

## Trying Iowa's Civil Rights Act in Davenport: the Case of Charles and Ann Toney

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# Trying Iowa's Civil Rights Act in Davenport: The Case of Charles and Ann Toney

GEORGE WILLIAM MCDANIEL

THE TRADITIONAL VIEW of the modern civil rights movement is that it began with *Brown v. the Board of Education of Topeka*, the 1954 U.S. Supreme Court decision that struck down school segregation in the South. But racial discrimination was not limited to schools or to the South. The 1947 *Report of the President's Committee on Civil Rights* noted that segregation was also "widely prevalent in the North, particularly in housing, and in hotels and restaurant accommodations."<sup>1</sup> Moreover, as recent studies have shown, the civil rights movement and the National Association for the Advancement of Colored People (NAACP) had been active long before *Brown*, as individuals fought in state and local courts for their rights. In fact, in the decades before *Brown*, lawyers from the NAACP brought dozens of cases in the North and South seeking to secure the rights of African Americans to equal access to public facilities. This pre-*Brown* legal activity, the "first act of a two-act play" in the words of one student of the civil rights struggle, culminated in the series of cases that constituted the *Brown* decision, and led

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An earlier version of this article was presented as "State [Charles and Ann Toney] v. Baxter: A Victory for Civil Rights in Davenport, 1945," at Iowa Heritage Expo, June 13, 1997. I am grateful to John Johnson, the session moderator, and to Marvin Bergman for their constructive comments.

1. *To Secure These Rights: The Report of the President's Committee on Civil Rights* (Washington, DC, 1947), 79.

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directly to the better-known activities of the late 1950s and 1960s commonly associated with the civil rights movement.<sup>2</sup>

Although some advocates of civil rights gained national reputations, many individuals fought quietly for their rights with little or no publicity outside their own communities. Those people constitute what Julian Bond has called an "enormous untold story" of the civil rights movement.<sup>3</sup> NAACP lawyers were an important part of this "untold story," but Jack Greenberg, a former NAACP attorney, reminds us that "before lawyers can win cases there have to be clients willing to stand up for their rights."<sup>4</sup>

Charles and Ann Toney of Davenport, Iowa, were two of those who were willing to stand up for their rights and thus become part of the "first act" of the struggle for civil rights. On July 24, 1945, the Toneys went to the integrated Capitol Theatre in Davenport to see Greer Garson and Gregory Peck in *The Valley of Decision*, a movie set in 1870 Pittsburgh that involved the rights of workers in a steel factory. Walking home after the movie, they stopped for ice cream at the Colonial Fountain, an ice cream parlor at Twelfth and Harrison Streets. When the clerk, Dorothy Baxter, refused to serve them, Charles Toney asked whether she knew that she was violating their civil rights. Baxter replied that she did not care and that she would not serve them.<sup>5</sup> In their part of the "first act" of the "two-act play," the Toneys took Baxter to magistrate's court, and in the second of two trials they won their case.

BORN IN WISCONSIN, Charles Toney grew up in Clinton, Iowa. He came to Davenport in 1932 to attend St. Ambrose College, but after one year he left college to find work. In 1936 he

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2. Adam Fairclough, *Race and Democracy: The Civil Rights Struggle in Louisiana, 1915-1972* (Athens, GA, 1995), xii.

3. Julian Bond, "The Politics of Civil Rights History," in Armstead L. Robinson and Patricia Sullivan, eds., *New Directions in Civil Rights Studies* (Charlottesville, VA, 1991), 8.

4. Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (New York, 1994), 15.

5. Charles Toney, interview with author, Coal Valley, IL, 16 July 1993.

took a job with the John Deere Company in the Union Malleable Iron Works in Sylvis, Illinois. Later he trained as a welder at the Deere Plow Works in Moline, the first African American to hold such a position. Active in union affairs, he became a shop steward and then a committeeman in the Farm Equipment Workers Union. In the 1940s he was among those who urged workers at the Plow Works to affiliate with the United Auto Workers instead of the leftist Farm Equipment Workers Union. When he retired from John Deere in 1983, he was director of affirmative action for the company.<sup>6</sup>

Charles was also active in the NAACP; at the time of the discrimination case he was president of the Davenport branch. Charles credited his mother for his activism. He remembered that she refused to sit in the upstairs Jim Crow section of a Clinton movie theater. Her activism, he suggests, "kind of rubbed off" on him. His own "militancy" came at age 15, when he went to the Clinton County Attorney to challenge the "whites only" policy at a public swimming pool.<sup>7</sup>

It was through Charles that Ann became active in the NAACP and eventually replaced him as president of the Davenport branch. Ann Palmer had been born in Des Moines. Her family did not belong to the local NAACP, but she had grown up knowing many of the leaders of the Des Moines branch, including James B. Morris and S. Joe Brown, who would later be involved in the Toney's discrimination case. In 1942 Ann came to Davenport, where she met Charles. They were married in 1944. At the time of their case, the Toney's were the publishers of *The Sepia Record*, a magazine with articles about African Americans in the Quad Cities (Davenport, Bettendorf, Rock Island, and Moline) and the United States.<sup>8</sup>

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6. Ibid. For the story of unionization at John Deere and the struggle between the UAW and the FE, see Wayne G. Broehl Jr., *John Deere's Company: A History of Deere & Company and Its Times* (Garden City, NY, 1984), 554-57, 573-81.

7. Charles Toney interview.

8. Because of the lack of advertising revenue, there were only two issues of *The Sepia Record*: vol. 1, no. 1, Spring 1944; and no. 2, Spring 1945. As far as I know, the only extant copies of *The Sepia Record* are the ones held by the Toney's themselves and the one copy of issue no. 2 that they gave to me.

IN 1940 Davenport's population was 66,039, of whom 801 (1.2%) were African American.<sup>9</sup> These blacks generally lived in one of two areas of the city. One area centered around Mound and Christie Streets, above the Village of East Davenport. The other area was in central Davenport between 8th and 11th Streets and from Gaines Street to Harrison Street.<sup>10</sup> The Colonial Fountain was on the edge of this second area. Most white residents of Davenport seemed content with the city's segregated housing pattern; one town leader was even quoted as saying that he was confident that no black would ever live outside the segregated area.<sup>11</sup>

In addition to the unofficial but real limits on where they could live, African Americans recalled widespread discrimination in Davenport. One remembered that taverns were closed to African Americans. "There was a quite a bit of prejudice at that time," he said. "A lot of old timers . . . were running Davenport just how they wanted to." Another, who had come to Davenport in 1925, said she could not eat at Bishop's Cafeteria, a popular restaurant, or at the local dime store.<sup>12</sup>

Famous African Americans did not receive any better treatment. Satchel Paige, the star of the Negro Baseball Leagues, recalled that after a game in Davenport the team slept on the grass in LeClaire Park because no hotel would give them a room. Black entertainers, businessmen, and others who passed through town often stayed at the Nicholson Funeral Home, which was owned by African Americans and which handled most of the black funerals in the Quad-Cities.<sup>13</sup>

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9. U.S. Department of Commerce, Bureau of the Census, *Sixteenth Census of the United States: 1940*, vol. 2, *Population*, Part 2, *Florida-Iowa* (Washington, DC, 1943), 959. In the 1940s Davenport's African American population doubled to 1,619 (2.2% of the city's total population of 74,549 in 1950). *Idem*, *Report of the Seventeenth Decennial Census of the United States Census of Population: 1950*, Part 15, *Iowa* (Washington, DC, 1952), 61.

10. Charles and Ann Toney, interview with author, Davenport, 14 September 1993.

11. E. A. Hopkins, interview no. 6, 1978, in Hope Denise Williams, ed., "An Oral History of the Black Population of Davenport, Iowa," typescript, 1979, Davenport Public Library, p. 11.

12. *Ibid.*; Lucille Clark Taylor, interview no. 15, 1978, *ibid.*, 2.

13. *Quad-City Times*, 26 February 1997.

THE TONEYS' STORY, thus, is one in a long line of instances of racial discrimination in Davenport. Nor were they the first African Americans who lived in Iowa to use the courts as a remedy for discrimination. One resident of the area from the middle 1830s was a slave who was called Sam when he lived in Iowa with his master. Later, as Dred Scott, he would unsuccessfully sue for his freedom from his late owner's heirs. At the same time that Sam lived in the Davenport area, a Dubuque slave, Ralph, successfully sued for his freedom in the Iowa Supreme Court. But for most of the antebellum period in Iowa, forces advocating abolition unsuccessfully competed with forces advocating exclusionary laws and other measures to limit the rights of African Americans in Iowa.<sup>14</sup>

Following the Civil War, in a series of referenda, constitutional amendments, legislative actions, and Supreme Court decisions, Iowans removed the word *white* from qualifications for voting and being seated in the legislature. Iowans also rejected the principle of "separate but equal" in education and public transportation. These actions prompted President Ulysses S. Grant to call Iowa the "bright radical star."<sup>15</sup>

The law that the Toneys used in 1945 had its genesis in the Iowa Civil Rights Act of 1884. Passed by sizable majorities in both houses of the Iowa General Assembly, the 1884 Civil Rights Act outlawed discrimination in "inns, public conveyances, barber shops, theaters and other places of amusement." Violation of the law was classified as a misdemeanor, but since the law did not provide a penalty for violation, it was necessary to have a

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14. Robert R. Dykstra, *Bright Radical Star: Black Freedom and White Supremacy on the Hawkeye Frontier* (Cambridge, MA, 1993), 216–37; idem, "Dr. Emerson's Sam: Black Iowans before the Civil War," *Palimpsest* 63 (1982), 66–82; Richard Acton, "To Go Free," *Palimpsest* 70 (1989), 50–61; Robert R. Dykstra, "White Men, Black Laws: Territorial Iowans and Civil Rights, 1838–1843," *Annals of Iowa* 46 (1982), 403–40; Richard, Lord Acton and Patricia Nassif Acton, *To Go Free: A Treasury of Iowa's Legal Heritage* (Ames, 1995), 40–48. Whether Dred Scott actually lived in Iowa has been a matter of some debate. Charles E. Snyder suggests that if he did not, he certainly worked on land in Iowa claimed by his owner, Dr. John Emerson. Charles E. Snyder, "John Emerson, Owner of Dred Scott," *Annals of Iowa* 21 (1938), 440–61.

15. Dykstra, *Bright Radical Star*. See also Dykstra's earlier article "Iowa, 'Bright Radical Star,'" in James C. Mohr, ed., *Radical Republicans in the North: State Politics during Reconstruction* (Baltimore, 1976), 167–93.

grand jury hearing and, if there was a conviction, a fine of \$100 or more. Consequently, the law was rarely applied because it was virtually impossible to get a white grand jury to return an indictment in a civil rights case.<sup>16</sup>

In 1892 the law was amended to add "restaurants, chop houses, eating houses, lunch counters and all other places where refreshments are served." Moreover, in addition to barber shops covered in the 1884 law, "bath houses" were now included. Once again, the majorities in both houses were substantial. But there was still no practical enforcement mechanism. Consequently, by 1923 the Iowa Supreme Court had decided only three cases based on the Iowa law.<sup>17</sup>

Civil rights leaders understood that for a reasonable chance of prosecution in cases of discrimination, the law would have to be amended in such a manner as to avoid the necessity of a grand jury. Thus, in 1923 the leaders of the Des Moines branch of the NAACP supported Volney Diltz for election to the Iowa House of Representatives. A member of the NAACP and the first commander of the American Legion in Des Moines, Diltz had a good reputation within the black community and with black veterans in particular. The agreement was that once elected, Diltz would sponsor an amendment to the Civil Rights Act that would reduce the penalty for violating the law and thus take it out of the purview of a grand jury. However, leaders of the local NAACP apparently wanted to keep the agreement with Diltz "shrouded in secrecy," fearing that if there was publicity about the attempt to change the law, opposition would arise to defeat the bill.<sup>18</sup>

Diltz was elected to the legislature and introduced his amendment, which passed with hardly any opposition.<sup>19</sup> Under

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16. *Laws of Iowa, 1884*, 107-8; Robert Edward Goostree, "Civil Rights in Iowa: The Statute and its Enforcement" (Ph.D. diss., University of Iowa, 1950), 19.

17. *Laws of Iowa, 1892*, 68; Goostree, "Civil Rights," 21; idem, "The Iowa Civil Rights Statute: A Problem of Enforcement," *Iowa Law Review* 37 (1951), 242-48.

18. James B. Morris to Robert W. Bagnall, 11 May 1923, Papers of the NAACP (microfilm), reel 10, part 12, series C, The Midwest, Manuscript Division, Library of Congress, Washington, DC; Jack Lufkin, "The Founding and Early Years of the National Association for the Advancement of Colored People in Des Moines, 1915-1930," *Annals of Iowa* 45 (1980), 456-57.

19. It passed in the Iowa House of Representatives on February 17, 1923, by a vote of 79-1 (with 28 members absent or not voting). *Journal of the House of the*

the amended law, violations could be punished with a fine of less than \$100 or fewer than 30 days in jail. That meant that violations could now be heard by a local magistrate instead of a grand jury. In the opinion of James B. Morris, publisher of the *Iowa Bystander*, the 1923 amendment to the Civil Rights Act gave civil rights advocates a weapon they had sought for 20 years.<sup>20</sup>

Within months the law was put to the test. On November 11, 1923, a Des Moines woman, Dottie Blagburn, was thrown out of a theater because she sat in the section reserved for whites. The case went to magistrate's court, where a white jury found the theater manager guilty. Writing to James Weldon Johnson, national secretary of the NAACP, William E. Taylor, secretary of the Des Moines branch, said that they were "very proud" of the conviction, as it was "the first time that the State [had] actively prosecuted a violation under that statute and is perhaps the first time that there [had] been a conviction under it" in Des Moines.<sup>21</sup>

There was another successful prosecution in Des Moines in 1931, but apparently there were no additional cases in Iowa until 1939.<sup>22</sup> Between 1939 and 1950, Iowans brought 22 cases to court, but only three (one of which was the Toneys' case) resulted in a conviction and fine. A fourth resulted in a fine, but the sentence was suspended. The others were either settled out of court or

*Fortieth General Assembly*, 1923, 580-81. Five weeks later the bill passed in the Iowa Senate by a vote of 34-0 (with 15 absent or not voting). *Journal of the Senate of the Fortieth General Assembly*, 1923, 1036. Apparently the NAACP's role did indeed remain "shrouded in secrecy." Each Sunday while the General Assembly was in session, the *Des Moines Register* published an article reviewing the activities of the legislature during the previous week. On February 18 and March 25, the Sundays following the House and Senate votes, the Diltz bill was not mentioned by name nor was the issue of civil rights singled out for comment. *Des Moines Register*, 18 February and 25 March 1923.

20. *Laws of Iowa*, 1923, 198; Goostree, "Civil Rights," 25; Morris to Bagnall, 11 May 1923, NAACP Papers, reel 10, part 12, Series C, The Midwest. The *Iowa Bystander* was a statewide newspaper published by and for African Americans.

21. William E. Taylor to James Weldon Johnson, 15 December 1923, NAACP Papers, reel 10, part 12, series C, The Midwest.

22. The 1931 case concerned Bertha Caldwell, a clerk in a bakery who refused to serve the Rev. George W. Slater, a black customer. S. Joe Brown represented Slater, and Caldwell was convicted. *Des Moines Register*, 7 April 1931; Annual Report, Des Moines branch of NAACP, December 1931, NAACP Papers, reel 10, part 12, Series C, The Midwest.



dismissed.<sup>23</sup> Thus, according to a recent student of Iowa's Civil Rights Act, despite the hopes expressed when the statute was amended in 1923, it "worked poorly for securing convictions through at least the first half of the twentieth century."<sup>24</sup> That makes the Toney's case all the more remarkable.

THE DAY following the incident at the Colonial Fountain, Charles Toney went to Scott County Attorney Clark Filseth and asked him to file charges against Dorothy Baxter. Filseth suggested to Toney that prosecution of the case could result in a loss of advertising for *The Sepia Record*. Toney replied that he did not care and reiterated that he wanted the case to proceed. The county attorney agreed to prosecute the case.<sup>25</sup>

Toney also turned to the NAACP for help with the case. The local chapter had been inactive for several years, but in April interested parties, including the Toney's, had met to reorganize. In May Charles Toney had been elected president of the Davenport branch. On July 30 he wrote to Ella J. Baker, the director of branches in the New York office, to inform her of his pending case. He said that the local branch had already opened the Davenport Natatorium and the YMCA to African Americans but that their "greatest fight" would be in the local restaurants. He sent Baker a copy of the Iowa Civil Rights Act and asked for her advice on how to proceed with the fight to integrate restaurants that he and Ann had begun. Baker sent Toney's letter to Thurgood Marshall of the NAACP's legal division. Marshall was on vacation, so Herman L. Taylor, a clerk in the legal department, responded to Toney's request. He said that the best strategy would be to send blacks into restaurants to see if they could get served. He also recommended having several witnesses to each attempt.<sup>26</sup>

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23. Goostree, "Civil Rights," 64, 65-66.

24. Robert Benjamin Stone, "The Legislative Struggle for Civil Rights in Iowa: 1947-1965" (M.A. thesis, Iowa State University, 1990), 21.

25. Charles Toney interview.

26. Mayidelle Nicholson to Ella J. Baker, 18 April 1945, NAACP Papers, 1940-1945, Branch File; Toney to Baker, 24 May 1945, and Toney to Baker, 30 July 1945, *ibid.*; Baker to Toney, 13 August 1945, *ibid.*; Herman L. Taylor to Toney, 20 August 1945, NAACP Papers, Part 15, Series A, Legal, reel 3. Several years

In the meantime, the Davenport branch met to discuss the Toney's case. Charles Toney was not "pleased or impressed" with Assistant County Attorney William Brubaker, who was to prosecute the case, so the group decided that an African American attorney should be present as an "observer." However, the only African American attorney in Davenport, Sylvester Shepherd, was in the army, so the Davenport branch appealed to James B. Morris of Des Moines, an old family friend of Ann Toney.<sup>27</sup>

Morris had been president of the Des Moines branch of the NAACP, and he was now chairman of its legal redress committee. That committee had been created when the Des Moines branch was founded in 1915. In the ensuing years it was responsible for the lawsuits the NAACP had filed in Des Moines courts. Morris was also the publisher of the *Iowa Bystander*, Iowa's statewide African American newspaper, which published articles about the Toney's trial. But Morris was unable to go to Davenport, so Charles Toney contacted S. Joe Brown, an attorney in Des Moines and another old family friend of Ann Toney.<sup>28</sup> Brown, like Morris, was one of the leaders of the African American community in Iowa. He was a Phi Beta Kappa graduate of the University of Iowa, where he had also earned a law degree. He practiced law in Des Moines and was instrumental in organizing the Des Moines branch of the NAACP, the Des Moines Interracial Commission, and the Crocker Street Branch of the YMCA. Brown agreed to come to Davenport to help with the case.<sup>29</sup>

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later the Toney's would be part of the League for Social Justice, a Catholic Action group in Davenport, which would send black and white couples into restaurants. The League published its results in *Citizen 2nd Class, Negro Discrimination in Davenport* (Davenport, 1951). See George William McDaniel, "Catholic Action in Davenport: St. Ambrose College and the League for Social Justice," *Annals of Iowa* 55 (1996), 256-60.

27. Charles Toney to Herman L. Taylor, 25 August 1945, NAACP Papers, Part 15, Series A, Legal, reel 3; Mrs. Ulysses A. Shoots to Ella J. Baker, 31 August 1945, NAACP Papers, Branch File, Davenport, Iowa, 1940-1945.

28. Toney to Taylor, 25 August 1945; *Iowa Bystander*, 16 August 1945.

29. Leola Nelson Bergmann, *The Negro in Iowa* (Iowa City, 1969), 82-83; Lufkin, "Founding and Early Years of the NAACP in Des Moines," 439-61.

THE TRIAL took place in Magistrate John P. Dorgan's court on August 3. Just as the trial was about to begin, S. Joe Brown entered the room. Assistant County Attorney Brubaker had not been told that Brown was coming, so he was "quite surprised" when Brown was introduced. Nevertheless, Brubaker stepped aside to allow Brown to take the lead in prosecuting the case.<sup>30</sup>

Magistrate Dorgan impaneled a jury of five women and one man, all white. The women were all homemakers. Their husbands included a police officer, a brewery worker, a clerk, a Western Union roundsman, and a worker at the Rock Island Arsenal.<sup>31</sup>

During the trial, both Charles and Ann Toney testified that Baxter had refused to serve them because of their race. In her defense, Baxter denied refusing to serve them because they were black. Instead, she said that she was offended by the "cocky" manner in which Charles Toney had asked for service. In his summation to the jury, Baxter's attorney, Matthew Hart, attributed the incident to the "hazards of the times," when "tempers and patience" were short.<sup>32</sup>

In his closing argument, S. Joe Brown asked whether African Americans were first-class citizens, sharing all the civil rights of Americans, or second-class citizens, entitled only to what others were willing to give them. Addressing the jury directly, he said, "If you of the jury think it is all right for a Negro to be drafted, to fight for his country and the preservation of the liberty we prize, and to make the supreme sacrifice, and then to return and be told that he cannot enter such a place as Mrs. Baxter operates and be served like other people, then you will have no alternative but to find this defendant not guilty."<sup>33</sup>

Following four hours of deliberation, the jury was reportedly divided three to three on the verdict. Justice Dorgan declared a mistrial and scheduled a second trial for the following

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30. Toney to Taylor, 25 August 1945; Shoots to Baker, 31 August 1945.

31. *Davenport Daily Times*, 3 August 1945; *Polk's Davenport City Directory, 1945* (Milwaukee, 1945), 41, 115, 169, 237, 343, 415. The male juror was also probably working class. The city directory lists two men with the same name, one a clerk in a store and the other a plumber. I have been unable to determine which of these two men was the juror.

32. *Davenport Democrat and Leader*, 3 August 1945.

33. *Ibid.*

Wednesday. Although there was disappointment that a verdict was not reached, S. Joe Brown found reason to be optimistic. "It's almost a victory," he said, "to have a white jury divided over an issue involving colored people."<sup>34</sup>

THE SECOND TRIAL was held the following Wednesday. Justice Dorgan impaneled another jury, like the first, with five women and one man, all of whom were white. Three of the women were homemakers whose husbands were an auto mechanic, a real estate agent, and a hauler at International Harvester. The city directory listed the other two women as "householders," and each was the only person in her household. The male juror was a retired carpenter.<sup>35</sup>

The Toney's repeated their testimony that they were refused service because they were black. This time Brown pressed Baxter harder until she grew angry and admitted that she was opposed to the civil rights law and always would be. She also said that she was opposed to the two races intermingling by being seated side by side in a theater. She concluded her testimony by declaring that "if the Toney's wished to accomplish something they should establish an eating place or restaurant for Negroes only."<sup>36</sup>

In his closing argument, S. Joe Brown responded to Baxter's final statement, suggesting that if the jury believed as she did that Iowa law should be ignored, they should find in her favor. The jury deliberated for ten minutes before finding Baxter guilty. Justice Dorgan fined her \$10.00 plus \$30.75 in court costs.<sup>37</sup>

Charles Toney declared that it was an "outstanding victory for democracy." The chair of the Davenport NAACP branch's Publicity and Press Committee, Mrs. Ulysses A. Shoots, echoed Toney's assessment. She told the national office that they were all "very pleased with winning the first Civil Rights Case ever tried in the City of Davenport."<sup>38</sup>

34. *Davenport Daily Times*, 4 August 1945.

35. *Davenport Daily Times*, 9 August 1945; *Polk's Davenport City Directory*, 1945, 92, 132, 188, 202, 206, 434.

36. *Davenport Daily Times*, 9 August 1945; *Davenport Democrat and Leader*, 9 August 1945.

37. *Ibid.* \$40.75 is equivalent to about \$385 in 2000 dollars.

38. Toney to Taylor, 25 August 1945; Shoots to Baker, 31 August 1945.

THE TONEYS' VICTORY was one of many such victories in the years before *Brown*.<sup>39</sup> Those victories can be attributed to the willingness of the Toney, and people like them, to go to court. Thus, the Toney's victory was, in part, a personal victory. Charles and Ann Toney knew the law, and they knew that they had the right to be served an ice cream cone. But their victory was also attributable to the patient work of the NAACP nationally, and to the willingness of S. Joe Brown from the Des Moines branch's legal redress committee to come to Davenport to assist the Toney. A recent scholar points out that although the federal government did play an important role in the civil rights struggle, the "foundation of the civil rights movement remained anchored" in the NAACP and its "extensive network of branches." The Des Moines and Davenport branches that assisted Charles and Ann Toney were a significant part of that network.<sup>40</sup>

The Toney's victory was also a first for Davenport. Never before in that city had blacks won a victory in court against discrimination. And it was one of the few such victories in Iowa before *Brown*.<sup>41</sup>

Finally, the Toney's victory was a victory of the law: the 1923 amendment to the 1884 Iowa Civil Rights Act had worked. But it was only a narrow victory of the law. A student of the Iowa law has noted that while it did entitle blacks to equal treatment in "common carriers" and "public eating places," that right did not extend to a "purely private business enterprise" that did not serve the public at large. Moreover, it did not confer social equality. In that regard, the Civil Rights Act's statement of the "negro's legal status in Iowa must not be understood to be a description of his actual participation in the institutions of the state."<sup>42</sup>

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39. See Fairclough, *Race and Democracy*, passim.

40. Patricia Sullivan, *Days of Hope: Race and Democracy in the New Deal Era* (Chapel Hill, NC, 1996), 275.

41. Robert Edward Goostree documented ten more Iowa cases between the Toney's victory and 1950, the time of his dissertation. There were four acquittals, three convictions, two dismissals, and one was settled out of court. Goostree, "Civil Rights," 64.

42. Dorothy Schaffter, "The Iowa 'Civil Rights Act,'" *Iowa Law Review* 14 (1928), 75, 76.

Two years after the Toney's victory, the President's Committee on Civil Rights noted that 18 states, including Iowa, had laws prohibiting discrimination in public places, while 20 states had laws mandating segregation. And even in states with anti-discrimination laws, "practice [did] not necessarily conform to the law."<sup>43</sup> In that regard, the Toney's victory is less clear. In spite of the law and their victory, the larger problem of discrimination in Davenport remained. A year after the Toney's case, a group of four African American high school students were refused service in another Davenport café. One of them, Robert Jones, filed charges and won in court. That night Jones received phone calls from anonymous callers threatening that "they would get him."<sup>44</sup> And in 1951, six years after the Toney's victory, the League for Social Justice, a local Catholic Action group to which the Toney's belonged, published *Citizen 2nd Class, Negro Discrimination in Davenport*. The study reported widespread discrimination in several areas of Davenport life, including restaurants.<sup>45</sup>

Ten years after *Citizen 2nd Class* was published, an article in the *Iowan* magazine noted a United States Civil Rights Commission report that said that the civil rights situation in Iowa presented a "very discouraging picture." One African American said that Davenport was "looking backward over its shoulder, pleased at the specter of the Nineteenth Century, when thinking of human rights." Still, the article noted a "growing recognition of the problem [in Iowa] and a willingness to do something about it."<sup>46</sup>

Speaking about their case more than 50 years later, the Toney's acknowledge that progress has been made in combating discrimination. But they contend that discrimination is still present; it is just "more subtle."<sup>47</sup> Nevertheless, they take justifiable pride in their part in the "first act" of the "two-act play" of the civil rights movement.

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43. *To Secure These Rights*, 77-78.

44. *Davenport Daily Times*, 9 and 10 May 1946; *Iowa Bystander*, 16 May 1946.

45. McDaniel, "Catholic Action in Davenport," 256-60.

46. Wayne DeMouth and Joan Liffing, "Where the Negro Stands in Iowa," *Iowan* 10 (Fall 1961), 9, 4, 3.

47. Charles and Ann Toney, interview with author, Coal Valley, IL, 1 April 1997.

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