

HAYZEL B. DANIELS SANDRA DAY O'CONNOR VAL-
DEMAR CORDOVA WILLIAM REHNQUIST LORNA
LOCKWOOD FRANCIS X. GORDON THOMAS TANG
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LEGENDS OF THE JUDICIARY



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A Tradition of *Progress*

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O'CONNOR

GORDON

**A Tradition of Progress
A History of Excellence**

A History of *Excellence*

Arizona Legends of the Law: Hayzel B. Daniels



Hayzel B. Daniels (1913-1992) earned his B.S. in Social Sciences in 1939 and an M.A. in Education in 1941 from the University of Arizona. He taught at Fort Huachuca, Arizona where his father was stationed with the 10th Cavalry. Daniels served in the Army during World War II. In 1948 he was the first African American to graduate from the University of Arizona Law School and be admitted to the Arizona State Bar. Daniels opened a law office in Phoenix and became involved in politics and the NAACP. In 1950 he and Carl Sims were the first Blacks elected to the Arizona legislature. As a lawmaker and an attorney, Daniels fought against school segregation. In June 1952 he argued successfully against school segregation in *Phillips, et al. v. Phoenix Union High School District*. Judge Frederick Struckmeyer wrote, "There are no second class citizens in Arizona." Judge Struckmeyer ruled that segregation in public schools was unconstitutional.

In November of 1953, Daniels argued successfully against segregation in the (Phoenix) Wilson Elementary School District in *Heard et al. v. Davis, et al.* Judge Charles C. Bernstein ruled in this case that segregation in public schools was an unconstitutional violation of the 14th Amendment. The U.S. Supreme Court used Bernstein's ruling to inform its landmark 1954 *Brown v. Board of Education* decision. Daniels went on to serve as the first black Assistant Arizona State Attorney General, and was appointed Phoenix City Court judge in 1965, becoming the first black judge in Arizona. Daniels belonged to many organizations, including the Arizona Black Lawyers Association, which changed its name to the Hayzel B. Daniels Bar Association in 1993.

Sources:

The Arizona Republic, "A History of African-Americans in Arizona," *Cultures AZ African American*, <http://www.azcentral.com/culturesaz/afroam/afrohistory.html>

Matthew C. Whitaker, *Race Work: The Rise of Civil Rights in the Urban West*. (Lincoln: University of Nebraska Press, 2005).

Judge Hayzel Burton Daniels

1913-1992



**Pushed by Circumstance, Pulled by Hope: The Humble and Pioneering Spirit
of a Renaissance Man©**

The Legacy and the Legend

**State Bar of Arizona
2008 Annual Convention – Tucson, Arizona
June 20, 2008**

Pushed by Circumstance, Pulled by Hope¹: The Humble and Pioneering Spirit of a Renaissance Man©

By Honorable Penny L. Willrich (Retired, Arizona Superior Court)²
Associate Professor – Phoenix School of Law

Judge Hayzel Burton Daniels epitomizes the rise to success in education, law, politics, and the judiciary because he was pushed by the circumstances of segregation and discrimination yet pulled by the hope for social change. Called a “pioneer,”³ I prefer to call him a “Renaissance Man.” From the time that he graduated as the first African American from the University of Arizona School of Law in 1948 until his retirement from public life in 1978, Judge Daniels’ humility and strong belief in equality contributed to the continual reawakening that civil rights were human rights, not just rights to be applied differently to Black and Whites.

This article represents a celebration of Judge Hayzel Burton Daniels as a legend of the law, who left a legacy that has helped to shape the Arizona legal profession and the greater society of Arizona. Fifteen years after the historical founding of the Arizona State Bar Association, Hayzel Burton Daniels, became the first African American member of the State Bar, a member destined for distinction. He was a Bar member who established himself as a renaissance man in the legal and African American communities of Phoenix.

Judge Daniels grew up in Fort Huachuca, Arizona and in Nogales, Arizona.⁴ The son of a member of the 10th Calvary⁵ Judge Daniels followed in his father’s footsteps by serving in the

¹ I would like to thank Dr. Matthew Whittaker of Arizona State University for the phrase “pushed by circumstance and pulled by hope” as used in a historical 2004 African American property survey of the City of Phoenix.

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³ Jose E. Garcia, *Daniels’ pioneering began in high school*, Arizona Central, August 09, 2007 available at www.azcentral.com/sports/prep/articles/0809hofstory-daniels.html (last visited March 24, 2008).

⁴ David R. Dean and Jean Reynolds. *City of Phoenix: African American Historic Property Survey (2004)*.

Army during World War II.⁶ While serving his country, Judge Daniels carried the legacy of having been the first African American to earn “All State” honors as the first Tucson High School running back during the 1920’s.⁷ In 1925, Judge Daniels set a Tucson High School single season record by rushing for 1,632 yards; and in that same year set a city high school record of rushing for 301 yards in one game.⁸ Judge Daniels’ rushing record at Tucson High School remained unbroken until 1990. In 2007 Judge Daniels was selected to be in the inaugural class of the azcentral.com Arizona High School Sports Hall of Fame.⁹ As the first African American All State high school football player in Arizona, he earned back to back honors during his junior and senior years.¹⁰ From high school he distinguished himself in the military through courageous service. He returned home to pursue his college education at the University of Arizona, working his way through school.¹¹ He continued to play football in college, earning a nickname of the “Flying Ebony,” until a knee injury put an end to his football career.¹² In 1939, he received his Bachelor’s of Science in Social Studies. In 1941 he received his Master’s of Arts in Education from the University of Arizona.

Though Judge Daniels fought in World War II in defense of the American ideals of freedom and justice, he returned to his hometown finding racism, prejudice, and disparate treatment.¹³ Despite the dominant culture of segregation, restrictions on housing, and economic exclusion that existed in the United States, solider Hayzel B. Daniels lived his life to bring a

⁵ BlackPast.org, *African American History in the West*, <http://www.blackpast.org/?q=aaw/daniels-hayzel-b-1913-1992> (last visited March 24, 2008).

⁶ *Id.*

⁷ Garcia, *supra* note 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Quintard Taylor, *Race & Ethnicity in the Southwest*, Arizona Attorney, February, 1998, available at WL, 34-Feb Ariz. Att’y 17. Dr. Taylor states on page 2 that Fort Huachuca had the largest concentration of Black military personnel after World War II. Over 12,000 male and female.

¹² Jose E. Garcia, *Daniels’ pioneering began in high school*, Arizona Central, August 09, 2007, available at www.azcentral.com/sports/prep/articles/0809hofstory-daniels.html (last visited on March 28, 2008).

¹³ David R. Dean and Jean Reynolds. *City of Phoenix: African American Historic Property Survey (2004)*.

change in civil rights for all.¹⁴ While many African Americans during this time came to Arizona to escape the deep-seated racism, oppression, and violence of the South, it should be noted that many White Americans from southern states moved to Arizona and became pious lawmakers who could enact the philosophy of “separate but equal.” Hayzel B. Daniels knew that if he took advantage of the G.I. Bill to pay for his education, he could make a difference for others. He knew and believed strongly that separate was never equal.

Judge Daniels grew up in an era where African American parents trained their children that education was the most effective means of upward mobility in American society.¹⁵ For several years after completing his master’s degree in education, Judge Daniels taught in Fort Huachuca, Arizona.¹⁶ Certainly, Arizona’s struggle for civil rights and equality during this time defined and shaped or even consumed Judge Daniels thoughts in contemplation of what he could do in the struggle against discrimination. Described as a very humble man by his wife Lois,¹⁷ he was not concerned with being a civil rights icon. Yet, the historical American institutions that created and maintained unequal treatment must have been part of the impetus for him to return to law school as the penultimate educational accomplishment that continued his legacy of firsts as a social change agent. Judge Daniels believed in the moral and political power of the civil rights movement, because he had lived through the era of Jim Crow laws in Arizona.¹⁸

¹⁴ *Id.*

¹⁵ “Black law students giving back in mentoring program for area youth.” Retrieved from: <http://record.wustl.edu/archive/1998/04-23-98/articles/blsa.html>.

¹⁶ BlackPast.org, *supra* note 4.

¹⁷ Garcia, *supra* note 2.

¹⁸ “Jim Crow” has come to symbolize and describe the segregation laws, rules, and customs that arose at the end of the period of American Reconstruction in 1877. “Jim Crow” represents racists’ traditions, attitudes, and *de facto* or *de jure* laws that devalued difference and diversity. Unpublished work in progress by Professor Penny Willrich, *19th, 20th & 21st Century Voter Suppression: Disarming The Long Arms of Jim Crow*©.

Hayzel B. Daniels enrolled in the University of Arizona School of Law, again using his G.I. Bill.¹⁹ Graduating law school in 1948, passing the Arizona bar exam in 1948, and having become admitted to practice law in 1948, Attorney Hayzel B. Daniels became the first law school graduate of an Arizona law school and the first African American to be admitted to membership in the Arizona State Bar Association upon taking and passing the state bar examination.²⁰ Hayzel Daniels contemplated moving to California or Texas after graduation from law school. According to an article written in 2000 by Arizona Attorney Linda C. Boone, Hayzel Daniels did not want to practice law in Tucson because he felt he would not be accepted as a lawyer in the community. He felt too many people would identify with him as a busboy, handyman, and switchboard operator.²¹ Persuaded by classmates Morris and Stewart Udall to try Phoenix, Hayzel Burton Daniels moved to Phoenix with his wife in 1945. He and his wife no doubt moved into one of the areas of southwest or southeast Phoenix restricted to Black residents until the early 1970's.²² After his licensure to practice law, Hayzel B. Daniels established an office at 215 E. Washington, Phoenix, Arizona. He was the only African American attorney practicing law in Arizona until the 1970's.²³ He lived for many years at 2801 N. 5th Ave. in Phoenix.²⁴ When pushed by circumstance, the pull of hope often caused a resurgence of energy for Hayzel B. Daniels. Early in his career, he must have known that he had to use his law degree

¹⁹ *Id.*

²⁰ J. Clay Smith, in his book *Emancipation*, indicates that an African American by the name of Robert Fortune actually practiced law in Arizona in 1921, however, he did not graduate from an Arizona law school nor was it necessary for a lawyer to sit for a bar exam at that time.

²¹ Linda C. Boone, *The Days of "Haze: A Personal Journey Down The Back Road to Brown v. Board of Education*," Arizona Attorney, March 2000, available at WL36-Mar Ariz. Att'y 38.

²² Dean & Reynolds, *supra* note 3.

²³ The author could find not information to verify that Robert Fortune may have been the first African American lawyer practicing in Arizona. However, personal conversations with a contributor wanting to remain anonymous indicated that the rumor was that Robert Fortune was "passing" for another race and therefore would not have been recognized as African American.

²⁴ Dean & Reynolds, *supra* note 3.

quietly but determinedly to model racial equality in hope that people of color in Arizona, albeit America, would receive justice and equality.

Two years out of law school, at the age of 37, Hayzel B. Daniels was one of the first African Americans elected to the Arizona legislature.²⁵ Shortly after being elected to the legislature, Representative Daniels and Representative Carl Sims co-authored House Bill 86 to allow Arizona school districts to voluntarily desegregate and to delete the word "Negro" from the statute.²⁶ Even with this minor change in the statute and though the amendment to the statute did not completely eliminate segregated schools, there was great opposition by the public and media.²⁷ Armed with a law school education and empowered by his election to the Arizona House of Representatives for Phoenix District 8, Representative Hayzel B. Daniels played a significant role in the resurgence of the political, legal, economic, and social development of African Americans in Arizona.

Brad Luckingham writes, "Hayzel B. Daniels and Carl Sims, both representing predominantly African American Phoenix neighborhoods, 'worked their hearts out' to help enlist the aid of white colleagues to rid the Arizona of mandatory segregation."²⁸ "Arizona law from the time of statehood required children of African descent to attend separate elementary schools."²⁹ In convincing the legislature to vote on HB 86, Representative Hayzel B. Daniels argued that with so few African American children enrolled in school, it would be a tremendously harsh financial burden on the (White) taxpayers to have to support two school

²⁵ Garcia, *supra* note 2. (Carl Sims was the other African American elected to the Arizona House of Representatives in 1950.

²⁶ Dean & Reynolds, *supra* note 3.

²⁷ Boone, *supra* note 17.

²⁸ Bradford Luckingham, *Minorities In Phoenix: A Profile of Mexican American, Chinese American, and African American Communities, 1860-1992*, p. 162. (The University of Arizona Press, 1994).

²⁹ *Id.* at 143. Luckingham explains that in schools with a very small population of African American children, "a screen placed around the desk of the Black child was ruled to be separation in terms of the law." Additionally, "the law required that once a high school had an enrollment of twenty-five students of African descent, a district could vote to have a separate 'Negro' high school."

systems.³⁰ His horse trading won. He was also known as an active member of the NAACP who fought against school segregation.³¹

Hayzel B. Daniels shared the vision of the NAACP for a fully integrated society for all people.³² He often worked behind the scenes to coordinate peaceful sit-ins or representing criminal defendants against civil rights violations.³³ Judge Cecil B. Patterson, Jr. states that Attorney Daniels owned the Haze Hotel, located near downtown and established as a decent and respectable place for African Americans traveling to Arizona to have lodging.³⁴ Though he met with a number of civil rights organizations, some of whom did not share his vision of a fully integrated society, as an upstart, brash, outspoken and courageous advocate, Representative Hayzel Daniels forged on in his quest to remove the badges of slavery, inequality, and inequity with youthful impatience.³⁵ Pushed by circumstance, Attorney Hayzel B. Daniels' focus was to end segregation.

In 1952, Hayzel B. Daniels became the first African American Assistant Attorney General for the State of Arizona.³⁶ Teamed with Attorney Herbert B. Finn, who also was an Assistant Attorney General and representing the plaintiffs *pro bono*, in 1952 Daniels and Finn filed suit against the Phoenix Union High School District demanding an end to school segregation.³⁷ It has been said that Attorney Daniels paid the filing fee for the plaintiffs.³⁸ The

³⁰ Boone, *supra* note 17.

³¹ BlackPast.org, *supra* note 4.

³² Boone, *supra* note 17.

³³ *Id.*

³⁴ Personal conversation on March 17, 2008 with retired Judge Cecil B. Patterson, Jr. who was the first African American appointed to the Superior Court and the Arizona Court of Appeals. Judge Patterson currently teaches Administrative Law for Phoenix School of Law and has a part-time practice in alternative dispute resolution.

³⁵ *Id.*

³⁶ Dean & Reynolds, *supra* note 3.

³⁷ Even though Hayzel Daniels paid the filing fee, the plaintiff was a Black dentist and should have been able to pay for the lawyers, however, when the case was initially filed, the Black dentist, hired an out of state lawyer because he did not trust Hayzel Daniel's inexperience. The out of state lawyer filed the matter in federal court. The matter was dismissed by the federal courts because the parties had not exhausted their state court remedies. and the out of state lawyer when on back to California. Hayzel Daniels and Herbert Finn took the case for free.

case was assigned to Judge Fred C. Struckmeyer, Jr., known to be an excellent legal scholar and strict constitutionalist.³⁹ Judge Struckmeyer, Jr. said that “a half century of intolerance is enough”⁴⁰ Judge Struckmeyer, Jr. in ruling on the case found that democracy rejects the theory of second hand citizenship.⁴¹ In an interview about the case in 1990, Judge Hayzel B. Daniels stated that when he was summoned to Judge Struckmeyer Jr.’s office, the Judge was crying as he wrote the opinion.⁴² Judge Struckmeyer Jr., pulled by Attorney Hayzel B. Daniels’ humility and hope determined that segregation was unconstitutional and unlawful.⁴³

In 1953, shortly before the infamous *Brown v. Board of Education of Topeka, Kansas* was decided in 1954, the dynamic duo of Daniels and Finn filed a desegregation action against the Wilson Elementary School District in Phoenix.⁴⁴ Judge Charles E. Bernstein ruled that segregation of public schools violated the Fourteenth Amendment and therefore were unconstitutional.⁴⁵ Judge Bernstein declared that the segregation of public schools was dead wood from the past.⁴⁶ Although the United State Supreme Court used Judge Bernstein’s decision as a model for *Brown*, the Supreme Court did not adopt the language declaring that there were no second class citizens in the United States. After these two victories (with Daniels a mere five years out of law school), Daniels and Finn led activist and other white lawyers in the

³⁸ Pamela Treadwell Rubin, *A Blessing of “Firsts,”* Arizona Attorney, January 2004, available at WL40-Jan Ariz. Att’y 6.

³⁹ The Judicial Branch of Arizona, Maricopa County. Law Library Online: Phillips v. Phoenix Union High Schools and Junior College District.

⁴⁰ *Id.*

⁴¹ Elizabeth Finn, *Civil Rights For Every Generation*, Arizona Attorney, September 2004, available at WL41-Sep Ariz. Att’y 14.

⁴² *Supra.* at p. 3.

⁴³ *Supra.*

⁴⁴ BlackPast.org., *supra* note 4

⁴⁵ *Id.*

⁴⁶ Finn, *supra* note 35.

effort to dismantle the barriers of segregation and prejudice from public accommodations, public facilities, public transportation, and public restaurants.⁴⁷

In 2004, Pamela Treadwell-Rubin wrote that, "Phoenix school children have every reason to be proud of Hayzel B. Daniels' service as a lawyer."⁴⁸ However, the pride should go beyond just school children – it should extend to the parents of the school children and the grandparents of the school children. When Hayzel B. Daniels' was asked why he cared so much about ending school desegregation through the courts, Hayzel Daniels said that "people do not have the right to vote on my children's constitutional rights."⁴⁹ Hayzel Daniels believed that a governmental entity could not delegate away its power. The legislative scheme of Arizona at the time was that the legislature could delegate away their powers under Arizona law to a specific school district's board. The board would vote on school segregation rather than the legislature enacting a law. After HB 86 passed, Tucson and other Arizona school districts immediately desegregated their schools; Phoenix Union and Wilson Elementary were the only two school districts that voted to maintain segregated schools.⁵⁰

Judge Hayzel B. Daniels was the victim of the horrendous and vile attitudes of hate. Judge Elizabeth Finn has a vivid memory of she, Herbert B. Finn (her father) and Hayzel B. Daniels entering the restaurant of the San Carols Hotel in downtown Phoenix, and being told that Hayzel Daniels could not be brought into the restaurant.⁵¹ In this particular incident, Judge Finn, her father and Hayzel Daniels waited for two hours to be reluctantly served their food. After the food arrived, and they ate; they then witnessed a bizarre display of racial hate by the wait staff (I

⁴⁷ Dean and Reynolds, *supra*, note 3.

⁴⁸ Pamela Treadwell Rubin, *supra*.

⁴⁹ Garcia, *supra* note 2.

⁵⁰ Taylor, *supra* note 10.

⁵¹ Elizabeth Finn, *The Struggle For Civil Rights in Arizona*, Arizona Attorney, July 1998, available at WL34-Jul Ariz. Att'y 24.

am sure at the direction of the management) who proceeded to break each dish after the trio finished each part of their meal.⁵²

The fact that Hayzel Daniels was an Assistant Attorney General for the State of Arizona carried no weight where race hatred was involved.⁵³ During the time that Hayzel B. Daniels was an Assistant Attorney General, his job responsibilities included going from county to county to represent the state in his official capacity. Often he and Herbert Finn traveled together but could not find a place to stay because lodging was made available to “restricted clientele” only, which meant no Jews and no Negroes.⁵⁴ Finn and Daniels would travel on the Arizona roads for hours without being able to find a restaurant that would serve either of them. Of course, during the Daniels-Finn crusade for human rights, Arizona was enraptured with Jim Crow, having enacted several statutes in his honor, namely segregation, miscegenation, and restrictive voting statutes. Between statehood in 1912 and 1962, Arizona passed six segregation laws: four against miscegenation and two school segregation statutes, and a voting rights statute that required electors to pass a literacy test. The state's miscegenation laws prohibited Blacks as well as Indians, Malays, Hindus, and Asians from marrying Whites.⁵⁵ These laws were not repealed until 1962.

Attorneys Daniels and Finn, joined together to fight the entrenched bigotry that served to thwart human rights. Exclusion from public schools, the ballot box, the jury box, public transportation, and accommodations were painful reminders of the limitations on freedoms for people of color and cultural or religious ethnic groups. Despite the emancipation of some

⁵² *Id.*

⁵³ It has been 54 years since this incident occurred; however, incidents such as these still occur in Arizona and in our greater society.

⁵⁴ Finn, *supra* note 45.

⁵⁵ Stetson Kennedy, *Jim Crow Guide: The Way It Was*, 1959, available at www.stetsonkenedy.com/jim_crow_guide/index.html, (last visited on May 04, 2008).

African Americans in 1865 and the Thirteenth, Fourteenth, and Fifteenth Amendments to the United States Constitution,⁵⁶ Attorney Hayzel B. Daniels and other activists were asking that the promises of democracy be fulfilled so that all of American's citizens are treated equally.

Donning the robe of justice and picking of the gavel of mercy, Hayzel Burton Daniels was sworn in as the first African American municipal court judge (City of Phoenix) in the state of Arizona in 1965. Judge Daniels was described by Judge Cecil Patterson as a Judge who was well respected and who often provided sage advice to young lawyers appearing before him.⁵⁷ Judge Jean Williams described him as a quiet and helpful jurist.⁵⁸ She stated that he took her under his wings and taught her the ropes of the Phoenix Municipal Court and on the day that he retired, she walked him to the door to say good bye – there was no fanfare and no party.⁵⁹ He served the City of Phoenix as a distinguished jurist from 1965 until his retirement in 1978. Hayzel Burton Daniels died in 1992 at the age of 79 years young.

CONCLUSION

Judge Hayzel B. Daniels was a part of a national transformation of persons and attitudes fighting for the cause of justice for all. In Arizona direct action protest and litigation was the key to getting the changes done, especially by a man that has been characterized as humble and patient. Judge Daniels saw the compelling wave of human spirit – that knows no color boundaries, when the objective is doing the right thing. I only wished I had gotten to meet Judge Daniels. Judge Daniels is a pioneer and a Renaissance man. His call for change in the school

⁵⁶ Taylor, *supra* note 10.

⁵⁷ Personal conversation on March 17, 2008, with retired Judge Cecil B. Patterson, Jr.

⁵⁸ Personal conversation on April 25, 2008, with retired Judge Jean Williams. Judge Williams was the second African American woman lawyer admitted to the State Bar of Arizona and the first African American woman lawyer to be appointed to a judicial position in Arizona. She served on the Tucson Municipal Court and the Phoenix Municipal Court. Judge Williams was on the bench in Phoenix from 1976 to 1996. Judge Williams is still quite active in the Phoenix community.

⁵⁹ *Id.*

system was a call for new beginning. Judge Daniels distinguished himself as the epitome of a practicing lawyer and discerning jurists. The year that Judge Daniels was appointed to the bench was not just an ordinary year; it was the year that Congress passed the Civil Rights Act of 1965. It was the year that the President Lyndon Johnson shouted as he spoke to a class of Howard graduates, "And we shall overcome."⁶⁰

The renaissance man in Hayzel B. Daniels overcame all burdens, stigmas or obstacles that may have stood in the way because of the color of his skin. Judge Daniels achieved many firsts in Arizona legal history and his career has represented a "yellow brick" road that paved a path for all Arizona African American attorneys who have followed him. Judge Daniels lived up to his values; he stood up for principal; and he believed in equality. His desire was to truly see an integrated society. I know that in his capacity as a jurist for the angels, he is looking out on us right now, smiling and saying thank you for the tribute.

In his lifetime, Judge Daniels saw the dismantlement of racial segregation and he saw the nation and Arizona moving more and more toward equalization. Pushed by circumstance and pulled by hope, Judge Daniels is looking down on us and saying, "And we have overcome." If I could have a conversation with him, I would say, "Judge Daniels, we are still holding up the banner of human and civil rights to ensure that there are no second class citizens in Arizona." "Thank you for all that you have done." Judge Daniels was a pioneering renaissance man who established a legacy for liberty. He understood the humiliating affect that exclusion caused in African American communities, especially on children.⁶¹ His desire for equality ensured us that

⁶⁰ Ira Katznelson. *When Affirmative Action was White: An Untold History of Racial and Inequality in the Twentieth-Century America*. (Norton, 2005).

⁶¹ Luckingham, *supra* at 146.

no American or Arizonan will never be restricted again by a sign or a law or a practice, as the one depicted below.”⁶²



Today we celebrate the legacy of the legend, Judge Hayzel B. Daniels, as a native son and as a first Arizonan of achievement. Pushed by circumstance, pulled by hope, he served as a catalyst for social equality.

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⁶² Jim Crow Laws, available at <http://www.sweataubur.us/rings/jimcrow.htm>, (last visited on May 04, 2008).

