



Arkansas Supreme Court Historical Society Holds 2006 Conference

Karolyn Bond

Administrative Office of the Courts

“**We the People: The Constitutional Heritage of Arkansas,**” an exhibit by the Arkansas History Commission, opened at the Justice Building on Friday, September 8, 2006, and will remain on display Monday through Friday from 7:30 am to 5:00 pm for one year. The exhibit opened as part of the annual conference of the Arkansas Supreme Court Historical Society, which focused on “Arkansas’s Constitutional Heritage”. In conjunction with the exhibit opening, there was a special showing just for September 8th of four of the original state constitutions.

Lectures throughout the day examined the history of the five constitutions that have governed Arkansas. Speakers included Professor Scott Stafford-UALR Bowen School of Law, the Hon. Morris Arnold, 8th Circuit U.S. Court of Appeals Judge, Arkansas Tech History Professor Thomas DeBlack, Russell Baker-Archival Manager for the Arkansas History Commission, UALR Professor Emeritus Cal Ledbetter, and Nancy Bellhouse May-UALR Bowen School of Law Professor.

Each of the five constitutions symbolizes a change in the state’s political status: statehood in 1836, joining the Confederate States of America during the Civil War in 1861, military occupation near the end of the Civil War in 1864, Reconstruction in 1868 and reaction to Reconstruction in 1874. Although several attempts have been made to draft a new constitution, the 1874 document currently remains the basis for state laws in Arkansas.



Chief Justice Jim Hannah, Frances Ross, President Arkansas Supreme Court Historical Society, and Wendy Richter, Director Arkansas History Commission.

2007 Membership Dues

2007 membership dues are now payable! Please complete the membership form on the last page of this newsletter, and return with your dues to Rod Miller, Secretary/Treasurer, Arkansas Supreme Court Historical Society, 625 Marshall, Suite 1500, Little Rock, AR 72201.

2006 Annual Conference

“Arkansas’s Constitutional Heritage”

~ Abstracts of Presentations ~

An Overview of Arkansas’s Constitutional History

L.Scott Stafford, President, Arkansas Supreme Court Historical Society

Although often amended, the current constitution of Arkansas has endured for 132 years. By contrast, the first four constitutions of the state lasted a total of only 38 years. These early charters were not short-lived because Arkansas was periodically swept by movements for constitutional reform. Instead, each of the first four constitutions coincided with an attempt to join or withdraw from the Union. The Constitution of 1836 was adopted when the citizens of Arkansas Territory initially sought statehood. The Constitution of 1861 was adopted by the convention that approved secession from the Union. The Constitution of 1864 was adopted during the Civil War by Arkansans seeking to rejoin the Union. When Arkansas’ status as a state was called into question by the Reconstruction Acts of 1867, Arkansans adopted the Constitution of 1868 in a successful effort to gain unequivocal Congressional recognition as a state.

The Arkansas Constitution and the Brooks Baxter War

Dr. Tom DeBlack, Arkansas Tech University

The Brooks-Baxter War (1874) was the end result of a major schism in the Republican Party in Arkansas during the Reconstruction era. It began in the disputed gubernatorial election of 1872 in which Elisha Baxter defeated Joseph Brooks. Baxter and Brooks represented different wings of the Republican Party in the state. Brooks and his supporters never accepted the results of the election, contending that Brooks was the lawful winner but that he had been denied the office by election fraud perpetrated by Baxter and his supporters. Denied redress by the legislature, Brooks’s supporters managed to secure a ruling from a Pulaski County Circuit Judge on April 15 declaring Brooks the legal governor and ordering Baxter to vacate the office. An armed group of armed Brooks’s supporters forced Baxter to leave the capitol. Over the course of the next month, forces loyal to the two men skirmished in and around Little Rock. Finally on May 15, President Ulysses Grant intervened, declaring Baxter the legal governor and ordering Brooks to yield the office. The Brooks-Baxter War brought an effective end to Reconstruction in Arkansas. In the election of 1874, Democrats recaptured the governor’s office and the state legislature. In July a constitutional convention drafted a new state constitution that effectively undid many of the provisions of the Republican-crafted constitution of 1868.

“Dummy” and the Documents: Saving the Constitutions

Russell Baker, Arkansas History Commission

Early in May of 1862, Little Rock, the capital of Confederate Arkansas, was in the midst of a panic because of rumors of an impending Federal Army invasion. Elias Rector, then governor, hemmed in by impassable roads, swollen streams, and an advancing enemy, concocted a “comic opera” scheme to evacuate Arkansas’ state government, its constitutions, and its archives by water to Dardanelle and then overland through the Ouachita Mountains to Hot Springs. To oversee this operation he chose a one of Arkansas’ most unusually and competent citizens, John W. Woodard, a deaf mute, affectionately known as “Dummy”. Against all odds, Woodard accomplished this ill-advised move and later oversaw a second more successful relocation of Arkansas govern-

ment, this time to Washington, AR, in the fall of 1863. Although he died early in 1865, the story of “Dummy’s” exploits is the human face that makes this tale of war and its dislocations more poignant.

Interesting Arkansas Constitutions and Why They Failed

Dr. Cal Ledbetter, U.A.L.R. Professor Emeritus

The proposed constitutions of 1917-18 and 1969-70 both received attention. For each constitution, topics covered historical background, summary of constitutional content, supporters and opponents and explanation of why the constitutions failed. The final part of the presentation addressed steps that can be taken to assist a new proposed constitution if and when one is drafted in Arkansas.

In the uphill battle for acceptance, voters of the state rather than the legislature must authorize the calling of a constitutional convention and voting on whether to ratify a new constitution must take place in a special election when there is nothing on the ballot except the constitution itself.

New Judicial Federalism and the Arkansas Constitution

Professor Nancy Bellhouse May,
U.A.L.R. Bowen School of Law

Although the philosophy now known as the new judicial federalism began to emerge in the 1970s, the movement has been slow to reach Arkansas. A series of cases decided recently by the Arkansas Supreme Court indicates, however, that this approach—grounded in respect for the continuing vitality of state constitutions, and effected through the application of state constitutional provisions to cases in which they are relevant—may now be taking root in Arkansas. In brief, the new judicial federalism reminds Arkansas judges that they can, and indeed should, read the Arkansas Constitution as a source of rights independent of those granted in the United States Constitution. The Arkansas Supreme Court’s decisions in Griffin, Sullivan, and Picado demonstrate that both the Arkansas Supreme Court and the lawyers who appear before it are taking this reminder to heart.

President's Report

Scott Stafford, President
Supreme Court Historical Society

On behalf of the Society I want to thank Frances Ross, J.D. Gingerich, and everyone else who worked so hard to make a success of the fall 2006 conference on the Constitutional Heritage of Arkansas. This year's conference, which will feature the courthouses of Arkansas, is now in the planning stages.

It is a pleasure to introduce the five new members to the Society's board of directors.

Stark Ligon is the Executive Director of the Arkansas Supreme Court Committee on Professional Conduct. Previously he served as judge of the Tenth Judicial Circuit (Ashley, Bradley, Chicot, Desha and Drew Counties).

Dr. Wendy Richter was named State Historian in April 2005, replacing Dr. John Ferguson. Prior to assuming her new post, Wendy was an Associate Professor and Archivist at Ouachita Baptist University.

The Honorable Andree Layton Roaf recently retired after a distinguished legal career that included service on the Arkansas Supreme Court and the Arkansas Court of Appeals.

Grif Stockley is best known as a prolific author of Arkansas-focused fiction and nonfiction. He is currently a Dee Brown Fellow at the Butler Center, Central Arkansas Library System.

Fred Ursery is a partner with Friday, Eldredge and Clark, one of the state's largest law firms. He has served as president of the Arkansas Bar Association as well as state chair of the United States Supreme Court Historical Society.

Thanks is also due John Gill, former Supreme Court Justice Steele Hays, Frances Ross, Circuit Judge Jim Spears, and Mary Worthen, each of whom will serve an additional term as director.

Finally, Rod Miller, the Supreme Court Public Services Coordinator, and Jack Garvey, the Court's webmaster, merit special mention. Due to their efforts, the Society's web page will soon be available on the Supreme Court's web site. Rod and Jack are also responsible for putting together an expanded newsletter with a more professional-looking format.

Stafford is Professor of Law, U.A.L.R. Bowen School of Law

Comments

Frances Mitchell Ross
Past-President, Arkansas Supreme Court Historical Society

In September of 2006, the Arkansas Supreme Court Historical Society held its annual conference. The theme centered on Arkansas's Historic Constitutions. The society worked closely with representatives of the Arkansas History Commission to display several of the state's original constitutions and an accompanying exhibit that coordinated with the conference theme. The conference, which was offered for Continuing Legal Education credit, featured speakers on the history of the constitutions, differences between them, the state's failed constitutional efforts and more. It was a well-attended conference, informative, entertaining, and enhanced by those who were present. J. D. Gingrich headed the conference planning committee for the society.

The 2006 conference also represented the conclusion of my two terms as society president. Officers elected at the September board meeting are President Scott Stafford, who was also the society's first president, Vice President Judge Jim Spears and Secretary-Treasurer Rod Miller. Between the fall of 2004 and fall 2006, the society not only continued to sponsor the annual conferences, it also revived its article series for the Arkansas Lawyer, adopted a mission statement and established a committee structure to create opportunities for greater board and membership involvement. In these ways and more it has continued to work to promote knowledge of the judicial department of state government.

Ross is a member of the Department of History, University of Arkansas at Little Rock

David Walker: The Whig on the State Supreme Court

Michael B. Dougan
Professor of History Emeritus
Arkansas State University

The Whig party, created by Henry Clay and dedicated to a program of using the national government to advance the cause of modernization, lasted from the mid 1830s until the early 1850s when the slavery issue finally drove a fatal wedge into its unity. However, a commitment to modernization, styled by historians as “persistent Whiggery,” survived the Civil War. In the North, the Republicans inherited the mantle, but in the post-Reconstruction South, Southern ex-Whigs eventually found a home in the Democratic Party. Arkansas’s foremost Whig, David Walker, embodied both Southern Whiggery and persistent Whiggery.

Walker (February 19, 1806 – September 30, 1879) was born to a political family prominent in the affairs of both Kentucky and Virginia. But his father, “an indulgent master and a poor farmer,” his son recalled, engaged in many of the vices associated with the Virginia gentry. Forever fixed in David’s memory was an all-night card game that was followed by one of the winners riding off with the child’s pony.

Walker’s schooling was limited, with none between the ages of twelve and eighteen, but a clerking job for one uncle taught him much practical law. A voracious reader, he mostly studied on his own. A combination of a failed romance and too many other Walkers led him westward. His trek stopped at Fayetteville, where his money had run out. Shortly thereafter, he scored a huge success in a court case that launched his career. In contrast to the background from which he had sprung, he avoided parties and dances; no dice or cards were ever permitted in his home. Instead, he invested in land and slaves. A bit of the Virginia legacy remained in his love of dogs.

Walker was renown in Arkansas politics for losing the 1840 congressional race against the legendary and charismatic Archibald Yell. As the two campaigned across North Arkansas, Yell out prayed Walker at a camp

meeting and then out shot him at a beef shoot. Outside politics the two were friends and joined in speculations. In 1848 he was elected by the legislature to the state supreme court, where he remained until 1855. On the court he displayed a firm grasp of Whig legal principles. In 1860 he was a principal figure in the Constitutional Union party and the following year opposed secession. Elected to the Secession Convention, he served as its president. His conversion to secession in May, 1861, helped carry all the other northwest Arkansas delegates except Madison County’s Isaac Murphy. However, many back home claimed Walker had broken his promises to the voters.

The war cost Walker a son, and his service on a wartime military court created some post-war difficulties on account of the death sentences the court handed down. Nevertheless, Walker got a pardon from President Andrew Johnson and in 1866 returned to the court as chief justice. His tenure there was terminated by the Constitution of 1868, but notable was his ruling in *Hawkins v. Filkins* (1866) that sustained the legality of Arkansas’ wartime government and hence wartime contracts and other legal proceedings.

During Reconstruction the ex-Confederate opposition to the Republicans was divided between ex-Whigs (who preferred to be

called Conservatives) and Democrats. Only gradually did the hyphenation end. In 1872 Walker supported the Liberal Republican Joseph Brooks for governor and remained unconvinced that winner Elisha Baxter was a legitimate governor. The Brooks-Baxter War in Little Rock was managed without his assistance.

Walker expected a seat at the convention that ended Reconstruction. However, a farmer revolt against taxes and his failure to campaign led to an embarrassing defeat. His presence and legal acumen might have resulted in a less obscure document. His behind the scenes activities were not forgotten and he returned to the high court as an associate justice.

Walker wrote the opinion in *State of Arkansas v. Little*



Judge David Walker, Fayetteville, mid 19th century. Courtesy Shiloh Museum of Ozark History/ Washington County Historical Society Collection (P-2275)

Rock, Mississippi, and Texas Railway Company (1877), that held as void the election that had authorized the state to grant railroad bonds. In one judicial stroke, one third of the state's debt was eliminated. He also continued his opposition to legal rights for women. In 1835 in the last territorial legislature he had opposed a law granting married women property rights; during his years on the high court he invoked the common law in order to gut Arkansas's Married Woman's Property Law. After 1876 his mental and physical condition began to deteriorate, and in 1878 he resigned from court. His death the next year was due a buggy accident. Walker was one of the few Arkansans selected for inclusion in the Dictionary of American Biography (1930). His most notable off-bench accomplishment was a much publicized speech at the American Centennial celebration in Philadelphia in 1876. He left behind a series of autobiographical letters and much other correspondence. His daughter Mary married a cousin, James David Walker, who in 1879 served a term in the United States Senate. A number of homes associated with Walker family members survive in Fayetteville.

Further reading:

Lemke, Walter J., ed. *The Life and Letters of Judge David Walker of Fayetteville: Justice of the Arkansas Supreme Court, 1848–1878*. Fayetteville, AR: Washington County Historical Society, 1957.

———. *The Walker Family Letters*. Fayetteville, AR: Washington County Historical Society, 1956.

Thompson, George H. *Arkansas and Reconstruction: The Influence of Geography, Economics, and Personality*. Port Washington, NY: Kennikat Press, 1976.

Dougan, Michael B. "The Arkansas Married Woman's Property Law," *Arkansas Historical Quarterly*, XLVI (Spring 1987), 3-26.

**Mission Statement of the
Arkansas Supreme Court 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."



***2007 Annual Conference:
"Arkansas Courthouses"***

The 2007 Annual Conference & Exhibits of the Arkansas Historical Society will be dedicated to "Arkansas Courthouses," and will be held in the fall of 2007. The Historical Society will collaborate with Kay Bona of The Daily Record, who has profiled numerous Arkansas Courthouses in The Daily Record over the last several years.

Ms. Bona has generously agreed to allow the Historical Society to utilize her wonderful articles and photos of Arkansas Courthouses for the planned exhibits on Arkansas Courthouses.

Presentations at the annual conference will address topics such as courthouse architecture, courthouses & the community, courthouse accessibility issues, counties with two courthouses, new courthouses, and designing a courthouse for the 21st century.

Supreme Court Historical Society Board of Directors Meeting

December 14, 2006

The Board of Directors of the Supreme Court Historical Society met in the Administrative Office of the Courts Conference Room in the Justice Building on December 14, 2007. Scott Stafford, the Historical Society's incoming President for 2006-2007, welcomed four new Board members: Stark Ligon, Wendy Richter, Judge Andre Layton Roaf, and Grif Stockley. The other officers for 2006-2007 are Judge Jim Spears, Vice President, and Rod Miller, Secretary-Treasurer. The Treasurer's report reflected that the balance of the Society's account, as of December 14, 2006, to be \$3,711.36.

A major topic of discussion and planning was the upcoming 2007 annual conference, as J.D. Gingerich, committee chair, gave the report of the Annual Conference Committee. He announced that the 2007 conference will be dedicated to "Arkansas Courthouses." There was brainstorming on potential topics for presentations and exhibits, which included courthouses and the community, courthouse architecture, courthouse accessibility, a photographic exhibit of historic courthouses, new courthouses, designing a courthouse for the 21st century, and courthouses built in the last 5 to 10 years. John Gill, author of the book *On the Courthouse Square in Arkansas*, has copies left of his book and offered to let the Society sell them at the conference. Kay Bona, staff writer with *The Daily Record*, has been running an ongoing series of articles in *The Daily Record* profiling courthouses in Arkansas counties with photographs and histories of the courthouses (so far, the series has covered more than 20 courthouses). Ms. Bona has offered her files on the courthouses to be used in the 2007 annual conference and exhibits.

Scott Stafford has been working with Anna Hubbard, publications director for the Arkansas Bar Association, writing



and publishing a series of articles in the *Arkansas Lawyer* for the Supreme Court Historical Society. His most recent article is on circuit judges who became governor of Arkansas. Board member Michael Dougan has written an article on David Walker for the June 2007 issue of *Arkansas Lawyer*.

The Administrative Office of the Courts (AOC) has hired a new webmaster, Jack Garvey, to redesign the Arkansas Judiciary web site. Jack and Rod Miller are working together to implement the items and information the Supreme Court Historical Society would like to see on its new web page, such as information on the annual conference, issues of the Society's newsletter, its mission statement, the Society's membership form, a history of the Society, and the historical list of the Supreme Court justices. It is anticipated that the new Arkansas Judiciary web site will be unveiled sometime later this year.

The next Board of Directors meeting will be held in May 2007.

Rod Miller
Secretary/Treasurer
Arkansas Supreme Court Society

History of the Arkansas Supreme Court Historical Society

Arkansas has a rich and colorful legal history. The Arkansas Supreme Court Historical Society, Inc. was organized in 1999 to promote that legal heritage. The Society sponsors speakers and educational programs related to Arkansas legal history and promotes scholarly articles with a focus on Arkansas legal history.

The Society's board of directors represents a mix of historians and attorneys:

- Donna Gay, Staff Attorney, Administrative Office of the Courts
- John P. Gill, Attorney and former President of the Arkansas Bar Association
- J.D. Gingerich, Executor Director, Administrative Office of the Courts
- Mort Gitelman, Distinguished Professor of Law Emeritus, University of Arkansas School of Law
- Honorable Steele Hays, former Justice, Arkansas Supreme Court
- Honorable Jack Holt, former Chief Justice, Arkansas Supreme Court
- William B. Jones, Jr., former Reporter of Decisions, Arkansas Supreme Court
- Stark Ligon, Executive Director, Supreme Court Committee on Professional Conduct
- Rod Miller, Public Services Coordinator, Arkansas Supreme Court Library
- Wendy, Richter, Director, Arkansas History Commission
- Honorable Andree Layton Roaf, former Arkansas Supreme Court Justice and Arkansas Court of Appeals Judge
- Frances M. Ross, Assistant Professor of History, University of Arkansas at Little Rock
- Honorable Jim Spears, Circuit Judge, 12th Judicial Circuit
- Logan Scott Stafford, Professor of Law Emeritus, University of Arkansas at Little Rock School of Law
- Grif Stockley, Dee Brown Fellow, Butler Center, Central Arkansas Library System
- Fred Usery, attorney and former President of Arkansas Bar Association
- Mary F. Worthen, former President of Pulaski County Historical Society, Inc.
- Jacqueline Wright, former Director, Arkansas Supreme Court Library

Anyone with an interest in Arkansas legal history is invited to join the Society. Annual individual dues are \$25.00. Memberships at other dues levels are available for students, partnerships, corporations and other entities. For information, please contact the Secretary-Treasurer of the Society, Rod Miller, Arkansas Supreme Court Library, 625 Marshall, Suite 1500, Little Rock AR 72201. E-mail: rod.miller@arkansas.gov. Telephone: 501-682-6879.

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2007 Membership Application

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
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- _____ \$500 Partnership, corporation, or company (A partnership, corporation, or company may name up to ten individual members)
- _____ \$1,000 Sponsor (A lifetime membership available to individuals)
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