

ASK BARTLEBY

Who were the lawyers associated with the United States Supreme Court case of Taylor Strauder that originated in Wheeling? ~Bill Gallagher

Taylor Strauder, an African-American, was convicted of murder on May 8th, 1873, in the Circuit Court of Ohio County, and was sentenced to be hanged on August 29th, 1873 “at the usual place of execution.” The conviction was challenged on the basis of the newly enacted 14th Amendment, arguing that a West Virginia law allowing only “white male persons” to be eligible to serve as jurors deprived him of due process, equal protection, and the privileges or immunities of other citizens.

The Supreme Court of Appeals of the State of West Virginia denied his appeal, and Strauder appealed by writ of error to the United States Supreme Court.

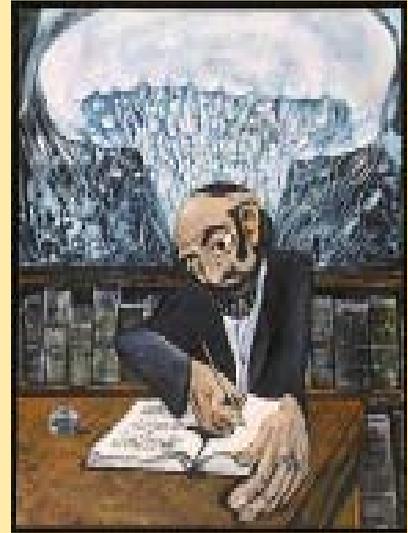
The Supreme Court framed the issue as “whether, in the composition or selection of jurors by whom he is to indicted or tried, all persons of his race or color

may be excluded by law, solely because of their race or color, so that by no possibility can any colored man sit upon the jury.” Citing the *Slaughter-House Cases* (16 Wall. 36), The Supreme Court held that the very reason the 14th Amendment was adopted was to “assure the colored race the enjoyment of all the civil rights that under the law are enjoyed by white persons.” “It not only gave citizenship and the privileges of citizenship to persons of color but it denied to any State the power to withhold from them the equal protection of the law.” *Strauder v. West Virginia*, 100 U.S. 303 (1879).

Strauder was represented in the Ohio County Circuit Court by Wheeling lawyer Blackburn Barrett Dovenor, a former union officer who went on to serve West Virginia’s First Congressional District in Congress. According

to the book, “Men of West Virginia,” (Biographical Publishing Company, 1903), Mr. Dovenor was an avowed Republican, a member of the firm of Davenport and Dovenor, and like our own Senator Robert C. Byrd, became instrumental in the appropriation of substantial sums of money for his home state—in his case for improvement of navigation on the Ohio river between Pittsburgh and Marietta. The same book mentions nothing of his representation of Taylor Strauder, but explains that as an advocate “he was earnest, making his client’s cause his own.”

In the United States Supreme Court, Dovenor’s senior partner, George O. Davenport, appears as counsel, along with Charles Devens, Attorney General of the



Imprimis: I am a man who, from his youth upwards, has been filled with a profound conviction that the easiest way of life is the best. — *Bartleby, the Scrivener* Herman Melville

United States under Rutherford B. Hayes from 1877 to 1881. Mr. Devens was a distinguished union officer during the war, and as a Brigadier General, his troops were the first to occupy Richmond after its fall. He was, before becoming Attorney General, the Fifth Commander in Chief of the Grand Army of the Republic.

Presiding over the Strauder trial in Ohio

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County was Circuit Judge Thayer Melvin, who the same book notes was born “in that portion of Brooke County, Virginia which in 1847 became Hancock County,” with “North of Ireland stock.” He was admitted to practice in 1853, at the age of 18. He too fought in the civil war on the union side, and as the book further states, “Politically, Judge Melvin was, at the beginning, a follower of Henry Clay but since the war he has acted with the Republican part, at least on national questions. He is not, [however] recognized as a partisan.”

The *Strauder* case has been cited as precedent in a number of other cases over the years, including the 1975 case of *Taylor v. Louisiana*, where the Supreme Court relied on

Strauder to strike down a law which excluded women from juries. Although the case was hailed as a significant win for equal protection at the time, the striking down of West Virginia’s law excluding African-Americans from sitting on juries did not guarantee them a right to do so, as subsequent ill-willed county officials could simply by refusing to call them out for jury duty.

For more information, see Stephen Cresswell, “the Case of Taylor Strauder,” *West Virginia History* 44 (Spring, 1983) 193-211. 

In the next issue, Bartleby explains the Wheeling origin of “Yellow Dog Contracts”-and identifies the legal professionals involved.

THE WALS FOUNDATION: Educational Outreach

As we like to say, “If those who believe in the Civil Justice System don’t educate the public, those who don’t will.”

You can now view a video of our mock trial project by clicking on our website: www.firststatecapitol.com.

This is a sample, in still pictures, of what our program is all about.

We’re gearing up for the 2006/2007 school year when we will continue our mock trials in Ohio County public schools (4th and 8th grade classes) while making plans to expand into parochial and private schools and also into other counties.

NEW scripts are being created by Patrick S. Cassidy, President of The WALS Foundation. We will continue our scripts for 4th graders in the

format of a fairytale trial while 8th grade scripts will be more sophisticated. Both scripts will once again be on the topic of crystal meth, as requested by our grantor, Department of Health & Human Resources. 



Thanks again, to all lawyers who participate in this growing educational program!