republican campaigner one would think all of his time was spent on KLP business. In fact, Scott spent five years at Washburn, graduating in 1916, meaning his study of law was part time.<sup>202</sup> The five year time period may also have been because Scott interrupted his studies when he relocated to Muskogee, Oklahoma for a brief time in the fall and winter of 1913 and 1914 to work for “a big land syndicate.”<sup>203</sup> Scott worked so much during his Washburn years he even spent Christmas day, 1911 in Kansas City on business.<sup>204</sup>

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<sup>197</sup> *Western Index* (Topeka, KS), February 3, 1911.

<sup>198</sup> *Western Index* (Topeka, KS), November 3, 1911; *Western Index* (Topeka, KS), August 4, 1911; *Western Index* (Topeka, KS), September 6, 1912; *Western Index* (Topeka, KS), May 11, 1912; *Western Index* (Topeka, KS), March 22, 1912; *Western Index* (Topeka, KS), November 22, 1912; *Western Index* (Topeka, KS), May 2, 1913.

<sup>199</sup> *Western Index* (Topeka, KS), September 20, 1912; *Topeka Plaindealer*, September 27, 1912; *Western Index* (Topeka, KS), October 25, 1912; *Topeka Plaindealer*, November 8, 1912; *Western Index*, November 8, 1912.

<sup>200</sup> *Topeka Plaindealer* (Topeka, KS), September 12, 1913.

<sup>201</sup> *Carbondale Post*, September 25, 1913.

<sup>202</sup> “Law Department,” *Topeka State Journal*, June 8, 1916.

<sup>203</sup> *Topeka Plaindealer*, September 26, 1913; *Topeka Plaindealer*, December 19, 1913.

<sup>204</sup> *Topeka Plaindealer*, January 5, 1912.



Even if he missed a holiday or two his family was always there to support him. His father who passed away when he was just five months old and his mother who never made much money were able to help with school expenses albeit in a small way.<sup>205</sup> Scott sold the only inheritance he had to help fund his education. Just before he announced his intention to attend Washburn, in January 1911, he successfully represented himself in an emancipation hearing. The hearing was necessary to allow Scott, then twenty years old, to sell “a small interest” in two lots on Lane Street he had inherited from his father. Jeff Scott had acquired the property in 1886 for one hundred and twenty-five dollars.<sup>206</sup> His mother was present in court to relinquish any of her rights as guardian.<sup>207</sup> While on legal paper the gift came from his father it was really another testament to the strength of Diana. As a single mother working as a washer woman there must have been times when she could have used whatever money the real estate would bring, and as her son’s guardian she could have legally disposed of the property for the benefit of the family. But she held on to it for nearly twenty years, only letting go when it could benefit her son’s education directly. His use of it to attend Washburn Law School would prove to be a defining decision. Just as, the creation of Washburn was a defining decision for the city of Topeka.

Washburn College was created as part of the same abolitionist ideology that drew the Exodusters to Kansas. Its founding can be traced back to Kansas’s pre-Civil War days, and its key founders were religious social reformers who were certain slavery must be abolished. Men like John Ritchie who spent years trying to get a Congregational

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<sup>205</sup> Everett, *The Colored Situation*, 84.

<sup>206</sup> “Real Estate Transfers,” *Daily Commonwealth* (Topeka, KS), June 17, 1886.

<sup>207</sup> *Topeka Daily Capital*, January 15, 1911.

Church owned college in Topeka were contemporaries of John Brown and signers of Kansas's famous free state constitution. Many were also associated with the New England Emigrant Aid Society (NEEAS), the organization responsible for Topeka's founding in 1854. The NEEAS is historically well known for its connection to the Pilgrim's faith known as Congregationalism, and it echoed the Pilgrim's views on important social questions. Washburn's seminal historian stated, "The college movement in Topeka was directly related to the abolition of slavery, the prohibition of liquor and the organization of the Congregational Church in Kansas."<sup>208</sup> Other locales such as Lawrence and Manhattan were also interested in forming a college connected to the Congregational Church, therefore, higher education did not come easily to Topeka.

The college that would become Washburn University was overtly anti-slavery and anti-discrimination from the beginning. In 1864, after nearly a decade of fits and starts the Topeka group named its still fledgling school Lincoln College. Article I of Lincoln College's Articles of Association stated the school was named after the current President of the United States to "commemorate the triumph of Liberty over Slavery in our nation and serve as a memorial of those fallen in defense of their country." Article III stated, the college would "afford to all classes, without distinction of color, the advantages of liberal education."<sup>209</sup> Abraham Lincoln himself was reported to have given "assurance of his prospective aid in its behalf."<sup>210</sup> When Lincoln was assassinated, the school was dubbed

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<sup>208</sup> Bird, *Washburn Through the Years*, 2.

<sup>209</sup> The Articles of Association in the Incorporation of Lincoln College, Washburn.edu, Retrieved July, 1 2021, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/<https://www.washburn.edu/about/files/washburn-history-chapter.pdf>

<sup>210</sup> Bird, *Washburn Through the Years*, 9.

Lincoln Monumental College and said to be “A Monument to the Triumph of Freedom over Slavery.”<sup>211</sup> The first building was constructed in 1865 at Tenth Avenue and Jackson Street.<sup>212</sup> When New Englander Ichabod Washburn’s largesse rescued the school from bankruptcy in 1868, the trustees changed the name to Washburn College. By 1903, the school had built an endowment of \$100,000 dollars along with property and donations valued at more than \$335,000 dollars combined.<sup>213</sup> Motivated to make Washburn a first-class educational institution, the Board of Trustees moved to create a Law School.

A law school in the state capital made perfect sense. Washburn had begun awarding graduate degrees in the form of the Master of Arts since 1893, and some law classes had been taught in 1899 and 1900.<sup>214</sup> It was time for a full-fledged law school. In February 1903, the *Topeka Daily Herald* noted the sensibility of the Washburn trustees in planning to add a law program. “The courts of the state center at Topeka; the leading lawyers are residents of the city, or within easy reach; the state law library with its 50,000 volumes is here; abundant opportunity offers itself to law students to secure positions as clerks in the numerous law offices of the city; and the Legislature is right at hand.”<sup>215</sup> Furthermore, the law school would be part of Washburn, and the College had plans to create a program in which undergraduate students could take a first- year law school curriculum as their final year of undergraduate work.<sup>216</sup> Later it was noted that all of the members of the Kansas Supreme Court had agreed to act as lecturers, and much of the

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<sup>211</sup> Bird, *Washburn Through the Years*, 9.

<sup>212</sup> F.W. Giles, *Thirty Years in Topeka: A Historical Sketch* (Topeka, Geo. W. Crane and Co., 1886), 190.

<sup>213</sup> “New Law School,” *Topeka Daily Herald*, February 2, 1903.

<sup>214</sup> Bird, *Washburn Through the Years*, 47-8.

<sup>215</sup> “New Law School.”

<sup>216</sup> “New Law School.”

rest of the faculty would be made up of “local talent.”<sup>217</sup> The first Dean, however, was another New Englander. Ernest B. Conant a graduate of Phillips Exeter Academy in New Hampshire, Harvard College, and Harvard Law School, was hired away from a law teaching position in Chicago in May.<sup>218</sup> The curriculum it was asserted would be that of a modern law school: A full three years of study with graduation requirements exceeding “those of the law schools in connection with Universities of Missouri, Iowa, Nebraska, and Kansas by fully one-half of their courses.”<sup>219</sup> The *Topeka Daily Capital* bragged, “The school will undoubtedly open with over sixty students, which is a greater number than attended the law school of the University of Chicago at the opening of the department one year ago.”<sup>220</sup>

By early twentieth century standards the student body at Washburn law school was downright diverse. Women and African Americans were never equally represented but their presence was common in the classroom. The first Washburn class was without an African American, but newspapers all over Kansas noted the enrollment of two women: Anna Marie Nellis, and Maude Bates.<sup>221</sup> In keeping with the Congregationalist spirit, Black students were never banned and soon began to attend. The first African American student was Samuel E. Cary who came to Kansas from Providence, Kentucky

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<sup>217</sup> *Fort Scott Republican*, February 13, 1903.

<sup>218</sup> *Chanute Daily Tribune*, May 12, 1903; *Topeka State Journal*, May 14, 1903; *Topeka Daily Capital*, May 17, 1903

<sup>219</sup> “Offers Three Years Course,” *Topeka Daily Capital*, June 13, 1903.

<sup>220</sup> “Registration is Large: Washburn Law School Will Start Out With at Least Sixty Students,” *Topeka Daily Capital*, August 30, 1903. As it turned out attendance reached about fifty students. See, “Attendance at Washburn Law School Picking up,” *Topeka Daily Capital*, October 9, 1903.

<sup>221</sup> As noted, numerous Kansas newspapers noted the attendance of the women including: *Attica Independent*, October 6, 1903; *Osage City Free Press*, October 7, 1903; *Junction City Sentinel*, October 9, 1903.

and enrolled in 1907. He graduated in 1910 and joined the practice of another Black lawyer, W.L Sayers in Hill City, Kansas before moving to Denver, Colorado. Scott was not the lone Black student at Washburn when he enrolled in 1911. He overlapped with his friend Fred Helm who was the second African American to graduate from Washburn Law School and went on to practice in Wichita. Scott became the third African American graduate when he completed his studies in 1916.<sup>222</sup>

Scott's grades are unknown, but throughout his law school career he demonstrated the abilities that would make him a famously successful trial lawyer. In February 1911, he won a legal dictionary for being the best debater when he and Helm defeated James L. Todd and J. Roy Baker in a public debate at St. John A.M.E.<sup>223</sup> In a Washburn moot court trial held at Calvary Presbyterian Church Scott represented a man accused of stealing "a valuable overcoat" against Helm who would go on to a fine career as a trial attorney himself. Newspaper coverage of the event reads like a harbinger of things to come for Attorney Scott. According to *The Western Index*,

Mr. Fred Helm represented the prosecution and Mr. Elisha Scott appeared for the defense. The first trial (held two weeks before at the Tennesseetown Kindergarten) having resulted in a hung jury. These two young attorneys last night appeared in a fight to the finish. A good-sized, enthusiastic crowd was present and applauded the finding of the jury, that the defendant was not guilty. The trial was featured by sharp encounters between counsel over the evidence, and by Mr. Scott's closing argument.<sup>224</sup>

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<sup>222</sup> Concannon, *The Ideal Place*, 589-90, 593; "Abe Morse," *Kansas City Plaindealer*, July 26, 1957.

<sup>223</sup> *Washburn Review* (Topeka, KS), March 8, 1911; *Topeka Plaindealer*, March 3, 1911.

<sup>224</sup> *Western Index* (Topeka, KS), December 8, 1911.

Enthusiastic crowds, sharp exchanges, hung juries, and crowd-pleasing closing arguments were themes that would play out repeatedly in Scott's career.

Throughout his time at Washburn, Scott worked for money but also for social justice. His willingness and ability to help the underdog, a trait he maintained all of his life, first became evident in his law school days. As early as 1911, the *Topeka Plaindealer* noted, Scott "successfully defended a client in a lawsuit" in Wanbunsee County.<sup>225</sup> Speaking of the same case, the *Western Index* reported, "Hon. Elisha Scott made a great hit in a law suit at Alma."<sup>226</sup> In 1913, the County Auditor denied his claim for eleven dollars and twenty cents for the handling of at least one criminal case in Wyandotte County.<sup>227</sup> And it was noted, he worked on clemency and parole cases in Topeka, Kansas City, and Leavenworth, leading the *Topeka Plaindealer* to describe him as "scientific" and "quite successful in obtaining clemency for people confined in the Shawnee County jail."<sup>228</sup> In 1915, the *Plaindealer* reported he was handling legal business in Bonner Springs about fifty miles to the east of Topeka.<sup>229</sup> Though he did not graduate until 1916, Scott was referred to as a lawyer throughout his time at Washburn and it is likely the above examples are only a few of the cases he took while still a student.

His time at Washburn left Scott well prepared for a legal career. As their graduation day neared, his classmates showed affection for him and made a prediction they had a hint might come true. His description in the *Washburn Review* stated, "As we pass down the list of Seniors, we come to that famous criminal lawyer named Scott.

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<sup>225</sup> *Topeka Plaindealer*, October 27, 1911.

<sup>226</sup> *Western Index* (Topeka, KS), October 27, 1911.

<sup>227</sup> *The Press* (Kansas City, KS), December 12, 1913.

<sup>228</sup> *Topeka Plaindealer*, February 21, 1913.

<sup>229</sup> *Topeka Plaindealer*, February 5, 1915; *Topeka Plaindealer*, February 19, 1915.

Scott's name has been heralded with much applause among the students as the advocate of their cause."<sup>230</sup> He had already given them reason to believe he might actually become a famous criminal lawyer. When they acted as defendants in practice cases Scott was the preferred defense attorney.<sup>231</sup> Furthermore, he had shown great determination and ability by working his way through law school. During his Washburn years he also gained valuable experience as a speaker, made important social and political connections, and amassed more courtroom experience than most if not all of his classmates. He was ready to make a career for himself and make change for his people. It was a tall order, but he had in some ways been preparing for the challenge since kindergarten. Attorney Scott initially flirted with the idea of setting up his practice in Hutchinson or Pittsburg, but the people who had helped him and many he knew needed help were in Topeka.<sup>232</sup> Therefore, he joined Guy's office at 410 Kansas Avenue in the summer of 1916.<sup>233</sup> He would travel widely, but he never left Topeka or its people. It was a better place than most for a man to fulfill a yearbook prophecy.

Having completed his education, it was natural for Scott, who was very close to his family, to begin to look to start a family of his own. He was first rumored to be courting Esther Van Dyne in August 1916.<sup>234</sup> They were married in February 1917; and by that fall, they were living across the street from Diana at 1139 Lane Street.<sup>235</sup> They would spend the rest of their lives there. The man who would later admit he regularly

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<sup>230</sup> "Law School: Law Seniors, Promising Future For Graduates of Class of 1916," *Washburn Review* (Topeka, KS), May 17, 1916.

<sup>231</sup> "Law School;" Concannon, *The Ideal Place*, 592.

<sup>232</sup> "Law School."

<sup>233</sup> *Washburn Review* (Topeka, KS), August 22, 1916.

<sup>234</sup> *Topeka Plaindealer*, August 18, 1916.

<sup>235</sup> *Topeka Daily Capital*, October 17, 1917.

sought the attention of newspaper writers kept his romantic life quiet. In May 1917, the *Plaindealer* reported it was rumored he had married “Miss Esther Van Dyne, one of Topeka’s society belles” in February, but he refused to confirm or deny the accusation.<sup>236</sup> Esther who was either nineteen or twenty graduated from Topeka High School in June, and Scott denied nothing when he handed out cigars and told everyone who would listen about the birth of his first son, Elisha Scott Jr. just before Christmas.<sup>237</sup> They happy couple had two more sons, John Jefferson Scott arrived weighing eleven pounds in August 1919, and Charles Monroe Sheldon Scott was born in April 1921.<sup>238</sup> Family life must have agreed with Scott, because his practice flourished as he and Esther began to raise their boys.

Scott’s success allowed his family to travel, but his travels always seemed to be related to work. In August 1918, he, Esther, Elisha Jr., and Birdie were able to escape the Kansas heat by traveling to Denver and Colorado Springs, Colorado for three weeks.<sup>239</sup> Esther and the two oldest boys returned to Colorado in the summer of 1920 and 1925, and she made an extended trip to Colorado, California, and Washington in 1922.<sup>240</sup> But Scott’s travels were rarely if ever about pleasure alone, and his Colorado trip was likely connected to a client who had inherited some mining property there.<sup>241</sup> Scott was also part of the 1922 trip to California because he was apparently helping a client who was

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<sup>236</sup> *Topeka Plaindealer*, May 11, 1917.

<sup>237</sup> “The Topeka High School Graduates Largest Class,” *Topeka Daily Capital*, June 1, 1917; *Topeka State Journal*, December 17, 1917; *Topeka Daily Capital*, December 18, 1917.

<sup>238</sup> *Topeka Plaindealer*, September 5, 1919; *Topeka Daily Capital*, April 28, 1921.

<sup>239</sup> *Topeka Plaindealer*, August 16, 1918; *Topeka Plaindealer*, September 6, 1918.

<sup>240</sup> *Topeka Plaindealer*, September 3, 1920; *Topeka Plaindealer*, August 14, 1925; *Topeka Plaindealer*, August 11, 1922.

<sup>241</sup> *Topeka Plaindealer*, February 1, 1918; *Topeka Plaindealer*, December 13, 1918.



looking for a place to begin an independent Black colony in Mexico.<sup>242</sup> In 1919, he and Diana met Esther in Spring Valley, Illinois, and then saw the sights in Chicago.<sup>243</sup> The Chicago trip may have had something to do with Scott's work with Black baseball legend Rube Foster in his efforts to form what became baseball's Negro National League. Scott's early years as a family man found him away from home fairly consistently, as he never seemed to turn down a request for his services regardless of when and where he would have to travel. Ironically military service was the one occupation that did not cause Scott to leave his home state. He was commissioned "captain judge advocate" of a segregated Kansas state guard unit in December 1918 and served until the unit was disbanded in November 1919.<sup>244</sup> Any doubt that Scott was a workaholic was eliminated in 1921 when, for the second time in ten years, he spent Christmas working in another city.<sup>245</sup>

In addition to being a mother to three young boys, Esther was an active participant in Topeka's women's organizations, and those organizations provided Black women a chance to advocate for their cause. She was regularly associated with the Dumas Art and Literary Club, the Interos, and the City and State Federation of Women's Clubs.<sup>246</sup> The federations of women's clubs were as their titles indicate organizations that joined local and state clubs under the federation banner. As president in 1925 and 1926, Esther oversaw an effort to increase the number of clubs in the city federation from

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<sup>242</sup> "Hon. Elisha Scott Touring in West," *Topeka Plaindealer*, August 4, 1922; *Topeka Plaindealer*, August 11, 1922; *Topeka Plaindealer*, September 22, 1922.

<sup>243</sup> *Topeka Plaindealer*, November 28, 1919.

<sup>244</sup> "Scott Gets Commission," *Topeka Daily Capital*, December 7, 1918.

<sup>245</sup> *Topeka Plaindealer*, January 5, 1912; *Topeka Plaindealer*, December 30, 1921.

<sup>246</sup> *Topeka Plaindealer*, April 16, 1920; Mattie A. Perkins, "Women' Corner," *Topeka Plaindealer*, December 21, 1923; *Topeka Plaindealer*, June 19, 1925; *Topeka Plaindealer*, June 3, 1925.

eleven to twenty-five.<sup>247</sup> Nationally the federation was a key advocate for the rights of Black women. By 1925, it boasted 150,000 members nationwide.<sup>248</sup> One of the highlights of Esther's work with the federation was helping to organize the twenty-fifth anniversary of the Kansas State Federation in the summer of 1925. The *Plaindealer* featured pictures of four key organizers, and two of them were Birdie Scott Taylor and Mrs. Esther Scott. The newspaper called the weeklong meeting the "greatest meeting in the history of the organization."<sup>249</sup> The presence of Daisy Lampkin and Mary McLeod Bethune supported that argument. Lampkin was the national organizer of the federation in 1925, she was also a leader among Republican women, and she would go on to play a key role in the development of the NAACP when she became a field organizer in 1929.<sup>250</sup> Bethune was president of the organization and the educational institute that would become Bethune-Cookman University. The *Plaindealer* reported, "She electrified the audience when she told of her struggle from a log cabin in South Carolina where she had to walk five miles" to school and back. She explained that when she learned to read the Bible as a child illiterate neighbors would gather around to hear her read the Word. She gained her education, she stated, through the help of others; therefore, "it was her Christian duty to repay those who had helped her by helping others." By that time, the school she started in a log cabin with five little girls was a campus valued at nearly one million dollars.<sup>251</sup>

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<sup>247</sup> "Coming—Fall Festival," *Topeka Plaindealer*, November 6, 1925.

<sup>248</sup> "State Federation Holds Silver Jubilee," *Topeka Plaindealer*, June 25, 1925.

<sup>249</sup> "State Federation Holds."

<sup>250</sup> Patricia Sullivan, *Lift Every Voice: The NAACP and the Making of The Civil Rights Movement*, (New York: The New Press, 2009), 137.

<sup>251</sup> "State Federation Holds."

Esther's hard work on behalf of the local and state federations indicate she also saw the uplift of others as part of her Christian duty.

Less than three years after the silver jubilee meeting, Esther was gone. A friend sang "I've done my Work" at her funeral at St. John A.M.E. in Topeka. Most in the church must have felt her work was cut tragically short, as she was barely over thirty and left three sons between the ages of six and eleven. Friends reported she was strong to the end, as she barely let on how serious her illness was. It is not clear what happened to Esther. She was vibrant and active until around October 1927 when she became seriously ill. She and Scott decided she should travel to Hot Springs, Arkansas, for treatment, and Scott spared no expense, providing her a private room and access to the best doctors at the Woodmen of Union Hospital in Hot Springs. Owned and operated by a Black fraternal organization and occupying an entire block of Hot Springs's bathhouse row, the hospital was said to be "one of the most complete and up to date hospitals in the country."<sup>252</sup> But treatment did not work, and Esther was unable to travel home; therefore, Scott brought their boys to Hot Springs to see their mother for the final time in early February.<sup>253</sup> She passed away February 19, 1928.<sup>254</sup> Scott's life was full of tragedy, but realizing his boys would have to navigate the rest of their lives without their loving mother must have been his most devastating disappointment. The day the *Plaindealer* carried Esther's obituary it also carried a divorce filing notice for one of Attorney Scott's

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<sup>252</sup> "Funeral of Mrs. Esther Scott," *Topeka Plaindealer*, March 2, 1928.

<sup>253</sup> *Topeka Plaindealer*, February 3, 1928.

<sup>254</sup> "Funeral Esther Scott".

clients.<sup>255</sup> With three children to care for and myriad clients who needed him, Scott would need the support of his family to make it without Esther.

As always, the women in Scott's life were a pillar of strength in his time of need. Viola Scott, who never married, stepped in to help raise the boys. They called her Aunt Duck.<sup>256</sup> She was an active club woman, serving as president of the Dumas Art and Literary Club, and the Municipal Welfare League.<sup>257</sup> While Viola was the boys's primary female caregiver, Scott's legal secretary Inza Brown would also take care of the boys at the law office. Brown remembered, Scott was "not a fussin father."<sup>258</sup> But he spent as much time with his sons as he could. His oldest sister Birdie Scott Taylor was also actively involved in the boys' childhood. She hosted events like John's ninth birthday, his first without his mother, at her home on Lincoln Street.<sup>259</sup> Diana Scott was also there to support her son and grandsons, but she had several bouts with illness and medical problems as she aged.<sup>260</sup> She passed away in 1931 at age seventy-five.<sup>261</sup> She was laid to rest July 20, 1931 in what was deemed "one of the largest funerals ever held in Topeka." Her obituary stated, "Mrs. Scott was the neighborhood mother, and beloved by all who knew her."<sup>262</sup> Elisha Jr., John, and Charles Scott suffered through great tragedy at a tender age, but with the help of a loving extended family they flourished.

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<sup>255</sup> *Topeka Plaindealer*, March 2, 1928.

<sup>256</sup> Kluger, *Simple Justice*, 387.

<sup>257</sup> *Topeka Plaindealer*, October 12, 1923; *Topeka Plaindealer*, June 18, 1926.

<sup>258</sup> Inza Brown, interview by Richard Kluger, undated, MS 759, Box 1, Folder 11, *Brown v. Board of Education* Collection, Yale University Library.

<sup>259</sup> *Topeka Plaindealer*, September 7, 1928.

<sup>260</sup> *Topeka Plaindealer*, January 4, 1918; *Topeka Plaindealer*, January 25, 1924; *Topeka Plaindealer*, March 13, 1925.

<sup>261</sup> "Mrs. Diana Scott Dead: Mother of Elisha Scott was Born in Tennessee in 1856," *Topeka Plaindealer*, July 17, 1931.

<sup>262</sup> "Impressive Service for Mrs. Diana Scott," *Topeka Plaindealer*, July 24, 1931.

While Scott was an extremely busy man, he loved his sons and supported them in their endeavors. No matter how busy he was, he always tried to make it home for a nightly family dinner, and he and his sons continued to gather for those dinners even after the boys were married.<sup>263</sup> The Scott home was also consistently used to host things like Halloween parties, New Year's Eve dances, choir practices, back to school get togethers, meetings of the Knight Companions, and Kappa Alpha Psi fraternity meetings.<sup>264</sup> Scott's farm in Paxico was also open to his sons, and they used it to host a Kappa smoker.<sup>265</sup> Elisha Jr. starred at fullback on his integrated junior high school football team. He was one of three African American players who made the team.<sup>266</sup> John gave his father the kind of scary moments all parents dread when he was bedridden with an infected foot for several weeks in 1933, and he was "miraculously spared" in a serious car rollover accident in 1936.<sup>267</sup> Such troubles did not stop him from being very outgoing. He was a regular party host as the boys were growing up.<sup>268</sup> Charles demonstrated he inherited some of his father's showmanship when he "brought the house down with his imitation of Cab Calloway" at a St. Simon's Church event, played a "pleasing" Gratiano in *The Merchant of Venice*, and sang a "colorful rendition of 'Boogie, Woogie'" at the city talent

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<sup>263</sup> John Scott, interview; Kluger, *Simple Justice*, 387.

<sup>264</sup> *Kansas City Plaindealer*, November 4, 1932; Thelma Chiles Taylor, Clubs & Topeka Society, *Kansas City Plaindealer*, December 28, 1934; *Kansas City Plaindealer*, April 7, 1933; *Kansas City Plaindealer*, September 14, 1934; "Topeka Society," *Kansas City Plaindealer*, February 23, 1940; *Kansas City Plaindealer*, March 1, 1940; *Kansas City Plaindealer*, September 29, 1939. The Knight Companions were a junior organization connected to the Black Masons.

<sup>265</sup> "Topeka Society," *Kansas City Plaindealer*, September 20, 1940.

<sup>266</sup> "Negro Boys on Football Team," *Kansas City Plaindealer*, October 7, 1932.

<sup>267</sup> *Kansas City Plaindealer*, August 25, 1933; *Kansas City Plaindealer*, September 1, 1933; "Clubs & Topeka Society," *Kansas City Plaindealer*, May 1, 1936.

<sup>268</sup> *Kansas City Plaindealer*, November 4, 1932; *Kansas City Plaindealer*, November 17, 1933; *Kansas City Plaindealer*, September 14, 1934.

contest.<sup>269</sup> He also started at guard for Topeka High School's Black basketball team, the Topeka Ramblers.<sup>270</sup> By the fall of 1938, Elisha Jr. was a student at Washburn, John was beginning his college education at Kansas University, and Charles was attending Topeka High.<sup>271</sup> All three would eventually serve in World War II then follow their father into the practice of law. Elisha Jr. moved to Flint, Michigan, to take over the practice of his Uncle Roy Van Dyne, while John and Charles stayed with the Scott law firm. Charles Scott stated, upon returning from a war "fought in the name of human dignity and equality," they were anxious to change the status quo.<sup>272</sup> They did so as important participants in the court case of the twentieth century. That story is told in chapter six, but John and Charles were not the only lawyers who benefited from the mentorship of Elisha Scott Sr.

Elisha Jr. had a successful practice in Flint, and he continued the family's fight against Jim Crow. Upon completing his education at Washburn, he worked in the office of the state superintendent of public instruction.<sup>273</sup> After he served in the European theater in World War II, he and his brothers joined with their father's firm making it Scott, Scott, Scott, & Scott for a time. However, Elisha Jr. relocated to Flint to join the practice of Esther's brother Roy Van Dyne who had gotten his start as a lawyer in Scott's office in 1921.<sup>274</sup> In Flint, he joined the Bethel United Methodist Church where he taught

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<sup>269</sup> "St. Simon's Church," *Kansas City Plaindealer*, March 29, 1935; Thelma Chiles Taylor, "Clubs & Topeka Society," *Kansas City Plaindealer*, May 31, 1935; "Amateur Contest Draws Large Crowd," *Kansas City Plaindealer*, December 9, 1948.

<sup>270</sup> "Topeka High Ramblers Start Cage Season," *Kansas City Plaindealer*, December 15, 1939.

<sup>271</sup> "Topeka Society," *Kansas City Plaindealer*, September 16, 1938.

<sup>272</sup> Charles Scott, interview by Richard Kluger, October 21, 1970, MS 759, Box 5, Folder 89, *Brown v. Board of Education* Collection, Yale University Library.

<sup>273</sup> "George L. McClenny: Republican Candidate for State Supt. Public Ins.," *Kansas City Plaindealer*, November 1, 1940.

<sup>274</sup> *Topeka Plaindealer*, June 17, 1921.

Sunday school and acted as legal counsel. He and his wife Violet had three children, and they remained in Flint until they died in 1988 and 1981 respectively.<sup>275</sup> During his career in Michigan, Elisha Jr. continued the family fight for social justice. He was a lifetime member of the NAACP, and when he served as NAACP branch president in the late 1940s, he launched a campaign to fight against racially restrictive covenants, racist hiring practices, and segregated education.<sup>276</sup>

While the Scott law firm was mostly a family business and all of the lawyers were male, Scott found a way to use his office to help Black women in Topeka gain necessary job training. John Scott's wife Berdyne remembered that Scott's office served as an unofficial training ground for women who wanted to gain the skills necessary to work in professional offices. She stated, in the 1930s Black women in Topeka could expect to work in only the most menial jobs, they were even excluded from work as store clerks. Therefore, women could go to beauty school or go to college and become nurses or teachers. The only other viable option for a good job was to work in an office, but Topeka had no place for Black women to learn office skills. Berdyne remembered, "the only office we could go to even practice working in an office, and he was very generous...was John's father, Elisha...His office was open, so everybody had to go there to practice any skills—shorthand, typing." Berdyne was able to use the skills she acquired in Scott's office to gain employment in the government printing office in Washington D.C. and later attend Howard University. And Berdyne and the women who gained experience in Scott's office were not the only locals who benefited from Scott's generosity, she noted, new

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<sup>275</sup> "Elisha Scott Jr.," *Topeka Capital Journal*, August 11, 1988.

<sup>276</sup> "Elisha Scott Jr.;" "Flint NAACP to Continue Restrictive Covenant Fight: Citizens' Unity is Important, Attorney Says," *Michigan Chronicle*, December 13, 1947.

Black lawyers had very few employment options, but Scott's office was also always open to them.<sup>277</sup>

Samuel C. Jackson grew up in Topeka, became a lawyer because he was inspired by Scott, and went on to a career in the Johnson, Nixon, and Reagan administrations. Jackson was inspired by Scott because "he breathed life into the Fourteenth Amendment," and "did his work virtually for nothing."<sup>278</sup> Jackson graduated from Washburn Law School in 1954 and went to work in the Scott firm. At a time when numerous African Americans were leaving the Republican Party, he followed Scott's example and became a GOP leader. He was the first African American elected vice chairman of the Kansas Republican Party.<sup>279</sup> He earned his first national level position in 1964, when Democrat Lyndon Johnson made him one of the original members of the Equal Employment Opportunity Commission.<sup>280</sup> Jackson returned to Republican politics when Richard Nixon appointed him to the position of assistant secretary for metropolitan development in the department of Housing and Urban Development (HUD) which meant for a time he was the highest ranking African American in the Nixon administration.<sup>281</sup> While he was working for HUD, he chaired the Council of Black Presidential Appointees, a group that voiced their concerns when they felt the Nixon administration

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<sup>277</sup> Berdyne Scott, interview.

<sup>278</sup> Samuel C. Jackson, interview by Richard Kluger, June 11, 1969, and June 21, 1969, MS 759, Box 3 Folder 53, *Brown v. Board of Education Collection*, Yale University Library.

<sup>279</sup> "Samuel Jackson, Nixon Aide In Housing Matters is Dead," *New York Times*, September 29, 1982.

<sup>280</sup> "Samuel Jackson, Dead".

<sup>281</sup> "Romney Appoints 2 Negroes to Fill Major Positions," *New York Times*, January 26, 1969; "Law Meet," *New York Amsterdam News*, May 17, 1969.



was not advancing the cause of civil rights.<sup>282</sup> He urged Nixon to help integrate communities in order to alleviate school desegregation problems. Jackson went into private practice after Nixon's first term with the firm of Stroock, Stroock, and Lavan and became one of the first African Americans to make partner in a Wall Street law firm.<sup>283</sup> He returned to the executive branch in 1981, when he was appointed to the Presidential Housing Commission by Ronald Reagan.<sup>284</sup> By July 1982, he had apparently seen enough of the Reagan administration, as he joined a group of African American former government officials who intended to monitor Congress and the Reagan administration in their handling of civil rights matters.<sup>285</sup> His career was cut short when he died of cancer at age fifty-three. Jackson's *New York Times* obituary stated, he was "an outspoken civil rights spokesman."<sup>286</sup>

The most outspoken advocate and well-known lawyer to get his start in the Scott law firm was Loren Miller who went on to an illustrious career as both a newspaper columnist and a lawyer in Los Angeles. Miller graduated from high school in the town of Highland, Kansas, and attended college at Kansas University, Washburn, and Howard University before returning to Washburn and studying law.<sup>287</sup> Miller chose to study law by default. He did not view the practice of law as a noble profession that gave one the opportunity to become a social engineer, but there were few other avenues for an

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<sup>282</sup> "Protest to Nixon on Busing," *New York Amsterdam News*, July 22, 1972.

<sup>283</sup> "Samuel Jackson, Dead."

<sup>284</sup> Concannon, *The Ideal Place*, 604.

<sup>285</sup> "16 Ex-U.S. Officials Join Group to Study Civil Rights Records," *New York Times*, July 25, 1989.

<sup>286</sup> "Samuel Jackson, Dead."

<sup>287</sup> Amina Hassan, *Loren Miller: Civil Rights Attorney and Journalist* (Norman: University of Oklahoma Press, 2015), 32-39.

educated African American. While at Kansas, he won a *Crisis* essay contest with a seemingly autobiographical piece called “College” in which he wrote from the perspective of a student who chose law due to fear that he could not succeed as a writer. Miller saw a career in law as compromise that also caused the writer to lose his dignity. He wrote, “You will be pushed down to preying on police court characters, loose women and gamblers.”<sup>288</sup> Nonetheless, he pursued a legal education and graduated from Washburn Law School in 1928, passed the bar, and spent a short time practicing in Scott’s office before moving to Los Angeles in 1930.<sup>289</sup> While at Washburn, he was an honor student which was impressive considering how busy his Washburn years were.<sup>290</sup> Miller was active in Republican politics and Kappa Alpha Psi.<sup>291</sup> He also organized and served as president of a Black students’ club, protested against a plan to allow military training at Washburn at which time he wrote, “preparation for war leads inevitably to war,” and helped start an interracial group “to study into the real reasons for race prejudice and try to work out steps toward a solution to the race problem.”<sup>292</sup> Almost nothing is known about Miller’s time in Scott’s office, but he most certainly did not leave

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<sup>288</sup> Loren Miller, “College,” in Sondra Kathryn Wilson, ed., *The Crisis Reader: Stories, Poetry, and Essays from the NAACP’s Crisis Magazine* (New York: Modern Library, 1999), 237-241.

<sup>289</sup> Concannon, *The Ideal Place*, 594; “New Members are Sworn in Kansas Bar,” *Wichita Eagle*, January 24, 1929.

<sup>290</sup> “Honor Roll—Law School,” *Washburn Review* (Topeka, KS), May 5, 1926; “High Honors to Four and Honors to Eighteen Law Students,” *Washburn Review* (Topeka, KS), September 29, 1926.

<sup>291</sup> “Three to Colored G.O.P. Meet,” *Washburn Review* (Topeka, KS), April 30, 1924; “Letter of Condolence,” *Topeka Plaindealer*, November 6, 1925; *Washburn Review* (Topeka, KS), March 3, 1926.

<sup>292</sup> *College Hill News* (Topeka, KS), March 13, 1924; “Statement,” *Washburn Review* (Topeka, KS), April 14, 1926; “Hester Forms Group to Study Race Problems: Meeting Open to Washburn Students and Instructors—Miller in Charge of Next Discussion,” *Washburn Review* (Topeka, KS), December 16, 1925.

Topeka thinking that legal action was the way to solve the race problem. In fact, if he was afraid a lawyer's life was full of "police court characters, loose women, and gamblers," Scott's practice would have only enforced such feelings. What he thought of Scott's practice is unknown, but he took the first opportunity to relocate to Los Angeles.

In Los Angeles, Miller became a newspaper man and a harsh critic of the NAACP's legalistic approach to African American progress; however, when he returned to the practice of law, he became a key figure in the association's legal fight against segregation. According to historian Kenneth Mack, Miller's "main complaint was the charge that black attorneys represented nothing more than the voice of a self-interested middle class, and certainly not the voice of the race as a whole."<sup>293</sup> As Charles Houston was working to build an NAACP led legal movement to attack Jim Crow, Miller saw Houston as the embodiment of the self-interested middle class lawyer.<sup>294</sup> His views turned 180 degrees when financial problems forced him to reenter the practice of law. The bulk of his early practice was indiscernible from Scott's. He had the chance to challenge racism directly when a Los Angeles skating rink and a drug store soda fountain refused to serve African Americans, but he made his living with a high volume of small cases such as divorce and probate matters.<sup>295</sup> One case involved a dispute over ownership of a dog.<sup>296</sup> It was not easy grinding out case after case for fees that could be as small as a few dollars, but, according to Mack, working as a lawyer for common people with real

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<sup>293</sup> Kenneth W. Mack, *Representing the Race: The Creation of the Civil Rights Lawyer* (Cambridge, MA: Harvard University Press, 2012), 181.

<sup>294</sup> Mack, *Representing the Race*, 193-94.

<sup>295</sup> Hassan, *Loren Miller*, 104-05.

<sup>296</sup> Mack, *Representing the Race*, 196.

needs led Miller to believe the practice of law was not “based in self-interest and exploitation.”<sup>297</sup>

Miller was certain residential segregation was the key legal question of the post-World War II era. He stated, “residential segregation and all other types of segregation that follow in its wake have made us strangers to each other, and because we are strangers we distrust each other, and distrust ripens into dislike, and dislike into hatred.”<sup>298</sup> He fought against such hatred in the courts, and he did it with Charles Houston. In the years during and after World War II, African Americans moved to cities and gained upward mobility from working in industrial jobs. When they sought to purchase homes outside of the Black ghettos, they found they were often blocked from purchasing houses in white neighborhoods by racially restrictive covenants in deeds that forbade the sale of the property described in the deed to African Americans. In 1926, the Supreme Court ruled in *Corrigan v. Buckley* that such covenants were enforceable by the courts. This meant lawyers in large urban areas such as Miller in Los Angeles and Houston in Washington D.C. were constantly fighting an uphill battle for their clients to live where they chose, and that was far from the worst problem caused by such covenants. In many cases, the covenants deemed the sale of such properties null and void, meaning African Americans were often evicted from houses they bought and paid for and those who evicted them were acting in accordance with the law. This led several lawyers to band together and look for a way to challenge such covenants before the Supreme Court.<sup>299</sup> From 1945 to

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<sup>297</sup> Mack, *Representing the Race*, 197.

<sup>298</sup> George Streater, “Housing Problem Called ‘Explosive,’” *New York Times*, June 26, 1947.

<sup>299</sup> Genna Rae McNeil, *Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights* (Philadelphia: University of Pennsylvania Press, 1983), 177-78.

1947 more than forty lawyers collaborated on strategies to overrule *Corrigan v. Buckley* in meetings in Chicago and New York.<sup>300</sup> Miller had been fighting complex covenant cases in California since 1939, and he had won a key 1945 case in which he convinced a California judge to find a restrictive covenant violated the Fourteenth Amendment.<sup>301</sup> Therefore, it was not surprising he emerged as one of the leaders in the nationwide fight against racially restrictive covenants. In 1948, Miller, Houston, Thurgood Marshall, George Vaughn and others argued and won *Shelly v. Kramer*. The Supreme Court ruled 6-0 that judicial enforcement of racially restrictive covenants violated the Fourteenth Amendment. Miller's work in the covenant cases helped him rise to national prominence, but he got his start in covenant cases handling the kind of emotionally charged, local cases Scott specialized in.

When a Black man named George Farley killed two deputy marshals who attempted to evict him from his home because he had not paid a \$29.66 street assessment, Miller provided him an aggressive defense.<sup>302</sup> Miller put Farley on the stand, and he testified that he was born and raised in the South and had about nine months of education. He stated that he owned the home, and he was told his deed would keep the house in his possession "unless I mortgaged it or sold it." When the marshals came to take the house, Farley said, "I just went plumb blind."<sup>303</sup> It was undisputed that he killed the deputies, and he was nearly killed by soft tipped slugs and teargas fired by the police. The *California Eagle* explained, Farley was out of work and as a Black man he had always

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<sup>300</sup> McNeil, *Charles Hamilton Houston*, 178-180.

<sup>301</sup> Mack, *Representing the Race*, 203-04.

<sup>302</sup> "Farley May Take Stand," *Los Angeles Sentinel*, May 12, 1938; "George Farley Receives Manslaughter Verdict," *Los Angeles Sentinel*, May 26, 1938.

<sup>303</sup> "Farley Tells Slaying Story," *Los Angeles Sentinel*, May 19, 1938.

been the last hired and first fired. Then “To top it all off his castle—though but a shack—was to be forcibly taken through a system of highway robbery sanctioned by society.”<sup>304</sup> Miller made an impassioned plea to the jury that Farley was just as much a victim as the two slain deputies.<sup>305</sup> Farley was found guilty of manslaughter, but that was a win for Miller. The *Pittsburgh Courier* recognized “a semblance of victory” was had by saving Farley “from the lethal gas chamber,” and Miller himself admitted a conviction for manslaughter was a success.<sup>306</sup> Miller had used his connections to the local press to bring great attention to the case, and an overflow crowd watched him argue it. The *Los Angeles Sentinel* reported, “a pandemonium of jubilation broke loose in the corridor” after the verdict was returned, and “Farley’s wife seized Attorney Miller...and placed a solid kiss on his cheek.”<sup>307</sup>

Considering the fact that Miller left the practice of law shortly after his stint in Scott’s office it seems likely that he initially viewed Scott in the same way he viewed Houston—as a self-interested member of the Black bourgeoisie. It also seems likely his opinion of Scott changed when his opinion of Houston changed. When Miller found himself representing the entire Los Angeles Black community in fights like the Farley case that were as much about the rights of the African American community as they were about the individuals involved in the case, he must have come to appreciate what Scott, who was in the same position myriad times, had accomplished as a lawyer. But Miller

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<sup>304</sup> “A Sad Tragedy,” *California Eagle* (Los Angeles, CA), February 24, 1938.

<sup>305</sup> “Farley Receives Manslaughter.”

<sup>306</sup> “Los Angeles Man Found Guilty of Manslaughter in Killing of Deputies who Attempted Eviction,” *Pittsburgh Courier*, June 4, 1938; “Farley Receives Manslaughter.”

<sup>307</sup> “Farley Receives Manslaughter.”

would have also liked Scott for another reason, Miller was a newspaper man, and Scott was a newspaper writer's dream.

## CHAPTER THREE: LEGEND

Elisha Scott's legend grew so large at some point letters began to arrive addressed only, "Colored Lawyer, Topeka, Kansas."<sup>1</sup> They came from common people with big problems and bad luck who could find help nowhere else.<sup>2</sup> The letters were not delivered to Topeka's other prominent African American attorneys. Everyone knew they were meant for Scott. He was already a well-known Republican stump speaker by the time he graduated Washburn University Law School and began to practice law in 1916. That year Governor Arthur Capper stated Scott was "the greatest Negro orator in the State of Kansas."<sup>3</sup> He took that ability and with the help of Topeka newspaper editor Nick Chiles created a legend. The word legend has two meanings: a person who is famous, and a good story that is likely not authenticated. Both definitions apply to Scott's story.

Out of necessity Scott's story is told through newspapers. This is not the way a historian wants to tell the story of an attorney. Documents are the life blood of the law, and they are the main tools of a historian writing about the law. A fire destroyed Scott's papers and the chance to tell his story in the traditional manner. When certain first year PhD students embark on such a project, they assume this will not be a problem because transcripts of court cases will be found in courthouses all over Kansas. Transcripts of

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<sup>1</sup> Sam Jackson, interview by Richard Kluger, June 11, 1969, and June 21, 1969, MS 759, Box 3, Folder 53, *Brown vs. Board of Education* Collection, Yale University Library; Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* (New York: Vintage Books, 2004), 387.

<sup>2</sup> Jackson, interview.

<sup>3</sup> "Atty. Elisha Scott in the Limelight!," *Topeka Plaindealer*, June 30, 1916.



court cases from before World War II are exceedingly rare. Therefore, an analysis of Scott can be made via newspapers, a few files of the National Association for the Advancement of Colored People (NAACP), family history, some interviews conducted by researchers interested in other subjects, written appeals, and some transcripts of high-profile desegregation cases. Newspapers are by far the most abundant source. Newspapers then are the elephant in the room. It was in the pages of newspapers, especially the *Topeka Plaindealer*, where Scott became a legend. Therefore, this chapter examines how Scott manipulated his image and had his image manipulated in the hundreds of newspaper stories that make up the only story left to tell.

Aside from Scott, *Topeka Plaindealer* owner and editor Nick Chiles is the person most responsible for Scott's story. Had the firebrand editor and fiery attorney not joined forces in 1918, Scott's story would be vastly different and perhaps impossible to tell. Chiles was a self-made man, a power in Topeka Republican politics, a habitual violator of Kansas' prohibition law, a neighbor to eight Kansas governors, a fearless fighter for his race, and the owner of a newspaper that spread his influence far beyond Topeka, Kansas. From 1918 until his death in 1929, Chiles was the chief teller of Scott's story. He tirelessly promoted his friend with great passion and a great deal of hyperbole. Without Chiles, Scott never would have become the "Colored Lawyer, Topeka." Chiles was also a key mentor and friend as Scott expanded his career from Topeka's police court to places as far away as North Carolina, Minnesota, and Washington D.C. Just as Chiles was a key to Scott's life and legend, he is a key to this chapter.

Why desperate people sought Scott's help is a simple question to answer; they had virtually nowhere else to turn. In the years before World War II there were precious few

Black lawyers, fewer still who could make a living working as a lawyer alone, and even fewer who were known to African Americans. How Scott, who never argued a case before the United States Supreme Court, never held public office, and was never named to the NAACP's legal redress committee got to be so well known is the more difficult question to answer. It is the key question addressed in this chapter. The short answer is Scott understood the importance of publicity and he knew how to get it. But it is important to return to the question of why he was one of only a few lawyers who managed to gain publicity first.

In Scott's era (1916-1963) African American lawyers were rare. In 1910 there were less than eight hundred Black lawyers in the entire country meaning 0.7 percent of lawyers were African American. By 1930, that number had only improved to 0.8 percent, and survey data indicates only about half of the Black lawyers in the country were actually practicing law. In the South, the number of African American lawyers declined between 1910 and 1940 with South Carolina's total falling from seventeen to five and Mississippi's total dropping from twenty-one to three.<sup>4</sup> In 1927, there were no Black lawyers in Wilmington, Delaware.<sup>5</sup> By 1947, Alexander Tureaud was Louisiana's only African American attorney.<sup>6</sup> Even in Kansas, a Black lawyer appearing in court was a rare sight. As late as 1957, when Scott and Sam Jackson argued a case in Marysville,

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<sup>4</sup> August Meier and Elliott Rudwick, *Along the Color Line: Explorations in the Black Experience* (Chicago: University of Illinois Press, 2002), 130, 157.

<sup>5</sup> Charles H. Houston, "Tentative Findings Re Negro Lawyers" (1928). This was a report conducted by Houston and submitted to Roscoe Pound, then Dean of Harvard Law School.

<sup>6</sup> Meier and Rudwick, *Along the Color Line*, 157.

Kansas they were said to be the first African American lawyers to appear before the local court in the more than one-hundred-year history of the town.<sup>7</sup>

Charles Houston's extensive 1928 study of African American lawyers in nine Midwestern and Eastern cities demonstrated many of Scott's contemporaries lacked skills that he acquired early in his career. Those skills helped Scott gain clients locally and nationally, and every client was a chance to appear in the headlines or have a story passed along by word of mouth. Houston found that overall African American lawyers had an inferior education and inadequate experience. They had little involvement in politics especially in the South and East. Furthermore, they made "a very poor showing in the matter of community charities," and they created no lasting legal aid societies to assist indigent African Americans. Black lawyers handled, "criminal law, then domestic relations, personal injuries, (and) small claims," but they rarely got work in business even from Black clients. Houston noted the lack of work in business was no surprise considering "the greatest deficiency in the equipment of the Negro lawyer is a lack of knowledge of the fundamentals of economics and business practices." He found Black Lawyers also lacked a good understanding of the business of life insurance even though it was likely "the largest single business among Negroes."<sup>8</sup> According to August Meier and Elliott Rudwick it all added up to create a situation "with most black lawyers caught in a vicious circle of discrimination and inexperience."<sup>9</sup> Scott suffered discrimination, but his

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<sup>7</sup> "First Negro Attorney in Local Court," *Marysville Advocate*, October 17, 1957. An example of Scott's overshadowing fame is demonstrated in this article. Although Sam Jackson is mentioned as one of the attorneys in the case only Scott is billed as the first Black attorney to argue in Marysville.

<sup>8</sup> Houston, "Tentative Findings."

<sup>9</sup> Meier and Rudwick, *Along the Color Line*, 132.

experience helped him avoid the vicious circle many Black lawyers could not escape. He had an excellent legal education, he was highly active in Republican politics, he had a reputation for helping indigent clients, and he was well versed in business law, particularly life insurance. Most importantly, he used those skills to gain notoriety via the newspapers and by word of mouth. Several African American lawyers who made a lasting mark on history struggled to gain notoriety even in their own cities.

The early correspondence of the NAACP demonstrates that it was common for African American citizens to be unaware there were African American lawyers nearby who could help them with basic legal issues. The national offices of the NAACP had to inform letter writers who were under the impression New York was the only place they could turn for help that prominent lawyers like N.J. Frederick in South Carolina, George Vaughn in Missouri, and N.K. McGill in Florida were nearby and capable of providing help.<sup>10</sup> Scipio Jones who was a well-known advocate for African American rights for decades is the most glaring example of African Americans in need being unaware help could be had in their own state. Twice in a two-week period in 1921, the national office of the NAACP received letters from African Americans in Arkansas seeking legal help they claimed was not available anywhere in the state. One letter stated, “All Attys here are white. One will Not go against another.”<sup>11</sup> Walter White replied to both writers that

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<sup>10</sup> Walter White to Henry Mikell, March 5, 1929, NAACP Files, Folder 5 (G-N, 1929); Walter White to Randolph King, NAACP Files, Folder 7 (General, G-P, 1922); Two letters referred individuals to McGill for basic legal cases in 1937. Thurgood Marshall to Edward Reynolds, June 3, 1937, NAACP Files, Folder 8 (N-S, 1937); Thurgood Marshall to Mrs. P.O. Rickman, July 26, 1937, NAACP Files, Folder 8 (General N-S, 1937).

<sup>11</sup> T.B. Dukes to NAACP, July 29, 1921, NAACP Files, Folder 2 (General B-D, 1921).

they should contact Jones.<sup>12</sup> By the summer of 1921, Jones was fifty-eight years old, and he had gained national attention for his involvement in the Elaine, Arkansas, race massacre cases. Furthermore, he had been the state's most active advocate for African American rights for more than thirty years, yet African Americans within his own state were unaware of his existence.<sup>13</sup> In 1931, long after Jones's name was associated with a victory before the United States Supreme Court in *Moore v. Dempsey*, the NAACP national office had to let a Little Rock man know he should contact Jones in Little Rock for help with a case in which his home was taken. In 1937, Thurgood Marshall told a Pine Bluff man to contact Jones when he was evicted from his home.<sup>14</sup>

In an effort to connect African American lawyers with citizens in need, Nick Chiles paired with Scott to form a legal aid society that he envisioned would act as a protector of African American's constitutional rights. In 1918, in the wake of an ugly 1917 battle between Black soldiers and white police officers in Houston, Texas, Chiles formed the Kansas Defense Society (KDS) along with several other local race leaders. The organization, therefore, formed in answer to racial violence just as the NAACP had nine years earlier in the wake of a 1908 Springfield, Illinois, pogrom. Elisha Scott and T.W. Bell a Leavenworth lawyer would be among the attorneys working on the initial legal petitions on behalf of the imprisoned soldiers. But the KDS was not intended to be a

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<sup>12</sup> Walter White to T.B. Dukes, August 6, 1921, NAACP Files, Folder 2 (General B-D, 1921); Walter White to Jim McEachern, July 26, 1921, NAACP Files, Folder 2 (General B-D, 1921).

<sup>13</sup> Robert Whitaker, *On the Laps of Gods: The Red Summer of 1919 and the Struggle for Justice That Remade a Nation* (New York: Three Rivers Press, 2008), 185.

<sup>14</sup> John Green to NAACP, June 2, 1931, NAACP Files, Folder 2 (D-G, 1921); William T. Andrews to John Green, June 6, 1931, NAACP Files, Folder 2 (D-G, 1921); Thurgood Marshall to D.W. Briggs, August 25, 1937, NAACP Files, Folder 1 (General A-B, 1937).

one case organization. It was slated to be a regional legal aid society for the victims of prejudice. According to Chiles,

The society intends to make the organization an interstate affair, principally in the state of Kansas, Missouri, Oklahoma and the western country and parts of the South. Each person who pays \$1.00 will become a member and we shall employ attorneys to look after the internal strife and the abridgement of the constitutional rights of the race in cities and towns where prejudiced white people subject the race to Jim Crow laws etc.<sup>15</sup>

Topeka then was to be the center of an organization Chiles envisioned would be prepared to answer racism in multiple places. He stated the KDS would “have local representatives in each town where there are members and anytime anything comes up where the race needs defense as in cases of school matters and wherever there are outrages committed upon the race, the matters will be taken up by this Society.”<sup>16</sup>

It took courage to standup for the soldiers of the 24<sup>th</sup> Infantry Division, as they were alleged to have launched an organized attack on white people. Until the World War I era most incidents of mass racial violence followed a pattern of white mobs attacking unprepared and unarmed Black citizens who most often fled for their lives. In East St. Louis, Illinois, in 1917 many African Americans abandoned the city in the face of a mob. The actions of the Black soldiers in Houston stirred the worst nightmares of many white Americans. According to reports, angry at an attack on one of their most popular officers the members of the segregated 24<sup>th</sup> Infantry Division organized themselves, took firearms, and marched on Houston in search of the police officers responsible for the

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<sup>15</sup> Nick Chiles, “A Movement Worthy of Your Support,” *Topeka Plaindealer*, June 21, 1918.

<sup>16</sup> “Kansas Defense Society Will Act For Imprisoned Soldiers: Race Loving Men and Women Contribute Funds While Lawyers Work on the Papers,” *Topeka Plaindealer*, August 9, 1918.

attack. The soldiers killed sixteen white people while losing only four men of their own. It was a rare occurrence for a race riot to result in more white than Black death, and whites wanted vengeance. Vengeance was had via a hasty court martial that led to the gallows for thirteen soldiers followed by two more courts martials that resulted in six more hangings in the fall of 1918.<sup>17</sup>

The NAACP did all it could to help the soldiers. NAACP Executive Secretary James Weldon Johnson secured a meeting with President Woodrow Wilson who commuted ten of the death sentences to life in prison.<sup>18</sup> However, Wilson defended the procedure that led to the first thirteen men hanging without the opportunity to appeal only six days after they were found guilty and before their convictions were officially announced.<sup>19</sup> The NAACP remained involved in efforts to free the remaining prisoners for the next twenty years.<sup>20</sup> But the NAACP was a young organization constantly struggling with funding and inundated with calls for help. Chiles was not attempting to compete with the NAACP. There was no shortage of work for an organization that wanted to help African Americans in need, and he had good lawyers ready and willing to help under the banner of the KDS.

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<sup>17</sup> Robert V. Haynes, "The Houston Mutiny and Riots of 1917," *Southwestern Historical Quarterly*, April 1973, Vol. 76, No. 4, 435, 438; "Houston Riot Case Ended: Last of Convicted Negro Soldiers Pays the Death Penalty," *New York Times*, September 25, 1918.

<sup>18</sup> Patricia Sullivan, *Lift Every Voice: The NAACP and the Making of The Civil Rights Movement*, (New York: The New Press, 2009), 71-72; "President Saves Rioters: Commutes Sentences of Half a Score of Negro Soldiers Convicted of Murder," *New York Times*, September 5, 1919.

<sup>19</sup> Haynes, "The Houston Mutiny;" "President Saves Rioters".

<sup>20</sup> Sullivan, *Lift Every Voice*, 72, 143.

Scott teamed with African American lawyer T.W. Bell of Leavenworth, Kansas, in an effort to provide justice for the remaining sixty-one soldiers accused of rioting and serving mostly life sentences at the federal penitentiary in Leavenworth. Bell was nearly thirty years Scott's senior. He was born enslaved in Cornett, Mississippi, and studied law at Drake University in Iowa, before settling in Leavenworth in 1886.<sup>21</sup> He was told by a prominent white lawyer if he did not want to starve to death, he should leave town immediately.<sup>22</sup> He remained in Leavenworth until his death in 1948. Like Scott, he showed no fear when it came time to fight for his race. He once wrote that he was "born in Mississippi, April 1, 1862, began to fight the next morning."<sup>23</sup> He was an expert at fighting the custody of prisoners in federal habeas corpus claims. Habeas Corpus is Latin for "you have the body," it is an ancient writ used to force a government agent into court to determine if a person in custody is held lawfully. It is one of the most often used weapons in a criminal lawyer's arsenal, and few have used it better than Bell. By 1920, he had used his proximity to the Leavenworth federal prison to free more individuals from federal custody than any other lawyer in the United States—686 in total.<sup>24</sup>

Despite the best efforts of Bell and Scott progress on the soldiers' case was slow, and it was the NAACP not the KDS that achieved the most for the soldiers. In October 1918, Bell and Scott filed a writ of habeas corpus alleging the soldiers were illegally confined because the Southern department of the army had no power to order a court

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<sup>21</sup> *Leavenworth Times*, August 26, 1948.

<sup>22</sup> "Some Little Stories of Racial Progress," *Chicago Defender*, February 23, 1918.

<sup>23</sup> Turner W. Bell to Arthur Capper, July 6, 1946, Senator Arthur Capper Collection, Box 16, Kansas Historical Society, Topeka.

<sup>24</sup> "Waging Campaign to Free Colored Soldiers: Liberty Being Sought For the 41 Members of the Famous Twenty-Fourth Convicted For Reprisal in Houston in August, 1917," *Dallas Express*, October 23, 1920.



martial.<sup>25</sup> They finally got to argue that and other claims before the U.S. District Court in Kansas City in May 1920.<sup>26</sup> Nothing came of it. But they kept fighting, in October 1920 the KDS teamed with the *Chicago Defender* to raise money to try another appeal, this time to the U.S. Court of Appeals. They also raised funds to circulate a petition that would be submitted to the president elect demanding the release of men who were guilty of only “avenging insults to their uniforms on account of color.”<sup>27</sup> In November 1921, they attempted to convince the House of Representatives to investigate whether some of the imprisoned men “were found guilty merely because they were absent from a roll call the evening of the riot.”<sup>28</sup> Once again, they had no success. Johnson and the NAACP continued to slowly make progress throughout the decade, and by 1930, all but two of the soldiers were pardoned or paroled.<sup>29</sup> Frankly, the KDS did more for Scott than it did for the soldiers. His partnership with Chiles was cemented by the years they spent working on the case and promoting the KDS.

Scott and Chiles always envisioned the KDS would expand beyond the borders of Kansas, and Chiles used his connections in the newspaper world to give it national exposure. In August 1918, Chiles personally visited the offices of the *Chicago Defender*, the *Baltimore Afro-American*, the *New York Age*, the *New York Amsterdam News*, and several other African American newspapers across the country to help put the KDS on the

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<sup>25</sup> “Habeas Corpus Asked: Attempt to Free 41 Negroes Who Were in Houston Riot,” *Arkansas City Daily Traveler*, October 5, 1918; *St. John Daily Capital*, October 24, 1918.

<sup>26</sup> “To Argue Habeas Corpus Writ For Houston Rioters,” *Leavenworth Times*, May 23, 1920.

<sup>27</sup> “Waging Campaign.”

<sup>28</sup> “Cong. Anthony In Resolutions: Asks Information Regarding Trial of Men of the 24<sup>th</sup> Infantry,” *Topeka Plaindealer*, November 25, 1921.

<sup>29</sup> Sullivan, *Lift Every Voice*, 143.

national map.<sup>30</sup> Chiles was a friend of *Defender* editor Robert S. Abbott, who once worked on the staff of the *Topeka Plaindealer*, so he could be sure of a warm reception in the *Defender's* offices and on its pages. Black America's most influential newspaper stated, "this organization is to be nationwide in scope and was born of the purpose of offering some respectable resistance against the propaganda of race hatred and prejudice so often exerted."<sup>31</sup> As Chiles spread word of the KDS throughout the country he let his friends know Topeka had a young lawyer named Scott who feared no fight.

Neither Scott nor Chiles was hesitant to fight with anyone over anything; they even had a major public clash against one another prior to joining forces. The row was over accusations Chiles made against the Knights and Ladies of Protection (KLP) when the insurance agency was staffed by President James Guy and Field Agent Elisha Scott. One of Chiles' obituaries stated, "There was nothing furtive or clandestine about Nick Chiles. He was for his friends, and he was against his enemies—and the entries of his ledger showed which was which."<sup>32</sup> Before Scott made the friends list, he was firmly in the enemies column.

The battle between Chiles, Guy, and Scott was so vicious it ended with Chiles in jail. Prior to Guy's involvement with the KLP Chiles was a member. He co-signed for a KLP debt and lost two hundred dollars in a lawsuit against the company. When Guy and others took over, they "repudiated all debts for the reason that the law does not allow a

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<sup>30</sup> "How The Negro Stands with The Powers At Washington: Scott and Tyler Alarmed When the Plaindealer Man Called at the White House," *Topeka Plaindealer*, September 6, 1918.

<sup>31</sup> "N. Chiles Starts Movement to Aid Imprisoned Soldiers," *Chicago Defender*, August 31, 1918.

<sup>32</sup> *Iola Register*, December 27, 1929.

fraternal order to borrow money.” Chiles then sued to recover his two hundred dollars. He initially won a judgment, but Guy and his co-defendants were awarded a retrial and won.<sup>33</sup> The loss sent Chiles into a rage. He took to his typewriter in an effort to exact his revenge. He used the pages of the *Plaindealer* to attack everyone involved with the KLP. He wrote, “Beware of the Knights and Ladies of Protection, an order that has robbed several colored people and will rob several more if they continue to live up to its mandates.”<sup>34</sup> Of Scott he wrote, “We also made public some of the numerous complaints called to our attention, about one Elisha Scott...charging him with misleading the people and getting their money under false promises and failure to carry out contracts.” Unfortunately for Chiles, the gavel was mightier than the typewriter. Guy pressed charges, and Chiles was sentenced to six months in jail for malicious libel.<sup>35</sup> Scott testified against Chiles at his trial.<sup>36</sup> The ugly incident made national news in the pages of the *Baltimore Afro-American* when it was reported, Chiles lost his appeal before the Kansas Supreme Court and would have to serve his sentence.<sup>37</sup>

It is not clear how it happened, but Scott and Chiles became friends and partners in the fight for social justice. Around the time the KDS was founded in 1918, Scott proved his loyalty when one of Chiles’s cousins was mixed up in a race riot in North

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<sup>33</sup> “Six Months in Jail for Telling Truth! Wyandotte County Judge Hands Editor Chiles a Bunch in Knights and Ladies of Protection Case: ‘Still Running at Large’ and Will Never Give up Fight for Right—Up to Supreme Court to Decide,” *Topeka Plaindealer*, August 30, 1912.

<sup>34</sup> “A Warning!” *Topeka Plaindealer*, October 21, 1910.

<sup>35</sup> “Six Months Jail.”

<sup>36</sup> “‘Two Jims’ Order Proven a Skin Game: The Editor of the Plaindealer Substantiates Charges Against Fake Insurance Order in Court,” *Topeka Plaindealer*, May 5, 1911.

<sup>37</sup> “Criticized Officers of Fraternal Order: Hence Militant Editor Must Serve Six Months in Jail,” *Baltimore Afro-American*, December 6, 1913.

Carolina. Demonstrating the fearlessness that would help build his legend, Scott made his first foray into the deep South to lend assistance.<sup>38</sup> Chiles repaid his friend in newspaper ink. Beginning in the fall of 1918, he worked to publicize the KDS and to make Elisha Scott a shining star in the Black community. By then Chiles had already made his way from South Carolina newspaper boy to Kansas newspaper mogul, therefore, a deeper look at his life is helpful in understanding Scott's.

Chiles began life with all of the disadvantages that came with being born Black in South Carolina just after the Civil War, but he died a rich and famous man. He summarized his experiences in the South when he told a Kansas audience, "The South is worse than hell, and I would rather live in hell."<sup>39</sup> Looking for better opportunities in the West, he came to Topeka with only five dollars in his pocket. By the time he died, his was the largest African American funeral in the history of the city.<sup>40</sup> His newspaper, the *Topeka Plaindealer*, was at one time the best-selling African American newspaper west of the Mississippi.<sup>41</sup> More importantly, under Chiles's stewardship the *Plaindealer* became a consistent challenger of the racial status quo in America.

Chiles demonstrated to Scott that a Topeka African American could fight Jim Crow and make a comfortable living. Chiles was aggressively militant when it came to the rights of his race, yet he enjoyed an upper-class lifestyle. His home was on Topeka's

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<sup>38</sup> "Memorial to Elisha Scott," Charles Scott Collection, RH MS 1145, Box 9, Kenneth Spencer Research Library, Kansas University, Lawrence.

<sup>39</sup> *Hutchinson News*, October 1, 1906.

<sup>40</sup> J.B. Bass, "Nick Chiles, Noted Kansas Editor, Passes to the Great Beyond," *California Eagle* (Los Angeles, CA), November 1, 1929.

<sup>41</sup> Tim Hrenchir, "Topeka History Guy remembers Nick Chiles, Editor and Founder of the *Topeka Plaindealer*," *Topeka Capital Journal*, May 3, 2017. Retrieved June 23, 2022, <https://www.cjonline.com/story/news/local/2017/05/03/topeka-history-guy-remembers-nick-chiles-editor-and-founder-topeka/15353745007/>

Governor's Row just a few doors down from the Executive Mansion, and it was said to be "one of the show places of the city."<sup>42</sup> Chiles owned the colonial mansion free and clear; he also owned a farm near Topeka, the large downtown building where the *Plaindealer* was housed, a significant interest in a coal mine, and the Chiles Hotel. His success prompted the *Chicago Defender* to state, "Mr. Chiles is one newspaper owner, at least, who is living evidence that an Afro-American newspaper CAN be made to pay."<sup>43</sup> Chiles' success in the newspaper business was tolerated in Topeka, after all it was a Black industry. When he chose to use the money that came with success to improve his family's living conditions, he ran into trouble.

Chiles' success brought forth more fear and hatred from the people of Kansas than it did respect and understanding. His efforts to make a comfortable home for his family demonstrate Kansas was not much different than the South when it came to the fear of Black success leading to social equality. His first attempt to move into a white neighborhood was met with overt racism. He had his brother-in-law J.W. Golden who was described as "almost white" rent a home at 717 Topeka Avenue. The realtor who made the deal made no secret of his feelings about African Americans in the neighborhood. He stated, "I thought Mr. Golden a white man and never had the slightest inkling that Nick Chiles would live in the place." He asked Chiles to leave at the end of

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<sup>42</sup> "N. Chiles Buried," *Baltimore Afro-American*, November 9, 1929.

<sup>43</sup> Ralph W. Tyler, "Topeka Sets Pace for Progress in Business," *Chicago Defender*, June 13, 1914.

the month.<sup>44</sup> Chiles refused.<sup>45</sup> His neighbors wanted the police to evict them, but the Chiles family stayed for more than a year.<sup>46</sup>

Chiles was not welcome in his next neighborhood either. When he purchased the house on Governor's Row in 1905 many in the white community were outraged.<sup>47</sup> A St. Louis newspaper article written by an author who asserted he was a Republican born in the North claimed Governor Hoch was to blame for being a "coon lover" as demonstrated by his walking "arm in arm" with Booker T. Washington when Washington was in Topeka. If he was willing to make a public display of his respect for Washington, Hoch deserved to have "Chiles or any other 'nigger' to his home to associate with his wife and daughters." The article was reprinted with favorable comments in at least one Kansas newspaper.<sup>48</sup> Things eventually got so bad Chiles considered "moving for the safety of his family."<sup>49</sup> But Chiles chose to stay and reassured Kansans "he will be a good neighbor to Governor Hoch and that the executive may borrow from him when he wishes."<sup>50</sup> Chiles remained in the home until his death; eight governors were privileged to borrow his sugar.

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<sup>44</sup> "Nick Chiles Moved In," *Topeka State Journal*, April 13, 1904; "To Be A 'Neighbah' to Hoch: Nick Chiles, Negro Editor, Buys House Facing Governor's Square," *Hutchinson News*, July 21, 1905.

<sup>45</sup> Nick Chiles, "Tillmanites on Topeka Avenue: They Kick on a Respectable Colored Family Living in the Community," *Topeka Plaindealer*, April 15, 1914; "Chiles Will Stay There," *Topeka State Journal*, April 15, 1914.

<sup>46</sup> "Don't Want Nick," *Kansas Democrat* (Hiawatha, KS), June 7, 1904; "Nick Chiles to Move: Will Leave Topeka Avenue to Reside Opposite Governor," *Topeka Daily Herald*, July 20, 1905.

<sup>47</sup> "Congratulate Gov. Hoch," *Lehigh Ledger*, August 3, 1905.

<sup>48</sup> "Hoch Der Nigger," *Junction City Sentinel*, November 10, 1905. The article notes it was clipped from the *National Rip Saw* (St. Louis, MO) undated.

<sup>49</sup> *Junction City Sentinel*, May 4, 1906.

<sup>50</sup> "Congratulate Gov. Hoch."

African American success in Kansas often brought about a negative metamorphosis in those who achieved it. Purchasing a home caused Chiles's manner of speaking to transform from that of a well-read newspaper man with a Southern accent to that of a minstrel show stereotype. According to the *Hutchinson News* Chiles stated, "O' coase me an' the govnah don't have much in common when hit comes to politics, but I reckon we can get along tolabable well as neighbahs."<sup>51</sup> The greater Chiles's success the more viciously he was attacked in the white press. And he was undoubtably a success in the newspaper business. He was also a success in the distribution of a more notorious commodity.

Selling liquor in Kansas had been illegal since 1881, but newspaper accounts of the late nineteenth and early twentieth centuries carried numerous reports of Chiles selling alcohol. For several years before and after the turn of the century he was in fact a notorious violator of the prohibition law. He did little to hide it. He was not alone; Topeka was full of respectable citizens who shirked the prohibition law including many pharmacists and the proprietors of the city's finer hotels and social clubs. Though his ownership of the Chiles Hotel led to most of his prohibition violations the press portrayed him more like an organized crime boss than a businessman providing good service to his clientele. The *Lawrence Journal* called Chiles "the worst jointist Topeka ever had."<sup>52</sup>

Chiles was also a force in local Republican politics; he was so powerful in fact that he was accused of being a political boss who operated above the law. As Chiles was building his empire, he was known as a "notorious politician jointist," and a "notorious

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<sup>51</sup> "To Be Neighbah."

<sup>52</sup> *Lawrence Journal*, October 16, 1897.

colored joint keeper and ward heeler.”<sup>53</sup> The *American Bimetallist* claimed, “Nick Chiles is the most powerful politician in Shawnee County today. Our officers hold their posts by his good will,” and stated, “We hope Nick Chiles will let us have a decent mayor.”<sup>54</sup> It was regularly reported, Chiles’s wealth and power kept both citizens and the police from challenging him. The *Topeka State Journal* stated, “there are many negroes in the city who do not approve of Chiles and his gang, but they can not deny that more men of their color are at his beck and call than that of any other man of the negro race in Topeka.”<sup>55</sup> When he opened his hotel, newspapers reported, Chiles publicly distributed handbills that stated beer and wine would be served at the grand opening, and even extended an invitation to the police force, yet he was not punished.<sup>56</sup> The reason according to the *State Journal* was, “Nick controls Republican votes.”<sup>57</sup>

When the *Plaindealer* became an instant success, Chiles was viewed as an even more powerful force in statewide politics and that led to more frequent attacks. When the Republican Attorney General suspended a prohibition violation jail sentence four times, he claimed it was because Chiles was keeping his nose clean. When Chiles was again arrested for a prohibition violation in 1900 newspapers screamed for the old sentence to be served.<sup>58</sup> But the matter was delayed until November. The temperance minded *Good*

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<sup>53</sup> *Kansas Templar* (El Dorado, KS), August 1, 1900. “Chiles Has A Fight: Colored Joint Keeper Assaults Two Citizens,” *Topeka Daily Capital*, September 29, 1897.

<sup>54</sup> *American Bimetallist* (Topeka, KS), November 14, 1896; *American Bimetallist* (Topeka, KS), November 21, 1896.

<sup>55</sup> “Negro Bosses in Politics,” *Topeka State Journal*, August 11, 1900.

<sup>56</sup> “Right In Their Faces: Nick Chiles Snaps His Fingers in the Faces of Public Officers,” *Topeka State Journal*, December 30, 1896; “Timely Topics from Topeka,” *Oskaloosa Times*, January 8, 1897.

<sup>57</sup> “Right In Their Faces”.

<sup>58</sup> *Kansas Issue* (Topeka, KS), August 1, 1900; *Kansas Templar* (El Dorado, KS), August 1, 1900.



*Citizen* explained, Chiles “is ‘whooping it up’ in true party style for (Attorney General) Godard’s party. He prints a cut of Mr. Godard and gives him a write up.”<sup>59</sup> In 1901, the *Wichita Beacon* was brusque in its description of Chiles’s career. “Nick Chiles of Topeka is one of the richest negroes in the state. His wealth is estimated at \$40,000. He runs two newspapers, a hotel, a joint, a dairy, and the republican negro vote.”<sup>60</sup>

Racist jealousy was definitely a factor in reports of Chiles’s political power. As W.E.B. DuBois stated it, “there was one thing that the white South feared more than negro dishonesty, ignorance, and incompetency, and that was negro honesty, knowledge and efficiency.”<sup>61</sup> For African Americans anywhere in the country that meant success could lead to problems. It did in Topeka for men like Chiles and Scott who overtly refused to accept the racial status quo. The harshest criticism Chiles received in Kansas’s newspapers came shortly after he achieved notable success. Just after he made dozens of Kansas newspapers for serving as Assistant Sergeant at Arms at the 1900 Republican Convention in Philadelphia, he was attacked. Most of the mentions of Chiles’s service at the Convention simply listed him among the people from Kansas who served as assistants without mention of his race. The *Beloit Weekly Times*, therefore, reported, “Nick is a ‘nigger’...he also runs an exclusively colored peoples hotel and the hottest joint in Topeka. He makes no secret of it either...but you don’t read of his place being pulled do you? Why? Because Nick has ‘fluence’—lots of it.”<sup>62</sup> Just after newspapers noted Chiles had purchased the large building on Seventh Street that would house his hotel and

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<sup>59</sup> “Godard’s Dilemma,” *Good Citizen* (Topeka, KS), August 15, 1900.

<sup>60</sup> “Kansas Notes,” *Wichita Beacon*, March 30, 1901.

<sup>61</sup> W.E.Burghardt DuBois, “Reconstruction and its Benefits,” *The American Historical Review*, July 1910, Vol. 15. No. 4 (1910), 795.

<sup>62</sup> “‘Topeka’ Heard From,” *Beloit Weekly Times*, June 28, 1900.

newspaper two Topeka dailies bluntly accused him of being an untouchable political boss. Chiles, it was stated, cursed at an on-duty police officer, and then laughed and walked away when arrest was threatened. The *State Journal* made clear what it thought of Chiles insolence with its headline, “Insults Whom He Will: Nick Chiles Appears to be Immune From Police Interference.” The writer of the article for the *Daily Press* was inconsolable, he or she called Chiles “a brazen faced colored street politician who bosses police officers...and who sticks his nose into every gathering with the slyness of a slimy serpent and the odor of a skunk.”<sup>63</sup> The writers seemed to want an uppity Black man to be put in his place or worse. The *Daily Press* concluded, someday Chiles would “rub the fur the wrong way of some one who is not acquainted with the pull this grinning hyena has on the officers—there will be a Negro in Heaven for breakfast.”<sup>64</sup> Ironically it is possible the desire to dine in Heaven caused Chiles to change his ways.

When the famous saloon smasher Carrie Nation set her hatchet upon Topeka on February 17, 1901, she created a frenzy like the city had never seen; when it was Nick Chiles who bailed her out of jail many thought it could be nothing but divine intervention. With the help of about five-hundred followers including Washburn College students wielding a battering ram, Nation managed to smash the property of several alcohol sellers and get arrested four times.<sup>65</sup> After one arrest, Nation was allowed to speak to the throng outside the jail. Standing on the courtroom steps, she specifically

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<sup>63</sup> “Insults Whom He Will: Nick Chiles Appears to be Immune From Police Interference,” *Topeka State Journal*, August 28, 1896; “‘Boss’ Nick Chiles: Runs Things With a High Hand and Insults Officers at Will,” *Daily Press* (Topeka, KS), August 29, 1896.

<sup>64</sup> “‘Boss’ Nick Chiles”.

<sup>65</sup> “A Busy Day: Mrs. Nation Began Work Yesterday Morning at 6,” *Iola Daily Record*, February 18, 1901.

asked for Nick Chiles to sign her bond and he agreed. As he sat down to sign the papers, Nation's followers sang the "Doxology."<sup>66</sup>

Praise God from whom all blessings flow  
Praise Him, all creatures here below  
Praise Him above the heavenly host  
Praise Father, Son and Holy Ghost  
Amen, Amen, Amen, Amen

The *Topeka State Journal* stated, "Mrs. Nation and Nick Chiles have, like the lion and the lamb lain down together."<sup>67</sup> Nation who was aware of Chiles's connection to the saloon world she abhorred thought she had a conversion.<sup>68</sup> Chiles was not a likely candidate for conversion. He was so far removed from religious life that even his own *Plaindealer* had to admit the irony when he spoke at a church in 1899. "Nick Chiles," it was reported, "'made a little talk' in a church at Hutchinson last week! Great God!"<sup>69</sup> Chiles eventually did find religion. He joined St. John AME in 1910, and remained a member for life, but religion alone did not motivate his connection to Carrie Nation.<sup>70</sup>

Legal issues stemming from prohibition violations and the desire to enter into business with Nation who was creating a sensation that could not be ignored were important factors in his decision to join forces with the saloon smasher. Days before he signed Nation's bond, Chiles was still running his hotel bar, but Nation and her followers

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<sup>66</sup> "The Sunday Arrests: Mrs. Nation's Bond Was Signed by Nick Chiles," *Kansas Weekly Capital* (Topeka, KS), February 19, 1901.

<sup>67</sup> "Waters Dissatisfied: Summons Populists to Nominate a New City Ticket," *Topeka State Journal*, March 13, 1901.

<sup>68</sup> "Is Due This Week: Mrs. Nation Consults About 'the Smasher's Mail,' Thinks She Has About Converted Chiles," *Wichita Beacon*, March 4, 1901.

<sup>69</sup> *Topeka Plaindealer*, July 7, 1899.

<sup>70</sup> Paul Putz, "The Anti-Racism Activist That History Forgot," *Christianity Today*, <https://www.christianitytoday.com/history/2018/june/nick-chiles-early-anti-racism-activist-history-forgot.html>, retrieved December, 10, 2021.

were making things tough for Topeka's liquor sellers.<sup>71</sup> Temperance activists requested injunctions against Chiles and other habitual violators of the prohibition law. If successful they would shutter their places of business, meaning Chiles would lose his hotel.<sup>72</sup> With that much pressure on the saloon business, it made sense for Chiles to publicly repent and join the prohibitionists. He went a step beyond signing by Nation's bond, and the pair partnered in creating a temperance newspaper called the *Smasher's Mail*.

If Chiles wanted his relationship with Nation to take the heat off of his alcohol business, he was only minimally successful. In the pages of *The News* it was stated, "(Chiles) has the reputation of being one of the worst characters in Topeka...a pimp and a keeper of a low-down 'nigger' dive. He is also reported a thug and a drunkard...he can afford to let Mrs. Nation edit a paper for him, but can she afford it? The poor woman is certainly insane."<sup>73</sup> The *Barton County Democrat* stated Nation would make a large sum of money from her partnership with "Nick Chiles, the Topeka 'coon' jointist," provided Chiles did not "hornswaggle her out of the profits."<sup>74</sup> Other newspapers were clearly uncomfortable with the interracial business partnership. The *Lebanon Times* commented the *Smasher's Mail* should be dubbed "the Miscegenationist."<sup>75</sup> All of the attention paid to the partnership did little to help Chiles avoid attention for his connection to the liquor business. However, some journalists believed in his conversion. In several Kansas

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<sup>71</sup> *Topeka State Journal*, February 11, 1900.

<sup>72</sup> "New Actions," *Topeka Daily Legal News*, February 14, 1901; "Property Owners Enjoined," *Kansas Farmer and Mail and Breeze* (Topeka, KS), February 15, 1901.

<sup>73</sup> *The News* (Harper, KS), March 15, 1901.

<sup>74</sup> *Barton County Democrat* (Great Bend, KS), March 15, 1901.

<sup>75</sup> *Lebanon Times*, March 15, 1901.

newspapers he went from notorious jointist to “ex-jointkeeper.”<sup>76</sup> The pair did their best to heal his reputation in the first issue of the *Smasher’s Mail*, it featured a large picture of Chiles and nearly half of one page was dedicated to Chiles’s biography and the heroic story of him signing Nation’s bond.<sup>77</sup> But two personalities as strong as Chiles and Nation were bound to clash and it was not long before the Black joint runner and the white joint smasher returned to their customary side of the bar.

Two weeks after the first issue of the *Smasher’s Mail* was published Chiles and Nation dissolved their partnership. Nation was upset that Chiles edited some of her content; therefore, she decided to find a new printer.<sup>78</sup> Chiles may have wanted out anyway, as Nation’s aggressive attacks had already gotten the paper threatened with at least one libel suit.<sup>79</sup> Furthermore, his connection to Nation did not take the heat off of his liquor business.

If Chiles sought to avoid problems with the law by partnering with Nation, his plan backfired. About seven months after his split with Nation, the *Topeka Daily Capital* commented, “A very unusual and remarkable thing occurred in police court yesterday. No case against Nick Chiles for selling booze was set for trial.”<sup>80</sup> Chiles did not quit the liquor business, and his fame and success were only a hinderance as prohibition

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<sup>76</sup> *Osage City Free Press*, March 6, 1901. While Chiles was still often referred to as a joint keeper or jointist during that period the “ex-jointkeeper” remark appeared in several more papers, including: *Dickinson County News* (Abilene, KS), March 7, 1901; *Burlingame Enterprise*, March 7, 1901; *Wakefield Searchlight*, March 7, 1901. After the first edition of the *Smasher’s Mail* was released March 9, 1901, more newspapers referred to Chiles as “ex-jointkeeper”. See for example, *Holton Signal*, March 13, 1901; *Republican Gazette* (Gove City, KS), March 14, 1901.

<sup>77</sup> “Nick Chiles,” *Smasher’s Mail* (Topeka, KS), March 9, 1901.

<sup>78</sup> *Smasher’s Mail* (Topeka, KS), March 30, 1901.

<sup>79</sup> *Atchison Daily Globe*, March 23, 1901.

<sup>80</sup> *Topeka Daily Capital*, October 22, 1901.

violations piled up. The Attorney General reinstated the old charge, and Chiles was arrested six times between his break with Nation and 1908 when it appears he left the liquor business behind. The last two decades of this life were dedicated to the business of his newspaper and the betterment of his race.

Chiles was an aggressive opponent of Jim Crow for years. In situations where even brave people may have backed down for the sake of self-preservation, he continued to fight. Chiles's example to Scott was the same as Charles Sheldon's: take action. It was written, "His motto was to 'DO SOMETHING' and he religiously live up to this feature in every way possible."<sup>81</sup> He once forced a train conductor in Muskogee, Oklahoma, to arrest and jail him for one night when he "refused to give up his seat and stand in order that white passengers might sit down."<sup>82</sup> Furthermore, he kept the pressure on by filing suit for twenty-thousand dollars in federal court.<sup>83</sup> A person who had as many run-ins with the law as Chiles would be crazy not to befriend a good lawyer, and Scott's record shows he was a great lawyer even if some people did not know his name.

Chiles did all he could to help people remember the name Elisha Scott. The KDS was short lived, it faded from existence by the mid-twenties, but Scott and Chiles remained allies, and Chiles was always willing to boost his friend's career. While the KDS was still in existence it gave Scott the chance to demonstrate his abilities to the federal authorities in Washington D.C.

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<sup>81</sup> J.B. Bass, "Nick Chiles, Noted Kansas Editor, Passes to Great Beyond," *California Eagle* (Los Angeles, CA), November 1, 1929.

<sup>82</sup> "Kansas Editor Freed," *Baltimore Afro-American*, March 7, 1925.

<sup>83</sup> "Nick Chiles Sues," *Baltimore Afro-American*, December 5, 1925.

In 1921 Scott helped the town of Boley, Oklahoma, to open a federally chartered bank; it was the first Black owned and operated federally chartered bank in the country.<sup>84</sup> Southern African Americans searching for opportunity founded Boley in 1903. It quickly became the largest of dozens of all Black towns in Oklahoma, and it was for a time the largest all Black town in the United States.<sup>85</sup> Scott described the town as utopian. He wired Chiles that all of the town officials from the mayor to the ticket agent to the sheriff were African American and the town ran like clockwork.<sup>86</sup> He gained the prospective bank as a client through the KDS. He traveled to Washington D.C. and appeared before Secretary of the Treasury Andrew Mellon in order to charter the bank.<sup>87</sup> Chiles let the world know the great work his favorite lawyer was doing for the race. He wrote, "Several months ago this matter was placed in the hands of the Kansas Defense Society who directed its counsel to proceed to tear down the barriers of oppression which confronted the organization of such an institution...Attorney Scott at once went to Boley...and then proceeded to Washington...The charter was received this week."<sup>88</sup>

Scott was always doing things like breaking barriers of oppression when the *Plaindealer* was describing his work. In 1916, he was "forging the front in the legal profession."<sup>89</sup> In 1917, he was "destined to become one of the brightest stars in the legal

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<sup>84</sup> *Topeka State Journal*, April 20, 1921.

<sup>85</sup> Melissa Nicole Stuckey, "All Men Up: Race, Rights and Power in the All-Black Town of Boley, Oklahoma, 1903-1939," PhD dissertation (Yale University, 2009), 1-2.

<sup>86</sup> *Topeka Plaindealer*, September 2, 1921.

<sup>87</sup> "Memorial to Elisha Scott."

<sup>88</sup> "National Institution by Race Only One of its Kind in Country: Kansas Defense Society through its Counsel Atty. Elisha Scott Surmounts Obstacles and Secures Charter," *Topeka Plaindealer*, April 22, 1921.

<sup>89</sup> "A Coming Power in the Legal Fraternity," *Topeka Plaindealer*, December 8, 1916.

fraternity.”<sup>90</sup> By 1918, he was “one of the state’s most popular attorneys.”<sup>91</sup> When Scott accomplished the unthinkable feat of putting a white woman who accused a Black man of rape on the witness stand and destroying her credibility, he was “brave,” “bold,” “courageous,” and “a race man from start to finish.”<sup>92</sup> He once argued before the Kansas Supreme Court “as though he was skating on ice.”<sup>93</sup> Scott could accomplish anything in the pages of Chiles’ newspaper. He could even play both parts in a biblical epic. He was a “legal giant,” and “the young David of the colored race.”<sup>94</sup>

Scott was an oxymoron—an obscure legend. He made national news dozens of times, making him better known than lawyers like T.W. Bell, Scipio Jones, and others who did great things for their race but suffered in obscurity. Yet Scott suffered from his own brand of obscurity in that people knew of a Black lawyer in Topeka who had the skill to provide help, but they did not know his name. The fact that he was an African American lawyer helps to explain the obscurity. He was a star in the Black press, but the down and out individuals who wrote him for help were clearly not exposed to his legend via reading newspapers. The fact that he became so well-known was dependent on many things including residing in Topeka as opposed to the South and his relationship with Chiles.

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<sup>90</sup> *Topeka Plaindealer*, March 23, 1917.

<sup>91</sup> “Topeka Lawyer Making Good,” *Topeka Plaindealer*, October 11, 1918.

<sup>92</sup> “Assault Story A ‘Frame-Up’: White Woman Accuses Son of Wealthy Negro of Serious Crime—Atty Scott Wins Case at Preliminary,” *Topeka Plaindealer*, May 2, 1919.

<sup>93</sup> “Educational Rights of the Colored Race is Jeopardized,” *Topeka Plaindealer*, January 11, 1924.

<sup>94</sup> Scott was described as a “legal giant” twice. “Colored Citizens of Atchison Have Big Affair,” *Topeka Plaindealer*, September 26, 1919; “Attorney Elisha Scott,” *Topeka Plaindealer*, April 1, 1921; “Elisha Scott to Arkansas: Bold Topeka Attorney Would Face Death to Defend Robert Hill,” *Topeka Plaindealer*, April 9, 1920.



One possible explanation for the fact that people knew about Scott's deeds but did not know his name stems from the distribution of the *Plaindealer*. When Chiles wanted to encourage African Americans to take up arms against racial oppression after a lynching, he sent hundreds of copies of the *Plaindealer* stamped with the word "Special" in red letters to Mississippi. A least one newspaper took notice running the headline, "A Kansas Paper Advises the Negroes to Wade Through Blood."<sup>95</sup> Chiles also hired agents in other cities to sell the newspaper. When he hired an agent in Memphis, he informed its citizens the paper "shall cover the southern territory thoroughly and will write that which we think best for the betterment of the race."<sup>96</sup> Therefore, it is conceivable like the *Chicago Defender* the *Plaindealer* made its way around the country, and as it did some of Scott's stories were transmitted verbally. The location of Topeka would have also made it possible for the *Plaindealer* to make its way around the country, as the city was a fairly large railroad hub. But it would not have mattered how many places the *Plaindealer* reached if Scott wasn't a subject worth reading about, and he was worth reading about. His notoriety was also due to his ability to make the courtroom his personal stage and benefit his clients in the process.

Scott saw drama as part of a lawyer's toolbox, and he was willing to use it especially when the law was not on his client's side. In 1955, he admitted as much in open court. When opposing counsel insisted on returning to facts already discussed Scott objected and stated, "this is a theatrical performance. You're talking about Act I and right now I'm working on Act II."<sup>97</sup> Part of the performance was playing on the emotions of

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<sup>95</sup> *Topeka Plaindealer*, March 11, 1904.

<sup>96</sup> Nick Chiles, "To the Public," *Topeka Plaindealer*, October 6, 1905.

<sup>97</sup> "Drama Provided at Trial of Hickman," *Manhattan Mercury*, July 29, 1955.

jurors. His secretary remembered, “he could make a jury cry like a Baptist minister.”<sup>98</sup> A famous dramatic performance by Scott concerned the case of an old formerly enslaved man who killed his son in law. The defendant had repeatedly warned the victim he would kill him if the young man did not stop beating his wife. When the old man finally made good on his threat, Scott took the case. With the evidence stacked against his client his only chance was to appeal to emotion. He finished his closing argument on his knees as he implored the jury, “Do not send this poor old man who did what he thought was right to jail to spend his last years in bondage as he spent his early years.” Despite the fact that the man committed a murder, the jury took less than two minutes to return a verdict of not guilty of first-degree murder.<sup>99</sup> In another well-known case the *Chicago Defender* reported Scott saved a man from the death penalty with a closing argument that referred to “the Pharoahs (sic), to the Caesars, to the birth of Christianity.” He told the jurors if they found his client guilty, “The earth will rock and shake like an earthquake.” His argument saved the man’s life.<sup>100</sup> Such performances were must see events.

Scott drew large crowds at myriad trials throughout his career.<sup>101</sup> His closing arguments were particularly popular. When he closed a case in Oklahoma it was reported, “Attorney Scott’s closing argument drew a large crowd of both races who had long heard

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<sup>98</sup> Inza Brown, interview by Richard Kluger, undated, MS 759, Box 1, Folder 11, *Brown vs. Board of Education* Collection, Yale University Library.

<sup>99</sup> Charles Scott, interview by Richard Kluger, October, 21, 1970, MS 759, Box 5, Folder 89, *Brown vs. Board of Education* Collection, Yale University Library; “Lawyers Win Case,” *Topeka Plaindealer*, February 5, 1926.

<sup>100</sup> “Makes Eloquent Plea to Save Man Facing Death,” *Chicago Defender*, April 2, 1938.

<sup>101</sup> *Topeka State Journal*, August 11, 1920; “Reception Day in Court”; “Hammond Case to Jury: Elisha Scott Noted Criminal Lawyer Pleads Before Packed Audience,” *Topeka Plaindealer*, December 4, 1931; Kluger, *Simple Justice*, 387.

of the able Kansas lawyer.”<sup>102</sup> United States District Court Judge Richard Rogers stated, “wherever he went the courtroom was filled” and admitted he once skipped his high school football practice to hear Scott close and win a case in 1939.<sup>103</sup> People who worked in the vicinity of the courthouse as well as Washburn University law students would fill the seats when they heard the little lawyer with the baritone voice was treading the courtroom boards.<sup>104</sup>

Scott was criticized for playing to emotion, but his ability to appeal to emotion was a tool he could use to win when others would simply have to accept a loss. Paul Wilson who represented the state of Kansas in *Brown v. Board of Education* complained that Black lawyers including Scott relied “on favor rather than law.”<sup>105</sup> But when his fellow members of the Topeka bar memorialized Scott they recognized the ability to win without relying solely on the law was a strength. They stated, “He possessed a natural wit and the ability to dramatize. He learned early in life to effectively use these in varying combinations with his knowledge of the law, and many an adversary discovered this combination to be overpowering in the courtroom.”<sup>106</sup> Former United States Attorney Charles Rooney remembered Scott once had a judge biting his fist to keep from laughing at Scott’s aggressive defense in a white slavery case, but Scott had the last laugh when

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<sup>102</sup> “Noted Criminal Lawyer Represents The State of Oklahoma in Murder Trial,” *Topeka Plaindealer*, July 8, 1932.

<sup>103</sup> Mike Anton, “Scion of Topeka Law Firm Inherits Role in Rights Case,” *Kansas City Star*, October 6, 1985.

<sup>104</sup> “Unforgettable Characters of Topeka: Elisha Scott,” Charles Scott Collection, RH MS 1145 Box 9, Kenneth Spencer Research Library, Kansas University, Lawrence. This copy of a newspaper article does not contain a date or newspaper name; Inza Brown, interview.

<sup>105</sup> Paul E. Wilson, *A Time to Lose: Representing Kansas in Brown v. Board of Education* (Lawrence: University Press of Kansas, 1995), 132.

<sup>106</sup> “Memorial to Elisha Scott.”

the jury returned a verdict of not guilty in less than fifteen minutes.<sup>107</sup> Scott's grandson Charles Scott Jr., an excellent civil rights lawyer himself, explained why Elisha Scott's ability to turn to drama was an asset when the law was not on his side. The younger Scott admitted he did not inherit the ability to play on juror's emotions. He stated, "I'm very mechanical. If I win, it's on the merits of a case, not because of my style. If I don't have the merits, I don't win."<sup>108</sup> The fringe benefit of Scott's dramatization was that when he won it did not matter whether he was heralded or lambasted in the newspapers—his name was in the newspapers.

Scott readily admitted he was a publicity seeker. He saw making the newspapers as part of his job. In one of his most honest self-reflections, he let the *Topeka Daily Capital* know his attitude about cultivating the attention of the press. When asked what he was doing at the capitol building he said, "For once I'm up here at the state house without trying to get my name in the paper. I'm not stirring up a thing."<sup>109</sup> One newspaper blurb hinted that he may have subscribed to the axiom that no publicity is bad publicity. In 1921, the *Daily Capital* printed the following alone and without context: "Elisha Scott, attorney—If I took to heart all the papers have said about me I would be in trouble all the time."<sup>110</sup>

Knowing the value of publicity in gaining clients, Scott was always ready with a clever quote for the Press. When a reporter asked him about Topeka's jury pool, he quipped, "the district court has a good sensible jury this term of court. It acquitted one of

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<sup>107</sup> Anton, "Scion of Topeka".

<sup>108</sup> Anton, "Scion of Topeka".

<sup>109</sup> *Topeka Daily Capital*, August 4, 1919.

<sup>110</sup> *Topeka Daily Capital*, April 21, 1921.

my clients.”<sup>111</sup> When he protested the Showing of *The Birth of a Nation* an early film that combined overt racism with a sentimental ode to the Ku Klux Klan, Scott was at his wittiest. He stated, the film was “conceived in hell and born in Georgia.”<sup>112</sup> When Scott was arrested for failing to update the license plate on his car, he was allowed to bail himself out and set a trial date more than three weeks later. He stated, “I’ll have my license tag by that time”. When asked if he had applied for the tag yet he replied, “One of the first instructions I give my clients is not to say a word about most cases. I am my own client this time, so I’m not putting out a thing.”<sup>113</sup> When Scott did speak everyone seemed to listen. He even made headlines when one of his jokes missed the mark. When charges of assault were dropped against Oscar C. Bryant on account of Bryant being dead and buried, Scott set off a full-fledged manhunt for the deceased when he joked that Bryant was playing possum in order to avoid jail.<sup>114</sup> While his joke about death did not go over very well, jokes about birth were better appreciated. The birth of his first son brought about a memorable one-liner. It was reported, “Elisha Scott, colored attorney, was passing cigars yesterday in celebration of the arrival of an heir, Elisha Scott, Jr. Mr. Scott says his son will undoubtedly adopt the legal profession, as he has good lungs and makes a lot of noise on slight provocation.”<sup>115</sup>

While Scott was happy to create his own publicity, his fame grew when other people began to disseminate his legend. As newspaper reporters and his peers in the legal

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<sup>111</sup> *Topeka Daily Capital*, April 13, 1921.

<sup>112</sup> *Topeka Plaindealer*, October 16, 1931.

<sup>113</sup> “Keep Still About Case Says Elisha to Elisha,” *Topeka Daily Capital*, March 5, 1922.

<sup>114</sup> “A Joke Caused Trouble: Shawnee County Authorities Start a Search for O.C. Bryant, Who Has Been Dead Several Weeks,” *Topeka State Journal*, April 24, 1922.

<sup>115</sup> *Topeka Daily Capital*, December 18, 1917.

world began to tell “Elisha Scott stories” they unwittingly became his media machine. A machine by definition works on its own, without labor from its owner. The same is true of a publicity machine, and as the machine grew so did Scott’s legend. Shortly after he began practicing in 1916, the *Topeka State Journal* helped to get things running. The paper noted, “Negro police characters had better stand on good behavior the next two weeks. Elisha Scott, negro attorney, who has been representing them in court since he got out of law school, announced today that he has accumulated enough of a surplus to take a vacation, and he’s gone.”<sup>116</sup> A few years later when the local bar association ruthlessly roasted Judge Robert Garver at his retirement party he shouted, “Where is Elisha Scott? I demand counsel.”<sup>117</sup> By 1940, a local bishop complained, “that sleuths before committing crimes demanded to know was Elisha Scott available.”<sup>118</sup> Scott’s reputation quickly became strong enough that even when he lost, he won in the press. For example, when a reporter wanted to demonstrate a judge had lost patience with local prostitutes he or she wrote, “The fact that Elisha Scott represented them made no difference. ‘Thirty days in jail’ became a habit.”<sup>119</sup> In 1951, columnist Arnold Scripto wrote, “(Scott) practices in all courts and in almost all sections of the United States. It is customary for people when on the verge of any conflict with either the criminal or civil statutes to inquire of the health of Attorney Elisha Scott of Topeka. When he is well and on his feet, they feel better.”<sup>120</sup>

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<sup>116</sup> *Topeka State Journal*, August 18, 1916.

<sup>117</sup> “Attorneys Roast Garver: Give A Luncheon Also,” *Topeka Daily Capital*, September 7, 1919.

<sup>118</sup> “A Tribute to Attorney Scott,” *Kansas City Plaindealer*, October 18, 1940.

<sup>119</sup> “30 Days in Jail: That is What Undesirable Girls on Street May Expect,” *Topeka State Journal*, August 22, 1917.

<sup>120</sup> Arnold Scripto, “At the Listening Post,” *Kansas City Plaindealer*, March 2, 1951.

As he traveled to take cases Scott's notoriety spread nationally. It began when Chiles helped him make headlines in the Houston soldier's case, and when he became involved in the several cases surrounding violent acts against African Americans that are covered in the next chapter it grew rapidly. As he took more cases, his legend grew simultaneously, one feeding off of the other. A case in Oklahoma or Colorado meant a mention in the papers, and that led to another case and another mention in the papers. By 1921, it was said he had "an extensive practice which constantly takes him in and out of the state."<sup>121</sup> His legend grew with stories like the *California Eagle* reporting the Kansas lawyer whose name was "a household word" stopped in Los Angeles while representing a group of Oklahoma African Americans who wanted to relocate to Mexico.<sup>122</sup> It was not hyperbole when the *Topeka Plaindealer* stated, "He is being sought after all over the country in various states, towns and cities, the colored people are calling on him to come to their defense."<sup>123</sup> He even drew comparisons to the most famous attorney of his era. The *Plaindealer* noted in 1928, Scott's success meant "he is fast getting into Attorney (Clarence) Darrow class."<sup>124</sup> When Scott arrived in Detroit in July 1936 to handle a murder trial he was said to be, "The Black Darrow."<sup>125</sup>

By the mid-1930s, he was a living example of the potential of his race, and the infinite possibilities of a career in law. In 1936, when Faye Philip Everett wrote a book called *The Colored Situation* which was intended to provide African Americans a guide for choosing a profession, he deemed Elisha Scott the exemplar of a Black lawyer in the

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<sup>121</sup> "Attorney Elisha Scott."

<sup>122</sup> "Noted Lawyer Visits City," *California Eagle* (Los Angeles, CA), July 29, 1922.

<sup>123</sup> "Hon. Elisha Scott Handles Big Oil Case," *Topeka Plaindealer*, August 8, 1924.

<sup>124</sup> *Topeka Plaindealer*, June 22, 1928.

<sup>125</sup> "Mrs. Leola Davis Pleads Guilty of Manslaughter," *Detroit Tribune*, July 4, 1936.

United States. His description of the famous barrister explained why people seemed drawn to Scott.

Attorney Scott has argued law in nine states in the United States successfully representing Negroes in all. Aside from his success in the courts, he has served as a Business Engineer for Negro banks, white Oil Companies, and Negro families of wealth. It has been said that to describe Elisha Scott at the bar is to ascertain the highest intellect to which an attorney under the most favorable circumstances may aspire. The foundation of his professional and public reputation is his oratorical power. His speeches are inimitable and his power of statement is forceful. His unusual capacity for organizing an argument around a fundamental principle, his style of expression, and his perfect sense of propriety, and proportion place him as one of the Masters of the English language and rank him as one of the great orators of America.<sup>126</sup>

He could also benefit when a writer did not appreciate his success. Newspaper articles that complained Scott's work set guilty people free were the best endorsements a criminal lawyer could get. He once won an easy acquittal and gained such an endorsement in a prohibition violation case in Fort Scott. The prosecutor proved that the man had liquor in his house and that the liquor belonged to him. After the prosecution rested its case, Scott did nothing to dispute any of the evidence. He simply pointed out the man was charged with *selling* liquor and not a shred of evidence had been provided to prove that charge. *The Fort Scott Daily Tribune and Monitor* lamented, "Although plainly guilty of having liquor in his possession Harding was acquitted."<sup>127</sup> At times his successes resembled a magic trick. In a series of Topeka prohibition cases the police found illegal liquor at the home of Lela Dotson three times in one month. They found the last bottle in plain sight on her table. It seemed the evidence was overwhelming;

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<sup>126</sup> Faye Philip Everett, *The Colored Situation: A Book of Vocational and Civic Guidance for the Negro Youth* (Boston: Meador Publishing Company, 1936), 84.

<sup>127</sup> *Fort Scott Daily Tribune and Monitor*, July 5, 1922.



however, it was written, “each time she has proved an alibi and convinced the court thru her attorney, Elisha Scott, that she had no knowledge of the presence of the ‘booze’ and as a consequence has gone free.”<sup>128</sup> The article certainly meant to complain about Dotson and her slick lawyer who could apparently make crimes disappear. But the complaint was the best advertisement Scott could receive. It clearly demonstrated he could win in the face of seemingly irrefutable evidence. The article also hints at racism toward Scott and his African American client, but it was far from the worst treatment he received in Kansas newspapers.

At the hands of writers who sought to appeal to racist imagery Scott’s speech and dress became a stereotype. Even when he was complimented the implications were negative. When the *Daily Capital* called him “dapper” it was coupled with a narrative and dialect clearly intended to besmirch the reputation of the rising Black lawyer.

Elisha Scott, dapper Negro lawyer, came dashing into Judge McFarland’s court yesterday afternoon. He wore a cap. It was on skewed wise. A trial was in the midst, as it were. “Beg pardon, jedge, but I has a case heah and I sure forgot my party’s name. Can you tell it to me?” The judge told Scott the client’s name was Burns and that Burns had burnt the tracks to “Kay See”. Burns’ case will be heard Monday afternoon. Scott said he will be on hand.<sup>129</sup>

Scott’s busy schedule and notoriously messy desk did cause problems. In 1922, his client was found guilty of possessing liquor when he left town without rescheduling the trial.<sup>130</sup> And he was known to get so busy he would forget to eat until he became

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<sup>128</sup> “Lela Gets Off Easy,” *Topeka Daily Capital*, January 19, 1919. Dotson was fined ten dollars for interfering with a policeman in connection with the final incident.

<sup>129</sup> “Had Case But Forgot Name of His Client,” *Topeka Daily Capital*, June 19, 1920.

<sup>130</sup> “Ella is Guilty When Elisha Scott, Her Attorney, Leaves Town,” *Topeka Daily Capital*, November 3, 1922.

malnourished.<sup>131</sup> Therefore, he probably did walk in the courtroom and ask the judge for the name of his client. But the article does not represent him as a busy lawyer, the description of his style, language, and attitude imply he was closer to a pimp than a Darrow.

The shyster lawyer narrative was also used against Scott. When city officials sought to shutter a notorious pool hall known to allow drinking and gambling called the Silver Moon, they passed an ordinance “closing all pool halls north of Fifth street to the river on Kansas avenue knowing the while the Silver Moon was the only resort carrying a city pool hall license in that territory.”<sup>132</sup> The *Daily Capital* saw the ordinance as a smart solution to an infamous problem, and lamented the fact that the pool hall was closed for only one day before returning to illegal business as usual. The article in the *Capital* rhetorically asked what could be the reason for the repeal of an ordinance after only one day? “The answer seems to be that after the ordinance was passed, it was discovered Elisha Scott, colored attorney and friend of the administration had an interest in the Silver Moon. The order was immediately modified, and the ordinance placed on ice.”<sup>133</sup> The truth was an ordinance aimed at only one business was on thin ice from the beginning, and Scott’s interest in the Silver Moon was only a lien he held on the “contents of the pool room” for \$400 dollars.<sup>134</sup> He likely held the lien to guarantee payment for past legal

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<sup>131</sup> John Scott, interview by Richard Kluger, August 18, 1969, MS 759, Box 5, Folder 90, *Brown vs. Board of Education* Collection, Yale University Library.

<sup>132</sup> “Silver Moon Shines On: Total Eclipse is Brief,” *Topeka Daily Capital*, February 8, 1918.

<sup>133</sup> “Silver Moon Shines.”

<sup>134</sup> “‘Silver Moon’ Failed to go up in Smoke: Gasoline and Rags Didn’t Work According to Schedule,” *Topeka Daily Capital*, April 1, 1918; “Demands Foreclosure on Fixtures of Silver Moon Pool Hall on \$150 Lien,” *Topeka Daily Capital*, April 3, 1918.

work. But the implication was clear, Scott had the power to make legal problems disappear if his own interests were at stake.

Scott could not make his own mistakes disappear, as even minor transgressions were often headline worthy. When he filed a suit in which he accused a man of being caught in an “uncompromising position” with another man’s wife, opposing counsel made a big show of the error and the *Topeka State Journal* ran the story under the headline “Explain Yourself, Elisha.”<sup>135</sup> The *State Journal* also took exception to his use of the word “ridiculous,” implying that it had no place in a court of law and demonstrated a lack of intelligence on his part.<sup>136</sup> Perhaps it was rumored stories about Scott’s language sold newspapers because less than one month later the *Topeka Daily Capital* noted Scott’s restraining orders always contained the “portentious” phrase, “Fail not hereof at your peril!”<sup>137</sup>

Topeka’s two main daily newspapers: the *Topeka Daily Capital* and the *Topeka State Journal*, printed articles that sought to make Scott and his clients participants in a minstrel show rather than a court case. Curiously it was the *Daily Capital* owned by Governor then Senator Arthur Capper, Topeka’s first NAACP President and a Republican ally of Scott that seemed to take the most delight in attacking Scott. It was Capper who in 1916 put Scott on the Republican map by stating he was “the greatest Negro orator” in the state.<sup>138</sup> That same year, however, when Scott was threatened by a male witness with

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<sup>135</sup> “Explain Yourself, Elisha: Opposing Attorneys Want to Know What Negro Lawyer Means by ‘Uncompromising Position’ and ‘Ridiculous Manner,’” *Topeka State Journal*, September 11, 1920.

<sup>136</sup> “Explain Yourself Elisha;” *Topeka State Journal*, September 25, 1920.

<sup>137</sup> “We Want Judge’s Recipe: If He Can Award ‘Sustaining’ Alimony on \$20, He’s a Wonder,” *Topeka Daily Capital*, October 7, 1920.

<sup>138</sup> “Atty. Elisha Scott.”

violence once he left the safety of the courtroom and had his finger snatched when he shook it at a female witness, Capper's newspaper portrayed the whole incident as a comedic exchange between Black folks who didn't know any better and that group included attorney Scott.<sup>139</sup>

In 1920, the *Daily Capital* attempted to turn a victory in court and for civil rights orchestrated by Scott into a negative. For the first time in Topeka, he was able to seat six Black men on a jury of six in police court. One fell ill and he was replaced by a white man, but the *Topeka State Journal* stated it was Topeka's first all-Black jury.<sup>140</sup> The case involved an attempt by Topeka officials to purge the city of prostitutes by charging them with vagrancy in addition to prostitution "in order to rid the town of them for an extra six months."<sup>141</sup> Scott explained, the case would set an important precedent. "You are going to determine," he informed the jurors, "whether the chief of police can round up a lot of colored girls and have them arrested for vagrancy whenever he wants to."<sup>142</sup> The *Topeka State Journal* stated, "the court of Topeka was well filled with the representation which cheered wildly during the peppery eloquence of Elisha Scott."<sup>143</sup> It is reasonable to expect the newspaper owned by Topeka's first NAACP president would complement Scott on the all-Black jury. Capper's newspaper did not even specifically note the fact that the case featured the first all-Black jury. The *Daily Capital* described a spectacle more like the South Carolina Legislature scene in D.W. Griffith's *The Birth of a Nation*.

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<sup>139</sup> "A Busy Day for Lish Scott: Colored Attorney Excites Wrath of Witnesses in Police Court Trial of Negro Row," *Topeka Daily Capital*, June 25, 1916.

<sup>140</sup> *Topeka State Journal*, August 11, 1920.

<sup>141</sup> *Topeka State Journal*, August 11, 1920.

<sup>142</sup> "Reception Day in Court: Colored Defendants Spend Pleasant Time in Judge Lee's Tribunal," *Topeka Daily Capital*, August 11, 1920.

<sup>143</sup> *Topeka State Journal*, August 11, 1920.

The article stated, “The court room was in turmoil thru-out the trial. Elisha Scott’s eloquence, well flavored with profanity, evoked the enthusiasm of a large dark audience.”<sup>144</sup> It was the second time Scott was accused of cursing in Court in the pages of the *Daily Capital*; they were the only two such accusations in his forty-seven years of practicing law.<sup>145</sup> Both newspapers invoked racist imagery in claiming the defendants danced a “shimmy” in celebration, but the *Daily Capital’s* tone was decidedly more negative toward Scott, the defendants, and Judge Rad Lee. Even the *Daily Capital’s* headline was negative: “Reception Day in Court: Colored Defendant’s Spend Pleasant Time in Judge Lee’s Tribunal.”<sup>146</sup>

Particularly when it came to descriptions of African American Topekans who found themselves in the court system the white press was willing to evoke racist imagery. Three times when Scott was involved in cases in which men were arrested for shooting craps the *Daily Capital* referred to the game as “African golf.”<sup>147</sup> When he argued for a continuance for a client named Chick Maze in another craps case the *Kansas State News* reported, “Scott prevailed so ‘Chick’ has a few more days to rob people a la crooked dice.” Giving him “ample opportunity to steal enough cash to pay the limit possible to assess.”<sup>148</sup> When Scott represented a notorious liquor and gambling hall owner known as the King of the Bottoms, the *Daily Capital* was happy to report, “the ‘king’ was put to the

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<sup>144</sup> “Reception Day in Court.”

<sup>145</sup> “Lawyer Calls Decision Damndest Ever Heard,” *Topeka Daily Capital*, July 12, 1916.

<sup>146</sup> “Reception Day in Court.”

<sup>147</sup> “Silver Moon Shines;” “Must Talk to ‘Bones’: Attorney Says Conversation in Resort Means Dice Not Cards,” *Topeka Daily Capital*, January 29, 1919. “Ducks Can Be Shot While Persons Stand Erect, But Craps Is Different Game,” *Topeka Daily Capital*, September 21, 1921.

<sup>148</sup> “Cops Raid One Sure Thing Gambling Joint,” *Kansas State News* (Topeka, KS), September 14, 1923.

necessity of pawning his best suit of clothes for \$7 with which to pay his attorney...it is reported that he is without money with which to buy 'crawdads,' and the 'crawdad' peddler denied him credit."<sup>149</sup> The story of Scott's client having her gold tooth knocked out of her mouth by her angry husband even made the national wire services, and the article was sure to mention the parties were "colored".<sup>150</sup> In the face of that kind of treatment, it was clear to African Americans that waiting for access to white institutions such as schools and businesses was futile.

Scott joined earlier generations of Kansas African Americans in attempting to build up the Black community especially in the business world. He was not alone. Historian Juliet E. K. Walker has stated 1900 to 1930 "was the golden age of black business, which saw the emergence of leading black capitalists who achieved millionaire status."<sup>151</sup> Scott was not among them, but he joined in the entrepreneurial spirit of the time, and it helped him in and out of the courtroom. Scott owed his early education to the Black founded and managed Kansas Industrial Institute, and he supported his legal education working for the Black owned and managed KLP. He was never content to work only in the courtroom. He knew it was important to work to develop Black run institutions in the business world. As early as 1911, he delivered a speech on Black business enterprises to a large audience at the Lane Chapel in Topeka.<sup>152</sup> And he practiced what he preached. He engaged in numerous entrepreneurial activities, including

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<sup>149</sup> "King of Bottoms Pawns Clothes Pays Lawyer and Goes to Jail," *Topeka Daily Capital*, July 1, 1916.

<sup>150</sup> "Likes Name Quarrels But Not Real Thing," *Morning Examiner* (Bartlesville, OK) March 14, 1920.

<sup>151</sup> Juliet E. K. Walker, *The History of Black Business in America: Capitalism, Race, Entrepreneurship* (New York: Twayne Publishers, 1998), 182-83.

<sup>152</sup> "Closing Exercises," *Western Index* (Topeka, KS), October 11, 1920.

serving on the respective boards of a carpet, overall, and shirt manufacturing company, and the “Mid West Life Insurance Company,” as well as founding a windmill company.<sup>153</sup> He was also the proud owner of a farm and ranch in Paxico, Kansas, and it was reported to produce prize winning cattle.<sup>154</sup>

While many African American lawyers of his era were limited to handling criminal cases and basic civil matters, Scott’s experience in business and skill in the courtroom helped him handle large estate matters, gain corporate clients, and handle complex business litigation. In 1918, he traveled to Colorado to help with the inheritance of “valuable mining property.”<sup>155</sup> Oil leases were one of his specialties. He made national news when Geraldine Hemmett who the *Chicago Defender* stated was the second wealthiest Black woman in the country due to ownership of real estate and oil leases fired her white lawyer and chose Scott to represent her.<sup>156</sup> The *Baltimore Afro-American* also covered the story, reporting the white lawyer sought unsuccessfully to disbar Scott over the dispute.<sup>157</sup> Scott was a logical choice for Hemmett, as she was living in Topeka, and he was known as an expert in early oil and gas law.<sup>158</sup> He won so many oil lease cases that for a time Sun Oil Company put him on their payroll rather than continue to fight

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<sup>153</sup> *Kansas City Advocate*, March 11, 1921; *Topeka Plaindealer*, November 30, 1923;

<sup>154</sup> “Topeka Society,” *Kansas City Plaindealer*, September 20, 1940.

<sup>155</sup> *Topeka Plaindealer*, February 1, 1918.

<sup>156</sup> “Elisha Scott Attorney For Millionaire Girl,” *Chicago Defender*, February 4, 1922.

<sup>157</sup> Lawyers Fight to Become Girl’s Counsel,” *Baltimore Afro-American*, January 27, 1922.

<sup>158</sup> “Elisha Scott Attorney;” “Memorial to Elisha Scott”.

with him.<sup>159</sup> Scott's most well-known clients came from the sports world. The first was a pioneer in sports and business.

In 1920, Scott helped Andrew "Rube" Foster organize the Negro National League (NNL), Black America's first organized professional baseball league. Prior to the NNL Black baseball teams were individual enterprises traveling the country and playing what amounted to exhibition games against both Black and white teams. Teams were more like traveling theater companies than what we recognize today as professional sports organizations. They did not have their own ballparks or even home cities in some cases, records were sparsely kept if at all, and teams did not compete for a championship. Players were perpetually free agents which meant the best players jumped from one team to another and, all of the players risked not being paid at all by the promoters who scheduled the games. Foster, the owner of the Chicago American Giants, sought to change all of those things by organizing the NNL, and although there were plenty of African American attorneys in Chicago, he sought the help of Elisha Scott to accomplish the task. A Black lawyer was a choice few Black businesspeople would have made at the time, as according to Carter Woodson, "for any question involving serious decisions and consequences (African American business owners) resort to the better known and more influential lawyers of the other race."<sup>160</sup>

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<sup>159</sup> John Scott, interview; Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* (New York: Vintage Books, 2004), 386.

<sup>160</sup> Carter G. Woodson, *The Negro Professional Man and the Community: With Special Emphasis on the Physician and the Lawyer* (Washington D.C.: Association for the Study of Negro Life and History, 1934), 225-26.



Foster's plan for Black baseball was to unite the owners in one league modeled after the white leagues with the express purpose of competing with them at the ticket office and on the field. He organized a meeting at the Paseo YMCA in Kansas City in February 1920. The representatives of eight prospective teams were shocked to find out Foster and Scott had already filed articles of incorporation for the league in Illinois, Michigan, Ohio, Pennsylvania, New York, and Maryland.<sup>161</sup> The meeting was said to have been the most harmonious in the history of such meetings. This was because Foster who had the only truly profitable ball club immediately agreed to "leave it to the newspaper men at the meeting to decide all questions." Scott and several sports writers worked through the night drawing up the league constitution. It was then painstakingly adjusted and corrected article by article until "finally it was approved by Attorney Elisha Scott" and signed by the team owners. It shifted several players to new teams in the interest of competitive balance and listed Foster as league chairman.<sup>162</sup> No one could have known it at the time, but the signing of that agreement meant Scott was present at the founding of an institution that would help to change the course of history.

To say Foster was the George Washington of Black baseball sells Foster short. Before he cemented his legacy by forming the NNL the *Chicago Inter-Ocean* claimed he was more popular than Booker T. Washington, and there was ample evidence to support that contention.<sup>163</sup> In his playing days he was the best player, then he was the best

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<sup>161</sup> "Baseball Magnates Hold Conference: Sporting Editor of *Defender* Elected Secretary," *Kansas City Call*, February 20, 1920.

<sup>162</sup> "Western Circuit Organized: To Become Effective April 1, 1921," *Kansas City Call*, February 27, 1920; "Organize Base Ball League: Best Colored Players in the Country Included in Five Team League," *Baltimore Afro-American*, February 27, 1920.

<sup>163</sup> Frederic North Shorey, "Well, Well, Man, Rube Foster Certainly Eats Em Alive," *Chicago Inter-Ocean*, August 11, 1907.

manager, the best general manager, the best team owner, and finally the founder and President of the NNL an African American institution that led directly to the reintegration of major league baseball by Jackie Robinson seven years before *Brown v. Board of Education* desegregated America's schools. Martin Luther King Jr. said of Robinson, "he underwent the trauma and the humiliation and the loneliness which comes with being a pilgrim walking the lonesome byways toward the high road of Freedom. He was a sit-inner before the sit-ins, a freedom rider before the Freedom Rides."<sup>164</sup> Before there could be a Jackie Robinson there had to be a Rube Foster. Robinson made his reputation in professional baseball with the Kansas City Monarchs who were a charter member of the NNL. He was an outstanding player, but it was the success of the Black leagues at the box office and on the field that forced the door open for him.

A baseball team owner has two main goals: make money and win baseball games, and the NNL hastened the integration of major league baseball by demonstrating African American teams could do both. The economic circumstances of African Americans meant the Negro leagues were not as profitable as white major league baseball teams, and exact figures denoting Negro leagues's attendance do not exist.<sup>165</sup> But Sunday afternoons and big games like the World Series and the East v. West All-Star Game drew huge crowds.

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<sup>164</sup> Martin Luther King Jr., "Hall of Famer," *New York Amsterdam News*, August 4, 1962.

<sup>165</sup> In 1942 for example Negro leagues' teams drew an estimated three million fans compared to 8,553,569 for the White major leagues. Matt Kelly, A 20<sup>th</sup> Century Baseball Institution, <https://www.mlb.com/history/negro-leagues/history>, retrieved January 15, 2022; "Major League Miscellaneous Year-by-Year Averages and Totals," <https://www.baseball-reference.com/leagues/majors/misc.shtml>, retrieved January 15, 2022.

The East-West game held at Chicago's Comiskey Park in 1946 drew 45,474 fans, and the 1947 contest at the same venue saw players perform before 48,112 fans.<sup>166</sup>

The performance of Black players on the field was the second reason baseball was integrated. Black teams could defeat white teams on the field of play, and Foster's formation of the NNL led to a direct improvement in the performance of Black players in integrated competition. It was a poorly kept secret that throughout the Jim Crow era Black and white professional baseball teams met hundreds of times on diamonds from Cuba to California. Every big-name player from Babe Ruth and Ty Cobb to Josh Gibson and Oscar Charleston participated in interracial games. Foster himself earned the moniker "Rube" by defeating the great Philadelphia Athletics pitcher Rube Waddell in a 1903 game.<sup>167</sup> The name which was normally used to refer to a simpleton ballplayer was embraced by the erudite Foster as a spoil of war won against the best the major leagues had to offer. According to historian Sarah L. Trembanis, "the public use of the name 'Rube' for Foster was an attempt to point out the cracks in segregated baseball and the white supremacist theories that maintained that segregation. As 'Rube' Foster had shown in his triumph over Waddell, black baseball players could not only compete against the very best of the white major leaguers, they could win against them."<sup>168</sup> The bulk of that winning took place after Scott helped Foster to form the NNL. From 1885 through 1919

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<sup>166</sup> East-West All Star Game (Summaries), <http://www.cnlbr.org/Portals/0/RL/East-West%20All%20Star%20Game%20Summaries.pdf>, retrieved January 15, 2022.

<sup>167</sup> Larry Lester, *Rube Foster in His Time: On the Field and in the Papers with Black Baseball's Greatest Visionary* (Jefferson, NC: McFarland and Company Inc., 2012), 22-23; Charles Dryden, "Rube Waddell Afraid to Give His Arm a Rest," *Pittsburgh Press*, August 5, 1903.

<sup>168</sup> Sarah L. Trembanis, *The Set-Up Men: Race Culture and Resistance in Black Baseball* (Jefferson, NC: McFarland and Company Inc., 2014), 153.

Black teams were 90-121-9 (.427) against teams with five or more white major leaguers including the starting pitcher. The organization, training, and continuity that came about with the formation of the NNL greatly improved the play of the Negro league's teams. From the formation of the NNL in 1920 to 1948, one year after Robinson broke the color barrier, Negro leaguers went 221-207-16 (.516) against teams with five or more major league players including the starting pitcher.<sup>169</sup>

If Rube Foster was not the most famous African American sports figure of that time period, then former Heavy Weight boxing champion Jack Johnson was, and Scott represented him too.<sup>170</sup> Johnson pulled off one of the greatest upsets of the segregation era when he defeated Tommy Burns for the Heavyweight boxing title in Sydney, Australia, in 1908. Johnson was a far superior fighter; therefore, it was not Burns he upset—it was Jim Crow. His victory spawned the era of the Great white Hope in which white boxers like Jim Jeffries were called to defend white manhood against the defiant Black champion. In what was billed as the fight of the century Johnson knocked Jeffries out in the fourteenth round on July 4, 1910, touching off race riots across the country. Johnson would pummel Great white Hopes for a total of seven years before losing the title to Jess Willard. Willard did not make the same mistake Burns did—he never considered a rematch with Johnson. Johnson, it was said committed two deadly sins the day he defeated Jeffries, first, he beat the hell out of a white man, second, he celebrated in

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<sup>169</sup> Jeffery S. Williams, "Winning in the Crucible of White-Hot Competition," in *The Negro Leagues Were Major Leagues*, ed. Todd Peterson (Jefferson, NC: McFarland and Company Inc.:2020), 75, 83.

<sup>170</sup> Foster's biographer, Robert Cottrell has noted Foster was often said to be the best-known Black person in the country above Johnson, Booker T. Washington, and W.E.B. DuBois. Robert Cottrell, *The Best Pitcher in Baseball: The Life of Rube Foster, Negro League Giant* (New York: New York University Press, 2001), 4.

the ring with his white wife.<sup>171</sup> It was Johnson's relationships with multiple white women that eventually landed him in Leavenworth where he made the acquaintance of Scott.

Officially Johnson was jailed for "transporting women across state lines for immoral purposes," a violation of the Mann Act.<sup>172</sup> In truth, he was guilty of violating societal norms; he was brash, flashy, arrogant, and he had flaunted his relationships with white women for years. Before he could be jailed, Johnson likely escaped the country posing as Rube Foster. According to Foster biographer, Larry Lester, "Foster and Johnson were tall, heavy, dark complexioned, and bald headed. Playing on the assumption that law officials thought that all black people look alike, Johnson escaped" to Canada where he took a steamer to France. He did not return for seven years.<sup>173</sup> When Johnson did return to the United States, he was sentenced to serve one year and one day in Leavenworth. Scott traveled to Washington D.C. in November 1920, claiming to have evidence that exonerated Johnson, but he was only able to file a brief with the pardon board. Furthermore, he was informed no formal application for clemency could be made until Johnson served one third of his sentence.<sup>174</sup> Scott apparently had nothing more to do with the case, and Johnson was released July 9, 1921.<sup>175</sup>

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<sup>171</sup> Leon Litwack, *Trouble In Mind: Black Southerners in the Age of Jim Crow* (New York: Alfred A. Knopf, 1998), 442.

<sup>172</sup> 18 United States Civil Code Sections 2421-2424.

<sup>173</sup> Lester, *Rube Foster*, 21.

<sup>174</sup> "Seeks Pardon for Johnson: Negro Attorney Says Pugilist Will Pay Fine if Released," *New York Times*, November 20, 1920; "Jack Johnson Claims Innocence: Attorneys Make Pardon Request," *Madison Capital Times* (Madison, WI), November 24, 1920; "What's Matter Now? Ain't it a Good Jail?," *Sun-Advocate* (Price, UT), November 19, 1920.

<sup>175</sup> "Jack Johnson Prepares To Quit Penitentiary," *Standard Union* (Brooklyn, NY), July 8, 1921.

Scott's association with Johnson provides a clue about his view of race progress and decorum. Leon Litwack found upper and middleclass African Americans tended to see Johnson as "an embarrassment." This view was demonstrated by Booker T. Washington who tried convincing Johnson to refrain from interviews and bragging about his victories, because he worried Johnson would cause people to think African Americans could not handle success. Litwack noted, working class African Americans saw Johnson differently. He wrote, "Jack Johnson remained a "ba-ad" man who commanded enormous admiration. No other black person in their memory had displayed so impressively the ability to outwit, outthink, and outfight white folks."<sup>176</sup> Considering it was Scott's job to outwit, outthink, and outfight white folks it is easy to see why he would have sided with Johnson over Washington.

In the final analysis it was Scott's ability to outwit, outthink, and outfight his opponents that created his legend. He had a partner in Nick Chiles who helped him to expand his practice across the country, but it was the little lawyer's unique abilities that captured headlines and people's imaginations. Unfortunately, Scott's never-ending fight against racist violence also contributed greatly to his legend. His involvement in some of the ugliest racist violence in the history of the country is the subject of the next chapter.

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<sup>176</sup> Litwack, *Trouble in Mind*, 443.

## CHAPTER FOUR: VIOLENCE

June 16, 1920, Clifford Jackson, a mechanic in Topeka's Santa Fe Railroad shops, was looking over his copy of Sunday's *Topeka Daily Capital* when news of another lynching caught his eye. This one was up north in Duluth, Minnesota, but that was not terribly surprising considering the previous summer race riots had ravaged cities like Chicago, Illinois, and Omaha, Nebraska. What gave Jackson a jolt was the fact that all three victims were Black circus workers. He scanned down and saw exactly what he did not want to see—the name Elmer Jackson. His son usually went by the name Ernest, but his given name was Elmer. The lynching victims were said to be around twenty-two-years-old, and Elmer Jackson turned twenty-three on April 19.<sup>1</sup> The men had been accused of raping a white girl, and a mob of more than 5000 broke into the jail, held a speedy show trial, and hung the three young men from a lamp post.<sup>2</sup> Clifford Jackson hurried to Topeka's Shawnee County Courthouse and had both the chief of police and sheriff send telegrams to Duluth for more information. The only response he got was that one of the men hanged in Duluth was named Elmer Jackson. His only choice was to travel 650 miles to Duluth and face a nightmare. He asked Elisha Scott to go along with him.<sup>3</sup> Perhaps it was because he was angry and wanted to sue, or maybe Scott was the

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<sup>1</sup> “Three Negroes Lynched Three Sent Back to Jail: Mob of 5,000 Successfully Overpowers Officers, *Topeka Daily Capital*, June 16, 1920; Warren Read, *The Lyncher in Me: A Search For Redemption in the Face of History* (St. Paul, MN: Borealis Books, 2008), 144, 155, 161.

<sup>2</sup> “Three Negroes Lynched.”

<sup>3</sup> Read, *Lyncher in Me*, 144-45.

only person willing to travel to the scene of a lynching. If Jackson was afraid he would not be welcome in Duluth, he was correct.

Scott and Clifford Jackson arrived in Duluth on June 24, and they were clearly not welcome. Their mission was merely to find out whether the Elmer Jackson who was killed and buried in Duluth was Clifford's son. Beforehand Scott was told that the undertaker would exhume the body for five dollars. However, when they located the undertaker, the price was increased to ten dollars plus another three dollars for Scott to accompany Jackson. With the thirteen dollars in pocket, the undertaker pulled up the coffin, and it was revealed to be nothing more than a "box of slats." Elmer Jackson's face was covered in dirt. His head had been smashed with great force by a large blunt object, and the dirt had to be brushed away in order for his father to make an identification.<sup>4</sup> It was under those circumstances that Clifford Jackson confirmed his worst fear: his son had been kidnapped from jail, brutally beaten, killed, and "buried like a dog" for a crime he did not commit.<sup>5</sup> Probably lacking the money to bring his son home, Jackson let the body remain in Duluth.<sup>6</sup> At some point, Jackson's body was moved from a paupers' grave to Park Hill Cemetery about three miles from where he was lynched. His grave remained unmarked until 1991.<sup>7</sup> Scott did the only thing a lawyer could do. First, he did all he could to ease Jackson's pain, then he asked the city of Duluth to accept blame for failing to protect Jackson while he was in custody.

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<sup>4</sup> "Braved The Riot Spirit: Hon. Elisha Scott Young Brilliant Topeka Attorney Who Braved the Mob Spirit in Defence of the Race," *Topeka Plaindealer*, July 2, 1920.

<sup>5</sup> "Braved The Riot."

<sup>6</sup> "Braved The Riot."

<sup>7</sup> Michael Fedo, *The Lynchings in Duluth* (St Paul, MN: Minnesota Historical Society Press, 2000), 175.



A little more than two weeks after the mob completed its work, Scott filed a suit on behalf of Clifford Jackson against the city of Duluth for the wrongful death of his son. The complaint stated city officials were aware the lynching was going to take place on the night of June 15, yet they did nothing to stop it. Scott claimed the behavior of the police went beyond negligence—it was downright cowardly. He asked for \$7,500 in damages under a Minnesota wrongful death statute.<sup>8</sup> News of Scott's suit appeared in the *Chicago Defender* on July 17, 1920; it was bracketed by news of a lynching in Paris, Texas, and a near lynching in Cincinnati, Ohio. The Paris lynching was advertised via large signs hours before it took place. The near lynching in Cincinnati was by the dragging of a minstrel troupe leader.<sup>9</sup> While all three incidents demonstrated how depraved American society could be, the article about the dragging demonstrated a way forward. The victim had been awarded \$5,000 in damages by a federal court.<sup>10</sup> With the \$7,500 dollar Minnesota wrongful death statute on the books, it seemed certain Scott would go to trial on Jackson's claim. Instead, he advised Jackson to put the entire ugly incident behind him and drop the case. Jackson agreed and did his best to move on with his life.<sup>11</sup>

Scott advised Jackson to quit the case because it was best for Jackson, and Scott always did his best to put his clients' interests first. He knew Clifford Jackson could use

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<sup>8</sup> "Son Mobbed; Sues Duluth: Father of Mob Victim Wants Pay for Boy's Untimely Death," *Chicago Defender*, July 17, 1920; "Files \$7,500 Claim: Duluth Asked to Pay When Topeka Negro is Lynched," *Topeka Daily Capital*, July 3, 1920.

<sup>9</sup> Signs Announce Texas Burning: Lynching Advertised Hours Before Victims Arrived With Sheriff," *Chicago Defender*, July 17, 1920; "Dragged Through Town; Gets Damages: Manager of Minstrel Troupe Sues Dyersburg for Assault During War Time," *Chicago Defender*, July 17, 1920.

<sup>10</sup> "Dragged Through Town."

<sup>11</sup> Read, *Lyncher in Me*, 143-46.

the money. Jackson was a widower raising three children ages seven to thirteen.<sup>12</sup> But Scott saw something in either Clifford Jackson, or the prospective juries of Duluth, or both that told him the case was not worth the fight. Or maybe it was enough for Clifford Jackson to find out his son faced his death stoically and without a whimper?<sup>13</sup> News of the Northern lynching was making headlines from coast to coast, and trying the case was a no-lose situation for a lawyer. If Scott won, he exacted revenge on Duluth, and made national headlines for doing so. If he lost, he fought an impossible case against a racist city, and the name Elisha Scott still made headlines. But Scott's defining characteristic as an attorney was the fact that he put his clients first. Whether it was traveling to places where the danger of a riot or lynching was imminent, or working so hard he forgot to eat, or taking cases pro-bono, Scott's first priority was always his clients. He was known as a National Association for the Advancement of Colored People (NAACP) man, a Republican, and a Race man, but he was an Advocate for his clients' needs no matter what they were and before all else.

Scott's career is best known for his involvement in desegregation cases, but before anyone could embark on a serious program to secure African American civil rights, African Americans needed to be afforded their basic human rights. One of the most basic human rights is the right to be free from violence, and Scott's early career was defined by the kind of brutal racist violence that led to the formation of organizations like the NAACP. The NAACP was formed after a 1908 race massacre in Springfield, Illinois. Scott made his first national headlines defending soldiers accused of murder in a 1917

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<sup>12</sup> Read, *Lyncher in Me*, 162.

<sup>13</sup> Read, *Lyncher in Me*, 148.

Houston, Texas, race riot. In the 1920s, he helped African Americans in the wake of massive pogroms in Tulsa, Oklahoma, and Elaine, Arkansas, and he fought hard to win justice for the victims of a 1927 race riot in Coffeyville, Kansas.

Scott's efforts to defend African American's rights to live without the threat of unpunished violence at the hands of white people defined his early career. And national efforts to achieve civil rights followed the same pattern. Historians have documented how the years immediately following World War I were defined by bloodshed when it came to race relations. This work has argued that people like Scott built the foundation for later civil rights gains. This chapter demonstrates that the first bricks in that foundation were made up of simple things like the right to a trial, and the right to defend oneself against armed attackers.

The violence that Scott and myriad others of his generation encountered was rooted in three related motivations: sex, money, and fear. Fear of losing dominion over sex and money led to violence. Historian Leon Litwack found that the first generations of African Americans born in freedom were "more questioning of their 'place' and less inclined to render absolute deference to whites, encountered (and in a certain sense helped to provoke) the most violent and repressive period in the history of race relations in the United States."<sup>14</sup> Speaking in 1908, racist firebrand and South Carolina Senator Ben "Pitchfork" Tillman stated the problem with the generations not born in bondage was, "for forty years these have been taught the damnable heresy of equality with the

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<sup>14</sup> Leon Litwack, *Trouble in Mind: Black Southerners in the Age of Jim Crow* (New York: Alfred A. Knopf, 1998), xiv.

white man.”<sup>15</sup> The provocation African Americans were most often guilty of, according to Litwack, was success. He wrote, “whites employed terror, intimidation, and violence to doom Reconstruction, not because blacks had demonstrated incompetence but because they were rapidly learning the uses of political power, not because of evidence of black failure but the far more alarming evidence of black success.”<sup>16</sup> Those methods of control were consistently employed for decades, and as African Americans migrated away from the rural South in the twentieth century violence erupted in all corners of the country. As more and more African Americans earned success in business, they became tangible competition for whites accustomed to dominating local economics.

Competition for sexual power was far less obvious, as the constant threat of lynching kept interracial relationships deeply clandestine. However, a handful of Black men such as Scott’s client, heavyweight boxing champion Jack Johnson flaunted their relationships with white women providing a shred of tangible evidence to justify sexual fear.<sup>17</sup> Johnson’s career was also a concrete example of Black success being answered by violence. His 1910 victory over great white hope Jim Jeffries touched off riots across the country that resulted in twenty-five deaths.<sup>18</sup> More commonly, the irrational fear of the

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<sup>15</sup> Senator Benjamin Tillman, “Excerpt from the Congressional Record” (January, 1908), <https://history.hanover.edu/courses/excerpts/336tillman.html>, retrieved August 10, 2022.

<sup>16</sup> Litwack, *Trouble in Mind*, xiii.

<sup>17</sup> Finis Farr, *Black Champion* (New York: Charles Scribner’s Sons, 1964), 72. Farr who was one of Johnson’s earlier biographers stated, “Johnson had women in his personal entourage and they were always white and blonde.” Johnson married three different white women.

<sup>18</sup> Violent episodes were reported in twenty-seven states and the District of Columbia. The worst violence was in Uvaldia, Georgia, where three Black men were killed and Little Rock, Arkansas, where two Black men were killed. But there was serious violence in places like Pueblo, Colorado, Mounds, Illinois, Boston, Massachusetts, Omaha, Nebraska, New York, New York, Reading, Pennsylvania, and Walla Walla, Washington.

animalistic Black beast who instinctually attacked white women kept white fear high and provided the most often cited justification for riots and lynchings. Moreover, as the first generations of Black women born in freedom exercised agency over their own sexuality it signaled a loss of power for white men. When African Americans achieved power and agency it often sparked violent outbursts from white Americans returning to the tried-and-true methods of terror, intimidation, and violence to keep African Americans in their proper sexual and economic position.

Between 1919 and 1927, Scott was deeply involved in efforts to help African Americans recover from three devastating episodes of racist violence, and all three were rooted in white fear. First, in 1919, African American sharecroppers in Arkansas's Mississippi River Delta sought to unionize and get a fair price for cotton, which sparked wild rumors of a coming genocide in the white community. Those rumors quickly led to attacks on African Americans that killed more than 200 people and sent union leader Robert Hill fleeing to Kansas where Scott fought against his extradition back to Arkansas. Second, in 1921, the relative success of African Americans in Tulsa's Black Wall Street district and increasing competition for jobs led to growing anger amongst the white community. But it was a minor incident between a white woman and a Black man in an elevator that was the spark that ignited one of America's worst race massacres. Finally, in 1927, Coffeyville, Kansas, erupted in violence after two white high school girls falsely claimed they were raped by three Black men. The violence in Coffeyville began as an

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For detailed analysis of the violence following the boxing match see, Shannon Smith Bennett, "'Dangerous Exultations' Cultural Boundaries, the Public Sphere, and Riots Following the Johnson-Jeffries Prizefight of 1910" (Master's Thesis, University of Nevada, Reno, 2005).

attempted lynching, but it shifted to an attack on Black businesses in Coffeyville's integrated downtown. A legal victory against Jim Crow segregation orchestrated by Scott a few years earlier had served to increase tensions in the small town. When Black victims of the rioting were charged with rioting by Coffeyville's authorities, the Black community again called on Scott for help.

The story of the Arkansas race massacre case has been ably told from the Arkansas side of things by several scholars.<sup>19</sup> It was after all the site of the massacre and most of the legal battles. The work of a Black lawyer, Scipio Africanus Jones of Little Rock, along with lawyers working for the NAACP brought about the Supreme Court victory in *Moore v. Dempsey* in 1923. In *Moore* Justice Oliver Wendell Holmes stated that a trial held in a mob dominated atmosphere violated the defendant's Fourteenth Amendment right to due process.<sup>20</sup> That victory brought the NAACP one of its earliest due process victories and gave the Arkansas side of the case a great deal of deserved attention. However, the Kansas side of the incident provided the NAACP a victory that helped shape the organization moving forward. It was an early blueprint for the way to fight the extradition of a prisoner back to a state where he or she was unlikely to receive a fair trial.

The trouble started in Phillips County, Arkansas, when a group of African American sharecroppers sought to form a union. That decision turned out to be a deadly

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<sup>19</sup> See for example. Grif Stockley, *Blood in Their Eyes: The Elaine Race Massacre of 1919* (Fayetteville: University of Arkansas Press, 2001); Ida Wells-Barnett, *The Arkansas Race Riot* (Chicago: Ida B. Wells-Barnett, 1920); Robert Whitaker, *On the Laps of Gods: The Red Summer of 1919 and the Struggle for Justice that Remade a Nation* (New York: Three Rivers Press, 2008); Guy Lancaster, ed., *The Elaine Massacre and Arkansas: A Century of Atrocity and Resistance 1819-1919* (Little Rock: Butler Center Books, 2016).

<sup>20</sup> *Moore et al. v. Dempsey*, 261 U.S. 86.

sin for around 200 African Americans who were expected to continue *ad infinitum* in a state little better than slavery. Violence quickly ensued when the white community got wind of the sharecroppers' plan to organize. A sharecroppers' meeting at a church with women and children present was cranked through the local rumor mill, and it emerged as an insidious plot by bloodthirsty African Americans to kill all of the white people in the area and take their land. Blame for the violence was shifted to Black men who were either involved in the Union or attempted to defend themselves. The root of the violence came from a fear as old as slavery itself: the fear that the enslaved would rise up and kill the masters. The planters also turned to an old trope to explain why the Black folks who they treated so well would resort to such ugly violence.

From the slave days to the present, stories of African American organization and protest have regularly contained a ubiquitous character—the outside agitator. The minds of local people seem unable to accept the fact that the seeds of protest could come from within their own community. The uprising in their community must have been spurred by insidious outsiders with the power to turn happy locals into active protesters or even angry, murderous mobs. In America outside agitators have been the Spanish, the French, the British, newly arrived enslaved Africans, Quakers, free Blacks, Union soldiers, carpetbaggers, the NAACP, college students, and myriad others. In Phillips County, Arkansas, Robert L. Hill was the outside agitator.

Hill is better described as an organizer than an agitator, but the distinction was immaterial. His efforts to unionize African Americans was part of a national trend viewed as dangerous by those who benefited from the status quo. The year 1919 likely saw more labor unrest than any year in American history with four million individuals participating

in strikes across the country. The labor unrest coincided with several anarchist bombings and rumors of Bolsheviks infiltrating the country leading “fear of subversives” to become “a national obsession.”<sup>21</sup> In Arkansas’s Mississippi River delta, organization might as well have meant agitation, and agitation might as well have meant full-fledged anarchy.

Hill’s actions were benign but that did not matter to the fearful planters of Phillips County. He revived a dormant organization called the Progressive Farmers and Household Union of America (PFHUA). The organization was not a clandestine cabal. Hill ratified a constitution with the Supreme Court of Arkansas. Then he worked to form fraternal lodges including two in Phillips County.<sup>22</sup> The constitution stated the purpose of the organization was “to advance the interests of the Negro morally and intellectually and to make him a better citizen and a better farmer.”<sup>23</sup>

According to Ida B. Wells-Barnett’s thorough investigation, the trouble for Hill and his allies started when word reached the planter elite that Black sharecroppers were being encouraged to make certain they got a fair price for cotton. The following flier was meant to encourage sharecroppers to band together, but it turned out to be a call to action for the white landowners.

*Don't Get Excited  
Hold your cotton until the World's Cotton Conference is over  
October 13, 14, 15, 16.  
Let us see what Uncle Sam means. Uncle Sam can help you when  
nobody else can.*<sup>24</sup>

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<sup>21</sup> Patricia Sullivan, *Lift Every Voice: The NAACP and the Making of The Civil Rights Movement* (New York: The New Press, 2009), 88.

<sup>22</sup> Ida B. Wells-Barnett, *The Arkansas Race Riot* (Chicago: Ida B. Wells-Barnett, 1920), 9.

<sup>23</sup> Wells-Barnett, *Arkansas Race Riot*, 59.

<sup>24</sup> Wells-Barnett, *Arkansas Race Riot*, 9.



The flyer was a double taboo in the eyes of Southern whites. First, it demanded economic independence. Second, it stated that the federal government might provide aid to Black sharecroppers. Both statements would have brought the horrors of Black freedom during the Reconstruction era to the minds of Arkansas whites. Wells-Barnett saw it as “a Declaration of Economic Independence, and the first united blow for economic liberty struck by Negroes of the South!”<sup>25</sup> She stated, “that was their crime and it had to be avenged.”<sup>26</sup>

On September 30, 1919, in Hoop Spur, Arkansas, vengeance was had, and Robert Hill barely escaped alive. With Hill miles away meeting with white attorney O.S. Bratton about a way to demand better cotton prices, nervous locals fired shots into the church where the union was meeting. When fired upon, the union members returned fire. When a white man was killed, all hell broke loose.<sup>27</sup> When all hell broke loose, Robert Hill broke loose from the state of Arkansas. What Hill saw happening in the wake of the initial violence in Hoop Spur told him he could flee Arkansas or die there. It was not an irrational fear, as more than 200 African Americans were killed in the violence following the attack on the Hoop Spur Church.<sup>28</sup> Hill was with O.S. Bratton at the Ratio plantation, about five miles from Elaine, working on the plan to have Bratton and his father, attorney U.S. Bratton, help sharecroppers get a fair price for their cotton when he saw a crowd of armed men arrest Bratton. He knew an arrest would not be a courtesy he would receive. He stated, “I fled for my life.”<sup>29</sup>

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<sup>25</sup> Wells-Barnett, *Arkansas Race Riot*, 10.

<sup>26</sup> Wells-Barnett, *Arkansas Race Riot*, 10.

<sup>27</sup> For logistical details of the massacre see: Stockley, *Blood in their Eyes*.

<sup>28</sup> *Bureau of Investigation Reports, Phillips County War*, ix.

<sup>29</sup> *Bureau of Investigation Reports, Phillips County War*, 56.

Hill's instincts were good—everyone associated with the effort to get a fair cotton price was in jeopardy. O.S. Bratton, who was a Little Rock lawyer with little connection to Phillips County was kept in jail for thirty days. He was lucky to suffer only that fate considering he was initially made out to be one of the architects of the whole plot. Bratton was first brought to Elaine where he stated, “several of those who appeared to be leading citizens wanted to hang me to a telegraph pole forthwith.”<sup>30</sup> He likely avoided being lynched only because a group of men chained him to some of the African American prisoners and took him to jail in Helena.<sup>31</sup> While he was initially charged with murder, his connection to the alleged plot was so remote he could never serve as a proper scapegoat. He was never indicted for murder. Probably to save face, the Phillips County grand jury settled for an indictment for barratry, which is defined as “exciting groundless judicial proceedings.”<sup>32</sup> By the time Bratton was smuggled out of the Helena jail in the middle of the night, blame for the riot had shifted to the outside agitators: PFHUA and Robert Hill.

By October 7, 1919, Progressive Farmers and Householders Union of America (PFHUA) had taken its place alongside Yankee and Republican on the list of Arkansas's dirtiest words. On October 5, the media began reporting the publicly chartered PFHUA was a secret organization whose members planned to kill white planters in Phillips County and take their land. The *Pine Bluff Daily Graphic* reported, Hill was the “Councillor” of an organization that featured, “pass words, door words, grips and signs, which were to be changed every three months, and provided a fine and expulsion for

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<sup>30</sup> O.S. Bratton to U.S. Bratton, November 5, 1919, NAACP Papers.

<sup>31</sup> O.S. Bratton to U.S. Bratton.

<sup>32</sup> thelawdictionary.org, Retrieved July 21, 2020.

exposing secrets.”<sup>33</sup> On October 6, newspapers revealed, that very day had been scheduled “for beginning the slaughter of white people.”<sup>34</sup> The *Helena World* claimed its sources were jailed African Americans when it stated, “An elaborate system of communication by courier had been perfected and ‘Paul Reveres’ were to ride rapidly throughout the outlying districts calling Negroes to arms. As a matter of fact...courier (sic) rode throughout the night following the tragedy at Hoop Spur summoning members of the Union.”<sup>35</sup> The same day the Associated Press (AP) reported, “twenty-one white planters in this district, according to the confessions, had been singled out to be killed first...to be followed immediately by a general massacre of whites.”<sup>36</sup> Despite the fact that he was from Winchester which was only about 85 miles from Elaine, Robert Hill was the outside agitator responsible for the PFHUA’s murderous plot.

Within one week of fleeing Arkansas, Hill experienced a metamorphosis worthy of Franz Kafka. He changed from an unknown Arkansas farmer and union organizer to an outside agitator posing as a federal agent who attempted genocide against the white race. On October 7, the AP claimed Hill “saw in (the PFHUA) an opportunity for making easy money.”<sup>37</sup> A committee of seven local men, many of whom had a large monetary interest in keeping African Americans in their present state of peonage, placed Hill at the center of the violence. The committee found that Hill had posed as a government agent who

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<sup>33</sup> “Troops Will Be Recalled From Elaine Monday,” *Pine Bluff Daily Graphic*, October 5, 1919.

<sup>34</sup> “Insurrection Planned To Be Begun Today,” *Helena World*, October 6, 1919.

<sup>35</sup> “Insurrection Planned.”

<sup>36</sup> Associated Press, “300 Soldiers Are Hunting 20 Negroes Who Dodged Posses,” *Arkansas Democrat* (Little Rock, AR), October 6, 1919.

<sup>37</sup> Associated Press, “‘Committee Of Seven’ Has Concrete Evidence Of Plans For Insurrection,” *Arkansas Democrat* (Little Rock, AR), October 7, 1919.

promised his organization would be supported by the federal government, and convinced union members they would one day be called upon to attack the white planters.<sup>38</sup> The attack would be backed by what the committee called “Hill’s Army.” Hill, according to the committee, “told them that the government was erecting at Winchester three huge storehouses where arms, ammunition and trained soldiers would be ready for instant use.”<sup>39</sup>

Many African Americans confessed to being involved in Hill’s plot, but they did so only after being subjected to sadistic torture. Committee spokesperson B.M Allen claimed, “I have cross-examined and talked to at least 100 prisoners at Elaine... The stories they tell are almost identical as to the promises and representations made by Hill. He even told them that probably some would be called upon to die before ‘equal rights’ would be assured.”<sup>40</sup> Lawyers Scipio Jones and George Murphy provided affidavits in December that stated shock treatment, strangling, and pouring water into people’s noses were used to gain confessions.<sup>41</sup> Allen claimed, Hill’s power of persuasion was so strong he was able to convince some of the “oldest and most reliable of the negroes.” These men, according to Allen, were certainly not oppressed as evidenced by their ownership of “mules, horses, cattle and automobiles.”<sup>42</sup> Authorities were, therefore, certain the outside agitator had come from Winchester and poisoned the minds of good African Americans who had always benefited from the planters’ loving paternalism.

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<sup>38</sup> “Committee Of Seven.”

<sup>39</sup> “Committee Of Seven.”

<sup>40</sup> “Committee Of Seven.”

<sup>41</sup> Richard C. Cortner, *A Mob Intent on Death: The NAACP and the Arkansas Riot Cases* (Middletown, CT: Wesleyan University Press, 1988), 85.

<sup>42</sup> “Committee Of Seven.”

The narrative of the committee of seven leading citizens was spread across the country by several reporters who accepted the committee's findings as unimpeachable. To Clare Kenmore, of the *New York World*, it was clear the white people who put down the rebellion were American heroes. Kenmore wrote the white planters "accept the responsibility and they manage the affairs. They care for the Negroes in their employ, advance them money a year ahead of crop time, advise them, manage for them and govern them." Conversely, Hill was a "grafter" and the principal "germ in the plot." According to Kenmore, the plot was not to kill white planters and take their land as it was originally reported. Hill was interested in getting money for himself without having to work. "It was only when business began to wane that Hill began to emphasize the sinister side of the organization. He spoke darkly of the coming conflict...He said all members who did not have guns should get them."<sup>43</sup> By the time he was arrested in Kansas City, Kansas, on January 20, 1920, Robert Hill and the PFHUA were unquestionably curse words to many in Arkansas and across the nation. Elisha Scott was about to join the club.

When Hill was arrested, Scott and his friends in the Topeka NAACP were ready to keep him safe from the bitter vengeance he would no doubt face if he was returned to Arkansas. By the time Hill was taken into custody in Kansas his alleged co-ringleaders had been tried and sentenced to death in the Arkansas electric chair. The defendants had been provided precious little in the way of adversarial defense. No attorney asked that the trials be moved to a less frenzied venue, and no one asked for more time to prepare even though the trials took place less than a month after the violence subsided. The respective

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<sup>43</sup> Claire Kenmore, "11 Negroes to Pay With Their Lives for Greed of One," *New York World*, November 16, 1919.

juries convicted twelve men to die in the electric chair in trials measured in hours and deliberations measured in minutes.<sup>44</sup> Six men were tried in two separate trials on November 2, with jurors deliberating a total of fifteen minutes before finding them guilty. Ed Ware, who like Hill had fled the state in fear for his life, was found guilty of first-degree murder after a two- hour trial and four minutes of jury deliberation.<sup>45</sup>

Scott was no doubt aware of the violence and injustices in Arkansas as well as the search for Robert Hill, but he and James Guy had no time to deliberate when America's most wanted outside agitator miraculously appeared in Topeka. Hill had been in Boley, Oklahoma and South Dakota before he was arrested in Kansas City, Kansas. He also wrote letters to Arkansas's Governor Charles Hillman Brough, U.S. Bratton, and the national offices of the NAACP. NAACP Assistant Secretary Walter white had encouraged him to come to New York so that they might help him. Instead, Hill was arrested in Kansas City, and taken to Topeka where he would be extradited back to Arkansas to stand trial for murder.<sup>46</sup> He could not have known how fortunate he was to be delivered into the capable hands of James Guy and Elisha Scott. Nor could he have known how difficult it was going to be for them to keep him from returning to Arkansas and a date with an executioner.

Stopping extradition was almost impossible. Governor Brough and the state of Arkansas had the law firmly on their side, as extradition from state to state was nothing more than a legal formality. The United States Constitution is clear about the process and rules for extradition from state to state. In fact, in a document known for its ambiguity,

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<sup>44</sup> *Bureau of Investigation Reports, Phillips County War*, 16-17.

<sup>45</sup> *Bureau of Investigation Reports, Phillips County War*, 20.

<sup>46</sup> *Bureau of Investigation Reports, Phillips County War*, 33.

the extradition clause is a model of clarity and simplicity. Article IV, Section 2 states, “A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.”<sup>47</sup> Hill was charged with felonies in Arkansas, and he was found in Kansas; therefore, Arkansas’s Chief Executive merely needed to demand his return, and the state of Kansas was required to provide the prisoner. Governor Brough’s choice of a representative to procure Hill was a clear sign of what awaited the fugitive in Arkansas. Brough sent Charles Pratt, one of the first white men wounded in the attack on the church in Hoop Spur. Pratt was not a lawyer. He did not need to be a lawyer. Arkansas officials only needed to claim Hill was charged with murder in Arkansas and demand his return. Pratt was sent to escort Hill back to Arkansas, a lawyer was not required. Unless Hill’s lawyers could convince Kansas Governor Henry Allen to disobey a clear Constitutional mandate.

Henry Allen was born in 1868, in Pennsylvania, but his family moved to Kansas before his second birthday. He was raised a typical Kansas yeoman farmer complete with suffering the indignity of seeing his parents lose the family farm to foreclosure in 1879. Allen transitioned from rags to riches via the newspaper business. He left college to work for the *Salina Republican*, and eventually owned and edited the *Wichita Beacon*.<sup>48</sup> Like Scott, he was regarded as one of the finest orators of his time, a contention backed by the

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<sup>47</sup> United State Constitution, Article IV, Section 2.

<sup>48</sup> Homer E. Socolofsky, *Kansas Governors* (Lawrence: University Press of Kansas, 1990), 152-53.

fact that he gave the keynote address at the 1920 Republican National Convention.<sup>49</sup> He was so well liked around the state that in 1918 he won the governorship despite spending the time leading up to the election in another country and not spending a dime of his own money. While others campaigned, he was in France working with the Red Cross to improve conditions for Kansas troops.<sup>50</sup> Allen's experience with the loss of his family farm gave him an empathy for the working man, but he was likely to view the root of the Hill affair as a dispute between management and labor gone awry, and his views on the relationship between management and labor were nuanced. He liked to refer to himself as the defender of "the party of the third part."<sup>51</sup> "The party of the third part" was, according to Allen, the public's interest in the ongoing battle between labor and management. He published a book of the same title in 1922 in which he stated,

The history of human advancement has been largely the history of bettering the conditions of the laboring man, and nothing should be done by the state to prevent the continuation of that steady progress...But the same principles of justice which are extended to his side of a quarrel must be extended also to the side of the employers. It is the duty of the government to see to it that the strife which has grown between them shall no longer express itself in a form of warfare upon an innocent and helpless public.<sup>52</sup>

Thus, Allen was a defender of the rights of labor, but he was also a utilitarian law and order man who would not tolerate labor upheaval. According to the stories that filled America's newspapers, Hill was the architect of violent labor upheaval. Therefore, it was completely unclear how Allen would react to a request to keep a man accused of murder

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<sup>49</sup> "Henry J. Allen," *The Rural Kansan* (Topeka, KS), September 6, 1923; Socolofsky, *Kansas Governors*, 153.

<sup>50</sup> "Henry J. Allen."

<sup>51</sup> Socolofsky, *Kansas Governors*, 153.

<sup>52</sup> Henry J. Allen, *The Party of the Third Part: The Story of the Kansas Industrial Relations Court* (New York: Harper & Brothers Publishers, 1922), xi-xii.



within Kansas's borders. However, his status as a Republican leader gave Scott and Guy an opening.

Even though Allen, who got his start in Kansas politics as the Progressive Party's gubernatorial candidate in 1914, was a strong opponent of the Ku Klux Klan, he was not a radical defender of African American rights.<sup>53</sup> However, as a Kansas Republican, Allen was aware that African Americans represented a sizable voting bloc, and James Guy and Elisha Scott were hard workers for Republican causes. While Allen was winning the governorship from France in 1918, Scott was on the road stumping for candidates like Allen as one of the Republican State Central Committee's favored speakers.<sup>54</sup> In June 1919, Allen recognized Scott's contribution when he gave him a political plum. He appointed Scott to travel to New York as part of a committee to welcome the segregated 805<sup>th</sup> Pioneer Regiment home from service in Europe.<sup>55</sup> The trip was a nice reward for Scott's efforts, but he would soon be asking for more. To save Hill, Scott would have to ask Allen to exploit a constitutional loophole.

The lone exception to the extradition clause was carved out in 1860 in a conflict over slavery. In *Kentucky v. Dennison* (1861) the Supreme Court ruled Ohio Governor William Dennison was bound by the extradition clause and a moral duty to return a fugitive to Kentucky; however, neither Congress nor the courts could compel a state chief executive to return a fugitive to another state. The fugitive was a free person of color named Willis Lago, who was wanted by the state of Kentucky for helping an enslaved woman named Charlotte to escape while in Cincinnati. The High Court's decision was

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<sup>53</sup> Socolofsky, *Kansas Governors*, 153-55.

<sup>54</sup> "Topeka Lawyer Making Good," *Topeka Plaindealer*, October 11, 1918.

<sup>55</sup> "Scott to New York," *Topeka Daily Capital*, June 24, 1919.

written by Chief Justice Roger Brooke Taney, who four years prior authored the disastrous *Dred Scott* decision. In *Dred Scott v. Sanford* Taney ruled, Dred and Harriet Scott as enslaved persons were property of their owners not citizens of the United States; therefore, they could not sue for their freedom in federal court. Taney's *Dennison* decision was made from between a rock and a hard place. He was writing ten days after Lincoln's inauguration and thirty days before the Civil War began at Fort Sumter. In *Dennison* Taney, who came from a wealthy slave holding Maryland family, sought just as he did in the *Dred Scott* case to protect the rights of slave owners to their property while also protecting the power and prestige of the Supreme Court. He protected the rights of slave holders by ruling that the governor of Ohio was required to surrender Lago to Kentucky. Knowing Governor Dennison was likely to refuse a court order to return Lago, Taney protected the power of the Supreme Court by ruling it was not within any court's jurisdiction to force Dennison to return the fugitive.<sup>56</sup> Therefore, the slave owning interests won the case, and the Supreme Court did not have to suffer the embarrassment of having a direct court order refused. The decision struck another blow against abolitionists, but it provided a valuable tool more than half a century later for the cadre of Kansas lawyers whose only chance of saving Robert Hill was to convince Governor Henry Allen to refuse Hill's extradition back to Arkansas.

To keep Hill in Kansas, Scott and Guy would have to fight both state and federal charges. The state charge was murder, and the federal charge was impersonating a federal officer. The impersonating an officer charge was used as a backup to get Hill back to

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<sup>56</sup> *Kentucky v. Dennison*, 65 U.S. 68 (1861); Stephen R. McAllister, "A *Marbury v. Madison* Moment on the Eve of the Civil War: Chief Justice Roger Taney and the *Kentucky v. Dennison* Case," *Green Bag* 2d, Vol 14, Summer 2011), 405.

Arkansas on the federal charge at which point, he could be arrested and tried for murder under state law. Scott and Guy took the case along with their friend A.M. Thomas, another member of Topeka's Black bar. They immediately recognized Governor Allen was the key to keeping Hill in Kansas; therefore, before extradition papers were even filed, they secured a promise that Hill would get a hearing with Allen before any decision regarding extradition was made. They also appealed to Kansas' two Republican senators: Charles Curtis and Arthur Capper who was a member of the NAACP. The lawyers asked Curtis and Capper to do what they could to prevent the federal extradition, stating that it would surely lead to Hill being lynched. The national offices of the NAACP also got in touch with Capper, and he recommended that Hugh Fisher, the local County prosecutor head the legal team. If the African American lawyers had a problem with Fisher as lead counsel, they never uttered a word in public. Fisher was a fellow Republican, and he was willing to work without pay which likely endeared him to Scott, Guy, and Thomas, as they too intended to handle the case pro-bono on behalf of the Topeka NAACP.<sup>57</sup> Fisher's eagerness to be involved with the Hill case is another example of how important the Black vote was to Republican politicians in Kansas. He was eyeing a run for state senator and probably saw involvement in the Hill case as a smart political move.<sup>58</sup>

Fisher's main strategy was to ensure extradition proceedings were held before Governor Allen first—a promise the Black lawyers had already secured. Scott, Guy, and

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<sup>57</sup> Cortner, *Mob Intent on Death*, 57-59; "Hill Starts Proceedings to Secure His Release: Asks Habeas Corpus Hearing Before Judge McClure, *Topeka Daily Capital*, January 23, 1920. The *Plaindealer* later reported that Guy and Thomas were working on behalf of the NAACP and Scott was working on behalf of the Kansas Defense Society (KDS), but it was the only mention of the KDS. See "Gov. Allen Stands Firm For Justice," *Topeka Plaindealer*, January 23, 1920.

<sup>58</sup> Cortner, *Mob Intent on Death*, 57-59.

Thomas had also filed a habeas corpus petition against the state. Habeas corpus is an old legal writ that allows lawyers to challenge a state's custody of a prisoner. Fisher may have seen this as an error because if the writ were granted, Hill would be free from state custody leaving him open to be arrested on the federal charge, thereby destroying the chance to have Hill go before Allen first.<sup>59</sup> But the Black lawyers also wanted the case in Allen's hands first, meaning they probably filed the writ as a way to delay the proceedings. This theory is supported by the fact that they requested and received a one-day delay.<sup>60</sup> They would have known a local judge was simply going to say he had no power to rule on the validity of an extradition claim which is exactly what Judge McClure, who they all knew exceedingly well, did. They were also able to use the habeas hearing to state on the record that Arkansas had quickly sentenced twelve of Hill's alleged co-conspirators to death with juries deliberating for only minutes.<sup>61</sup>

By the time of the first scheduled hearing Charles Pratt realized extraditing Hill from Kansas was not going to be a routine matter. The Topeka NAACP was prepared for a fight and Kansas authorities were going to let them wage one before they made a decision. Pratt sent this news back to Arkansas, and Governor Brough sent Attorney General John D. Arbuckle to handle the case. He was in for an experience he had never had in Arkansas.

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<sup>59</sup> Cortner, *Mob Intent on Death*, 58-60.

<sup>60</sup> "Hill Hearing Today: Government to Hold 'Riot' Negro if State Releases Him, *Topeka State Journal*, January 23, 1920. The trio did argue that Hill's Kansas City arrest was illegal because there was no warrant and no writ from Arkansas providing authority to hold Hill. Therefore, it is possible they wanted to see Hill released via the writ of habeas corpus.

<sup>61</sup> "Hill Starts Proceedings."

Scott used all of the power in his baritone voice to let Arbuckle and the Arkansas authorities know that Black people's lives were more than mere formalities in Kansas. A large crowd of Black Topekans gathered to watch the proceedings, and Scott made sure they were both entertained and well aware that he was not going to let Southern justice leach into a Topeka courtroom. According to the *Plaindealer* he stated, "in open court that the officers of Arkansas did not have the brain to draw up the papers properly and that no state paid any attention to Arkansas court decisions."<sup>62</sup> He and Hill's other attorneys convinced Allen to postpone the hearing on extradition; thereby, sending Arbuckle and Pratt home without Hill but with a good idea that extracting him from Topeka was going to be harder than they thought.

The local and National NAACP's strategy to prevent Hill's extradition was much more lobbyist than legal. Lobbying Allen to see the case from their perspective was without question their best strategy considering how difficult it was to defeat properly drawn extradition papers. Getting the ear of the governor was a method Guy and Thomas had employed all the way back in 1895. They visited Governor Edmund Needham Morrill several times in an effort to keep Missouri from extraditing a Black man named Chisolm on a charge of kidnapping a white girl for what they feared would become "a lynching bee."<sup>63</sup> Fisher worked with NAACP leaders Walter White and John Shillady to inform Allen that the PHFUA was organized with good intentions, and the men who pointed the finger at Hill did so under intense torture.<sup>64</sup> Eventually they decided a

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<sup>62</sup> "Gov. Allen Stands Firm For Justice," *Topeka Plaindealer*, January 23, 1920.

<sup>63</sup> "Fear A Lynching Bee: Chisolm, Colored, Will Not Be Taken to Missouri at Present," *Topeka Daily Press*, November 26, 1895.

<sup>64</sup> Cortner, *Mob Intent on Death*, 68-69.

firsthand witness to the hysteria that infected Phillips County was the best person to get their message across to Allen.

O. S. Bratton, the lawyer who spent thirty days in jail for merely meeting with Hill, agreed to travel to Topeka and speak to Allen. Fisher kept his presence in Kansas completely secret, Fisher and Bratton had a “long confidential conference with Governor Allen.”<sup>65</sup> Afterward, Bratton and Allen took the train to Kansas City together and continued their conversation. Everyone involved was cautiously optimistic Allen would oppose extradition when the hearings resumed March 22.<sup>66</sup> When the day came, Topeka’s Black community was ready.

With the exception of “Allen, four state and federal officers, and Hugh Fisher” there was not a white face in the courtroom aside from the Arkansas authorities, and it was standing room only.<sup>67</sup> The *Topeka State Journal* stated there were hundreds of African American spectators.<sup>68</sup> The NAACP had held a meeting the day before at Central Baptist Church and adopted a resolution opposing Hill’s return to Arkansas, and the multitude of Black spectators served to remind the Arkansas group that they were playing a road game. The crowd reacted with an angry murmur when Attorney General Arbuckle called African Americans, “niggahs.”<sup>69</sup> Fisher and the trio of Black lawyers bested Arbuckle at every turn. Guy’s argument upset Arbuckle so severely that, according to

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<sup>65</sup> Hugh Fisher to John Shillady, quoted in Cortner, *Mob Intent on Death*, 68-69.

<sup>66</sup> Cortner, *Mob Intent on Death*, 69.

<sup>67</sup> “At Hill Hearing: Court Room Filled With Negroes in Extradition Case,” *Topeka State Journal*, March 22, 1920.

<sup>68</sup> “Can’t Have Hill: Governor Allen Refuses Arkansas’ Plea for Extradition,” *Topeka State Journal*, March 23, 1920.

<sup>69</sup> “At Hill Hearing.”

Fisher, “he wasted half his time on frivolous prejudices.”<sup>70</sup> Arbuckle managed to point out that Blacks outnumbered whites 26,000 to 4,000 in Phillips County, and that Hill advised them to attend the Hoop Spur meeting armed. Furthermore, Arbuckle claimed the PFHUA held meetings in which they decided which white men would be killed.<sup>71</sup> Surprisingly, Arbuckle did not cross examine Hill. Instead, he simply stated in his closing argument that Hill was properly indicted.<sup>72</sup> In response, Fisher read affidavits from all twelve men condemned to the electric chair in Arkansas asserting that statements they made were false because they were obtained by whipping and electrocution among other means of torture. The hearing started at two in the afternoon and lasted until after midnight.<sup>73</sup>

The following afternoon, Henry Allen refused to allow Robert Hill to be extradited back to Arkansas.<sup>74</sup> The national NAACP called the victory one of its greatest ever and pointed out when Arkansas’s claims were litigated against good lawyers before an impartial judge, they had no merit.<sup>75</sup> Charles Scrutchin, a Southern raised Black lawyer in Minnesota, wrote Allen and stated that, Hill would have stood “no more show than a cat in Hell without claws” in an Arkansas trial.<sup>76</sup> And the reactions of Arkansans proved he was right. Governor Brough told the Associated Press that he was outraged. He

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<sup>70</sup> Hugh Fisher to John Shillady, quoted in Cortner, *Mob Intent on Death*, 71.

<sup>71</sup> “Can’t Have Hill.”

<sup>72</sup> Cortner, *Mob Intent on Death*, 71.

<sup>73</sup> “Can’t Have Hill.”

<sup>74</sup> “Can’t Have Hill.”

<sup>75</sup> “Greatest Since Segregation Victory,” *Black Dispatch* (Oklahoma City, OK), April 9, 1920.

<sup>76</sup> Charles Scrutchin to Henry Allen, April 15, 1920, Governor Henry Allen Correspondence, Box 11, Folder 3 (Hill, Robert S. Extradition), Kansas Historical Society, Topeka.

stated Allen was not supposed to consider whether Hill was guilty or innocent, but if he did, he could never have deemed Hill innocent.<sup>77</sup> Allen received dozens of angry letters. One was addressed to “The Kansas Nigger Lover,” it stated, “It is too bad you were not at Elaine on October 1, 1919 and had your nasty ‘white liver’ shot out by some of your beloved brethren.”<sup>78</sup> Allen stated, “if I had not believed before I made the decision that the Arkansas atmosphere would make it impossible for Hill to receive a fair trial. I would certainly be impelled to that conclusion after reading the immoderate letters I am receiving.”<sup>79</sup> People in Arkansas took a sadistic joy in the fact that in late April a Black man was lynched in Kansas after he was accused of assaulting a young white girl. Brough crowed that the people of Phillips County were better at preventing mob rule than some of their counterparts in Kansas.<sup>80</sup> The incident was definitely an embarrassment for the state the Exodusters viewed as a new Canaan, but it was the last time a Black person was lynched in Kansas. Hill still faced the federal charge which stemmed from him possessing a badge he obtained via a correspondence course with the letters “U.S.” on it.<sup>81</sup> But those charges were dismissed that October.<sup>82</sup>

Governor Allen’s reason for refusing to turn Hill over to Arkansas’s authorities was not fear that Hill would be kidnapped and lynched but rather the fear that he would be legally lynched. Allen later explained to Governor Brough, “I did not refuse the extradition of Hill through any fear that he might be lynched but through fear of that

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<sup>77</sup> Cortner, *Mob Intent on Death*, 75.

<sup>78</sup> “One Who Suffered” to Henry Allen, March 24, 1920, Henry Allen Correspondence.

<sup>79</sup> Henry Allen to Charles Edward Russell, April 7, 1920, Henry Allen Correspondence.

<sup>80</sup> Cortner, *Mob Intent on Death*, 75.

<sup>81</sup> Can’t Have Hill.”

<sup>82</sup> “Federal Cases Against Robert Hill Dismissed,” *Dallas Express*, October 23, 1920.



equally unfortunate thing that he might be tried by passion and racial bitterness.”<sup>83</sup> It was a dream decision for the NAACP. Allen refused to allow a Southern state to put a man on trial just because they promised he would not be lynched. His decision put Southern politicians on notice—if their courts were going to be respected by Northern states, they would need to start respecting defendants’ Fourteenth Amendment rights. The activist Topeka branch of the NAACP represented what the organization could achieve on the local level. And the three Black lawyers who spent countless hours working on the case without pay were an exemplar of the potential present in the Black community.

Three years later, the United States Supreme Court validated Allen’s decision. In *Moore v. Dempsey* (1923) the Court ruled that the trial of five Black men accused of murder in Phillips County was a violation of their due process rights because they were tried amid a mob atmosphere.<sup>84</sup> By the time the case was argued before the Supreme Court the tale of Walter White, the blond haired, blue eyed Black man, infiltrating the ranks of Arkansas’s white power structure by posing as a white reporter for the Chicago *Daily News* was known nationwide. White’s story helped the NAACP raise more than \$50,000 dollars to argue the men’s appeal.<sup>85</sup> Justice Oliver Wendell Holmes wrote the opinion for the court. He found that despite the fact that Phillips County counted 26,000 African Americans to 4,000 white people, African Americans “were systematically excluded from both grand and petit juries.” Furthermore,

The Court and neighborhood were thronged with an adverse crowd that threatened the most dangerous consequences to anyone interfering with the desired result. The counsel did not venture to demand delay or a

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<sup>83</sup> Henry J. Allen to Charles H. Brough, Governor, Telegram, April 20, 1920. Henry Allen Correspondence.

<sup>84</sup> *Moore v. Dempsey*, 261 U.S. 86 (1923).

<sup>85</sup> Kluger, *Simple Justice*, 113.

change of venue, to challenge a juryman or to ask for separate trials...called no witnesses for the defence...and did not put the defendants on the stand. The trial lasted about three-quarters of an hour, and in less than five minutes, the jury brought in a verdict of guilty of murder in the first degree. According to the allegations and affidavits, there never was a chance for the petitioners to be acquitted; no juryman could have voted for an acquittal and continued to live in Phillips County, and if any prisoner by chance had been acquitted by a jury, he could not have escaped the mob.<sup>86</sup>

The violence in Phillips County was America at its worst, but victories in *Moore* and Hill's extradition case demonstrated that with good lawyers backing them African Americans could get justice in the courts. Of course, justice was never assured, therefore, the Hill extradition fight helped to serve as a blueprint for later cases.

The method of stopping Hill's extradition was repeated by the NAACP several more times in the coming years. Appealing to Northern governors' sense of fairness by informing them of the problems with Southern justice continued to work for the organization in the same way it did in Topeka. Northern governors were informed of the lynching records of the state seeking extradition, often through the testimony of Walter White, and they were informed of the dangers defendants faced if they were not lynched at the hands of Southern courts that were often only interested in a show trial. In 1921, Michigan Governor Alexander Grosbeck refused to extradite a prisoner to Georgia citing the state's lynching record. In 1922, the governor of Illinois denied extradition to Mississippi after reviewing the state's lynching records. In 1928, the NAACP won three of its four extradition cases by attacking the lynching records of the requesting states.<sup>87</sup> By that time the organization listed the steps lawyers should take in fighting extradition.

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<sup>86</sup> *Moore v. Dempsey*, 89-90.

<sup>87</sup> Memorandum on Lynchings, NAACP Papers.

First, form a committee of influential local citizens and visit the governor. Second, use facts and statistics provided by the national office to demonstrate the poor lynching record of the state in question. Third, argue that the prisoner stands little chance of receiving a fair trial and strong chance of being lynched.<sup>88</sup>

Preventing extradition became less important to the NAACP as the number of lynchings decreased. After a thorough investigation of NAACP efforts to fight extradition, historian Eric Rise found that “the NAACP was never able to develop a coherent doctrinal approach to organize its work on extradition, and by the late 1930s its involvement in such cases tapered off significantly.”<sup>89</sup> Rise is correct on both accounts. The NAACP was never able to find a coherent doctrinal strategy to fight extradition largely because of the simplicity of the extradition clause, and the organization did move away from extradition cases. But the move away from extradition cases should not be viewed as a failure to find a strategy that worked consistently; it should be seen as a mark of success. The NAACP moved away from extradition because the reasons to fight extradition became less commonplace between 1921 and the late 1930s. Because fear of lynching was the reason the NAACP fought extradition cases, the number of lynchings is a good indicator of the need to fight such cases. Seventy-six African Americans were lynched in 1919, fifty-three in 1920, and fifty-nine in 1921. By 1924, the number was down to sixteen; by 1939 it was two, and it has not been higher than six since.<sup>90</sup> As Governor Allen stated, lack of due process in the courts of the South was an adequate

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<sup>88</sup> Memorandum on Lynchings, NAACP Papers.

<sup>89</sup> Rise, “Crime, Comity, and Civil Rights,” 120.

<sup>90</sup> <https://www.statista.com/statistics/1147507/lynching-by-race/> Retrieved, August 8, 2022.

reason to refuse extradition, but it was not the main reason to fight extradition. As unchecked violence against African Americans decreased, the NAACP and individuals like Scott were forced to fight less extradition cases.

The Hill case was celebrated for years in Kansas as evidence that the egalitarian Kansas the Exodusters came in search of did exist. When Scott and Guy won a 1928 extradition case against Louisiana in what was a thinly veiled attempt to keep a family in peonage, Nick Chiles waved the Kansas flag as vigorously as he ever did. He gloated, “Oh! What cheek these hell hound white peonage land owners have asking a Kansas governor to sanction peonage in the South...Kansas never has honored one of these damable (sic) instruments and never will as long as John Brown’s name is revered in Kansas.”<sup>91</sup> Chiles respected the bravery to stand up for what was right regardless of risk or consequences above any other trait, which is why he was constantly lauding Scott. And it was Chiles who gave Scott the most laudatory headline of the Hill case.

Scott planned to travel to Arkansas to defend Hill if the state of Arkansas was able to remove him from Kansas via extradition. Chiles’s *Plaindealer* called him “the young David of the colored race,” and printed a headline reading, “Bold Topeka Attorney Would Face Death to Defend Robert Hill.”<sup>92</sup> Without stating his name the *Fort Scott Tribune* pointed out Hugh Fisher was completely unwilling to take such a risk. The paper quoted a white lawyer involved in the case as stating, “Elisha Scott can be a martyr if he wants to...Somebody down there would take a shot at me...No sir, Elisha can go if he wants to,

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<sup>91</sup> Nick Chiles, “Governor of Louisiana Don’t Know Kansas History. He Certainly Had His Nerve to ask Return of Two Peons for Debt,” *Topeka Plaindealer*, May 4, 1928.

<sup>92</sup> “Elisha Scott to Arkansas: Bold Topeka Attorney Would Face Death to Defend Robert Hill,” *Topeka Plaindealer*, April 9, 1920.

but I told Governor Allen that I wouldn't go, and I mean it."<sup>93</sup> Of course Scott did not have to travel to Arkansas. More importantly, neither did Hill; he remained in Kansas for the rest of his life, working mostly for the Santa Fe Railroad and supporting the NAACP when he could.<sup>94</sup> Scott probably did not want to go to Arkansas any more than Fisher did, but he would have if he had to. He proved it when Tulsa, Oklahoma turned into a war zone.

The Tulsa race massacre was reminiscent of the destruction wrought by World War I. In one eighteen-hour span covering May 31 and June 1, 1921, what amounted to a small, independent, segregated town was completely destroyed. Pictures of the destruction bear a striking resemblance to European cities leveled by the massive shelling campaigns of World War I. In those eighteen hours, about forty square blocks of Tulsa's Black residential district were obliterated, leaving almost nine-thousand individuals homeless. Also ruined was the commercial district full of brick buildings containing the livelihoods of countless professionals and small business owners. The number of lives lost was great enough that no one can be sure how many died. According to the careful research of John Hope Franklin and Scott Ellsworth the original official estimate of thirty-five deaths was far too low. Franklin and Ellsworth estimated the number to be in the seventy-five to 100 range, and they did not discount the American Red Cross estimate of 300 dead.<sup>95</sup>

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<sup>93</sup> "A Quitter," *Fort Scott Tribune*, April 22, 1920.

<sup>94</sup> Undated and Unnamed Newspaper Clipping, Henry Allen Correspondence.

<sup>95</sup> John Hope Franklin et al., "History Knows No Fences: An Overview," *Tulsa Race Riot: A Report by the Oklahoma Commission to Study the Tulsa Race Riot of 1921* (February 28, 2001), 32-33.

Greenwood was the Black section of town in deeply segregated Tulsa. The nickname Black Wall Street according to historian James Hirsch was at least as ironic as it was apropos. Greenwood had a thriving business district full of Black professionals, and the residential area featured numerous big and beautiful homes, but those homes could only be found for a few blocks near the business district. The remainder of Greenwood was fairly impoverished. More than ninety percent of Greenwood's women worked in domestic service as did more than one third of the men. Still to African Americans, Black Wall Street stood for community pride and resiliency.<sup>96</sup> And despite its warts, according to historian Alfred Brophy, "blacks lived in relative prosperity."<sup>97</sup> Moreover, Tulsa was an oil fueled boomtown. In 1905, it was a rural crossroads, but by 1920 it had one-hundred-thousand residents. Therefore, most everything in all parts of Tulsa was new.<sup>98</sup> By 1921, the new music called jazz filled the dance halls, and a person could drink, gamble, fraternize, and find all sorts of trouble in Greenwood. To the white community it was a hell hole, and that helped many rationalize the all-out assault that it suffered.<sup>99</sup>

On Memorial Day, May 30, 1921, a nineteen-year-old African American shoe shiner named Dick Rowland took an elevator run by a seventeen-year-old white girl named Sarah Page. That much is known for certain. What transpired in the elevator is still the subject of debate. It was speculated the two knew one another, and they may have

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<sup>96</sup> James H. Hirsch, *Riot and Remembrance: America's Worst Race Riot and its Legacy* (New York: Houghton Mifflin Company, 2002), 38-47.

<sup>97</sup> Alfred L. Brophy, *Reconstructing The Dreamland: The Tulsa Riot of 1921 Race, Reparations, and Reconciliation* (New York: Oxford University Press, 2002), 23.

<sup>98</sup> Scott Ellsworth, "The Tulsa Race Riot," *A Report by the Oklahoma Commission to Study the Tulsa Race Riot of 1921* (February 21, 2001), 37-38

<sup>99</sup> Hirsch, *Riot and Remembrance*, 38-47.

been lovers. It is also possible all of the destruction was touched off when Rowland accidentally stepped on Page's foot or grabbed her in an attempt to steady himself as he slipped.<sup>100</sup> On May 31, the *Tulsa Tribune* stated, Rowland was arrested for "attempting to assault the 17-year-old white elevator girl." He "attacked her, scratching her hands and face and tearing her clothes." The *Tribune* reported that Page screamed, and a department store clerk came to her aid causing Rowland to run away. When he was apprehended "Rowland denied that he tried to harm the girl, but admitted he put his hands on her arm in the elevator when she was alone."<sup>101</sup> In the Jim Crow era putting the words "Black man," "white girl," and "assault" together was almost certain to cause the kind of outrage that could lead to lynching. "Assault" was often used as a euphemism for a rape or attempted rape, and the *Chicago Tribune* stated after the riot that the incident was a "mere agitation," but the *Tulsa Tribune's* use of the word "assault" led Tulsans to believe "a rape had been attempted."<sup>102</sup> Regardless of what happened or what was intended the damage was done, and Tulsa's Black community would have to pay.

Buck Corbett Franklin was an African American lawyer who had recently moved his practice from Rentiesville, Oklahoma, to Tulsa. Franklin's story was one all too familiar to Black professionals of his time. He was forced to open a practice in Tulsa, leaving his family behind in Rentiesville because he could not cobble together a decent

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<sup>100</sup> Brophy, *Reconstructing The Dreamland*, 24-25.

<sup>101</sup> "The False Story Which Set Tulsa on Fire," *Black Dispatch* (Oklahoma City, OK), July 1, 1921. The article is cited from a reprint in the *Black Dispatch* because according to Alfred Brophy all copies of the *Tulsa Tribune* were destroyed possibly because they contained the incendiary article and an editorial that encouraged a lynching. See Brophy, *Reconstructing the Dreamland*, 24-25.

<sup>102</sup> "Misuse of Word 'Assault' Led to Tulsa Charge," *Chicago Tribune*, June 5, 1921; Brophy, *Reconstructing the Dreamland*, 25, 130 note 4.

living working as “postmaster, justice of the peace, president of the Rentiesville Trading Company, and the town’s only lawyer.”<sup>103</sup> Franklin would eventually team with Scott in several post massacre civil suits. He was also an eyewitness to the massacre and to the economic competition that was at its root. His insights on the subject make an event like the destruction of Greenwood feel inevitable given the competition for jobs he witnessed in Oklahoma during the period.

Franklin was born in 1879, in Oklahoma’s Chickasaw Indian territory. Neither of his parents had been enslaved. His paternal grandfather had purchased the freedom of himself and his children; and his mother was born free in Mississippi.<sup>104</sup> He grew up farming and ranching in Oklahoma, but his father managed to send him to Roger Williams University in Nashville.<sup>105</sup> He eventually transferred to Atlanta Baptist College where a professor named John Hope made a strong impression on him.<sup>106</sup> When he returned to Oklahoma, Franklin taught school and began to study law via a correspondence course.<sup>107</sup> He was admitted to the bar of Oklahoma, a brand new state, in 1908 by examination. Before moving to Rentiesville he began practicing law in Ardmore, Oklahoma.<sup>108</sup>

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<sup>103</sup> John Hope Franklin, “Foreword to the New Edition,” Mary E. Jones Parish, *The Nation Must Awake: My Witness to the Tulsa Massacre* (San Antonio: Trinity University Press, 2021), ix.

<sup>104</sup> Buck Corbett Franklin and John Hope Franklin and John Whittington Franklin editors, *My Life and an Era: The Autobiography of Buck Corbett Franklin* (Baton Rouge: Louisiana State University Press, 1997), 1-2.

<sup>105</sup> Franklin et al., *My Life and an Era*, 80.

<sup>106</sup> Franklin et al., *My Life and an Era*, 107.

<sup>107</sup> Franklin et al., *My Life and an Era*, 126.

<sup>108</sup> Franklin et al., *My Life and an Era*, 134-35.



Franklin experienced first-hand how African American success and competition was what led to racism on the part of whites. He noted that in Ardmore, “all the judges and many of the lawyers were friendly. The judges were absolutely impartial on the bench.”<sup>109</sup> The collegial relationships between Black and white lawyers changed, according to Franklin, when new individuals began moving into the state and lawyers began competing, sometimes unfairly, with one another for new business.<sup>110</sup> He stated, “certain white lawyers had Negro runners in the different communities seeking clients—in some cases telling the people that a Negro lawyer had no standing ‘in white courts, before white juries.’”<sup>111</sup> Franklin’s observation that he first encountered such an argument in the form of efforts to drum up business is important. He believed Oklahoma’s Black lawyers were treated fairly until competition with whites became fierce and they were slandered as incapable. Franklin’s observation demonstrates the poor reputation of Black lawyers among both Blacks and whites during the Jim Crow period may have been a product of racism rooted in competition rather than any true deficiency. It is certainly revealing that Franklin’s first interaction with prejudice against Black lawyers in Oklahoma was the product of competition for work, not a lack of success in the courtroom. Franklin himself believed racism came from an economic seed. He noted, the five Native American tribes owned much of the oil rich land in the state. Therefore, “the ongoing struggle was always an economic one; possibly more economic than racial.”<sup>112</sup>

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<sup>109</sup> Franklin et al., *My Life and an Era*, 138.

<sup>110</sup> Franklin et al., *My Life and an Era*, 142-43.

<sup>111</sup> Franklin et al., *My Life and an Era*, 142.

<sup>112</sup> Franklin et al., *My Life and an Era*, 143.

As Oklahoma grew, Franklin's experiences with racism grew more common. Statehood, according to Franklin, brought the passage of Jim Crow laws for trains and schools. He personally visited the governor and objected to the laws. When the legislator passed a grandfather clause voting law that would disenfranchise most African Americans, he told the governor, "You know the meaning of such a proposed law—just what is at the back of it. If it is enacted into law the Negro will have lost all. He will cease to be a citizen, and a voteless man is a hopeless, defenseless man."<sup>113</sup> The governor stated he would not interfere with the legislative process by vetoing the law. Franklin explained in vain how such laws were used to subjugate African Americans in the South.<sup>114</sup> His observations on the direction Oklahoma was taking were insightful; he recognized, economic considerations were motivating white people to force Native and African Americans into a lower caste. Franklin saw the most brutal efforts by the white Community to maintain economic control in Tulsa in 1921.

By Memorial Day 1921, World War I had been over for two and half years, but it had a massive impact on the Tulsa massacre. Brophy found that World War I had given Black men freedom, and they could truly enjoy that freedom in Greenwood. Therefore, they "were primed...to take action to prevent lynching. Meanwhile, white Tulsans were themselves on guard against blacks seeking 'social equality.'"<sup>115</sup> Black Tulsans had been as patriotic as anyone else when it came to the war effort, and they came home expecting something closer to social equality only to find they were expected to keep quiet and acquiesce. But they just could not remain silent, and white men refused to treat them as

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<sup>113</sup> Franklin et al., *My Life and an Era*, 146.

<sup>114</sup> Franklin et al., *My Life and an Era*, 146.

<sup>115</sup> Brophy, *Reconstructing the Dreamland*, 23.

anything close to equal. With all of those issues thick in the air and Dick Rowland in jail the stage was set for a disaster.

By sundown on May 31, there were hundreds of white people surrounding the building that held the courthouse and jail. Many of them were shouting, “Let us have the nigger.” Sheriff William McCullough had no plans to let the mob have Rowland. He posted armed guards, had his deputies barricade themselves at the top of the building, and went outside to try to reason with the rioters. A man named Roy Belton had been taken from the jail, driven out of town, and lynched the year before and McCullough was not going to allow such a thing to happen again, and neither were the men of Greenwood.<sup>116</sup> As white people were gathering around the courthouse Black people were gathering in Greenwood. They knew they had to take some kind of stand against another lynching, but there was a lot of debate about what to do. Finally, about twenty-five World War I veterans drove down to the courthouse, and with guns in hand climbed the steps and announced they were there to volunteer as defenders of the jail. The offer was declined, and they were assured Rowland was safe. They left quietly and drove back to Greenwood.<sup>117</sup>

Outraged by the audacity of the Black veterans, whites began to arm themselves. Seeking to send a message to white Tulsans, armed Black men began to “make brief forays into downtown.”<sup>118</sup> The message they intended to send was the fact that they were prepared to defend Rowland, but many whites thought they were witnessing the beginning of an uprising. When a white man tried to disarm a Black veteran near the

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<sup>116</sup> Ellsworth, “The Tulsa Riot,” 51-52 and 60.

<sup>117</sup> Ellsworth, “The Tulsa Riot,” 60-61.

<sup>118</sup> Ellsworth, “The Tulsa Riot,” 62.

courthouse, someone fired a shot, and dozens more followed. The shooting only lasted for seconds, but several people were dead, and Tulsa was a war zone. Vastly outnumbered, the Black men retreated. Numerous whites were deputized by police officers. Many were told their duty was to “get a gun and get a nigger.” Several Black people unlucky enough to be in the area of downtown were shot. The National Guard was mobilized, but many guard members saw the entire event as a Black uprising and, therefore, only made things worse. There was sporadic fighting throughout the night, and things only got worse in the morning.<sup>119</sup>

At dawn many witnesses heard a whistle or siren that may have been a signal to attack the Black section of town. And Greenwood was attacked with military precision. A machine gun stationed in a grain elevator provided cover for hundreds of men who crossed the train tracks and entered Greenwood. Black families fought to protect their homes and businesses, but they were outnumbered and outgunned. The invading army routed Greenwood and set it afire. By the time state troopers arrived to attempt to quell the violence most Black Tulsans had fled the city or been imprisoned by the citizen deputies. Before dark most everything was destroyed.<sup>120</sup> It was in those early daylight hours that witnesses first began to see airplanes in the sky over Tulsa, and the use of airplanes would play an important part in Scott’s experience with the massacre.

It is not clear when Scott first became involved in efforts to help victims of the Tulsa massacre. He may have gone to Tulsa immediately after the violence as a

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<sup>119</sup> Ellsworth, “The Tulsa Riot,” 63-65.

<sup>120</sup> Ellsworth, “The Tulsa Riot,” 72-83.

representative of Nick Chiles's Kansas Defense Society (KDS).<sup>121</sup> By mid-July, Scott was hired "by the relief board of the colored people of Tulsa, Okla., in their effort to recover damages for the loss of life and property" totaling over five-million-dollars. He was set to team up with Oklahoma lawyers E.I. Saddler and R.E. Stewart, as well as W.B. Brown of Chicago, Illinois.<sup>122</sup> Regardless of when Scott first bore witness to the destruction in Tulsa, his experience there was hair raising. His son John remembered that at some point of his involvement in the Tulsa cases Scott found himself having to sleep in a chicken coop for his own protection and carrying the legal fees he collected in a paper bag, "because," the elder Scott stated, "the banks belonged to the white people."<sup>123</sup> Scott may have had problems in Tulsa because he uncovered information that demonstrated city officials helped lead a military style strike on Greenwood.

For over 100 years the use of airplanes in the Tulsa massacre has been a source of consistent debate and controversy, and Scott was at the center of the controversy from the beginning. Finding a way to get himself right in the middle of the action, as he always seemed to do, Scott obtained an affidavit from a man named Van B. Hurley who claimed to be a police officer detailing the use of airplanes by city officials to gain an advantage during the fighting. Hurley named "several prominent city officials who he declared met in a downtown office and carefully planned the attack on the segregated district by the use of airplanes." Furthermore, he "asserted the airplanes hovered over the district

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<sup>121</sup> "Tulsa Riot by White Ruffians A Grave Travesty Against God, Justice and Humanity! Amen," *Topeka Plaindealer*, June 3, 1921.

<sup>122</sup> Engage Topeka Lawyer: Negroes at Tulsa Seek to Recover for Losses in Riot," *Topeka Daily Capital*, July 16, 1921; *Coffeyville Daily Journal*, July 19, 1921.

<sup>123</sup> John Scott, interview by Richard Kluger, August 18, 1969, MS 759, Box 5, Folder 90, *Brown vs. Board of Education* Collection, Yale University Library.

dropping nitroglycerine on buildings, setting them afire.”<sup>124</sup> Hurley’s description of what the airplanes did matches that of several other eyewitnesses, and Tulsa officials did go up in airplanes to look over the area. But there never was a Van B. Hurley on the Tulsa police force, meaning all Scott had was a statement from an unnamed source. He never introduced the affidavit into evidence in the litigation that followed, and if it survived the years immediately following the Tulsa violence it was probably destroyed in the fire that destroyed his legal files. Nevertheless, it is an important piece of evidence in a continuing controversy.

Numerous eyewitnesses to the attack on Greenwood recalled seeing airplanes, and there is no doubt there were airplanes buzzing overhead during the massacre. The question is, what were they used for? The *Chicago Defender* reported, around dawn on June 1, “Airplanes rained bombs down on the few hundreds of our men fighting there. Several of these were disabled by rifle shots.”<sup>125</sup> The *St. Louis Argus* reported the use of airplanes was a turning point in the battle. The June 10, 1921, edition claimed, “The Negroes held their own until about 6 o’clock in the morning when a fierce attack was made upon them from the hill by cannons, and airplanes soared over the Negro section dropping fire on their houses.”<sup>126</sup>

Historian Richard Warner carefully examined myriad accounts of airplanes flying over Tulsa on June 1, and he found men in airplanes likely did some shooting and may

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<sup>124</sup> Atty. Scott is at the Root of Tulsa Riot, *Negro Star* (Wichita, KS), October 21, 1921.

<sup>125</sup> “Tulsa Aflame: 85 Dead in Riot: Bombs Hurlled From Aeroplanes in to Stop Attacks on Whites,” *Chicago Defender*, June 4, 1921.

<sup>126</sup> *St. Louis Argus*, June 10, 1921. Quoted in Richard S. Warner, “Airplanes and the Riot,” *A Report by the Oklahoma Commission to Study the Tulsa Race Riot of 1921* (February 21, 2001), 107.

have dropped incendiaries, but the massive attacks reported by several witnesses were exaggerated. His findings were published in 2001 as part of the Oklahoma Commission to Study the Tulsa Race Riot of 1921 report. He concluded, “It is within reason that there was some shooting from planes and even the dropping of incendiaries, but the evidence would seem to dictate that it was of a minor nature and had no real effect in the riot.”<sup>127</sup> To support his conclusion Warner concluded his report by stating, “prominent African Americans” such as “James T. West, Dr. R.T. Bridgewater, and Walter White of the NAACP, did not speak of any aggressive actions by airplanes.”<sup>128</sup> But Warner wrote that both Bridgewater and West saw low flying airplanes, and West “heard a woman say, ‘look out for the aeroplanes they are shooting upon us.’”<sup>129</sup> As for White, he was not an eyewitness to any part of the massacre, and Warner mentioned that White’s article in the *Nation* stated, “eight aeroplanes were employed to spy on the movements of the Negroes and according to some were used in bombing the colored section.”<sup>130</sup> Considering the wide range of accounts, Warner’s conservative conclusions are understandable, but a new account has surfaced since he made his report.

In 2015 Buck Corbett Franklin’s ten-page, typewritten account of the attack on Black Wall Street was discovered in a storage area and donated to the Smithsonian.<sup>131</sup>

Writing in 1931, Franklin recalled,

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<sup>127</sup> Warner, “Airplanes and the Riot,” 107.

<sup>128</sup> Warner, “Airplanes and the Riot,” 107.

<sup>129</sup> Warner, “Airplanes and the Riot,” 105.

<sup>130</sup> Warner, “Airplanes and the Riot,” 105.

<sup>131</sup> Allison Keyes, “A Long-Lost Manuscript Contains a Searing Eyewitness Account of the Tulsa Race Massacre of 1921,” *Smithsonian Magazine*, May 17, 2016, <https://www.smithsonianmag.com/smithsonian-institution/long-lost-manuscript-contains-searing-eyewitness-account-tulsa-race-massacre-1921-180959251/> Retrieved May 11, 2022.

From my office window, I could see planes circling in mid-air. They grew in number and hummed, darted and dipped low. I could hear something like hail falling upon the top of my office building. Down East Archer, I saw the old Mid-Way hotel on fire, burning from its top, and then another and another and another building began to burn from the top. “What, an attack from the air, too?” I asked myself. Lurid flames roared and belched and licked their forked tongues in the air. Smoke ascended the sky in thick, black volumes and amid it all, the planes—now a dozen or more in number—still hummed and darted here and there with the agility of natural birds of the air. Then a filling station further down East Archer caught on fire from the top. I feared now an explosion and decided to try to move to safer quarters. I came out of my office, locked the door and descended to the foot of the steps. The side-walks were literally covered with burning turpentine balls. I knew all too well where they came from and I knew all too well why every burning building first caught from the top.<sup>132</sup>

Scott and Franklin teamed with numerous other attorneys to fight for the rights of the thousands of individuals left homeless and penniless by the violence in Tulsa. Claims for damages against the city and insurance claims were almost summarily denied. And white Tulsans developed a plot to prevent Greenwood’s residents from ever being allowed to rebuild. They passed an ordinance they claimed was an effort to prevent fire, that prevented the construction of new wooden buildings in the area. Scott, Franklin and a team of lawyers succeeded in quickly winning a permanent injunction against the ordinance.<sup>133</sup> Unfortunately, that victory over an obviously spiteful ordinance was the high-water mark for Tulsa victims in the courts. Many suits for damages lingered in the courts for years, and Scott and Franklin dropped the last remaining cases in 1937.<sup>134</sup>

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<sup>132</sup> “Buck Corbett Franklin, Recollection of the Tulsa Race Massacre,” August 22, 1931, <https://slate.com/culture/2019/10/watchmen-b-c-franklin-tulsa-massacre-account-full-text.html> Retrieved August 25, 2022.

<sup>133</sup> “Tulsa Negroes Win Permanent Injunction, *Hutchinson Blade*, September 3, 1921; Tulsa Negroes up Against it: White Hatred Cannot Accept Competitive Success, *Savannah Tribune*, September 8, 1921.

<sup>134</sup> “Dismissal Asked in Tulsa Riot Suits,” *Henryetta Daily Free-Lance*, July 1, 1937.



Franklin's son John Hope grew up to be one of America's finest scholars, and he and Scott Ellsworth noted the key positive to come out of the Tulsa massacre. They wrote,

The Tulsa riot would forever alter life in Oklahoma. Nowhere, perhaps, was this more starkly apparent than in the matter of lynching...during the early years of the twentieth century, the sad spectacle of lynching was not uncommon in Oklahoma...Mary Elizabeth Estes determined that between the declaration of statehood on November 16, 1907, and the Tulsa race riot some thirteen years later, thirty-two individuals—twenty-six of whom were black—were lynched in Oklahoma. But during the twenty years following the number of lynchings statewide fell to two. Although they paid a terrible price for their efforts, there is little doubt except by their actions on May 31, 1921, that black Tulsans helped to bring the barbaric practice of lynching in Oklahoma to an end.<sup>135</sup>

Scott's next direct experience with a race riot would come six years later in Coffeyville, Kansas.

Coffeyville, Kansas is best known as the place where the infamous Dalton Gang met their match in a group of ordinary folks who refused to let the gang victimize their town. The Dalton's planned to rob both of Coffeyville's banks in broad daylight at the same time. Robert Barr Smith who researched the gang thoroughly found the plan was "just plain stupid," but the gang was overly confident and in need of money.<sup>136</sup> Therefore, on October 5, 1892, around nine o'clock in the morning, five members of the Dalton Gang attempted the double robbery. They split into two groups and proceeded to rob both of Coffeyville's banks. Contrary to the popular myth, few people in old west towns carried guns, and no one did in downtown Coffeyville. Therefore, when the Daltons ambled through town carrying rifles, they were immediately noticed, and many locals

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<sup>135</sup> Franklin et al., "History Knows No Fences," 34.

<sup>136</sup> Robert Barr Smith, *Daltons! The Raid on Coffeyville, Kansas* (Norman: University of Oklahoma Press, 1996), xii.

armed themselves.<sup>137</sup> Four members of the Dalton Gang were killed in the shootout that followed, and the other was seriously wounded. Three townspeople and Marshall T.C. Connelly were killed in one of the few Hollywood style gunfights that actually took place in real life.<sup>138</sup>

Coffeyville's residents have always been proud to boast that their townspeople said, "No More!" to the Dalton Gang. The town celebrates its citizens' bravery with a festival called Defender's Days, and the town museum, a charming building that resembles the Alamo Mission, is known as the Dalton Defender's Museum.<sup>139</sup> A similar act of bravery has been far less celebrated in the small Kansas town on the Oklahoma border.

For close to one hundred years following the Civil War, in all parts of the country, nothing could turn seemingly peaceful citizens into sadistic fiends faster than an accusation of Black on white rape. Nearly thirty-five years after the last stand of the Dalton gang, on March 18, 1927, the streets of Coffeyville were again crowded with townspeople bent on defending the town against violent criminals. The trouble started early that morning. Local high school students Julia Mooney and Margaret Akers were spending the night alone in a house owned by the Mooney family. Around two a.m., Coffeyville was almost immediately thrown into a frenzy when according to the *Coffeyville Daily Journal*, the girls appeared at the home of a neighbor "bleeding from several lacerations on the face, weeping though their hearts would break the two girls

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<sup>137</sup> Robert Barr Smith, "The Wrong Towns for Outlaws," *Wild West*, October 1, 2010, 52.

<sup>138</sup> "The Last of the Dalton Gang: The Band of Desperados Practically Exterminated," *New York Times*, October 6, 1892; Smith, "The Wrong Towns," 52.

<sup>139</sup> Smith, *Daltons!* xvi.

were staggering toward the porch... ‘Negroes!’ they gasped in unison.”<sup>140</sup> It was clear, the newspaper stated, the girls had faced “an experience more terrible than death itself.”<sup>141</sup> By four a.m., “a cordon of armed men was thrown around the city...and armed posses from a dozen Kansas and Oklahoma towns were headed toward Coffeyville.”<sup>142</sup> As the day went on and the suspects were not found some sort of interracial violence seemed imminent. The *Daily Journal* noted, “the conversations in the knots of men that fringed downtown streets were of ropes, arms, and various other agencies of death.”<sup>143</sup>

With hundreds of angry men milling about the streets Coffeyville, authorities took what steps they could to prevent violence. The *Wichita Eagle* printed a photo that looked like a New York City traffic jam, strewn with automobiles and pedestrians and everyone in the photo was following police bloodhounds as they searched for the assailants.<sup>144</sup> Early in the search local authorities called out Troop B of the 117<sup>th</sup> Calvary to help locate the accused, and maintain order if they were found.<sup>145</sup> When the dogs led the hundred plus person search party to a home on the Black side of Coffeyville’s segregating train tracks, the police arrested three men they found sitting around a kitchen table inside. The Sheriff attempted to disperse the mob by claiming the search had reached a dead end. When the crowd did not disperse, he cleared the street as best he could and “whisked” the

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<sup>140</sup> “Two Girls Assaulted: Julia Mooney and Margaret Akers Victims of Three Negro Men Last Night,” *Coffeyville Daily Journal*, March 18, 1927; “Two Girls Are Brutally Assaulted This Morning,” *Morning News* (Coffeyville, KS), March 18, 1927.

<sup>141</sup> “Two Girls Assaulted.”

<sup>142</sup> “Two Girls Assaulted.”

<sup>143</sup> “Two Girls Assaulted.”

<sup>144</sup> “Militiamen Quiet Mob Seeking Revenge,” *Wichita Eagle*, March 21, 1927.

<sup>145</sup> “Two Girls Assaulted.”

prisoners to the jail, with all of the unwanted members of his posse following just as they had before.<sup>146</sup>

Two groups of men, both thinking they were on the right side of justice, clashed in the streets of Coffeyville that night. The first group of would-be-heroes was as many as three-thousand strong and made up almost exclusively of white men, but there were a smattering of women and children around the edges of the crowd. They were determined to defend the honor of their local girls by extracting the accused rapists from the city jail, which occupied the same building as the courthouse, and holding a good old -fashioned lynching in the very streets in which the Daltons were “exterminated.”<sup>147</sup> The second group of would-be-heroes were far fewer in number, they were made of Sheriff’s deputies and African American citizens, many of whom were World War I veterans, who chose to defend the life of the accused man against the mob. The white men likely defended the jail because they believed that justice should be had through the courts after careful deliberation, not at the end of a rope after anger turned into action. They may have also decided they were defending an innocent man, as by the time of the assault on the jail the Sheriff was convinced none of the arrestees were guilty of the rape.<sup>148</sup> The Black jailhouse defenders likely shared their white counterpart’s belief in deliberative justice, but they also acted because they “understood that the lynching of *any* black person constituted an assault on all black people.”<sup>149</sup> Furthermore, most of the Black men who

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<sup>146</sup> “Street Battle Leads to Marshall Rule Here,” *Coffeyville Daily Journal*, March 19, 1927.

<sup>147</sup> “Last of the Dalton Gang.”

<sup>148</sup> “And That Reminds Us,” *Morning News* (Coffeyville, KS), March 22, 1927.

<sup>149</sup> Brent M.S. Campney, *This is Not Dixie: Racist Violence in Kansas 1861-1927* (Urbana, IL: University of Illinois Press, 2018), 120. Emphasis added by Campney.

became involved in the melee only did so when the Black section of town became the target of the rioters.

By nightfall authorities had let two of the suspects go due to lack of evidence, but there was still an African American, a thirty-year-old barber named Curtis Smith, accused of raping a white woman, inside the jail, and that was enough for the mob. Authorities tried to avoid conflict by announcing that two of the arrested men had already been released and the other had been smuggled out of town in a firetruck.<sup>150</sup> The firetruck story was a bluff, as Smith was actually hidden on the roof of the courthouse.<sup>151</sup> Not even allowing three separate groups to enter the building and search for Smith was enough to stop the inevitable march toward a pogrom.<sup>152</sup> There were around fifteen hundred people lurking around the jail when a rumor spread through the crowd that one of the victims had died.<sup>153</sup> At that point around one hundred men attacked the door on the west side of the building screaming “Give us the nigger.”<sup>154</sup> They were met by law enforcement officers wielding night clubs and guns. Eventually they employed tear gas to force the rioters back.<sup>155</sup> Several unsuccessful attempts were made to breach various parts of the building. Scattered by the tear gas, the rioters turned their anger on Black businesses in the area and the Black section of town.

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<sup>150</sup> “Troops Enforce Martial Law in Coffeyville,” *Fort Worth Record-Telegram*, March 19, 1927.

<sup>151</sup> *Topeka Daily Capital*, March 19, 1927.

<sup>152</sup> “Troops Enforce Martial Law”; *Topeka Daily Capital*, March 19, 1927; Geoffrey Jay Newman, “Forgetting Strength: Coffeyville, The Black Freedom Struggle, and the Vanishing of Memory (Master’s Thesis, University of Missouri-Kansas City, 2013), 20-21.

<sup>153</sup> *Coffeyville Daily Journal*, March 19, 1927; Campney, *This is Not Dixie*, 196.

<sup>154</sup> *Coffeyville Daily Journal*, March 19, 1927; Campney, *This is Not Dixie*, 196.

<sup>155</sup> *Coffeyville Daily Journal*, March 19, 1927; “Troops Enforce Martial Law;” Campney, *This is Not Dixie*, 196.

Much like the Dalton Gang defenders, Coffeyville's Black community had ample warning that they may be attacked, and they were ready when a large number of white men turned away from the courthouse and toward the Black owned businesses on the other side of the street. After they were forced away from the center of town that afternoon, several Black men established a perimeter around their neighborhood and posted lookouts near the white rioters.<sup>156</sup> As many in the mob turned their attention toward the Black businesses, gunfire filled the air. A Black man named Robert Liggins who worked as a "merchant policeman," meaning he was hired by the local police force to patrol the Black section of town, was arrested for firing the first shot.<sup>157</sup> But Liggins may well have been the biggest hero among many. According to the Black owned *Kansas City Call*, Liggins stopped some sixty rioters dead in their tracks when he leveled his gun and ordered them to stop.<sup>158</sup> Behind Liggins, a group of Black men emerged from the pool hall and took up defensive positions in a nearby ditch. Members of the mob fired shots from the second story windows of a hotel across the street, and some Black men were hit.<sup>159</sup> A group of young white men looted the local hardware store for guns and ammunition, but they were stopped by a combination of law enforcement and military personnel. By 11 p.m., the city was under martial law. Not long after, a heavy rain helped to send everyone home.<sup>160</sup>

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<sup>156</sup> Campney, *This is Not Dixie*, 196.

<sup>157</sup> "Forgetting Strength," 21.

<sup>158</sup> "Forgetting Strength," 21-22. Liggins was shot and killed on Union Street in Coffeyville less than one year later. See "Robert Liggins, Hero of Coffeyville Race Riot is Gone," *Topeka Plaindealer*, February 10, 1928.

<sup>159</sup> "Forgetting Strength," 22.

<sup>160</sup> "Forgetting Strength," 23.

In the aftermath of the riot, the people of Coffeyville stuck to the egalitarian Kansas myth and laid the blame for the rioting on outside agitators from Oklahoma.<sup>161</sup> Arrest records do not back that claim, and it was just the beginning of a collective effort to forget the whole incident ever happened. They also chose to cover up the racist nature of the riot by arresting several Black men who were guilty of nothing more than keeping their neighborhoods from burning in the same way Tulsa's Greenwood district burnt six years prior. In need of an attorney to represent the newest Coffeyville defenders the Black community requested the assistance of Elisha Scott.

Scott was the lawyer Coffeyville's Black community turned to in big cases. In 1924, acting on behalf of the national office of the NAACP, he won *Thurman-Watts v. The Board of Education of the City of Coffeyville*. The case involved a blatant attempt by the Coffeyville school board to segregate the town's new junior high school in violation of Kansas law. The plan tore the town apart with at least fourteen Black parents arrested for refusing to send their junior high school aged children to the segregated elementary schools.<sup>162</sup> Scott won the case convincingly. He got three school board members to admit they currently were or had been members of the Ku Klux Klan and generally embarrassed the school board and their overmatched attorney at every turn.<sup>163</sup> It was an important victory statewide and nationally, but it meant the most to Coffeyville's parents who could now send their children to a school they voted and paid for. Therefore, when the riot continued to be fought via litigation, they again called for Scott.

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<sup>161</sup> "Forgetting Strength," 23.

<sup>162</sup> City Court of Coffeyville Criminal Appearance Dockets, 1906-1978, Vol. II June 2, 1922; Vol. 12 Nov. 24, 1927.

<sup>163</sup> "Education Rights of the Colored Race is Jeopardized," *Topeka Plaindealer*, January 11, 1924.

In May 1927, even though they had recently let their local NAACP branch lapse, Coffeyville residents sent separate telegraphs to Robert Bagnall and Walter White in New York asking for help. One message read, “Criminal Cases Result of Riot Set for Thursday. Very Serious. We Want Elisha Scott Attorney of Topeka...Please Wire Him to Come at Once He Knows What to do.”<sup>164</sup> Walter White contacted Scott that day.<sup>165</sup> Scott made the 154-mile trip to Coffeyville several times in the next few months, and not only did he represent his clients, he also became a force behind the scenes in a case that started with a near lynching and somehow got even uglier from there.

The attempted lynching in Coffeyville followed an unfortunate pattern that mirrored numerous similar incidents: an accusation of sexual assault by a Black man or men against a white woman or women, a night or more of senseless violence, and a later realization that those accused were innocent. Scott must have relived horrible memories of Duluth and Tulsa as the truth about what really happened in Coffeyville on the morning of March 18, 1927, slowly came out. Good luck, guile, and bravery prevented Coffeyville from seeing as much death and destruction as Duluth and Tulsa, but the truth of what happened in Coffeyville is just as damaging to one’s faith in human nature.

By May 18, Scott had conducted his own investigation and concluded that the men who attacked Mooney and Akers were white. He informed Walter White that Kansas’s Attorney General (AG) agreed with him, and he would be appointed special

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<sup>164</sup> D.G. Whiterker to Robert Bagnall, May 9, 1927, NAACP Files Anti-Lynching Campaign correspondence on race riot in Coffeyville, Kansas; Dennison Hannigan to Walter White, May 9, 1927, NAACP Files, Anti-Lynching Campaign correspondence on race riot in Coffeyville, Kansas.

<sup>165</sup> Walter White to Elisha Scott, May 9, 1927, NAACP Files, Anti-Lynching Campaign correspondence on race riot in Coffeyville, Kansas.



assistant to the AG “for the purpose of assisting him in conducting the investigation.”<sup>166</sup> In his report to the NAACP, Scott explained that he spoke to every witness except for the two girls and discovered that the girls had planned a late-night party in the empty house. At some point they were attacked, but the assailants were white men posing as Black because “black substances (were) found on the clothing of the girls.” He added an underline to make clear to white the fact that the girls “were not assaulted by Negroes.”<sup>167</sup> By the end of May, Scott’s version of the story had proven to be substantially correct, and the NAACP gave him credit in a press release. The headline read, “WHITE RAPISTS NOT NEGROES CAUSED COFFEYVILLE RACE RIOT: white Newspaper Now Admits Charge Made by NAACP Attorney.” The release continued, “Charges made by Attorney Elisha Scott...to the effect that white rapists not colored were responsible for the race riot of March 18 in Coffeyville, Kansas are now admitted in a front-page display story in the *Coffeyville Daily Journal*.”<sup>168</sup> Later, the NAACP would refer to the case as “A Kansas ‘Scottsboro’ Case,” and the *Pittsburgh Courier* reported it was Scott who “persuaded the Grand Jury to investigate the rape charges.”<sup>169</sup> The revelation that white men were responsible for the attack was surprising news, and the news coming out of Coffeyville was about to take an even stranger turn.

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<sup>166</sup> Elisha Scott to Walter White, May 20, 1927, NAACP Files, Anti-Lynching Campaign correspondence on race riot in Coffeyville, Kansas.

<sup>167</sup> Elisha Scott to Walter White, May 18, 1927, NAACP Files, Anti-Lynching Campaign correspondence on race riot in Coffeyville, Kansas.

<sup>168</sup> Undated Press Release, NAACP Files, Anti-Lynching Campaign correspondence on race riot in Coffeyville, Kansas.

<sup>169</sup> “A Kansas ‘Scottsboro’ Case,” Essays on Scottsboro trial and other NAACP legal cases, January 1, 1937, to December 31, 1937, NAACP Papers, Part 11, Special Subject Files, 1912-1939; “NAACP’s Persistent Fight For Justice Has Saved Scores From Death For The ‘Usual Crime,’” *Pittsburgh Courier*, August 4, 1934.

Two white people were arrested in connection with the assault on Margaret Akers: one was a car salesman named Ira Kennedy and the other was the other alleged victim—Julia Mooney. Mooney had arranged the incident in order to play the victim in a fantasy, and she helped victimize the unknowing Akers in the process. white men had indeed blacked their faces with cork and attacked Akers with Mooney pretending to also be a victim. Kennedy and Mooney were arrested when Akers refused to stick with the original story any longer. Akers thought her attacker may have been Kennedy, who she knew through Mooney, all along. But she hesitated to change her story due to fear that Mooney who was living in her house may kill her. She even borrowed a revolver from her father and slept with it under her pillow. Mooney spent her high school graduation day in jail. Her bond was eventually reduced, so she was free on bail when she and Kennedy stood trial in July 1927.<sup>170</sup> The trial was a newspaper writer's dream. The *Coffeyville Daily Journal* which had previously described Mooney as a more than virtuous victim now described what it deemed the real question at stake in the trial this way.

Whether Julia Mooney is the female Judas, the vampire woman who upset the records, sacred and profane, by seducing one of her own sex without hope of reward; whether Kennedy is a revealing wolf in sheep's clothing, or whether both are innocent victims of circumstance and have been accused falsely, may be revealed by the rejected stone which is expected to become the true keystone in the arch of justice to be built by the state.<sup>171</sup>

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<sup>170</sup> "Arrest of Couple is Race Riot Echo," *New York Evening Post*, May 31, 1927; "Jury Trial Next Phase of Assault," *Coffeyville Daily Journal*, June 20, 1927; *Kansas City Call*, June 24, 1927; Campney, *This is Not Dixie*, 197. For a thorough explanation of all of the circumstances surrounding the riot and trial including Scott's involvement see Geoffrey Jay Newman, "Forgetting Strength: Coffeyville, The Black Freedom Struggle, and the Vanishing of Memory (Master's Thesis, University of Missouri-Kansas City, 2013), 13-50.

<sup>171</sup> "Investigating New Assault Clue."

The case ended in injustice when, according to Scott, the county attorney destroyed the state's case by cross examining Akers who was his own witness about an inconsistent written statement she had previously made.<sup>172</sup> The Coffeyville *Morning News* agreed, and reported, the County attorney had kidnapped the case.<sup>173</sup> Scott stated, that the county attorney may have sabotaged the city attorney out of jealousy because the city attorney built the case against Kennedy and Mooney. He also stated, he could not prove it, but he believed the county attorney had been paid "to lay down" in all of the riot cases. Furthermore, the other two suspects were prominent citizens of Coffeyville who were being protected by Coffeyville officials.<sup>174</sup> With the case in shambles, the charges against Mooney were dropped, and an all-male jury acquitted Kennedy after a fifty-minute deliberation.<sup>175</sup>

Scott's defense of the alleged rioters was a relative success, as he got the worst charges dropped but predictably failed in the civil suits. The case against one of the original three defendants was dropped early on, so Scott proceeded with his defense of Napoleon Anderson and Herschel Ford. Eighteen white men were charged with rioting, but the charges were dropped against every one of them. The prosecution of Anderson and Ford continued, according to Scott, because the two had filed civil suits for damages against the city. However, Scott claimed, after Kennedy was acquitted and Mooney was

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<sup>172</sup> Elisha Scott to James Weldon Johnson, June 27<sup>th</sup>, 1927, NAACP files, Anti-Lynching Campaign correspondence on race riot in Coffeyville, Kansas.

<sup>173</sup> "Mitchell's Tactics Hard to Understand," *Morning News* (Coffeyville, KS), July 10, 1927.

<sup>174</sup> Elisha Scott to James Weldon Johnson, July 28, 1927, NAACP files, Anti-Lynching Campaign correspondence on race riot in Coffeyville, Kansas.

<sup>175</sup> "Defendants Not Guilty," *Morning News* (Coffeyville, KS), July 20, 1927; Kennedy is Freed by Jury," *Independence Daily Reporter*, July 20, 1927; "Forgetting Strength", 49.

released, public sentiment turned in favor of Anderson and Ford. With the help of the NAACP “and the best class” of white people Scott was able to pressure the county Attorney into dropping the charges. The city refused to drop a charge of discharging a firearm within the city limits against Anderson, but it was a minor infraction. The city charge was likely retained because of Anderson’s civil suit against Coffeyville. He was badly injured as a result of gun shots in both legs, but Scott lost the civil case. He informed the national office, “The jury stayed out five hours, and returned a verdict in favor of the City, just as we expected. Impossible to win a case in Coffeyville against the City.”<sup>176</sup> But it was the rape case that meant the most to the NAACP, and Scott’s behind the scenes efforts in that case were successful despite the fact that they did not result in any convictions.

An allegation of rape against three Black men did not easily morph into charges against a white man and a white female accuser, and Scott’s quiet work behind the scenes helped authorities to identify and charge the proper suspects. His correspondence with the NAACP demonstrates they were paying him to represent Anderson and Ford, but for the organization the rape case was more important, and Scott was serving as their investigator. Just as he had in Tulsa, Scott demonstrated an uncanny ability to gather information from both Black and white witnesses. He was of course known and trusted in Coffeyville’s Black community, but he was also able to gather information from white sources like lawyer Charles Ise who wound up representing Julia Mooney at trial. And, as he noted in his letters to the NAACP, he had the power of the AG’s office behind him.

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<sup>176</sup> Elisha Scott to NAACP Secretary James Weldon Johnson, December 3, 1927, NAACP files, Anti-Lynching Campaign correspondence on race riot in Coffeyville, Kansas.

Scott never appeared in the case as a special prosecutor for the AG, but he appears to have used his connections to that office to gain access to witnesses and evidence, and he was able to do so quietly because the AG never stated Scott had been appointed to any position. The AG was likely using Scott as a clandestine investigator as well, as Scott, who was desperately in need of money at the time, never asked the NAACP for any pay for his hours spent investigating. This was because, according to his correspondence with the NAACP, he was paid for that work by the AG's office.<sup>177</sup> Finally, Scott was an expert at manipulating the news media, and he had connections to the Republican leaning *Coffeyville Morning News*, the *Kansas City Call* a large Black owned newspaper edited by a fellow NAACP man in Roy Wilkins, and his friend Nick Chiles's *Topeka Plaindealer*. It will never be clear how much influence Scott had on the direction of the case, but his correspondence with the NAACP's New York offices demonstrate he knew where the case was headed before it got there, and his close relationships with Republican and Black owned newspapers make him a likely source for their stories.<sup>178</sup>

By 2020, the Coffeyville riot of 1927 was a little-known historical footnote to many residents of the town. That summer the *Montgomery County Chronicle* printed a two-part series chronicling the events surrounding the riot. While some Coffeyville residents noted they were taught about the riot in school, several said they were completely unaware of it. One commenter noted they were unaware of the riot because

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<sup>177</sup> Elisha Scott to James Weldon Johnson, July 7, 1927, NAACP files, Anti-Lynching Campaign correspondence on race riot in Coffeyville, Kansas.

<sup>178</sup> Geoffrey Newman's Master's Thesis engages the same speculation about Scott, and it was his work that first noted Scott was a possible source for Roy Wilkins. See, Geoffrey Jay Newman, "Forgetting Strength: Coffeyville, The Black Freedom Struggle, and the Vanishing of Memory" (Master's Thesis, University of Missouri-Kansas City, 2013)

“nobody built a statue,” while another complained bringing the incident up now was just the “media stirring the pot.”<sup>179</sup> While the acts of the men who defended the town against the Daltons are celebrated yearly, Coffeyville has been much slower to recognize the heroism of Sheriff’s deputies and townspeople who prevented an aggressive mob from lynching an innocent African American man. Scott immediately recognized the significance of the Black community’s self-defense on the night of March 18, 1927. In his report to Walter White he explained, “This case is of unusual importance because the Negroes made a stand, turned back the mob and saved the property of our folks.”<sup>180</sup> Coffeyville made an important step in the long healing process when the *Montgomery County Chronicle* brought the riot into back into the public eye. The next step is for the town is to recognize a second set of Coffeyville defenders. When the town honors Dalton Gang defenders Marshall C.T. Connelly, Charles Brown, Lucius Brown, and George Cubine they should take time to honor lesser-known Coffeyville defenders like Napoleon Anderson, Herschel Ford, Robert Liggins, and Elisha Scott.

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<sup>179</sup> Montgomery County Chronicle Facebook Page, <https://www.facebook.com/Montgomery-County-Chronicle-179343538715/> Retrieved August 29, 2022.

<sup>180</sup> Elisha Scott to Walter White, May 18, 1927, NAACP files, Anti-Lynching Campaign correspondence on race riot in Coffeyville, Kansas.

## CHAPTER FIVE: LITIGATOR

The word “legerdemain” is an important clue in the search for the essence of Elisha Scott. When he passed away in the spring of 1963, a group of his colleagues attempted to describe Scott’s life in fifteen paragraphs. They chose their words carefully and lovingly. Scott was described as rising from “humble circumstances,” to “pursue his education against almost insurmountable odds.” The result of this striving was “a long and illustrious career.” He was also described by many of the words that are almost obligatory in eulogization: “dedicated,” “illustrious,” “vital,” “colorful,” “daring,” “liked,” “respected,” “generous,” and numerous more superlatives.<sup>1</sup>

One word in a document full of accolades stands out, “legerdemain.”<sup>2</sup> It appeared in paragraph ten. When his colleagues attempted to pay tribute to his contribution to *Brown v. Board of Education* they noted, for Scott it was the “crowning achievement” of a long career fighting for the rights of his people in courts all over Kansas and the United States. Next his friends complimented his legacy as a patriarch by noting the involvement of his sons in the case. They concluded by asserting the eldest Scott was a crucial contributor in the fall of separate but equal. All of their words were warm and kind, and all of their words were what one would expect to find in an obituary. However, when the lawyers needed to articulate the qualities Scott brought to the famous case, they chose

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<sup>1</sup> “Memorial to Elisha Scott,” RH MS 1145, Box 9, Charles Scott Collection, Kenneth Spencer Research Library, Kansas University, Lawrence.

<sup>2</sup> “Memorial to Elisha Scott.”

two predictable words and one that required the author to retrieve a dictionary. They wrote, Scott provided to the lawyers involved in the *Brown* case “all of the wisdom, legerdemain, and experience that he had acquired over the years.”<sup>3</sup> A child watching Sesame Street could determine which one of those things did not belong. Wisdom and experience are words one would expect to find in an obituary for an older person. They are words often used to describe the contributions of a mentor who was admired and respected. Legerdemain looks like a word that wandered over from Harry Houdini’s obituary. It is defined as, “skillful use of one’s hands when performing conjuring tricks.” It can also mean, “skill in deceiving or misleading others in order to achieve one’s purpose or benefit oneself; the action or fact of employing this skill; artful deception or trickery.”<sup>4</sup> The second definition fit Scott as well as the old bone rimmed eyeglasses he was buried in.<sup>5</sup> Throughout his career, he regularly employed tricks better described as sleight of mouth than sleight of hand that allowed him to succeed without making too many enemies and to win cases when the law was not on his side.

Scott was a Black man in a decidedly white profession; thus, he had to win cases like any other lawyer, but he was also often required to practice the kind of legal sleight of hand that allowed him to win without offending anyone. His aggressive advocacy made winning without offending anyone difficult, but his ability to make others laugh or cry as if he was using magic helped him navigate decades of contentious courtroom

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<sup>3</sup> “Memorial to Elisha Scott.”

<sup>4</sup> Oxford English Dictionary Online, <https://www.oed.com/view/Entry/107057?rskey=hH37yz&result=1#eid>, Retrieved November 11, 2022.

<sup>5</sup> John Scott, interview by Richard Kluger, August 18, 1969, MS 759, Box 5, Folder, 90, *Brown vs. Board of Education* Collection, Yale University Library.



battles. Therefore, wisdom, experience and legerdemain were all words that paid proper tribute to the lawyer who despite a degree of fame had spent most of his more than forty years as a lawyer in Topeka, in police court, fighting for clients who had little chance, less money, and less respect. However, it was legerdemain that best explained why Elisha Scott was remembered that day in 1963 as a man who demanded and created change.

Legerdemain was a necessary tool for a Black man, tasked with defeating white lawyers in a game run by white lawyers and rigged in their favor. A Black lawyer who intended to win, and keep his house fire free, could not just win. Scott had to win and make the losing side feel good about it. It was a goal he could not always achieve, he lost often, and he stomped on more than a few toes. However, he also demonstrated an uncanny ability to push as hard as he could for total victory, then pull back and get whatever modicum of success he could ring out of cases that were often lost causes.

Scott's second magic trick was his ability to change the controlling law from the law of the United States to the law of the Bible in the middle of a court case. He regularly took on cases that no one else wanted, and no one thought he could win. And he lost many of those cases. But he also pulled a rabbit out of his hat more times than anyone could count. When the law was against his client, he would shift the question posed to the jurors from a question of American law to a question biblical law. If, for example, his client was caught stealing he would do all he could to shift the question posed to the jury from the legal elements of theft to the moral ramifications of what the person did. Often, he would also redirect the moral question to the jury, borrowing from his old mentor Charles Sheldon, and effectively asking them what Jesus would do if he were asked to determine the guilt or innocence of his client. Would Jesus take a father away from his

children when the father was only guilty of making a little white liquor to support his family?<sup>6</sup> It was a simple concept but one that his fellow lawyers recognized took great skill to pull off in practice.<sup>7</sup> If he ever let on for a minute that he did not passionately believe in what he was preaching, he would lose credibility and the case. Therefore, his delivery was just as important as his message.

In the same obituary, Scott's fellow lawyers noted, he "possessed a natural wit and the ability to dramatize. He learned early in life to use these in varying combinations with his knowledge of the law, and many an adversary discovered this combination to be overpowering in the courtroom."<sup>8</sup> Scott's friends in Topeka knew him well. Scott's performative abilities, aggressiveness, wit, and knowledge of the law made him a success in the courtroom. He used those tools to win cases in an environment hostile to an African American attorney and his clients. This chapter explores Scott's work in the courtroom, and concludes it was his unique skill set that allowed him to win difficult cases in sometimes dangerous circumstances and do so while ruffling as few feathers as possible. As his friends stated in their eulogy, "whether he was on the popular or unpopular side he was well liked and respected." They reasoned this was because "he was firm, but never abusive, persistent, but never overbearing. His conduct was always the type that would create sympathy and understanding for his client or cause."<sup>9</sup> Scott's record shows he was not always well liked, and he could be abusive and overbearing.

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<sup>6</sup> John Scott, interview.

<sup>7</sup> John Scott, interview; Samuel Jackson, interview by Richard Kluger, June 11, 1969, and June 21, 1969, MS 759, Box 3, Folder 53, *Brown v Board of Education* Collection, Yale University Library.

<sup>8</sup> "Memorial to Elisha Scott."

<sup>9</sup> "Memorial to Elisha Scott."

Lawyers themselves, his friends also understood the challenges a Black lawyer faced while practicing in a country in which numerous civil rights were legally not afforded to African Americans. Scott's fight against Jim Crow required him to artistically employ all of the tools at his disposal in order to help his race move toward full citizenship. And while his obituary specifically noted his contribution to *Brown* and other desegregation cases, this chapter will demonstrate how he succeeded in a courtroom environment that was socially and legally constructed to insure his failure.

Scott succeeded by mastering skills that went beyond knowledge of the law. He adroitly balanced connecting with jurors, aggressively advocating for his clients, and maintaining good will with judges and fellow lawyers in a way that it seemed only he could completely understand. Sixty years after his death, his ability to fight as aggressively as he did, win as often as he did, and maintain a respected place in the Topeka bar, still looks like the same kind of magic trick his peers described in 1963.

The cornerstone of Scott's work in the courtroom was his ability to connect with the white jurors who held the freedom of his clients in their hands. Long after his passing, lawyers who knew him remembered he used two tools so often that if he were a carpenter, they would have been his hammer and nails. First, Scott was expert at using the trope that claimed Kansas was a place where all persons were viewed as equal. He accomplished this by comparing Kansas to the South. He was always quick to remind Kansans that they were citizens of a state that had chosen abolitionism, where ancestors like John Brown had spilled blood in the name of freedom. Kansas was not Dixie; state law protected all Kansans not just those who happened to be white. Second, he was an expert at using religion to win the sympathies of jurors. He would quote Bible verses,

threaten liars with divine punishment, and unapologetically appeal to the religious sympathies of jurors who often viewed the laws of Kansas as completely secondary to the teachings of Jesus Christ.

Scott was fond of reminding Kansas's jurors that Kansas was not the South, and Kansans would, therefore, help him to protect the rights of the state's African American citizens. Kansas's connection to the abolitionist movement, the Civil War, and the Exodusters meant, according to Scott, that Kansans should feel duty bound to provide justice to African Americans. He regularly mentioned to juries that Kansas was special—a place where a Black person could get a fair shake. In a death penalty case, he stated, “Kansas...is a state where men get a fair trial, no matter what race creed or color. The ground was made fertile by the blood of the forefathers of those men on the jury. Surely they wouldn't do anything to besmirch the fair name of the state for which men fought to make it free.” The *Chicago Defender* reported that Scott's one-hour and forty-minute closing argument was regarded as a “masterpiece” by court watchers. His plea saved his client from the death penalty.<sup>10</sup>

Scott knew that Kansas had been identified with the cause of freedom since it joined the Union as a free state just two months before the Civil War, and he took full advantage of his fellow citizens' patriotic pride. The history that framed Kansas as a racial utopia was a revisionist history, adopted by Kansans to provide themselves a measure of exceptionalism. Kansas had indeed come into the Union as a free state, but its residents had overwhelmingly approved a referendum in 1855 forbidding slavery and

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<sup>10</sup> “Makes Eloquent Plea to Save Man Facing Death,” *Chicago Defender*, April 2, 1938.

excluding free Blacks.<sup>11</sup> Dr. Brent M.S. Campney has noted that after John Brown, who was famous for killing pro-slavery men in Kansas, was killed attempting to instigate a slave rebellion in Harper's Ferry, Virginia, Kansans began to cultivate a myth that framed Kansas as morally superior especially when compared to Southern states. Campney wrote, "with Brown as their symbol, white Kansans spun a romantic Free State narrative, rehabilitating white supremacists as righteous soldiers in a struggle for human dignity."<sup>12</sup> Scott saw too much racism in Kansas to believe the Free State narrative was anything but a way for white Kansans to feel superior to Southerners. However, he also knew Kansas was not like the old Confederate states, and he could appeal to the good nature of its citizens to treat his clients fairly. It did not matter whether his appeals to remember Bleeding Kansas were successful because Kansans believed in their duty to uphold John Brown's legacy or because he was calling their bluff. The not subtle comparison to the states of the Confederacy allowed him to use state patriotism in his favor. Patriotism is a powerful rhetorical tool; perhaps only appeals to religion are more powerful, and Scott invoked religion more often than he did state patriotism.

Throughout his career, Scott used references to the Bible, religion, and damnation to argue points of law, and appeal to the sympathies of judges and jurors. Other Kansas lawyers also used biblical law to argue points of Kansas law. None evangelized the law better than Scott. His longtime secretary remembered, "he could make a jury cry like a Baptist minister."<sup>13</sup> One story, famous among members of the Topeka bar, was of a Bible

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<sup>11</sup> Brent M.S. Campney, *This is Not Dixie: Racist Violence in Kansas 1861-1927* (Urbana, IL: University of Illinois Press, 2018), 12.

<sup>12</sup> Campney, *This is Not Dixie*, 13.

<sup>13</sup> Inza Brown, interview by Richard Kluger, undated, MS 759, Box 1, Folder 11, *Brown vs. Board of Education* Collection, Yale University Library.

quoting battle of biblical proportions between Scott and his drinking and poker playing buddy Lester Goodell, a white Topeka lawyer who served many years as a county attorney.<sup>14</sup> The details of the case are unknown, but at some point Scott and Goodell both decided the jury was best spoken to from the legal pulpit because “Bible verses rang through the courthouse corridors.”<sup>15</sup> Unknown to the lawyers turned-tent-revivalists was the fact that the four-year-old daughter of the defendant was seated in the back of the courtroom. When the arguments were complete, in a voice loud enough for all to hear, the little girl asked, “Mommy, do we all sing now?”<sup>16</sup> Everyone in the courtroom burst into laughter, and the judge complimented the defendant for taking his child to church. The outcome of the case was not reported, but Scott and Goodell had succeeded in turning a weekday court case into a Sunday morning fire and brimstone session. To a four-year-old the key words were the same: Hell, and damnation, Heaven, and salvation, the Lord, and the Devil. Justice, and injustice were just different sides of the same coin. Church was a familiar setting for Kansas’s jurors, and religion was a universal language. If Scott had to take jurors to Sunday service on a Tuesday afternoon to win mercy for his clients, then he would take them to church.

Scott used religion to find common ground with white juries. Religion was a logical tool for a Kansas lawyer, because it was a key part of life in Kansas. Religion in Kansas has been important since long before statehood. It informed ethics and ethics often influenced politics. According to Gary R. Entz, “religion and religious imagery

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<sup>14</sup> John Scott, interview.

<sup>15</sup> Hall Smith, “The Unforgettable Elisha Scott,” Charles Scott file, MS 759, Box 5, Folder 89, *Brown vs. Board of Education* Collection, Yale University Library. This article is undated, and its place of publication is unidentified.

<sup>16</sup> Smith, “Unforgettable Elisha Scott.”

permeates the physical and cultural landscape of Kansas. Religion predated the arrival of people of European descent, played a major role in the political formation of the state, and has retained a significant influence over private and public spheres.”<sup>17</sup> Entz noted, when Ernest Hamlin Abbott compared Kansas to other Southwestern states in 1902, he found Kansas to be influenced more by the politics of morality than religious doctrine.<sup>18</sup> Today, the mention of morality and politics conjures images of the kind of conservative politics liberals tend to think hide racist motives. In the late nineteenth and early twentieth centuries, Kansas for African Americans represented a morality that meant freedom from oppression and the opportunity to make a living from one’s own toil on one’s own land. Scott’s Kansas was steeped in a morality that induced African Americans to leave the South in search of the promised land—an American Canaan.

As an outsider in the legal world, Scott used the Bible as a tool to appeal to the morals of judges and jurors and bridge the gap that the country’s racial mores put between them. John Scott noted, his father was not a deeply religious man. Yet he had “all kinds of bibles around the house.”<sup>19</sup> It is clear from Scott’s liberal use of the Bible as part of his legal arguments that it served him in the same way legal treatises and statute books did. Bibles were like textbooks; they provided ways to win cases. Scott’s ability to connect religious law to statutory law was one of his most effective weapons. He used religion to connect on a personal level with white jurors and to appeal to their

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<sup>17</sup> Gary R. Entz, “Religion in Kansas,” *Kansas History: A Journal of the Central Plains*, 28 (Summer 2005), 121.

<sup>18</sup> Entz, “Religion in Kansas,” 120.

<sup>19</sup> John Scott, interview.

sympathies. Scott found himself needing a miracle to save his clients many times, and he was not afraid to use the textbook of miracles to help his cause.

Scott often employed the same biblical to moral to legal method by which Kansas had arrived at its statutory law to argue his cases. He began with the biblical, connected that to the unwritten moral law, and connected that to the codified statutes.<sup>20</sup> Scott's son John and Sam Jackson, men who both went on to fine careers as lawyers in Washington D.C., saw Scott's ability to connect scripture to law as one of his great strengths.<sup>21</sup> Furthermore, it is important to note, both men used nearly the exact same phraseology to describe Scott's methods—he began with scripture, connected it to the moral law, and then to the statutory law.<sup>22</sup> Jackson saw Scott as a mentor, and he became a lawyer because of Scott.<sup>23</sup> He worked in the administrations of Lyndon Johnson, Richard Nixon, and Ronald Reagan; and he was, for a time, “the leading black policy maker in the Nixon administration.”<sup>24</sup> Jackson's career put him in the company of some of the brightest minds in America, but more than five years after Scott's death, Jackson was still enamored of the little man with the big voice he called, the “greatest criminal lawyer in Kansas.”<sup>25</sup>

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<sup>20</sup> Jackson, interview; John Scott, interview.

<sup>21</sup> Jackson, interview; John Scott, interview.

<sup>22</sup> Jackson, interview; John Scott, interview. Sam Jackson said, Elisha was adept at, “quoting scripture or the Greek and Roman classics and relate them to the moral law and then to statutes.” John Scott said Elisha was, “famous for quoting biblical law with the unwritten moral law, then with a statute.”

<sup>23</sup> Jackson, interview.

<sup>24</sup> “Samuel Jackson, Nixon Aide in Housing Matters, Is Dead,” *New York Times*, September 29, 1982.

<sup>25</sup> Jackson, interview.



Scott was a master at finding jurors who were sympathetic to his cause and receptive to his message. Asking questions about religious preferences is still a staple of jury selection and in Scott's time it was an even more common query. Selecting jurors sympathetic to the plight of their clients is a necessity for criminal lawyers, and Jackson said, Scott excelled at jury selection. He stated, Scott was "excellent at selecting juries and trying to get at least one or two compassionate souls on the all-white jury."<sup>26</sup> Scott often found the one or two compassionate souls he was looking for by selecting jurors who would be apt to respond to his references to the relationship between biblical law and statutory law. His knowledge of the Bible would have also been an excellent way for the Black lawyer to find common ground with white jurors.

Scott could take the lessons contained in the Bible and use them to elicit sympathy for his clients—and win cases in which the law was not necessarily on his side. According to his son John, he was particularly fond of using the story of Daniel in the Lions' Den. The story demonstrates the problems inherent in man-made law, and the fact that God will protect his servants. It is short and simple, but it is powerful. Therefore, the story of Daniel makes a perfect vehicle for a lawyer to send important messages.

Daniel was born into a prominent Jewish family in Jerusalem, but he was taken away by the Babylonian army. The pagan Babylonians saw potential in Daniel, therefore, they put him in training to be a top civil servant. Despite being an outsider, and abhorring their pagan, polytheistic religion, he rose through their ranks to become prime minister. Daniel's peers were jealous of him; therefore, in an effort to destroy him, they created a law against praying to God. They knew it was a law he would unapologetically break,

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<sup>26</sup> Jackson, interview.

and they could use his transgression against him.<sup>27</sup> When Daniel broke the law, his crime was reported to the King who did not want Daniel to be killed but felt he was duty bound to uphold the law.<sup>28</sup> Daniel was thrown into the lions' den, and a boulder was used to block the exit. Only a miracle could save him.<sup>29</sup> The next morning the king found Daniel alive. Daniel explained, "My God sent his angel and shut the lions' mouths so that they would not hurt me, because I was found blameless before him."<sup>30</sup> The king saw that Daniel had done nothing wrong. He, therefore, chose to punish Daniel's accusers. They "were brought and thrown into the den of lions—they, their children, and their wives. Before they reached the bottom of the den the lions overpowered them and broke all their bones in pieces."<sup>31</sup>

In the hands of an orator as talented as Scott, the story of Daniel could be turned into a powerful argument for mercy. Scott spent much of his career battling for the rights of the unfortunate. His clients were often individuals the world had thrown to the lions: prostitutes, and poor people, bootleggers, and bums, druggies, and drunks. He admitted as much when he told a local newspaper the county banning liquor sales had doubled his business.<sup>32</sup>

Victories for Scott were defined by different standards than one might expect. Often simply saving his clients from the gallows was a win. A sentence of life in prison could be an overwhelming success. In one well known case, reported in the *Chicago*

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<sup>27</sup> Dan. 6:4-9 (New Revised Standard Version).

<sup>28</sup> Dan. 6:14.

<sup>29</sup> Dan. 6:16-17.

<sup>30</sup> Dan. 6:22.

<sup>31</sup> Dan. 6:24.

<sup>32</sup> *Topeka Daily Capital*, November 17, 1920.

*Defender*, he saved a man named James Jackson from the death penalty by referring to, “the Pharoahs, [*sic*] to the Caesars, to the birth of Christianity.”<sup>33</sup> He informed the jurors if they found Jackson guilty, “The earth will rock and shake like an earthquake.” He even warned the prosecutor, “the spirits of hell will haunt you the rest of your days if you ask the death penalty in this case.”<sup>34</sup> His speech saved Jackson’s life.

Stories like 6 Daniel, in which God’s angel saved a man who had broken a statutory law, but obeyed God’s law would have been appealing to Scott. After all, he was a lawyer who built a practice fighting battles other lawyers would not touch, on behalf of people who few others would support. Scott could use the story of Daniel in the Lions’ Den to remind jurors, statutory law was not always the law that should be respected, an idea that could be used to seek mercy for a petty thief, prostitute, or bootlegger who broke the law of Kansas but did no one harm. An example of a situation in which Scott would have used the story of Daniel or something similar to appeal to the sympathies of jurors is the time he was defending a former slave who had killed his son in law. The defendant had repeatedly warned his son in law he would kill him if the young man did not stop beating his wife. When the old man finally made good on his threat, Scott implored the jury, “Do not send this poor old man who did what he thought was right to jail to spend his last years in bondage as he spent his early years.”<sup>35</sup> Scott, himself the son of formerly enslaved parents, could have certainly made this story a tearjerker. The jury took less than two minutes to return a verdict of not guilty of first-degree murder.<sup>36</sup>

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<sup>33</sup> “Makes Eloquent Plea”.

<sup>34</sup> “Makes Eloquent Plea.”

<sup>35</sup> Charles Scott, interview by Richard Kluger, October 21, 1970, MS 759, Box 5, Folder 89, *Brown v. Board of Education* Collection, Yale University Library.

<sup>36</sup> Charles Scott, interview.

Daniel in the Lions' Den could also be used to convince jurors to sympathize with the families of the accused. The part of the story that shocks the conscience is the fact that the wives and children of Daniel's enemies were also sent to the lions' den to be devoured. One of Scott's common pleas to juries was to think of the families of the people he was representing. According to John Scott, his father "could be a total sentimentalist if it was to his interest to become one."<sup>37</sup> The elder Scott would ask the jurors what would become of the defendant's family if he or she was sentenced to prison? Would they become wards of the state?<sup>38</sup> In 1941, he got a woman who killed her husband acquitted by employing such a speech. According to the *Kansas City Plaindealer*, Scott

appealed to the members of the jury for the mother of three children who needed their mother's care. He asked the jurors to look at the three children...He said it would be suicide to convict "this poor innocent mother of a crime that she is not guilty of because we have proven to you members of the jury that her husband was brutal to this poor innocent child, and I appeal to you intelligent members of the jury to free her."<sup>39</sup>

The jury was out for an hour before returning with a verdict of not guilty.<sup>40</sup> Because Scott commonly represented lost causes, appealing to the better nature of jurors, by connecting his clients' cases to Bible stories, was an effective way to seek mercy for clients who had little else to protect them.

Scott also had a personal connection to Daniel. He was a Black man in a decidedly white profession. As such, he could certainly relate to Daniel's life story.

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<sup>37</sup> John Scott, interview.

<sup>38</sup> John Scott, interview.

<sup>39</sup> "Elisha Scott Wins Freedom For Ruby Keeling," *Kansas City Plaindealer*, May 2, 1941.

<sup>40</sup> "Elisha Scott Wins."

Daniel was born into a prominent family in Jerusalem, but he was taken away by the Babylonian army. He rose to the position of prime minister while his boss, the king of Babylon, waged a more than two decades war against Daniel's people. It is tempting to compare the plight of a Black lawyer in the Jim Crow era to that of Job, but Daniel is the more apt comparison for Scott. Like Daniel, he was operating in a world that was outwardly antagonistic to his people, and he was an outsider who rose to the top of the ranks despite his diminished status in the world in which he worked. Rising to prominence only earned Daniel more enemies, and Scott had to constantly strike a balance between aggressive advocacy on behalf of his clients and his place in a legal fraternity that viewed him as an often-unwelcome outsider. Daniel was an effective leader for Babylon, yet he never denied his belief in God or strayed from his religion. Scott spent his career attempting to walk a similar tight rope. As a lawyer, he was part of a world dominated by white people who had taken the Civil War amendments and twisted their meaning until they did precious little for the formerly enslaved individuals for whom they were written to protect. As a Black lawyer, he was attempting to win back those protections. But he was doing so while working within the Jim Crow system he sought to destroy. Like Daniel, he never apologized for his aggressive advocacy on behalf of his people, yet he was able to work effectively inside a system in which he was an outsider.

Scott's dual role in the legal system is similar to refugees like Daniel who are thrust into a new culture while always remaining part of their original group. Scholars of the colonization of the Atlantic world have noted such people were integral in making connections between people separated by oceans, languages, and cultural expectations.

Many Atlantic world scholars refer to the people who connected cultures as go-betweens. Go-betweens acted as more than just translators, they helped to bridge cultural gaps that allowed for trade, avoided violence, and helped build lasting alliances. During the long period of North and South American exploration and colonization, go-betweens could be ship crew members who were left behind and, therefore, became immersed in native culture or natives who lived among the Europeans such as servants and wives. Some European traders found them so integral they would intentionally maroon crew members on native beaches, and only return sometimes years later when they could use the go-betweens to establish contacts without all of the danger that usually accompanied first contacts with a foreign culture. Scott's role in Topeka was that of a go-between connecting the African American community to the legal community. He stood in for his fellow African Americans in the courts of law, yet he also had to be part of the legal community. This dual role was the challenge that Scott faced every day.

Historian Kenneth Mack has noted, Black attorneys such as Charles Houston, "seemed to stand in for the masses of African Americans who could not come to court and interact with whites as equals. But to be a successful lawyer, one had to also represent the core identity of what was a white dominated profession."<sup>41</sup> Furthermore, according to Mack, "being a prominent black person has often meant that prominent whites must recognize you as one of their own."<sup>42</sup> To Mack, this meant African American lawyers would need to exercise perfect courtroom decorum at all times. Scott's life complicates Mack's conclusions. Scott was often antagonistic and sarcastic in the

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<sup>41</sup> Kenneth W. Mack, *Representing the Race: The Creation of the Civil Rights Lawyer* (Cambridge, MA: Harvard University Press, 2012), 6.

<sup>42</sup> Mack, *Representing the Race*, 4.

courtroom. However, he was able to gain the acceptance of fellow members of the Kansas bar by acting as an aggressive advocate for his clients. He gained the acceptance of his peers, in his white dominated profession, by giving them the fight of their lives every time they encountered him in the courtroom.

In Kansas where African Americans of all professions had far more leeway than in places like South Carolina and Mississippi to challenge Jim Crow, Scott understood that standing in for his people meant aggressively standing up for his people. He often fought cases in front of large crowds of African American people, and he always tried to let them know they had a fighter on their side. Scott was extremely effective at winning the sympathies of white jurors with references to heaven. But the Black people who often overflowed courtrooms when he was at work on a big case wanted to see him raise hell.

Scott could raise hell with opposing lawyers, witnesses, judges, and jurors every bit as well as he could speak about the biblical Heaven and Hell. His son John told a story that explains what Scott's clients expected of him, and what Scott could provide his clients. John, who began practicing law in his father's office after World War II, was approached by an old white farmer. The farmer demanded to see Elisha about a piece of land he had lost in a real estate case. He was certain his lawyer had performed poorly, and he was not willing to give up on the case. John sent the farmer away from the office several times, explaining each time that the farmer had no further legal recourse, but he kept coming back and demanding to see the elder Scott. Finally, the farmer exclaimed, "that's why I want to see the old man, you young men don't fight hard enough." John finally granted the man access to his father, and Elisha told the old farmer it would take a five-hundred-dollar retainer to get started. The farmer peeled the payment, in one-

hundred-dollar bills, from a large roll. His directive was simple, “I just want you to raise hell.” Scott subpoenaed every witness from the previous case and saw to it the farmer got five-hundred-dollars’ worth of hell raising.<sup>43</sup>

Elisha Scott raised hell. He was typical of Black lawyers of his era in that most of his practice, especially in the early days, was representing African American clients in relatively unwinnable criminal cases. As J. Clay Smith Jr.’s extensive study of early African American lawyers found, “Black people often used Black lawyers in almost hopeless criminal matters but turned to white lawyers in the more lucrative civil cases.”<sup>44</sup> Most of Scott’s time was spent in Topeka, in Police Court, fighting with the passion of a man trying to save his own life. Day in and day out, he represented clients the world wanted to cast aside. He fought as hard for petty thieves and heroin addicts as he did for the former heavy weight champion of the world. His closing arguments were like high theatre. People came from miles around to hear Scott’s orations. Law students from his alma mater, Washburn University, would come to court to learn the art of lawyering from a quintessential trial lawyer.<sup>45</sup> It was said, “he could take one word and turn it into a paragraph.”<sup>46</sup> He knew that far too often all of his energy and eloquence fell on the ears of jurors deaf with racism; therefore, he fought even harder and raised even more hell.<sup>47</sup>

Scott also raised hell when he was the victim of racism. When a restaurant refused to serve him anywhere but in the back because of his color Scott “refused to be classed

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<sup>43</sup> John Scott, interview.

<sup>44</sup> J. Clay Smith Jr., *Emancipation: The Making of the Black Lawyer 1844-1944* (Philadelphia: University of Pennsylvania Press, 1993), 4.

<sup>45</sup> Inza Brown, interview.

<sup>46</sup> John Scott, interview. This quote is attributed to “one of his (Elisha Scott’s) daughters-in-law.” Most likely, John’s wife Berdyne.

<sup>47</sup> John Scott, interview.



other than as an American citizen,” and did not eat in the restaurant.<sup>48</sup> He also filed suit against a dining car conductor who refused to allow him to take an empty seat in a train dining car until all of the white passengers were finished eating.<sup>49</sup> He suffered one of the greatest indignities of his life in 1929 in Topeka. By that time, he was a well-known and well-respected member of the community. But when he needed to move to a new office the *Topeka Plaindealer* reported,

Hon. Elisha Scott, born, reared, and educated in Topeka, and one of the best lawyers in Kansas or in the country, had to seek a new location, and was refused by everybody on Kansas avenue because he was colored. He finally found a young white man who was acting for his boss, and who had instructions to rent the building (at 930 Kansas Avenue)...which is controlled by Arthur Tucker, the Electrician. When Mr. Tucker found out the Mr. Scott a colored man, he tried to force him to take his money back, in fact, threw it back at him...Hon. Elisha Scott is now temporarily located at 930 Kansas Avenue, and enjoying the practice of all races. We cannot understand why white people can be so deceitful and at the same time seek his advice. He had to secure a Peremptory Writ of Mandamus to even have Kansas Power and Light Company give him lights, but the lights are in, and all the hypocrites and imposters may visit the office.<sup>50</sup>

It may have been that Scott’s reputation as an advocate for his race caused him to have trouble renting an office, or it may have been a simple case of racism. The key to this story is the fact that Scott refused to back down. He set an example for the community: when he was the victim of racism, he enforced the valid contract he had with the owner and filed a writ of mandamus to force the power company to provide him light.

Scott made his way from cub lawyer, in Topeka’s Police Court in 1916, to representing boxing’s former Heavy Weight Champion Jack Johnson in Washington, D.C

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<sup>48</sup> *Topeka Plaindealer*, July 17, 1923.

<sup>49</sup> “Refused Him Service: Negro Lawyer of Topeka Sues Dining Car Conductor,” *Topeka State Journal*, July 29, 1919.

<sup>50</sup> “Refuse to Rent to a Colored Lawyer Who Enjoys a large White Practice,” *Topeka Plaindealer*, July 5, 1929.

in 1920, by taking all of the courtroom fights he was offered and fighting for even the most insignificant client as though he was in a title bout.<sup>51</sup> Topeka's white press loved to cover his courtroom antics, but they failed to see there was a method to his madness. Scott built a successful practice by treating his down and out clients with the respect society did not give them. In the early years, he failed to exonerate a bootlegger charged with theft who Scott claimed had merely borrowed a "community horse."<sup>52</sup> He had better luck with pigs. In 1920, he took an entire day to win a pig he himself described as "stunted weak and without energy" for his client in a divorce settlement. In a later case, he won the value of a sow for a woman who was cheated by a church elder.<sup>53</sup> Literally in between his swine cases he traveled to Washington, D.C. to attempt to obtain a pardon for former Heavyweight Boxing Champion Jack Johnson who was serving time in Leavenworth for violating the Mann Act. Canines were apparently not his strong suit; he failed to get a dog released from solitary confinement, at the local jail, despite his vehement objections to testimony as to the dog's character.<sup>54</sup> Topeka's white press loved to trivialize Scott and the Black community by calling attention to such odd cases. In their eyes it was a real-life version of the racist stereotypes depicted in Vaudeville and early radio. However, Scott used every case to convey a different message: he respected his clients' lives and provided them with dignity by treating even the most trivial cases

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<sup>51</sup> *New York Times*, November 19, 1920.

<sup>52</sup> "It Was A Community Horse: Because Dan Young Couldn't Tell Where He Got Animal, He Gets Stiff B.D. Sentence," *Topeka Daily Capital*, April 14, 1917.

<sup>53</sup> "Argue In Court Entire Day Over One Weak Pig," *Topeka Daily Capital*, May 8, 1920. "Gets Judgment for Hog: Negroes Settle Dispute Over Porkers in Court of Topeka," *Topeka State Journal*, December 14, 1920.

<sup>54</sup> "Supposedly 'Vicious' Dog on Trial for His Life Wags Tail in Court Room," *Topeka Daily Capital*, May 22, 1920.

with respect. Man, and beast hired a fighter when they hired Elisha Scott, and word spread—there was a bantamweight lawyer in Topeka willing to step in the ring and fight for his clients.

Scott's human clientele as he built his practice was mostly Black and/or from the fringes of society. Few white lawyers would take Black clients especially if they had little money and less chance of winning; therefore, Scott fought hundreds of hopeless cases.<sup>55</sup> Yet, facing almost exclusively white juries, Scott won around sixty percent of the time. He had only been practicing for a few months when the *Topeka State Journal* warned Black criminals, they had better behave themselves, because Elisha Scott was on vacation for the next two weeks.<sup>56</sup> He also gained notoriety early in his career when he won a case in which the defendant had confessed. Before *Miranda v. Arizona* provided the accused a measure of protection from police questioning, a confession was basically a guilty plea. Therefore, in 1917, when he beat a county attorney with a "high batting average" in a robbery case when he proved the defendant's confession was obtained by duress it was a victory worth celebrating.<sup>57</sup> More importantly, it was a notice to the community that Scott could fight and win against seemingly insurmountable odds.

One of the most difficult situations a Jim Crow era Black lawyer could face was when he or she was tasked with questioning the veracity of a sexual assault allegation lodged by a white woman against a Black man. A Black man accused of such a crime could face a lynch mob in any state of the Union and no one would be surprised if his Black lawyer wound up hanging from the next branch. Many Black lawyers refused to

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<sup>55</sup> Jackson, interview.

<sup>56</sup> *Topeka State Journal*, August 18, 1916.

<sup>57</sup> *Topeka Daily Capital*, February 10, 1917.

confront a white woman who took the stand in such cases. And when they refused, they were not just making a good decision for their chances of living to see another case, they were making a good decision for their clients. Vitriol toward Black men, who had long been rumored to desire white women more than air and water, was so powerful that it could cause catastrophic failure in a court case. Scott faced such a dilemma when he represented a Black man accused of crawling through a bedroom window and assaulting a young white girl.

Scott chose not to partner with a white attorney and instead aggressively questioned a young, white, female witness who had accused a Black man of sexual assault. Scott's theory of what actually happened in the case was that the accuser had dreamt the entire thing. Afterall, she did not have any injuries, there were no other witnesses, and the accused had an alibi. The white press scoffed at Scott when he insisted thirteen-year-old Lottie Bivens had dreamt a Black man named Archie Porter had crawled through her window and into her bed.<sup>58</sup> But Scott was dead serious about the dream defense. He called witnesses who provided Porter with an alibi, and he got Bivens to admit she did not know Porter, yet—somehow—she could identify him as she awoke and “as he passed thru a strip of moonlight.”<sup>59</sup> Despite the dubious nature of the evidence Porter was found guilty of burglary. Nick Chiles's *Topeka Plaindealer* recognized a conviction for burglary, as opposed to sexual assault, was a victory for Scott in a case where it was a white person's word against that of a Black man. The *Plaindealer* blamed prejudice for the outcome of the case and noted, Scott had “nerve and grit to stand firm

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<sup>58</sup> “Did Not Dream It,” *Topeka State Journal*, December 4, 1916.

<sup>59</sup> *Topeka State Journal*, October 18, 1916; “Did Not Dream It.”

against the practice of the county attorney's office in resorting to prejudice in cases where white is against black."<sup>60</sup>

Scott's use of the dream defense was in actuality his way of accusing a white girl of lying without directly accusing her of dishonesty. The evidence was on his side, as she was not injured, there were no other witnesses, and Porter had an alibi. But Scott could only go so far with a white female witness. He needed a way to impugn Bivens's credibility without accusing her of making a wrongful accusation; therefore, he provided her with the chance to admit she couldn't be sure of what happened as she awoke in a dark bedroom. When she basically stuck to her story, a conviction for burglary as opposed to an attempted sexual assault was a win. Legally speaking, a conviction for burglary meant the jury believed Porter unlawfully entered the room with the intent to commit a felony. Therefore, a burglary conviction can be viewed as the jury striking a compromise between their duty to protect white womanhood and the almost complete lack of evidence showing Porter was anywhere near the Bivens home at the time of the crime. Regardless of the exact circumstances of the case, Scott demonstrated he was willing to put himself in peril to provide the best advocacy he could for his clients.

Scott was fearless when it came to fighting for his clients, and he repeatedly took cases other lawyers were afraid to touch. His reputation as a man not afraid to fight city hall spread to downtrodden people all over the Midwest. He began to receive letters from people with tragic stories who had heard he could help. The letters were addressed: "Colored Lawyer, Topeka, Kansas."<sup>61</sup> When he tried to help Black people who turned out

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<sup>60</sup> "A Coming Power In The Legal Fraternity," *Topeka Plaindealer*, December 8, 1916.

<sup>61</sup> Jackson, interview.

to own some of the most oil rich land in the country he was run out of some Texas and Oklahoma towns.<sup>62</sup> When he represented a Black client who crossed a Santa Fe Railroad picket line, the Ku Klux Klan burned a cross in front of his house. As noted previously, when he traveled to Tulsa, Oklahoma, to help victims of the warlike attack on the Black section of town, in order to protect himself he was forced to sleep in a chicken coop.<sup>63</sup>

Scott built a successful practice by letting his downtrodden clients know there was someone fighting for their rights. Despite his need to win without offending others, he was never a deferential, “yes sir—right away sir,” lawyer. He raised hell with witnesses, judges, and lawyers. Scott’s defense of Archie Porter, in the dream defense case, is an example of his confrontational style. Scott’s opponent in the case was Assistant County Attorney Rad Lee. Scott claimed Lee’s mere presence was overwhelming evidence that the case was deemed a loser by the county attorney. He stated, when cases were without merit, “Mr. Atchison (the county attorney) backs out of it and Rad Lee handle it just as he is in this instance.”<sup>64</sup> Scott’s attack on his adversary breached both the rules of courtroom decorum and white supremacy. It is a legal taboo punishable by censure or worse to launch a personal attack against opposing counsel, and in Scott’s time few African Americans dared to publicly insult any white person let alone a prominent member of the community. Far less disrespect for the boundaries of the color line than Scott’s insult of Lee had led to lynching for countless African Americans, and Scott knew it. But, at least publicly, he never backed down or apologized for any such comments.

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<sup>62</sup> Inza Brown, interview.

<sup>63</sup> John Scott, interview.

<sup>64</sup> “In Jury’s Hands,” *Topeka State Journal*, December 5, 1916.

It is interesting to note that the lawyer who made his reputation and living bitterly fighting with county prosecutors would occasionally join the prosecutorial ranks. When African Americans were the victims of high-profile crimes Scott would get himself appointed prosecutor, move to the table on the righthand side of the courtroom, and raise hell from there. It was essentially the same work—demanding justice. But switching tables added a great deal of pressure for a Black lawyer. Scott was always saddled with a responsibility to represent the community as a prominent Black citizen, but when he prosecuted cases on behalf of the state he stood in for justice. He was appointed state's prosecutor at least three times in Kansas and once in Oklahoma, and he was appointed a temporary judge in Topeka. When he won a manslaughter conviction in Oklahoma, it was reported to be the first time an African American lawyer had ever argued a homicide case on behalf of the state in Tulsa. His closing argument drew a large audience of Black and white spectators.<sup>65</sup> Scott won two convictions as a prosecutor, however, in the two most well-known cases in which he worked on the side of the state he lost under circumstances that demonstrated racism may have been a motivating factor for the all-white juries.

In 1937, Scott lost a murder case against Cleo Mosler, a white farmer who shot and killed a fifteen-year-old Black male named Fred Harvey Smith who Mosler claimed was stealing chickens.<sup>66</sup> The local *Oswego Independent* immediately made a report favorable to Mosler claiming Smith had drawn a knife, and he had recently been released from the State Industrial Home in Topeka where he had been for several months after he

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<sup>65</sup> "Noted Criminal Lawyer Represents The State of Oklahoma in Murder Trial," *Topeka Plaindealer*, July 8, 1932.

<sup>66</sup> "A Kansan Held For Trial," *Emporia Gazette*, August 31, 1936.

was implicated in several thefts.<sup>67</sup> The *New York Amsterdam News* reported, Smith and his younger brother Chester were taking a commonly used path across Mosler's property, in the middle of the day, when Mosler confronted them, and shot Smith in the chest with a shotgun. Mosler justified the shooting by claiming Smith "made a motion toward his hip pocket."<sup>68</sup> Later it was reported, Mosler claimed Smith was carrying a sack and had a gun in his hand, but police found neither a sack, nor a knife, or gun.<sup>69</sup> A coroner's inquest, which is basically a grand jury investigating whether there is enough evidence to charge an accused person with a crime, was called and probably owing to the circumstances of the case was made up of three white men and three Black men.<sup>70</sup> At the coroner's inquest, Mosler claimed he meant to fire at Smith's feet but missed because he was standing in a doorway that was higher than where Smith was standing. *The Chicago Defender* reported, "the coroner's jury returned a verdict to the effect that Fred Smith met his death from a charge fired feloniously and unlawfully," from a shotgun held by Mosler.<sup>71</sup> Therefore, the County attorney charged him with first degree murder.<sup>72</sup>

Scott got himself appointed special prosecutor, and local NAACP branches rallied to support the prosecution. Their support did not come in the form of money.<sup>73</sup> By mid-November only eleven dollars had been raised for the prosecution, and the NAACP

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<sup>67</sup> "Local Youth Shot," *Oswego Independent*, August 24, 1936.

<sup>68</sup> "Man Who Killed Lad Arouses Ire," *New York Amsterdam News*, December 5, 1936; "Kansan Held For Trial;" "Local Youth Shot."

<sup>69</sup> "K.U. Law Student Reveals Facts On Kansas Murder," *Kansas City Plaindealer* December 12, 1936.

<sup>70</sup> "A Murder Charge: Cleo Mosler at Liberty on \$5,000 Bond After Arrest in Connection With Death of Harvey Smith Last Thursday," *Oswego Independent*, August 28, 1936.

<sup>71</sup> "White Farmer Shoots Youth, 15, To Death," *Chicago Defender*, September 5, 1936.

<sup>72</sup> "A Murder Charge."

<sup>73</sup> "Man Who Killed;" "NAACP to Support Elisha Scott in Prosecution of Kansas Killer," *Kansas City Plaindealer*, December 4, 1936.



national office informed Scott it did not have the money to pay the costs.<sup>74</sup> Scott told Walter White and Thurgood Marshall that he would prosecute the case with or without money.<sup>75</sup> Just before Thanksgiving he wrote Marshall, “this is one case that is going to be prosecuted to the fullest extent of the law, whether there is any money raised or not.”<sup>76</sup> Scott’s opinion was that this was a case of cold blooded murder, and he did not intend to let Mosler go free.<sup>77</sup>

Mosler did go free. Scott and the Labette County attorneys worked well together, and they made a compelling case. But the case came down to Mosler’s word against Chester Smith’s, and the white man won. Unfortunately, it was not the most disappointing defeat of Scott’s career. That loss came in Topeka in 1930.

When a six-year-old African American girl named Mildred Shaw was sexually assaulted by W.C. Maxey, the white driver of a local gasoline truck in September 1929, the entire community was depending on Scott to win Shaw and all of them justice. Scott knew the pressure of such an ugly case would be intense. But he did not back down or shy away. He got himself appointed prosecutor, and he did everything he could to get justice for the Shaw family and Topeka’s African American community.<sup>78</sup> The brutal incident preoccupied Topekans for five long months and two criminal trials. And it cast a dark shadow over the city for much longer than that.

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<sup>74</sup> Thurgood Marshall to Walter White, November 10, 1936, NAACP Files, Litigation File; Thurgood Marshall to Elisha Scott, November 18, 1936.

<sup>75</sup> Elisha Scott to Walter White, November 5, 1936, NAACP Papers, Topeka Branch Files; Elisha Scott to Thurgood Marshall, November 23, 1936.

<sup>76</sup> Scott to Marshall, November 23, 1936.

<sup>77</sup> Scott to White, November 10, 1936.

<sup>78</sup> “White Degenerate Takes Six Year Old Mildred Shaw in Truck—Goes to Weeds,” *Topeka Plaindealer*, October 4, 1929.

Maxey was apparently a sexual predator who lured Shaw into his gasoline truck on her way home from school. He then took her to a weed patch, and according to the *Plaindealer*, “subjected her to a treatment lower than that of a brute and which is too horrible to put in print.”<sup>79</sup> Maxey, who was fifty years old at the time, was charged with attempted rape and sodomy.<sup>80</sup> The school’s Parent Teacher Association (PTA) immediately retained Scott to represent Shaw, and eventually he got himself appointed special prosecutor for the state of Kansas.<sup>81</sup> It was reported that he worked “untiringly” as an assistant prosecutor.<sup>82</sup> But even in Topeka, winning a case in which there was a white assailant and a Black victim was an extremely difficult task.

The Black community was immediately livid that such a thing could take place in their city. Nick Chiles who had railed against lynch law in the pages of the *Plaindealer* countless times may have been attempting to stir up a mob when he stated,

Knowing that it was committed in Kansas, the home of John Brown, in Topeka, where that christian man lives the Rev. Sheldon who wrote “In His Steps” and where we have churches on many streets, and not only in Kansas, but in these United States where we have framed such a grand old constitution, among its articles, one reads thus: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” Living in such a country with such a constitution and among civilized and educated people, we are sure that Maxey, (one man), will not be taken out of jail and lynched by a mob of 500 or 1000 men, but will be dealt with according to law.<sup>83</sup>

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<sup>79</sup> “White Degenerate Takes.”

<sup>80</sup> “Child Testifies: Jury’s Verdict Ten to Two For Conviction,” *Topeka Plaindealer*, December 27, 1929.

<sup>81</sup> “White Degenerate Takes.”

<sup>82</sup> “Child Testifies.”

<sup>83</sup> “White Degenerate Takes.”

When neither trial ended in a conviction, Chiles voiced the Black communities' concern that the only explanation for such a verdict was racism.

Scott and the other prosecutors made a compelling case against Maxey, but they could not get a unanimous guilty verdict. The original trial ended when the jury hung, voting ten to two for conviction.<sup>84</sup> The *Plaindealer* reported, an eyewitness testified to seeing Maxey pick up Shaw, and immediately called the police to whom she described the truck and driver in detail. The prosecution demonstrated Maxey could somehow account for his whereabouts every minute of the day in question but could do so for no other day. Furthermore, a witness testified that Maxey back dated a gasoline sales slip to help provide an alibi. Both the eyewitness and Shaw identified Maxey and the truck. But two jurors refused to vote guilty. At the second trial, Scott destroyed Maxey's alibi and produced the same witness who saw Maxey pick up the girl and take her to the weed patch. Both the witness and Mildred Shaw clearly identified Maxey and the truck. Scott's closing argument affected everyone in the courtroom—causing several women and men to weep.<sup>85</sup>

Working constantly as he did, Scott was in the middle of another trial when the jury returned its verdict in the second Maxey trial—Not Guilty. The jury was excused, and Scott returned to work on the other trial. One can only imagine what was going through his head. The community had relied upon him. He had given them every ounce of energy and expertise he had, and it was not enough. Brave little Mildred Shaw had

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<sup>84</sup> *Topeka Plaindealer*, December 27, 1929.

<sup>85</sup> *Topeka Plaindealer*, February 20, 1930. "Elisha Scott Makes Great Plea in Maxey Case: Spectators Weep," *Topeka Plaindealer*, February 21, 1930.

faced her attacker and identified him, yet she would receive no justice, and neither would Topeka's Black community.

In the middle of a public courtroom, in the middle of an unrelated trial, Scott shed tears of sorrow for Mildred Shaw, her family, and his people. He began cross examining a witness, but he could not continue. He had lost control of his emotions in a courtroom many times, but those outbursts were always in anger, and they were, up to a certain limit, an accepted behavior for an advocate in an adversarial process. This was different, his outburst was not for show. The reminder that American society routinely denied African Americans justice overcame him. Scott dropped his head and cried. He had to be taken to the judge's chambers to regain his composure. The *Topeka Daily State Journal* reported, "Other negroes in the courtroom also were deeply moved and tears ran down their faces," and stated, "Scott's friends attributed his emotion to nervous strain caused by overwork."<sup>86</sup> The truth was, the disappointment was the kind Scott knew all too well. Kansas was not Dixie, but it was not the Black man's Canaan his family had left Tennessee in search of either. Scott knew he could call down law and damnation and his people would still suffer in a world where a Black lawyer was an anomaly and a white man punished for a crime against a Black person seemed just as rare. It was an ugly case with an ugly ending, and somehow things managed to get uglier in the aftermath.

No one seemed to blame Scott for the loss; nevertheless, the Maxey case sparked an embarrassing controversy within Topeka's African American community. The *Plaindealer* immediately reported it was rumored Ku Klux Klan members had been on the jury, and that members of the Black professional community may have sabotaged the

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<sup>86</sup> *Topeka Daily State Journal*, February 26, 1930.

case.<sup>87</sup> The reference to a saboteur was rekindled more than a year after the decision was handed down. The blame for the loss in the Maxey case was laid on another member of Topeka's Black bar. The *Plaindealer* and the *Topeka Daily Capital* printed a letter from Topeka NAACP President Raymond Reynolds that claimed another Black attorney named William Bradshaw "gave damaging evidence in the Maxey case, defeating the Negroes because Scott was appointed to assist the prosecuting attorney."<sup>88</sup> Reynolds's claims never went beyond allegations, but he and Bradshaw represented two sides of a bitter divide in Topeka's African American community. That divide was still apparent more than a decade later when Scott was charged with embezzlement in 1941.

With the fiery Scott on trial, it was no surprise to find out his attorney exchanged punches with the prosecutor; nor was it surprising to find out that one of the pugilists was Black and one was white. The surprise was who was fighting on which side. Scott's lawyer was the white former County Attorney Lester Goodell, and his opponent was Scott's Black rival William Bradshaw who had finally received his appointment as special prosecutor. It was no surprise Scott chose Goodell to represent him. They were old friends known to bond over a game of cards and a glass of bourbon after they had spent the day fighting in court. The pair regularly gave one another clients, loaned one another money, and remained friends even when Goodell represented the school board in *Brown v. Board of Education*.<sup>89</sup> The embezzlement charge stemmed from a manslaughter

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<sup>87</sup> "Race Loses Maxey Case: Negro Politician is Said to Help Defeat," *Topeka Plaindealer*, February 28, 1930.

<sup>88</sup> *Topeka Plaindealer*, October 16, 1931.

<sup>89</sup> Jackson, interview; Paul E. Wilson, *A Time to Lose: Representing Kansas in Brown v. Board of Education* (Lawrence, KS: University Press of Kansas, 1995), 79; John Scott, interview.

case in which Scott represented local undertaker Newton Bowser who claimed Scott had misappropriated seven hundred dollars that he was supposed to use to attempt to settle the case.<sup>90</sup> Goodell was not Scott's only white ally in the case. When it was filed, Senator Arthur Capper wrote to Scott addressing the letter "My dear Elisha," and assured him that he was certain of his innocence. Never one to miss the chance for good publicity, Scott had the letter printed in the *Kansas City Plaindealer*.<sup>91</sup>

The fight was over comments Goodell made referring to Bradshaw as they were arguing about an affidavit. Eventually Bradshaw flatly called Goodell a liar, and Goodell's response came in the form of a right hook. The "Lincolnesque" Goodell had the reach advantage, but it was a fairly even bout. The two "mixed lefts and rights in a lively fight, and although the attorneys' table was between them several blows landed on both sides."<sup>92</sup> Scott immediately tried to leap up from his chair and join the fray, but his son and sisters forced him to sit back down. He could only bellow, "He's (Goodell) fighting my fight."<sup>93</sup> Perhaps Bowser had gotten his fill of hell raising because he eventually dropped all charges.<sup>94</sup>

The courtroom fight is demonstrative of the wounds the Maxey case inflicted on the community. And Scott's relationship with Goodell shows how he was able to adroitly

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<sup>90</sup> "Attorney Scott Denies Embezzlement Charges: Lawyer Stands Ready To Help Former Client," *Kansas City Plaindealer*, September 19, 1941.

<sup>91</sup> "Senator Capper Expresses Confidence in Atty. Scott," *Kansas City Plaindealer*, October 3, 1941.

<sup>92</sup> "Topeka Judge Stops Fight In Court: White Lawyer Hits Bradshaw In Scott Trial," *Kansas City Plaindealer*, November 11, 1941; Wilson, *A Time to Lose*, 79.

<sup>93</sup> "Judge Stops Fight."

<sup>94</sup> "Court Exonerates Atty. Elisha Scott," *Kansas City Plaindealer*, February 2, 1942.

straddle the color line as an advocate for his people and a member of the almost lily-white bar. But Scott's nature was not to tip toe; it was to stomp.

Scott made a habit of stomping on the color line. According to John Scott, "he was always paying fines for being out of order."<sup>95</sup> The first time he made the white newspapers, he "flailed the witnesses and declared anyone who looked at them while on the stand knew they were perjuring themselves."<sup>96</sup> The next month, he drove a state prosecutor to throw his papers in disgust, after he successfully objected to every question the prosecutor tried to ask. The exasperated prosecutor turned his attention to Scott, demanding he mind his own case. Scott replied, "I'm looking after the interest of this woman." Judge Robert Yates agreed with Scott, he stated, "anyone who knows any law, knows you have no right to ask the kind of questions you have been asking." Scott's efforts worked; the judge dismissed one count of selling intoxicating liquor.<sup>97</sup> He was particularly aggressive with witnesses he thought were lying. He once stated of a witnesses' testimony, "there never was as big a lie told since the day when lies were invented in this world. The worst I've heard since I've been on this earth."<sup>98</sup>

Scott's confrontational tactics do not appear to have hurt him in later cases. Three years after he implied Rad Lee only argued meritless cases for the County attorney's office, it was Judge Rad Lee who presided over a case in which Scott's Black client stood accused of raping a white woman. It was the most dangerous situation a Black lawyer could face in the Jim Crow era. Scott, a Black lawyer, needed to attack the credibility of a

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<sup>95</sup> John Scott, interview.

<sup>96</sup> "All For 25 Cents," *Topeka State Journal*, May 17, 1916.

<sup>97</sup> "Knew His Rights: Elisha Scott, Negro Attorney, Makes a Winning Fight," *Topeka State Journal*, June 3, 1916.

<sup>98</sup> "Makes Eloquent Plea."

white woman. As noted above, in such situations Black lawyers regularly brought in white co-counsel in order to do the questioning, but Scott again handled the questioning of a white woman who accused his Black client of sexual assault himself. Judge Lee gave Scott the room to insinuate the case was about a poor white family seeking to destroy their wealthy Black landlords. Lee dismissed the case when the accuser's story changed multiple times during her only appearance on the witness stand.<sup>99</sup> It is certainly a testament to Rad Lee's professionalism that he seems to have held no grudge against Scott, but Scott was also quite adept at pushing as far as he could go and patching things up later. In 1921, Scott and Lee teamed to represent a client together.<sup>100</sup> Scott had insulted Lee's ability as a lawyer in 1916, yet Lee apparently held no grudge. He had a similar experience with Hugh Fisher. Scott and Fisher got into a verbal altercation during a 1918 case when Scott threw a handful of papers scattering them all over the courtroom floor after the Judge sustained Fisher's objection to a question Scott asked.<sup>101</sup> Yet, a mere two years later the two worked countless hours together preventing the extradition of Robert Hill. Scott's ability to stomp on the color line and live to fight another day was due, at least in part, to his ability to elicit a laugh when one was necessary to defuse a tense situation.

Scott got away with his attacking style because he could disarm any situation with his wit.<sup>102</sup> He could clog the courtroom air with hyperbole, yet never lose the respect of the jury. One of his courtroom foes described his wit as "devastating," but he could also

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<sup>99</sup> "Assault Story A 'Frame Up,'" *Topeka Plaindealer*, May 2, 1919.

<sup>100</sup> "His Throat Cut: John Nicholson Covered With Blood, Staggers From Home," *Topeka State Journal*, March 25, 1921.

<sup>101</sup> "Critic of a Judge," *Topeka State Journal*, February 13, 1918.

<sup>102</sup> John Scott, interview.



produce “first rate melodrama or, if the situation demanded, side-splitting comedy.”<sup>103</sup> The wit that would become legendary amongst the members of the Topeka bar was on display when his Black client was accused of disturbing the peace of a white woman. Scott told the jury, “If you hold Charles Wesley guilty, the Goddess of Liberty will take down her hair and hide her face.” The *Topeka Daily Capital* got the last laugh when it noted, “rather than have the coiffure of the goddess disturbed, the jury acquitted Wesley.”<sup>104</sup> Often he refused to stop fighting even after the case was over. When he lost a case over title to a tiny parcel of real estate he thundered, “To hell with it! I could pee halfway across the thing.” The judge shot back, “Scott, you’re out of order!” To which he replied, “Yes sir, and if I weren’t, your honor, I could pee all the way across it.”<sup>105</sup>

Perhaps Scott’s most daring comedic stunt made the Associated Press (AP) wire. Suing for the value of a note he had signed, he put himself on the witness stand. According to the AP, Elisha Scott attorney at law entertained the entire courtroom by questioning Elisha Scott aggrieved plaintiff. The AP piece stated, he questioned himself vigorously. “‘Now, Mr. Scott,’ Scott the lawyer asked, ‘are you absolutely certain that you didn’t receive any of the money in question?’ ‘No, I didn’t get nothing,’ snapped Scott the witness. The courtroom was convulsed when Earl Reynolds defense attorney objected once that Scott didn’t answer the question he had just asked himself.”<sup>106</sup> At first blush, Scott’s actions sound like the behavior of the court(room) jester, acting out for no reason other than the pleasure of making others laugh. The true explanation for Scott’s

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<sup>103</sup> Smith, “Unforgettable Elisha Scott.”

<sup>104</sup> “Jury Won’t Disturb Liberty’s Coiffure,” *Topeka Daily Capital*, April 3, 1920.

<sup>105</sup> John Scott interview; Kluger, *Simple Justice*, 387-88.

<sup>106</sup> Associated Press, “Lawyer In Dual Role,” *Emporia Gazette*, February 22, 1935.

jocosity can be found in his connection to slavery and his position as a Black lawyer arguing points of the white man's law in a decidedly white profession. Scott knew how to win, while keeping his vanquished opponents smiling. He could employ a version of the trickster of slave lore when he needed to defuse a tense situation or distract from a weak argument. It was a necessary skill for a Black lawyer fighting for Black clients in a white dominated profession.

The secret to Scott's success was more than merely raising hell or using his wit to win favor; he was a well-trained attorney with a unique and powerful mind. Richard Kluger stated Scott was fighting the same fight as Charles Houston and Thurgood Marshall but fighting it largely on his own. Without, "the interplay of friendly minds to help hone his legal thinking," Scott used the talents he had.<sup>107</sup> Wit was a necessary tool for a Black lawyer who routinely defeated white opponents.

Black men were not supposed to compete with white men in Jim Crow America, but lawyers and athletes regularly crossed color barriers to engage in contests of the mind and body. Especially in the Black press, battles in courts and athletic arenas were reported upon and celebrated. They were less commonly reported in the white press because they challenged white dominance. According to one scholar, the two rules of white supremacy were: African Americans were genetically inferior to their white counterparts and African Americans should never be given the opportunity to prove rule one wrong.<sup>108</sup> Rule two was almost never broken in the South, but it was not uncommon for it to be broken elsewhere in the United States. Two high profile exceptions to the golden rule of Jim

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<sup>107</sup> Kluger, *Simple Justice*, 388.

<sup>108</sup> Thom Rosenblum, "Unlocking the Schoolhouse Doors: Elisha Scott, 'Colored Lawyer, Topeka,'" *Kansas History* 36 (2013), 41.

Crow were competition in courtrooms and on baseball diamonds. In baseball, a sport the *Topeka Plaindealer* once described as, “requiring a perfect co-ordination of muscle and brain,” African Americans enjoyed great success in interracial competition.<sup>109</sup>

The most successful competitor in interracial baseball games was Leroy Satchel Paige, the lanky, right-handed pitcher was said to have won over one hundred games against white and Latin American baseball teams.<sup>110</sup> In a series of well publicized games, played between 1933 and 1935, Paige beat Dizzy Dean, one of the best pitchers white baseball had to offer, eight times in eleven contests.<sup>111</sup> Historian Todd Peterson has located records of more than six hundred interracial baseball games played from 1885 through 1948. Peterson found, in games featuring five or more players from the white major leagues, including the pitcher, Black teams won three hundred and eighteen games and lost three hundred, a .514 winning percentage.<sup>112</sup> In thirty-five cases reported in the newspapers, Elisha Scott won twenty-one and lost fourteen, a winning percentage of .600.<sup>113</sup> Two verdicts probably better defined as victories are included among the fourteen losses. In both cases, Scott was lauded by the *Plaindealer* for avoiding conviction for the most punitive charges. In one case he was said to have made one of the “finest pleas that

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<sup>109</sup> *Topeka Plaindealer*, October 13, 1922.

<sup>110</sup> Leslie A. Heaphy, *The Negro Leagues 1869-1960* (Jefferson, NC: McFarland and Company Inc., 2003), 142.

<sup>111</sup> Timothy M. Gay, *Satch, Dizzy & Rapid Robert: The Wild Saga of Interracial Baseball Before Jackie Robinson*, (New York: Simon and Schuster, 2010), 107.

<sup>112</sup> Todd Peterson, *The Negro Leagues Were Major Leagues: Historians Reappraise Black Baseball* (Jefferson, NC: McFarland and Company Inc., 2020), 209-226.

<sup>113</sup> Cases were taken from both criminal and civil courts and the appellate and trial courts. Only cases in which a clear disposition was announced were included. The seriousness of charges ranged from Scott winning acquittals for individuals accused of murder to winning the value of a pig for a Topeka woman.

was heard” in saving his client from a first-degree murder charge and life in prison.<sup>114</sup> In the second case, the aforementioned dream defense case, he managed to keep his African American client from being convicted of sexual assault.<sup>115</sup> The Black baseball player who defeated white teams, with white umpires officiating, and the Black attorney who defeated white lawyers, with white judges presiding, called the supremacy of white people into question. Therefore, both men had to make adjustments to their behavior, that allowed them to succeed without drawing too much ire from the opponents they were beating.

Satchel Paige consistently defeated white men at the national pastime and convinced them to enjoy the beatings he administered. Paige was regularly portrayed as a simpleton, Stepin Fetchit type. The slow moving, slow talking image provided to him by the white press hid brilliance few could understand. As a lawyer, Scott made his living with his mind; therefore, he could not afford to be viewed as a simpleton, however, he was able to use humor to hide some of his success. Paige’s slow talking, country bumpkin persona also shielded him from the same kind of pain Scott experienced—the pain of a world full of both possibility and cruelty. One of Paige’s biographers wrote, “he could see more looking down from the pitcher’s mound than most of his contemporaries could see through a Galilean telescope...As a result, Satchel Paige was a wise man and a tranquil man. He was so wise and so tranquil that no one realized how much pain was torturing him inside.”<sup>116</sup> The pain was rooted in the fact that Paige, like Scott, was a success in his

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<sup>114</sup> “Lawyers Win Case,” *Topeka Plaindealer*, February 5, 1926.

<sup>115</sup> “A Coming Power in the Legal Fraternity,” *Topeka Plaindealer*, December 8, 1916.

<sup>116</sup> Mark Ribowsky, *Don’t Look Back: Satchel Paige in the Shadows of Baseball* (New York: Simon & Schuster, 1994), 11.

chosen profession, but his success never provided him with full American citizenship. In order to succeed in the world, Paige had to be better than his white competitors. It was not enough to merely be better at baseball, he had to be better at everything. This meant hiding his success in plain sight.

Paige managed to dominate white baseball teams and simultaneously become a beloved figure by expertly entertaining while he chalked up victory after victory. Professor Donald Spivey wrote, “Paige knew exactly what he was doing as he bridged the racial divide with athletic performance packaged in slapstick humor. He entertained as he played to win and saw no contradiction in doing both. He performed for the crowds and the crowds loved him for it.”<sup>117</sup> Furthermore, Paige was able to maintain a delicate balance between being disliked for clowning and being disliked for winning baseball games. Spivey found, “Paige was a master at pushing the envelope, of fooling around minstrel-like just enough to satisfy both blacks and whites...They could laugh along with his antics rather than laughing at him as a racial caricature, while, at the same time, he demonstrated his dominance over blacks and whites from the pitcher’s mound.”<sup>118</sup> Many of Paige’s skills are strikingly similar to Scott’s. Paige could trash talk white players and get away with it. Again, he struck a perfect balance by, dishing out “such an accurate dose of good-natured trash that it was viewed as a normal and acceptable part of the game and within the boundaries of permissible competitive mouthing off.”<sup>119</sup> Finally, Paige was one of the most quotable athletes who ever lived. He is still known for “Don’t look

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<sup>117</sup> Donald Spivey, *If You Were Only White: The Life of Leroy ‘Satchel’ Paige* (Columbia: University of Missouri Press, 2012), xviii.

<sup>118</sup> Spivey, *If You Were Only White*, xviii.

<sup>119</sup> Spivey, *If You Were Only White*, xviii.

back. Something might be gaining on you,” and “Age is a matter of mind over matter. If you don’t mind, it don’t matter.”<sup>120</sup> Long before many others did, Paige understood the press was a key to success for a public figure and he “used it to enhance his reputation and name recognition.”<sup>121</sup> Scott exhibited all of the same skills, except his job required him to be more adversarial and aggressive than Paige.

At times Scott’s hell raising spirit caused him to straddle the color line less adroitly than Paige; nevertheless, Scott managed to beat many white opponents in court, yet stay in their good graces. Once he proved a white cowboy was guilty of cattle rustling and found himself confronted by the cowboy’s angry friends as he tried to make his way to his car. The men physically threatened him, and Scott who stood five and a half feet tall on a good day was never going to win a physical confrontation. He used the best weapon he had; he started talking and didn’t stop until the cowboy’s friends agreed that Scott should be complimented for bringing a bad man to justice.<sup>122</sup>

Humor was one of Scott’s best weapons. Sam Jackson noted, Scott “could be very ingratiating, (and) play the comedian to distract the jury or whomever.”<sup>123</sup> Both Charles and John Scott described their father as “disarming” in the court room.<sup>124</sup> John added that his father “was always putting on a show,” but he “could get away with a lot via his personality and diction.”<sup>125</sup> Scott’s proteges recognized he was not using humor to make people happy or be known as the top comedian amongst the Kansas bar. He used humor

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<sup>120</sup> Spivey, *If You Were Only White*, xix.

<sup>121</sup> Spivey, *If You Were Only White*, xix.

<sup>122</sup> John Scott, interview; Kluger, *Simple Justice*, 387.

<sup>123</sup> “Samuel Jackson Is Dead;” Jackson, interview.

<sup>124</sup> Charles Scott, interview; John Scott, interview.

<sup>125</sup> John Scott, interview.

to allow him to push the envelope. And he did push the envelope, sometimes it was hard to tell whether he was attempting to win a court case or become an honorary member of the Barrymore family.

Scott's closing arguments were must-see theatrical performances. In 1939, the *Topeka Daily State Journal* described one of his showstoppers.

Democracy's future tattered (sic) on the very brink of destruction Tuesday afternoon. Elisha Scott said so. The Negro lawyer, full of fire and oratory made one of his periodic police court appearances before Judge Peter F. Caldwell, in a booming defense of Richard and Dorothy Ledford, man and wife, who were arrested Free Fair week and charged with vagrancy. Twasn't (sic) so said Scott...The veteran member of the Topeka bar was in rare form, as he turned loose the oratorical flood that first rose in a roaring crescendo, then gently dropped in delicate diminuendo. It was on the head of Patrolman Barney Bryant that the inimitable Elisha dumped most of the coals of his wrath...on cross examination Bryant admitted to Scott that he never had seen Ledford gamble...“Barney Bryant,” Scott shouted, shaking his fist, “sees more and hears more than any other policeman on the force. He says this man is a gambler—but he’s never seen him gamble. He says he took some dice from him—but where are the dice now?”...At one stage, Harold Doherty, assistant city attorney, suggested that Scott was taking overlong in his closing argument. “You can’t limit the closing argument in a murder case,” boomed Scott, “And this is a murder of the rights of this young lady.”...Another time he told the court: “Why your honor, they couldn’t even get by with this in the state of Arkansas, and anything goes in the courts down there.” Judge Caldwell cautioned Scott, who had been holding forth at some length, to limit his argument to the evidence. “That’s just it your honor,” said Scott. “There is no evidence.” He sat down, (and) wiped a steaming brow. The court agreed with him. Both the Ledfords were freed.<sup>126</sup>

Scott's dramatizing and appeals to emotion were deemed unprofessional by other lawyers, but it is important to remember as a fiduciary for his clients his job was to win, and his unorthodox methods won cases that were unwinnable through use of the law alone. Paul Wilson a former assistant Kansas attorney general who represented the state

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<sup>126</sup> “Attorney Wins A No-Dice Case: Elisha Scott in Rare Form as He Booms Defense of Pair on Vagrancy Charge,” *Topeka Daily State Journal*, September 27, 1939.

in *Brown v. Board of Education* wrote that Scott was still “a legend among Topeka lawyers” more than thirty years after his death.<sup>127</sup> But he said of Black lawyers, “I thought them to be deferential not adversary, relying on favor rather than law. Even Elisha Scott played to the sympathy and emotions of judges and jurors.”<sup>128</sup> Wilson’s criticism seems to assert that Scott should have simply accepted losses in cases in which the law was not on his side. It is important to remember, Scott’s typical client was poor, Black, and often legally guilty of the charges they faced. Scott could have pled his clients guilty and looked dignified in the eyes of people like Wilson. But he fully understood his job was to represent his clients using every tool he could employ until the final gavel fell. Scott’s unapologetic pleas for mercy demonstrate successful African American lawyers did in fact appeal to emotion in order to win cases, but it should be recognized that they had few alternatives when representing Black clients before white judges and juries against white lawyers.

When Scott was called a Black Clarence Darrow, the comparison was intended to publicize Scott, but the two trial lawyers shared the same philosophy of lawyering. When Darrow conducted a lecture series for students at Howard University Law School in 1931, he taught the students several lessons that had little to do with law. He told them jury selection was an exercise in finding jurors prejudiced in their favor. Scott, who excelled at connecting with one or two sympathetic jurors would have agreed. Furthermore, Darrow “suggested that students spend more time developing their wits, because at least nine-tenths of what one was up against in the courtroom was anything

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<sup>127</sup> Wilson, *Time to Lose*, 75.

<sup>128</sup> Wilson, *Time to Lose*, 132.



but law.”<sup>129</sup> Again, Scott would have agreed. In his career he faced hostilities of all kinds, and he countered them with creative arguments aimed at the sole goal of winning cases with law or whatever else was available. The main obstacle any Black lawyer of his era faced was racism, and it was also the impetus behind most negative views of Black lawyers.

During Scott’s era prospective clients for Black lawyers from their neighbors to the NAACP chose white lawyers over Black lawyers because they recognized the racism inherent in the legal system, and, therefore, opted for white lawyers who offered them a better chance to win. Historian J. Clay Smith Jr. found that claims of Black lawyers’ incompetence “slowed the progress of black lawyers, and fed racial stereotypes in the white legal community.”<sup>130</sup> Furthermore, Smith found Black lawyers’ willingness to defend members of their race for very little money may have inadvertently negatively affected their reputations. Smith wrote, “The black lawyer was supposed to make more money than a bootblack. If he did not, the black community presumed that his lack of material success was due to incompetence.”<sup>131</sup> The NAACP would seem to have been a natural employer of African American lawyers but that was not the case in its first few decades. The NAACP began as a largely white run organization at the top levels with the exception of W.E.B. DuBois. But its most prominent position was filled by a Black person from 1921 forward when James Weldon Johnson took over as Secretary. The organization took longer to use Black attorneys in big cases, and the reason was simple,

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<sup>129</sup> Genna Rae McNeil, *Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights* (Philadelphia: University of Pennsylvania Press, 1983), 77.

<sup>130</sup> Smith, *Emancipation*, 13.

<sup>131</sup> Smith, *Emancipation*, 13.

there were very few qualified Black lawyers and the organization had access to some of the finest white legal minds in the country.<sup>132</sup> This lack of employment by both regular people and the country's largest civil rights organization has created the misconception that early Black lawyers were incapable, when their lack of success in the job market was actually due to the obstacles they faced in a white dominated legal system. Black lawyers were not given opportunities to try complex cases leaving "most black lawyers caught in a vicious circle of discrimination and inexperience."<sup>133</sup> Scott was lucky to be situated in Kansas where predecessors like James Guy had proven Black lawyers could win complex cases, and where a Black lawyer could get a top rate education at the University of Kansas or Washburn University.

Scott's obituary noted, "his parents left their native state of Tennessee and settled in Kansas in order to escape racial and social injustice...and in order to give their children a better opportunity to make good in life."<sup>134</sup> Scott earned his better opportunity at Washburn law school. It is impossible to determine how Washburn measured against other law schools around the country, but in Kansas it had its fair share of prominent graduates, and it compared favorably to the University of Kansas Law School. Both were integrated, which meant the few Black lawyers who were able to take advantage of their law programs were as ready for practice as their white counterparts. In the 1920s, as Scott was rubbing elbows with United Senators and representing Jack Johnson a full seventy five percent of the nine hundred and fifty African American attorneys in the country were

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<sup>132</sup> August Meier and Elliott Rudwick, *Along the Color Line: Explorations in the Black Experience* (Chicago: University of Illinois Press, 2002), 130.

<sup>133</sup> Meier and Rudwick, *Along the Color Line*, 132.

<sup>134</sup> "Memorial to Elisha Scott."

educated at Howard University, most of them in a part time program referred to by locals as the “Dummie’s Retreat.”<sup>135</sup> By 1931, under the leadership of Charles Hamilton Houston, Howard was a fully accredited member of the American Bar Association’s Association of American Law Schools.<sup>136</sup> Washburn had gained full accreditation in 1905, more than a decade before Scott’s graduation in 1916. Scott, therefore, was more than prepared to joust over the intricacies of the law with most any lawyer he encountered. His use of theatrical performance, humor and other creative tools was a conscious choice made to give his clients the best chance to win the particular case he was arguing. His ability to use the law to win cases is demonstrated in the next chapter.

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<sup>135</sup> McNeil, *Groundwork*, 64-65.

<sup>136</sup> McNeil, *Groundwork*, 75.

## CHAPTER SIX: EDUCATION

In 1946, Elisha Scott got old. He turned fifty-six in October, but that was not what caused him to age. If a person is lucky, they get to grow old. Scott was made old overnight. He was in a serious car accident that left him unable to walk for six months.<sup>1</sup> It was the second time he was injured in a car crash in less than five years. The first, in 1941, in Hannibal, Missouri, left him bedridden for a few days.<sup>2</sup> The second was devastating. From then on, his left leg was substantially shorter than his right; therefore, he walked with a noticeable limp, and he was in constant pain. As he aged, his small stature was exaggerated by the fact that he hunched forward as he limped so that he was now “a little, bent over man.”<sup>3</sup> He was still a force to be reckoned with in court. But he drank more and worked less. He always carried a small bottle full of liquor and he sipped from it regularly, and he “liked to avoid work if he could.”<sup>4</sup> Yet he still seemed to work constantly. His house was a twenty-four hour a day, seven day a week law office, and there was always work to do.<sup>5</sup> Jim Crow did not stop when he won cases, it did not stop

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<sup>1</sup> John Scott, interview by Richard Kluger, August 18, 1969, MS 759, Box 5, Folder 90, *Brown v. Board of Education* Collection, Yale University Library.

<sup>2</sup> *Kansas City Plaindealer*, March 28, 1941.

<sup>3</sup> Esther Brown, interview by Richard Kluger, May 31, 1969, MS 759, Box 1, Folder 10, *Brown v. Board of Education* Collection, Yale University Library; Richard Kluger, *Simple Justice: The History of Brown v Board of Education and Black America's Struggle for Equality* (New York: Vintage Books, 2004), 390.

<sup>4</sup> John Scott, interview; Charles Scott, interview by Richard Kluger, October 21, 1970, MS 759, Box 5, Folder 89, *Brown v. Board of Education* Collection, Yale University Library.

<sup>5</sup> John Scott, interview.

when he got his name in the newspaper, it did not stop when the entire country joined in a fight against an eerily similar form of fascism in Europe, and it did not stop for his injured leg. But he had reinforcements. His sons had all served in World War II, and then graduated from Washburn law school and entered the family business. Elisha Jr. moved to Michigan to take over his Uncle Roy Van Dyne's practice, but John and Charles became aggressive advocates for African American civil rights.

When the NAACP chose Wichita as the site of its full-fledged attack on school segregation in Kansas, John and Charles joined with Charles Bledsoe in organizing their own case in Topeka. Partially because the Scott's were tied up with another school case in South Park, the Kansas State Conference of the NAACP chose to pursue the case in Wichita. When the Wichita case fell apart amid a serious protest against a desegregation case by local African American teachers, Topeka's NAACP was ready.<sup>6</sup> McKinley Burnett the Topeka NAACP president had been pushing the Topeka school board to integrate since 1948. Burnett, whose father was enslaved and grandfather a white slave owner was a consistent agitator at school board meetings. His children were too old to attend integrated schools, yet "he sacrificed his life" for the rights of other children.<sup>7</sup> He correctly insisted the school board could end segregation in Topeka whenever they saw fit. When they refused, he chose to pursue legal action. In 1950, branch secretary Lucinda

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<sup>6</sup> Mark Tushnet, *The NAACP's Legal Strategy Against Segregated Education, 1925-1950* (Chapel Hill, University of North Carolina Press, 1987), 139; Interview with Esther Brown.

<sup>7</sup> Kluger, *Simple Justice*, 393; Lucinda Todd, interview by Richard Kluger, undated, MS 759, Box 5, Folder 98, *Brown v. Board of Education* Collection, Yale University Library.

Todd wrote Walter White to inform him Topeka was ready to challenge Kansas's segregation law.<sup>8</sup> The case would eventually be called *Brown v. Board of Education*.

Thurgood Marshall assigned the Topeka case to Robert Carter and Jack Greenberg. Carter was a graduate of Howard Law School and held a Master of Law from Columbia. The best way to understand him was to know that in his youth he had been the first person to integrate a New Jersey swimming pool despite the fact that he could not swim.<sup>9</sup> Carter was “a partisan, a doer, a man deeply concerned with results.” He was also Marshall's right-hand man and the workhorse of the NAACP office. He made sure things got done.<sup>10</sup> Greenberg a graduate of Columbia Law School was the only white lawyer who would play a key part on the NAACP side of *Brown*. He had joined the NAACP legal team in 1949 on the recommendation of a Columbia professor who was a friend of Marshall and jokingly encouraged him to stop discriminating and hire a white lawyer.<sup>11</sup> Greenberg and Louis Redding had already won the first case ever to force a state university to admit Black undergraduates.<sup>12</sup>

While John and Charles met with Carter and Greenberg, the Scott family patriarch stayed in the background. He was in constant pain after the 1946 car accident. Furthermore, he “found the legal theory of the case, with all these psychologists and other high-domed types being shipped into town, a lot of confounded nonsense.”<sup>13</sup> “To him it

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<sup>8</sup> Kluger, *Simple Justice*, 394-95.

<sup>9</sup> Patricia Sullivan, *Lift Every Voice: The NAACP and the Making of the Civil Rights Movement* (New York: The New Press, 2009), 297.

<sup>10</sup> Kluger, *Simple Justice*, 271. The quote is from a person Kluger only refers to as “a knowledgeable associate of those years.”

<sup>11</sup> Kluger, *Simple Justice*, 437.

<sup>12</sup> Sullivan, *Lift Every Voice*, 408.

<sup>13</sup> Kluger, *Simple Justice*, 402.

was out and out discrimination and nothing fancy.”<sup>14</sup> According to John Scott, the theory of the case was the reason his father did not participate much in *Brown*. John stated, the Topeka lawyers worked hard on ‘half a dozen’ briefs with the assumption that *Plessy* was the key to the case. The New York NAACP lawyers “tore them apart,” insisting that the briefs should push the psychological argument that African American children were mentally injured by separate facilities even when they were equal. After a careful examination, John and Charles “came to gain some confidence in the per se argument,” and, therefore, acquiesced. Elisha refused.<sup>15</sup> Perhaps he did not want to cede control to the national NAACP lawyers. And it was the NAACP’s civil rights specialists who were running the show. Charles Scott stated, they were in charge, “they had the expertise, while we were in general law practice.”<sup>16</sup>

The elder Scott was rapidly slowing down. By the summer of 1951 he was sixty, and it had been a hard sixty years. As he rose from Tennesseetown to national prominence he endured numerous difficulties. He lost two battles with the Internal Revenue Service which nearly cost him the family home on Lane Street.<sup>17</sup> He had been a widower since age thirty-eight. In 1937, a twenty-year-old college student walked away from a conversation with her boyfriend in Scott’s living room and killed herself with Scott’s revolver.<sup>18</sup> Shortly after his 1941 car accident, he had literally watched a friend sail more than one hundred feet through the air and over a hedge fence after he was

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<sup>14</sup> John Scott, interview.

<sup>15</sup> Charles Scott interview; John Scott, interview.

<sup>16</sup> Charles Scott, interview.

<sup>17</sup> John Scott, interview.

<sup>18</sup> “Co-ed Worries Over Her Job: Leaves Boyfriend, Takes Life,” *Philadelphia Tribune*, September 9, 1937.

ejected from a car in a rollover accident. The man was killed instantaneously, and all Scott could do was load another injured friend in his car and rush him to the hospital.<sup>19</sup> And he certainly had further mental scars from losses in cases like *Mosler* and *Maxey*, not to mention the physical pain that forced him to drink more and work less. No one could have predicted what the *Brown* case would mean, but everyone understood it was a frontal attack on the core of Jim Crow segregation. If school segregation fell, everything else was a domino waiting to be toppled.

The day Scott hobbled into Topeka's federal courthouse as *Brown v. Board of Education* was being argued should have been a moment in the sun for the aging advocate; instead, it was what Richard Kluger deemed the "saddest moment of the trial."<sup>20</sup> Scott arrived in the courtroom during the middle of the original *Brown* case and took a seat at the counsel table alongside his sons. Lester Goodell who represented the school board was cross examining Professor Hugh Speer, a key witness for the NAACP, and Scott interrupted.

ELISHA SCOTT: I object to that.

JUDGE HUXMAN: Mr. Scott, are you entered here as an attorney of record?

ELISHA SCOTT: I am supposed to be.

JUDGE HUXMAN: Go ahead.

ELISHA SCOTT: I object to that because he is invading the rights, and he is answering a question not based upon the evidence adduced or could be adduced—.

GOODELL: You just got here. You wouldn't know.

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<sup>19</sup> "Topekan Killed When Auto Leaves Road," *Kansas City Plaindealer*, July 11, 1941.

<sup>20</sup> Kluger, *Simple Justice*, 414.



ELISHA SCOTT: Yes, I do know.

JUDGE HUXMAN: Objection will be overruled. You may answer.<sup>21</sup>

Kluger attempted to view the situation positively. He wrote, “It cannot be said...that the small, brave ebony lawyer who had fought in the courtrooms of Kansas for thirty-five years did not participate in the most important civil rights case of his lifetime. It was not much of a contribution, but his sons were of course in the thick of the fight and he had more than a little to do with that.”<sup>22</sup>

Most of the people who witnessed the interruption thought Scott was drunk, however, his sons denied it. NAACP activist Esther Brown stated, “he knew it was to have been his day in court and that he had been shunted aside.”<sup>23</sup> She was certain that Scott was drunk.<sup>24</sup> Kluger, who interviewed nearly everyone involved, explained it made no sense for Scott to object to testimony from his side’s witness and wrote, “the bent little lawyer was almost certainly under the influence.” Judge Huxman stated, Scott “came into court that day drunk as a lord...His boys tried to pull him down and they led him out in a little while.”<sup>25</sup> Huxman also noted that Judge Herman Mellott, a known teetotaler, may have been prepared to issue Scott a citation for contempt, but he and Judge Hill convinced Mellott that Scott was not intoxicated.<sup>26</sup> Scott’s sons insisted their father was

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<sup>21</sup> Quoted in, Kluger, *Simple Justice*, 415.

<sup>22</sup> Kluger, *Simple Justice*, 415.

<sup>23</sup> Kluger, *Simple Justice*, 415.

<sup>24</sup> Kluger, *Simple Justice*, 415.

<sup>25</sup> Walter Huxman, interview by Richard Kluger, October 24, 1970, MS 759, Box 3, Folder 50, *Brown v. Board of Education* Collection, Yale University Library.

<sup>26</sup> Walter Huxman, interview.

not drunk.<sup>27</sup> They even considered suing Kluger for defamation.<sup>28</sup> However, John Scott also acknowledged his father was a drinker. He stated, “first thing in the morning he’d reach for a sip of bourbon...always carried a bottle of Listerine with bourbon in it...But you’d never see him tight or drunk.”<sup>29</sup> Anecdotal evidence also points to Scott’s proclivity to take a drink even while working. Topeka attorney Hall Smith and Huxman both told a story that demonstrates Scott’s love of liquor and his quick wit. Huxman said that one day Scott had a little bottle of booze in his vest pocket, and opposing counsel stated, “Your honor, I do believe I smell alcohol in the courtroom.” At that point, Scott went over to that lawyer and made a big show of smelling him. Then Scott said, “He’s right your honor—I smell it too.” Scott’s comment earned a hearty laugh from everyone in the courtroom and nearly got him a citation for contempt.<sup>30</sup> Smith told a similar story admitting he was the lawyer Scott sniffed, but he claimed, even the judge had a good laugh at Scott’s wit.<sup>31</sup> His appearance during the *Brown* trial was not funny to anyone, but it was only a brief distraction from the work that had to be done.

One of the many challenges the NAACP faced in their effort to overrule *Plessy* was proving that children were injured by segregation even when facilities were equal. Carter suggested to Marshall, the way to demonstrate mental damage was with social scientific evidence. In a case involving physical injuries it was accepted practice to use a physician as an expert witness who could testify as to what injuries the plaintiff suffered.

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<sup>27</sup> John Scott, interview.

<sup>28</sup> Charles Scott to John Scott, undated, RH MS 1145, Box 9, Folder 3, Charles Scott Papers, Kenneth Spencer Research Library, University of Kansas, Lawrence.

<sup>29</sup> John Scott, interview.

<sup>30</sup> Walter Huxman, interview.

<sup>31</sup> Undated Story from Unnamed Newspaper, *Brown v. Board of Education* Collection, Yale University Library.

The NAACP lawyers were going to do the same thing with mental injuries. Kenneth and Mamie Clark were two of the few Black psychologists in the country, and more importantly their doll test could provide Marshall with the evidence he was looking for. The Clark's tested children by showing them four gender neutral dolls, two Black and two white, and asking them first to identify which doll looked like them and then questions about which doll they liked best, or which was a nice doll and so forth. The tests revealed that children showed a statistically significant preference for the white dolls.<sup>32</sup> It was a powerful example of the psychological damage caused by legally sanctioned second-class citizenship. The Clark's doll test is indelibly tied to the *Brown* case, but neither Kenneth nor Mamie Clark appeared as an expert witness when the case was argued in Topeka. The key expert witness in Topeka was Louisa Holt, a psychology professor at the University of Kansas.

When compared with Chief Justice Earl Warren's opinion in the case, the transcript of Holt's testimony reveals she had as much impact on the case as any witness. The NAACP lost the Topeka case, but Judge Huxman's opinion stated if not for *Plessy* which had already been essentially overruled when it came to graduate schools, Topeka's segregated schools would violate the plaintiff's Fourteenth Amendment rights. He also echoed Holt in his finding of facts.

Overruling *Plessy* changed everything. Earl Warren stated, "Segregation of white and Negro children in the public schools of a State solely on the basis of race...denies to Negro children the equal protection of the laws guaranteed by the Fourteenth Amendment—even though the physical facilities and other "tangible" factors of white

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<sup>32</sup> Kluger, *Simple Justice*, 315-17.

and Negro schools may be equal.”<sup>33</sup> The decision applied to public schools across the country, but the fact that equal facilities would not relieve a government entity’s mandate to operate desegregated schools was of particular importance to Kansas. It meant even well-constructed schools with excellent teachers like they had in Topeka did not provide African American children the protections guaranteed them by the Fourteenth Amendment. It was a massive victory for the civil rights of African Americans. If separate schools violated the Fourteenth amendment so did other separate public facilities. *Plessy’s* Separate but Equal doctrine had kept the Fourteenth Amendment from doing what it was truly intended to do since Scott was a student in Charles Sheldon’s kindergarten. The *Brown* decision did more to open America’s possibilities to African Americans than any one thing since emancipation. It was a new beginning for African Americans all over the country, but for Scott it was the culmination of a career spent aggressively arguing that the Fourteenth Amendment did provide equal protection without being limited by the word separate.

As head of the NAACP’s Legal Defense Fund (LDF) Thurgood Marshall received a mountain of accolades for winning the *Brown* case, and they were well deserved. But the man who built the NAACP’s strategy to overrule *Plessy* and trained Marshall to help carry out the task was a different onetime Scott house guest: Charles Hamilton Houston. The son of a Washington D.C. Lawyer, a World War I veteran, and the first African American elected to the staff of the *Harvard Law Review*, Houston could have lived a comfortable life trying cases for the many affluent African Americans living in the nation’s capital. Instead, he chose a life of public service more accurately described as

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<sup>33</sup> *Brown v. Board of Education*, 347 U.S. 483 (1954)

public sacrifice. Few fighters in the struggle for civil rights gave as much as Houston. He was keenly aware that the country lacked Black attorneys with the training to protect the rights of his people. Therefore, he helped Howard University's law school gain full accreditation. He then set about training individuals like Marshall to become "social engineers," ready to protect the rights of African Americans and advance the race.

Marshall remembered that Houston ran more than half of his class right out of law school and into less stressful professions. He stated, "He was hard crust. We used to call him Iron Shoes and Cement Pants and a few other things I can't tell you."<sup>34</sup> He remembered Houston would say, "Doctors could bury their mistakes, but lawyers couldn't." And he would remind his students, "We'd be competing not only with white lawyers but with really well-trained white lawyers, so there wasn't any point in crying in our beer."<sup>35</sup>

Houston pushed his students as hard as he pushed himself. When he was finished, he had trained a cadre of outstanding legal minds, and he had worked himself to death in 1950 at the age of fifty-four. His legacy was the *Brown* decision and the lawyers who guided it from an aspiration to a unanimous Supreme Court decision.

Scott, like Houston, did not have his name on the *Brown* briefs, and he did not pose for pictures on the steps of the Supreme Court with Marshall and the other lawyers like his son Charles did, but *Brown* was a direct result of his life's work. The LDF's website notes that in order to win the *Brown* case Thurgood Marshall "recruited the nation's best attorneys, including Robert Carter, Jack Greenberg, Constance Baker Motley, Spottswood Robinson, Oliver Hill, Louis Redding, Charles, and John Scott,

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<sup>34</sup> Thurgood Marshall, interview by Richard Kluger, December 28, 1973, MS 759, Box 4, Folder 65, *Brown v. Board of Education* Collection, Yale University Library.

<sup>35</sup> Marshall, interview.

Harold R. Boulware, James Nabrit, and George E.C. Hayes.”<sup>36</sup> Educationally those lawyers fit into three distinct groups. Marshall, Carter, Robinson, Hill, Boulware, and Hayes were all graduates of Howard University Law School. Greenberg, Motley, Redding and Nabrit were all educated at America’s most elite law schools. The third group is occupied solely by the Scott brothers who graduated from Washburn after World War II.<sup>37</sup> The original *Brown* trial featured Washburn lawyers on both sides, as the Scott’s were accompanied by Greenberg and Carter as well as Charles Bledsoe Washburn class of 1937 and opposed by Lester Goodell class of 1925, and George Brewster class of 1929.<sup>38</sup> The appearance of the sixth Washburn lawyer was unfortunate, but he had been fighting for the educational rights of African Americans in Kansas for nearly four decades.

Kansas had a unique educational segregation law; it fit with the state’s complicated relationship with African Americans. Kansans like to trace their state’s lineage to New England abolitionists, but most of its early settlers were white, midwestern, farmers who had no desire to add Black competition to their already hardscrabble lives. Historically Kansas is known for rejecting slavery, but the first territorial legislature was dominated by proslavery men. Around the same time, the New

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<sup>36</sup> “What was *Brown v. Board of Education*, <https://www.naacpldf.org/case-issue/landmark-brown-v-board-education/>, Retrieved December 6, 2022.

<sup>37</sup> Marshall Graduated from Howard first in his class in 1933, Robert Carter (41), Spottswood Robinson (39), Oliver Hill (33), Harold Boulware (40), George E.C. Hayes (18), Jack Greenberg (Columbia, 48), Constance Baker Motley (Columbia, 46), Louis Redding (Harvard 29), James Nabrit (Northwestern, 27), Charles Scott (Washburn 48), John Scott (Washburn 47).

<sup>38</sup> James M. Concannon, *The Ideal Place...for the Establishment of a Great Law School: History of Washburn Law School, 1903-2003* (Topeka: Washburn School of Law Alumni Association, 2012), 141.

England Emigrant Aid Company formed “with the avowed intention of rescuing the territory from the clutches of slavery.” However, it was also a money-making enterprise, and its founders did not view Black people as equals.<sup>39</sup> Eventually the state’s early leaders forbade slavery, but they also passed laws banning African Americans from their borders. The ban on Black people did not endure, but that did not mean African Americans were welcome in Kansas. The first state lawmakers were staunchly antislavery but not antiracist. They passed a constitution banning slavery and denying African Americans the right to vote. Therefore, it is no surprise that Kansas law allowed for segregated schools but did not mandate complete educational segregation.

Kansas law allowed segregation in elementary schools in the state’s largest cities if the respective local school boards chose to segregate. Segregation was prohibited in all high schools with the exception of Kansas City, Kansas, and smaller cities and towns were banned from operating segregated schools at any level. State policy regarding segregated schools mirrored the complexity of the state’s overall relationship with African Americans. Kansas’s 1859 constitution mandated segregated schools for African Americans. In 1874, Kansas lawmakers overruled the constitution when they passed a law banning segregation in any public educational institution from elementary school to college. However, after thousands of Exodusters arrived in the state in 1879, the legislature passed the law that allowed boards of education to decide whether or not to maintain separate elementary schools in the larger cities. Cities of over fifteen thousand residents were defined as “cities of the first class,” and they could segregate elementary

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<sup>39</sup> Thomas C. Cox, *Blacks in Topeka, Kansas 1865-1915: A Social History* (Baton Rouge, LA: Louisiana State University Press, 1982), 4-5.

schools if they saw fit. By the time *Brown* was litigated in the early 1950s, twelve cities qualified as large enough to choose or reject segregated schools. The law meant smaller school districts could not legally maintain segregated schools at any level, though many of them did. The result was what Topeka NAACP Secretary Lucinda Todd called a “crazy quilt educational pattern.”<sup>40</sup>

In America Jim Crow segregation of all sorts was commonly practiced when and where there were no laws mandating it, and Kansas was no exception. On paper the people of the state were protected from segregation even without the Fourteenth Amendment. The same 1874 civil rights law that forbade school segregation also outlawed segregation by any licensed place of public accommodation, and that part of the law was not changed when the Exodusters arrived. This meant African Americans could not be banned from restaurants, hotels, swimming pools, or theaters.<sup>41</sup> Yet all of those accommodations and many more were routinely segregated in Kansas. Kansas was not the deep South, but it was not the Freedman’s haven Scott’s family had come searching for. Numerous small towns operated segregated schools and businesses who refused to serve African Americans were common. Kansas City’s Minnesota Avenue was packed with Jim Crow establishments.<sup>42</sup> Topeka had only one hotel and one theater that served African Americans, and the swimming pool at Gage Park was open to African Americans

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<sup>40</sup> Lucinda Todd, “To the Negro Press: Suit Hits Separate Schools in Kansas,” undated, MS 759, Box 24, Folder 124, *Brown v. Board of Education* Collection, Yale University Library.

<sup>41</sup> Kluger, *Simple Justice*, 372.

<sup>42</sup> “Asks Kansas Supreme Court to End Jim Crow in Theaters,” *Kansas City Plaindealer*, October 15, 1948.



one day a year. Until after World War II, downtown Topeka restaurants featured signs that read, “Negroes and Mexicans Served in Sacks Only.”<sup>43</sup>

In Topeka’s schools, segregation filtered up to the high school while technically adhering to Kansas law. Topeka High was integrated by law and segregated by policy. Extracurricular activities and student government were completely segregated. Each race had its own student council. In sports, the white students were the Topeka Trojans while the Black students were the Topeka Ramblers. They even had separate school colors.<sup>44</sup> The segregation of high school sports must have been particularly frustrating, as at least when Elisha Scott Jr. was playing football his junior high team was integrated and he and a few other Black players participated in every game.<sup>45</sup> Apparently the Topeka board of education felt those practices satisfied their mandate to run an integrated high school. School boards throughout the state seemed to constantly be attempting to find ways to expand segregated education by probing for loopholes in the statute.

In 1923, Coffeyville, Kansas, attempted to redefine the ninth grade as part of elementary school in order to leave only grades ten through twelve integrated. It was a blatant attempt to shirk Kansas law. Furthermore, it was an example of public officials using Black voters to get what they wanted and then casting them aside without fear of reprisal. In 1920, the Coffeyville school board asked residents to support a new junior high school. The school would be for seventh, eighth, and ninth graders. Knowing they needed the support of Coffeyville’s Black community, the school board flatly promised

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<sup>43</sup> Kluger, *Simple Justice*, 375-76.

<sup>44</sup> Jackson, interview.

<sup>45</sup> “Negro Grid Stars Shine on White Aggregations,” *New Journal and Guide* (Norfolk, VA), October 29, 1932.

all pupils with the requisite grades “regardless of race” could attend the new school.<sup>46</sup> School board Vice President A.A. Bessey also admitted that he stated Black children would be able to attend the school at a mass meeting of Black parents to discuss the bond issue.<sup>47</sup> When the new school opened in the fall of 1923, Black students were excluded. With the new \$350,000 school completed and paid for with taxpayer money, African American students were an afterthought.<sup>48</sup> The *Coffeyville Daily Journal* confirmed as much when it documented a large increase in school enrollment that fall, but noted, “figures do not include the colored schools.”<sup>49</sup> The Coffeyville school system offered Black students ninth grade classes at either the segregated Cleveland school or the integrated Washington school, but neither was as well-equipped to educate ninth graders as the new school, and neither was a high school. By keeping Roosevelt lily white the school board was providing the best facilities to white students while giving Black students a choice between segregation in a dilapidated school with no true ninth grade and integration in an equally dilapidated school.<sup>50</sup> Both options were against Kansas law if the ninth grade was classified as high school, therefore, several parents and children who attended Cleveland in eighth grade attempted to register at the new Roosevelt Junior High School. They were unequivocally denied admission and told to report to Cleveland. At Cleveland they would have to sit in the seventh and eighth grade classroom of the

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<sup>46</sup> Rosenblum, “Unlocking the Schoolhouse,” 45.

<sup>47</sup> “Affidavit of A.A. Bessey,” November 3, 1923, *Thurman-Watts v. Board of Education* case file 25,305, Records of the Kansas Supreme Court, State Archives Division, Kansas Historical Society, Topeka.

<sup>48</sup> “Coffeyville Junior High School: The Pride of Coffeyville, *Morning News* (Coffeyville, KS), September 24, 1923.

<sup>49</sup> “School Increase is 246 over Last Year: Figures. However, Do Not Include Colored Schools—Gain in College and Junior High,” *Coffeyville Daily Journal*, October 4, 1923.

<sup>50</sup> *Thurman-Watts v. Board of Education*, 115 Kan., 328 (1924).

overcrowded and unsanitary school where the toilets often overflowed leaving the school smelling of feces for days afterward.<sup>51</sup> Scott was immediately called in to clean up the mess.

Choosing to take on the city of Coffeyville in 1923 was a brave move for a Black attorney. By then Scott was known to be a lawyer willing to wade into the lions' den with little more than his wits to defend him, and if there was a lions' den in Kansas, it was Coffeyville. Located in Montgomery County in southeastern Kansas on the Oklahoma border, the town of 13,452 residents was home to myriad violent episodes involving Black and white residents.<sup>52</sup> Coffeyville it seemed was always trying to relive the glory of the Dalton gang defense, and unfortunate African Americans regularly played the part of the Daltons. Brent M.S. Campney's research on violence in Kansas showed that since Scott's birth in 1890 the town had seen at least three threatened lynchings.<sup>53</sup> And the violence did not stop there. In 1898, three Black men were removed from the city jail and "whipped very severely, after which they were given time to leave the city." The *Coffeyville Weekly Journal* celebrated the mob action and suggested "other tramps and bums" should also be run out of town.<sup>54</sup> In 1905, a local newspaper stated several African Americans "should be made to work or treated to a coat of tar and feathers" after what was described as a near race war following a Black against white sexual assault

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<sup>51</sup> Report on Condition of Coffeyville's Schools, *Thurman-Watts v. Board of Education* case file.

<sup>52</sup> United States Census Bureau, "Census of Population and Housing, 1920."

<sup>53</sup> Brent M.S. Campney, *This is Not Dixie: Racist Violence in Kansas 1861-1927* (Urbana, IL: University of Illinois Press, 2018), Appendix 1, "Incidents of Racist Violence in Kansas," pp. 220-37.

<sup>54</sup> "Three Negroes Whipped," *Coffeyville Weekly Journal*, June 17, 1898. Campney, *This is Not Dixie*, 141.

allegation.<sup>55</sup> The *Topeka Plaindealer* claimed that the allegation was false, the perpetrator was probably a white man, and reported that Coffeyville officials were forcing African Americans to remain in the city while they searched for the suspect. When Foster Williams an “intelligent and wealthy” Black merchant said he would help Black people who had not violated the law to leave town, he was thrown in jail.<sup>56</sup> In 1907 a police officer shot and killed a Black man, and a white citizen was lauded by prominent locals for shooting another Black man. Neither was punished. In the case of the civilian shooting, the coroner decided on his own that the shooter acted in self-defense. The *Coffeyville Daily Record* gloated that the shooting would serve as a warning to criminals and hoped it would provide others the courage to defend the town.<sup>57</sup> In neighboring Independence, 1907 saw a near race riot when a white school superintendent punched a Black child in the face while breaking up a fight. He was subsequently attacked by two Black men and three Black women and “severely beaten by the negro women.”<sup>58</sup> In 1920, a race riot broke out in Independence when Black men acted to prevent a jailhouse attack and lynching.<sup>59</sup> Racist violence continued to blight Coffeyville in 1923.

Just months before Scott was called to help the citizens of Coffeyville, its Black residents suffered another killing by police and a glut of Ku Klux Klan activity. The

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<sup>55</sup> Campney, *This is Not Dixie*, 141; “No Race War Demonstrations Were Made Last Night,” *Coffeyville Daily Record*, April 13, 1905.

<sup>56</sup> “Coffeyville Negroes Take a Commendable Stand,” *Topeka Plaindealer*, April 21, 1905.

<sup>57</sup> Campney, *This is Not Dixie*, 141.

<sup>58</sup> “Negro Women Beat Up School Teacher,” *Topeka Daily Capital*, September 12, 1907; “In a Race Riot: Negro Women Beat Up a School Teacher at Independence,” *Topeka State Journal*, September 12, 1907; “Beat the Teacher: Negro Men and Women Attack White Principal,” *Leavenworth Post*, September 13, 1907; Campney, *This is Not Dixie*, 159-60.

<sup>59</sup> Campney, *This is Not Dixie*, 116, 118.

homicide victim was a man named Elmer Warren. His home was raided in a search for illegal alcohol, but Warren who was a was called “River George” and known to regularly distribute illegal liquor was not home. He was shot during a chance encounter on the same evening between Coffeyville and Independence. The *Independence Star* was matter of fact in its description of Warren’s last moments. The paper reported, “the chief of police and two officers were on their way to Independence when they noticed Warren. They immediately gave chase and two officers fired at George. One shot hit George in the head, killing him.”<sup>60</sup> The *South Kansas Tribune* was just as cold, under the heading “Court Cases Disposed Of,” it noted, “State vs. Elmer Warren, alias River George, persistent violation of liquor law—killed while resisting arrest.”<sup>61</sup> Warren had two bullet holes in the back of his head, but Police Officer Clyde Powell claimed self-defense. He stated, Warren was reaching for a gun as he ran away, therefore, he fired before Warren could “turn about and bring his weapon into play.”<sup>62</sup> The county attorney cleared Powell before the body was cold but stated he would “go through the legal formalities” of an inquest the following week.<sup>63</sup> The killing was vigilante justice shielded by a police badge. And Ku Klux Klan members were doing their best to bring their own brand of vigilantism to Kansas.

In the years after World War I, the Ku Klux Klan attempted to go mainstream. William J. Simmons was the father of the twentieth century Klan. He gave the secret

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<sup>60</sup> “Coffeyville Negro Killed Wednesday,” *Independence Star*, Quoted in *Fredonia Daily Citizen* (Fredonia, KS), March 15, 1923.

<sup>61</sup> “Court Cases Disposed Of: Criminal Docket,” *South Kansas Tribune* (Independence, KS), March 21, 1923.

<sup>62</sup> “Man Killed by Officer: Patrolman Clyde Powell Shoots ‘River George’ Warren, Yesterday,” *The Morning News* (Coffeyville, KS), March 15, 1923.

<sup>63</sup> “Man Killed by Officer.”

society a symbolic rebirth by inducting fifteen members at Stone Mountain Georgia on Thanksgiving Day 1915.<sup>64</sup> The new Imperial Wizard hired publicists and advertisers in an effort to make the Klan a nationwide fraternal organization, and he got lucky when D.W. Griffith's glorification of the KKK in his 1915 film *The Birth of a Nation* stirred great interest in the secret organization. Griffith's film was based on Thomas Dixon's play *The Clansmen*. Dixon who was a Baptist minister and lawyer was also a "professional racist...who made a living writing books and plays attacking the presence of African Americans in the United States."<sup>65</sup> *The Birth of a Nation* premiered on February 8, 1915. It portrayed the Klan as a heroic organization protecting patriotic Americans from insidious white carpetbaggers and dangerous Black criminals. The character Superman had not been created yet, but it did not matter because Griffith's KKK was protecting truth, justice, and the American way. A full-fledged Hollywood advertising campaign accompanied the film's release. New York's Times Square even featured a massive billboard showing Klansmen on horseback.<sup>66</sup> Regular people could purchase KKK hats and aprons.<sup>67</sup> The NAACP recognized the film could do nothing but harm to the Black community; therefore, they launched an extensive effort to prevent its showing. Mostly working independent of the national NAACP, Black and white Kansans waged their own war against the film.

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<sup>64</sup> "Klan is Established With Impressiveness," *Atlanta Constitution*, November 28, 1915.

<sup>65</sup> Mark E. Benbow, "Birth of a Quotation: Woodrow Wilson and 'Like Writing History with Lightning,'" *Journal of the Gilded Age and Progressive Era*, Vol. 9., No. 4 (October 2010), 510.

<sup>66</sup> Wyn Craig Wade, *The Fiery Cross: The Ku Klux Klan in America* (New York: Oxford University Press, 1987), 127.

<sup>67</sup> Wade, *The Fiery Cross*, 139.

It was the film's power to teach a racist, revisionist view of history that made it dangerous. It was the opposite of education in that it portrayed a work of fiction as American history. *The Birth of A Nation* was epic in every way, and viewers seemed to be swept away by the power of action and drama on the big screen. President Woodrow Wilson was famously reported to declare, "It's like writing history with lightning."<sup>68</sup> The film was unprecedented in scale and grandeur. It was two hours and forty-five minutes long, and it traveled with a "big symphony orchestra playing specially arranged music." It featured "18,000 people, 3,000 horses and cost a half million dollars to produce."<sup>69</sup> It was Thomas Dixon who arranged to show Wilson the film in the white House, and he admitted, "I didn't dare allow the President to know the real purpose back of my film—which was to revolutionize Northern sentiments by a presentation of history that would transform every man in my audience into a good democrat!"<sup>70</sup> The movie chronicled the Civil War and Reconstruction in a way that glorified the Confederacy and the Ku Klux Klan and painted Black success during Reconstruction a national disaster. Dixon and Griffith portrayed African Americans as simpleton fools at best and rapist animals at worst. Finally, they made masked vigilantes the heroes who made America great again.

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<sup>68</sup> This quote has been regularly used in work about the film and Wilson's racial views. It is unclear whether Wilson actually said it. Mark Benbow made an extensive examination of the origins of the quote and concluded Wilson may have said something to that effect either before or after seeing the film. Benbow speculated that the former professor may have actually said, "it's like teaching history with lightning," which was the quote originally reported by Griffith. Benbow found that the second part of the quotation in which Wilson reportedly said, "My only regret is that it is all so terribly true," did not appear until 1937. Benbow speculated that it may have originated with Dixon to back his insistence that the story was historically accurate. See Benbow, "Birth of a Quotation."

<sup>69</sup> "D.W. Griffith's 'Birth of A Nation' Coming to the Orpheum Theater," *Parsons Daily Sun*, December 17, 1923.

<sup>70</sup> Thomas Dixon Jr. to Joseph Tumulty, May 1, 1915, Quoted in Benbow, "Birth of a Quotation," 513.

Prominent Kansas leaders were dead set against allowing such a distortion to show in the state. Arthur Capper once wrote that the only way to make the film acceptable was to “eliminate everything after the title.”<sup>71</sup> When exhibitors wanted to bring the film to Kansas in late 1923, Charles Sheldon, who had dedicated his life to the secular and spiritual education of both races articulated the problem with *The Birth of a Nation* perfectly. He wrote, “The owners of the picture...have no lesson to teach that elevates or honors mankind. The only purpose they have is to swell the box office receipts...they care nothing about the results that will follow in human hate, and a knowledge of American history that never has occurred.” He finished by claiming Governor Jonathan M. Davis had a “duty as a citizen” to keep the movie out of Kansas.<sup>72</sup> When he claimed Governor Davis could prevent the film from playing in Kansas Sheldon had precedent on his side.

As the Coffeyville litigation was ongoing, Scott and many others fought one of several battles in a long war against *The Birth of a Nation* in Kansas. Kansas was one of a handful of states with a motion picture censor board. The board was created by legislation in 1913. Its members began reviewing films in 1915 after the U.S. Supreme Court approved such action in *Mutual Film Corporation v. Industrial Commission of Ohio*.<sup>73</sup> In February 1916, the Kansas board of censors kept *The Birth of a Nation* from showing in

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<sup>71</sup> Arthur Capper to Mrs. J. M. Miller, May 10, 1917, Box 11, Folder 45, Arthur Capper Papers, Kansas Historical Society, Topeka.

<sup>72</sup> “Dr. Sheldon Protests,” *Iola Register*, December 10, 1923.

<sup>73</sup> Gerald R. Butters Jr., “The Birth of a Nation and the Kansas Board of Review of Motion Pictures: A Censorship Struggle,” *Kansas History* (Spring 1991), 2.



the state.<sup>74</sup> Scott's Republican allies Arthur Capper and Henry Allen prevented the film from showing while they were in the governors' mansion; therefore, what amounted to a commercial for racist vigilantism did not play in the Sunflower State for seven years.<sup>75</sup> In June 1923, Democrat Jonathan M. Davis was governor, and it was announced the movie would likely be allowed to show in Kansas because "sufficient pressure had been brought to bear upon the Democratic censors to have the picture admitted to the state."<sup>76</sup> The *Lawrence Journal-World* claimed the film would be shown in Kansas "out of deference to the supposed strength and influence of the present Klan."<sup>77</sup> Governor Davis initially asked the censor board to ban the film.<sup>78</sup> But the movie was a worldwide cash cow, thus, there was great pressure to exhibit it to new audiences. As the fate of the movie remained uncertain in Kansas, it was shown three times in Paris before police dug up an old law from the French Revolution to "prohibit any theatrical performance which is liable to cause disturbance of the peace."<sup>79</sup> Not even Scott who had been known to "dredge up obscure Kansas statutes to save his clients' hides" could save Kansas from *The Birth of a Nation*.<sup>80</sup> In late November, the censor board approved the showing of the film "after

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<sup>74</sup> "Swat Birth of A Nation Film: Members of Lincoln Day Club Commend State Board of Movie Censors for Rejecting Sensational Play," *Topeka Daily Capital*, February 14, 1916.

<sup>75</sup> "'Grease Skids' For A Film: Picture Long Barred from Kansas to get in Now," *Columbus Day Advocate*, June 7, 1923.

<sup>76</sup> "'Grease Skids,'"

<sup>77</sup> *Lawrence Journal-World*, quoted in *Miami Republican*, June 15, 1923.

<sup>78</sup> *Neosho Daily Sun*, June 29, 1923; "'Birth of A Nation' Not in Kansas," *Kirwin Kansan*, July 4, 1923.

<sup>79</sup> "Paris Police Stop Show," *Emporia Gazette*, September 13, 1923.

<sup>80</sup> Kluger, *Simple Justice*, 386.

many eliminations had been made.”<sup>81</sup> “Many eliminations” turned out to be five changes, and Governor Davis was now reported to be in favor of showing the film.<sup>82</sup>

Knowing that if Davis had the same desire and gumption to prevent the film as Capper and Allen did it would be stopped, Scott took his argument directly to the governor. In December he led a group of thirty African American citizens from all over the state seeking a meeting with Davis in an effort to forbid the film.<sup>83</sup> The governor was not in, but Scott’s delegation obtained mixed results from a meeting with Attorney General C.B. Griffith. The attorney general stated, “If there is anything I might do to prevent the showing of this film in Kansas, I would lose no time doing it.” However, Griffith contended, “the governor is the only official who has power to recall the picture outside the courts.”<sup>84</sup> The delegation did see Davis the next day and it was reported they “were favorably impressed with the reception.”<sup>85</sup> Nevertheless, he refused to ban the film.<sup>86</sup> With the power of the Chief Executive now behind it, *The Birth of a Nation* played in several Kansas locations in late 1923 and 1924. In October 1924, the mayor of Baxter Springs promised the NAACP the film would not show in his town, but he was allegedly intimidated by the Ku Klux Klan to allow it to show twice.<sup>87</sup> The first ever

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<sup>81</sup> “‘Birth of A Nation’ is O.K. for Kansas,” *Hutchinson News*, November 28, 1923.

<sup>82</sup> “State Censor Board Approves Famous Film,” *Kansas State News* (Topeka, KS), December 6, 1923.

<sup>83</sup> “Negro Attorneys Are Against Showing Film,” *Hutchinson News*, December 5, 1923; “Responsibility for Admitting ‘Birth of Nation,’ Given by Griffith,” *Iola Register*, December 5, 1923.

<sup>84</sup> “Responsibility for Admitting.”

<sup>85</sup> “Negroes Protest Photoplay,” *Iola Daily Register*, December 7, 1923.

<sup>86</sup> “Permit Great Movie---Kansas: State Censor Board and Davis O.K. ‘Birth of a Nation,’ Thousands of Petitions,” *Fort Scott Herald*, December 6, 1923.

<sup>87</sup> “Kansas Mayor Gets Cold Feet After Barring ‘Birth of Nation’ Film,” NAACP Press Release, undated, NAACP Papers, Part 11, Special Subject Files, 1912-1939 Series A: Africa through Garvey, Marcus.

public showing of the film in Kansas took place in Coffeyville on December 26, 1923.<sup>88</sup>

It was said to have been “favorably accepted,” and that was the problem.<sup>89</sup>

The fear that the film would be viewed as patriotic American history rather than revisionist historical fiction was realized as it miseducated audiences throughout the state. The *Kansas State News* called criticism of the film “unfair,” and stated, *The Birth of a Nation* was “the one great moving picture which truly and accurately depicts a vivid portrayal of events and historical facts that took place during the carpet bag Republican rule in the South following the Civil War.”<sup>90</sup> One columnist claimed, African Americans “should be proud of the way it pictures the loyalty of the Black race.”<sup>91</sup> A writer who had seen the movie twice stated, “the picture is the greatest ever filmed in America.” Furthermore, “it is the finest portrayal of the advancement of the colored man since the war that has ever been put into pictures.”<sup>92</sup> The money behind the film may have swayed some newspaper owners to back it. Even Nick Chiles’s *Topeka Plaindealer* promoted it, writing it showed “what wonderful progress the race has made in 60 years.”<sup>93</sup> Defending the paper’s stance, Chiles wrote, “The Daily Press spreads more poison and venomous stuff against the colored race in one day and does more harm than ‘The Birth of a Nation’

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<sup>88</sup> “Views and Reviews on ‘The Birth of a Nation’ Film, *Kansas State News* (Topeka, KS), December 27, 1923.

<sup>89</sup> “Birth Of A Nation: Famous Film at American Theatre Saturday Afternoon Night,” *Sedan Times Star*, December 27, 1923.

<sup>90</sup> “Unfair Criticism,” *Kansas State News* (Topeka, KS), December 20, 1923; “Public Letter Box,” *Kansas State News* (Topeka, KS), December 20, 1923.

<sup>91</sup> Anna Carlson, “The Vitascope,” *Manhattan Nationalist*, January 3, 1924.

<sup>92</sup> “Views and Reviews on ‘The Birth of a Nation’ Film, *Kansas State News* (Topeka, KS), December 27, 1923.

<sup>93</sup> “‘Birth Of A Nation’ At Grand Theatre, The Week of Feb. 18,” *Topeka Plaindealer*, February 15, 1924.

could do in a thousand years.”<sup>94</sup> “In Caney, Kansas, it was said the movie drew two large crowds and refreshed “your memory in matters of American history.”<sup>95</sup> The *Parsons Daily Sun* reported, “every child in Parsons will have the opportunity of seeing this historic photoplay, the management will give a special performance for them.”<sup>96</sup>

Like the Klan or a cockroach, the film made the skin crawl, and it would not die. When promoters attempted a return to Topeka in 1931 “the colored residents of this city arose almost enmasse (sic) to prevent the showing of the picture at a local theater.” Reacting to the protest, the mayor informed the theater manager “that he was not to show the picture under pain of arrest.” The film’s exhibitors turned to the courts, and Scott “headed the battery of lawyers who appeared against the film in both city and state courts.” He later noted, “All of the colored lawyers worked together” to prevent the film from playing in the state.<sup>97</sup> Eventually he was appointed by the city attorney to argue the case. Scott demonstrated how the film originated from Dixon’s racist work and claimed it had stirred up trouble each of the previous times it was scheduled to show in Kansas. Arguing on behalf of the movie distributors local Lawyer Ed Rooney argued, “the picture represented a true picture of history, especially the carpet bag Negro politician.” But Scott provided the argument’s most memorable comment when he roared, the film “was conceived in Hell and born in Georgia.”<sup>98</sup> This time his efforts were not rewarded. The

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<sup>94</sup> Nick Chiles, “The Editor of *Topeka Plaindealer* Has Been Patient,” *Topeka Plaindealer*, February 22, 1924.

<sup>95</sup> “The Birth of a Nation,” *Caney Daily Chronicle*, December 29, 1923.

<sup>96</sup> “D.W. Griffith’s ‘Birth of A Nation’ Coming to the Orpheum Theater,” *Parsons Daily Sun*, December 17, 1923.

<sup>97</sup> Elisha Scott to Walter T. Andrews, Special Legal Assistant NAACP, November 17, 1931, NAACP Papers, Administrative Files, Subject Files, Films and Plays: *Birth of A Nation*, 1931.

<sup>98</sup> *Topeka Plaindealer*, October 20, 1931.

movie company obtained an injunction ordering the mayor to allow the film to be played. Subsequently the attorney general's attempt at an injunction against showing the film failed as well.<sup>99</sup> The film played in Topeka, and Nick Chiles's daughter Thelma Chiles Taylor and several other African Americans went to see it. They were refused tickets; therefore, they filed suit against the ticket taker, the theater, and the film company. Of course, Scott's immediate goal was not focused on desegregation, he wanted to keep the film out of the state, and he knew from past experience the key to keeping *The Birth of a Nation* out of Kansas had always been the governor's office.

Scott personally went to see Governor Henry H. Woodring to ask him to do something to prevent the showing of the film, and he was quickly successful. Republicans Arthur Capper and Henry Allen had kept the movie out of Kansas, but Democrat Jonathan Davis had allowed it to show. Woodring was a Democrat. Nevertheless, he was receptive to Scott's position. According to Scott, he was present in the governor's office when Woodring made a telephone call to one of the members of the censor board, "and asked her why she had passed the picture." She explained the film had slipped through the cracks because it had been approved by the censor board in 1923. Scott stated, "I heard the Governor tell that he did not want the picture shown in Kansas and asked her to send a telegram to the Hollywood picture company, notifying them not to show the picture until a review was had."<sup>100</sup> Just as it had with Capper and Allen the censor board followed the governor's directive and refused to approve the film. Scott informed the NAACP that Woodring was the only person "of influence and power" in the

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<sup>99</sup> "'The Birth of A Nation' Played in Topeka: Kansans Are Aroused Over 'Birth of A Nation' Film," *Wyandotte Echo*, August 23, 1931.

<sup>100</sup> Scott to Andrews.

state who deserved credit for stopping the film.<sup>101</sup> Assistant Secretary Roy Wilkins at the NAACP's New York office also deserved credit, as he had written Woodring, the judges involved in the cases, and members of the censor board to plead the organization's case.<sup>102</sup> When the censor board officially banned the film, *The Birth of a Nation* was again expelled from Kansas. Democratic newspapers had blamed the influence of the Black vote on Republican politicians for the earlier bans. The *Johnson County Democrat* complained the reason the film was banned "was that it was offensive to the negro vote which has kept the Republican party in power in Kansas for more than two generations."<sup>103</sup> But that could not explain a Democrat governor taking the same action as Capper and Allen. The local and national NAACP and local Black lawyers led by Scott deserved as much credit as Scott heaped on Governor Woodring. Furthermore, Topeka's African American community had greeted the film with a large protest that set the tone for subsequent efforts to ban the film through legal and political channels. Regardless of the reason, the only extended run the film enjoyed in Kansas was in the winter of 1923

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<sup>101</sup> Scott to Andrews.

<sup>102</sup> Roy Wilkins to Harry H. Woodring, October 13, 1931, NAACP Papers, Administrative Files, Subject Files, Films and Plays: *Birth of A Nation*, 1931; Roy Wilkins to Hon. George H. Whitcomb, October 14, 1931, NAACP Papers, Administrative Files, Subject Files, Films and Plays: *Birth of A Nation*, 1931; Roy Wilkins to Judge George H. Whitcomb, October 20, 1931, NAACP Papers, Administrative Files, Subject Files, Films and Plays: *Birth of A Nation*, 1931; Roy Wilkins to Harry H. Woodring, November 2, 1931, NAACP Papers, Administrative Files, Subject Files, Films and Plays: *Birth of A Nation*, 1931; Roy Wilkins to Mrs. Myers, Chairman Kansas State Board of Motion Picture Reviews, November 5, 1931, NAACP Papers, Administrative Files, Subject Files, Films and Plays: *Birth of A Nation*, 1931.

<sup>103</sup> "Views and Reviews"; "The Birth of a Nation," *Johnson County Democrat* (Olathe, KS) December 6, 1923.

and 1924 when the Ku Klux Klan was wielding more influence than it ever had or would in the state.

Paradoxically as major newspapers and Congress condemned the Klan in the early 1920s membership numbers increased rapidly. A *New York World* expose on the misdeeds of the Invisible Empire and a Congressional investigation in the fall of 1921 pushed nationwide Klan influence to never before seen heights.<sup>104</sup> Klan leader William Simmons once bragged, “Congress made us,” but his theatrical performance before the House of Representatives in 1921 helped. He completed his Congressional testimony by asking forgiveness from the Lord for the Klan’s enemies, and dramatically collapsed unconscious. Two hundred new chapters were chartered in the next four months, and by early 1922 Klan membership was more than one million people.<sup>105</sup> By way of comparison, the NAACP had about one hundred thousand members in 1922.<sup>106</sup> The Klan was making up for lost time, and Coffeyville was at the center of much of its activity in Kansas.

The Montgomery County KKK was aggressive and highly visible. As the 1923 school year approached, the county was buzzing with Klan activity. On August 3, a local newspaper carried a warning that the Klan would be on the lookout for those caught “petting” or “spooning” in automobiles. The article stated, “Parents of young girls are

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<sup>104</sup> The major newspaper expose of the Klan was run by the *New York World* in twenty-one parts between September 6 and September 26, 1921. Simmons testified before the House of Representatives in October 1921.

<sup>105</sup> Southern Poverty Law Center, “Ku Klux Klan: A History of Racism,”

<https://www.splcenter.org/20110228/ku-klux-klan-history-racism#fear%20and%20violence>, Retrieved December 14, 2022.

<sup>106</sup> “Allen Congratulated,” *Independence Daily Reporter*, October 30, 1922.

warned to keep daughters at home.”<sup>107</sup> A few days later local Klansmen demonstrated the warning was not just talk by donning their masks and robes and burning a cross in an area known for such activity.<sup>108</sup> The burning cross was a dramatic effect taken directly from *The Birth of a Nation* and adopted by the new Klan. Simmons’s reinvented Klan had a Hollywood flair. In fact, the Klan of the early 1920s was as conspicuous as a secret society has ever been. They recruited openly, campaigned for politicians, and attempted to make their leaders national celebrities.

A visit from one Klan celebrity kicked off a frenzy of KKK activity in Coffeyville. On August 5, 1923, it was announced Imperial Wizard, Dr. Hiram Wesley Evans, a former Dallas dentist would pay a visit. The *Daily Free Press and Times* made it sound like Teddy Roosevelt had risen from the grave. Public property like the town plaza and circus grounds would be used for the visit, and the “distinguished visitor” would be provided a reception and a tour of the town.<sup>109</sup> A national day of mourning and prayer caused the rally to turn into a memorial for former President Warren G. Harding who had recently passed away, but after Evans finished his eulogy Judge Clement A. Reed brought him back to the stage to talk about the Klan.<sup>110</sup> Following his speech, “thousands of people” surrounded him wanting to shake his hand. He shook hands “for more than an

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<sup>107</sup> “Klan Against ‘Petting,’” *Caney Daily Chronicle*, August 3, 1923.

<sup>108</sup> “To Stop Petting Parties,” *Daily Free Press and Times* (Independence, KS), August 7, 1923.

<sup>109</sup> “Imperial Wizard coming,” *Daily Free Press and Times* (Independence, KS), August 5, 1923.

<sup>110</sup> “Imperial Wizard in a Harding Eulogium,” *Coffeyville Daily Journal*, August 11, 1923.



hour.”<sup>111</sup> The crowd was estimated to be between three and five thousand people.<sup>112</sup> Less than a week later, a Klan rally in tiny Elk City featuring an electric cross and a burning cross attracted as many as fifteen hundred locals.<sup>113</sup> On August 30, “\$500 was subscribed within five minutes,” at a large Klan meeting near Independence.<sup>114</sup> On September 14, 14,060 people gathered for a rally that featured airplanes and fireworks. The attendance was an exact figure as “an indicator similar to those used in a streetcar was used” to count everyone who entered. 200 new members “were made citizens of the Invisible Empire,” and “the entire field was lit up with beautiful fiery crosses, and a huge electric K.K.K. in red, white, and blue.” The speaker was a Dr. Plummer from Atlanta, and “he told why one hundred percent Americans should be for white Supremacy.”<sup>115</sup> Four days later, when Victoria Thurman went to enroll at the new Coffeyville junior high school white robes were still drying on clothes lines.

Thurman attempted to enroll at Roosevelt Junior High on September 18, 1923, but she was stopped by the principal who ordered her to report to the segregated Cleveland School. Fully aware that her daughter was entitled to attend Roosevelt, Celia Thurman-Watts contacted Scott. Within three days, he filed a lawsuit seeking to force Coffeyville school officials to enroll Victoria Thurman at the new school. He cleverly avoided a certain loss in Coffeyville’s local courts by convincing the Kansas Supreme Court that

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<sup>111</sup> “Thousands Heard Wizard Evans in Harding Tribute,” *Daily Free Press and Times* (Independence, KS), August 11, 1923.

<sup>112</sup> “Imperial Wizard.”

<sup>113</sup> “Klan Meeting Near Elk City,” *Elk City Sun*, August 17, 1923.

<sup>114</sup> “Local Ku Klux Klan to Stage Big Initiation,” *Daily Free Press and Times* (Independence, KS), August 31, 1923.

<sup>115</sup> “Thousands Witness Great Ku Klux Klan Ceremonies: Amid Scenes of Fiery Crosses Big Class Enter Invisible Empire,” *Daily Free Press and Times* (Independence, KS), September 15, 1923.

because the education of children was at stake time was of the essence, therefore, the case should proceed directly to the state's highest court.<sup>116</sup> The members of the school board and Superintendent A.I. Decker were ordered to appear before the Supreme Court on October 1 to "show cause if any, why a peremptory writ of mandamus should not issue, and to bring with them their authority, claiming and denying Victoria Thurman, a colored girl of Coffeyville, the right to enter the junior high school."<sup>117</sup> The writ of mandamus is used to force a government official to do her or his job. In this case, Scott was attempting to force the Coffeyville officials to fulfill their duties to educate Victoria Thurman and other Black students in the ninth grade or legally justify their behavior.

Scott's petition explained the impracticality of ninth grade students attending Cleveland School, and laid out why keeping Black students out of Roosevelt school was against the law. His friend Nick Chiles helped him gain public attention by printing the petition in the *Plaindealer* the same day that it was submitted to the Kansas Supreme Court. Scott wrote that at Cleveland the ninth grade would be moved to the principal's six by ten-foot office which was in actuality a cloak room.<sup>118</sup> The principal who did not have a college degree would teach ninth grade. Furthermore, the school did not have a "gymnasium nor manual training room, no facilities for domestic art, in fact nothing to constitute any part of a Junior High School." Even on paper, Scott could not resist a bit of hyperbole. He stated, Cleveland School "is in deplorable condition and is a disgrace to civilization." The reason Victoria Thurman was forced to attend such a school was her

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<sup>116</sup> "Affidavit of Elisha Scott," September 21, 1923, *Thurman-Watts v. Board of Education* case file.

<sup>117</sup> "Negroes Mandamus Board of Education: Seek Admission to New Roosevelt Junior High School Building," *Coffeyville Daily Journal*, September 22, 1923.

<sup>118</sup> "Testimony of Victoria Thurman," *Thurman-Watts v. Board of Education* case file.

color and her color alone. Scott stated, Victoria Thurman “has taken every step necessary for admission and has been refused each time, on account of being of African descent and colored.”<sup>119</sup> The mention of teacher quality and facilities were not necessary. Kansas law said schools outside of Kansas City could not operate segregated high schools, if Thurman was academically qualified (she was an honor student) and ninth grade was part of high school—she had to be admitted.<sup>120</sup> The motives of Coffeyville’s school officials were equally irrelevant, but Scott decided to pull the pointy white cap off of them as well.

According to Scott, the Ku Klux Klan was running Coffeyville’s schools. He claimed, “A.I. Decker, superintendent of said school and all of the members of the Board of Education, except one, are generally known to be members of the Ku Klux Klan and are maliciously prejudiced to the plaintiff and her daughter, by reason of their race and color.”<sup>121</sup> It was not the first time Coffeyville school officials had been accused of being complicit in Klan activities. In 1922, they were said to have allowed the Klan’s women’s auxiliary to use school buildings for meetings.<sup>122</sup> None of the members of the school board nor Superintendent Decker bothered to publicly deny Scott’s allegations. They simply claimed that ninth grade was not part of high school; therefore, they could legally segregate students until they reached tenth grade.<sup>123</sup> By accusing school officials of Klan membership, Scott demonstrated he had the guts of a burglar and the subtlety of an

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<sup>119</sup> “Plaintiff’s Petition for Peremptory Writ of Mandamus,” *Thurman-Watts v. Board of Education* case file, “Plaintiff’s Petition for Peremptory Writ of Mandamus,” *Topeka Plaindealer*, September 21, 1923.

<sup>120</sup> “Plaintiff’s Petition.”

<sup>121</sup> “Plaintiff’s Petition;” “Writ of Mandamus.”

<sup>122</sup> “Allen Takes a Hand,” *Morning News* (Coffeyville, KS), October 14, 1922.

<sup>123</sup> “Defendant’s Answer to Petition for Preliminary Writ of Mandamus,” *Thurman-Watts v. Board of Education* case file.

elephant. He knew the case boiled down to a simple interpretation of the statute. If ninth grade was part of high school the Black parents would win, if it was not, they would lose. If they lost, he could fall back on *Plessy v. Ferguson* and try to force Coffeyville to equalize facilities. In none of those scenarios were the motivations or affiliations of the school board necessary. But the KKK was spreading like a prairie fire. The organization was attempting to convince the public their bigotry was American patriotism rooted in family and religious values, and it was working. By the mid-1920s the FBI estimated “the group boasted several million members.”<sup>124</sup> Scott saw an opportunity to expose the Coffeyville officials and educate the public on the real motives of the Klan; therefore, he took it.

By dragging the Ku Klux Klan into the Coffeyville school case Scott was interjecting himself into a statewide battle against the Klan’s attempt to gain a foothold in Kansas. The Klan of the 1920s was adept at adjusting its recruiting strategies to local needs, and in Kansas they focused heavily on Black workers being hired by the railroads to replace white strikers.<sup>125</sup> It was during this time that Scott represented a Black man who replaced a Santa Fe Railroad striker, and the KKK responded by burning a cross in front of the Scott family home.<sup>126</sup> Crosses burned all over Kansas in the early 1920s, and membership in the Klan increased as they did. By 1924, they claimed to have a statewide

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<sup>124</sup> “KKK Series,” <https://www.fbi.gov/history/famous-cases/kkk-series>, Retrieved December 15, 2022.

<sup>125</sup> Richard E. Jones, “The Politics of the Ku Klux Klan in Kansas During the 1920s,” Master’s Thesis (Emporia State University, 2007), 7.

<sup>126</sup> John Scott, interview.

membership of more than 100,000 people.<sup>127</sup> But Scott and his Republican allies maintained a constant battle against Klan infiltration.

Governor Henry Allen made keeping only one K in Kansas a priority. And despite choosing not to run for governor in 1922, he was the main reason the Klan did not gain as much influence in Kansas as it did in other western states. As the Klan was working to recruit members in Kansas, he stated, “If there were any law or any way I could do it, I would run every member of the Klan out of Kansas.”<sup>128</sup> When Arkansas City, Kansas, wanted to hold a Klan parade in July 1922, Allen used a railroad strike as justification to ban the demonstration.<sup>129</sup> He went further when he claimed, “the appearance of masked men in any community constitutes a disturbance of the peace” under Kansas law meaning masked parades would be considered illegal.<sup>130</sup> That September he sent a special investigator to examine the Klan in Arkansas City after he received “reports that the Klan had threatened to tar and feather citizens.”<sup>131</sup> Allen also ordered the attorney general to conduct an investigation in Montgomery County, when he blamed the KKK for flogging the mayor of Liberty, Kansas. He stated, “Whether the whipping of the mayor was an act of members of the Klan or merely those using the disguise, the responsibility is upon the shoulders of those who employ disguise and preach right of mobs to take the law into their own hands.”<sup>132</sup> In a late October speech in Winfield he caused two hundred Klan

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<sup>127</sup> Jones, “Politics of the Ku Klux Klan,” 16-17.

<sup>128</sup> “Gov. Allen Denounces the Ku Klux,” *Morning News* (Coffeyville, KS), October 28, 1922.

<sup>129</sup> “Klan Notify Parade is Off,” *Arkansas City Daily News*, July 6, 1922.

<sup>130</sup> “Ku Klux Klan: Governor Bans Mask Wearing in State,” *Arkansas City Traveler*, July 8, 1922.

<sup>131</sup> “Lawless Gang to be Investigated by the Governor,” *The Morning News* (Coffeyville, KS), September 30, 1922.

<sup>132</sup> “Allen Flays the Criminal Klux,” *Morning News* (Coffeyville, KS), October 17, 1922.

sympathizers to leave the hall when he asked how “any grown man could see any sense of running around with a nightgown and mask on.”<sup>133</sup>

Allen’s next move was to use his power to remove the Klan from Kansas. With a speech in Coffeyville, he demonstrated that while Klan members were crying for rule by pure Americans, they were destroying the ideals that the country was built on. He stated,

Men in a self-governed democracy must have a love of liberty, and this love must extend to the liberty of others. Self-governing people must have the spirit that makes them self-controlled. If we deliberately allow this organization to take the law into its own hands, then we break down all the safeguards of society which have been built here through the sanctity of government. We allow the beginning of a feud that is racial and religious; we justify the establishment of a quarrel that leads to group formation, make civil war upon each other in the name of racial and religious bigotry. We destroy the foundation of society.<sup>134</sup>

Finally, he vowed he would order the attorney general to commence a lawsuit seeking to ban the Ku Klux Klan in Kansas.<sup>135</sup>

The key to Attorney General Richard J. Hopkins’s petition to ban the KKK was that it considered the Klan a Georgia corporation meaning they had to apply to the state charter board for permission to do business in Kansas. Hopkins also argued that the Klan should be banned because it was traditionally known to be an organization that threatened, intimidated, and injured individuals who it deemed enemies.<sup>136</sup> In January

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<sup>133</sup> “Gov. Allen Denounces.”

<sup>134</sup> “Governor Allen Starts a Suit Against the Hooded Hoodlums to Oust Them,” *Morning News* (Coffeyville, KS), October 29, 1922.

<sup>135</sup> “Governor Allen Starts.”

<sup>136</sup> Charles Williams Sloan Jr., “Kansas Battles the Invisible Empire: The Legal Ouster of the KKK from Kansas, 1922-1927,” *Kansas History: A Journal of the Central Plains*, vol. 40, no. 3 (Fall 1974). Article was read from a transcription on the Kansas Historical Society Website. Retrieved December 10, 2022. <https://www.kshs.org/p/kansas-battles-the-invisible-empire/13247>

1923, the state charter board denied the Klan its charter.<sup>137</sup> As litigation slowly moved through the courts, the Klan continued to recruit members and intimidate and attack their enemies in Kansas.<sup>138</sup> They also entered politics; therefore, by the time the Kansas Supreme Court ruled in favor of the state in 1925, Klan candidates had won control of the Senate, and Republican Ben S. Paulen who was supported by the KKK was governor.<sup>139</sup> The Kansas Supreme Court ousted the Klan because it ruled the organization was a foreign corporation meaning it was required to obtain a charter to do business in the state. The opinion made no mention of the allegations of violence and intimidation.<sup>140</sup> With no charter the Klan attempted to exploit its newfound political power. A bill that would have stripped the charter board of its powers thereby allowing the Klan to operate in Kansas passed in the Senate, but it was narrowly defeated in the House. Not willing to concede defeat, Klan leaders again applied for a charter. They were again denied. When they failed to get pro-Klan candidates for attorney general and secretary of state through the 1926 primaries their only hope rested with the U.S. Supreme Court. The High Court determined they would not hear the Klan's appeal because it did not present a question of federal law—Kansas's charter board was free to decide who could do business within the state. Therefore, the Klan was finally legally booted out of Kansas.<sup>141</sup> But in 1923, the

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<sup>137</sup> "Gov. Allen's State Denies Ku Klux Klan A Charter," *Chicago Defender*, January 20, 1923.

<sup>138</sup> Jones, "Politics of the Ku Klux Klan," 15-16.

<sup>139</sup> *State v. Knights of the Ku Klux Klan*, Kansas Reports, v. 117, pp. 569-578; "Ku Klux Klan Ousted From State of Kansas," *Chicago Defender*, January 17, 1925; Sloan, "Kansas Battles the Invisible Empire."

<sup>140</sup> *State v. Knights of the Ku Klux Klan*; Sloan, "Kansas Battles the Invisible Empire."

<sup>141</sup> Sloan, "Kansas Battles the Invisible Empire."

organization cast its ugly white robed shadow over the case of *Thurman-Watts v. The Board of Education*.

Scott's claim that some Coffeyville School Board members were also members of the Ku Klux Klan was proven true. His petition for the Writ of Mandamus claimed that four of the five school board members and Superintendent A.I. Decker were Klan members. Under oath, one school board member admitted to being a former member and Scott got two more, including the board president, to admit they were currently Klan members.<sup>142</sup> Defendant's Attorney A.R. Lamb never objected to Scott's questions about Klan membership. He did, however, try to draw a comparison between the Klan and the NAACP. After board member A.E. Hasting admitted to Klan membership, Lamb asked him if he was a member of the NAACP. After Hastings denied being a member, Lamb asked twice if he had ever applied for membership in the NAACP then asked, "if your name is upon the roll of that organization do you know anything about it?" Hastings again said no.<sup>143</sup> Later Lamb asked a Coffeyville NAACP member if the NAACP was paying to litigate the case. The witness said no, and Scott was quick to point out the NAACP was not a Black organization as Senator Arthur Capper and other white Kansans were members.<sup>144</sup> Lamb's repeated questioning about NAACP involvement in the case demonstrated that even in Kansas where Capper was a vocal member of the organization many whites seemed to think its goals were no different than the violent ambitions of the

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<sup>142</sup> Testimony of A.A. Bessey, F.M. Mercer, T.E. Perry, Albert Martin, A.E. Hasting, and A.I. Decker, *Thurman-Watts v. Board of Education* case file. F.M. Mercer admitted to being a past member of the Klan, while T.E. Perry and A.E. Hastings admitted to being current members.

<sup>143</sup> "Testimony of A.E. Hastings," *Thurman-Watts v. Board of Education* case file.

<sup>144</sup> "Testimony of Will Hale," *Thurman-Watts v. Board of Education* case file.



Klan. Superintendent A.I. Decker denied being a member of the KKK, but he did all he could to obfuscate when Scott asked him about the structure of Coffeyville's schools.

Well aware that the case hinged on whether the ninth grade was commonly considered part of high school Decker everything he could to keep from admitting that it was. While Decker was on the stand, he and Scott had several heated exchanges with Decker playing ignorant or answering questions not asked. When Decker attempted to deflect questions about whether the ninth grade was part of high school, Scott refused to move on until he got the admission he wanted.

MR. SCOTT: Now Mr. Decker, I will ask you if you don't know positively that the Ninth Grade is under our law, designated and considered a high school grade?

MR. LAMB: We object to that, invading the province of the Court, that is one of the propositions the Supreme Court will have to pass upon in this lawsuit.

MR. DECKER: The judgment of the authorities with whom I have talked said it would have to be decided as to when this elementary, intermediate, and high school work were not the Ninth Grade, or whether the Ninth grade would be intermediate or High School grade; that is a question for legislators and the courts to decide.

MR. SCOTT: During the 19 years that you have been in the school work and up until recently when you classified the schools in Coffeyville you didn't so consider the Ninth Grades as High School grades?

MR. LAMB: The basis of the different classifications in the schools in which this witness has taught have not been shown and without that basis for classification his answer would not be able to enlighten the court as to the conditions here.

MR. DECKER: During the eight years in which I was Superintendent of the Fredonia City Schools, the grades usually taught in the high school began in the seventh grade and continued over a long period and many subjects sometimes taught in the seventh and eighth grades were often taught in the ninth and tenth grades. I did not so consider the classification of the schools there as the subjects were not taught in that order. We considered the seventh and eighth and ninth grades as intermediate and the tenth and eleventh and twelfth grades as high school for the eight years I was in that city.

MR. SCOTT: What was the rule previous to that eight years?

MR. DECKER: For that eight years?

MR. SCOTT: Yes, that you have just testified about?

MR. DECKER: The common rule of eight and four. Educators over the country are adopting the change and doing it everywhere, and it is being done legally in some states, the six and three and three. If you will look it up you will find that is the rule.

MR. SCOTT: I don't care anything about what the educators are doing over the country. I want the custom in Coffeyville. I want the rule that you adopted.

MR. DECKER: Well that was twelve years ago, we had a division of the eight and four.

MR. SCOTT: What do you mean eight and four?

MR. DECKER: I mean eight grades and four grades.

MR. SCOTT: Then the ninth grade was the high school grade?

MR. DECKER: Yes, of course, that is what they were, but we didn't call it a high school grade, we called it elementary.

MR. SCOTT: What did they call it?

MR. DECKER: They call them grades, one, two and three up to twelve.

MR. SCOTT: Well, you don't answer my question.

MR. DECKER: I have tried to, honestly.

MR. SCOTT: Well you say eight and four. Then the first year in high school you would consider it the ninth grade?

MR. DECKER: They call it the four upper grades.

MR. SCOTT: Let's get between the eighth grades.

MR. DECKER: The first eight grades are common or elementary schools and the four grades are second school.

MR. SCOTT: After you leave the eighth grade and go to the ninth grade what is the next grade?

MR. DECKER: The ninth.

MR. SCOTT: Then when you leave the eighth grade and go to the High School it is the ninth grade?

MR. DECKER: I believe I have tried to answer that fairly.

MR. SCOTT: I take off my hat to you as being a witness on that proposition. You know how to answer it and won't do it. The first eight grades are common school?

MR. DECKER: Yes sir.

MR. SCOTT: The high school?

MR. DECKER: Yes sir, the second school.

MR. SCOTT: Then the first of the four that you enlightened me on was the ninth grade, numerically speaking, is that right?

MR. DECKER: I don't understand you.

MR. SCOTT: Eight and one is nine?

MR. DECKER: Yes sir.

MR. SCOTT: When you left the eighth grade you go to the ninth?

MR. DECKER: I will just simply say this, the first eight grades are common elementary schools. The grades nine, ten, eleven, and twelve are high school.

MR. SCOTT: Then the ninth is the first year in the high school?

MR. DECKER: Yes Sir.<sup>145</sup>

Decker had forced Scott to play Lou Costello to his Bud Abbott in a courtroom “Who’s on First?”. But Scott won the game because he refused to let go of the question until Decker stated on the record that the ninth grade was considered part of high school. It mattered greatly because Coffeyville could not legally segregate high school students. They could, however, compel students to attend school, and the testimony of several Coffeyville parents revealed that Scott’s suit against the school board was part of a larger protest.

When witnesses’ statements were taken in November, Celia Thurman-Watts was revealed to be one of the leaders of a quiet protest against the school board’s attempt to expand segregation. She first began to hear rumors Black children would not be allowed to attend the new Roosevelt School during the summer and confronted Superintendent Decker directly. When she was told, Black students would have to attend Cleveland School, she chose to lead her daughter and other students to Roosevelt to attempt to register on two separate occasions.<sup>146</sup> When her daughter was denied the right to attend

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<sup>145</sup> Testimony of A.I Decker, *Thurman-Watts v. Board of Education* case file.

<sup>146</sup> “Testimony of Celia Thurman-Watts,” *Thurman-Watts v. Board of Education* case file; Testimony of Violet Sanders, *Thurman-Watts v. Board of Education* case file.

Roosevelt, the mother of five did more than simply hire an attorney. As Scott was legally challenging the actions of the Coffeyville school board, several of Coffeyville's Black parents were arrested for failing to send their children to the segregated ninth grade at Cleveland school. Scott filed suit on September 21, and on September 24, thirteen African American parents were arrested for violating the compulsory school attendance law.<sup>147</sup> Testimony revealed the names of four arrestees—all women.<sup>148</sup> Among those arrested was Celia Thurman-Watts. On the witness stand Thurman-Watts articulated the position of the parents who refused to send their children to any school but Roosevelt.

MR. LAMB: Is that the purpose of this suit to get your daughter to attend school in the Roosevelt building?

MRS. THURMAN-WATTS: To get all the colored in there that belong over there.

MR. LAMB: Your daughter and anyone else that belongs over there?

MRS. THURMAN-WATTS: Yes

MR. LAMB: Is it your idea that you have a right to designate where your daughter should attend school?

MRS. THURMAN-WATTS: It is my idea that I should have everything I pay for, yes, I think she should go there.

MR. LAMB: Is it your idea you should have a right to designate the school that she should go to?

MRS. THURMAN-WATTS: Yes, when I pay for it.

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<sup>147</sup> Rosenblum, "Unlocking the Schoolhouse," 45. Rosenblum found these records in the Criminal Appearance Dockets for the City Court of Coffeyville.

<sup>148</sup> "Testimony of Ella Cartwright," *Thurman-Watts v. Board of Education* case file.

MR. LAMB: It is your idea you should send your daughter to the Roosevelt Building even though it is a half mile to a mile farther from the Cleveland Building?

MRS. THURMAN-WATTS: Yes, even if it is a thousand if I pay for it, I expect to get it.<sup>149</sup>

With Thurman-Watts leading them, Coffeyville's Black parents participated in a mostly silent protest against the school board by keeping their children out of school for more than four months. At least twenty Coffeyville students never acquiesced to attending the segregated ninth grade, therefore, they were still out of school when Scott finally got to argue the case before the Kansas Supreme Court in January 1924.<sup>150</sup>

In the oral argument before the Supreme Court Scott's full set of skills were on display. He won points of law and style points with the judges. The *Topeka Plaindealer* drew a striking comparison between Scott's eloquence and Attorney Lamb's boorishness. The newspaper reported, Scott "quoted from the brief of the Attorney A. R. Lamb...who lowered the dignity of the good people of Coffeyville by referring to the colored people as being filthy, only taking a bath once in ten years." Furthermore, Lamb "was a laughing stock for the court. He addressed the Court as you fellows...(and) spoke as if the Court was behind the times. When the Court began to grill him on the law and facts in the case he began to flounder like a puddle duck and showed himself to be a pettifogger." The *Plaindealer* reported that Scott was the opposite. "He argued the case before those seven Supreme Judges as though he was skating on ice. His flow of oratory and English

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<sup>149</sup> Testimony of Celia Thurman-Watts, *Thurman-Watts v. Board of Education* case file.

<sup>150</sup> Application For Citation Order Against the Defendants, March 1924, *Thurman-Watts v. Board of Education* case file. The blank for the exact day of the application is empty. It is unclear how many of the students who stayed out of school were under the age of sixteen and, thus, subject to the compulsory school attendance law.

language was at his command...the attention of the entire court was attracted by his forceful argument from start to finish.” Scott “quoted from both briefs and abstracts of the contending parties as well as citations from various decisions of Kansas and other states upholding his contention.” His argument made the simple point he had been stressing all along: the ninth grade was part of high school; therefore, it could not be segregated.<sup>151</sup> With the Coffeyville students still out of school it was a long wait for the Supreme Court to render a decision.

In February, Kansas’s highest court ruled in favor of Celia Thurman-Watts. The *Plaindealer* reported, the Supreme Court “upheld every contention” in Scott’s argument and gloated that the Coffeyville school officials disgraced “the name of the late President Roosevelt” by naming the school after him.<sup>152</sup> Justice Richard J. Hopkins wrote the opinion, and his reasoning closely followed Scott’s argument. He stated, the case turned on whether the ninth grade was part of high school, and he made clear school officials had no power to go beyond what was allowed by statute in their decisions about segregation.<sup>153</sup> Hopkins also noted, Coffeyville’s own reports to the state superintendent of public instruction showed they were operating under a system that defined the first eight grades as elementary school and the last four grades as high school during the school year ending in June 1923.<sup>154</sup> Next Hopkins did something rarely seen in a appellate court opinion; he directly quoted an exchange between a lawyer and a witness.

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<sup>151</sup> “Educational Rights of the Colored Race is Jeopardized,” *Topeka Plaindealer*, January 11, 1924.

<sup>152</sup> “Text of Opinion and Syllabus of the Court in the Coffeyville, Kansas, School Law Suit,” *Topeka Plaindealer*, February 1, 1924.

<sup>153</sup> *Thurman-Watts v. Board of Education*, 115 Kan. 328 (1924), 329.

<sup>154</sup> *Thurman-Watts*, 331.

It was a truncated version of Scott's wrangle with Superintendent Decker over whether he considered ninth grade part of high school.<sup>155</sup> Hopkins used Decker's admission that the ninth grade was a high school grade to transition to his final ruling. He wrote, "the junior high school of Coffeyville may be an intermediate school between the elementary grades and the senior high school. It is clear, however, that the ninth grade...is still part and parcel of the high school...It is equally clear that, under existing statutes, the defendants may not separate white and colored pupils in the high school because of their color."<sup>156</sup>

The victory was immeasurably important. Coffeyville's school officials were determined to push Kansas schools a step closer to full-fledged Jim Crow segregation and they had local law enforcement and the Ku Klux Klan behind them. With the Klan gaining power across the country and in Kansas, the case was a tipping point. The Klan was as powerful as it would ever be in Kansas in 1924, and Coffeyville had public officials who seemed happy to move the work of local government from city hall to a wheat field lighted by a burning cross. A win for Jim Crow would have emboldened similar efforts across the state. Instead, the Court's decision sparked a flurry of anti-Jim Crow activity. According to Scott, the victory produced positive change throughout the state. He wrote the NAACP that "Immediately after the publication of that opinion (by the court against segregation) many towns of Kansas threw open their doors to colored pupils that heretofore have been closed." Examples included African American children being allowed access to Wichita's public swimming pools.<sup>157</sup> The NAACP heaped praise

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<sup>155</sup> *Thurman-Watts*, 332.

<sup>156</sup> *Thurman-Watts*, 332-33.

<sup>157</sup> Undated Article in Unnamed Newspaper, Northern California Branch News Clippings, 1920-25, NAACP Papers, Part 12, Selected Branch Files 1913-1939.



upon Scott for setting important precedent in the Kansas Supreme Court, but his work was far from over.

Coffeyville's school officials were outsmarted by Scott and the determined cadre of Coffeyville parents at every turn, but in a move that foreshadowed the massive resistance the *Brown* decision would spark, they refused to give up. First, they claimed the court order did not force them to allow the students to attend Roosevelt but only to operate desegregated ninth grades at all three local schools. In a petition to rehear the case Lamb complained, "What control or what charge has the Board of Education left over this particular student in the face of this court's order requiring them to admit this girl regardless of her residence in the city or her educational qualifications." When these objections were made to Scott, he was incredulous. He sent Lamb the following telegram: "Are you requiring actual issuance of preemptory writ commanding Board of Education to admit colored children in Roosevelt High School Building? If unfamiliar with the rule call any justice of the Supreme Court for information."<sup>158</sup> The motion for rehearing was denied, and the Writ was issued ordering Coffeyville's school officials to admit the African American students to Roosevelt.<sup>159</sup> But, again, Scott's work was not finished.

When the students who had been out of school since finishing eighth grade in June reported to school in February, they were informed they would have to take five standardized tests in order to be admitted. Only three students passed the tests, and those students had previously taken ninth grade classes. Scott immediately asked the Supreme Court to jail Decker and the members of the school board for contempt. He wrote,

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<sup>158</sup> Petition for Rehearing, *Thurman-Watts v. Board of Education* case file.

<sup>159</sup> "No Segregation in High School," *Chanute Weekly Tribune*, February 15, 1924.

All of said pupils had been out of school for a term and had no notice, knowledge nor information of any tests to be given that day...said tests were unfair, unjust, unreasonable, and oppressive, and were given for the sole purpose of defeating the order of this Honorable Court...the very letter of the law of the decision of this Honorable Court is being viciously and maliciously violated by defendants...especially A.I. Decker, the superintendent.<sup>160</sup>

By hiding behind the results of the standardized tests and asking for Scott's contempt charge to be continued, the school board avoided admitting the students for the entire school year. The Associated Press reported, Lamb claimed the board was not properly served and he had no time to prepare due to other cases.<sup>161</sup> When they finally heard the contempt charge, the Supreme Court justices refused to cite Coffeyville's officials for contempt, but they did order that the students had to be admitted to Roosevelt in the fall of 1924.<sup>162</sup> Finally, the Court approved Scott's motion for one thousand dollars in legal fees to be paid by the Coffeyville school board.<sup>163</sup> He, therefore, allowed the Coffeyville NAACP branch to keep two hundred of the five hundred dollars they owed him.<sup>164</sup> He was in Oklahoma handling an oil case when the school board's check arrived that August.<sup>165</sup> It is impossible to image that he did not thoroughly enjoy spending it.

In Topeka the school board operated schools according to the letter of the law as dictated by *Thurman-Watts*, but their administration of schools was not in keeping with the spirit of *Thurman-Watts*. The school board moved white students to junior high school

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<sup>160</sup> Application for Citation Order Against the Defendants, *Thurman-Watts v. Board of Education* case file.

<sup>161</sup> Associated Press, "Board in Contempt? Coffeyville High School Refuses to Admit Colored Pupil to Classes," *Iola Register*, May 26, 1924.

<sup>162</sup> "Hon. Elisha Scott Handles Big Oil Case," *Topeka Plaindealer*, August 8, 1924.

<sup>163</sup> "Court Allows Negro Lawyer Fees of \$1,000," *Emporia Gazette*, July 5, 1924.

<sup>164</sup> "NAACP Lawyer Waives \$200 of Fee," *New Journal and Guide* (Norfolk, VA), January 17, 1925.

<sup>165</sup> "Hon. Elisha Scott."

for grades seven, eight and nine; while leaving Black students in their respective elementary schools for grades seven and eight before moving them to junior high school for grade nine. Therefore, the four grades that traditionally made-up high school were integrated in keeping with Kansas law and the *Thurman-Watts* decision. Black students attended well maintained elementary schools staffed with qualified teachers. The Buchannan school in Tennesseetown which is now the location of the *Brown v. Board of Education* National Monument was an example of a quality facility for the education of Black students from kindergarten to eighth grade. But excellent facilities and teachers did not mean African Americans were receiving everything they desired from the Topeka board of education.

January 29, 1940, Oaland Graham, a twelve-year-old Topekan having recently been promoted from sixth grade at Buchannan elementary school attempted to enroll in the white Boswell junior high school. He was denied due to his race. The attempt was more than likely preplanned because Attorney William Bradshaw filed suit the same day. Following the same procedure as Scott used in Coffeyville, Bradshaw filed for an alternative writ of mandamus demanding that school officials admit Graham to Boswell school or appear in court in February and show cause for failing to admit him.<sup>166</sup> Just as they did in *Thurman-Watts*, the Supreme Court appointed a commissioner to take testimony, gather evidence, and make a recommendation to the Court. The case languished in the courts for more than one year. The commissioner recommended that the motion for writ of mandamus was not supported by the evidence or law; therefore, it

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<sup>166</sup> “Superintendent and Principal Must Admit Negro Student or Tell the Court Why,” *Kansas City Plaindealer*, February 2, 1940.

should be denied. Specifically, he found the seventh and eighth grades were not part of high school, therefore, they could be segregated.<sup>167</sup> Bradshaw, now working with a white lawyer named Tinkham Veale who was president of the Shawnee County bar association, asked for the recommendation to be set aside and for Graham to be admitted to Boswell.<sup>168</sup>

Finally, in June 1941, the Supreme Court ruled in favor of Graham. They found, “the education facilities offered at Boswell junior high school do not differ from those at Buchannan school except in size and capacity of the building and equipment.”<sup>169</sup> However, the junior high school method of offering courses according to teacher specialty was superior to the system used at Buchannan and other elementary schools in which one teacher taught all of the subjects. Therefore, the chief justice wrote, “It will not do to say to one American citizen, you may not have the benefits of an improved method of education because of your race, when at the same time citizens in the same school district are being accorded those benefits.” The decision was demonstrative of Kansas officials’ desire to adhere to *Plessy v. Ferguson*. The Court ruled in Graham’s favor, but they did not order him admitted to Boswell. Thus, the decision gave the school district the opportunity to equalize educational methods. It also led to a bitter debate in the Black community.

Scott led a large group of Black parents and teachers who were vehemently opposed to integrating junior high schools. The fight split the community. Oaland

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<sup>167</sup> “Motion for Judgment in Jim-Crow School Case,” *Kansas City Plaindealer*, February 14, 1941; *Graham v. Board of Education of City of Topeka et al.*, 153 Kan. 840 (1941).

<sup>168</sup> “Motion for Judgment;” “Rule Pupil Can Attend White Junior High,” *Kansas City Plaindealer*, June 20, 1941.

<sup>169</sup> *Graham v. Board of Education*, 845.

Graham's father Ulysses S. Graham was among the leaders of the struggle for integration, and he and Scott had known one another for more than forty years. Graham was four years older than Scott, and they had both grown up in Tennesseetown where they starred in Charles Sheldon's Village Improvement Society contests.<sup>170</sup> The physical fight that Lester Goodell and Bradshaw had during Scott's embezzlement hearing was also probably partially fueled by the school fight. Bradshaw was opposed by Goodell who represented the school board in the *Graham* case, and the embezzlement case took place just a few months after the school case concluded.<sup>171</sup> The Topeka NAACP was also divided over the issue. Attorney Raymond Reynolds wrote the national NAACP complaining that the teachers had stuffed the ballot box in order to elect Scott NAACP president because he would use the decision to help them avoid desegregation. While it is unclear if Scott used the power of his NAACP office to halt the desegregation order, he was the spokesperson for those who opposed desegregating junior high schools.

Scott appeared before the school board June 23, 1941, and made an impassioned argument for maintaining segregated junior high schools. He had never been completely convinced that desegregation would provide the best education to Black children. In 1930, he defied the NAACP when he refused to file a desegregation suit against a clearly illegally segregated school system in Baxter Springs, Kansas. NAACP Director of Branches Robert Bagnall warned Baxter Springs's parents he felt it was "exceedingly

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<sup>170</sup> "Dr. Sheldon's Work," *Topeka Plaindealer*, October 20, 1899.

<sup>171</sup> "Attorney Scott Denies Embezzlement Charges: Lawyer Stands Ready To Help Former Client," *Kansas City Plaindealer*, September 19, 1941; "Topeka Judge Stops Fight In Court: White Lawyer Hits Bradshaw In Scott Trial," *Kansas City Plaindealer*, November 11, 1941.

unwise for the branch to accept a separate school.”<sup>172</sup> But parents in Baxter Springs only wanted a second teacher reinstated at their segregated school. Scott asked that the school board provide two teachers for the twenty or so students in first through eighth grade. He claimed two teachers were particularly necessary because Black children did not receive as much “home training” as white children, therefore, they needed more attention particularly in the first grade.<sup>173</sup> Eleven years later in Topeka, he argued that integration would cause Black teachers to lose their jobs because white parents would never accept Black teachers for their children. Furthermore, the children would “get more out of training by colored teachers and association with children of their own race.” And “children might develop an inferiority complex and drop out” if they were forced into an integrated junior high school. Finally, Scott claimed, “at least 90 percent of the colored people in Topeka want their children to go to the colored schools.” His solution was to allow children to attend any junior high they desired but to provide Black students the option of attending a newly established Black junior high. The school board agreed that if Scott’s delegation could prove ninety percent of Black parents were against total integration, they “would continue to operate seventh and eighth grades in the four schools and allow colored children the option of attending either these or the junior high

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<sup>172</sup> Robert Bagnall to Sadie Clay, September 5, 1930, NAACP Papers, Branch Office Files, Baxter Springs, Kansas Historical Society, Microfilm MS 1386.

<sup>173</sup> Elisha Scott to Williams Andrews, September 18, 1930; *Miami Daily News-Record* (Miami, Oklahoma), August 17, 1930. In 1904 and 1905 Baxter Springs’ Black community protested the placement of their children in separate classrooms with separate teachers by refusing to attend school. This protest also centered around the number of pupils per teacher as one teacher was required to instruct around sixty elementary school students. The protest was apparently violent enough to prevent the opening of school and to require police presence when school opened the following week. See “A Color Line Clash Comes Up at Bonner Springs, *Topeka State Journal*, September 19, 1904; “Negroes Still Angry,” *Topeka State Journal*, September 8, 1905.

schools.”<sup>174</sup> When one member of the school board moved that they simply admit African American students to the junior high schools, the motion was not even voted on because it failed to receive a second.<sup>175</sup>

Both sides were certain they were doing what was right for their community, therefore, neither side was willing to give an inch. Reynolds formed a committee to oppose Scott who he claimed was asking the school board to disregard the Supreme Court’s directive. He said that while Scott’s group “pretended to be arguing for the best interests of the colored students, it in fact offered a plan primarily designed to save a few colored teachers their jobs.” If the school board wanted to save Black teacher’s jobs, Reynolds suggested they could be assigned to the segregated grade schools where he claimed the staffs were “overworked.”<sup>176</sup> Scott made clear he was “against any discrimination between white and colored children but in favor of segregation for the present time at least, with equal facilities and accommodations.” He provided the school board results of his own survey that found sixty-five percent of parents preferred for their children to attend a segregated school.”<sup>177</sup> Sixty five percent was not the promised ninety percent, and it was not enough to sway the school board. Possibly “fearful of judicial rath” the school board desegregated junior high schools.<sup>178</sup> Bradshaw and Reynolds had

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<sup>174</sup> “Equal Education Decision Causes Uproar in Topeka: Jobs are at Stake,” *Kansas City Plaindealer*, July 4, 1941; Rosenblum, “Unlocking the Schoolhouse,” 48-49.

<sup>175</sup> Application for Consent to Refile and Argue Motion for Damages and Attorney Fees,” *Graham v. Board of Education*, case file, 34791, Records of the Kansas Supreme Court, State Archives Division, Kansas Historical Society, 2.

<sup>176</sup> “Equal Education Decision.”

<sup>177</sup> Rosenblum, “Unlocking the Schoolhouse,” 49. Rosenblum cited the minutes of the Topeka Board of Education meetings from June 23 and July 7 and 11, 1941.

<sup>178</sup> Rosenblum, “Unlocking the Schoolhouse,” 49.

won a hard-earned victory, but Scott's fear that good Black teachers would be the first to lost their jobs was almost immediately realized.

The school board exacted its revenge by firing teachers connected to the lawsuit. Eight Black teachers were fired in the wake of Graham.<sup>179</sup> The school board provided no justification for the firings, and several of those fired were well educated and experienced teachers who according to Bradshaw had close connections to the plaintiff's cause. Ruth Howarth was fired after ten years of service because she was connected to a Leavenworth doctor who complained to the school board about the actions of Scott's delegation. Annabel Sawyer had taught in Topeka's schools for nineteen years before she was let go because her brother was "an important witness for the plaintiff." Maytie Bradshaw was fired after eighteen years of teaching in Topeka because she was Attorney William Bradshaw's sister. The board retained several teachers who had less than two years of experience and did not live or pay taxes in Topeka.<sup>180</sup>

The debate demonstrates that desegregation was never a goal shared by all members of the Black community. Parents wanted their children to be safe, they wanted them to receive the best education possible, and they wanted them to have economic opportunities after their schooling was finished. Integration never guaranteed any of those things. It could always be dangerous for Jim Crow era African Americans when they interacted with whites, and children in Kansas were not an exception to that rule. The 1907 near riot in Independence mentioned above was touched off by a school yard scuffle

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<sup>179</sup> Kluger, *Simple Justice*, 380.

<sup>180</sup> Affidavit of William Bradshaw, *Graham v. Board of Education* case file, 1-2.



between children.<sup>181</sup> After the school superintendent was beaten by Black parents the *Independence Daily Reporter* stated, many locals “suggested that a mob be organized and give the five negroes the same treatment they gave Prof. Riggs.”<sup>182</sup> Such hostility did not engender great confidence in the education Black children might receive from white teachers. Furthermore, because opportunities in other occupations were limited, many Jim Crow schools were stocked with excellent Black teachers. At the time of the Graham case, two of the four Black elementary schools had more teachers with master’s degrees than any one white school.<sup>183</sup> Well educated Black teachers understood what it was to live under Jim Crow, and they worked hard to give their students the best education they could, because they understood better educated pupils meant better opportunities for the entire Black community. Teachers were the backbone of the African American segregated economy; therefore, the loss of a large number of teaching jobs could be devastating to both local Black communities and the national Black community. The change wrought by the *Brown* decision demonstrate that the fear that Black teachers would lose jobs was not irrational. After *Brown* more than 38,000 African American teachers lost their jobs, and more jobs continued to be lost as late as the 1980s as desegregation orders were carried out.<sup>184</sup> Despite such concerns, the next time Scott had the chance to challenge school segregation he did so with vigor.

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<sup>181</sup> “Negro Women Beat;” “In a Race Riot;” “Beat the Teacher;” Campney, *This is Not Dixie*, 159-60.

<sup>182</sup> *Independence Daily Reporter*, September 13, 1907, quoted in Campney, *This is Not Dixie*, 160.

<sup>183</sup> Kluger, *Simple Justice*, 380.

<sup>184</sup> Deidre Oakley, Jacob Stowell, and John R. Logan, “The Impact of Desegregation on Black Teachers in the Metropolis, 1970-2000,” *Ethnic and Racial Studies* Vol 32, No. 9 (November 2009), 1577.

While Kansas law clearly forbade cities of the second class from operating elementary schools, several smaller communities did. In 1948, in Merriam, in Johnson County not far from Kansas City, Kansas the community built a brand-new school called South Park. It was to serve students from first to eighth grades in a rural area also called South Park. The \$90,000 school was made of fireproof brick and complete with an auditorium, cafeteria, and indoor plumbing.<sup>185</sup> It was staffed with ten teachers.<sup>186</sup> And it was paid for by taxpayers including the hard-earned dollars of several Black families. In fact, ninety percent of South Park's African Americans owned property, therefore, they paid the property taxes used to support local schools.<sup>187</sup> Nevertheless, the new school was for whites only. South Park schools had been illegally segregated since at least 1912 when white students were provided a new school building and Black students were left behind in the community's original one room schoolhouse. When the Black school was marginally improved in the 1920s, it was named after Madame C.J. Walker the hair care products magnate.<sup>188</sup> Approximately fifty Black children attended the Walker School for the first eight grades. It had two rooms, outhouses, and a basement that flooded every time it rained leaving the heating system inoperable.<sup>189</sup> *The Kansas City Plaindealer*

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<sup>185</sup> Notes Taken by the Commissioner Upon Examination of South Park School Building, Transcript of Commissioner's Investigation, *Webb v. School District No. 90*, case file 37,427, Records of the Kansas Supreme Court, State Archives Division, Kansas Historical Society, Topeka.

<sup>186</sup> Franklin H. Williams, "Negro Children on School Strike," *Crisis Vol. 6 Issue 1* (1949), 27.

<sup>187</sup> Brief of Plaintiffs, *Webb v School District No. 90* case file, 73.

<sup>188</sup> Milton S. Katz and Susan B. Tucker, "A Pioneer in Civil Rights: Esther Brown and the South Park Desegregation Case of 1948," *Kanas History* 18 (1995), 236.

<sup>189</sup> Petition Fails to Halt Kansas School Jim Crow," *Negro Star* (Wichita, KS), December 31, 1948; Brief of Plaintiffs, *Webb v. School District No. 90* case file, 70.

called it “typical of a scene often seen in the ‘jim crow’ backwoods.”<sup>190</sup> Walker was staffed by only two teachers and neither one had a college education.<sup>191</sup> As the bond for the new school was being discussed, Black parents, led by a local concrete contractor and a father of nine named Alfonso Webb, asked for improvements to the Walker School to be included.<sup>192</sup> When their requests were ignored, the parents decided to demand that their children receive the education they were entitled to by Kansas law. They were spurred on by an unexpected hero.

Esther Brown, according to the *Kansas City Call*, “was a civil rights crusader long before the civil rights revolution...advocating an end to discrimination and segregation two decades before the rest of white America began to wake up.”<sup>193</sup> Her bravery and determination was on par with the toughest fighters the 1960s civil rights movement would produce, but she did not become anything close to radicalized until she was thirty-one years old. She was born Esther Swirk, raised in Kansas City, Missouri, and educated in their segregated schools. Her mother died when she was young, so she was brought up by her father who was a watchmaker. The only thing that caused the Swirks to stand out from their friends and neighbors was the fact that they were Jewish, but by Brown’s own admission her faith had little to do with her civil rights work.<sup>194</sup> She inherited a belief in leftist politics from her father. Therefore, she joined garment workers in a Chicago strike while she was working for Marshall Field’s, and she attended Commonwealth College a

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<sup>190</sup> “Students Stage Boycott Against Kansas Jim Crow School,” *Kansas City Plaindealer*, September 10, 1948.

<sup>191</sup> “Petition Fails.”

<sup>192</sup> Testimony of Alfonso Webb, *Webb v. School District No. 90* case file; Katz et. al., “Pioneer in Civil Rights,” 237.

<sup>193</sup> “Her Light Will Shine Eternally,” *Kansas City Call*, May 8 to June 4, 1973.

<sup>194</sup> Esther Brown, interview.

leftist institution in Arkansas for two summers.<sup>195</sup> But those experiences did not cause her to question the inequity of Missouri's Jim Crow system of segregation that kept the races legally separate from birthing room to graveyard. Eventually she married and settled in Merriam, Kansas. Until 1948, she and her husband Paul were raising two small children, and she was a suburban housewife.<sup>196</sup> Brown was living an idyllic Kansas life completely unaware of conditions on the Black side of Jim Crow's curtain. When the curtain was pulled back, she paid attention. And she took action.

Brown was shown the problems of African Americans in Kansas by her maid—the only Black person she knew.<sup>197</sup> When she drove Helen Swan a mother of five home, she saw for the first time South Park's Black neighborhood complete with dusty streets, ramshackle homes, and the neglected Walker School. She witnessed for the first time the Swan family's "precarious way of life" and understood she was complicit in such poverty. She paid Swan only fifteen dollars per week and knew her husband made only forty-five dollars per week as a mechanic.<sup>198</sup> When Swan told her there would be a vote for a new \$90,000 school bond, Brown instructed her to encourage the Black community to oppose the bond unless the school board agreed to improve the segregated Walker School. In October 1947, Swan and Alfonso Webb went before the school board to again

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<sup>195</sup> Katz et. al., "Pioneer in Civil Rights," 236.

<sup>196</sup> Esther Brown, interview.

<sup>197</sup> Kluger, *Simple Justice*, 389.

<sup>198</sup> Esther Brown, interview; Kluger, *Simple Justice*, 389.

ask for improvements to the Walker School.<sup>199</sup> When the school board responded by installing a stop sign and a mailbox, they made an energetic enemy in Esther Brown.<sup>200</sup>

Brown was made to be a crusader for justice. She was angry enough to work until she collapsed, capable enough to accomplish things others could not, and idealistic enough to believe she could actually change things. When Brown decided to change things, she fearlessly threw herself into her work. She was certain her friends and neighbors would share her enthusiasm. She was wrong. Her civil rights work made her a pariah. A cross was burned on her lawn, her father-in-law called her a communist and fired her husband, and neighbors thought she should be fitted for a coat of tar and feathers.<sup>201</sup> All of the stress caused her to have a miscarriage. But she refused to quit fighting.<sup>202</sup> Isolated from her community, Brown found common ground with local African Americans and NAACP members who shared her sense of outrage. She would drive her car on South Park's unpaved roads made unbelievably dusty by a lack of rain and an abundance of wind, until it was completely caked in dirt. It seemed wherever she parked the car her newfound enemies would take the opportunity to write messages in the dirt, the most popular was "Nigger Lover."<sup>203</sup>

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<sup>199</sup> Testimony of Helen Swan and Alfonso Webb, Transcript of Commissioner's Investigation, *Webb v. School District No. 90*, case file.

<sup>200</sup> Esther Brown to Franklin Williams, August 30, 1948, NAACP Files, Discrimination and Segregation in Kansas Public Schools, July 28, 1948 to December 31, 1948; Esther Brown, interview; Kluger, *Simple Justice*, 389.

<sup>201</sup> Associated Press, "White Housewife led Desegregation Fight," *Arizona Daily Star* (Tucson, AZ), May 13, 1979; "The Successful Life of Esther Brown," *Kansas City Times*, May 26, 1970; Kluger, *Simple Justice*, 390-91; Katz et. al., "Pioneer in Civil Rights".

<sup>202</sup> Kluger, *Simple Justice*, 391.

<sup>203</sup> Esther Brown, interview.

Her initial goals were not radical by any rational stretch of the imagination, and, by today's standards, she was disrespectfully paternalistic toward the people she wanted to help. But her intentions were pure, and she was relentless. *Plessey v. Ferguson* said African Americans were entitled to equal facilities, and she was simply trying to secure improvements to the Walker School. She saw Black people as "simple naïve people with no ulterior motives," and she was certain they "didn't know what to want...didn't know what they were missing/being deprived of." Brown was afraid she cared more than they did. She said, "I had to pull them, hold them, show them" how to fight and what to fight for. She claimed, "I would tell them that they were making history here---But they didn't know what history was." When she got involved with the South Park school issue she thought, "I'm white, maybe I can help—I can express myself better than these people."<sup>204</sup> Unfortunately, eloquent elocution did not impress the school board.

Brown's encounters with the school board radicalized her. The first time she spoke to them the segregated school was rewarded with some lightbulbs and the desks from the old white school once the new school was finished.<sup>205</sup> Mad as hell, she pushed for more. As she attended more meetings, Brown found South Park's Black parents to be "far more intelligent than the school board members and principal." The school officials readily "admitted they were prejudiced and did not want negro children going to school with theirs."<sup>206</sup> She was invited to speak at another "small" school board meeting by Board Director Virgil Wisecup, but Swan was worried there would be trouble and asked her not to go by herself. Brown went alone and walked into an ambush. The small

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<sup>204</sup> Esther Brown, interview.

<sup>205</sup> Esther Brown, interview.

<sup>206</sup> Brown to Williams, August 30, 1948.

meeting was packed with 350 angry white faces, and they had saved her a seat right in the middle. Wisecup set the tone when he stated, “we seem to have a racial problem in South Park all of a sudden,” and then bellowed, “let me tell you that no nigger will get into South Park school as long as I live.” One woman had to be restrained from hitting her. Brown tried to explain she was not a radical. She just wanted to improve the Black school a bit. When she complained she had been invited to the meeting, Wisecup denied it and walked away. When a minister called for restraint, the crowd shouted him down. When Brown left the meeting, she was a radical. Having failed in their own efforts to secure better conditions, the previously accommodationist South Park community was willing to join her.<sup>207</sup>

A group of thirty-seven South Park residents formed an NAACP branch and found a Black lawyer named William Towers through the Kansas City, Kansas, NAACP who filed a desegregation suit against the school board.<sup>208</sup> The new NAACP branch was led by Alfonso and Mary Webb, Ernest and Thelma Turner, Thomas Black, and Brown.<sup>209</sup> In April 1948, Towers and Alfonso Webb asked the school board to “cease and desist in separating and segregating the common grade school children.” Webb noticed the presence of numerous Black parents at the school board meetings made at least one board member nervous because “he hadn’t been used to seeing that many colored people fight for anything worthwhile.”<sup>210</sup> But making the board members nervous only seemed to strengthen their resolve to continue segregating South Park’s schools. When the old white

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<sup>207</sup> Brown to Williams, August 30, 1948; Esther Brown, interview; Kluger, *Simple Justice*, 389-90.

<sup>208</sup> Williams, “Negro Children Strike,” 27; Esther Brown, interview.

<sup>209</sup> Williams, “Negro Children Strike,” 27.

<sup>210</sup> Testimony of Alfonso Webb, *Webb v. School District No. 90* case file.

school was torn down to make room for the new one all of the rubble was dumped on the grounds of the Walker School.<sup>211</sup> By late May, it was apparent any change would require a lawsuit. The Webb children, Harvey Lewis Webb and Eugene Webb, were the named plaintiffs, and the Webb family was joined by the Black, Gay, and Turner families on the briefs, but numerous South Park residents were onboard.<sup>212</sup> The national NAACP took an immediate interest in the case and offered their assistance to Towers and Webb.<sup>213</sup> It was plainly illegal for a town of less than 15,000 residents to operate a segregated school, therefore, a victory seemed imminent. But the road to desegregating South Park's schools was riddled with obstacles from the very beginning.

Before long Scott was called upon to help. William Towers's representation and the school board's resistance were the first two problems the new NAACP branch had to overcome. Brown was immediately worried that Towers was preoccupied with Republican politics, perhaps "in cahoots with the school board," and generally "indifferent." South Park school officials were far from indifferent, and they drew a gerrymandered school district boundary that forced all of the Black students to remain at the Walker School, while all of the white students would attend the new school. Scott sarcastically stated the map was "more dexterously prepared than I have known in the history of my entire career and it is done for the purpose of zoning the Negroes from the

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<sup>211</sup> Testimony of Alfonso Webb, *Webb v. School District No. 90* case file.

<sup>212</sup> Plaintiff's Alternative Writ of Mandamus, *Webb v. School District No. 90* case file; "White Housewife.;" "Supreme Court Rules on South Park School: Must Admit Negroes," *Kansas City Plaindealer*, June 17, 1949.

<sup>213</sup> Edward R. Dudley to Alfonso Webb, July 28, 1948, NAACP Papers, Discrimination and Segregation in Kansas Public Schools, July 28, 1948, to December 31, 1948.



whites.”<sup>214</sup> The map was so irregular that some white students would pass by Walker on their way to South Park and some Black students would pass by South Park on their way to Walker.<sup>215</sup> South Park’s parents were now determined to force the closure of Walker School.<sup>216</sup> Lacking confidence in Towers, and probably afraid he would acquiesce to a rumored offer of a new segregated school, Brown asked that either one of the local branches or the national NAACP retain Scott.<sup>217</sup> Initially Scott and Towers worked together, but it was quickly apparent South Park was Scott’s case. Just as in the Coffeyville case, a commissioner was appointed to gather evidence and make a report before the case proceeded to the Supreme Court as a mandamus action. The newborn South Park NAACP branch immediately needed \$350 to cover the commissioner’s fee, and they only had \$115. The national offices of the NAACP loaned them the difference, thereby, putting themselves in the case whether they liked it or not.<sup>218</sup>

Thurgood Marshall was concerned that an important court case was being managed by a non-lawyer. He told NAACP Lawyer Franklin Williams, “the staff should sit down and talk over the questions as to how far we are going in this case. I assume that all are in agreement that we don’t like the way it is presently being handled as a one woman show.”<sup>219</sup> Williams told Marshall in his opinion Brown’s intentions were pure,

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<sup>214</sup> Transcript of Proceedings before the Commissioner, *Webb v. School District No. 90*, case file.

<sup>215</sup> “Decision Pending on Kansas School Case,” *Negro Star* (Wichita, KS), April 22, 1949.

<sup>216</sup> Esther Brown, interview; Kluger, *Simple Justice*, 390.

<sup>217</sup> Esther Brown to Edward R. Dudley, August 4, 1948; Esther Brown to Franklin Williams, August 19, 1948.

<sup>218</sup> Franklin Williams Memorandum to Thurgood Marshall, August 26, 1948.

<sup>219</sup> Thurgood Marshall Memorandum to Franklin Williams, August 23, 1948.

and Towers had “failed or refused to proceed vigorously.”<sup>220</sup> Scott was officially hired by the local NAACP. His mission was to force integration and do it quickly. He attempted to get the case heard before school started September 9 by asking for an emergency writ of mandamus like he did in the Coffeyville case, but like the Coffeyville case, *Webb v. School District No. 90* was constantly delayed.<sup>221</sup> The case would not reach the Kansas Supreme Court for almost a year.<sup>222</sup> It was the busiest year of Esther Brown’s busy life.

Esther Brown’s impatience with the racial status quo made her a true civil rights hero, but her impatience with the legal process made her a true pain in Scott’s neck. The case was immediately delayed, and as delays piled on top of one another she blamed Scott. She complained that he was disorganized, always asking for money, and his normal condition was “soused.”<sup>223</sup> The truth was she didn’t like him from the moment she saw him. Her first impression was that he was “the ugliest man I’d ever seen...a typical southern midwestern negro lawyer.”<sup>224</sup> As far as Brown was concerned Scott’s only redeeming quality was that “he really cared.” Richard Kluger noted Scott had “been really caring since before Esther Brown was born.”<sup>225</sup> But Scott’s record did nothing to convince Brown the case was in good hands. Her letters reveal she never believed Scott was capable of winning, and assurances from lawyers who understood the issues better than her never convinced her. She admitted, “I know nothing about law,” but she was

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<sup>220</sup> Franklin Williams Memorandum to Thurgood Marshall, August 26, 1948.

<sup>221</sup> “Attorney Elisha Scott Takes Over Merriam School Case,” *Kansas City Plaindealer*, August 20, 1948.

<sup>222</sup> Rosenblum, “Unlocking the Schoolhouse,” 50-51; “Attorney Elisha Scott.”

<sup>223</sup> Esther Brown, interview; Esther Brown to Franklin Williams, June 26, 1949.

<sup>224</sup> Esther Brown, interview.

<sup>225</sup> Kluger, *Simple Justice*, 390.

certain Scott and others “don’t know too much about civil rights cases.”<sup>226</sup> Therefore, she pressed the NAACP lawyers in New York so hard that they had Kansas City, Missouri Attorney and NAACP President Carl Johnson check up on Scott, “without Scott knowing it.”<sup>227</sup> They only did so to appease Brown, as Thurgood Marshall had known Scott for decades and knew his abilities. He considered Scott the “greatest attorney in his part of the country.”<sup>228</sup> After speaking with Brown, Johnson thought “the case handling smells a little.”<sup>229</sup> But after meeting with Scott and inspecting the files, Johnson assured Brown that the delays “were not due to any lack of diligence on the part of Mr. Scott.”<sup>230</sup> He told Williams that “from a legal standpoint, the pleadings and briefings were in excellent shape.” Furthermore, “Mr. Elisha Scott is a very very busy and capable attorney. He is the most outstanding trial lawyer in this section.”<sup>231</sup>

Scott fully understood the case needed to move quickly, but he was hamstrung by the legal process. Following Kansas procedure, the Supreme Court appointed a commissioner to hear testimony and provide them with a report. The problem was the commissioner was very slow in issuing his report. Scott had forced him to take testimony in September 1948, and hopes were high when Scott and the defendant’s attorney, W.C. Jones met before the commissioner in a packed courtroom on September 22 and 23. But by November the commissioner had not issued his report. Initially he was out sick, then

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<sup>226</sup> Esther Brown to Franklin Williams, January 30, 1948; Esther Brown to Franklin Williams, November 28, 1948.

<sup>227</sup> Esther Brown to Franklin Williams, January 30, 1948.

<sup>228</sup> Thurgood Marshall, interview.

<sup>229</sup> Carl Johnson Telegram to Franklin Williams, December 23, 1948.

<sup>230</sup> Esther Brown to Franklin Williams, January 13, 1949; Carl Johnson to Franklin Williams, January 19, 1949.

<sup>231</sup> Carl Johnson to Franklin Williams, January 19, 1949.

he was out of the state. Scott asked for a temporary injunction that would force South Park to stop operating a segregated school, but the injunction was not filed for more than three weeks because Scott did not receive \$100, he needed to file it. Thinking he should “do a little sacrificing,” Brown was furious with him.<sup>232</sup> Not long after, the commissioner citing illness asked that the case be postponed until the March term. Scott told Brown he trusted the commissioner was being truthful, but admitted he was at his wits end as to what to do to move the case forward.<sup>233</sup> Marshall sent an urgent telegram asking Scott to file for an immediate injunction.<sup>234</sup> The telegram reads more like a frantic order than a request, but Scott was going to litigate the case the way he saw fit even in the face of a direct order from the NAACP’s top attorney. He thought a visit to the Chief Justice would do more good than another injunction attempt, therefore, he scheduled two separate meetings and on both occasions the man was called away to tend to a sick relative.<sup>235</sup> Finally, Scott asked for an injunction “ordering the South Park School to admit Negroes pending decision” of the Kansas Supreme Court.<sup>236</sup> But, according to Scott, “the court held in substance that on account of the mandamus case pending, that there was no immediate necessity for a temporary injunction.”<sup>237</sup>

When the argument before the Supreme Court looked as if it would finally happen on March 1, the defendant’s attorney W.C. Jones became the party responsible for further delays. By late February he had not filed his briefs, and although Scott insisted the case

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<sup>232</sup> Esther Brown to Franklin Williams, November 18, 1948.

<sup>233</sup> Elisha Scott to Esther Brown, November 26, 1948.

<sup>234</sup> Thurgood Marshall Telegram to Elisha Scott, November 30, 1948.

<sup>235</sup> Franklin Williams to Esther Brown, December 13, 1948.

<sup>236</sup> Elisha Scott to Thurgood Marshall, January 22, 1949; “Petition Fails to Halt Kansas School Jim-Crow,” *Cleveland Call and Post*, December 25, 1948.

<sup>237</sup> Elisha Scott to Thurgood Marshall, January 22, 1949.

move forward, it was again delayed.<sup>238</sup> It was actually the third continuance the defendant's had been granted, and all Scott could do in response was waste his time opposing motions that were almost always granted as a courtesy between judges and lawyers. Next, Scott attempted to push the case forward by paying another direct visit to the Chief Justice, but he was only promised if there was another motion for a continuance he would be "given an opportunity to protest."<sup>239</sup> No one was happy about the delays, but while the lawyers understood that such delays were impossible to prevent, Esther Brown took each one personally and with good reason.

Brown was in a rush to resolve the case because she was leading an expensive boycott of the Walker School. By the time the Kansas Supreme Court finally heard the case in April 1949, the majority of South Park's Black students had been refusing to attend Walker for eight months. When South Park officials figured out the Black parents were determined to integrate, the school board offered to build a new school for the Black students. Their parents turned the offer down flat.<sup>240</sup> South Park's Black families were determined to get what their tax money paid for and that meant attending the new school. Nearly all of South Park's Black families attempted to register at the new school in September 1948. They were greeted by Edwin Campbell who was principal of both South Park and Walker. He showed them the gerrymandered map "and informed the children and their parents that they did not live in the district." Thinking things might get violent,

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<sup>238</sup> Defendant's Motion Requesting an Order for a Continuance, *Webb v. School District No. 90* case file; Elisha Scott to Franklin Williams, February 23, 1949.

<sup>239</sup> Elisha Scott to Franklin Williams, March 21, 1949.

<sup>240</sup> "Attorney Elisha Scott;" "Students Stage Boycott Against Kansas Jim Crow School," *Kansas City Plaindealer*, September 10, 1948.

someone called the police, but nothing happened.<sup>241</sup> Campbell no doubt figured his action would force the Black students to report to Walker and wait for the courts to decide their fate. But he did not understand the determination of South Park's parents. It was immediately reported, "the parents were not permitting their children to enroll in the old school building pending the outcome of a hearing" that had already been held in Olathe September 6. The hearing did not provide a resolution; therefore, students were still out of school when the commissioner heard testimony and viewed evidence on September 22 and 23.<sup>242</sup> When the commissioner did not quickly issue his report, South Park's Black community opened a full-time boycott school staffed with two excellent African American teachers.<sup>243</sup>

Brown did everything she could to keep the boycott school running. She traveled all over the state speaking and asking for money. When she could not make ends meet, she took out a personal bank loan to cover school expenses.<sup>244</sup> She also wrote hundreds of letters asking anyone she could think of for money to help the cause. Local NAACP branches and several Jewish charity organizations helped out. When one of the teachers was sick, she taught in her place for a week.<sup>245</sup> But her main work was fundraising, and it was a tough job. When Mr. E. Snell Hall of Jamestown, New York, saw an article in the *Crisis* about the children's plight and sent a note of encouragement she immediately asked him for money. Much to her surprise, he sent \$100.00 which she stated, "saved my

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<sup>241</sup> "Students Stage Boycott."

<sup>242</sup> Brief of Plaintiffs, *Webb v. School District No. 90*, case file.

<sup>243</sup> Williams "Negro Students Strike," 27.

<sup>244</sup> Esther Brown to Franklin Williams, January 30, 1949.

<sup>245</sup> Esther Brown to Franklin Williams, February 18, 1949, NAACP Papers Part 3, Campaign for Educational Equality, Series B: Legal Department and Central Office Records, 1940-50.

life.”<sup>246</sup> As litigation dragged on, bills piled up, and money had to be raised to keep the school running. Brown was constantly crisscrossing the state. She would get in her dust-covered car and travel anywhere there was an opportunity to tell the South Park story and raise a few dollars. Most of her audiences and donors were African Americans who spared what they could. A crowd of seventy-five people in Manhattan grossed \$123.00, a “very poor crowd” in Topeka still brought in \$46.50, and a Black church in Coffeyville contributed \$6.21.<sup>247</sup> She remembered “the most inspiring collection” she ever got was \$10.00 from “ten children and four adults” in the middle of a torrential rainstorm in Bonner Springs.<sup>248</sup> Once when she owed the teachers their \$200.00 salary and had only \$45.00 she raised \$151.09 by taking several South Park children with her to a Billie Holiday concert and passing the hat.<sup>249</sup> It was during this period that she had the miscarriage, but she did not tell her husband for fear he would demand she take time off to convalesce.<sup>250</sup> By the time the school year ended in May, Brown figured she had raised nearly \$4,000 to support the case, the school, and other expenses. She estimated she has spent close to \$100.00 of her own money, and she was still constantly on the road speaking and asking for support.<sup>251</sup>

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<sup>246</sup> Esther Brown to Franklin Williams, February 15, 1949; Esther Brown to Franklin Williams, February 18, 1949.

<sup>247</sup> Esther Brown to Franklin Williams, May 17, 1949; “Manhattan Folk Hear Talk On South Park Case; Contribute \$123,” *Kansas City Call*, May 20, 1949; Esther Brown to Franklin Williams, June 5, 1949.

<sup>248</sup> Katz et. al., “Pioneer in Civil Rights,” 241.

<sup>249</sup> Esther Brown to Franklin Williams, November 18, 1948; Expenditures in the South Park—Merriam, Kansas School Case, NAACP Papers; Esther Brown, interview.

<sup>250</sup> Esther Brown, interview.

<sup>251</sup> Esther Brown to Walter White, May 30, 1949. The letter’s heading is dated April 7, 1949, which was when Brown started the letter.

No one involved in the protest rested. They could not afford to, because none of the families had money to spare. Most of the adults worked as laborers or domestic servants in Kansas City, and most farmed or raised livestock for their own food. According to an article by Franklin Williams and Earl Fultz paying for the school “almost crushed them.” But they were resourceful people and when the need for a boycott school arose, they met every challenge. The school began in the living room of the Gay family.<sup>252</sup> And everyone did what they could to raise money. The families raised \$50.00 from a tea party, \$45.00 from a rummage sale, and an amazing \$69.00 from the sale of cupcakes at fifty cents a dozen.<sup>253</sup> It was a herculean effort to raise funds for one month and the families of South Park did it for nine months always with the hope the case would be resolved, and the protest could stop. But it did not stop, and they were constantly under pressure to return to Walker School.

As the protest went on, South Park took on the conditions of a nasty labor strike. School officials employed psychological and economic tactics in an effort to break the striking families. They made improvements to Walker School, threatened that the students would not be allowed to graduate, and promised the students who stuck with the Jim Crow school that they would not fail. They even started having Walker’s two teachers serve free lunches to students.<sup>254</sup> Free food was a tempting enticement for families who consistently lived hand to mouth, but nearly all of the families held out. By December,

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<sup>252</sup> Franklin H. Williams and Earl L. Fultz, Unnamed and Undated Article in Esther Brown File, MS 759, Box 1, Folder 10, *Brown v. Board of Education* Collection, Yale University Library.

<sup>253</sup> Expenditures in the South Park—Merriam, Kansas School Case, NAACP Papers; Esther Brown, interview.

<sup>254</sup> Esther Brown to Franklin Williams, January 13, 1949.



the protest school was in an old Baptist church where expenditures included: leasing the building, coal for heating, and renting tables and chairs.<sup>255</sup> The greatest expense was the \$100.00 per month for each teacher from September to May.<sup>256</sup> But Brown was certain they were worth every penny. She told Franklin Williams, “these teachers work harder than they ever have. We have all 8 grades in one room and that means the teachers never stop.” The teachers also became strike leaders by contacting parents who put their students back in the Walker School to try to recruit them to return to the strike school. At one point they convinced ten students who had defected to Walker School to return.<sup>257</sup> Brown also marveled at the strength of her comrades. She was certain the strike had brought the community together and said it actually caused new families to participate in the protest.<sup>258</sup> She stated, “If you people could see the conditions under which these children are getting education you would probably cry...the furnace smokes...the kids don’t have books. It is just terrible. Yet the mere mention of going to the Walker School makes them angry...I don’t believe I would have the nerve to expose my children to such conditions.”<sup>259</sup> Even more than money, the protest required nerve.

The threat of violence was always hanging over the boycott. Brown reported she received a barrage of hostile telephone calls, threatening to burn her house to the ground, accusing her of being a communist agitator and the like.<sup>260</sup> As the strike moved forward the white community held several mass meetings in which individuals were “aroused by

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<sup>255</sup> Financial Statement South Park Merriam, Kansas, April 1948 to May 21, 1949, NAACP Papers.

<sup>256</sup> Financial Statement.

<sup>257</sup> Esther Brown to Franklin Williams, February 18, 1949.

<sup>258</sup> Esther Brown to Franklin Williams, September 29, 1948.

<sup>259</sup> Esther Brown to Franklin Williams, February 18, 1949.

<sup>260</sup> Esther Brown to Franklin Williams, September 29, 1948.

local officials to such a degree that actual threats of intimidation were directed against Negroes and sympathetic white residents.” The specter of violence caused Williams to worry about the parents and students, but it also caused him to worry that violence would provide those who argued the country was not ready for integration with a concrete example.<sup>261</sup> No matter what other people did or threatened to do, the students kept attending the boycott school, and they kept learning.

While they were doing everything they could to win the court case, Brown and Scott understood that refusing to end the strike was a victory in itself. Brown wrote,

I am now convinced more than ever...that these children should not return to the Jim-Crow school. It is just as important for these people to learn that they stick together on a principal (sic) and win that way, then it is to win the case. The few people who are against this fight in South Park and are sending their children to the Jim-Crow school, tell the others they are foolish to hold out, because in the end they will have to accept the Jim-Crow school and the awful teachers, so they may just as well give in now, save their money etc., I think the people making this fight should learn, that the only way to ever get any place in a civil rights fight, is just to stick at no matter what. If they go back to this school before the Supreme Court decision, they have lost the biggest part of the battle.<sup>262</sup>

During the first days of the strike, Scott stated he was prepared to support the children “if they got into difficulty by not enrolling for the present term.”<sup>263</sup> Furthermore, he agreed with the idea of nonviolent resistance. As early as 1936, he saw “that 96 pound man, who has been leading 350,000,000 toiling and oppressed people in a fight for freedom, Mahatma Gandhi” as the model for Black leadership. Scott wrote, “He is precisely the sort of unifying force which we must have for success as a group. We need Negro leaders

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<sup>261</sup> Franklin Williams, Memorandum to Gloster B. Current, June 28, 1949.

<sup>262</sup> Esther Brown to Franklin Williams, January 13, 1949.

<sup>263</sup> Madison Jones Memorandum to Mr. Current, September 9, 1948, NAACP Papers, Part 26, Selected Branch Files, Kansas State Conference, 1948-1950.

who are of unflinching purpose...and are not afraid to go to the front and make the fight for the race.”<sup>264</sup>

Whereas Coffeyville had been a legal fight over Kansas law with a school boycott taking place quietly on the fringe, South Park was a larger fight for social justice, and the questions of Kansas law were only part of that battle. In September, Brown put the case on the radar of the Black press with an impassioned speech at the Kansas NAACP Convention in Osawatomie, the town famous for being the home base of John Brown.<sup>265</sup> Channeling her namesake, Esther Brown stated, “Until Jim-Crow is abolished, the words ‘democracy,’ ‘freedom’ and ‘justice’ used so freely to support our foreign policy will ring hollow throughout the world.”<sup>266</sup> As the strike dragged on, the local people’s fight gained more and more attention. Eventually newspapers like the *Baltimore Afro-American* would publicize the plight of South Park’s families.<sup>267</sup> In October, Williams stated the outcome of the Kansas school case could influence elementary schools nationwide.<sup>268</sup> An article about the boycott in the *Crisis* drew national attention and much needed funding. The article, written by Williams, mentioned the strike leaders by name and stressed the hardships they faced in paying to keep the boycott school alive.<sup>269</sup> The national NAACP was fully invested in publicizing the case, but Scott wanted their legal support as well.

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<sup>264</sup> Elisha Scott, “Law as a Profession for Negroes,” in *The Colored Situation: A Book of Vocational and Civic Guidance for the Negro Youth*, ed. Faye Philip Everett (Boston: Meador Publishing Company, 1936), 83.

<sup>265</sup> Katz et. al., “Pioneer in Civil Rights,” 239-40.

<sup>266</sup> *Kansas City Call*, September 24, 1948; Katz et. al., “Pioneer in Civil Rights,” 240.

<sup>267</sup> Racial Barriers Fall on Three Widespread School Fronts,” *Baltimore Afro-American*, June 25, 1949.

<sup>268</sup> “Press Jim Crow School Case in Merriam, Kansas,” *Kansas City Plaindealer*, October 8, 1948.

<sup>269</sup> Williams, “Negro Children Strike,” 27-28.

Scott knew Kansas's education law better than anyone, and he knew the law was on his side, but he also recognized the case had become bigger than a fight for fifty Black students to attend a good school; therefore, he wrote to Thurgood Marshall for help. He had asked the national office for money to litigate cases before, but he had always worked essentially on his own or in conjunction with other local lawyers while occasionally consulting with NAACP lawyers. He started the South Park case that way, refusing to answer correspondence from New York.<sup>270</sup> However, when he finally received the "Commissioner's Findings of Fact and Conclusions of Law" in January 1949 he reached out to Marshall for help. Scott asked Marshall to read it "very carefully and write me your reaction." He also asked Marshall to send Franklin Williams to help him argue the case. Scott, who addressed Marshall as "My dear friend, Thurgood," stated, "I would like to have you, but I know how busy you are and just do not believe I can get you at this time." Scott considered Williams "brilliant" and knew he would be a great help with the case.<sup>271</sup> Williams had graduated from Fordham Law School only four years earlier, but he had been editor of the law review and he had already made a name for himself arguing death penalty cases on behalf of the NAACP.<sup>272</sup> Marshall promised he would send Williams and subtly asked Scott to provide more details about the case when he noted, "Incidentally, this procedure in Kansas, which is so clear to you, is strange to us and we are trying to keep up."<sup>273</sup> When the families of South Park finally got their day in court

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<sup>270</sup> Carl Johnson to Franklin Williams, January 19, 1949.

<sup>271</sup> Elisha Scott to Thurgood Marshall, January 22, 1949.

<sup>272</sup> "Franklin H. Williams Dies at 72: Lawyer and Former Ambassador," *New York Times*, May 22, 1990; Patricia Sullivan, *Lift Every Voice: The NAACP and the Making of the Civil Rights Movement* (New York: The New Press, 2009), 297.

<sup>273</sup> Thurgood Marshall to Elisha Scott, January 27, 1949.

Scott and Williams argued the case based on briefs written by the Scott law firm and supplemented by Williams.

The New York NAACP left most of the preparation to Scott, however, they wanted to assure the lawyers made an argument that segregation was per se unconstitutional as opposed to only arguing that the facilities at Walker and South Park were unequal. Charles and John worked on the case with their father and their argument was one Scott had made before. They noted that case law going back as far as 1881 made it clear a Kansas school board could not segregate facilities without statutory authority.<sup>274</sup> Then they argued that the segregated school facilities were not equal. It was an argument the NAACP was moving away from in an effort to have segregation of any kind deemed unconstitutional, but it allowed the Scotts to force equalization of facilities if the Supreme Court ruled South Park could segregate its schools.<sup>275</sup> Finally, they argued that the gerrymandered school district map was found by the commissioner to have been created after Black parents asked for their children to be admitted to South Park in April 1948.<sup>276</sup> Williams added a supplement to Scott's briefs that stated the question of law was whether the segregation creating, gerrymandered school district boundaries were against federal and Kansas law. He argued they violated Kansas law because there was no statutory authority to establish a segregated elementary school in a city of less than 15,000 residents and made a general argument that the segregated schools violated the equal protection clause.<sup>277</sup> After all of the delays the case was finally going to be argued on

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<sup>274</sup> Brief of Plaintiffs, *Webb v School District No. 90* case file, 62-68; citing *Board of Education v. Tinnon*, 26 Kan. 1 (1881).

<sup>275</sup> Brief of Plaintiffs, *Webb v School District No. 90* case file, 69-73.

<sup>276</sup> Brief of Plaintiffs, *Webb v School District No. 90* case file, 73-74.

<sup>277</sup> Supplementary Brief of Plaintiffs, *Webb v School District No. 90* Case File.

April 5, 1949. “Pressing matters” in New York kept Williams from arriving until 3:35 a.m. on the day of the trial.<sup>278</sup>

Scott and Williams argued that segregating South Park’s schools violated state and federal law, and Scott made certain the racism that motivated South Park officials to obdurately defy Kansas law was on the record. He reminded the justices that the law was clear and well established when he stated, “There are no reasons that the opponent can assign to justify the Court in deviating from its previous stand for justice and fair play to all people regardless of creed, color, or previous condition of servitude which is definitely at bottom of the intention of the school board.” Next, he invoked Kansas patriotism by informing everyone that an outsider was chiefly responsible for such disrespect for state law. He claimed, Principal “Elwin Campbell is definitely a Missouri product, which is a slave state, and we understand he lives in Missouri. He assumes the position of dictator because it cannot be questioned that he tells the members of the school board just what to do and when to do it.” He also made it clear Webb and the other parents were not interested in fixing Walker School—they wanted integration. He said only “some isolated southern state” with “a jim crow constitution” would allow the school board to attempt to equalize Walker School by the fall of 1949. The whole business was “in direct violation of the Federal Constitution and a curse to the Constitution of Kansas.”<sup>279</sup> National stories focused on the moment when one of the justices made one of the school district’s lawyers admit white children walked directly in front of the Walker School on their way to the

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<sup>278</sup> Franklin Williams Telegram to Esther Brown and Carl Johnson, April 4, 1949.

<sup>279</sup> Brief of Plaintiffs, *Webb v School District No. 90* case file, 74-75.

South Park School.<sup>280</sup> It was a great sign, and the thirty South Fork parents who made the seventy five mile trip to Topeka to watch Scott and Williams fight their case left confident they would win. But the wait for a decision would be a long one.

By the time the Kansas Supreme Court handed down its decision in *Webb* the students had finished a long and difficult year in the boycott school, but the Court was clear they would begin the 1949 school year desegregating South Park. For the students, the school year ended in May with a graduation that Brown said was “the most impressive thing I ever witnessed.”<sup>281</sup> In June, the Supreme Court ruled in their favor. Newspapers across the country reported Williams and Scott had convinced the Court “that arbitrary gerrymandering of school districts” violated the law.<sup>282</sup> Scott was lauded for winning another high-profile race case. The *Plaindealer* stated Scott made a “brilliant plea,” and gushed “Elisha Scott ‘fighting’ Topeka, Kansas attorney chalked up another great victory on the civil rights side of the scoreboard.” Scott was humble in triumph. He called the win gratifying and noted “The ruling followed the line of argument set out in our brief.”<sup>283</sup> Scott was also thankful for the help of the NAACP, and he was highly impressed with Williams.

In a letter to Thurgood Marshall, Scott gave credit to Williams and shifted his focus to furthering the cause of the NAACP. He wrote, “I want you to know that Franklin Williams made a wonderful impression before the court and the spectators...I am

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<sup>280</sup> “Decision Pending in Kansas School Case,” *Cleveland Call and Post*, April 23, 1949; “Jim Crow Schools Hit,” *New Journal and Guide* (Norfolk, VA), April 23, 1949.

<sup>281</sup> Esther Brown to Franklin Williams, June 5, 1949.

<sup>282</sup> “Court Orders Kansas Schools To Open Doors,” *New Journal and Guide* (Norfolk, VA), July 2, 1949.

<sup>283</sup> “Victorious Lawyer,” *Kansas City Plaindealer*, June 17, 1949; “Supreme Court Rules on South Park School: Must Admit Negroes,” *Kansas City Plaindealer*, June 17, 1949.

definitely proud of him...If by chance he is in this jurisdiction soon, we can arrange a big mass meeting in furtherance of our membership drive.”<sup>284</sup> The South Park case was worth celebrating, but Scott knew well it was just another small victory and a counterattack would be coming.

Just as it had been with the *Thurman-Watts* case and it would be with the *Brown* case, a courtroom victory did not mean a real-life victory for parents and students; they had to force true change themselves. Williams summarized the aftermath of the case in the *Crisis*. First, South Park officials duped Black citizens into signing a petition to keep Walker School open by telling them it would be used as a pre-kindergarten. Next, they called a secret school board meeting in which one Black man, clearly in their employ, stated Black families only wanted the old, segregated school properly repaired. Countless white volunteers now cared deeply for the Black students, and they showed it by working on the Walker School like a colony of carpenter ants. But Black parents found out the original petition was a fraud; therefore, they signed a new one insisting that their children would only attend the new school.<sup>285</sup> In the meantime, the school board petitioned the Supreme Court to allow them to comply with the decision by remodeling Walker. Scott countered with a motion to strike the defendant’s motion, but the school board continued to do all it could to maintain segregation.<sup>286</sup> South Park officials called a meeting of Black parents, but the parents refused to attend. They sent two local NAACP officials in their place. At the meeting, the school board promised to build a brand-new segregated

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<sup>284</sup> Elisha Scott to Thurgood Marshall, April 21, 1949.

<sup>285</sup> Franklin H. Williams, “Merriam, Kansas: Since the Parents Fought,” *Crisis*, December 1949.

<sup>286</sup> Motion to Strike and Motion in Protest of Defendant’s Motion, *Webb v. School District No. 90* case file.



school. South Park's Black parents were so determined to integrate that they did not even have to consider the offer. Williams wrote,

The NAACP representatives announced that in speaking for more than ninety-five percent of the Negro families they wished to state that the colored children of Merriam were going to attend the South Park (white) school and that the school board was wasting its time and money. The new principal, Charles H. Rutherford, acted in good faith on school registration day when every Negro child in the district enrolled in the South Park school. Despite charges of being everything from a "nigger lover" to a "Communist," he insisted on completely integrating the children, and for this he deserves the greatest commendation. Meanwhile, the board opened the jim-crow school with its enlarged staff of three teachers. They sat patiently for two-and-a half days waiting in vain for a child to enroll. Not one student came.

Williams closed by stating he hoped "Merriam can serve as a blueprint in a continuing fight of Negro parents to eradicate this most common violation of their civil rights."<sup>287</sup>

The win in *Webb* must have been bittersweet for Scott. He had seen previously accommodationist parents stand up for their rights and organize a strike that lasted amid great difficulty for an entire school year; and he had helped them by winning another school case before the Kansas Supreme Court. But the *Webb* decision only forced the school board to adhere to a clearly defined Kansas law. In substance it was no different than his win in *Thurman-Watts* in 1924, and *Thurman-Watts* was no different than *Board of Education v. Tinnon* which was decided in 1881. According to Scott's interpretation, *Tinnon* stood for the proposition "that until the Legislature has granted express authority to the school boards of cities of the second class to maintain segregated schools on the basis of race color or previous condition of servitude, such school board shall not maintain segregated schools." The rule had been clear for sixty-eight years, yet it

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<sup>287</sup> Williams, "Merriam, Kansas."

consistently had to be relitigated. Furthermore, such cases always had the possibility of violence hanging over them. As the *Tinnon* case was progressing, Tinnon's attorney's office was intentionally set on fire.<sup>288</sup> Three years after Scott won the *Thurman-Watts* case, he was called upon to help the victims of the Coffeyville riot. And several Black parents and others who understood the situation in South Park were afraid there would be violence when the students attempted to enroll at the new school.<sup>289</sup> The integration of South Park did not result in documented violence, but unapologetically racist school officials did all they could to prevent desegregation. Scott had to wonder if anything would ever change.

The 1954 decision in *Brown v. Board of Education* changed things overnight. With the Fourteenth Amendment working the way its architects intended, life in America changed for everyone. Men and women who were now known as civil rights lawyers won cases against every aspect of Jim Crow. Airports, beaches, buses, courtrooms, golf courses, libraries, public parks, trains, zoos and myriad other public places were desegregated with *Brown* providing precedent. The last vestige of de jure Jim Crow was interracial marriage and *Loving v. Virginia* said states could not prevent it in 1967. Wins in court did not guaranteed results in the world, therefore, it was the *Brown* ruling that gave the mass civil rights protests of the early 1960s their beginning. Many who took physical beatings and served time in jail in efforts to desegregate facilities stated the brutal lynching of Emmett Till in 1955 radicalized them, but it was *Brown* and its progeny they were fighting to enforce. Scott fought for the *Brown* ruling to be enforced

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<sup>288</sup> *Topeka Daily Capital*, February 11, 1881.

<sup>289</sup> Sidney Lawrence to Esther Brown, June 24, 1949; Esther Brown to Franklin Williams, June 26, 1949; Franklin Williams, Memorandum to Gloster B. Current, June 28, 1949.

until the day he died, but he took his beatings in pursuit of *Brown* long before the case had a name.

Elisha Scott's generation of lawyers had created the occupation of civil rights lawyer. Their fight was against *Plessy v. Ferguson* its Separate but Equal doctrine. Precedent was, therefore, always against them. In a perverse and unwanted way *Plessy* had directed the entire careers of men and women of Scott's generation. Even when they were not arguing that the Fourteenth Amendment was written to protect all Americans, legally sanctioned second-class citizenship was always a yoke around their necks. Charles Scott marveled at the fact that his father could win cases where the law was not on his side by appealing to emotion, or religion, or patriotism. Elisha Scott had no other choice. He knew the law, and he knew it was not on his side. When the *Brown* decision was announced, the second generation of Scott lawyers immediately had a tool their father never had—a simple interpretation of the Fourteenth Amendment that protected the citizenship rights of African Americans. Robert Carter later explained that after the *Brown* decision,

The psychological dimensions of America's race relations problem were completely recast. Blacks were no longer supplicants seeking, pleading, begging to be treated as full-fledged members of the human race; no longer were they appealing to morality, to conscience, to white America's better instincts. They were entitled to equal treatment as a right under the law; when such treatment was denied they were being deprived—in fact robbed—of what was legally theirs. As a result, the Negro was propelled into a stance of instant militancy. Now he was demanding—fighting to secure and possess what was rightfully his. The appeal to morality and conscience was still valid, of course, but in a nation that was wont to describe itself as a society ruled by law, blacks had now perhaps the country's most formidable claim to fulfillment of their age-old dream of equal status.<sup>290</sup>

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<sup>290</sup> Robert L. Carter, "The Warren Court and Desegregation," 67 *Michigan Law Review*, 237 (1968), 247.

Elisha Jr., John, and Charles' generation could go into court and argue with precedent on their side. Their father had done pretty well without it.

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