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## "The Dean Of Chicago's Black Lawyers": Earl Dickerson And Civil Rights Lawyering In The Years Before Brown

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## **BOOK REVIEW**

### **“THE DEAN OF CHICAGO’S BLACK LAWYERS”: EARL DICKERSON AND CIVIL RIGHTS LAWYERING IN THE YEARS BEFORE *BROWN***

*Earl B. Dickerson: A Voice for Freedom and Equality.* By Robert J. Blakely with Marcus Shepard. Northwestern University Press, 2006.

*Jay Tidmarsh\* and Stephen Robinson\*\**

**B***BROWN* v. *Board of Education*<sup>1</sup> is a watershed in American law and society. In the years since it was decided, *Brown* has shaped America’s views of race, constitutionalism, and equality. *Brown* exerts an equally important influence over the historiography of civil rights lawyering in the decades before *Brown*. In particular, in constructing the story of civil rights lawyering in the crucial years between World War I and World War II, historians and legal scholars have focused primarily on the people and the events that shaped *Brown*.

*Earl B. Dickerson: A Voice for Freedom and Equality*<sup>2</sup> demonstrates the need to broaden this focus. *Dickerson* is a flattering biography of Earl Burrus Dickerson, Chicago’s leading African-American lawyer between the World Wars. The book, which began as an oral history project, relies principally on taped conversations with Dickerson that were conducted in 1983, three years before his death at the age of ninety-five.<sup>3</sup> Although the biography brims with

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<sup>1</sup> 347 U.S. 483 (1954) (declaring de jure school segregation unconstitutional); see also *Brown v. Bd. of Educ.*, 349 U.S. 294 (1955) (determining an appropriate remedy).

<sup>2</sup> Robert J. Blakely with Marcus Shepard, *Earl B. Dickerson: A Voice for Freedom and Equality* (2006) [hereinafter *Dickerson*].

<sup>3</sup> Drafted by Robert Blakely, a journalist, *Dickerson* fleshed out these interviews with the reminiscences of Dickerson’s admirers. Blakely died in 1994 before complet-

the ex post inevitability and justness of the civil rights cause,<sup>4</sup> and at times relies too heavily on the memory of an aged and atypical warrior,<sup>5</sup> *Dickerson* nonetheless is an essential text for anyone who wishes to appreciate the many facets of African-American civil rights lawyering in the decades between the World Wars.

Indeed, *Dickerson* emerges just as the *Brown*-centered understanding of interwar civil rights lawyering is undergoing a critical reevaluation. As Professor Kenneth Mack argues in his important contribution to the history of the civil rights movement, traditional accounts of pre-*Brown* civil rights lawyering tell the story of a band of African-American lawyers, led by Charles Hamilton Houston, who spent a generation crafting a litigation strategy and orchestrating a series of cases designed to overthrow de jure segregation in public institutions.<sup>6</sup> The standard “legal liberal” account applauds this effort, while revisionist theories contend that the limitations of courts as effective agents for achieving racial equality either doomed the “legal liberal” project to failure in the long run or wasted energy better spent agitating for true changes in the status quo.<sup>7</sup> Mack argues that both schools of thought agree on the aims of civil rights lawyering during this period, and further agree that this group’s idealistic commitment to “socially engineer” institutional change through formal, judicially recognized rights separated civil rights lawyering from the legal realism academically fashionable in the decades after World War I.<sup>8</sup>

Mack argues that both the “legal liberal” and the revisionist accounts of civil rights lawyering in the decades before *Brown* are

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ing the biography. Len Rubinowitz of Northwestern Law School discovered the manuscript and kept it alive; writer Marcus Shepard did the final polishing.

<sup>4</sup> See, e.g., *Dickerson*, supra note 2, at 108 (calling the racial violence following *Dickerson*’s victory in *Hansberry v. Lee*, 311 U.S. 32 (1940), “a necessary if painful step toward the final defeat of legal segregation in the United States”).

<sup>5</sup> See, e.g., infra notes 30, 141, and accompanying text.

<sup>6</sup> Kenneth W. Mack, *Rethinking Civil Rights Lawyering and Politics in the Era Before Brown*, 115 *Yale L.J.* 256, 258 (2005). For an insider’s description of the cases and strategy that resulted in *Brown*, see Jack Greenberg, *Crusaders in the Courts: Legal Battles of the Civil Rights Movement* 3–224 (2004).

<sup>7</sup> Mack labels the first revisionist claim (the limitations of courts as agents of change) the “neo-institutionalist critique,” and the second claim (the failure of formal legal rights to effect true social change) the “leftist critique.” Mack, supra note 6, at 259–62.

<sup>8</sup> *Id.* at 299–301.

wrong. He intervenes with a new thesis: In the years between the First and Second World Wars, African-American civil rights lawyers were not primarily engaged in, nor committed to, a court-based strategy to end segregation in public institutions.<sup>9</sup> Rather, they sought to achieve racial equality through methods other than the litigation campaign which yielded *Brown*, and focused on goals other than eliminating public segregation, such as race uplift. Race uplift had two components, “voluntarism” and “legalism.” The voluntarist element provided the legal support for African-American institutions such as business, churches, and law firms,<sup>10</sup> while the legalist part involved making “moral and legal claims directed to the larger white majority.”<sup>11</sup> Although African-American lawyers remained “cognizant of the discrimination and segregation that hemmed them in,”<sup>12</sup> voluntarism was the dominant strategy.<sup>13</sup> The principal role of black lawyers was to assist black professionals and entrepreneurs in establishing enterprises that would employ black workers and service black communities; in turn, black citizens would amass property and start to climb the employment ladders previously reserved for whites.<sup>14</sup>

In the 1930s, the legal strategy began to shift away from voluntarism. New influences—especially exasperation with discrimination in private employment, Marxism, and the growth of collective actions such as boycotts—altered black lawyers’ understanding about how to enable racial progress.<sup>15</sup> Litigation also emerged as a viable option. Unlike the post-World War II *Brown* strategy, however, the Depression-era litigation strategy focused primarily on private, rather than public, institutions. Mack asserts that—contrary to “legal liberal” and revisionist views—the intellectual commitment of

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<sup>9</sup> Id. at 264–65, 281.

<sup>10</sup> Id. at 277–80.

<sup>11</sup> Id. at 280.

<sup>12</sup> Id.

<sup>13</sup> Id. at 281, 287 (noting that “[i]n the 1920s, the voluntarist strand often predominated” and that “[t]he new black lawyers of the 1920s often emphasized the voluntarist strand of uplift, rather than rights-advocacy, as the professional mission of the African-American bar”).

<sup>14</sup> Id. at 281–87.

<sup>15</sup> Id. at 302–08.

these interwar civil rights lawyers was “linked closely to contemporary ideas put forth by progressive-realist thinkers and scholars.”<sup>16</sup>

Mack’s claim about civil rights lawyering is a universal one, but his evidence is particular. He focuses on the ideas and strategies of a group of lawyers who plied their trade along the eastern seaboard, from Cambridge to New York, and from Philadelphia to Baltimore to Washington, D.C. The principal lawyers in his narrative are Charles Hamilton Houston and his cadre of disciples, including William Henry Hastie and Leon Ransom, who followed him to Harvard Law School for either their initial or their advanced law degrees.<sup>17</sup> The husband-and-wife team of Randolph Pace Alexander and Sadie Tanner Mossell Alexander are also featured prominently.<sup>18</sup> Two of Houston’s foremost protégés, Thurgood Marshall and James Nabrit, Jr., receive scant treatment (perhaps because they never studied at Harvard and thus could not be shown to have fallen under the realist influences of Roscoe Pound and Felix Frankfurter).<sup>19</sup> Mack’s focus is understandable; Hamilton and his disciples engineered the victory in *Brown*, so studying their strategies in the interwar years helps to debunk the “legal liberal” storyline of an inexorable march to overturn *Plessy v. Ferguson*.<sup>20</sup> But the claim that African-American civil rights lawyers generally subscribed to the interwar strategies that Mack attributes to Houston’s circle rests on an inference from the early careers of this small circle.

Concentrating only on Earl Dickerson’s career, *Dickerson* is oblivious to the terms of this historical debate. The biography is nonetheless invaluable, for it expands the focus beyond Houston’s circle and adds important evidence about the nature of civil rights

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<sup>16</sup> *Id.* at 342; see *id.* at 265, 308–18.

<sup>17</sup> See *id.* at 284–87, 291–92, 308–18.

<sup>18</sup> *Id.* at 283, 290–95; see also Kenneth W. Mack, A Social History of Everyday Practice: Sadie T.M. Alexander and the Incorporation of Black Women into the American Legal Profession, 1925–1960, 87 *Cornell L. Rev.* 1405 (2002) (providing fuller treatment of Sadie Alexander).

<sup>19</sup> Mack uses classes taken by Houston, Hastie, and Ransom from Pound and Frankfurter, as well as other contacts between Pound and Houston, as evidence of the realist influence on Houston and others. Mack, *supra* note 6, at 308–18. Although it is not certain how much of a realist Pound was, especially by the 1920s, see Jay Tidmarsh, Pound’s Century, and Ours, 81 *Notre Dame L. Rev.* 513, 520 & n.19, 529 n.78 (2006), it is true that both Pound and Frankfurter saw law as an instrument of progress.

<sup>20</sup> 163 U.S. 537 (1896).

lawyering between the World Wars. Part I of this Book Review will describe how, during the interwar period, Dickerson rose to become the “dean of Chicago’s black lawyers,”<sup>21</sup> as well as one of the leading civil rights lawyers in the country. Part II will demonstrate that the arc of Dickerson’s career supports much of Mack’s thesis but also poses certain challenges. Part III will suggest a necessary refinement in the present discourse on pre-*Brown* civil rights lawyering. The “legal liberal” account, the revisionist accounts, and Mack’s thesis all assume that African-American civil rights lawyers molded their careers to such ideals as “social engineering” or “race uplift.” *Dickerson* reveals the dangers of cabin-ing the professional life of a man with Dickerson’s vigor and vision into neat intellectual categories. For Dickerson, civil rights lawyering was more personal than such categories. It was a piece of the struggle for his own dignity and his own professional reputation, as well as a reflection of his irrepressible desire to alleviate the suffering of African-Americans living under deplorable conditions.

*Dickerson* concentrates on Dickerson’s successes and failures during the years between 1937 and 1943—for good reason. On the verge of America’s entry into World War II, Dickerson had arguably become the nation’s most prominent and powerful African-American lawyer. Any discussion of civil rights lawyering in the years between the World Wars must, therefore, account for Earl Dickerson.<sup>22</sup>

### I. DICKERSON’S CAREER

Dickerson’s rise to prominence was no mean feat. Swollen by the waves of the Great Migration in the early twentieth century, Chicago became home to the second largest African-American population in the country and the largest number of African-American lawyers.<sup>23</sup> The Chicago bar contained such notables as C. Francis Stradford, for whom the National Bar Association’s highest

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<sup>21</sup> See Jay Tidmarsh, *The Story of Hansberry: The Foundation for Modern Class Actions*, in *Civil Procedure Stories* 217, 242 (Kevin M. Clermont ed., 2004).

<sup>22</sup> At three points Mack briefly refers to Dickerson, see Mack, *supra* note 6, at 282, 288, 345, but does not explore in detail the relationship between his thesis and Dickerson’s career.

<sup>23</sup> St. Clair Drake & Horace R. Cayton, *Black Metropolis: A Study of Negro Life in a Northern City* 12 (1945); Mack, *supra* note 6, at 266–67.

award is named,<sup>24</sup> and Irwin Mollison, who would become the first African-American appointed to a life-tenured federal judgeship.<sup>25</sup> Dickerson stood clearly at their head—a status made evident in his most famous civil rights case, *Hansberry v. Lee*,<sup>26</sup> in which Stradford, Mollison, and two other civil rights lawyers played supporting roles to Dickerson's lead.<sup>27</sup> In 1941, Dickerson was a Chicago alderman, a member of the NAACP's board of directors, and a member of President Franklin Delano Roosevelt's Federal Employment Practices Committee ("FEPC"), which was the federal government's most significant effort to deal with racial discrimination in employment before Title VII of the Civil Rights Act of 1964.<sup>28</sup>

Little in Dickerson's background suggested that he was destined for such greatness. "Earl B," as his friends called him (or "Silk Stocking Earl," as his detractors called him),<sup>29</sup> was born in 1891 in Canton, Mississippi. He was tall, handsome, inquisitive, and of mixed race, though the racial mores of the time put him on the Negro side of the color line.<sup>30</sup> As a boy he saw his brother-in-law shot for no greater a matter than jostling a white man who was carrying

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<sup>24</sup> See Tidmarsh, *supra* note 21, at 266.

<sup>25</sup> *Id.* at 267.

<sup>26</sup> 311 U.S. 32 (1940).

<sup>27</sup> Although each lawyer actively filed pleadings on behalf of his client or clients, Dickerson took the lead once the case reached the courtroom. He handled some of the cross-examinations and most of the direct examinations. He also argued the case in the United States Supreme Court. See *Hansberry*, 311 U.S. at 33; Tidmarsh, *supra* note 21, at 242, 258.

Aside from Stradford and Mollison, the principal lawyers in *Hansberry* were Loring Moore and Truman Gibson, Jr. Moore later litigated cases seeking to strike down racially restrictive covenants, including the case that put the legal end to the covenants in Illinois. *Tovey v. Levy*, 82 N.E.2d 441 (Ill. 1948). Gibson went on to become a member of President Harry Truman's "black cabinet" and had a role on the commission whose report led Truman to integrate the armed forces in 1948. See Tidmarsh, *supra* note 21, at 266; Richard Goldstein, Truman Gibson, 93, *Dies; Fought Army Segregation*, N.Y. Times, Jan. 2, 2006, at B7.

<sup>28</sup> See *infra* notes 55, 59–62 and accompanying text.

<sup>29</sup> Interview with Michael Flug, Curator of Vivian G. Harsh Research Collection of Afro-American History and Literature, in Chicago, Ill. (June 28, 2006); see Dickerson, *supra* note 2, at 87, 90 (describing the "silk stocking alderman").

<sup>30</sup> Dickerson, *supra* note 2, at 5–9. One of the intriguing claims made in *Dickerson* relates to his ancestry, which may trace back to a governor of Mississippi who had numerous children by his slaves. One of those slaves was Dickerson's grandmother. The book does not, however, conclusively substantiate Dickerson's speculation. *Id.* at xvi–xvii.

packages.<sup>31</sup> His mother slipped Pullman porters a few dollars so that he could jump trains to New Orleans and then Chicago in order to obtain a high school education.<sup>32</sup> He was one of the million African-Americans who flowed north in the early decades of the twentieth century and one of 200,000 who found their way to Chicago.<sup>33</sup> He left “feudal Mississippi,” he recalled late in his life, “clothed with little else than a burning sense of outrage and a driving resolve, cradled in the Declaration of Independence, not to be bullied, browbeaten, or held hostage, in fact or in spirit—ever again!”<sup>34</sup> Whether or not an accurate description of his mindset as he jumped the train to Chicago, the statement is emblematic of the Dickerson portrayed in the biography—driven, fearless, and intolerant of racial injustice.

Dickerson enrolled in Northwestern University and eventually graduated from the University of Illinois.<sup>35</sup> After spending one year teaching at Tuskegee Institute with Booker T. Washington and another as principal of a black school, he enrolled in the University of Chicago Law School in 1915.<sup>36</sup> Following his second year, he joined the Army and served in France during World War I—after nearly refusing his officer’s commission when he realized that infantry units would be segregated.<sup>37</sup> While in France, a white officer invited him to a meeting to discuss the creation of a veterans’ organization, with the result that Dickerson was the only African-American founder of the American Legion.<sup>38</sup> He returned to Chicago and earned his law degree in 1920, making Dickerson the first African-American graduate of the University of Chicago Law School.<sup>39</sup>

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<sup>31</sup> *Id.* at 10.

<sup>32</sup> *Id.* at 11–12.

<sup>33</sup> See Kevin Boyle, *Arc of Justice: A Saga of Race, Civil Rights, and Murder in the Jazz Age* 2–6 (2004) (observing that approximately one million African-Americans went north); Drake & Cayton, *supra* note 23, at 8; *Important Cities in Black History*, <http://www.factmonster.com/spot/bhmcities1.html> (last visited July 29, 2007) (noting that the black population in Chicago increased from 44,000 in 1910 to 235,000 in 1930).

<sup>34</sup> Dickerson, *supra* note 2, at 12–13.

<sup>35</sup> *Id.* at 16–19.

<sup>36</sup> *Id.* at 22–24.

<sup>37</sup> *Id.* at 25–32.

<sup>38</sup> *Id.* at 32–33, 38–39.

<sup>39</sup> *Id.* at 39. The University of Chicago Law School’s chapter of the Black Law Students Association is named in Dickerson’s honor. See *The Earl B. Dickerson Chapter*

The Chicago to which Dickerson returned teemed with racial tension. Between July 1917 and July 1919, twenty-four bombs were thrown at the homes of African-Americans and those who sold or leased to them. Resentment stemming from acts of violence, a lack of police protection, horrid housing conditions, and exclusion from decent schools and jobs finally boiled over into the Chicago Riots of 1919, which left thirty-eight people dead and 537 injured.<sup>40</sup> In the ensuing two decades, Chicagoans did little to ameliorate racial divisions and much to enhance them. For instance, on the housing issues that would consume much of Dickerson's career, in the 1920s realtors introduced racial covenants into most of the neighborhoods surrounding Chicago's Black Belt, thus constricting a swelling African-American population to a limited area.<sup>41</sup> In the 1930s, Chicago engaged in an ill-fated (and arguably racially motivated) urban-renewal project that leveled as much as ten percent of the housing stock available to African Americans.<sup>42</sup>

Dickerson personally felt the effects of discrimination. Unable to find work at several of Chicago's leading law firms despite sterling recommendations from James Parker Hall and Ernest Freund, he accepted a job as general counsel at Liberty Life Insurance Company, a fledgling black-owned business that sold insurance and

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of the Black Law Students Association, <http://blsa.uchicago.edu> (last visited Apr. 27, 2007).

<sup>40</sup> Chicago Comm'n on Race Relations, *The Negro in Chicago* 1 (1922). See generally Thomas A. Guglielmo, *White on Arrival: Italians, Race, Color, and Power in Chicago, 1890–1945* (2004) (describing racial milieu in Chicago from Chicago Riots until World War II).

<sup>41</sup> After the Supreme Court held racial zoning ordinances unconstitutional in *Buchanan v. Warley*, 245 U.S. 60 (1917), racially restrictive covenants sprang up around the country to enforce exclusionary living patterns. See Tidmarsh, *supra* note 21, at 220–21; Wendy Plotkin, *Deeds of Mistrust: Race, Housing, and Restrictive Covenants in Chicago, 1900–53*, at 13–32 (1999) (unpublished Ph.D. dissertation, University of Illinois at Chicago) (on file with authors). The best estimates are that seventy-five to eighty-five percent of the private residential property in Chicago contained these covenants. See Allen R. Kamp, *The History Behind Hansberry v. Lee*, 20 U.C. Davis L. Rev. 481, 484 (1987); Plotkin, *supra*, at 21–32 (discussing studies on the extent of the covenants).

<sup>42</sup> See Testimony of John P. Edelin, *Lee v. Hansberry*, No. 37 C 6804 (Cook County Cir. Ct. Mar. 17, 1938) (copy on file with authors); Testimony of Howard D. Gould, *id.* (Mar. 22, 1938); Dickerson, *supra* note 2, at 77–78; Thomas Lee Philpott, *The Slum and the Ghetto* 181–200 (1978).

other financial products to African-Americans.<sup>43</sup> In one capacity or another, Dickerson worked at Liberty Life—which later changed its name to Supreme Liberty Life Insurance Company when it merged with two other insurance companies in 1929—until 1971.<sup>44</sup> After the merger, Supreme Liberty became one of the country's largest African-American businesses and remained in the top ten of such businesses into the 1990s.<sup>45</sup> Supreme Liberty's growth, and its very survival during bleak years in the 1930s and 1950s, owed a great deal to Dickerson's legal cleverness and business acumen.<sup>46</sup>

Dickerson was a whirling dervish of activity. While maintaining a private law practice, he worked at times in the 1920s and 1930s as an assistant corporation counsel for the City of Chicago or an assistant attorney general for the State of Illinois.<sup>47</sup> He became one of the first African-Americans to abandon the party of Lincoln after he felt that it took the black vote for granted, and he traveled throughout the North to drum up African-American support for Democratic tickets as early as 1924.<sup>48</sup> In addition to serving on the boards of directors of the Chicago chapter of the NAACP and the Chicago Urban League, he also helped to form a committee of lawyers dedicated to ending racially restrictive covenants in the city.<sup>49</sup> He became an early leader in the National Lawyers Guild, the nation's first integrated bar association, after its organization in the mid-1930s.<sup>50</sup>

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<sup>43</sup> Dickerson, *supra* note 2, at 40, 42–43, 168. James Parker Hall was the long-time dean of the University of Chicago Law School, and Ernest Freund was one of the school's founding faculty and most prominent scholars. See <http://www.law.uchicago.edu/centennial/history/archive/index.html> (last visited Apr. 27, 2007).

<sup>44</sup> Dickerson, *supra* note 2, at 42–43, 166–88.

<sup>45</sup> See Earl Burrus Dickerson, in John N. Ingham & Lynne B. Feldman, *African-American Business Leaders: A Biographical Dictionary* 205–11 (1994) [hereinafter Earl Dickerson]; Harry Herbert Pace, in *African-American Business Leaders*, *supra*, at 501, 511–17.

<sup>46</sup> See Earl Dickerson, *supra* note 45, at 205–11; Dickerson, *supra* note 2, at 171–85.

<sup>47</sup> Dickerson, *supra* note 2, at 43–49, 168–69.

<sup>48</sup> *Id.* at 61–65.

<sup>49</sup> *Id.* at 52–53.

<sup>50</sup> *Id.* at 50; The National Lawyers Guild: From Roosevelt Through Reagan 43, 45 (Ann Fagan Ginger & Eugene M. Tobin eds., 1988) [hereinafter The National Lawyers Guild]. Dickerson gives the date of the Guild's organization as 1936. See Dickerson, *supra* note 2, at 50. The Guild's official history lists a founding date of 1937. See National Lawyers Guild, History, <http://www.nlg.org/about/aboutus.htm>

*Hansberry v. Lee*—which began in 1937 when Carl and Nannie Hansberry, leading figures in Chicago's African-American community, bought a covenanted home using a mortgage indirectly supplied by Supreme Liberty—provided Dickerson with a platform to rise to local and national prominence. In 1939, as Dickerson was steering *Hansberry* through the courts, he co-founded the NAACP Legal Defense and Education Fund, and he assumed the presidency of the Chicago Urban League.<sup>51</sup> That same year, he won election to the Chicago City Council.<sup>52</sup> Just four months after his victory in *Hansberry*, Dickerson was a platform guest at FDR's third inauguration.<sup>53</sup> In 1941, Walter White, the NAACP's Executive Secretary, helped to secure Dickerson's election to the NAACP's board of directors.<sup>54</sup> Later in 1941, and again on White's recommendation, President Roosevelt appointed Dickerson to the FEPC.<sup>55</sup>

By 1943, however, Dickerson had tumbled from power. Although he was charming and unflinchingly courteous, Dickerson's other traits—his blunt intolerance of discrimination, unyielding sense of justice, and dogged determination—undermined him politically. As an alderman, he was a constant agitator for the fair

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(last visited Mar. 25, 2007). It appears that the Guild was organized in late 1936 but held its founding convention in early 1937. See Maurice Sugar, *The Birth of the Guild*, reprinted in *The National Lawyers Guild*, supra, at 7–9; Mortimer Riemer, *Origins of the National Lawyers Guild*, reprinted in *The National Lawyers Guild*, supra, at 14–17.

<sup>51</sup> Dickerson, supra note 2, at 152–57, 220; 2 Jack Salzman et al., *Encyclopedia of African American Culture and History* 763 (1995); The Earl B. Dickerson Chapter of the Black Law Students Association, Earl B. Dickerson, <http://blsa.uchicago.edu/edickerson.html> (last visited Feb. 26, 2007).

<sup>52</sup> Dickerson, supra note 2, at 66.

<sup>53</sup> Id. at 84.

<sup>54</sup> Unfortunately, *Dickerson* does not explore how Dickerson and White came to know each other. Undoubtedly, White was impressed by Dickerson's victory in *Hansberry*, which effectively invalidated racially restrictive covenants in one of Chicago's neighborhoods. Such victories were few and far between. The campaign against these covenants was an issue dear to White, who had shrewdly used outrage against these covenants to buoy a failing NAACP in the 1920s. See Boyle, supra note 33, at 206–14, 219–27.

<sup>55</sup> Dickerson, supra note 2, at 111–17; see also Earl Dickerson, supra note 45, at 217 (suggesting that members of Chicago's Democratic machine lobbied Roosevelt for Dickerson's appointment in order to get Dickerson “out of their hair”). The National Lawyers Guild, supra note 50, at 43 (noting that the National Lawyers Guild also “campaign[ed] successfully” for Dickerson's appointment).

treatment of African-Americans in education, housing, and employment. Although he had some successes,<sup>56</sup> Dickerson did not have the common touch with his constituents. He was not interested in power for its own sake and did not like to play political games. For example, he frequently angered the mayor with his outspoken refusal to go along. In the Democratic primary for Congress in 1942, he chose to run against the party machine's hand-picked candidate and lost a nasty election decisively. In 1943, the machine retaliated by endorsing an apprentice firefighter for Dickerson's aldermanic seat.<sup>57</sup> Dickerson immediately left the Democratic Party, and, except for a failed primary bid for the Republican nomination for Congress in 1944 and a predictably disastrous run for Congress as the leftist Progressive Party's candidate in 1948,<sup>58</sup> he was never again a significant political force in Chicago.

A similar series of events led to Dickerson's demise on the FEPC. FDR had created the FEPC because discriminatory practices among defense contractors were causing labor unrest among African-Americans just as America's war engine was revving up.<sup>59</sup> Whether or not Roosevelt expected the committee to do anything more than mollify African-American frustration, Dickerson saw in the FEPC an opportunity to work against racial discrimination in employment. Although it had little legal power, the committee could hold hearings and issue findings. At hearings around the country, the FEPC frequently found instances of discrimination, and the testimony it elicited put governmental and contractor practices in a poor light.<sup>60</sup> Dickerson, who was elected as acting chairman for crucial hearings that the chairman could not attend, was a bulldozer. He examined dissembling contractors forcefully, knocked heads with bureaucrats who saw the FEPC as a threat to

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<sup>56</sup> Successes included achieving greater funding for black schools, forcing the companies that operated Chicago's bus system to integrate their workforce, and trying to alleviate overcrowding in African-American neighborhoods. Dickerson, *supra* note 2, at 73-84.

<sup>57</sup> *Id.* at 68, 70, 86-92.

<sup>58</sup> *Id.* at 141-43.

<sup>59</sup> Exec. Order No. 8802, 3 C.F.R. 957 (1938-1943); Exec. Order No. 8823, 3 C.F.R. 968 (1938-1943); see Lester B. Granger, *Barriers to Negro War Employment*, in 3 *A Documentary History of The Negro People in the United States: 1933-1945*, at 406, 415 (Herbert Aptheker ed., 1974).

<sup>60</sup> Dickerson, *supra* note 2, at 118-32.

the war effort, and on one occasion even crossed swords with FDR.<sup>61</sup> Dickerson's relentless pursuit of equal opportunity in employment earned him a trip to the sidelines. When Roosevelt reconstituted the FEPC in 1943, he reappointed every still-serving member of the original FEPC except Dickerson.<sup>62</sup> Thus ended Dickerson's years of government service.<sup>63</sup>

The 1940s also marked a turn in Dickerson's private practice, as he moved away from the law and toward business. One of the limitations in *Dickerson* is its failure to explore whether this shift resulted from Dickerson's political implosion or marked an unrelated change in his thinking about the relationship among civil rights, law, and economic development. In 1942, he assumed supervisory control of Supreme Liberty's mortgages and investments.<sup>64</sup> Around the same time, he also started a development company that marketed homes to African-Americans.<sup>65</sup>

He remained active in the law. In 1945, he was elected president of the National Bar Association ("NBA"), the African-American organization founded as a result of the American Bar Association's discriminatory practices.<sup>66</sup> Anticipating the litigation strategy that led to *Brown*, his acceptance speech upon his reelection in 1946 called for a legal challenge to the "separate but equal" doctrine in education.<sup>67</sup> In the same year, he and two of his co-counsel in *Hansberry* broke the color barrier in the Chicago Bar Association.<sup>68</sup> Dickerson also maintained a small appellate and Supreme Court practice in civil rights cases. In this capacity, he co-authored an

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<sup>61</sup> *Id.* at 129.

<sup>62</sup> See Exec. Order No. 9346, 3 C.F.R. 1280 (1938-1943); Dickerson, *supra* note 2, at 132. Ironically, in 1944 Roosevelt appointed another, probably safer African-American to the FEPC: Charles Hamilton Houston. Mack, *supra* note 6, at 345.

<sup>63</sup> A generation later, in 1961, Congressman Dawson of Chicago blocked John F. Kennedy's plan to nominate the seventy-year-old Dickerson as an Assistant Secretary of Commerce. Dickerson, *supra* note 2, at 193-94. Later that year, the Illinois Senate refused to approve Dickerson's nomination to a fair-employment committee modeled after the FEPC. *Id.* at 189-93.

<sup>64</sup> *Id.* at 176.

<sup>65</sup> *Id.* at 178-79.

<sup>66</sup> *Id.* at 148-49.

<sup>67</sup> *Id.* at 149.

<sup>68</sup> *Id.* at 143.

amicus brief in *Shelley v. Kraemer*,<sup>69</sup> which achieved what *Hansberry* did not—the end of the legal enforceability of racially restrictive covenants. He co-authored a successful petition for a writ of certiorari in a case arising from the activities of the communist-hunting House Committee on Un-American Activities.<sup>70</sup> In addition to working on the briefs in the lower courts, he also worked on unsuccessful petitions for writs of certiorari in cases arising from the activities of the National Lawyers Guild during its defense of members of the Communist Party<sup>71</sup> and in the case arising from the conviction of Glen Hearst Taylor, a U.S. Senator who violated a local ordinance when he proposed to enter a Birmingham church through the “coloreds only” entrance.<sup>72</sup> Finally, as the first African-American elected to lead an integrated national bar organization, Dickerson was president of the National Lawyers Guild from 1951 to 1954, guiding it through a difficult period in which the Attorney General accused it of being a subversive organization.<sup>73</sup>

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<sup>69</sup> Motion for Leave to File and Brief for the National Bar Ass’n as Amicus Curiae, *Shelley v. Kraemer*, 334 U.S. 1 (1948) (Nos. 72, 87, 290 & 291).

<sup>70</sup> Petition for Writ of Certiorari to the United States Court of Appeals, District of Columbia Circuit, and Brief in Support Thereof, *Dennis v. United States*, 339 U.S. 162 (1950) (No. 14). Although Dickerson did not appear on the petitioner’s opening brief on the merits, he reappeared as a co-author on the reply. Petitioner’s Reply Brief, *Dennis*, 339 U.S. 162 (No. 14). Dickerson also appeared as co-author on an amicus brief in the better-known companion case, *Dennis v. United States*, 341 U.S. 494 (1951). See Petition for Leave to File and Memorandum of Amici Curiae in Support of Petition for Rehearing, *Dennis*, 341 U.S. 494 (No. 336).

<sup>71</sup> One case arose out of a contempt citation issued against the lawyers defending Eugene Dennis, a member of the Communist Party. See *United States v. Sacher*, 182 F.2d 416 (2d Cir. 1950), cert. denied, 341 U.S. 952 (1951); Petitioner’s Brief, *Sacher*, 341 U.S. 952 (No. 201). Another involved a failed effort to obtain an injunction against a hearing at which the Attorney General proposed to list the National Lawyers Guild as a Communist organization. See *Nat’l Lawyers Guild v. Brownell*, 225 F.2d 552 (D.C. Cir. 1955), cert. denied, 351 U.S. 927 (1956); Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia, *Nat’l Lawyers Guild*, 351 U.S. 927 (No. 496).

<sup>72</sup> *Taylor v. City of Birmingham*, 45 So.2d 53 (Ala. Ct. App.), cert. denied, 45 So.2d 60 (Ala.), cert. denied, 340 U.S. 832 (1950); Petition and Brief in Support of Petition for Writ of Certiorari to the Supreme Court of the State of Alabama, *Taylor*, 340 U.S. 832 (No. 111).

<sup>73</sup> Dickerson, *supra* note 2, at 149–52. Dickerson was dogged throughout his later life by accusations that he was a communist. His most effective reply occurred at a hearing on his admission to the Chicago Bar Association. After indicating that he had amassed some wealth in his life, he remarked, “[I]f any one of you were to undertake

Just as the litigation campaign to overturn *Plessy* reached its apotheosis in *Brown*, however, Dickerson left the law behind. In 1955, he stepped into the role of president of Supreme Liberty, serving until 1971 and leading the venerable company back from the brink of financial disaster.<sup>74</sup> The same year that he retired from Supreme Liberty, at the age of eighty, he also stepped down from the NAACP's board of directors. He had become a businessman, a banker, and a civic leader—one of the very people that, according to Mack's thesis, African-American civil rights lawyers like Dickerson had tried to lift up in the years before World War II. By 1971, however, civil rights lawyering had taken on a different cast.

## II. DICKERSON AS A PRE-*BROWN* CIVIL RIGHTS LAWYER

Because Dickerson began his legal career just after World War I, was winding it down by the end of World War II, and had essentially left the profession by 1955, he presents an ideal study of African-American civil rights lawyering in the decades before *Brown*. First, however, one crucial issue must be addressed: whether Dickerson's legal practice supports the claim that he was a leading African-American civil rights lawyer. He was, without a doubt, a leading African-American lawyer, but was he a leading *civil rights* lawyer?

At first blush, the objection has force. Most of Dickerson's legal work for Supreme Liberty was routine; he spent hours in the meetings at which the Supreme Liberty's executive committee would decide, application by individual application, whether to approve mortgage requests.<sup>75</sup> The same might be said of his other legal work. In the 1920s and 1930s, Dickerson's lawyering for Supreme Liberty, the City of Chicago, the State of Illinois, and private clients ran the gamut of civil work, with an occasional criminal matter thrown in. Judging by the reported decisions, he was a good law-

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to deprive me of that property, you would find out whether I am a communist." *Id.* at 146.

<sup>74</sup> *Id.* at 180–88; see Earl Dickerson, *supra* note 45, at 205–11.

<sup>75</sup> See Dickerson, *supra* note 2, at 176; Defendants' Exhibits 8 & 9, *Lee v. Hansberry*, No. 37 C 6804 (Cook County Cir. Ct. Mar. 15, 1938) (copies on file with authors).

yer, losing a few more cases than he won.<sup>76</sup> Aside from *Hansberry*, none of the reported cases in which he appeared would today be regarded as a civil rights case. And *Hansberry* was a push. Despite his efforts to use the case as the vehicle to invalidate racially restrictive covenants, Dickerson won the case on a procedural ground that turned out to be more important to the law of class actions than to the civil rights movement.<sup>77</sup> The ultimate victory on racially restrictive covenants went to Thurgood Marshall in *Shelley v. Kraemer*,<sup>78</sup> in which Dickerson's only role was to file an amicus brief.

Moreover, Dickerson's civil rights credentials might be questioned in *Hansberry*; Stradford, not Dickerson, represented Carl and Nannie Hansberry.<sup>79</sup> Dickerson appeared on behalf of Su-

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<sup>76</sup> A Westlaw search for "earl /2 dickerson" in the IL-CS-ALL file reveals a total of forty-eight citations, a few of which referred to another Earl Dickerson. Aside from *Hansberry v. Lee*, Dickerson was listed as counsel or co-counsel in thirty-four decisions in the Illinois Supreme Court or the Illinois courts of appeals. Nearly all arose in his capacity as a government lawyer. Counting only bottom-line results, he won twelve, lost twenty-one, and drew one (a vacated judgment). But that record is deceptive. Some of the losses arose from multiple decisions in the same or related cases; some were on preliminary procedural or jurisdictional points; and fact-laden slip-and-falls which the City of Chicago had lost at trial padded the loss column significantly. Aside from *Hansberry* and his other cases in the United States Supreme Court, Dickerson's most interesting reported cases involved his representation of the *Chicago Defender*, the venerable African-American newspaper, against libel charges, and his defense of a Baptist deacon who allegedly attempted to oust his pastor. *Cobbs v. Chicago Defender*, 31 N.E.2d 323 (Ill. App. Ct. 1941); *Coleman v. Swanson*, 11 N.E.2d 840 (Ill. App. Ct. 1937).

One question is whether Dickerson might have been a better lawyer than his record—in other words, whether the color of his skin mattered. It is impossible to know the answer, but few of Dickerson's cases were racially charged. Chicago was not known for hostility toward its African-American bar. See Plotkin, *supra* note 41, at 158–60. Our review of the trial transcripts in *Hansberry* reveal some overt racism by one judge who heard a preliminary motion, see Tidmarsh, *supra* note 21, at 244, but none by the trial judge.

<sup>77</sup> On the significance of *Hansberry* to the law of class actions, see Tidmarsh, *supra* note 21, at 268–77; Kamp, *supra* note 41, at 493–99; Richard A. Nagareda, *Administering Adequacy in Class Representation*, 82 *Tex. L. Rev.* 287, 294–308 (2003).

<sup>78</sup> 334 U.S. 1 (1948). The eloquence at oral argument of George Vaughn, another lawyer in *Shelley*, is also credited with swaying the Supreme Court. See William B. Rubenstein, *Divided We Litigate: Addressing Disputes Among Group Members and Lawyers in Civil Rights Campaigns*, 106 *Yale L.J.* 1623, 1630 (1997).

<sup>79</sup> Tidmarsh, *supra* note 21, at 241; Plotkin, *supra* note 41, at 154. A portion of the litigation expenses in *Hansberry* was defrayed by the Hansberry Foundation, which Carl Hansberry had established in 1936 with a mission to "enforce legal action in

preme Liberty and its president, Harry Herbert Pace. Supreme Liberty held the mortgage to the Hansberrys' house and had prospects of holding many more if the covenants could be abolished. Thus, arguably Dickerson was protecting his clients' financial interests as much as he was vindicating a principle of racial equality.<sup>80</sup>

Nor could Dickerson's legal work in *Hansberry* be called inspired; rather, it was adequate. His pleadings were not as insightful as Mollison's, nor were his examinations as sharp as Stradford's.<sup>81</sup> He misjudged the strength of the due process argument that the United States Supreme Court embraced, placing it well down the list of arguments in his "shotgun" briefs in the Illinois courts.<sup>82</sup> Unfortunately, no transcripts of his arguments in the Illinois Supreme Court or the United States Supreme Court survive, but the transcript of the trial reveals the same bulldozer whose refusal to sugarcoat racial issues on the City Council and FEPC limited his effectiveness as an advocate.

The civil rights credential Dickerson most lacked was a single-minded commitment to litigation as the vehicle for changing the racial dynamic in interwar America, and this is the point at which Mack's thesis provides the necessary insight. As Mack argues, a commitment to litigation was not typical of African-American civil rights lawyers during this period. Instead, Mack claims, the principal strategy of African-American lawyers after World War I was race uplift. Part of the uplift strategy was "legalism" (the assertion of legal claims to obtain rights of equal citizenship), but a much

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cases of racial discrimination." Plotkin, *supra* note 41, at 142. The rest came from Supreme Liberty or donations. See *Iron Ring in Housing*, 47 *Crisis* 205 (1940).

<sup>80</sup> Cf. Drake & Cayton, *supra* note 23, at 463 (recording an interview with an unnamed secretary of a black Chicago insurance company, who stated that "[w]e had no charitable reasons, I assure you. We were out to make money, and we felt that there was a splendid opening in Chicago").

<sup>81</sup> Mollison's final pleadings best developed the arguments that would be successful in *Hansberry*, *Shelley*, and even *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968). See Amended Answer of Israel Katz to the Complaint and Amendment, *Lee v. Hansberry*, No. 37 C 6804 (Cook County Cir. Ct. July 14, 1938), *reprinted with minor alterations in* Abstract of Record at 56-64, *Hansberry v. Lee*, 311 U.S. 32 (1940) (No. 29); Amended Rejoinder of Israel Katz to the Reply of the Plaintiffs and Motion to Strike the Reply of the Plaintiffs and Objections to Answer, *Lee v. Hansberry*, No. 37 C 6804 (Cook County Cir. Ct. July 14, 1938), *reprinted with minor alterations in* Abstract of Record, *supra*, at 65-71.

<sup>82</sup> See Brief and Argument for Appellants at 18-22, *Lee v. Hansberry*, 24 N.E.2d 37 (Ill. 1939) (No. 25,116).

larger part was “voluntarism” (the bolstering of African-American businesses and civic groups).<sup>83</sup> By the end of the 1920s, the dominance of the voluntarist strand diminished as the two strands merged into a “cultural-institutional pluralism” in which African-American lawyers worked both to build up segregated African-American institutions and to desegregate majority institutions. These seemingly inconsistent goals in fact had a common aim; in proving African-Americans’ ability to run their own businesses and professions, lawyers could disprove the claim that African-Americans were unsuited to participate equally in American civil society.<sup>84</sup>

By the 1930s, Mack contends, this new consciousness led to a novel strategy of public agitation to combat discrimination.<sup>85</sup> This was not yet the *Brown* strategy, because it focused on the private workplace instead of public institutions like schools. And it did not use the lawsuit as its tool, but rather collective actions such as boycotts and protests.<sup>86</sup> Not until 1938 did the use of litigation to end discrimination in the private labor market gain strategic equivalence with voluntarism and collective action. Around the same time, the idea of using litigation to end discrimination in public institutions also gained its tenuous foothold.<sup>87</sup>

On the surface, Dickerson’s career fits Mack’s thesis hand-in-glove. Dickerson’s primary work in the 1920s was helping to establish, expand, and sustain Supreme Liberty—a classic voluntarist undertaking. Throughout the 1930s, he focused on ending private, rather than public, discrimination. Although housing remained his central concern, by the end of the 1930s Dickerson shifted his attention toward employment discrimination. His work in the early 1940s as an alderman to end discrimination among bus drivers, as president of the Chicago Urban League to mobilize a nationwide protest against discriminatory employment practices among defense contractors,<sup>88</sup> and as a member of the FEPC to end discrimination among these contractors suggests that he, alongside other

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<sup>83</sup> See *supra* notes 10–16 and accompanying text.

<sup>84</sup> Mack, *supra* note 6, at 289–99.

<sup>85</sup> *Id.* at 299–301.

<sup>86</sup> *Id.* at 308.

<sup>87</sup> *Id.* at 343.

<sup>88</sup> Dickerson, *supra* note 2, at 54.

civil rights lawyers, was becoming increasingly aware of the significance of equal rights in employment. Furthermore, Dickerson viewed political and economic advancement, not litigation, as the principal tool to improve the lives of African-Americans.<sup>89</sup> For example, his switch to the Democratic Party and entry into politics resulted from his desire to spur both parties to compete for the African-American vote.<sup>90</sup>

By the end of the 1930s (and still consistent with Mack's thesis), litigation appeared to be emerging in Dickerson's mind as a stronger option. For instance, he helped to establish the Legal Defense Fund. Likewise, the ferocity of the defense in *Hansberry*, which stood in stark contrast to the restrictive-covenant cases litigated earlier in the 1930s,<sup>91</sup> showcases Dickerson's increased willingness to use courts to create rights of equality to govern the private housing market. In *Hansberry*, Dickerson included testimony from an economist, a demographer, and a realtor in order to prove both the dire overcrowding among Chicago's African-Americans and the lack of harm to property values from African-American neighbors<sup>92</sup>—a decidedly realist approach that squares with Mack's assertion about legal realism's influence on African-American civil rights lawyers in this era.<sup>93</sup> Indeed, Mack uses the two bookends of Dickerson's interwar career—his incorporation of Liberty Life and his involvement in *Hansberry v. Lee*—to help demonstrate that the

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<sup>89</sup> Id. at 104, 201, 208.

<sup>90</sup> Id. at 47, 49, 61–65. A further indication of Dickerson's focus on nonadjudicatory methods was that, even as he was battling *Hansberry* in the courts, he was chairing the South Side Legislative Committee, which aimed to end racial covenants and other private discriminatory practices through state legislation. Id. at 64–65.

<sup>91</sup> Before *Hansberry*, four rental cases had raised the validity of the Chicago covenants. In the first three, the African-American tenants never retained counsel to fight the suits. See Tidmarsh, *supra* note 21, at 225–32. In the fourth case, the tenant was Carl Hansberry, and his lawyer was C. Francis Stradford. *Hansberry* was willing to fight, but the court decided the case against him on another ground. *Plath v. De-Launty*, 7 N.E.2d 637 (Ill. App. Ct. 1937).

<sup>92</sup> Testimony of John P. Edelin, *supra* note 42; Testimony of Howard D. Gould, *supra* note 42; Testimony of Wallace R. Anthon, *Lee v. Hansberry*, No. 37 C 6804 (Cook County Cir. Ct. Mar. 15, 1938) (copy on file with authors); Testimony of Fenton W. Harsh, Jr., *Lee v. Hansberry*, No. 37 C 6804 (Cook County Cir. Ct. Mar. 22, 1938) (copy on file with authors).

<sup>93</sup> See *supra* notes 8, 16 and accompanying text.

civil rights bar supported both voluntarism and the assertion of legal claims for equal treatment.<sup>94</sup>

Despite these points of convergence, Dickerson's interwar career exposes some gaps in Mack's thesis. The first of these gaps concerns the breadth of the race-uplift views that Mack ascribes to the post-World War I civil rights bar. Mack depicts the members of the interwar civil rights bar as the descendants of a received tradition of race uplift,<sup>95</sup> which they modified throughout the 1920s into the "cultural-institutional pluralism" that slowly supplanted the dominance of voluntarism with stronger legal claims for equal citizenship.<sup>96</sup> In Mack's account, the idea of voluntarism was well understood by 1920; at various points, he refers to it as a "strategy"<sup>97</sup> or a "mission."<sup>98</sup> But the evidence for such a top-down plan is thin, at least during the years immediately after World War I. For instance, Mack draws some of his evidence about the voluntarist strategy from speeches given at the NBA or elsewhere; the NBA, however, was not founded until 1925,<sup>99</sup> and Mack relies principally on speeches from the mid-1920s through the early 1930s.<sup>100</sup> Houston, on whose work Mack also draws, did not graduate from Harvard Law School until 1922. Houston's tract on the state of the African-American bar was not published until 1928, and his implementation of a business-oriented curriculum at Howard Law School, which Mack uses to help prove the emergence of a voluntarist strategy, occurred in the early 1930s.<sup>101</sup> Mack does not point to any African-American lawyer of national stature orchestrating a voluntarist strategy in the early 1920s. Indeed, not until 1930 is Mack's evidence strong enough to suggest that voluntarism had developed into a nationally discussed strategy for the civil rights

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<sup>94</sup> Mack, *supra* note 6, at 288.

<sup>95</sup> See *id.* at 272–81 ("Post-World War I civil rights lawyers carried forward the race uplift view of their professional role and put it into practice during the 1920s.").

<sup>96</sup> See *id.* at 288.

<sup>97</sup> *Id.* at 287, 294–95.

<sup>98</sup> *Id.* at 287.

<sup>99</sup> See The National Bar Association, *The NBA Perspective*, <http://www.nationalbar.org/about/#history> (last visited Mar. 26, 2007).

<sup>100</sup> *Id.* at 288, 290, 291, 293–94, 298.

<sup>101</sup> *Id.* at 284–87.

bar.<sup>102</sup> By then voluntarism was, according to Mack, already on the wane.<sup>103</sup>

Dickerson's early career highlights the difficulty of ascribing to the entire bar the ideals of some of its members.<sup>104</sup> As the first African-American to graduate from the University of Chicago Law School, Dickerson had no law school network from which to learn about voluntarism or how to implement it.<sup>105</sup> In his early career, Dickerson worked for Liberty Life, for the City of Chicago in an integrated law office, and for himself in solo practice. In 1923 Dickerson briefly formed a partnership with Edward Morris, who was then Chicago's leading African-American lawyer, but he and Morris were never close, nor is there any indication that Morris was the conduit for a strategy percolating within the entire African-American bar.<sup>106</sup> Indeed, even Dickerson's most significant voluntarist achievement—the incorporation of Liberty Life—was the result of happenstance after Dickerson was rejected by white firms, not design.

Given his rapid rise to prominence, Dickerson might have been expected to be a leader in developing and modifying the existing voluntarist strategy into a cultural-institutional pluralist alternative,

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<sup>102</sup> Cf. Drake & Cayton, *supra* note 23, at 430–33, 436 (suggesting that African-American support for African-American businesses—the soul of voluntarism—was “revivified” in Chicago when the Depression hit in 1929).

<sup>103</sup> Mack, *supra* note 6, at 302, 308.

<sup>104</sup> At one point, *Dickerson* provides a window into the life of the average African-American lawyer between the world wars. During the 1930s, Elmer Gertz, a white civil rights attorney, complained to Dickerson that African-American attorneys often did not show up for meetings of a committee working to abolish restrictive covenants. According to Gertz, Dickerson responded, “You’ve got to remember that we are dealing with people who have many personal, social, and economic problems. They can’t take these matters, which seem to them to be abstract, as seriously as you and I do. They can’t afford to.” *Dickerson*, *supra* note 2, at 52.

<sup>105</sup> See *id.* at 9, 17–18 (noting a lack of professional role models in Dickerson's youth and suggesting that Dickerson drew inspiration for his professional career from his contacts as a teenager with African-American doctors, lawyers, and architects in Chicago).

<sup>106</sup> Morris, who invited Dickerson into a partnership when Dickerson cleverly bested him in a probate matter, see *id.* at 45–46, receives no mention in Mack's article. Nor is it likely that Morris was a voluntarist in the sense that Mack describes. Mack associates voluntarism with Booker T. Washington and the Tuskegee Institute, see *infra* note 124 and accompanying text, but Morris was an “inveterate Tuskegee-hater.” David Levering Lewis, *W.E.B. Du Bois: Biography of A Race 1868–1919*, at 318 (1993).

but nothing in his biography or his surviving papers indicates that he assumed such a role.<sup>107</sup> *Black Metropolis*, the famous sociological study of African-American Chicago, lays the voluntarist approach at the feet of African-American clergy and business leaders, not lawyers.<sup>108</sup> *Dickerson* makes no mention of Dickerson's knowledge of a race-uplift strategy during the early years of his career, a fact which may not be surprising given the mixed meanings and non-strategic uses of the term for African-Americans.<sup>109</sup> At most, *Dickerson* suggests that Dickerson, over time, developed a complex view of race uplift, which he believed he was implementing principally as a businessman rather than as a lawyer.<sup>110</sup> Nor did Dickerson possess the patience that an emerging cultural-institutional pluralism demanded; pluralism was a gradual method for subverting segregation.<sup>111</sup> Dickerson's decision to attend predominantly white universities, his near refusal to accept his officer's commission, his first job applications, and his work for the City all show that, by the early 1920s, Dickerson was already a thoroughly committed integrationist. Indeed, shortly before he died, Dickerson summarized his life's work as follows: "For over fifty years . . . I have been dedicated to the ultimate attainment of an integrated society as the means to solving this country's racial dilemma."<sup>112</sup>

Viewed through that lens, even Dickerson's career as general counsel for Liberty Life and Supreme Liberty is less clearly voluntarist than it might initially appear. Supreme Liberty got much of its investment income from its mortgage business.<sup>113</sup> But mortgage

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<sup>107</sup> Unfortunately, few of Dickerson's papers have survived. The earliest papers date from 1918. See Papers of Earl Dickerson (on file with Chicago Historical Society, Chicago Public Library, Chicago, Ill.).

<sup>108</sup> Drake & Cayton, *supra* note 23, at 430–37.

<sup>109</sup> See Kevin K. Gaines, *Uplifting the Race: Black Leadership, Politics, and Culture in the Twentieth Century 1–20* (1996) (arguing that the meaning of race uplift differed across time and among groups).

<sup>110</sup> Dickerson, *supra* note 2, at 174–75, 208–09.

<sup>111</sup> See Mack, *supra* note 6, at 291 (noting that Sadie Alexander saw voluntarism "simply [as] a way of proving that blacks could eventually fit into the mainstream of American life").

<sup>112</sup> Ingham & Feldman, *supra* note 45, at 218. Dickerson continued this interview with the more doubtful observation that "for the past few years now, I have seriously questioned whether integration, per se, is the appropriate answer." *Id.*

<sup>113</sup> Plotkin, *supra* note 41, at 148.

lending wasn't just a business. In many northern cities in the 1920s and 1930s, the principal African-American concern was not school segregation. Far more significant were employment discrimination and impossibly overcrowded housing conditions, which had resulted in large measure from restrictive covenants.<sup>114</sup> Property ownership had a particular significance for African-Americans; Congress had recognized the right to own property as a civil right almost seventy-five years before *Brown*.<sup>115</sup> So Supreme Liberty's mortgage business mixed profit and civil rights in equal and indistinguishable measures.<sup>116</sup> "Invading" white neighborhoods to break down racial covenants made good business sense, but it also had a radical edge. Dickerson had been trying to undermine restrictive covenants almost from their inception in the 1920s.<sup>117</sup> In a newspaper article in 1938, Dickerson linked restrictive covenants with "jim crowism, segregation, police terror, and persecution against the Negro people."<sup>118</sup> Working to end the covenants was working to end racism. Obliquely referring to Dickerson, one observer remarked:

The specific invasion techniques . . . are associated with a Negro life insurance company in all except one instance. The invasion "know-how" may thus be said to have been developed to its greatest level of efficiency by legal counsel for the Negro life insurance company.<sup>119</sup>

Dickerson was not naive. He knew that the short-term consequence of busting racial covenants was white flight rather than integration,<sup>120</sup> but the long-term ideal of an integrated society was not

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<sup>114</sup> *Id.* at 95–100; see Drake & Cayton, *supra* note 23, at 111–15 (mentioning jobs and housing, but not school segregation, as critical areas in which the color line "is tightly drawn").

<sup>115</sup> Act of Apr. 9, 1866, ch. 31, § 1, 14 Stat. 27 (codified as amended at 42 U.S.C. § 1982 (2000)).

<sup>116</sup> See Dickerson, *supra* note 2, at 96, 208 (noting Dickerson's view that Supreme Liberty had both a financial and a social mission).

<sup>117</sup> *Id.* at 52, 95–96.

<sup>118</sup> *Id.* at 65.

<sup>119</sup> Egbert Frederick Schietinger, *Real Estate Transfers During Negro Invasion: A Case Study 49–50* (1948) (unpublished M.A. thesis, University of Chicago) (copy on file with authors).

<sup>120</sup> For instance, the plaintiffs in *Hansberry v. Lee* left no doubt that the Hansberrys' presence in their neighborhood would lead to white flight. Brief and Argument for

possible as long as the covenants remained in force. So were his years of work as general counsel an attempt, in a voluntarist way, to build up an African-American business, or were they a more radical attempt to achieve an integrated society?

Although one inference that can be drawn from the correlation between Dickerson's early career and Mack's thesis is that the dissemination of a race-uplift strategy to rising African-American lawyers like Dickerson must have occurred, another inference is equally possible—that African-American lawyers like Dickerson were bounded by their practical realities and took the work that came in the door. That some of this work involved institution building in the African-American communities is unsurprising; after all, who else would employ African-American lawyers and be able to pay their fees? On this view, voluntarism is useful only as a post hoc description of what African-American lawyers like Dickerson did in a world with most legal opportunities closed to them. It was not an ideal that motivated their actions.

One way to choose between these contrasting views—voluntarism as a bold strategy of racial improvement or voluntarism as a sad reflection of racial suppression—is to bring civil rights lawyering into contact with larger intellectual currents in African-American life during the early twentieth century. Put differently, even if there is no specific evidence that African-American lawyers crafted and implemented a strategy of race uplift, evidence that institution building was a priority among the African-American intellectual elite might permit an inference that the lawyers understood their supporting roles.

The failure to do so exposes a second difficulty in Mack's thesis. Mack principally ascribes the original race-uplift strategy to the generations of pre-World War I lawyers,<sup>121</sup> and the rising cultural-institutional pluralism to the intellectuals Gunnar Myrdal, Horace Kallen, and Alain Locke.<sup>122</sup> But these were hardly the only currents flowing in African-American intellectual life to which the civil rights bar might be expected to pay attention, and it is certain that

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Appellees at 110–12, *Lee v. Hansberry*, 24 N.E.2d 37 (Ill. 1939) (No. 25,116) (copy on file with authors). This in fact occurred after *Hansberry* was decided. Drake & Cayton, *supra* note 23, at 187.

<sup>121</sup> Mack, *supra* note 6, at 273–80.

<sup>122</sup> *Id.* at 289 & n.110, 290.

they were not the only intellectual influences to which Dickerson paid attention.<sup>123</sup> In an effort to ground race uplift in these larger currents, Mack suggests that voluntarism's strongest intellectual proponent was Booker T. Washington,<sup>124</sup> a seemingly unlikely well-spring for a civil rights legal strategy after World War I. To begin with, Washington's influence within the African-American community had fallen significantly by the time of his death in 1915.<sup>125</sup> Moreover, Washington's view of race relations, forged from southern agrarian conditions, was too modest to support the type of institution building in which northern African-American lawyers were supposedly engaging.<sup>126</sup> In his famous Atlanta Compromise speech, Washington argued that, for the time being, African-Americans needed to forego political power, civil rights, and higher education in business and the liberal arts. In return, they should be allowed to make gradual progress in business and agriculture, prove their merit through diligence and moral character, gain economic power, and eventually earn equal rights.<sup>127</sup> Washington was one of the forces behind the Urban League, which perpetuated his philosophy of sacrificing political rights for a measure of economic stability.<sup>128</sup> Although some features that Mack ascribes to voluntarism (especially the anti-legalist acceptance of segregation and the focus on building economic power) find their reflection in Washington's words, Washington was never an advocate for a separate

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<sup>123</sup> Dickerson, *supra* note 2, at 90 (describing seminars with professors from the University of Chicago that Dickerson held while an alderman); *id.* at 161 (noting Dickerson's efforts to read and attend lectures by W.E.B. Du Bois); *id.* at 216–17 (describing Dickerson's interests in philosophy and theology, and his attendance at University of Chicago lectures).

<sup>124</sup> Mack, *supra* note 6, at 280; see *id.* at 292 (stating that Charles Hamilton Houston's 1928 report on African-American lawyers "would have made Booker T. Washington proud"). Mack does not contend that Booker T. Washington was the original source of race uplift or its voluntarist branch; indeed, he suggests that the tradition of uplift stretches back as far as John Mercer Langston, an African-American lawyer at the time of the Civil War. *Id.* at 273–74.

<sup>125</sup> Lewis, *supra* note 106, at 323–24, 408–34, 501–03.

<sup>126</sup> *Id.* at 290, 502.

<sup>127</sup> *Id.* at 174–75.

<sup>128</sup> *Id.* at 273, 467, 488, 513; see Chicago Comm'n on Race Relations, *supra* note 40, at 146–47 (noting that the principal function of the Chicago Urban League was to assist migrants from the South find employment); Drake & Cayton, *supra* note 23, at 64, 72, 744; *id.* at 734 (indicating that the Chicago Urban League finally indicated some willingness to become more aggressive in a boycott campaign in 1930).

African-American society, complete with its own professional elite and business entrepreneurs.

In some ways, voluntarism and race uplift seem more closely associated with the populist Marcus Garvey and the sociologist W.E.B. Du Bois. Garvey flashed briefly but brilliantly in the 1920s with his call for racial separatism, his pan-Africanism, and his efforts to establish several African-American companies. But his influence in America, especially among better-educated African-Americans, was neither strong nor enduring,<sup>129</sup> and the dates of Garvey's influence do not match up well with supposed rise of a voluntarist strategy. Du Bois, the more significant figure, competed with Washington for supremacy over the direction of the African-American future in the early twentieth century. The traditional story of the opposition between Washington and Du Bois focuses on Washington's call for accommodation as opposed to Du Bois's call for a militant activism against racial injustice. Du Bois was a leading force behind the creation of an integrated NAACP, which agitated more directly than the Urban League for integration. Du Bois focused on political rights more than economic rights, and he argued for a liberal college education—an education that Washington demeaned in favor of industrial and technical arts—for the “talented tenth” of African-Americans who would serve as the leaders of African-American communities.<sup>130</sup> Although Du Bois was too suspicious of commercialism's potential to dominate intellectual achievement to count him as a strong proponent of voluntarism,<sup>131</sup> voluntarism nonetheless seems to have important links to Du Bois, who held a “cultural pluralist orientation.”<sup>132</sup> By 1934, Du Bois turned decidedly away from integration and toward the creation of a separate African-American economy and infrastructure,

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<sup>129</sup> For instance, Harry Herbert Pace, who became president of Supreme Liberty in 1929 and was a great believer in creating African-American businesses to serve the needs of the African-American communities, see *infra* notes 146–48 and accompanying text, virulently opposed Garvey's movement. See Plotkin, *supra* note 41, at 150. So did W.E.B. Du Bois. See W.E.B. Du Bois, Marcus Garvey, *reprinted in* The Oxford W.E.B. Du Bois Reader 265–76 (Eric J. Sundquist ed., 1996).

<sup>130</sup> See, e.g., W.E.B. Du Bois, The Talented Tenth, *in* The Negro Problem: A Series of Articles by Representative American Negroes of Today 31 (Humanity Books 2003) (1903).

<sup>131</sup> Lewis, *supra* note 106, at 290–91.

<sup>132</sup> Manning Marable, W.E.B. Du Bois: Black Radical Democrat 141 (updated ed. 2005).

but that turn was far too late to label him as an inspiration for voluntarism.<sup>133</sup>

The lack of a tight connection between the strands of race uplift and the strategies of either Washington or Du Bois hurts Mack's claim that voluntarism transformed readily into cultural-institutional pluralism as a civil rights strategy. Instead, it is likely that members of the civil rights bar recognized in the tension between voluntarism's focus on economic rights and pluralism's focus on political rights the bitter disagreement between Washington and Du Bois. Nor is it unusual that different members of the bar resolved that tension in different ways. Again, Dickerson, who uniquely felt the pull to both camps, provides an important case study, and his reaction is instructive. Dickerson had worked for Washington for one year,<sup>134</sup> but he also read Du Bois's work devotedly, and when on the NAACP's Board in the late 1940s, Dickerson worked to reconcile Du Bois with the NAACP's leadership.<sup>135</sup> Dickerson became a member of the Chicago branch of the Washington-inspired Urban League in 1921 and served as its president between 1939 and 1955.<sup>136</sup> Dickerson also joined the Chicago branch of the Du Bois-inspired NAACP in 1920, became a member of the local board of directors in 1926, and became a member of its national board of directors in 1941.<sup>137</sup> In his interviews, Dickerson both demonstrated respect for Washington *and* professed a lifelong interest in Du Bois.<sup>138</sup> Dickerson's work at Supreme Liberty to create economic opportunities for African-Americans echoes Washington, but his love of liberal education, his early efforts to have African-Americans exercise their right to vote, his blunt intolerance of discrimination, and his aristocratic, "Talented Tenth" view of leadership suggest the influence of Du Bois. Du Bois also exercised an important, indirect influence on Dickerson. The president of Supreme Liberty after the 1929

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<sup>133</sup> W.E.B. Du Bois, *Segregation*, 41 *Crisis* 20 (1934).

<sup>134</sup> Dickerson, *supra* note 2, at 22–23.

<sup>135</sup> *Id.* at 8, 161.

<sup>136</sup> *Id.* at 51, 152–57.

<sup>137</sup> *Id.* at 51–52, 118, 157.

<sup>138</sup> Compare *id.* at 23 (discussing Washington) with *id.* at 8, 161 (discussing Du Bois).

merger was Harry Herbert Pace, who had been a pupil, business partner, and academic colleague of Du Bois.<sup>139</sup>

In looking at the sum of the intellectual contributions to Dickerson's worldview, Du Bois has an edge over Washington. Therefore, if Mack is correct that voluntarism is a strategy more associated with Washington, there is reason to doubt that Dickerson saw himself as an implement of that strategy—and, given Dickerson's prominence, there is also some reason to doubt that voluntarism was a strategy affirmatively pursued by other African-American lawyers in the 1920s. Voluntarism might describe to an extent what Dickerson was doing, but it was not necessarily what he wanted to be doing.

In the end, Dickerson's vision of civil rights lawyering was too complicated to fit into tidy intellectual classifications such as voluntarism and pluralism. Dickerson must have understood that his career was proceeding on multiple tracks. On one, in working for Supreme Liberty, he was doing Washington's work—creating the economic conditions that provided the anchor for the eventual achievement of legal and social rights. On another, he was doing Du Bois's work—in particular, subverting the legal structures that perpetuated discrimination in housing.<sup>140</sup> And on a third, he was pursuing a strongly integrationist agenda that did not precisely accord with the views of either man.<sup>141</sup> Dickerson needed to come to

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<sup>139</sup> For a short biography of Pace, see Harry Herbert Pace, *supra* note 45, at 501–17. In 1904, Pace and Du Bois purchased a Memphis printing press whose purpose was to break Washington's stranglehold on the newspapers that helped to shape African-American opinion. See Lewis, *supra* note 106, at 217, 324–25.

<sup>140</sup> See Dickerson, *supra* note 2, at 208–09.

<sup>141</sup> For early evidence of Dickerson's views on integration, see *supra* notes 111–12, 120, and accompanying text. Dickerson's integrationist impulses remained with him throughout his life. He became an early leader in the National Lawyers Guild, and when he became its president in 1951, he became the first African-American to lead an integrated national bar organization. See *supra* notes 50, 73, and accompanying text. Likewise, in 1945, he was in the first group of African-American lawyers to gain admission to the Chicago Bar Association, and he worked behind the scenes to secure admission of the first African-American to the Illinois Bar Association. Dickerson, *supra* note 2, at 51. But see *id.* at 209 (suggesting that Dickerson himself was the first to break the color barrier in the Illinois Bar Association). In 1947, a year before *Shelley v. Kraemer*, Dickerson became the first African-American to live in Hyde Park, which was also bound by racially restrictive covenants. He was willing to become another Carl Hansberry, but his neighbors, rather than fighting, chose to accept him. *Id.* at 108, 195–98. Dickerson sued Chicago's prestigious Palmer House when it failed to

his own distillation of these competing ideals. The evidence suggests that, in doing so, he turned not outward, toward others' ideals of race uplift or cultural-institutional pluralism, but inward, toward his own philosophy of civil rights lawyering.

### III. MERGING PROFESSIONALISM WITH A DESIRE FOR FREEDOM

The first key in unlocking Dickerson's philosophy is his sense of professionalism. He was, first and foremost, a lawyer. The legal liberal and revisionist accounts, as well as Mack's theory, accept the account of civil rights lawyers as "social engineers" trying to craft strategies to overcome racism in America. The differences between Mack's account and other accounts center on what interwar civil rights lawyers were trying to engineer—the overthrow of *Plessy* and segregation in public institutions (the legal liberal and revisionist accounts) or the building of African-American institutions whose success would eventually undermine segregation (Mack's voluntarist account). In all those accounts, the lawyers controlled the direction of civil rights reform.

A closer look at Dickerson's career, however, suggests that African-American lawyers did not necessarily set the agenda. They were professionals trying to earn the respect of the bar,<sup>142</sup> which, at that time, meant that their principal loyalty was to their clients' interests, not to larger causes. In perhaps the key passage in his biography, Dickerson described his decision as a teenager to become a more "successful" African-American professional than any of the professionals he had met in Chicago. "To become such became an obsession with me, which ripened into a vow."<sup>143</sup>

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serve him, and he became the first African-American to eat in its restaurant (paying his bill with the proceeds of the judgment). *Id.* at 163–64. Likewise, he became the first African-American to stay at the Waldorf Astoria in New York and the Mayflower in Washington, D.C. *Id.* at 165. The claims in the last two sentences, not otherwise substantiated in the biography, rely on Dickerson's own statements.

<sup>142</sup> Indeed, Charles Hamilton Houston's 1928 paper on the African-American bar urged black lawyers to adhere scrupulously to professional standards. Mack, *supra* note 6, at 284–85; see also *id.* at 296–97 (recounting William Henry Hastie's warm reception in a southern courtroom when he demonstrated exceptional professional competence); Dickerson, *supra* note 2, at 218 (noting Dickerson's legendary professional courtesy and civility).

<sup>143</sup> Dickerson, *supra* note 2, at 18.

Seeing Dickerson first as a professional and second as a civil rights strategist explains Dickerson's eclectic legal practice, which included far fewer civil rights cases than routine civil matters, and less litigation work than transactional work. Dickerson's sense of professional responsibility also explains his tactical decisions in *Hansberry*. Dickerson wanted to hit a home run—to have the court declare racially restrictive covenants either unconstitutional or void as against public policy. But the particular covenant involved in the Hansberrys' neighborhood had a *sui generis* flaw—it had arguably not been signed by enough residents to be enforceable. Any ruling based on this flaw would render the covenant in *Hansberry* invalid but leave similar covenants elsewhere still standing. As a good lawyer should (but not necessarily as a good cause lawyer would), Dickerson made both arguments. The latter argument led him to the uncharted intersection of class actions and due process and supplied the ground on which the Supreme Court rendered its decision. Dickerson's lawyerly approach also explains his ethically dodgy willingness to trumpet the trial court's erroneous factual finding about the covenant's unenforceability in his Supreme Court brief. He knew that finding to be untrue, but he also knew that the finding might help him to win the case on the due process ground that made his goal of invalidating all racial covenants unattainable.<sup>144</sup>

If Dickerson's career is representative of others at the bar, civil rights work seeped into the interstices of ordinary legal work, but it was not a mainstay. The principal focus of the African-American bar was to lift itself up—to create a bar that was the equal of the white bar. The *Hansberry* legal team belonged to a new generation of African-American lawyers, all of whom had graduated from predominantly white law schools—Dickerson, Mollison, Moore, and Gibson from the University of Chicago, and Stradford from

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<sup>144</sup> For the covenant in *Hansberry* to be enforceable, the owners of ninety-five percent of the street frontage were required to sign the agreement. Relying on a quick and dirty affidavit that Dickerson had filed early in the case, the trial judge found, *in dicta*, that only fifty-five percent of the owners had signed. At trial, even Dickerson's own evidence suggested that the actual number was eighty-three to eighty-five percent, and it is possible that the requisite ninety-five percent had signed. These facts did not keep Dickerson from using the trial court's erroneous finding in his later briefs. See *Hansberry v. Lee*, 311 U.S. 32, 38 (citing figure of "about 54 per cent"); Tidmarsh, *supra* note 21, at 243–56.

Columbia.<sup>145</sup> Dickerson's status as the "dean of Chicago's black lawyers" seemed to derive more from his peers' recognition of the quality of his work in the courtroom and the law office than from the civil rights positions he staked out. By the middle to late 1920s, as they established practices and created organizations like the National Bar Association, African-American lawyers could start to turn their attention to questions of civil rights. But, to the extent that Dickerson's early career provides evidence of the strategies of other African-American lawyers, it is a mistake to see the African-American bar during these years as the engineers of a general strategy of race uplift. Dickerson was as fortunate as anyone to be in a position both to do well and to do good, but he was less social engineer than dutiful draftsman.

This fact is especially evident after 1929, when Harry Herbert Pace became president of Supreme Liberty. A consummate entrepreneur, Pace was at the time a much larger figure in the African-American community than Dickerson. In fact, it is a weakness of the biography that *Dickerson* fails to explore the relationship between these two iconic figures; Pace rates only passing mentions.<sup>146</sup> Pace was a "race man"; he had made a career of establishing African-American businesses to serve the African-American community.<sup>147</sup> If anyone embodied the voluntarist spirit, it was Pace, not Dickerson. To the extent that Dickerson's work at Supreme Liberty supplies evidence for the existence of a voluntarist strategy, it is important to distinguish between Dickerson's personal views and those of the clients he represented.

That distinction holds the key to the second half of understanding Dickerson's philosophy. If our view of Dickerson is correct, one of the puzzles in his professional life is how a man of Dickerson's notorious impatience could have worked so long for

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<sup>145</sup> See Plotkin, *supra* note 41, at 154–58.

<sup>146</sup> See Dickerson, *supra* note 2, at 96, 101, 171–73, 177, 187.

<sup>147</sup> Among other businesses, Pace had established a printing business with W.E.B. Du Bois; the Pace and Handy Company with W.C. Handy, the father of the blues; Black Swan Records, the first African-American record label; and the largest of the three life insurance companies that merged into Supreme Liberty. See Harry Herbert Pace, *supra* note 45; Tidmarsh, *supra* note 21, at 264; *supra* note 139 and accompanying text.

Pace,<sup>148</sup> whose voluntarist agenda seemed to diverge from Dickerson's integrationist one. The answer is that, in an important sense, Dickerson was not precisely an integrationist. Dickerson believed that every person should be able to choose where to work and live—hence his passion to demolish discriminatory barriers in public and private life. In a world without barriers, some people would choose an integrated environment, but Dickerson also understood that other people would choose a segregated environment.<sup>149</sup> Dickerson's personal preference, often stymied for the first fifty years of his life, was to live and work in an integrated environment. At the same time, however, he cherished a vibrant, plural black culture, which he worried that integration might destroy.<sup>150</sup> What he ultimately saw himself vindicating through his actions was not a right of equality, but a right of autonomy—a right to live the life a person chose, free of social constructs that irrationally constrained opportunity. As one of Dickerson's contemporaries summed him up:

There is a certain autonomy of spirit about Mr. Dickerson. He could not have been both a successful businessman and an effective radical without a great self-confidence, without this freedom of spirit, without that awareness that in a certain sense complete freedom comes from within. He has that quality to an unusual degree.<sup>151</sup>

As Dickerson said near the end of his life: "Nobody can encroach on my dignity . . . I will not tolerate it."<sup>152</sup>

In this philosophy lies the reconciliation of Dickerson's paradoxical tendencies—respecting Washington while befriending Du Bois, a leader of the Urban League and the NAACP, a litigator and a legislator, a lawyer and a businessman. For those, like Pace, who chose the way of separatism, who wished to build up a culturally and institutionally plural society, Dickerson was willing to lend

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<sup>148</sup> Dickerson worked for Pace from 1929 until Pace's sudden death in 1943. See Harry Herbert Pace, *supra* note 45, at 512–13.

<sup>149</sup> Dickerson, *supra* note 2, at xix–xx, 210.

<sup>150</sup> *Id.* at 210.

<sup>151</sup> Interview with Sterling Stuckey (Sept. 14, 1984), *quoted in* Dickerson, *supra* note 2, at 218.

<sup>152</sup> Robert McClory, *A Supreme Life: Earl Dickerson at 92*, Reader (Chi.), Jan. 13, 1984, at 1.

his talents. For those who wished to break down color lines in housing, employment, professional associations, and schools, Dickerson was willing to be their voice. He wished to be free to live his life as he wanted, and he wanted the same freedom for others.

### CONCLUSION

*Dickerson* tells the story of one of the forgotten lions of the pre-*Brown* civil rights era. It has a particular focus on the man, rather than on the movement. The final judgment on Dickerson the man is bittersweet. He was great in his time—the only African-American lawyer of his day to be a legislator, a member of a presidential committee, and a litigator in the Supreme Court. But he wanted to be, and could have been, greater. His victory in *Hansberry* made him the father of the modern class action, the device on which so much civil rights lawyering has depended,<sup>153</sup> but he enjoyed no triumphal achievement that keeps his name on the tongues of the present generation of civil rights lawyers. Dickerson's impatient intolerance of injustice gave him a prophetic quality but also led him down a path of political suicide.

Viewed through a different lens of the civil rights movement, *Dickerson* lends support to Mack's central claim—that in the years before World War II, African-American civil rights lawyers had not yet adopted a litigation strategy aimed at ending segregation in public institutions. As Dickerson's career shows, the goals of the African-American bar were diffuse, and the means African-American civil rights lawyers used to accomplish those goals had not yet concentrated on the courtroom. At the same time, *Dickerson* calls for refinements in Mack's treatment. Mack suggests that the interwar African-American civil rights bar initially adopted a two-prong strategy of voluntarist separation and legalist claims for integration, and that the key to reconciling these seemingly contrary impulses lies in cultural-institutional pluralism. Dickerson's career during these years suggests that voluntarism was less an affirmative strategy adopted by the civil rights bar than a realistic acknowledgment that African-American lawyers wishing

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<sup>153</sup> See Fed. R. Civ. P. 23(b)(2) (commonly known as the "civil rights class action"); Charles Alan Wright et al., *Federal Practice & Procedure* § 1776 (2005).

to ply their trade were hemmed in by the same majority institutions as their clients. It also suggests the source of the voluntarist strategy might lie more in the African-American business community than in its legal community. Finally, *Dickerson* suggests that Dickerson's motivation did not arise from the complex idea of a cultural-institutional pluralist group identity, but from the basic human intuition of autonomy—of the worth, the dignity, and the right of every person to choose how and with whom to live.

Mack might still be correct in his assessment of other leading figures in the interwar civil rights bar, but his account does not precisely capture the driving passion of the widely admired<sup>154</sup> “dean” of the largest African-American bar in the country. The subtitle of Dickerson's biography—*A Voice for Freedom and Equality*—puts Dickerson's beliefs in their proper order.

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<sup>154</sup> See, e.g., Dickerson, *supra* note 2, at 212–17.

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