



*“The mission of the Arkansas Supreme Court Historical Society is to promote the preservation, dissemination and understanding of the history of the judicial department of state government through exhibits, conferences, publications and other activities.”*

### September 2005 Conference: “Women and the Law in Arkansas”

Frances Mitchell Ross, President, Arkansas Supreme Court Historical Society

The Supreme Court Historical Society and the Supreme Court Exhibits Committee held a joint conference on Women and the Law on September 9 at the Arkansas Justice Building. The Arkansas Association of Women Lawyers contributed significantly to the conference. The agenda was packed with outstanding features, opening with an address by Professor Michael Dougan of Arkansas State University titled “We prefer to stand by the rule sanctified by Divine Wisdom’: The At-Risk Status of Arkansas Women at Law.” Two panels followed Dougan’s address: the first included women who presented their own experiences from the earlier years of women’s involvement in the law and the second was made up of women pioneers in judicial and bar association work.

In special session, the Arkansas Supreme Court convened to honor Arkansas’ first female judges, either appointed or elected to

Arkansas trial and appellate courts. The conference continued with a presentation on gender discrimination in the practice of law and concluded with an update on equal employment law. The September 2006 conference will focus on Arkansas constitutions.

Officers elected by the Board of Directors were: Frances Ross, President; Hon. Jim Spears, Vice President; Rod Miller, Secretary-Treasurer. Miller is Public Services Coordinator for the Supreme Court Library and will

provide staff assistance to the society. The directors formed four society committees: Publicity and Membership, chaired by Rod Miller; Program and Annual Conference, chaired by J. D. Gingrich; Publications, chaired by Scott Stafford and Nominations, chaired by Hon. Jack Holt. The board also considered and approved a society mission statement, which appears above. At the general membership meeting, three new board members were elected: Jackie Wright, Donna Gay and Rod Miller. All society members were

invited to participate as members of the new society committees.

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Honorees included (l. to r.) Judge Bernice L. Kizer, Judge Judith Rogers, and Associate Justice Annabelle Imber.

Arkansas Supreme Court  
Historical Society’s  
2006 Annual Conference:  
“Arkansas Constitutions”  
Friday, September 8, 2006  
Justice Building

# The Arkansas Supreme Court and the Emancipation of Slaves

By L. Scott Stafford, Chair, Publications Committee, Arkansas Supreme Court Historical Society

The Emancipation Proclamation, which President Abraham Lincoln issued in September 1862, freed those Africans held in slavery in the eleven states of the Confederacy. The effective date of the proclamation was January 1, 1863, and Arkansas was among the eleven affected states, but the actual date on which Arkansas slaves became free is somewhat complicated. It took the Arkansas Supreme Court numerous opinions, delivered over the course of two decades, to fully settle the question.

A preliminary question is why would the Supreme Court have found it necessary to fix the exact date on which Arkansas slaves were emancipated. After all, courts do not address questions unless the answers have legal consequences. An initial response might be that newly freed slaves brought actions to obtain compensation for work they performed after they gained freedom, but the reported cases do not include a single example of such a suit. Instead, lawsuits seeking to determine the exact date of emancipation were most often brought by former slave owners.

Slaves were expensive in antebellum Arkansas. Professor Orville Taylor, whose 1958 work is still the most comprehensive study of slavery in Arkansas, estimated from census records that an adult Arkansas slave was worth as much as an 80-acre farm or the average city residence. Orville W. Taylor, *Negro Slavery in Arkansas* 78-79 (UA Press Edition 2000). A purchaser who lacked the funds to pay cash for a slave at the time of the sales typically agreed to pay the purchase price in installments stretched over several years. Many of these deferred payment

transactions were not completed before emancipation, and suits seeking payment for freed slaves were common during the years after the war. These cases forced the Supreme Court to determine whether the seller or the buyer bore the risk of emancipation.

Understanding how the Supreme Court dealt with these lawsuits requires some familiarity with the military-political situation in Arkansas during the war years. By the fall of 1863 Union forces reached Little Rock after driving the Confederate army from most areas of the state north of the Arkansas River. Confederates still controlled the southwest corner of the state, and the Confederate state government moved to the Hempstead County seat of Washington, which functioned as the Confederate state capital for the last year and a half of hostilities. In the spring of 1864 a group of pro-Union Arkansans gathered in Little Rock and drafted a new state constitution that declared slavery at an end. The Constitution of 1864 was ratified by a public vote held on March 14-17, 1864, in Union Arkansas. When Confederate military forces surrendered in the spring of 1865, the pro-Union government in Little Rock became the both the de facto and de jure government of the state.

In August 1866 former supporters of the Confederacy, running on a Conservative Party ticket, were elected to all three positions on the Arkansas Supreme Court. A few months after taking office these three Conservative justices heard the case of *Dorris v. Grace*, 24 Ark. 326 (December term 1866). Dorris had purchased a

slave from Grace at Pine Bluff on August 29, 1863, in exchange for a promissory note of \$3,000 plus interest at ten percent. When the war ended, Grace sued Dorris to collect payment of the note. Dorris did not argue that the emancipation of the slave had freed him from the obligation to pay for the slave. This would have been contrary to prewar precedent holding that the purchaser remained liable to pay for a slave notwithstanding the death or escape of the slave. Instead, Dorris argued that he received no consideration for his promissory note because President Lincoln had freed the slave on January 1, 1863, some eight months before the date of the slave's sale.

The Arkansas Supreme Court disagreed and ruled that Dorris was obligated to pay for the slave. It noted that Lincoln had based his authority to issue the Emancipation Proclamation on his position as commander-in-chief of United States military forces during time of war. Consequently, it had only freed slaves in those areas under the military control of the United States Army. Because Union forces had not yet reached Pine Bluff on August 29, 1863, the date of the sale, the subject of the sale was still a slave at the time of sale, and the purchaser remained liable to pay the agreed purchase price. Later during the December 1866 term, the court followed *Dorris v. Grace* in two other cases involving sales of slaves in places where slavery was still legal at the time of sale. See, *Rust v. Reives*, 24 Ark. 359 (December Term 1866) (sale on September 20, 1860, in Albermarle County, Virginia) and *Ex parte Millwee*, 24 Ark. 364

**(Emancipation continued)**

(December Term 1866) (sale on February 18, 1863, in Sevier County ). The only transaction that the Conservative court refused to uphold was an exchange of slaves for land that occurred in Ouachita County on April 14, 1865, when the Confederacy was on its last legs. *Steele v. Richardson*, 24 Ark. 365 (December Term 1866).

Two slave sale cases decided by the Conservative justices raised legal issues not addressed in *Dorris v. Grace*. In *Haskill v. Sevier*, 25 Ark. 152 (December Term 1867), which involved the sale of a slave on March 8, 1860, in Arkansas County, the buyer argued that the seller's warranty at the time of sale that the slave was a slave for life was a guarantee that the slave would not be emancipated. The court rejected the argument and enforced the contract. In *Atkins v. Busby*, 25 Ark. 176 (December Term 1867), the court distinguished an April 2, 1859, Jefferson County sale in which the seller retained title to the slaves until the buyer made the first of several installment payments. Because title to the slaves never passed to the buyer, the seller bore the risk of emancipation and could not collect the unpaid installments.

The Constitution of 1868, which was adopted in the spring of 1868, provided for a five-member Supreme Court and shortly after adoption of the new constitution, Republicans assumed all five positions on the new court. Article XV, section 14 of the new constitution contained a provision that was clearly aimed at overturning *Dorris v. Grace*:

All contracts for the sale or purchase of slaves are null and void, and no court of this State shall take

cognizance of any suit founded on such contracts; nor shall any amount ever be collected or recovered on any judgment or decree which shall have been, or which may be, rendered on account of any such contract or obligation on any pretext, legal or otherwise.

This attempt by the framers of the Constitution of 1868 to bar the enforcement of contracts for the sale of slaves was rejected by the Republican Supreme Court. The case was *Jacoway v. Denton*, 25 Ark. 625 (December Term 1869), which involved the buyer's obligation to pay for three slaves sold on October 4, 1861, in Yell County, which was clearly under Confederate control at the time of sale. The majority of the Republican court ruled that the contract was legal at the time and place it was entered and that the state's refusal to enforce the contract would violate Article I, section 10, of the United States Constitution, which prevented the state from impairing the validity of contracts. The Republican court also followed the rule of *Dorris v. Grace*—that Arkansas slaves were emancipated gradually as the Union army extended its lines across the state.

Throughout the Reconstruction period, cases involving the wartime sale of slaves continued to reach the Republican Supreme Court, and the court continued to enforce contracts for the sale of slaves if slavery was legal at the time and in the place the sale occurred. *Kaufman & Co. v. Barb*, 26 Ark. 24 (December

Term 1870) (July 10, 1863, sale in Independence County); *Buchanan v. Nixon*, 26 Ark. 47 (December Term 1870) (1859 sale in Franklin County); *Pillow v. Brown*, 26 Ark. 240 (December Term 1870) (December 28, 1860, sale in Tennessee); *Sevier v. Haskell*, 26 Ark. 133 (December Term 1870) (March 8, 1860, sale in Arkansas County); and *Knott v. Knott*, 26 Ark. 444 (June Term 1871) (February 1, 1859, sale in Jefferson County).

Surprisingly, no case to reach the court during the years immediately after the war addressed the abolition of slavery by the Constitution of 1864. It was not until 1886, over a decade after the end of Reconstruction, that the Supreme Court decided that the Constitution of 1864, unlike the Emancipation Proclamation, applied to those areas of the state still within Confederate control. *Graves v. Pinckback*, 47 Ark. 470, 1 S.W. 682 (1886), was a suit by the children of a deceased slave owner. After their father's death, the children's mother remarried. In August 1863, their new stepfather conveyed slaves belonging to their father's estate as partial consideration for a plantation in Desha County. In the course of the opinion, the Supreme Court stated:

[The Emancipation Proclamation] had no legal efficacy except so far as it was actually put into operation by armies in the field setting free captured slaves. The adoption of the constitution of 1864 is the true date of the liberation of the slaves in this state.

**(Emancipation cont. next page.)**

(Emancipation cont.)

47 Ark. at 475,

1 S.W. at 683.

In summary, it took the Arkansas Supreme Court over twenty years to determine the exact date on which slavery was abolished in Arkansas. The answer is that Arkansas slaves were freed in stages. The Emancipation Proclamation freed all slaves in areas under the control of the United States Army on January 1, 1863. This would have included much of north Arkansas, where slavery was never widespread, as well as the delta from Helena north along the Mississippi River, which had a much higher population of slaves. Between January 1, 1863, and March 14, 1864, emancipation followed the progress of Union armies. Slaves in most of east Arkansas were freed as the Union army marched west through the delta following its success at the Battle of Helena in July 1863. Slaves in the area around the state capital were freed in September 1863 when Little Rock was occupied. Those held in slavery in areas still occupied by the Confederate army were set at liberty by the adoption of the Constitution of 1864, which became effective on March 14, 1864.

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## Historical Society Board Meets in December Plans Conference for 2006

Rod Miller, Secretary-Treasurer  
Arkansas Supreme Court Historical Society

The Supreme Court Historical Society Board met on December 9, 2005 and made plans for 2006 centered on the annual conference in September, two exhibits in the Justice Building in 2006, membership growth, appointments to committees, and the re-launching of the Society's newsletter.

The meeting was presided over by President Frances Ross. She summarized a letter from J.D. Gingerich, Executive Director of the Administrative Office of the Courts, outlining plans for conferences and exhibits in 2006. In the letter, Mr. Gingerich proposed a conference and exhibit in September of 2006 focused on the topic of "Houses of Justice," looking at the history and significance of those structures in Arkansas which have housed the work of the state courts. President Ross reported that Wendy Richter, State Historian, also suggested an exhibit on Arkansas constitutions for October 2006.

President Ross reported on a mission statement that she drafted for the Historical Society: *The mission of the Arkansas Supreme Court Historical Society is to promote the preservation, dissemination and understanding of the history of the judicial department of state government through exhibits, conferences, publications and other activities.*

Secretary-Treasurer Rod Miller reported that a new webmaster has been hired by the AOC to revamp the Arkansas Judiciary website. President Ross asked for a link for the Historical Society be added to the new

website, including links for the newsletter and membership application form.

President Ross reported that she has written an article on the history of the Arkansas Supreme Court Historical Society, titled "The Arkansas Supreme Court Historical Society: How It Started, What It Does," which appears in the Winter 2006 issue of *The Arkansas Lawyer*, published by the Arkansas Bar Association.

Board member John Gill suggested a Tuesday morning for the next board meeting. The spring 2006 board meeting was then scheduled for Tuesday, May 9, 2006 in the Justice Building. The fall board meeting was scheduled for Friday, September 8, 2006 in the Justice Building, to coincide with the annual conference.\*

***\*The Historical Society's Annual Conference Committee subsequently decided, at a meeting on March 20, 2006, to feature Arkansas constitutions for its 2006 conference on September 8, 2006, and to feature Arkansas courthouses for its 2007 conference in September 2007. Information on the 2006 conference "Historic Constitutions of Arkansas" will be posted on the Historical Society's website. <http://courts.state.ar.us>***

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**Arkansas Supreme Court Historical Society**  
**Officers & Board of Directors**  
**2005-2006**

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Hon. Jim Spears, Vice President  
Rod Miller, Secretary-Treasurer

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**Membership Form  
on last page.**

**Dr. John L. Ferguson,  
Ex-State Historian, Dies**

John L. Ferguson passed away on Saturday, March 25, 2006. He was 80. Dr. Ferguson served in the capacity of State Historian for Arkansas for 44 years, having becoming State Historian in 1960. He also served on the Arkansas Supreme Court Historical Society's initial Board of Directors. Retiring on April 30, 2005, as Director of the Arkansas History Commission, Dr. Ferguson throughout his career worked to preserve the history of Arkansas through the History Commission. And, through his work with archives, historical societies, historic preservation and museums, Dr. Ferguson served as a leader in all aspects of historic preservation in Arkansas.

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**Arkansas Supreme Court  
Historical Society  
~ Calendar/Events ~**

- **Spring Historical Society Board Meeting – Tuesday, May 9, 2006 – AOC Conference Room, 2<sup>nd</sup> Floor, Justice Building**
- **Fall Historical Society Board Meeting – Friday, September 8, 2006 – AOC Conference Room, 2<sup>nd</sup> Floor, Justice Building**
- **“Historic Constitutions of Arkansas,” Fall Conference & Exhibit — Friday, September 8, 2006, Justice Building**
- **Exhibit in conjunction with National Archives Week — October 2006, Justice Building**



## 2006 Dues Notice

### Arkansas Supreme Court Historical Society, Inc.

*All membership dues are payable now. Please check your category, complete the information, and return with your check made payable to "Arkansas Supreme Court Historical Society, Inc."*

~ The Arkansas Supreme Court Historical Society invites all to join! ~

- \_\_\_\_\_ \$10 **Student**
- \_\_\_\_\_ \$25 **Individual**
- \_\_\_\_\_ \$40 **Nonprofit organization or educational institution**
- \_\_\_\_\_ \$500 **Partnership, corporation, or company** (A partnership, corporation, or company may name up to ten individual members)
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