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Introduction: Celebrating the Mound City Bar Association Centennial: Looking Back, Leading Forward

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CELEBRATING THE MOUND CITY BAR
ASSOCIATION CENTENNIAL:
LOOKING BACK, LEADING FORWARD

INTRODUCTION

David Thomas Konig,^{*} Hon. David Mason,^{**}
and Karen Tokarz^{***}

In 2022, the Mound City Bar Association in St. Louis, one of the first Black bar associations in the country, celebrates its 100th anniversary. In this volume of the *Washington University Journal of Law & Policy*, distinguished authors look back at a century of contributions of Mound City Bar Association lawyers, judges, and allies, documenting their efforts to eliminate racial discrimination and break down barriers to equal justice. The volume is a testament to the work of countless individuals in the fight for civil rights since the beginning of the association in 1922. The authors also anticipate and examine the challenges ahead and the work yet to be done to achieve equal justice for all in our city, the region, and the country in the years to come.

Curating this volume has been exciting and heartening for the three of us. As the articles reveal, Mound City Bar Association lawyers, judges, and allies have worked relentlessly through the years toward a shared goal of equality for all. We thank all the authors for their amazing research and drafting efforts, capturing this rich history and inspiring change in the future. And we thank all of the editors of this year's *Washington University Journal of Law & Policy*, especially Rae Ensor, Editor-in-Chief, and

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Christina Schrantz, Managing Editor, for their tireless efforts to produce this high quality volume.

The first piece, “The Mound City Bar Association, Lloyd Gaines, and The Lincoln Law School,” authored by Judge Anne-Marie Clarke, highlights the early years of the Mound City Bar Association, starting with its inaugural meeting on January 7, 1922. Initially named the St. Louis Negro Bar Association, it changed its name to the Mound City Bar Association in September 1922, consistent with other Black professional organizations in St. Louis. Judge Clarke carefully documents the roster of Mound City Bar Association presidents from 1922 until today. She also highlights the key historical role of Lloyd Gaines, who sued the University of Missouri School of Law in 1935 after he was denied admission due to his race. Although he initially lost in state court, Gaines achieved a partial victory in 1938 in the United States Supreme Court, which ruled he had a right to gain a legal education at the University of Missouri or “a comparable and substantially equal school.” Rather than admit him to the University of Missouri, the state legislature authorized Lincoln University to create a law school. When Lincoln law opened its doors just nine months after the decision in fall 1939, it became the second Black law school in the country. Sadly, Gaines mysteriously disappeared and never attended Lincoln. Judge Clarke offers a unique perspective on this era, given the role of her father, Thomas P. Clarke, a Lincoln Law School graduate.

In “The Legacy of Frankie Muse Freeman, Esquire: First Female and Person of Color on The United States Commission on Civil Rights,” Judge Nicole Colbert-Bochway reviews the many achievements of Frankie Freeman, a life-long champion of civil rights. Commissioner Freeman received her law degree from Howard University in 1947, where she finished second in her class. She soon moved to St. Louis (then the fourth largest city in the country) and became full-time legal counsel in 1949 to the local chapter of the NAACP, with whom she worked for over sixty years. She served as lead counsel in several important civil rights cases and was named to the United States Commission on Civil Rights in 1964. She was the first woman and the first person of color to be appointed to the Commission. In 1999, she was selected with William H. Danforth, Chancellor of Washington University, to co-lead the St. Louis City Public School desegregation task force. She continued her work to advance equal

justice for all throughout her life, including her appointment by President Obama to the Commission on Presidential Scholars in 2015 at the age of 99.

The next piece, authored by Judge Willie J. Epps, Jr. and Jonathan M. Warren, “Missouri’s Black Judicial Pioneers: Leading and Presiding,” captures in unparalleled depth the history of Missouri’s “barrier-breaking” Black judges from 1922 to the present. The authors offer insights about the most well-known Black judges, in addition to details about lesser-known Black judges, who have served on the state and federal courts in Missouri. According to the authors, the earliest of these judicial pioneers sat on the bench when Blacks had few rights under the United States Supreme Court’s interpretation of the Constitution, and when *de jure* and *de facto* discrimination reigned in Missouri and throughout the country. The authors’ rich research shows how Black judges overcame prejudice within the profession and on the bench. Their scholarship illuminates generations of Black Missouri judges who initiated progress within and left an impactful legacy on the law, the judiciary, and the legal system in Missouri.

Professor Colin Gordon notes in “Dress Rehearsal for *Shelley*: Scovel Richardson and the Challenge to Racial Restrictions in St. Louis” that throughout the past century St. Louis has been and remains one of the most segregated metropolitan cities in the nation. Gordon argues that this problematic setting made the city ground zero for the legal battle against racial segregation and set the stage for the historic United States Supreme Court ruling in *Shelley v. Kraemer*, which prohibited state enforcement of racially restrictive deed covenants. He discusses the history of racially restrictive covenants in St. Louis and the subsequent legal challenges that occurred on the state and local level in Missouri. He focuses on a key figure in this history, Scovel Richardson, a St. Louis attorney and National Bar Association President, and his seminal case, *Dolan v. Richardson*. Professor Gordon explains the substance and history of legal arguments deployed by Richardson in his case and argues that, despite its unsatisfying outcome, the challenge to restrictive covenants in *Dolan v. Richardson* opened the door for the groundbreaking ruling in *Shelley*.

In “Justice For All: An Overview of the Supreme Court of Missouri’s Commission on Racial And Ethnic Fairness,” Judge Lisa White Hardwick argues that systemic racial and ethnic inequality *in* the courts and under the law can only be reversed by systemic action *by* the courts. She asserts that, after the killing of Michael Brown by a Ferguson police officer in August

2014, Missouri's need for judicial and legal reform could no longer be ignored. The following year, the Supreme Court of Missouri established the Commission on Racial and Ethnic Fairness. Announcing the creation of the Commission, then-Chief Justice Patricia Breckenridge highlighted the goals of the Commission: to examine current practices and to recommend measures to ensure fairness, impartiality, equal access, and participation for racial and ethnic minorities in the judicial process and in the practice of law. Judge Hardwick, who currently serves as one of the Commission's co-chairs, describes the Commission's background and purpose, details some of the steps the Commission has taken towards fulfilling equal justice for all, and sheds light on its inner workings. Sharing her insights into key successes during the Commission's five-year history of data collection and procedural reforms, she posits these provide a strong foundation to carry the work for racial and ethnic justice into the future.

In their piece, "The Rise of African American Women Judges During the Past Century," Judge Sandra Farragut-Hemphill and Ebony McCain illuminate the ascension of African American women to the bench in Missouri, starting with the formation of the Mound City Bar Association in 1922, when there were few African American women lawyers in the country. The authors document the increasing number of African American women judges joining state and federal courts in Missouri (and the country), especially in recent decades. The authors assert that the elevation of African American women jurists positively affects both perceptions of our legal system and outcomes of judicial decision-making in this country. However, despite the advancement of these accomplished jurists, the authors suggest that significant work remains in obtaining an equitable racial and gender representation in the judiciary that will present and foster fairness and equal justice for all.

Professor David Konig examines "The Persistence of Caste: Race, Rights, and the Legal Struggle to Expand The Boundaries of Freedom in St. Louis" and finds that the roots of racial hierarchy in St. Louis run so deep and have taken so many different forms they require the unflinching gaze of history to understand. He provides a prologue of historically embedded racial hierarchy that lays the basis of the main thrust of his article: the legal struggle against a racialized caste system that began long before the Reconstruction amendments or the civil rights movement of the twentieth century. Professor Konig examines how hundreds of enslaved individuals

were able to petition the Circuit Court of St. Louis County with tenaciously pursued “freedom suits,” challenging their enslavement as illegal. He notes that a third of these plaintiffs successfully achieved their own liberation and escaped further enslavement and argues that all the suits—successful or not—helped advance equal justice for all. He concludes that the experiences of suing for freedom left a robust legacy of a “rights consciousness” and familiarity with the ways that law could be an instrument of justice that has informed ongoing challenges to inequality.

In her piece, “Show Me the Ballot: The Ongoing Battle for the Right to Vote for Missouri’s Communities of Color,” civil rights attorney Denise Lieberman documents the history of Missouri’s place at the crossroads of voting rights debates in the United States. She posits that Missouri remains at the forefront of the battle against modern-day barriers to the ballot, with repeated backlashes to growing political participation by voters of color. She draws on Missouri’s problematic history to contextualize the discriminatory voting practices that disparately impact voters of color around the country by offering a narrative arc of Missouri’s modern voting rights battles through the lens of local advocates involved in those fights. The author asserts that the erosion of state and federal protections against discriminatory voting practices and the surge of restrictive voting proposals disparately impact voters of color and severely limit the freedom to vote. Lieberman also tracks the role of the Mound City Bar Association and the development of Missouri’s Election Protection program, and concludes that on-the-ground efforts of local legal and advocacy organizations like the Mound City Bar Association are key to an effective legal and organizing strategy to combat discriminatory voting barriers.

In “Judge Clyde Cahill: Courage and Action,” Judge David Mason highlights the life and work of Judge Cahill, a trailblazer on both the state and federal trial courts who made significant efforts to improve judicial outcomes. The author traces Judge Cahill’s life story from his early beginnings growing up in a poor family to his rise as a judge determined to use his position to foster fairness and equity, especially in the judicial administration of criminal law and civil rights. Judge Mason focuses on specific findings and opinions of Judge Cahill, in which he aimed to improve equal rights and due process at the trial level in the state and federal courts, including Judge Cahill’s longstanding criticism of the racial implications of mandatory sentencing. He highlights Judge Cahill’s

persistence and suggests that Judge Cahill’s opinions reveal visionary work, which serves as a model for what the judiciary in a democracy should be.

In their piece, “The Role of Law, Policy, and Practice in the Erosion of Economic Power in Underserved Communities,” Sandra M. Moore and Dorothy L. White-Coleman posit that growth of businesses owned and operated within communities is a cornerstone of economic power. Unfortunately, they note that underserved minority communities are consistently denied the opportunity for economic growth and power due to the inequitable societal infrastructure in place. The authors examine key law, policy, and practice barriers to economic growth in underserved communities, and explore pieces of societal infrastructure that have failed to provide the financial floor that these communities need to maximize economic power and potential. Moore and White-Coleman use their positions as an African American lawyer-investor and an African American lawyer-entrepreneur to provide an illuminating vantage point on access to capital and business growth. They conclude that, without examination through a variety of viewpoints and a change of the infrastructure in place, economic inequity will only persist—more ill-advised laws will be generated, with more policy implications, and more communities will experience dissonance between law, policy, practice, and outcomes.

In “The Root And Branches of Structural School Racism In Missouri: A Story of Failure by Design and the Illusion and Hypocrisy of School Choice,” Professor Kimberly Jade Norwood and attorney Ronald Alan Norwood demonstrate that Missouri has been hostile to the education of its Black residents since Missouri was first admitted into the Union as a slave state. The authors track the evolution of that hostility from 1821 through 2021, from the most overt and blatant in the early years to the subtler and covert in the modern era. Starting with the original total ban on the education of enslaved Blacks, they move to the reluctant allowance of separate but equal education for Black Missouri residents after the Civil War and continue with the separate but unequal policies that have thrived in the state from 1865 to the present. The authors assert that Black students continue to be subjected to under-resourced educational opportunities vis-à-vis their White counterparts, both during K-through-12 education and in the state’s two historically black colleges and universities. They contend that education inequity is compounded by the false promises of public-school privatization, which in their view allows charter schools and voucher

programs to cannibalize limited public school resources under the guise of “school choice.” The authors reveal various permutations of this dual, unequal system and argue that intentional decisions by Missouri lawmakers for over a century have caused Black students to struggle in public school systems designed not for the success of majority-Black learning institutions, but for their failure.

In “Judge Theodore McMillian: Beacon of Hope and Champion for Justice,” Professor Karen Tokarz illuminates the heroic accomplishments of Judge McMillian. She traces his early life and career to demonstrate his life-long dedication to challenging disparities in the legal system and in the community. She highlights his role as Missouri’s first Black judge to sit on the state circuit court, state appellate court, and federal appellate court. She examines the Judge’s contributions on the St. Louis City Circuit Court, especially the Juvenile Court, where he pushed for the expansion of constitutional rights for juveniles; his groundbreaking criminal justice and civil rights jurisprudence on the Missouri Court of Appeals; and his anti-discrimination decisions and dissents during his tenure on the Eighth Circuit Court of Appeals. She also notes his role as a community leader in St. Louis, as a founder of the Herbert Hoover Boys Club, first board chair of the Human Development Corporation, president of the Urban League, and board member of the Office of Economic Opportunity Legal Services Program. Professor Tokarz draws from her own experience with Judge McMillian to illustrate his extraordinary integrity, unbounded compassion, and abundant inspiration to law students, lawyers, judges, and all who care about equal justice for all.

In the final piece, “Black Lawyers and Civil Rights: The NAACP’s Legal Campaign Against Segregation,” Professor Leland Ware describes the carefully orchestrated series of lawsuits that occurred decades prior to the mass marches, boycotts, and other protest activities of the civil rights movement of the 1950’s and 1960’s. In particular, he discusses the legal campaign against segregation by the National Association for the Advancement of Colored People, working in conjunction with national and local Black lawyers’ organizations such as the Mound City Bar Association. Professor Ware traces the development of the law from the establishment of the “separate-but-equal” doctrine in *Plessy v. Ferguson* to the execution of the “equalization” strategy that culminated with *Brown v. Board of Education*. He analyzes the impact of these legal developments and the

“massive resistance” of the Southern states to school integration that remained post-*Brown*. He concludes by citing the lasting effects of discriminatory policies, using the example of continuing segregation in neighborhoods and schools in many urban communities.