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by Charles L. Ruffin

Georgia Legal Legends: Horace T. Ward and Ben F. Johnson Jr.

Second in a series of historical profiles in observance of the 50th anniversary of the State Bar of Georgia.

August of this year was the 50th anniversary of the March on Washington and Dr. Martin Luther

King Jr.'s famous "I Have a Dream" speech. Dr. King called on America to rise up and live out the true meaning of its creed that all men are created equal and should be judged not by the color of their skin but by the content of their character.

As we also celebrate the 50th anniversary of the State Bar of Georgia this year, I would like to take this opportunity to celebrate the legacy of two Georgia lawyers who did their part to live out that creed.

During the 1950s and early 1960s, the dominant public policy issue in Georgia—for all three branches of government, the rule of law and society in general—was school desegregation. A significant part of the civil rights movement was the effort to gain admission for African-American students into Georgia's primary and secondary schools, colleges and universities—including our state's law schools.

Efforts to desegregate Georgia's law schools—public and private—were centered on two separate cases, prominently featuring two men who would become household names in our state's legal community: Horace T. Ward and Ben F. Johnson Jr.

In 1950, Georgia native Horace T. Ward became the first African-American to apply for admission to the University of Georgia School of Law. The denial of his application was not unexpected, but it set in motion a lengthy saga in Georgia's legal history that would change our state forever. And Horace Ward would play a leading role in that change,

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later becoming the first African-American to serve as a federal judge in Georgia.

According to his biography in the *New Georgia Encyclopedia*, written by Robert A. Pratt of the University of Georgia, Judge Ward was born July 29, 1927, in LaGrange, the only child of Minnie Ward. He never knew his father, and because his mother was a live-in domestic worker, Ward lived with his maternal grandparents. Despite not starting school until age 9, he was a bright student whose fourth-grade teacher convinced the principal to allow him to skip the fifth grade. He would graduate as valedictorian of the East Depot Street High School Class of 1946.

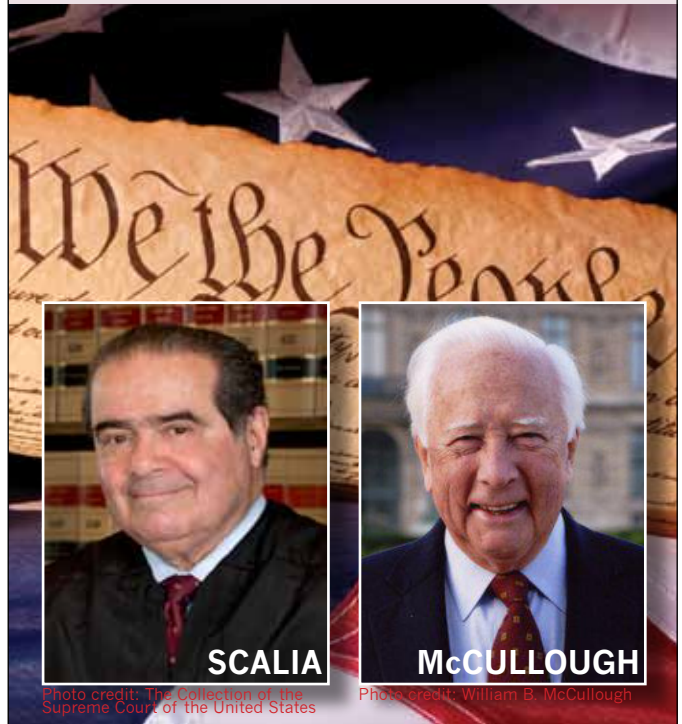
Ward left LaGrange bound for Atlanta and Morehouse College, where he majored in political science. He completed his bachelor's degree in three years and by 1950 had earned a master's degree from Atlanta University (now Clark Atlanta University). During his postgraduate studies, Ward was taken under the wing of William Madison Boyd, chair of the political science department at Atlanta University and president of the Georgia branch of the NAACP.

Ward's interest in becoming a lawyer stemmed from his learning about Austin Thomas Walden, one of the few African-American attorneys practicing in Georgia in those days. Ward did not want to have to leave the state to attend law school. Boyd had been looking for someone to break the color barrier at the University of Georgia; in Ward, he believed he had found someone with the credentials to do so. Ward agreed to take the first step in the application process, which Robert Pratt describes this way:

On Sept. 29, 1950, Ward formally applied to law school at UGA. The university registrar forwarded Ward's application to the Board of Regents—a procedure that was not followed for white applicants. When the executive secretary of the Board of Regents offered Ward out-of-state tuition assistance, Ward refused it and insisted that his application be judged on its merits. Despite Ward's repeated requests for updates on the status of his application, the regents continued to stall. Finally, on June 7, 1951, the registrar informed Ward by letter that his application had been denied. The university's decision came more than nine months after Ward had filed his application.

For the next 12 months Ward tried in vain to get university officials to give him a reason for their decision. Up to this point, university officials, including the president and University System of Georgia chancellor, had insisted that Ward was simply "not qualified" for admission, despite his stellar academic performance at both Morehouse and Atlanta University. University officials steadfastly denied that UGA excluded blacks; the fact that no black had ever been admitted to the university was merely coincidental. Meanwhile, the Board of Regents decided to 'modify' the admissions crite-

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ria by requiring that candidates take an entrance exam and that they get two additional letters of recommendation—one from a UGA law school alumnus and the other from the Superior Court judge in the area where the applicant resided.

The attorneys who were representing Ward included Walden, Constance Baker Motley and Donald Hollowell, who had just set up his practice in Atlanta on Hunter Street (now Martin Luther King Jr. Boulevard) with \$300 he had borrowed from a friend. Hollowell was one of only a dozen or so African-American lawyers in Atlanta in 1952. It was clear to them that Ward would have to take the University of Georgia to court to have any chance of entering its law school.

Their suit was filed in U.S. District Court in Atlanta on June 23, 1952, an event that was followed by numerous delays and legal maneuvers by the state's attorneys over the next several years. On Sept. 9, 1953, less than one month before the scheduled court date of Oct. 5, Ward was drafted into military service, effectively suspending his case. He served two years in the Army, including a year in Korea, before returning home in 1955 and reactivating the lawsuit. After multiple new motions for dismissal filed by lawyers for the university and state were unsuccessful, the court date was rescheduled for Dec. 17, 1956, which was more than six years after Ward's original application to law school.

By then, however, Ward had already enrolled in law school at Northwestern University in Evanston, Ill., as prospects for his admission to the UGA School of Law anytime in the near future appeared dim. His assessment of the situation was correct; on Feb. 12, 1957, the U.S. District Court dismissed Ward's suit on the grounds that he had failed to reapply for admission to UGA under the newly instituted guidelines requiring letters of recommendation and that Ward's entering another law school had rendered his UGA application moot.

Ward decided not to appeal the decision, having already gotten on with his life at Northwestern, where he earned his law degree in 1959. He then returned to Georgia and worked with Hollowell and Motley on their successful efforts, realized in 1961, to desegregate the state's flagship university. On Jan. 6, of that year, U.S. District Court Judge William A. Bootle of the Middle District of Georgia ordered UGA to admit Hamilton E. Holmes and Charlayne A. Hunter as the first African-American students in the institution's 175-year history.

Ward joined Hollowell's firm, which would become Hollowell, Ward, Moore & Alexander. In 1964, Ward was elected to the Georgia State Senate, where during his first term one of the fellow senators with whom he crossed paths was a South Georgia peanut farmer named Jimmy Carter.

Fifteen years later, Carter was serving as the 39th president of the

United States and made the historic appointment of Ward as a judge on the U.S. District Court for the Northern District of Georgia. "In an interesting twist of fate," Robert Pratt wrote, "Ward later presided over several cases in which UGA was the defendant."

Ward served in active status from 1979 through 1994, when he took senior status. He retired from the bench last September.

Bootle's ruling having effectively desegregated Georgia's public institutions of higher learning, the issue was, however, far from settled at the state's private colleges and universities. State law still denied tax exemptions to integrated private schools.

At the time, Ben F. Johnson Jr. was the new dean of the Emory University School of Law. Working closely with Henry Bowden Sr., who was chairman of Emory's Board of Trustees and the university's general counsel, Johnson pushed for and argued the landmark case that would integrate Georgia's private universities. Throughout his career, he remained a strong and effective advocate for women and minorities.

Johnson was born in Atlanta in 1914. Following his undergraduate work at Emory, Georgia State University and the University of Georgia, he received a J.D. from Emory Law School in 1939 and was admitted to the Georgia Bar Association the same year. From 1940 through 1943, Johnson practiced law at Sutherland, Tuttle & Brennan in Atlanta, where he came under the influence of Georgia legal giants



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Judge Elbert P. Tuttle and Randolph W. Thrower, among others.

Johnson served in the Naval Reserve from 1943 to 1946, including time on the U.S.S. Yorktown during its landings on Iwo Jima and Okinawa. Following the war, Johnson began 36 years at Emory Law School, including his service as dean from 1961 to 1972. During this period, he also served as a deputy assistant attorney general for Georgia from 1955 to 1961 and as a state senator from 1963 to 1969. In the Senate, he was chiefly responsible for writing the resolutions to permit the creation of the Metropolitan Atlanta Rapid Transit Authority (MARTA).

In 1962, Johnson and Bowden filed *Emory v. Nash*, which sought to overturn a state law that denied tax exemptions to integrated private schools. As William B. Turner, a visiting assistant professor at Emory Law in 2007 wrote in his paper *The Racial Integration of Emory University: Ben F. Johnson Jr. and the Humanity of Law*, the story of Emory's desegregation is very different from that of the public institutions in the South.

"Emory's leaders sought integration in 1962 while others fought it," Turner wrote. "Emory briefly found itself in the peculiar position of being unable to admit African-American students for fear of losing its tax exemption even after the state legislature had enacted legislation desegregating the state's public institutions."

Turner continued, "The obvious difference between these institutions and Emory is that they are public, but Emory is private. It is, therefore, less subject to the vagaries of electoral politics and stands in an importantly different relationship to the applicable law. But the difference between integration at Emory and integration at the [public institutions] lay not only in the specific statutes. It lay also in the posture of the universities' administrators. In the suit to integrate [a public college], the university administrator was the defendant. In *Emory v. Nash*,

the university and its representatives served as plaintiffs."

Challenging identical provisions of the Georgia Constitution and Georgia statutes, the suit was initially unsuccessful in DeKalb County Superior Court, where one defendant's motion for dismissal and summary judgment on behalf of the remaining defendants was granted. But Emory appealed to the Supreme Court of Georgia, which reversed the trial court.


According to William Turner's account, "The opinion rehearses the claim of the original petition that the two provisions of the statute contradicted each other, such that the first provision, limiting the tax exemption to institutions that served the general public, must stand while the second provision, limiting the tax exemption depending on the race of the institution's constituents, must fall. The opinion makes no reference to the equal protection argument, but Bowden and Johnson had achieved their goal. The Supreme Court of Georgia expressly held that 'Emory, as a private school, can accept colored students without jeopardizing its tax exemptions.'"

Following the Supreme Court's action, Turner added, "Lesser men might have rested on their laurels. Others might have revealed a measure of cynicism or ignorance in their contributions to racial integration by winning the suit to strike down the segregation statute, then waiting idly for African-Americans to matriculate. Johnson was just getting warmed up. He had high aspirations for Emory Law School and Emory University, and deliberately increasing the number of African-American students was part of his plan."

In 1965, more than two years after the *Emory v. Nash* decision, Emory Law admitted its first two full-time African-American students: Marvin S. Arrington Sr., who would go on to serve for 16 years as president of the Atlanta City Council and 10 years as a Fulton County Superior Court judge before his retirement last year, and Clarence Cooper, who has served as a judge for the

Atlanta Municipal Court, Fulton County Superior Court, Court of Appeals of Georgia and, since 1994, U.S. District Court for the Northern District of Georgia (in senior status since 2009). Johnson went on to create the unique Pre-Start Program, a vehicle for recruiting African-American students to Emory Law School.

After leaving Emory, Johnson capped his career at the College of Law at Georgia State University, serving as its founding dean from 1981 to 1985. Since 1994, the Georgia State University College of Law has presented the Ben F. Johnson Jr. Public Service Award to a deserving Georgia attorney. Johnson died June 30, 2006, at his home in Atlanta.

I have been privileged during my legal education and during my law practice to know both of these men. Ben Johnson was my tax law professor at Emory and allowed me to earn a passing grade. Judge Ward presided over my first trial within five months after I started my own practice, and I was fortunate to prevail in that trial. I can personally attest that Georgia is a better place because of these two giants of Georgia's legal community. 

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Correction

In the August edition of the *Georgia Bar Journal*, my President's Page article contained an erroneous reference to the Revolutionary War and "Gen. Cornwallis's surrender at Yorktown, Pa." We all know, of course, that the surrender took place in Virginia, not Pennsylvania.

While you might think that was an uncaught typographical error, it was actually a contest to see which readers, if any, were paying attention. The winner: my good friend, colleague and State Bar past president, Jeff Bramlett.