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ARTICLES

FORGOTTEN FIRST:

Macon Bolling Allen and the Journey to Becoming America's First Black Attorney

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Table of Contents

Introduction

On the occasion of her historic appointment as the first Black woman ever to serve on the United States Supreme Court, Judge (soon to be Justice) Ketanji Brown Jackson acknowledged that the road she followed had been paved by the "true pathbreakers," trailblazing judges like Justice Thurgood Marshall and Judge Constance Baker Motley.[1] Yet she could have easily invoked the name of another trailblazer, the first Black lawyer admitted to practice in the United States: Macon Bolling Allen, admitted in Maine in 1844.[2] Certainly, just as a Justice Ketanji Brown Jackson would not have been possible without the Thurgood Marshalls, the Constance Baker Motleys, or the Charles Hamilton Houstons of previous generations of pioneering Black lawyers, it is equally true

[1] *Remarks by President Biden, Vice President Harris, and Judge Ketanji Brown Jackson on the Senate's Historic Bipartisan Confirmation of Judge Jackson to be an Associate Justice of the Supreme Court*, White House (Apr. 8, 2022), https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/04/08/remarks-by-president-biden-vice-president-harris-and-judge-ketanji-brown-jackson-on-the-senates-historic-bipartisan-confirmation-of-judge-jackson--to-be-an-associate-justice-of-the-supreme-court [https://perma.cc/3QJC-TTWU].

[2] Daniel Hinchen, *Passing the Bar: America's First African-American Attorney*, Beehive (May 7, 2019), https://www.masshist.org/beehiveblog/2019/05/passing-the-bar-americans-first-african-american-attorney.

to say that those generations owe a significant debt to the "forgotten firsts" like Allen and his few contemporaries. Thirteen years before Chief Justice Roger Taney infamously pronounced Black Americans as "beings of an inferior order" and held that citizenship did not extend to people of Black African descent,[3] Macon Bolling Allen's achievement exposed the lie of slavery's underpinnings and of the Supreme Court's decision in *Dred Scott v. Sandford*.

In any field of human endeavor, there is always a so-called first. Every hero has an origin story. For every lawyer of color practicing today, that origin story begins with Macon Bolling Allen in 1844, and those Black men that followed him into the practice of law in antebellum America: Robert Morris, admitted in Massachusetts in 1847, George Boyer Vachon, admitted in New York in 1848, John Mercer Langston, admitted in Ohio in 1854, Aaron Bradley, admitted in Massachusetts in 1860, and John S. Rock, also admitted in Massachusetts in 1860. Macon Bolling Allen stands above the others because his "first" status is not limited to being the first Black attorney admitted to practice in the United States. He was also the first Black lawyer to try a case, and became the first Black attorney to serve as a judicial officer when he was appointed as a Massachusetts justice of the peace in 1847.[4] Allen would later move to Charleston, South Carolina in 1868, where he not only helped found the country's first Black-owned law firm, but also served as a judge on two different courts.

Yet despite his status as the first Black lawyer (and judge) in the United States, Macon Bolling Allen has been largely overlooked by historians, the legal profession, and the public consciousness. For all of his accomplishments, Allen has been reduced to little more than the answer to a trivia question. Contributing to this relative anonymity is the fact that no authenticated image of Allen exists today. Images online identified as Allen are almost invariably that of his Boston contemporary Robert Morris.[5] Although Allen donated "a fine oil painting" of himself (likely a judicial portrait) to the Cumberland County Bar in Portland, Maine in 1873, the portrait has long since disappeared, possibly due to a courthouse fire.[6]

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[3] Dred Scott v. Sandford, 60 U.S. 393 (1856) (enslaved party).

[4] J. Clay Smith, Emancipation: The Making of the Black Lawyer, 1844–1944 at 96 (1993).

[5] *Morris, Robert*, Associated Publisher's Photograph Morgue Collection, Howard U., https://dh.howard.edu/pp_asalh/85/. For example, in Wikipedia's entry for Allen, the photo used in fact comes from the Associated Publishers archive at Howard University that clearly states that the image is that of Morris. Also, note that the picture displayed in the article by Daniel Hinchen is the same Morris photo. *See* Hinchen, *supra* note 2.

[6] D. Brock Hornby, *A Mysterious Disappearance: What Happened to a "Fine Oil Painting" Depicting the First African American Lawyer?*, 24:4 Green Bag 327 (2021).

Allen's historical significance and the scope of his achievements are undeniable. During Reconstruction and beyond, early Black lawyers dealt with racial violence, threats, and intimidation simply for being lawyers. They argued in front of white judges and white juries and often struggled financially, as members of the Black community either lacked the resources to support a Black lawyer or expected him to "represent the race" for free. Well before these changes, Macon Bolling Allen ventured into uncharted territory, seeking admission to the bar as the first Black man to do so.

This article seeks to remove the shroud of mystery from this overlooked chapter in the annals of the legal profession. Section I of the article looks at Macon Bolling Allen's humble beginnings. Section II examines standards for bar admission during the first half of the nineteenth century. Section III of the article looks at why Maine seemed to have been the most hospitable site for Macon Bolling Allen's unprecedented attempt to become a lawyer, including Allen's fortuitous backing by noted Maine abolitionist attorney Samuel Fessenden. Section IV looks at the historic admission itself, analyzing the setbacks and opposition that Allen had to overcome. Finally, Section V examines the aftermath of Allen's triumphant achievement. His tenure in Maine rendered short-lived by uncertain financial prospects, and Allen relocated to Massachusetts in search of greener pastures. After gaining admission to the bar there in 1845, Allen carved out a precarious professional existence in the Boston area until 1868, when he moved to Charleston, South Carolina.

The story of Macon Bolling Allen's quest to become a lawyer is a critical narrative for understanding the challenges that Black lawyers still face today. While nearly fourteen percent of the American population is Black, only about five percent of its lawyers are Black. Beginning with Allen's admission to the Maine bar in 1844, Black Americans thrust themselves into the fight against racism, and their very presence sent a powerful message. Allen's journey also illustrates another theme that resonates today—the importance of white allies in working to achieve equality in and under the legal system. At a time in our nation's history when teaching about Black history and the contributions of hitherto-unnoticed Black pioneers like Macon Bolling Allen is under threat, it is more important than ever to appreciate our "forgotten firsts."

I. Macon Bolling Allen—The Early Years in Indiana

Because he left so little behind in terms of a record, we know little about Macon Bolling Allen's early life growing up in Indiana. In correspondence or in newspaper interviews, he rarely discussed his upbringing. We do know that he was born in 1816, the same year that Indiana entered the Union. We also know,

from his legislatively approved name change in January 1844 in Massachusetts, that his original name was Allen Macon Bolling (or "A. Macon Bolling," as the formal name change order read).[7] An 1880 census response by either Allen or a member of his household identified that he was born in Indiana and that both of his parents were born in Virginia.[8] In 1873, when Allen provided brief biographical notes along with the portrait of himself he sent to the Cumberland Bar Association, he added two other bits of information—that he was from Fountain County, Indiana and that he had briefly attended a college but was not permitted to complete his education there because of racial prejudice. Also in 1873, he shared with a journalist in South Carolina that he had "commenced life as a school teacher" before moving to New England.[9]

What was life like for a Black person growing up in antebellum Indiana? While its 1816 Constitution prohibited slavery and indentured servitude, and its Supreme Court rulings accelerated their demise, Indiana soon became one of the least racially tolerant of the Northern states. In the 1820 census, there was a total of 1,230 Black people in Indiana.[10] They fell into one of three categories: those who were free or who had been free in their former state of residence, recently freed ex-slaves, and fugitive former enslaved persons. Most were clustered in rural communities in the southern part of Indiana.

By the 1830 census, the state's Black population had more than doubled to 3,629, and by the 1840 census, it nearly doubled again to 7,165.[11] Indiana passed a series of laws that greatly restricted the rights of the state's Black community. Black people were not allowed to vote, serve in the militia, attend public schools, or testify in court cases against white people. An 1831 state law required that Black people settling in Indiana register with county authorities and pay a bond to ensure their good behavior.[12] The Indiana law was based on an 1807 Ohio statute that provided that any Black person not in compliance could be removed from the state as a pauper, and that white employers hiring Black workers who had not complied would be fined one hundred dollars.[13]

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[7] General and Special Statutes of Massachusetts, 1844, ch. 1, at 20.

[8] South Carolina State Census, Census Population Schedule for Charleston, S.C., Enumeration Dist. 64, Supervisor Dist. 2, at 4 (1880).

[9] *Judge Macon B. Allen*, Beaufort Republican, Mar. 6, 1873, at 2.

[10] Paul Finkelman, *Prelude to the Fourteenth Amendment: Black Legal Rights in the Antebellum North*, 17 Rutgers L.J. 415, 438 (1985).

[11] *Id.* at 439.

[12] *See generally* Emma Lou Thornbrough, The Negro in Indiana Before 1900: A Study of a Minority at 56–62 (1957). The 1831 law was enforced by the Indiana Supreme Court in several cases. *See* State v. Cooper, 5 Blackf. 258 (Ind. 1839); State v. Baptiste, 5 Blackf. 283 (Ind. 1840); State v. Hickland, 8 Blackf. 365 (Ind. 1847).

[13] Act of Jan. 25, 1807, 1807 Ohio Gen. Assem. Laws 1–5, *repealed* by Act of Feb. 10, 1849,

These restrictive laws made Indiana less hospitable for Black residents, but the state's Black population continued to grow nevertheless, reaching 11,262 by 1850.[14] With its 1851 Constitution, however, Indiana took a draconian stance on Black migration to the state. Article 13 of the Constitution stated that "no negro or mulatto shall come into or settle in the state after the adoption of this Constitution."[15] The constitutional provision was enforced by an 1852 statute appropriately titled "An Act to Enforce the Thirteenth Article of the Constitution."[16] The Indiana Supreme Court upheld a conviction under the Act in 1856.[17]

The measure was clearly successful. Between 1850 and 1860, the state's Black population grew by fewer than 200 people, to 11,428—Indiana had become the most Black-phobic state in the North.

How did Allen receive an education? Blacks were not permitted in public schools created in the early years of the state, at least after 1831 (and little in the way of funding or infrastructure for public schools existed before then). And while public funds provided for the creation of a state college, known as "Indiana College," in 1828, one Indiana scholar concluded that "No data have been found to show that Negroes attended any school of higher learning in this state until well after the Civil War."[18] In addition to public schools in the antebellum period, Indiana also had private subscription schools. These schools, prevalent in the state's Quaker communities, were supported by fees from pupils and existed in schoolhouses furnished by the community. They typically provided nothing beyond an elementary education. Secondary education came from private seminaries and academies, a number of which went on to become private denominational colleges. Again, however, there is no evidence of Allen attending such a school, since no data exists to show "that any denominational college ever admitted a Negro before 1860."[19]

Black school children did attend these subscription schools as well as schools operated under the auspices of denominations like Quakers or Baptists. The earliest data of a Black child attending a school in Indiana was in 1820, at the Baptist mission school in Fort Wayne.[20] The Quakers were active at this time

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1849 Ohio Laws 17–18.

[14] Finkelman, *supra* note 10, at 439.

[15] Ind. Const. of 1851, art. XIII.

[16] Act of June 18, 1852, ch. 74, 1952 Ind. Rev. Stat. 375.

[17] Barkshire v. State, 7 Ind. 389 (1856).

[18] Herbert L. Heller, *Negro Education in Indiana from 1816 to 1869*, at 6–7 (unpublished doctoral dissertation, Ind. U. 1951).

[19] *Id.* at 8.

[20] *Id.* at 41.

in assisting entire "colonies" of Black people to migrate to southern Indiana, many of whom formed settlements near areas settled by the Quakers. Fountain County, where Allen's family settled, had thirty-three free Black people in 1840, according to the federal census. Many of these were concentrated in Logan Township, near Bethel Church. While Bethel Church was settled by Quakers in the early 1820s (the church and its graveyard were added to the National Register of Historic Places in 1993), it quickly became a Black community.[21]

Given our limited knowledge of Allen's family history, it seems plausible that he received his primary education at a subscription school and/or a school run by the Quakers. Fountain County's Black community predominantly came from Kentucky, Virginia, or North Carolina, and we know Allen's parents were both from Virginia.[22] A greater mystery is the identity of the "college" where Allen noted in his account to Judge William Morris of Maine's Cumberland Bar Association in 1873 that he "found it impossible to enter" on "account of his color." Allen went on to explain that despite this, he had "received college course, however, and could have graduated had he been white."[23]

It is fair to conclude that Allen was largely self-taught, but may have attended a subscription school or Quaker-affiliated school for an unspecified period. He clearly felt academically prepared enough to seek higher education, but racist restrictions stood in his way. In any case, Allen was skilled and qualified enough to serve as a schoolteacher, likely teaching Black children.

So, what prompted Allen to leave Indiana? The "free" state's systemic discrimination and marginalization of its Black citizens were only worsening in the late 1830s and early 1840s, culminating in the migration restrictions in the 1851 constitution. Racial violence was on the rise as well. In 1836, James Overall, a respected, free Black man who owned his own land and served as a trustee of the African Methodist Episcopal Church, shot a white laborer named David Leach who broke into Overall's home and threatened to kill his family.[24] Despite the fact that Overall, as a Black man, was forbidden by Indiana law

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[21] Black Settlers in Indiana, Ind. Jr. Hist., Ind. Hist. Bureau (Feb. 1993), https://www.in.gov/history/files/7015.pdf.

[22] *Early Black Settlements by County—Fountain County*, Ind. Hist. Soc'y, https://indianahistory.org/research/research-materials/early-black-settlements/early-black-settlements-by-county.

[23] Allen's words appear in the Macon B. Allen entry in the catalog of portraits that Judge Morris prepared in his own handwriting, referencing Allen's communication to Morris. The catalog is discussed in a 1910 newspaper article about the Cumberland Bar's portrait gallery. *See* Daily Eastern Argus, May 7, 1910 at 14.

[24] Nicole Poletika, *James Overall: Indiana Free Person of Color and the "Natural Rights of Man"*, Ind. Hist. Blog (July 15, 2016), https://blog.history.in.gov/james-overall-Indiana-free-person-of-color-and-the-natural-rights-of-man.

from testifying against a white man, Overall's white neighbors rallied to support him, and Marion County Circuit Court Judge William Wick wrote that it was his "natural right" to defend his family and property."[25]

In 1845, former enslaved person John Tucker was not so fortunate. On July 4, 1845, Tucker was walking along Washington Street in Indianapolis when he was suddenly assaulted by a drunken white laborer named Nicholas Wood.[26] Although Tucker tried to run away, he was pursued by Wood and two other white men, William Ballenger and Edward Davis.[27] A crowd gathered, surrounding Tucker as the three white men beat him to death.[28] A few days after the lynching, the *Indiana State Sentinel* wrote, "It was a horrible spectacle, doubly horrible that it should have occurred on the 4th of July, a day which of all others should be consecrated to purposes far different from a display of angry and vindictive passion and brutality."[29]

While Ballenger fled from justice, the other two assailants were prosecuted. Justice was not served, however. Davis was acquitted, and Wood—while convicted—was only sentenced to three years in prison for manslaughter.[30] Black Hoosiers lived in terror of racialized violence. In August 1845, the *Indiana State Sentinel* reported "that many of the colored residents are in the habit, since the 4th of July, of carrying big clubs, etc."[31] With such a pervasive environment of inequality and violence toward Black residents, one cannot blame Macon Bolling Allen for leaving by late 1843. As Indiana historian James H. Madison observed, "separation and discrimination, whether legal or extra-legal, were the patterns of public life for African Americans."[32]

Allen left Indiana for Massachusetts by late 1843. Why the Bay State? That year, the Massachusetts Anti-Slavery Society was actively proselytizing in Indiana, sending speakers there (as well as to New York, Pennsylvania,

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[25] *Id.*

[26] Jake Allen, *"Documenting Uncomfortable History": New Historical Marker Tells Story of 1845 Lynching*, Indianapolis Star (Sept. 30, 2023), https://www.indystar.com/story/news/2023/09/30/new-marker-preserves-story-of-black-man-lynched-in-indianapolis/71003027007.

[27] Nicole Poletika, *A False Promise of Freedom: The Lynching of John Tucker*, Ind. Hist. Blog (Dec. 28, 2022), https://blog.history.in.gov/a-false-promise-of-freedom-the-lynching-of-john-tucker.

[28] *Id.*

[29] *Affray and Murder*, Ind. St. Sentinel, July 10, 1845.

[30] *Murder Cases at Indianapolis*, Evansville Wkly. J., Aug. 28, 1845.

[31] *Wrong*, Ind. St. Sentinel, Aug. 28, 1845.

[32] James H. Madison, *Race, Law, and the Burdens of Indiana History*, *in* The History of Indiana Law 37 (David Bodenhamer & Randall Shepard eds. 2006).

and Ohio) to hold "One Hundred Conventions" on abolition.[33] Often, these abolitionist meetings sparked mob violence. For example, at one gathering in Pendleton on September 16, 1843, when Frederick Douglass and white abolitionists George Bradburn and William A. White began to speak, more than thirty men armed with brickbats and stones marched in and disrupted the meeting—injuring Douglass and White in the process.[34]

It is likely that, spurred by conditions in Indiana and perhaps the influence of the abolitionists from out of state, Allen decided to relocate to Boston, Massachusetts. Although it is not known how he initially supported himself, we do know that Allen's fresh start involved one major break with his past and the formation of a new, soon-to-be professional identity—he changed his name.

"Macon Bolling Allen" had actually been born A. Macon Bolling in Indiana. "Bolling" was a well-known surname in Virginia, the home state of Allen's parents, and it is quite possible that it was the surname of a white former slaveowner. Allen left no explanation for his name change, and the historical record is similarly silent. What we do know is that Allen (then Bolling) petitioned the Massachusetts legislature for the change in name, and through a private act (similar to the process then used to change the names or corporate structures of businesses), it was granted and approved by the governor of Massachusetts on January 20, 1844.[35] It provided that "A. Macon Bolling, of the city of Boston, in the County of Suffolk, may take the name of Macon Bolling Allen, and shall be hereafter known and called by that name, as his only proper and legal name, to all intents and purposes."[36] Allen shortly thereafter published a notice of his name change in the pro-abolition newspaper, *The Liberator*.[37]

It could have been motivated by Allen's desire for a new life and new identity. It also might have been motivated by a desire to reject the name of a past enslaver of Allen's family and to exercise the freedom of self-naming in which so many newly-emancipated former slaves engaged.[38] This use of a legal means of rejecting ties to a white enslaver/ancestor is very likely, especially

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[33] *The Anti-Slavery Conventions in Indiana*, Liberator, Sept. 22, 1843; *The One Hundred Conventions*, Liberator, Sept. 22, 1843.

[34] William A. White, *Letter From William A. White*, Liberator, Oct. 13, 1843; *see also Documenting the American South*, *in* Nell Irvin Painter, Creating Black Americans 234 (2007).

[35] General and Special Statutes of Massachusetts, 1844, ch. 1, at 20.

[36] *Id.*

[37] Liberator, Jan. 26, 1844.

[38] Julia Craven, *Many African American Last Names Hold Weight of Black History*, NBC News (Feb. 24, 2022), https://www.nbcnews.com/news/nbcblk/many-african-american-last-names-hold-weight-black-history-rcna17267.

since we know that Allen was apparently biracial. The 1870 U.S. Census lists him as "mulatto." A South Carolina newspaper described Allen in 1873 as "a colored man of light complexion, and is said to have Scotch blood in his veins."[39] In 1845, a Portland, Maine newspaper stated that "his color and physiognomy bespeaks of a mingled Indian and African extraction, in about equal proportions."[40] When asked directly about his ancestry, Allen simply said that he was "descended from Africa."[41]

Armed with his new name and sense of identity, Macon Allen was about to embark on an even bigger transformation: going from self-educated schoolteacher to the nation's first Black attorney and counselor of law. What made Allen think it was possible to breach this racial barrier in the first place? Why choose Maine as the place to make history? The answers to both of these questions require a closer examination of the state of the American legal profession (and entrance to it) at the time and the political climate in Maine circa 1844 regarding the abolition of slavery and the rights of Black Americans.

II. Becoming a Lawyer in 1844

In his classic study of early American society, *Democracy in America*, Alexis de Tocqueville perfectly captures the significance of lawyers in the young Republic, observing that "The special information that lawyers derived from their studies ensures them a separate rank in society, and they constitute a sort of privileged body in the scale of intellect . . . They are masters of a science which is necessary . . . They serve as arbiters between citizens . . ."[42] If there was an "American aristocracy," de Tocqueville went on to note, it was "not among the rich . . . but it occupies the judicial bench and the bar."[43]

But the profession to which these "natural aristocrats" belonged had experienced a bumpy road. During the colonial period, most lawyers had either "read the law" (particularly traditional English common law) under the tutelage of respected practitioners and judges or had actually acquired their legal training in England with one of the established Inns of Court. The American Revolution, however, had a dramatic impact on the legal profession. Many of the more prominent and learned lawyers took part in the war itself as soldiers or statesmen, and never returned to the practice of law. Others who had decided

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[39] Beaufort Republican, Mar. 6, 1873.

[40] *That Colored Gentleman*, Daily Eastern Argus, May 6, 1845 at 2.

[41] Letter from Macon B. Allen to Prof. Simon Greenleaf (Apr. 17, 1847) (on file with the Harvard Law School Library).

[42] Alexis de Tocqueville, Democracy in America 254 (Harvey Mansfield & Delba Winthrop trans., eds. 2000).

[43] *Id.* at 259.

to remain loyal to the crown either left the country, retired from practice, or were forcibly prevented from practicing either through legislative measures or court rulings.[44] In addition, the lack of a distinct body of American law and the absence of American law books made for a rather difficult and haphazard practice of law.

Having just recently thrown off the British yoke, many Americans were distrustful of an elite class of attorneys. During Shays' Rebellion in western Massachusetts in 1786, a demand was made that all lawyers be eliminated.[45] Pamphleteer Benjamin Austin, writing under the pen name "Honestus," bluntly claimed that "[e]very one seems to be convinced that if this 'order' [of lawyers] . . . are permitted to go on in their career, without some check from the legislature, the ruin of the Commonwealth [of Massachusetts] is inevitable."[46] John Quincy Adams, observing in 1787 that the legal profession was laboring "under the heavy weight of public indignation," lamented that "the mere title of lawyer is sufficient to deprive a man of the public confidence" and even "the most innocent and irreproachable life cannot guard a lawyer against the hatred of his fellow citizens."[47]

The attacks upon the legal profession in early America also included attacks on reliance upon English common law, legal authorities, and rules of procedure. In addressing the Historical Society of New York in 1823, Lincoln's Inn-educated William Simpson proclaimed: "We must either be governed by laws made for us, or made by us . . . English judges . . . are not fit persons to legislate to us . . . Our law is justly dear to us . . . because it is the law of a free people."[48] Some states, such as Kentucky, went so far as to ban the use of British law books and reporters, or to use any pre-1776 cases a authority. At least one

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[44] *See generally* Anton-Hermann Chroust, The Rise of the Legal Profession America (1965). In 1781, the Massachusetts Supreme Court of Judicature ruled that "all Attorneys . . . shall take the Oath prescribed by Law for Attorneys, and the Oath of Allegiance to this Commonwealth . . . in order . . . to exclude men who are enemies of their country." In 1785, Massachusetts followed this up with a statute that provided "no person shall be admitted an attorney in any Court of this Commonwealth, unless he is . . . well affected to the constitution and government of this Commonwealth." Act of 1785, ch. 23 § 1, General Laws of Massachusetts 199 (1823). New York passed similar laws in 1779 and 1781, as did other states.

[45] John Bach McMaster, History of the People of the United States 302 (1927).

[46] Benjamin Austin (Honestus), Observations of the Pernicious Practice of the Law 3 (1786).

[47] John Quincy Adams, Diary of John Quincy Adams (Apr. 10, 1787) (on file with the Mass. Hist. Soc'y).

[48] *Address by William Simpson on Dec. 6, 1823*, *reprinted in* Perry Miller, The Legal Mind in America 121–34 (1962).

legal historian has explained such efforts as a way for poorly-trained lawyers and judges "to palliate their lack of information by a show of patriotism."[49] The rise of "homegrown" legal texts and treatises, such as Kent's *Commentaries*, helped to alleviate this situation.

Still, in the early 1800s, lawyers remained necessary, though their training remained decidedly informal. Even as late as 1846, there were only nine schools with any university affiliation; the first of which had been founded at the College of William and Mary in 1779.[50] Slightly more common were private or "proprietary" law schools, the most famous of which was the Litchfield School in Connecticut, operated by lawyer and judge Tapping Reeve.[51] Founded in 1784, the Litchfield School operated continuously until 1833, educating nearly a thousand judges and politicians.[52] Still, the overwhelming majority of lawyers received their education via reading the law as part of their apprenticeship to an older lawyer. Legal historian Lawrence Friedman described this system: "For a fee, the lawyer-to-be hung around the office, read Blackstone . . . and copied legal documents. If he was lucky, he benefited from watching the lawyer do his work, and do it well. If he was very lucky, the lawyer actually tried to teach him something."[53] This method, Friedman wrote, "was useful to everybody: to the clerks, who picked up some knowledge of the law . . . and to the lawyer, who . . . badly needed copyists and legmen."[54]

With the rise of Jacksonian democracy, however, the prevailing school of thought brought a renewed distrust of lawyers, their institutions, and their practices, including the standards for admission to the bar. With the rise of President Andrew Jackson—himself a Tennessee lawyer who had "read law"—came a populist, egalitarian sentiment that prized rugged individualism and disdained intellect. The denouncement of lawyers by P.W. Grayson in 1830 was typical of commentators of the time: "[This] long train of congenital . . . blood suckers and caterpillars . . . this mighty corps of undertakers—these slippery factors of justice—. . . [should be banished] as cancerous pests . . . Gain . . . is

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[49] Roscoe Pound, The Spirit of the Common Law 116 (1921).

[50] *America's First Law School*, Wm & Mary L. School, https://law.wm.edu/about/americas-first-law-school/#:~:text=In%201779%2C%20William%20%26%20Mary%20established,leaders%20for%20the%20new%20republic [https://perma.cc/7QKU-PTQU].

[51] *See generally* Mariam C. McKenna, Tapping Reeve and the Litchfield Law School (1986).

[52] John G. Browning, *From Litchfield to Lone Star: America's First Law School and Its Impact on Early Texas*, 11 Tex. S. Ct. Hist. Soc'y J. 2 (Winter 2022).

[53] Lawrence M. Friedman, A History of American Law 238 (3d ed. 2005).

[54] *Id.*

their animating principle."[55] Viewing the standards that states had enacted to control and limit admission to the practice of law as contrary to the egalitarian spirit of the era and geared to restrict the practice of law to the privileged few, legislatures of the Jacksonian era began opening the legal profession to nearly everyone who wanted to practice. For example, in 1836, Massachusetts reversed its previous, more exacting standard and passed a statute opening up admission to virtually all citizens:

> Any citizen of this Commonwealth, of the age of twenty-one years, and of good moral character . . . who shall not have studied . . . [law, in the office of some attorney in this state, for three years], may, on the recommendation of any attorney within this Commonwealth, petition the supreme court, or court of common pleas, to be examined for admission as an attorney in said courts, whereupon the court shall assign some time and place for the examination, and if they shall thereupon be satisfied with his acquirements and qualifications, he shall be admitted, in like manner as if he had studied three full years.[56]

Persons so admitted, the statute continued, were eligible "to practice in any court, any practice in every other court in the state, and there shall be no distinction of counsellors and attorneys."[57] Moreover, an individual who had been admitted in another state but who had moved to Massachusetts, "may be admitted to practice here, upon satisfactory evidence of his good moral character and his professional qualifications."[58]

Massachusetts was not the only state to be swept up in this Jacksonian fervor. New Hampshire (1842),[59] Maine (1843),[60] Wisconsin (1849),[61] Indiana (1851),[62] and other states passed legislation or made constitutional provisions allowing everyday citizens to engage in the practice of law without any legal training upon proof of satisfactory moral character, state citizenship or residency, and the absence of a criminal record. In Maine, the Cumberland Bar Association

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[55] P.W. Grayson, *Vice Unmasked: An Essay: Being a Consideration of the Influence of Law Upon the Moral Essence of Man, With Other Reflections*, *reprinted in* Miller, *supra* note 48, at 192–200 (1962).

[56] Revised Statutes of the Commonwealth of Massachusetts, ch. 88, §§ 19–20, at 541–42 (1836).

[57] *Id.* § 23, at 542.

[58] *Id.* § 24, at 542.

[59] Statue of December 23, 1842, ch. 177 § 2.

[60] Acts and Resolves of the State of Maine, ch. 12 (1843).

[61] Acts and Resolves Passed by the Legislature of Wisconsin, ch. 152 (1849).

[62] Ind. Const., art. 7, § 21 (1851).

issued a statement reflecting the dismay of the legal establishment: "[U]nder the hostile system of legislation that . . . prevailed [in the other states] . . . the members [of this Bar Association] . . . have yielded in despair to the spirit of reckless innovation upon old and established principles, and the [bar] association[s] . . . have fallen into decay."[63] The result of the greatly relaxed standard for admission to practice law was, according to one scholar, "an influx of incompetent, morally unqualified, and greedy men which soon crowded the profession."[64]

The numbers regarding the formerly strict requirement of completing a period of study in a lawyer's office reveal how lax standards had become. In 1800, fourteen out of nineteen jurisdictions required such an apprenticeship. By 1840, however, that number fell to eleven out of thirty jurisdictions, and by 1860, only nine of the now thirty-nine states required one.[65] Bar associations, once the gatekeepers of professional standards, began to disband; in 1836, the Suffolk County bar attributed this drastic step to the "essential changes in the admission to the bar."[66]

Having relaxed its standard for admission by virtue of its 1843 statute, Maine presented a hospitable environment for admitting an aspiring lawyer short on education and credentials. The only question was, would the state admit a Black man? As the following section discusses, Maine offered such an opportunity, with the timely aid of white abolitionist attorneys like Samuel Fessenden.

III. Why Maine?

Why choose Maine as the place to make history with the admission of the first Black lawyer in the United States? Besides the comparatively recent relaxation of standards for bar admission, Maine's legal community had grown in its early years. After establishing statehood in 1820, Maine had 207 lawyers servicing a population of 298,335. Two decades later, Maine's attorney population had more than doubled to 437.[67] There were sixty-six lawyers in Cumberland County (thirty-seven of whom were in Portland).; seventy-four in Penobscot County (forty-eight of whom practiced in Bangor); forty-nine in Lincoln County;

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[63] Roscoe Pound, The Lawyer from Antiquity to Modern Times 195 (West Pub. Co. 1953) (quoting 1 Rules and Regulations of the Cumberland [Maine] Bar Association (1864)).

[64] Anton-Hermann Chroust, *American Legal Profession: Its Agony and Ecstasy (1776–1840)*, 46 Notre Dame L. Rev. 486, 522 (1971).

[65] Lawrence M. Friedman, *supra* note 53, at 500.

[66] Pound, *supra* note 63, at 224 (quoting 1 Record-Book of the Fraternity of the Suffolk Bar (1836)).

[67] William Willis, A History of the Law, the Courts and the Lawyers of Maine, 332 (1863).

thirty-four in York County; fifty-nine in Kennebec County; twenty-nine each in Waldo and Washington Counties; twenty-five in Somerset County; twenty six in Oxford County; twelve in Hancock County; twenty in Franklin County; ten in Piscataquis County; and four in Aroostook County.[68] By 1860, when the state's population increased to 628,801, the number of lawyers in Maine had only risen to 529.[69]

Adding to the challenges of succeeding in a state with increasing competition for legal work was the limited pool of potential clients. In 1840, there were only 1,355 Black people in Maine.[70] By 1841, approximately one-third of the state's Black population (430) was clustered in the city of Portland, and nearly a third of those (123) were seamen.[71] And while Maine itself had held its first Anti-Slavery Society Convention in August 1834, the state's first Colored Convention would not be held until seven years later on October 6, 1841.[72] Those Colored Conventions—more than 200 of which would take place between 1830 and the 1890s—represented the first collective Black mobilization in the country.[73] At such gatherings, Black church leaders, businessmen, teachers, and writers assumed the spotlight that elsewhere was shared with white abolitionists.

Still, while few in numbers (about thirty people attended this first Colored Convention), those attending the 1841 convention did not simply focus on ending slavery. They called for an end to being treated like second-class citizens, condemning common carriers—such as railroads and steamboats—that denied equal accommodations to Black passengers. Convention leaders also called for the support of Black businesses, saying "it is the duty of the colored people . . . to patronize those of our own color in business, in preference to those of white people in the same kind of business."[74] Another persistent theme was on education, and on "the future occupations of our offspring."[75] Enhancing access to education was seen as crucial, with the understanding that for Black Americans, "Your standard must be high, a little higher than that of the whites.

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[68] *Id.*

[69] *Id.*

[70] Edward Schriver, *Black Politics Without Blacks: Maine 1841–1848*, 31:2 Phylon 194 (1970).

[71] *Minutes of the First Colored Convention, held in the City of Portland, October 6, 1841*, Colored Conventions Project, https://omeka.coloredconventions.org/items/show/1178 [https://perma.cc/3MBJ-VBG6] [hereinafter *Minutes of the First Colored Convention*].

[72] *See generally* P. Gabrielle Foreman, Jim Casey, & Sarah Lynn Patterson, The Colored Convention Movement: Black Organizing in the Nineteenth Century (2021).

[73] *Id.*

[74] Andy O'Brien, *Radical Mainers*, Bollard (July 4, 2024), https://thebollard.com/2024/01/09/radical-mainers-7.

[75] *Minutes of the First Colored Convention*, *supra* note 71.

For unless your attainments are above theirs, they will be slow to admit they are equal."[76] Education was seen as the means through which upward mobility could be achieved, and Black people were urged to aim higher, even as high as the professions of law and medicine. In a letter read at the convention, white cleric Reverend David Thurston of Winthrop urged attendees that Black people should not "confine themselves so generally to low menial employment" and "should not content themselves with being waiters, shoeblacks, and barbers."[77] Little did he know that in less than 3 years, Maine—and America—would welcome its first Black lawyer.

If the dim economic prospects for a Black lawyer in Maine were not a motivating factor for seeking admission there, perhaps it was the generally tolerant atmosphere of the state itself. Maine allowed free Black men to vote, testify against white people, allowed the unrestricted immigration of free Black people, and passed strong personal liberty laws that protected both free Blacks and fugitive slaves—putting it among a distinct minority even of northern states.[78] Multiple Maine governors refused to extradite to Georgia two white men who had been indicted for aiding a fugitive slave.[79] Maine's Anti-Slavery Society was founded on October 15, 1834 in Augusta—at the time, only the third such state organization in the country.[80] By spring 1838, there were forty eight anti-slavery societies in Maine, as anti-slavery sentiment swept through the state.[81]

The single biggest factor that dictated Maine as the choice for Allen's groundbreaking admission, however, was undoubtedly the presence and influence of abolitionist attorney Samuel Fessenden. Born in Fryeburg, Maine, in 1784, Fessenden was educated at Dartmouth, graduating in 1808.[82] He "read the law" with Judge Dana (also of Fryeburg) and Daniel Webster, one of the most famous lawyers in U.S. history. In 1809, Fessenden was admitted to the bar.[83] He opened a law office in New Gloucester, where he "entered upon the practice with earnestness," and "soon took the lead in the practice of his town and neighborhood."[84] Fessenden was also politically ambitious. In 1815–1816

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[76] *Id.* at 12.

[77] *Id.*

[78] Paul Finkelman, *Prelude to the Fourteenth Amendment: Black Legal Rights in the Antebellum North*, 17 Rutgers L.J. 421–22 (1985).

[79] Kate Masur, Until Justice Be Done: America's First Civil Rights Movement From the Revolution to Reconstruction 175 (2021).

[80] John L. Myers, *The Antislavery Agency System in Maine, 1836–1838*, 23:2 Maine Hist. 57 (1983).

[81] *Id.* at 78.

[82] Willis, *supra* note 67, at 543.

[83] *Id.*

[84] *Id.*

(before Maine became a state), the young lawyer served in the General Court of Massachusetts (the state legislature).[85] In 1818–1819, Fessenden was a state senator in Massachusetts.[86] Fessenden also became a general in the Massachusetts state militia, serving for fourteen years and earning the honorific by which he would forever be known—"General" Fessenden.[87]

In 1822, Fessenden moved to Portland and soon formed a partnership with Harvard-educated Thomas Amory Deblois.[88] Fessenden, described by one Maine historian as "a man of very good intellectual powers, a thorough lawyer," and "an able advocate,"[89] seemed straight out of Central Casting for a politician. He was tall, with "an expressive countenance," and a military bearing.[90] Unsurprisingly, his political career continued after Maine's statehood, and he represented Portland in the new legislature in 1825–1826. Fessenden fathered eleven children, including eight sons. Five of them graduated from Bowdoin, while the remaining three graduated from Dartmouth. Of the eight, four became lawyers, three became doctors, and one became a minister. Three of his sons were elected to Congress; one, William Pitt Fessenden, also served as a U.S. Senator and as President Lincoln's Secretary of the Treasury during the Civil War.

Fessenden's own political ambitions gradually faded. Once an ardent Federalist, he was keenly disillusioned by the Missouri Compromise in 1820, in which Missouri entered the Union as a slave state and Maine as a free state. Fessenden soon made the anti-slavery cause his main focus. He was an early supporter of and correspondent with noted abolitionist William Lloyd Garrison, publisher of *The Liberator* (founded in 1838), and of Maine's Anti-Slavery Society (founded in 1834). Fessenden's son William, while serving in Congress in 1842, had a front row seat to how divisive the issue of slavery had become on the national stage. He wrote to his father:

> The more I become acquainted with the course of things, the nearer am I brought to your opinion, that the slave interest is the controlling in this, and that slave holders are determined that northern industry and northern rights shall not have even a chance to be let alone. I have heard doctrines advanced that, if I believe them true, would

[85] Sally A. Merrill, *Cumberland and the Slavery Issue*, 62 Cumberland Books 11 (2017), https://digitalmaine.com/cumberland_books/62.

[86] *Id.*

[87] *Id.*

[88] Willis, *supra* note 67, at 546.

[89] *Id.* at 552.

[90] *Id.*

> make me an active and zealous disunionist. [F]or instance, that Congress has no constitutional power to protect the industry, for, in the absence of such a power, we should not even possess the power of self defence. What vexes me the more is that northern men, of any party, can be found who are willing for political benefit, to support all the exactions, and bear all the insults, of the South.[91]

Disappointed, the younger Fessenden would leave Congress soon after. "General" Fessenden would continue his own single-minded support of the abolitionist movement. As the Whig Party fractured in Maine and elsewhere, abolitionist activists began to form a national party of their own—first, the Liberty Party, which lasted from 1840 to 1848, and then the Free Soil Party from 1848 to 1852. At the Liberty Party's national convention in May 1840 in Warsaw, New York, there were 906 delegates, fourteen of whom were from Maine. One of them was Samuel Fessenden.[92] In 1843, the fledgling Liberty Party received ten percent of the gubernatorial vote in Maine.[93] Growing in strength, the Liberty Party endorsed Fessenden for president in 1848, but factional divisions led to the formation of the Free Soil Party that same year. Later that year on the Free Soil ticket, Fessenden was the candidate for governor of Maine.[94]

While Samuel Fessenden did not achieve his desired political aspirations, nothing dimmed his "obnoxious" and "earnest advocacy" of the anti-slavery cause. His political organizing was in furtherance of his commitment to abolition rather than mere personal gains. As one historian later reflected, Fessenden

> lived to see the sect which was despised and rejected come to be high in public consideration, and courted for its popular influence; and its orators, who once encountered hisses and reproaches, now greeted with huzzas and applause, not the faintest of which are bestowed upon those really gifted men who advance up from the ranks of the colored race itself.[95]

One such "really gifted man" seeking to advance was Macon Bolling Allen. In him, Fessenden saw a way to deliver a decisive blow to the myth of Black inferiority. Through Allen's groundbreaking admission to the bar, Fessenden would demonstrate that Black Americans and white Americans were equals.

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[91] Letter from William Pitt Fessenden to Samuel Fessenden (Feb. 15, 1842) (on file with the Bowdoin College Library).

[92] Merrill, *supra* note 85, at 24.

[93] *Id.* at 25.

[94] *Id.* at 27.

[95] Willis, *supra* note 67, at 554.

IV. An Historic Admission

Nowhere in the sparse extant correspondence attributable to Macon B. Allen or in the far more extensive collected papers of abolitionist attorneys Samuel Fessenden and Samuel Sewall does an explanation or discussion appear about the plan for Allen to seek admission to the Maine bar and become the first Black man admitted to practice anywhere in the United States. Was it intended as the history-making case that it became? Or was it a publicity stunt for the anti-slavery cause? Perhaps it was simply meant as a poke in the eye of Maine's legal establishment? Alternatively, was it a genuinely big-hearted gesture to aid a deserving and worthy young Black man in gaining entry into the lily-white legal profession? Maybe it was a combination of several of these reasons. With no discussion of what motivated Allen and his white sponsors to embark upon this historic path, we are left to wonder. Similarly, there is no discussion as to how Allen, Fessenden, and Sewall first became acquainted.

Allen was living in Boston at least as of January 1844, when he secured his name change from the Massachusetts legislature. Regardless of how long he had been residing in Boston, he likely met Samuel Sewall through abolitionist circles. Sewall, whose in-laws lived in Maine, is the likeliest connection between Allen and Fessenden. An active abolitionist lawyer, Sewall helped found the Massachusetts Anti-Slavery Society in 1830, participated in the abolitionist movement in Boston, and maintained a friendship with his Maine counterpart.

After his political career in Maine ended, Fessenden focused on the anti-slavery cause. His abolitionist beliefs were heartfelt. A historian of Maine's bench and bar wrote in 1863 that Fessenden received Black people "into his house, he took them with him to church, he visited them in their families, and encouraged them in every way to give them self-respect and a place in society."[96] His passion for the anti-slavery fight was such that he "became quite obnoxious for his earnest advocacy of the cause."[97] Frederick Douglass would later recall that Fessenden was devoid of the racial prejudices that sometimes lingered in abolitionist circles, and was "one of those large brothers of the human race, whose powers are not easily resisted."[98] If Fessenden had any ulterior motive of gaining fame, it would only be in terms of leaving a legacy. As he wrote to his son about William Lloyd Garrison in 1847, "If I could covet anything of posthumous fame, it would be the fame which W[illiam] Lloyd Garrison will have

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[96] *Id.* at 553.

[97] *Id.* at 552.

[98] Letter from Frederick Douglass to Francis Fessenden (Oct. 10, 1881) (on file with the Bowdoin College Library).

as the pioneer in the anti-slavery cause in the U.S., and the . . . constant and devoted friend of the oppressed."[99]

Notwithstanding how or precisely when they met, by early 1844, Allen was "reading law" as an apprentice in Fessenden's Portland, Maine law office. An 1873 biographical article written on the occasion of Allen becoming a judge in South Carolina refers to the fact that, after giving up life as a school teacher, Allen "moved to New England, where he studied law in the office of Hon. Lemuel [sic] Fessenden, at Portland, Maine."[100] Another 1873 account, this time in Maine, added the specific name of Fessenden's firm (Fessenden and Deblois), along with the observation that Allen had been "admitted to the Cumberland Bar after six month's study," and that his "thorough and accurate legal knowledge" caused his examiners to "overlook the shortness of time during which he had studied."[101]

Allen's first attempt to break the color barrier and gain admission to the Maine bar began inauspiciously. In April 1844, Fessenden presented his young apprentice to the Portland District Court and moved for his admission "under then new law, which makes all citizens of good moral character eligible to admission."[102] However, the Portland court denied Allen's application "on the ground that the candidate was not in fact a citizen."[103]

A number of scholars and commentators have taken the justification from the Portland District Court as some sort of precursor to the conclusion by Chief Justice Roger Taney in the infamous *Dred Scott* decision that no one of African descent could qualify as a United States citizen.[104] In fact, such an interpretation is wildly incorrect. Maine's constitution did not restrict its protections to white citizens. During the debate regarding the adoption of the state's constitution, the convention expressly rejected a clause which would deny voting rights to "Negroes."[105]

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[99] Letter from Samuel Fessenden to William Pitt Fessenden (July 13, 1847) (on file with the Bowdoin College Library).

[100] *Judge Macon B. Allen*, *supra* note 9, at 2.

[101] *Cumberland Bar Portraits*, Portland Daily Press, July 1, 1873, at 3.

[102] The Brunswicker, May 2, 1844, at 2.

[103] *Id.*

[104] *See, e.g.*, Clyde Ferguson, Jr., *Group Roles in American Legal History (Part II – Blacks)*, 69 L. Library J. 476, 473 (1976) ("[A]s a [B]lack he was not and could not be a citizen of Maine."). Many online commentators and legal blogs cite this conclusion as well.

[105] *Opinion of the Justices*, 44 Me. 507, 515 (1857) (citing the constitutional debates and reaffirming that under the state constitution, people "of African descent" had the right to vote). In fact, even the *Dred Scott* decision itself recognized Maine as the only state where "the African race, in point of fact, participate[s] equally with the whites in the exercise of civil and political rights." Dred Scott v. Sandford, 60 U.S. 393, 416 (1857) (enslaved party).

A more straightforward and accurate explanation for Allen's April denial is that he simply had not resided in Maine long enough to be considered a citizen of the state. Contemporary newspaper accounts confirm this. One newspaper report of the April proceeding mentions Allen not by name, but as "a colored gentleman from Boston."[106] Another news article makes the reason even clearer, reporting that Allen's application was only rejected "on the ground that the applicant was not a citizen of Maine, in contemplation of said act."[107] Even *The Brunswicker* article acknowledged that the setback was only temporary, and that "[a] successful application will probably be made at the October term."[108] Clearly, the rejection of Allen's application was the result of poor timing rather than racial prejudice.

Allen could have remained in Portland until the court's October term and simply re-applied without needing anything beyond Fessenden's attestation to his good character. To his credit, Allen decided not to wait, but rather to apply again in July 1844 under the only other method available to him—via examination before a committee comprised of local attorneys. It was a daunting prospect, not only because of the abbreviated period of study in Fessenden's office, but also due to the racial prejudice he would not doubt encounter. As the "examination by committee" approach dictated throughout the history of early Black lawyers (and aspiring attorneys), white lawyers and judges routinely subjected Black candidates to more rigorous questioning than white candidates faced. One scholar has attributed "the failure of African-Americans to enter the legal profession in significant numbers in the late nineteenth and early twentieth century" to several factors, including "an intimidating bar examination system that while not inherently rigorous could easily be manipulated to the disadvantage of would be black lawyers."[109] While there are multiple examples of the prejudicial treatment of aspiring Black lawyers to draw from, the same author gives the example of Thomas Calhoun Walker, an aspiring Black lawyer in Gloucester County, Virginia in October 1887, whose examination before the local judge "lasted three and one half hours, and the judge was, by his own admission, far more rigorous than he 'would be with a white boy.'"[110]

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[106] The Brunswicker, *supra* note 102 (quoting the *Portland Daily American*).

[107] *A Coloured Lawyer*, The Friend, Aug. 10, 1844 at 368 (quoting the *Portland Daily American*).

[108] The Brunswicker, *supra* note 102.

[109] Joseph Gordon Hylton, *The African-American Lawyer, The First Generation: Virginia as a Case Study*, 56 U. Pitt. L. Rev. 107, 114 (Fall 1994).

[110] *Id.* A number of scholars have questioned whether, even after the requirement of formal written bar examinations, pervasive racism still hindered the entrance of Black lawyers into the profession. *See, e.g.*, Nicola Boothe, *Black and Barred: The Bar Examination's History of*

The most complete account of Allen's July 3, 1844, examination is contained within a letter Fessenden wrote to Sewall two days later, on July 5, 1844. Fessenden acknowledged that the committee, which included his law partner, Thomas Deblois, "did their duty though I could perceive, they did not wish him to be admitted."[111] Fessenden noted that Allen's demonstration of legal acumen reflected that he "has improved the time he has spent here,"[112] presumably a nod to the study to which the young apprentice had devoted himself.

So, who was on this committee? We know that it included Fessenden's law partner, Thomas Amory Deblois, an 1813 Harvard graduate who was admitted to the Maine bar in 1816.[113] Their professional partnership in Portland lasted for 32 years, and was described as "one of the most successful ever established in the State."[114] The firm concentrated on real estate work and commercial transactions, and the Fessenden and Deblois partnership only dissolved in 1854, when Fessenden's son Daniel entered the partnership.[115] It was also supposed to include attorney John Rand, who exhibited "strenuous opposition" to Allen being considered, and who "refused to attend his examination."[116] The committee also featured Augustine Haines, a lawyer born in Portland in 1810, admitted to the bar in New Hampshire in January 1830 after reading law with Governor Fairchild, and who worked as the state's attorney in Cumberland County, Maine beginning in 1834.[117] In April 1845, Haines moved to Portland and served as the United States attorney for the district of Maine—a post he would hold until 1848.[118]

Rounding out the committee was Joseph Howard, a lawyer born in 1800 and who graduated from Bowdoin College in 1821.[119] He read the law in the law office of John Dana and the judge who presided over the committee, the

Exclusivity and the Threat of Further Exclusion Posed by ABA Standard 316, 74 S.C.L. Rev. 179 (2022); Mary Szto, *The American Bar Exam as Initiation Rite and Its Eugenics Origin*, 21 Conn. Pub. Interest L.J. 38 (2021).

[111] Letter from Samuel Fessenden to Samuel Sewall (July 5, 1844), *reprinted in* Daniel Hinchen, *Passing the Bar: America's First African-American Attorney*, Mass. Hist. Soc. (May 7, 2019).

[112] *Id.*

[113] Willis, *supra* note 67, at 546.

[114] *Id.*

[115] *Id.* at 547.

[116] Letter from Samuel Fessenden to Samuel Sewall (July 5, 1844), *supra* note 111.

[117] Tudor Place Hist. House & Garden, Tudor Place Manuscript Collection: Augustine Haines Papers MS-15 at 2, https://tudorplace.org/wp-content/uploads/2021/05/MS15-Augustine-Haines-Papers.pdf [https://perma.cc/APV4-BN24] (finding aid).

[118] *Id.*

[119] *Joseph Howard*, Cleaves Law Library, http://www.cleaves.org/sjcbios12.html [https://perma.cc/W24L-PEX8].

Honorable Daniel Goodenow. Howard, who was admitted to the Maine bar in 1824, served as the United States attorney for Maine from 1837 to 1841.[120] On October 23, 1848, he was appointed to Maine's Supreme Judicial Court by Governor Dana, a post he would hold until October 22, 1855.[121]

Overseeing the Committee was Judge Daniel Goodenow, a Dartmouth graduate who was born on October 30, 1793.[122] Goodenow had "read law" and was admitted to the Maine bar in 1817.[123] A Whig, Goodenow served in the state legislature before a stint as Maine's Attorney General from 1838 to 1845.[124] His service on Portland's district court lasted until 1855, when he was appointed to Maine's Supreme Judicial Court.[125] Fessenden described Goodenow's conduct with respect to Allen's examination in favorable terms. He said Goodenow "though not an antislavery man, acted nobly, and said he could not, sitting on that Bench of Justice, have respect to the colour of the skin."[126]

Although Fessenden "warmly advocated" for Allen's admission before a judge with integrity who would not let race influence the outcome, it was nevertheless an uphill battle. Fessenden noted that "[i]t was contended that to admit Mr. Allen would disgrace the Bar, no doubt because he was a coloured man, though that was not in terms avowed."[127] Even the more favorable votes on the committee, the "most distinguished counselors" Howard and Deblois, voted to admit Allen only grudgingly. Fessenden wrote that while "they did not wish him to be admitted," they "had too much honor and too high a sense of justice to refuse a certificate, fairly claimed by merit."[128] Rand and Haines, on the other hand, were more hostile to Allen's admission. Fessenden described them as "active politicians" who "only agree in an inveterate hostility to the antislavery cause."[129] Perhaps to help turn the tide in Allen's favor, Fessenden openly appealed to the onlookers and jurors who happened to be in the court that day. Fessenden wrote:

> I think Mr. Allen had the sympathy of a large portion of the people in the court, and some and I think quite a number of the jurors wept

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[120] *Id.*

[121] *Id.*

[122] *Daniel Goodenow*, Cleaves Law Library, http://www.cleaves.org/sjcbios12.html [https://perma.cc/UNL7–4YR6].

[123] *Id.*

[124] *Id.*

[125] *Id.*

[126] Letter from Samuel Fessenden to Samuel Sewall (July 5, 1844), *supra* note 111.

[127] *Id.*

[128] *Id.*

[129] *Id.*

> while I addressed the Court which I did much at large, on the rights of the coloured man, and the wickedness of that prejudice which was crushing him.[130]

It must have been a moving sight, especially given Fessenden's passion for the anti-slavery cause and the rights of Black citizens, as well as his gift for oratory. As one historian wrote of Fessenden's impact in a courtroom or legislative chamber, "his commanding figure, his full round voice, his emphatic and graceful elocution, could not but make a deep impression upon such an audience."[131]

Ultimately, after having submitted to what Fessenden described as "a careful and protracted examination," Allen was certified 'that his legal and scientific attainments were such as to well entitle him to be admitted to practice at the Bar of our Courts."[132] Reaction to the historic admission was somewhat muted. One Maine newspaper speculated about its groundbreaking nature, opining that "[w]e think we have heard of a colored physician somewhere at the South, in New York, probably, but we have never before heard of a colored lawyer in this country."[133] Portland's *Eastern Argus* newspaper was more nonplussed about America's first Black lawyer, stating "Vell, vot of it? Is the practice of law so much more respectable than hoeing potatoes, that a lawyer can be disgraced by contact with a black man, and not the farmer?"[134] Allen received more media attention for his admission to practice in Massachusetts nearly a year later than he did for his admission in Maine.

From his correspondence to Sewall, it is obvious that Fessenden believed that a significant and historic blow against racism had been struck by Allen's admission. He wrote, "I hope however the cause of truth will be advanced, by the victory which we have obtained," shortly after noting "I think the event will do great good."[135] He added that "[t]he cause of emancipation is [onward] in Maine," and "the genius of liberty is arousing from her slumbers."[136] And how could Fessenden not feel exultant and optimistic? At the height of the anti-slavery debate then raging throughout the United States, and a full 13 years before the U.S. Supreme Court would pronounce that not only could Black Americans not be citizens, they were justifiably regarded as "beings of an inferior order;"[137]

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[130] *Id.*

[131] Willis, *supra* note 67, at 551.

[132] Letter from Samuel Fessenden to Samuel Sewall (July 5, 1844), *supra* note 111.

[133] *A Colored Lawyer*, The New York Herald, July 7, 1844 at 1 (quoting the *Portland American*).

[134] Daily Eastern Argus, July 15, 1844 at 2.

[135] Letter from Samuel Fessenden to Samuel Sewall, July 5, 1844, *supra* note 111.

[136] *Id.*

[137] Dred Scott v. Sandford, 60 U.S. 393, 394 (1857) (enslaved party).

a Black man had demonstrated that he was the intellectual equal of any white lawyer.

However, Fessenden did not see a bright economic future for his protégé. Fessenden informed Sewall that:

> I regret that Mr. Allen has to struggle with poverty, as I have been compelled to advance him the $20 duty or tax which our statute imposes, [on] admission to practice at the Bar, and some small sums besides to enable him to live. I hope he will be aided to repay me as I shall also be compelled to stand [security] for his bond while here. This regret I should not feel were I not myself a poor man.[138]

While it may seem odd to hear Fessenden, a successful attorney, describe himself as a "poor man," it may not be just the musings of a frugal Yankee. Fessenden was an active philanthropist, and his support of the anti-slavery cause no doubt alienated some prospective clients, while his unyielding moral stance appealed to others.

V. Farewell to Maine, and New Beginnings

Fessenden's letter to Sewall did not paint a rosy financial picture for their mutual friend, Macon B. Allen. Fessenden predicted bleak prospects, writing, "I incline to think Portland is not exactly the place for our friend. Our coloured people here are few and poor; and Portland, altogether, is an inveterate pro-slavery place."[139] Allen never entered into the practice of law in Maine and left the state months after his historic admission to return to Boston. There he would be admitted to the Massachusetts bar in 1845.[140] It would be 35 years before the state of Maine would welcome its second Black lawyer, when John H. Hill was admitted in 1879.[141]

Fessenden's words about the bleak financial prospects for Allen in Maine proved prophetic. In 1840, Maine had a Black population of 1,355 people, compared to Massachusetts's Black population the same year of 8,669.[142] By the 1850 Census, Maine's Black population had only risen to 1,356.[143] According to the Maine Historical Society, by 1850, more than half of the Black working

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[138] Letter from Samuel Fessenden to Samuel Sewall (July 5, 1844), *supra* note 111.

[139] *Id.*

[140] At least one historical account incorrectly states that Allen "made repeated applications for admission to the Suffolk bar, but was uniformly rejected." Willis, *supra* note 67, at 553.

[141] Smith, *supra* note 4, at 94. Like Allen, Hill did not remain in Maine very long, returning to his native West Virginia.

[142] *Id.* at 112.

[143] Statistics of Maine – Census of 1850, U.S. Census Bureau 3 (1853), https://www2.census.gov/library/publications/decennial/1850/1850a/1850a-16.pdf.

men in the state were employed in maritime-related trades, such as fishermen, shipwrights, and stevedores.[144]

At least one writer has claimed that "Allen was undoubtably a creation of Garrison, Fessenden, and other New England abolitionists."[145] This is an unduly harsh, unfair criticism. Perhaps Allen permitted himself to be used to an extent by the white abolitionists who assisted him, but he used them as well to advance his own interests. Allen did not hesitate to follow his own conscience, even if it meant breaking with the abolitionist "party line" at times. Macon B. Allen charted his own course, practicing for 23 years in Massachusetts before achieving new heights in Reconstruction, South Carolina.

Given the sparse Black population in Maine, Allen did not hesitate to return to Boston. He was admitted to the Massachusetts bar at Worcester on May 3, 1845, becoming the first Black lawyer in Massachusetts. Samuel Sewall, prominent abolitionist, attorney, and mutual friend of Samuel Fessenden and Macon Allen, moved for Allen's admission. As with Allen's admission in Maine, his admission months later in Massachusetts has been the subject of some historical misinterpretation. Multiple online sources refer to Allen "passing the bar examination" in Worcester after "walking forty miles to get there." Again, folklore clouds the truth. First, while it is true that Worcester is forty miles from Boston and that the cash-strapped Allen likely could not afford to rent a horse or carriage, there is no historical evidence as to how Allen traveled. The origin of this tale apparently comes from a eulogy given by Black lawyer Edwin G. Walker at the December 1882 funeral service for Allen's contemporary, Robert Morris, America's second Black lawyer. In a digression about Allen, Walker tells how Allen, who "lacked the necessary means to pay his way from Boston to Worchester and back," "without money or friends, Mr. Allen walked every step of the way, and on the third day of May 1845, he passed a successful examination, and was admitted to practice law in all the courts of this Commonwealth."[146]

There is some doubt about the accuracy of this account, in part because it states that Allen was initially unsuccessful in seeking bar admission in Boston and journeyed to Worcester, where "he could then be examined again."[147] On the contrary, it was customary for a lawyer already admitted to practice in one

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[144] Candice Kanes, *Black People in Maine*, Maine Hist. Soc'y, https://www.mainememory.net/sitebuilder/site/793/page/1203/display [https://perma.cc/XBP9–6HU9].

[145] F. Mark Terison, *Macon Bolling Allen: A Milestone for Maine*, 10 Maine Bar J. 234 (2000), https://law-journals-books.vlex.com/vid/october-2000-pg-234–937355286.

[146] In Memoriam, Robert Morris, Sr., 31–32 (1883) (on file with the Boston College Law Library). The author gratefully acknowledges the assistance of Karen Breda and Laurel Davis of the Boston College Law Library in obtaining this source.

[147] *Id.*

jurisdiction to present himself to a court in his new state of residence and seek admission upon motion, with a local lawyer sponsoring or vouching for him.[148] Indeed, this is apparently what happened on May 3, 1845, according to contemporary newspaper accounts. Allen was admitted on the motion of General Fessenden's friend and fellow abolitionist attorney Samuel Sewall, supported by "a certificate of competency, signed by Judge Merrick [of Maine] to practice as an attorney and counselor of law."[149]

Although the Boston area became Allen's home for the next twenty-three years, he endured more than his share of adversity, both professionally and personally. Not long after his admission to the Massachusetts' bar, Allen wrote to John Jay (a New York abolitionist and the grandson of the first chief justice of the Supreme Court) expressing his disappointment over his bleak financial prospects in Boston:

> The prospect of my securing an adequate support . . . is certainly not so good as to be desired. Owing to the peculiar custom of the New England people, and especially Boston people, to sustain those chiefly who are of family and fortune, or who have been long established, this is not regarded as the best place for he who can boast none of these requisite appendages.[150]

After bemoaning his lack of family connections and the professional networking benefit that they would convey, Allen subtly put out a feeler for whether his fortunes might improve in New York:

> It has been frequently suggested to me that New York, where people greatly differ from our own in this particular I have noted, and with a colored population who themselves, it is reasonable to suppose, have sufficient business which they would give him . . .[could] employ a colored lawyer . . . better than . . . Boston.[151]

Even though Allen received a measure of economic assistance through the fees he was able to assess after being appointed a Middlesex County justice of the peace by Governor George Briggs on April 21, 1847,[152] financial security was

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[148] This is akin to the modern practice of admission upon motion between states with reciprocity.

[149] *That Colored Gentleman*, *supra* note 40 (quoting *Common Pleas: A Colored Gentleman Admitted to the Bar*, Bost. Post, May 5, 1845, at 2).

[150] Letter from Macon B. Allen to John Jay (Nov. 26, 1845), *in* Black Abolitionist Papers, 1830–1865, at 32 (G.C. Carter & C.P. Ripley eds. 1981).

[151] *Id.*

[152] Smith, *supra* note 4, at 115. Allen was re-appointed to another seven-year term in 1854 by Governor Emory Washburn. He was the first Black lawyer to hold judicial office.

perennially elusive for Allen. In 1852, Allen's landlord sued him for allegedly ripping out shelves, flooring, and "nearly the whole of the stairway" of the home Allen was renting to burn for fuel.[153] Being arrested and tried over such an episode of financial desperation must have been a low point for Allen, although the jury acquitted him.[154]

Unfortunately, Allen would experience even lower points. In February 1849, Allen was attacked and beaten by four white men, most likely in a fit of racialized violence.[155] Although in a rare instance for a Black victim, two of the assailants were actually charged (the other two were quickly released), it can hardly be said that justice was done. The two defendants were fined a measly $3 and assessed court costs.[156]

Allen experienced tragedy in his personal life as well. He and his wife Emma had five children while living in Massachusetts (a sixth would arrive after Allen moved to Charleston, South Carolina in 1868). Unfortunately, two of the children died in early childhood; his youngest son passed away in 1855 at only eleven months old.[157] Shortly after the move to South Carolina, Allen's wife gave birth to a sixth child, but Emma died as well in February 1870, along with the couple's twelve-year-old daughter (also named Emma)—both of meningitis.[158] Allen, now a widower at age 53, was a single parent of three.

The post-Massachusetts chapter of Allen's life had started out on a positive note. Like many Black Americans, Allen saw opportunity in the Reconstruction South. Charleston, along with New Orleans and the District of Columbia, was a population center for affluent and ambitious Black people.[159] In 1869, Allen became a partner—with William J. Whipper and Robert Brown Elliot—in the United States' first Black-owned law firm.[160] There, Allen handled a variety of civil and criminal cases, and he also mentored younger Black lawyers. In February 1873, Allen was elected by the South Carolina legislature as judge of

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[153] *A Member of the Suffolk Bar Arrested for Larceny*, Bost. Herald, May 21, 1852, at 2.

[154] Bost. Evening Transcript, July 20, 1852, at 2.

[155] *Police Court This Morning*, Bost. Herald, Feb. 28, 1849, at 4.

[156] *Id.*

[157] The Church of the Advent in Boston, where Allen and his family were congregants, kept records of baptisms and burial rites. *See* Daphne B. Noyes, *Macon Bolling Allen, 1816–1894*, Church of the Advent, https://www.theadventboston.org/%20about-us/advent-175/macon-bolling-allen-1816–1894/.

[158] *Id.*

[159] *See generally*, Loren Schweninger, *Prosperous Blacks in the South, 1790–1880*, 95 Am. Hist. Rev. 51 (Feb. 1990); Bernard Powers, Black Charlestonian: A Social History, 1822–1885 (1994).

[160] W. Lewis Burke, All for Civil Rights: African American Lawyers in South Carolina, 1868–1968, at 63 (July 1, 2017).

the relatively new Charleston County Criminal Court.[161] He served as a criminal court judge until 1875.[162] In 1876, Allen was elected as a probate judge in Charleston County after defeating the white incumbent. His term lasted through 1878.[163]

With the end of Reconstruction and with Republican power waning, Allen did not seek reelection and left Charleston for Washington, D.C. At the nation's capital, he continued to practice law and obtained a patronage position as an auditor in the Department of the Treasury. Unfortunately, in his later years, Allen began experiencing the ravages of dementia. On one occasion in 1893, police found him wandering the streets and turned him over to his son, Arthur.[164] Allen's condition worsened, and a year later, a local equity court "confirmed" his "inquisition in lunacy."[165] On October 15, 1894, at the age of 78, Macon Bolling Allen died.[166] He was buried in Friendly Union Cemetery in South Carolina.[167] The *Washington Star*'s death notice was sparing, noting only in passing that Allen was "said to have been the first colored man to enter the legal profession in this country."[168]

Conclusion

There is no statue of Macon Bolling Allen. No portrait of him (or purporting to be his likeness) hangs in any courthouse. There are no historical markers honoring him in the state of his birth (Indiana), the state in which he became the first Black man admitted to practice law in the United States (Maine), the state in which he spent the majority of his years of practice, and served as the first Black judge (Massachusetts), or the state in which he started the first Black-owned law firm and served as an elected judge on two different courts (South Carolina). None of these states, each with a claim to at least part of his legacy, have recognized Macon Bolling Allen as a native son. While there are minority bar associations, Inns of Court, and even scholarships named after other pioneering lawyers of color, no such institutional recognition exists that honor the very first lawyer who shattered the legal profession's racial barrier.[169]

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[161] *Id.* at 34.
[162] *Id.*
[163] *Id.*
[164] The Evening Star, June 19, 1893, at 10.
[165] The Evening Star, June 21, 1894, at 3.
[166] News & Courier, Oct. 17, 1894, at 8.
[167] *Id.*
[168] *Death of Macon B. Allen*, Wash. Star, Oct. 16, 1894, at 11.
[169] In contrast, for example, the Massachusetts Chapter of the American Board of Trial Advocates annually presents its "Robert Morris Trial Award" for unusual courage and

Macon Bolling Allen's name is associated, at least tangentially, with "1844," a group of Black male attorneys from leading large law firms, government, and corporate legal departments, that honors the year of his historic admission.[170] In 2021, Penn State Dickinson School of Law established the Macon Bolling Allen Civil Rights and Transitional Justice Program, which purports to acknowledge "the importance of [Allen's] legacy and encourage[es] more people of color to attend law school."[171] In 2022, the National Underground Railroad Freedom Center in Cincinnati, Ohio hosted an exhibit entitled "Macon Bolling Allen: The First African American Lawyer in the United States."[172] A number of locally prominent Black judges and bar association leaders confessed that despite taking Black studies courses over the years, they had never heard of Macon Bolling Allen.[173]

Instead of statues or namesake chapters, Macon Bolling Allen's legacy is memorialized within each and every Black lawyer practicing today. Shortly after the start of the Civil War, there were only seven Black lawyers in the United States, including six whose bar admissions were presaged by Allen's historic admission nearly twenty years prior. One hundred years later, there were approximately 2,700 Black attorneys practicing in the United States, and by 2022, that figure swelled to roughly 65,000.[174] Writing in 1959, Black historian Charles Sumner Brown noted the growing number of Black lawyers in New England and nationally, and called them "the fruits of the tree that General Fessenden planted in 1844 when he introduced Macon B. Allen to the court in Maine."[175]

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uncommon courtesy in civil litigation.

[170] *See, e.g.*, *1844: Black Male Lawyers Tell Their Stories*, Corporate Counsel Bus. J. Blog (Feb. 8, 2021), https://ccbjournal.com/blog/1844-black-male-lawyers-tell-their-stories.

[171] Press Release, Penn State Dickinson Law, Generous Anonymous Gift Establishes the Macon Bolling Allen Civil Rights and Transitional Justice Program at Penn State Dickinson Law (May 30, 2021), https://dickinsonlaw.psu.edu/generous-anonymous-gift-establishes-macon-bolling-allen-civil-rights-and-transitional-justice.

[172] Casey Weldon, *Freedom Center Honors Lasting Legacy of Nation's First African American Lawyer*, Spectrum News (Feb. 18, 2022), https://spectrumnews1.com/oh/columbus/news/2022/02/16/freedom-center-tells-story-of-nation-s-first-african-american-lawyer#:~:text=Freedom%20Center%20honors%20lasting%20legacy%20of%20nation's%20first%20African%20American%20lawyer&text=CINCINNATI%20%E2%80%93%20Macon%20Bolling%20Allen%20became,reading%20of%20the%20Emancipation%20Proclamation.

[173] *Id.*

[174] Emily Newburger, *Lawyering and Justice in a World That We Know is Riven by Injustice*, Harv. L. Today (Mar. 22, 2022), https://hls.harvard.edu/today/lawyering-and-justice-in-a-world-that-we-know-is-riven-by-injustice.

[175] Charles Sumner Brown, *The Genesis of the Negro Lawyer in New England* (Part II), 22 Negro Hist. Bull. 171, 176 (1959).

Allen himself was justly proud of his status as "the first," and he was not shy about correcting those who got their facts wrong. In 1848, when *The Liberator* incorrectly identified Robert Morris as the first Black lawyer to conduct a jury trial, Allen made sure the publication corrected itself.[176] When, in the wake of Morris' death in December 1882, a Washington, D.C. journalist mistakenly characterized Morris as the nation's first Black lawyer, Allen was quick to call out the error, referring to his "many very dear friends" in Portland and Boston who were well aware of the truth.[177]

Macon Bolling Allen paved the way for the generations of Black lawyers, judges, and activists who followed. He demonstrated that it was possible for Black people, aided by white sponsors when necessary, to create avenues for social change. At a time when it was commonplace to deny Black Americans the right to an education and a path to upward mobility, Allen dared to pursue his dream in the face of racial discrimination and injustice. He is a "forgotten first" eminently worthy of our remembrance.

[176] Liberator, Feb. 11, 1848, at 2.
[177] *The First Colored Lawyer*, Evening Critic, Jan. 24, 1883, at 4.