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DR. J. CLAY SMITH, JR.*
COMMISSIONER, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
before the
THE NATIONAL BAR ASSOCIATION
FIFTY-FIFTH ANNUAL CONVENTION
FIRST PLENARY SESSION
FAIRMONT HOTEL
DALLAS, TEXAS

AUGUST 4, 1980

THE NATIONAL BAR ASSOCIATION AND THE
AFRO-AMERICAN LAWYER: A TIME FOR ROOTAGE,
PERSONALITY AND UNIVERSAL PROJECTION

Mr. President Robert L. Harris (California), members of
the Executive Committee, The Board of Governors, Officers, the
Executive Director, ^{1/} delegates and affiliates of the National Bar

* Dr. Smith is a U.S. Commissioner on the Equal Employment
Opportunity Commission (EEOC), in Washington, D.C. He received
his A.B. degree from The Creighton University (Omaha, Nebraska)
in 1964; the J.D. degree from The Howard University School of
Law (Washington, D.C.) in 1967, the LL.M. and S.J.D. degrees
from the George Washington National Law Center (Washington, D.C.)
in 1970, 1977 respectively. He is a member of the D.C. and
Nebraska Bars.

^{1/} Prior to 1973, Elmer C. Jackson, Jr., a former president of
the NBA, was deemed to be the Executive Director of the NBA.
During the time that Jackson acted in this capacity, the national
office of the NBA was located in Kansas City, Missouri, where
Mr. Jackson practiced law. However, since 1970, there have been
four paid Executive Directors, all residing in Washington, D.C. to
where the national office was transferred; namely, Messrs. Donald
M. Stocks (1970-1973), Charles E. Smith (1973-1975), Elihu M. Harris
(1975-1977), Philip L. Johnson (1977-1978), John L. Crump (1977-
). Regarding comments of or data concerning the above, note, 7 NBA Bull.
1 (June 1975) (Charles E. Smith); 9 NBA Bull. 6 (May 1977) (Elihu
Harris); 9 NBA Bull. 5 (July 1977) (Philip L. Johnson). While in
the Nation's Capital, the national headquarters offices have been
located in the Woodward Building; at the law offices of Charles
E. Smith, 1100 17th Street, N.W.; at 2109 E Street, N.W.; at
919 18th Street, N.W.; and at its present location, 1900 L Street,
N.W. The dream of the future is for the NBA or the NBA Foundation
to own a building housing the Association. Concerning the NBA
Foundation, see E. Toles, Fifty Years of Progress For Black Lawyers--
The History of the National Bar Association 5 (50th Anniversary Pro-
gram 1975) hereafter (History of the National Bar Association).
See also, Archie B. Weston, Sr., President Speaks, Id. at 6 (50th
Anniversary Program).

Association. I am deeply honored to have been asked to keynote this, the First Plenary Session of the National Bar Association during its Fifty-Fifth Annual Convention here in Dallas, Texas.^{2/} This is the first Annual Convention of a new decade and it is appropriate that this assembly reflect upon its beginning, its history, its principles, its policies, its mission and its purpose. However important it is for this assembly to plan for the challenges facing Afro-American lawyers of this decade, far more important is your vision to plan for the challenges facing the Afro-American when the new century is born. This nation and the legal and judicial structure of this nation has been significantly enhanced by the substantial contribution that the NBA, its presidents and its members have made in its quest for pure legal existence.

^{2/} As a Commissioner on the United States Equal Employment Opportunity Commission, which is celebrating its fifteenth year of fighting employment discrimination under the provisions of Title VII of the Civil Rights Act of 1964, and other statutes, I know that the National Bar Association has been one of the great supporters of the Commission. The members of the NBA have been in the vanguard for equality in employment and your member lawyers have brought and prevailed in many of the landmark decisions which now make opportunity in the workplace for minorities, women, the aged and handicapped, a reality as opposed to a dream. As a matter of fact, one of your members was appointed and served with distinction on the first Commission: The Honorable Samuel C. Jackson (Washington, D.C.). See, Samuel C. Jackson's Remarks on Title VII and the Civil Rights Act, 53 The Delta Sorority Journal 24 (March 1967) (I am indebted to Ms. Gaynelle Reed Lewis of Washington, D.C. for access to this Volume of The Delta). I view the opportunity to address this assembly as an extension of the good relations that the NBA and the EEOC have mutually enjoyed during the Commission's existence.

In conformity with the theme of this meeting,^{3/} I will now turn to an historical overview^{4/} of the National Bar Association under the title: The National Bar Association and the Afro-American Lawyer: A Time for Rootage, Personality and Universal Projection.

I.

The NBA: A Progeny of The "Greenville Movement"

Between 1890 and 1900 the number of Black lawyers in the nation, particularly in the states of Tennessee, Kentucky and Mississippi, began to grow and to take on the trappings of legal organizations. Prior to the turn of the twentieth century, as a consequence of the growth of the number of Black lawyers the first bar association organized by "colored lawyers" occurred in the state of Mississippi. The Colored Bar Association of the State of Mississippi held its first annual meeting in the city of Greenville. The keynote address of this inaugural meeting was made by Josiah T. Settle.^{5/}

^{3/} The theme of the Fifty-Fifth Annual NBA Convention is: "Challenges For Black Lawyers In The 80's: Communicating Solution Strategies For Self-Determination." See letter from President Robert L. Harris to NBA membership, May 1980.

^{4/} This paper is intended as a supplement to the on going efforts by the NBA to write its history and to complement existing literature on the NBA.

^{5/} Settle was graduated from the Howard College Department of Law in 1875, and was admitted to the D.C. Bar before he left to practice law in North Mississippi.

The "Greenville Movement" lives on today through the many affiliates of the National Bar Association. Josiah T. Settle and those associated with the "Greenville Movement" knew that their meeting would have a permanent impact upon a nation which excluded Black lawyers from the mainstream of the society and from the legal profession. However, these "colored lawyers" organized with a purpose and a vision of "the present and prepared to meet the demands of the future." As Josiah T. Settle stated in his keynote address:

[W]hoever thought that in [Greenville, Mississippi], would meet the first colored bar association ever organized in the United States? And I think I may safely say that never in the history of the race has there been a meeting fraught with more significance.^{6/}

Josiah T. Settle knew then that the survival of the Black lawyer required association and scholarship. He knew that the survival of "colored citizens" required Black lawyers capable of judicial agitation and creative jurisprudential thought. From the shadows of history, Josiah T. Settle's words ring out here

^{6/} See Josiah T. Settle, "The Colored Bar Association" in Thoughts, Doings and Sayings of the Race 50 (Edited by J.T. Haley, Nashville, Tenn., Sept. 1, 1895).

today in Dallas, Texas.

[The Colored Bar Association], of which this is the first annual meeting, marks the advent of the colored citizen into a new field of labor. It evidences the existence of a sufficient number of colored lawyers in Mississippi engaged in active practice of the law to form a State organization to promote their interests individually and collectively and in doing this they cannot fail to promote the interests of the entire race and to contribute to the general welfare of our common country, for we are as much a part of our composite nationality as any element it contains.^{7/}

It is important to note that access to legal training in the early days of the Black lawyer may be, on a comparative basis, no less than it is today. Today, many of our black youth are being discouraged from entering the legal profession because the people do not see the Black lawyer in corporate law firms, as corporation counsels in the major cities of our nation, as general counsels of major and small corporations. However, Josiah T. Settle and the lawyers of the "Greenville Movement" knew that the legal profession would be slow in its willingness to assimilate

^{7/} Ibid.

the Negro into a profession where the rule of law might be broadened to encompass the rights of racial minorities. Settle stated,

Many of our friends and all of our enemies discouraged us by saying that this was one profession in which we could not hope to succeed... We realized in the beginning that the undertaking to become practical lawyers, and to acquire such a mastery of the law as to enter favorably upon its practice, was a serious one and doubly so to us.^{8/}

Concerning the question of scholarship, the "Greenville Movement" concluded that "few men ever reach distinction in the law who were not thorough scholars." Said Settle, the legal profession requires more than an "oily tongue and vivid imagination. It requires real earnest work."^{9/}

The "Greenville Movement" was initiated because the participants believed that the established bar associations were not concerned about the "masses of [Black] people" yet, they knew that "[t]he bar has necessarily exercised the whole judicial power of this country."^{10/}

^{8/} Id. at 51.

^{9/} Id. at 52.

^{10/} Id. at 55.

The National Bar Association grew out of the "Greenville" Movement and the 1924 convention of the Iowa Colored Bar Association. While it is believed that lawyers from other states were in attendance, ^{11/} Dr. Genna Rae McNeil ^{12/} and others list the following twelve Black lawyers as attending organizational sessions; Chicago, Illinois: (1) Wendell E. Green, (2) C. Francis Stradford (3) Jesse N. Baker, (4) William H. Haynes, and (5) George C. Adams. Kansas City, Missouri: (6) L. Amasa Knox, and (7) Charles H. Calloway. Des Moines, Iowa: (8) Gertrude E. Rush (9) Charles P. Howard, (10) George H. Woodson, (11) James B. Morris, and (12) S. Joe Brown.

The National Bar Association is a product of the mid-western values of the Black lawyer. The person given credit for organizing the "Colored or Negro Bar Association" into a National

11/ S.J. Brown, Our Founder, 2 NBAJ 263, 264 (1944) Lawyer(s) from Nebraska who may have been in attendance, include Silas Robbins, the first Black lawyer in Nebraska (1889), H. J. Pinkett, Jesse Hutton, John Adams, Sr., John A. Pagg, Charles S. Davis, A. B. McCall, Ray Williams, E. H. Hall, and a Mr. Green. Additional research is required in so far as the Nebraska delegation to the 1925 meeting is concerned. I am indebted to Ms. Bertha Calloway, Director of the Black Plains Museum in Omaha, Nebraska, for providing me with these names as possible attendees. Ms. Calloway's reference comes from an unpublished manuscript by Attorney H. J. Pinkett, entitled, A Historical Sketch of The Omaha Negro 41, 75 (1937). See also, F. Dixon, Negroes of Nebraska 35 (Urban League of Nebraska 1939). (Also on file at the Black Plains Museum in Omaha, Nebraska). But see, E. Toles, History of the National Bar Association 23 (50th Anniversary Convention Program of NBA - 1975). Toles reports that the first action to form a National Bar Association was taken by Woodson in Chicago. S. J. Brown, who was a founder of the NBA and present during all of the initial meetings has written that the second, not the first meeting to organize the NBA occurred in Chicago. The first occurred in Des Moines, Iowa Id. at 264.

12/ See Genna Rae McNeil The National Bar Association, Incorporated, undated manuscript pending publication by Greenwood Press for inclusion in Encyclopedia of Black American Voluntary Organizations.

Bar Association is George H. Woodson. George H. Woodson, an 1895 law graduate of Howard Law School, was born in Wytheville, Virginia in 1865. Upon graduation from Howard Law School, Woodson went to Iowa where he practiced law until his death on July 7, 1933. Woodson was the first president of the Iowa Colored Bar Association, the first president of the National Bar Association, and served as Deputy Collector of U.S. Customs for the Port of Des Moines. He became the first Black citizen of Iowa ever nominated by Republicans as a state representative, and served as a U.S. Commissioner to the Virgin Islands.

II.

The NBA: Its Purpose

Founded in 1924 and incorporated in August 1925, the purpose of the National Bar Association was stated in the constitution as follows:

The advancement of the science of jurisprudence, and in addition to form a nation-wide organization of practicing attorneys of the Negro race in an endeavor to strengthen and elevate the Negro lawyer in his profession and in his relationship to his people; to improve his standing at the bar of the country, and to stress those values that would serve to enhance the ethics of his practice and conduct, to condemn actions that have a tendency to lessen respect for the lawyer and to create a bond of true fellowship among the colored members of the Bar of America for their general uplift and advancement and for the encouragement of the Negro

youth of America who will follow their choice of this profession.13/

In 1925 the question raised by some members of the bar was "should the Negro lawyer encourage and organize a separate bar association?" Today, I raise this question with you at this, the first plenary session of the NBA in this decade: "Should the Afro-American lawyer participate and support a bar association like the National Bar Association?" These questions loom over this convention, and while one could provide a ready answer of either yes or no, some analysis must first be made.

13/ R.P. Alexander, *The National Bar Association--Its Aims and Purposes*, 1 NATIONAL BAR ASSOCIATION JOURNAL (NBAJ) 1 (1941). I note that the current statement of purpose of the NBA has been modified. The current objects of the NBA appearing in Article II of the NBA Constitution reads as follows:

The objects of the Association shall be to advance the science of jurisprudence, improve the administration of justice, preserve the independence of the Judiciary of our cities, states and nation; to uphold the honor and integrity of the legal profession; to promote professional and social intercourse among the members of the American Bar and the International Bar; to promote legislation that will improve the economic condition of all of the citizens of the United States; to aid all citizens regardless of race, sex or creed in their efforts to secure a free and untrammled use of the franchise guaranteed by the Constitution of the United States; to protect civil and political rights of the citizens and residents of the several states of the United States.

Another version of the NBA "Constitution [Article II] and By-Laws" (probably adopted in the late 1940's) contains the following language:

The objects of the association shall be to advance the science of jurisprudence, uphold the honor of the legal profession, promote social intercourse among the members of the American Bar, and protect the civil and political rights of all citizens of the several states of the United States.

In 1930 there "were approximately eleven hundred Negro lawyers in America."^{14/} In 1940 that figure had increased by only 300 lawyers, raising the number of Negro lawyers in America to 1,400. In 1970 there were approximately 4,000 Afro-American lawyers. Today there are approximately 11,000 Afro-American lawyers. In 1925, the National Bar Association was concerned about the number of Black lawyers vis-a-vis the number of Black people in the nation and within certain geographical regions who might be without adequate representation. The concern for the dearth of Black lawyers today is no different than it was in 1925 and 1930; the plight of the Black lawyer today and his or her future requires much vigilance in which an organization like the NBA has a direct interest to monitor.^{15/} This is especially true in the area of law school admissions policies. In 1930, racial exclusionary policies were sanctioned by the courts. Today, the law of racial exclusion from schools of higher education has diminished. Even with the implementation of affirmative action programs to increase the number of minorities in the legal profession, Journals continue to report that there is a marked decline in the number of

^{14/} Id. at 2.

^{15/} See J.C. Smith, The Future of the Black Lawyer in America, before the Old Dominion Bar Association's Annual Meeting, Lynchburg, Virginia, May 26, 1979; J.C. Smith, The Future of The Black Lawyer in America--Part II: The Career Patterns of Black Lawyers in The 80's, before the National Conference of Black Lawyers Roundtable Discussion at the Georgetown National Law Center, Washington, D.C., March 13, 1980.

Black and Chicano applicants being admitted to several of the nation's major law schools.^{16/} Today, who can question the need for the National Bar Association?

In 1930^{17/} the National Bar Association was concerned, inter alia, about the discrimination of private and municipally owned and operated law libraries which excluded Black lawyers from their premises solely on the basis of race. Today, the number of Black lawyers in private practice has so drastically declined that most communities do not have to worry about Black lawyers using the library facilities. The decline of the private practitioner should be of much concern to the National Bar Association, for its membership base has shifted from the private lawyer to a corporate and government lawyer base. So serious is the situation that unless the decline in the private practice is reversed it may drop below the current estimated figure of 1,500, leveling off to approximately 1,000 by the year 2000.

The judicial appointment climate in 1925 was appalling as Black men and women were presumed incompetent to judge the majority. The Federal judiciary was segregated until the late William Henry Hastie was appointed as the nation's first Black Federal Judge in 1937. Today, the Bench is occupied by several capable, Black Federal and State Judges, who sit on the U.S. District Courts, various U.S. Courts of Appeals, and State Supreme Courts. The

16/ Ibid.

17/ Ibid.

Honorable Thurgood Marshall, who sits as the first and only Black member of the U.S. Supreme Court is revered and respected. However, recent judicial nominations by the President, even when supported by the U.S. Senate have run into high hurdles.^{18/} And, one outstanding jurist--my former law teacher from the Commonwealth of Virginia, James Edward Sheffield, has not been granted a hearing on his nomination because of political opposition.^{19/}

Historically, the National Bar Association has been dedicated to the notion that this nation cannot be legitimately governed without diversity in the third branch of government. This philosophy has frequently been expressed in resolutions passed by the NBA during its annual meetings. Such a resolution was passed in Chicago in 1945 during the 19th Annual Convention which stated, in part,^{20/}

^{18/} Kwitny & Landauer, "President Carter's Pick of Fred Grey for Judge in Alabama Draws Fire," Wall Street Journal, col. 1, p. 1, April 2, 1980; R.L. Harris, Federal Judgeships, 12 NBA Bull. 9 (April, May, June 1980).

^{19/} Smardy, "Black Judge Keeps Low Profile," Washington Star, col. 4, B-1, July 13, 1980; Worrell, Harry Byrd Vows a Fight, Washington Afro-American, col. 1, p. 1 (April 19, 1980); Rosenfeld, A Soft-Spoken Judge at the Center of Controversy, The Washington Post, col. 1, F-1, July 20, 1980.

^{20/} Highlights of the 19th Annual NBA Convention, 3 NBAJ 80, 83 (1945)(original emphasis). See also, Resolution 1, Midwest Regional Conference, Chicago, Illinois, 1 NBAJ and News 11 (Issue 2, 1960).

We recognize as a fundamental precept of our American democracy that no Negro should be denied public office anywhere, elective or appointive, on account of his race or color. Negroes should be integrated into the government structure of our nation on the same basis and equally with other citizens.

We recognize further that when the executive and legislative branches of our government fail to accord to all citizens their just rights, it is to the Courts that they must turn for the protection of the rights of minorities.

To a large extent Courts reflect in their interpretation of the law the attitudes of the judges who preside over their deliberations, and their attitudes to a great degree are the product of their background and experience.

It is important, therefore, to the approximately 14 million Negroes of the United States of America--as about one-tenth of the population of this nation--that their attitudes be represented in our Federal Courts through the appointments of some Negro lawyers as judges.

We therefore urge that Negro lawyers be given an opportunity to make their contribution, drawn out of their native ability, training and experience, to our judicial administration through appointment by the President of the United States to the various Federal courts of our land, from the Supreme Court on down; and that the President of the United States of America appoint some Negro lawyers to the federal departments requiring attorneys, and particularly as assistant attorneys general.

We recommend that a committee be named by the president of the National Bar Association to confer with the President of the United States of America to bring this matter to his direct attention. Such a step taken by the President of this Nation would go a long way toward assuring Negroes generally that they could secure real justice in our federal courts and would inspire increased confidence in our whole American system.

Hence, as much as any organized group in the nation, the National Bar Association has been the force to integrate the Judicial Branch of Government. The NBA can proudly take credit for the significant gains made for not only minority citizens of

the nation, but for the majority citizens whose rights have been protected by the decisions of American judges who happen to be Black.

By its efforts to increase the number of Blacks in the legal profession, and to increase the number of Blacks in the judiciary, and its agitation for social change by invocation of the rule of law, in the main, the NBA has never veered too far, or for too long from its purpose.

III.

Black Lawyers: Charting the Course for Universal Equality

That Black lawyers were proud to assume responsibility over litigation directly relevant to minorities in America is not well known or fully appreciated. The NBA has always recognized that the dearth of Black lawyers made it impossible for it to fight on all the legal fronts. In fact, those who have opposed the quest of Blacks to participate fully in every aspect of American life know that unless non-minority lawyers assist in the cause of freedom it will grind exceedingly slow for Black Americans. Therefore, the NBA has never objected to the offer of assistance from people of good will who volunteered to join Black lawyers in their fight for justice and equality; and, this is so today.

However, there is a thread of pride which runs through the literature which speaks to the obligation of Black lawyers

to chart their own course. Sidney R. Redmond spoke to this issue in 1941 when he wrote.

All of the early cases involving the rights of Negroes were handled by white lawyers, but in recent years practically all of them have been handled by Negro lawyers. The tide has turned, it is up to us to fight our own battles if we want to eliminate these illegal disadvantages. Those who suffer the wrong must surely bring the action and prosecute it vigorously.^{21/}

^{21/} Sidney R. Redmond, National Bar Day, 1 NBAJ 87, 89 (1941) (Redmond was an NBA president: 1939-1940). I generally concur with Redmond's statement, but it is not totally accurate. Many Black lawyers, at great risk to their lives, had handled "early cases" whatever the definition of "early cases" meant to Redmond. Robert Morris, the second Black lawyer in the nation's history, played an important role in the celebrated Boston case of Roberts v. City of Boston 59 Mass. (5 Cush), 198 (1850). See J.C. Smith, "One Lone Kid in Boston," The Washington Star, Editorial page A-12, col. 3, Sept. 5, 1975. Reprinted Vol. 121, Part 24 Cong. Rec. 31270 (introduced by Cong. Charles B. Rangel, N.Y.). However, Redmond's reference to "early cases" might reflect the fact that the Black lawyer voluntarily yielded his cases to white lawyers because of racist jury systems and the hope that white lawyers would fare better for their clients before some of these juries; and yet, by 1941, this impediment to justice remained. But see, Booker T. Washington, Negroes In Business, 233 (1907) and J.C. Smith, Black Lawyers In The United States (1840-1900), Vol. 121 Cong. Rec. E2758, 2759 (June 2, 1975) (Not all Black lawyers were discriminated against according to Booker T. Washington). For current thinking on the need for minority lawyers to assume a greater role in litigation, see, H. Burns, Black People and the Tyranny of American Law, 407 Annals 156, 165 (1973). See also, Revius O. Ortique, Jr., The National Bar Association--Not Just An Option, 53 Judicature 390, 392 (1970) (a former president of the NBA 1965-1966). ("Only through professionally trained advocates can Black people hope to achieve full citizenship rights, and even more to be accorded human dignity."); Robert L. Harris, President Speaks, 11 NBA Bull. 2 (Sept. 1979) ("As the legal arm of the Black community, the Black bar must become more vocal and visible in the struggle for equal justice and for civil rights. Trained in the art of advocacy and intellectual reasoning, who in the Black community is better prepared to examine these critical issues and expose inherent contradictions in policies of this country which affect the lives of Black Americans?") See also, Howard University Commencement Address of Judge A. Leon Higginbotham, Jr., "Time to Plead Our Cause," 7 New Directions (H.U. Magazine) 12 (July 1980).

Because of discriminatory conditions in the country, the Black lawyer was viewed by some as a liability including many persons within the Black race--for great odds faced Black defendants charged with crimes against white people, tried before a white judge and a white jury. These conditions drew Blacks to white lawyers at the expense of struggling Black lawyers, yet, the community had no other way to subsidize the Black lawyer, who it frequently called upon for services. This dilemma caused Sidney R. Redmond to say,

The sooner Negroes realize that every time they retain a colored lawyer and pay him a fee, they are paying a premium on their civil rights insurance, the sooner we will get justice and equality of opportunity. The matter rests with the people. 22/

The Black lawyer tried to lift the minds of Black Americans "conditioned to believe that, in the fields where the white man competes with the Negro for the Negro clientele, he is safer with the white man," said Arthur D. Shores. 23/ Shores believed that these "false notions" created "obstacles" overcome only by superhuman efforts by Black lawyers. 24/

22/ Sidney R. Redmond, National Bar Day, 1 NBAJ 87, 90 (1941).

23/ Arthur D. Shores, The Negro at the Bar, 2 NBAJ 266, 267 (1944).

24/ Ibid.

The superhuman efforts of Black lawyers is mentioned by Arthur D. Shores in the National Bar Journal in which he tells how he was physically abused "while in the corridor of the Court House" during a trial in the late 1930's or early 1940's.^{28/} Harassment of Black lawyers was often done by officers of the court. For example, Shores reports:

An attorney for the [NAACP] was struck, without provocation, by a white deputy sheriff in a courtroom in Tennessee. The lawyer, who was from Washington, D.C., had just finished arguing a case to compel Tennessee officials to admit a Negro to the University of Tennessee...^{29/}

Black lawyers have faced uncontrolled mobs leaving the courthouse, and even in the well of the courthouse itself. For example, Shores reports,

In Missouri, down near the Arkansas line, Attorney W.A. Cole of St. Louis was chased out of the court room and severely beaten for representing Negro defendants who had formed an organization to improve conditions of Negro sharecroppers. His clients were badly beaten in the court room immediately after the judge "conveniently" took a recess...^{30/}

Black lawyers and members of the NBA have charted a course for all of us to follow. The physical presence of the Black lawyer

^{28/} Arthur D. Shores, The Negro at the Bar, 2 NBAJ 266, 270 (1944).

^{29/} Id. at 270, n. 3. See also, Note on Judge Armond W. Scott, Washington Afro-American, October 16, 1979, at p. 5.

^{30/} Ibid.

is the greatest deterrent to authoritarian rule. The founders of the NBA and its membership have looked death in its eye for the cause of justice and freedom. This philosophy is the legacy bequeathed to the contemporary members of the NBA and the Black lawyers of America.

IV.

Blind Faith in the Courts

Perhaps the one reason why Black people in America never yielded to foreign influence or propaganda was their reverence to and almost blind faith in the third branch of government. This is so, even though in the early days the courts clearly did not demand such blind faith. However, it was the NBA that advocated that Black people resolve their grievances within the system rather than in the streets. The NBA vigorously opposed encouraging its members to join organizations whose purposes were contrary to the constitutional precepts Black lawyers were sworn to uphold.

The late 1930's and 1940's could have been vulnerable years for America with the high level of poverty, racism and unemployment among Blacks and with the nation engaged in war. However, the National Bar Association's leadership and members echoed a solid pro-American theme and cast their lot with the courts of the land. This theme is gleaned from a speech given by Euclid Louis Taylor, a president of the NBA (1941-1942), delivered at the American Legion Convention in Milwaukee, Wisconsin, in 1941. Taylor's speech, entitled, "Unite for Freedom," signaled to the

nation that the Black bar stood behind the flag.^{31/} But even with this public support of the national cause during war time, Taylor reminded the nation that the slogan, "Unite for Freedom," would be tested against demands calling for equality in the armed services, democratic suffrage, freedom from race discrimination by unions, parity in salaries and political presence in the country.^{32/}

Perhaps the faith placed in the judicial system by Black people and Black lawyers was their lack of confidence in the Executive and Legislative Branches of government when it came down to protecting the rights of minorities. While this perception is highly debatable, there is some evidence to validate this. As Eugene Washington Rhodes (NBA president 1933-1934) wrote in the Foreward to Negroes and the Law in 1937 authored by Fitzhugh Lee Styles:

The cause of the race will be advanced in exact proportion to the strength and militancy of the bar.

Disfranchisement, segregation and discrimination are issues which must be fought in American courts. The hope of colored Americans for a square deal depends almost entirely upon the proper interpretation of the law. The sole bulwark of protection for negroes are courts of the law. There is no other way out. (emphasis added) ^{33/}

^{31/} Euclid Louis Taylor, Unite for Freedom, 1 NBAJ 105 (1942).

^{32/} Id. at 111-112.

^{33/} Fitzhugh L. Styles, Negroes and the Law xi (Christopher Publishing House, Boston, 1937). But see, J. Dreyfuss, Black Faith in Law Undermined, 7 Equal Opportunity Forum 15 (July 1980).

As to the Legislative Branch, Arthur Shores has written:

Legislators, elected, as they are, every two years, may under the pressure of the times, enact certain laws without regard to the fundamental law of the state, namely the constitution. The only recourse the people have then is to the courts.

Pertaining to the Executive Branch, Shores stated:

The executive or administrative branch of the government may become arbitrary and oppressive in performing its function. Here again the only relief for the people is to appeal to the courts. The courts thereby become the chief assurance of the people of majority rule under the constitution with adequate protection to the minorities. 34/

Regardless of the reaction of Black lawyers to the views of Rhodes and Shores, few quibble about the position that the political future of Black people "does essentially and intimately concern the Negro Lawyer."^{35/} The Black lawyer, though few in number, has charted the path of Black Americans through the thickets of the racist, political, economic and social forests. The Black lawyer is and has been the legal conscience of America. And, even to this day, America presents a challenge to the Black lawyer similar to the challenge that Charles W. Anderson outlined before the NBA in 1945: "The Negro lawyer must continue to meet and attempt to solve the many problems that daily confront his race, and which retard the development of his people."^{36/}

34/ Arthur D. Shores, *The Negro at the Bar*, 2 NBAJ 266, 277-278 (1944).

35/ Charles W. Anderson, Jr., *The South's Challenge to the Negro Lawyer*, 3 NBAJ 29, 39 (1945).

36/ Ibid.

Black lawyers must continue to adhere to the philosophies of Euclid Louis Taylor, Arthur Shores and Charles W. Anderson, Jr., who were all leaders of the NBA. The debate of the supremacy of the U.S. Supreme Court and blind faith in the judicial system may from time to time have to be re-evaluated. The presidency wields much power and must be prodded to recognize the awesome power of the Black bar. The Congress is more difficult because of its numbers, but that should not deter the creativity of the Black lawyer to find ways to persuade, to guide and to provide adequate advice to legislative decision makers on major and vital questions which directly impact on the political future of Black people in America. The words that Charles W. Anderson, Jr., wrote in 1945 are worth reviewing: "...whenever the Negroe has political power, he has suffered less of the various forms of discrimination."^{37/}

V.

NBA & The Attorney General of the United States

Recognizing that the Executive Branch of government could be "arbitrary and oppressive" to Black Americans, the National Bar Association has always sought to have a close relationship to the Attorney General and the Deputy Attorney General of the United States. There is good reason for this. Black lawyers have always

^{37/} Id. at 35.

believed that the Attorney General--regardless of politics--should exercise the powers of the Executive Branch of government when the rights of Black people hung in the balance. Hence, a close review of available records, documents and discussions with senior members of the bar refute, in part, the notion that the Black lawyers primary interest in seeking a relationship with the U.S. Attorney General was to secure judicial appointments for Black lawyers. The NBA is and has been concerned about how this nation is governed as goverance relates to and applies to Black Americans, and others subject to the law of inequality.^{38/}

The concerns of the NBA should not be confused with its concern about judicial appointments. Since the founding of the NBA, its members have recognized the need to diversify the legal system and to diversify the systems controlling the judicial process. Hence, the litigation brought by Black lawyers to open the legal system to new concepts of law has greatly benefited more than just Black people. The efforts of the members of the NBA have given new life to our nation's constitutional order; these efforts now facilitate the equality of all groups who claim exclusion from America because of race, creed, religion, color, sex and national origin.

^{38/} See, NBA Meets With Top Federal Administrators, 8 NBA Bull. 3 (April/May 1976); Attorney General Griffin Bell Addresses The Judicial Council of the NBA, 9 NBA Bull. 6 (March 1977); Dunn, NBA Meets With Justice Department Re LEAA, 9 NBA Bull. 8 (Sept. 1977); Carl J. Character, The President Speaks, 9 NBA Bull. 2 (Jan. 1977).

Because of the relationship that the NBA has had and, in some cases, demanded from the Executive Branch, the NBA is now on the list that an Attorney General and the President of the United States must consult with on all matters of governance and not solely on the issue of judicial appointments.

An example of the vigilance of the NBA concerning the resurgence of the Klu Klux Klan was highlighted in 1941. In 1941--40 years ago--the Klan made an effort to resurface. Francis Biddle had been appointed Attorney General of the United States. The NBA gave him little time to settle into his job before a former president of the NBA, Raymond Pace Alexander, sent Biddle the following message, which I am privileged to quote, in part:

"We trust that Attorney General Biddle will quickly and thoroughly investigate the re-birth of the infamous Klu Klux Klan and find out what, if any, connection it has with other associations that have as their purpose the persecution of the Negro, the Catholic and the Jew. We want to know who it is who has suddenly given high sums to finance this most satanic of all anti-racial and anti-religious organizations. 39/

In April 1980, Robert L. Harris, the incumbent NBA president wrote a letter to U.S. Attorney General Benjamin Civiletti which could have been authored 40 years ago by Raymond Pace Alexander, concerning the Klu Klux Klan. Harris wrote, in part,

39/ Raymond Pace Alexander, Attorney General Francis Biddle, I NBAJ 146, 148 (1941).

This letter is to request that your office take immediate legal steps to ban the Klu Klux Klan (KKK) as an organization.

For more than 100 years, the KKK has not only advocated, but has in fact murdered thousands of Black Americans solely because of the color of their skin. It is time that this nation take affirmative steps to halt the operation of this group of killers. As you know, there is no constitutional right to organize a group with the specific purpose of murdering a race of people as has been the case with the KKK.40/

The relationship between the NBA and the Department of Justice over the years needs additional research for it may be one of the most significant relationships insofar as the protection of Black people as a matter of historical fact. Over the years, the NBA has probably issued several statements and written several letters to the Department of Justice about many people and groups bent on destroying minorities in America. A review of this material may provide great insight into the dedication of the NBA to preserve the rule of law and human rights for all Americans and the corresponding response of the Federal government to do the same.

Turning now briefly to another aspect of the NBA/Justice Department relationship, the NBA has been concerned since its very inception about affirmative action in the employment of

40/ Letter from Robert L. Harris, President of the NBA, to The Honorable Benjamin Civiletti, United States Attorney General, April 24, 1980. See, Resolution No. 10 of the NBA Board of Governors adopted on May 16, 1980, calling for the "Legal Abolition of the Klu Klux Klan," p. 17, which states, in part, "The acceptance of the continued existence of this criminal organization by the Justice Department of the United States makes a mockery of our justice system..." See also, Riley, Board Seeks To Ban Klan, 12 NBA Bull. 2 (April, May, June 1980).

Black lawyers in responsible positions in the Federal sector. However, it is believed that prior to 1975 no high level official of the Justice Department had ever admitted that cronyism may be the reason for the problem.

During the NBA's 50th convention in Washington, D.C., in 1975, Deputy Attorney General Harold Tyler addressed the assembly and admitted that "progress in the federal government for the Black lawyer is not what it should be."^{41/} Tyler not only indicated that cronyism is an obstacle to getting more Blacks into government legal positions, but said that the millenium has not arrived in so far as the appointment of Black judges and lawyers to elevated posts in the government.^{42/}

Hence, for over forty years the NBA has sought to broaden the sensitivity of the Department of Justice regarding Black Americans. That effort continues today.

VI.

The NBA and the Legal Aid Division

The National Bar Association has never been given credit for what is often popularly referred to as "poverty law." The National Bar Association was way ahead of "the War On Poverty"

^{41/} Thibou, Problems Defined For Black Lawyers, The Washington Post, col. 1, D-9, Aug. 20, 1975.

^{42/} Ibid. (Charles P. Howard, Jr., was president of the NBA in 1975).

programs of the 1960's which included funding legal clinics for the poor. Members of the National Bar Association were leaders of the pro bono movement at a time when they could least afford to provide free legal services to the poor; and, as Professor Herbert O. Reid, Sr., has stated, "before poverty law became profitable."^{43/}

Yet, in the 1940's, even though the number of Black lawyers barely exceeded 1000 nationwide,^{44/} the National Bar Association attempted to establish "free legal clinics in all cities with a colored population of 5,000 or more."^{45/} The purpose of clinics was to

...advise and assist indigent persons in need of competent legal advice. These clinics also render assistance to Negroes accused of crime who are unable to retain a lawyer and especially if the case is one in which the defendant will likely suffer because of the facts involved.^{46/}

^{43/} This remark was made by Professor Reid during a speech before the Annual Meeting of the National Conference of Black Lawyers on June 21, 1980, Washington, D.C. Professor Reid is the Charles Hamilton Houston Distinguished Professor at the Howard University School of Law, Washington, D.C.

^{44/} Tollett, *Black Lawyers, Their Education, and the Black Community*, 17 *How. L. J.* 326, 332-333 (1973).

^{45/} Sidney R. Redmond, *National Bar Day*, 1 *NBAJ* 87, 88 (1941).

^{46/} Ibid.

The legal clinics were established in eleven states and were managed by a cadre of superb Black lawyers.^{47/} In the first report by the National Director of the NBA Legal Aid Division Henry J. Richardson, Jr., he rightly predicted: "If we have the indomitable courage and cooperative morals required to put over the Legal Aid Program, it will be referred to in generations to come as the threshold of the Negro's honorable status as a citizen."^{48/}

By legal activism, the legal aid program inaugurated by the NBA was designed to highlight its approach to solving the race problems; Richardson stated,

The united effort of the National Bar Association as a unit and local bar activity supported by and reaching all groups and classes of citizens in need of legal aid will distinguish our principle of democratic jurisprudence from the related though woefully limited activities of other militant organizations. ^{49/}

^{47/} Georgia (A.T. Walden-Atlanta); Tennessee (A.A. Latting-Memphis); Oklahoma (J.J. Bruce-Oklahoma City); California (Thomas L. Griffith, Jr.-Los Angeles); New York (Julian J. Evans-Buffalo); Maryland (A.C. Hughes, Jr.-Baltimore); Florida (S.D. McGill-Jacksonville; L.E. Thomas-Miami); Michigan (Percival R. Piper-Detroit); Missouri (R.L. Witherspoon and Sidney R. Redmond-St. Louis); Southern Illinois (Louis F. Orr-East St. Louis); Northern Illinois (Loring B. Moore, Horace E. Galloway, McHenry Kemp, Jesse Mann and Thomas E. Hunter-Chicago); Ohio (Harry E. Bonaparte-Columbus); Indiana (Mercer M. Marice, Howard R. Hooper). Henry J. Richardson, Jr., Report of the Legal Aid Division of the National Bar Association, Inc., 1 NBAJ 130 (1942).

^{48/} Ibid.

^{49/} Id. at 132. cf. Ronald S. Samuels, The New Legal Services Program, A Promise Or A Threat, 9 NBA Bull. 6, 7 (April 1977).

Poverty law and legal clinics to aid the poor and to provide a sense of security for the Black community which exist today can be traced to the legal aid movement initiated by the NBA in 1940. Like so many other contributions of the NBA, this one, too, has been overlooked.

VII.

The National Bar Association Journal

One of the objects stated in the first constitution of the NBA and each rewrite of the constitution was "to advance the science of jurisprudence...." Since Blacks were foreclosed from publishing in most of the recognized scholarly journals in the nation, the NBA established its own Journal. Programmatically, the National Bar Journal was established in 1941 by the NBA to implement this vital concept. That lawyers should write scholarly articles for educating the "colored lawyer" was a tenet of the "Greenville Movement." The Journal became a platform for Black lawyers from which to speak and to challenge legal principles contrary to the interests of Black Americans. The Journal became an instrument to articulate, to mold, to structure and to create "the science of jurisprudence." The founders of the Journal were well aware of the fact that the courts often referred to Journals to formulate opinions. The NBA Journal was founded to provide the courts of this land with an alternative scholarly view on matters of race.

Raymond Pace Alexander from Philadelphia, Pennsylvania, is acknowledged as the founder of the National Bar Journal. Alexander (Harvard Law College, 1923), who was president of the NBA between 1931-1932, made the original recommendations at the Annual NBA convention in Pittsburgh, Pennsylvania in 1938. The first Board of Editors^{50/} of the NBA Journal, chaired by the Editor-in-Chief Freeman Lenore Martin (St. Louis, Mo.) acknowledged Raymond Pace Alexander for his,

'...invaluable assistance...whose collaboration made this National Bar Journal possible; his great ability, unselfish service and fine spirit of co-operation were used to achieve a standard of highest rank in the dissemination of legal information and diffusion of gainful knowledge so essential to the general welfare and progress of Negro Lawyers everywhere and our racial group.^{51/}

50/ The first Board of Editors included, Dr. Charles Hamilton Houston (Washington, D.C.), George W. Crockett, Jr. (Washington, D.C.), Sadie Tanner Mossell Alexander (Philadelphia, Penn.), Harry J. Capehart (Welch, West Virginia), Perry Jackson (Cleveland, Ohio), Sidney Redmond (St. Louis, Mo.), Oscar W. Baker (Bay City, Mich.), William T. Garvin (New York, N.Y.), A.A. Latting (Memphis, Tenn.), S.D. McGill (Jacksonville, Florida). Each of these lawyers was a person of prominence in his/her community and was considered a national figure. Each of these lawyers was orientated toward both the practice of law and excellence in the development of scholarship in the law.

51/ 1 NBAJ 92 (1941).

Sidney R. Redmond (St. Louis, Mo.), was president of the NBA ^{52/} when the Journal was issued in July 1941, and Redmond articulated the importance of the National Bar Journal in his National Bar Day speech. He stated,

In order to consolidate our gains, to promote interest in this fight for equality, to enable colored lawyers to contribute to the jurisprudence of our country, and to bring lawyers in closer contact, the National Bar Association is publishing a bar Journal... ^{53/}

For nearly 10 years the National Bar Association issued Journals on a broad range of subjects. Apparently, strapped by waning membership interest and insufficient cash flow in membership dues, the publication's destiny seemed doomed. This mood was amply expressed by J.R. Booker in his president's message to the NBA membership in May 1950. Booker stated,

Unfortunately, the interest of the membership is not fully pointed toward the importance of the National Bar Journal. Not

^{52/} Redmond was president of the NBA between 1939-1941. He received his A.B. from Howard University in 1926 and his LL.B from Harvard Law College in 1929. At the time, he was also president of the St. Louis Chapter of the NAACP.

^{53/} Sidney R. Redmond, National Bar Day, 1 NBAJ 87, 88-89 (1941).

only does the Journal depend upon continued membership and the payment of the membership dues punctually, but it also depends upon noteworthy and interesting articles being transmitted to the editor of the Journal for publication. We have been derelict in the performance of our duty toward this valuable aim of our associational activities.^{54/}

And so, by 1952 only ten issues of the National Bar Journal had been published. It took twenty-six years before the National Bar Association published Volume 10, Number One, of the National Bar Journal,^{55/} during the presidency of Junius W. Williams.^{56/} No

^{54/} Note, 8 NBAJ 69 (1950) (Booker (Little Rock, Ark.) was president of the NBA from 1949-1950). See also, letter from Scovel Richardson, Secretary of the NBA to the membership, 8 NBAJ 72 (1950).

^{55/} Fortunately, in January 1954, the Howard University School of Law, Washington, D.C., began to publish the Howard Law Journal, closing the scholarship gap among Black lawyers and provided the legal community with legal ammunition to balance the jurisprudential matrix. Today, The Howard Law Journal continues to play a significant role in Journal scholarship for Black lawyers, and the judiciary, the legal profession, and Black Americans.

^{56/} Junius W. Williams (Newark, N.J.) served as president of the NBA between 1978-1979.

Journal has been published since. ^{57/}

A review of some of the issues which faced the National Bar Association and Black Americans can be identified, in part, by reference to the published issues of the National Bar Journal. When reviewed, it is clear that many of the issues which faced Black Americans in the 1940's are present today. Such issues include equal pay for equal or comparable work, ^{58/} racism by unions, ^{59/} the general status of Blacks as citizens, ^{60/} the right to vote, ^{61/}

^{57/} This statement is qualified to the extent that in 1960 the NBA did re-establish a NBA Journal and News during the presidency of Elmer C. Jackson, Jr. However, it was apparently never intended to replace the National Bar Journal because it was published as a new Volume One. Its format was entirely different as it focused on news and pictures of the membership and the business meetings of the NBA, and it contained hardly any scholarly articles similar to the previous Journals. The NBA Journal and News has since been replaced with the current NBA Bulletin, cited herein as NBA Bull.

As late as 1970, Revius O. Ortique, Jr., a former president of the NBA, wrote that the NBA Bulletin was "not a satisfactory substitute" for the NBA Journal. Ortique throws some light on the plight of the Journal. He said, "Prior to the high cost of printing, NBA published the NBA Journal, which presented scholarly writings relative to problems affecting the rights of blacks throughout the country. About 1952 or 1953 it became necessary to discontinue this publication and to resort to a newsletter." Revius O. Ortique, Jr., The National Bar Association--Not Just An Option, 53 Judicature 390, 391 (April/May 1970).

^{58/} George W. Crockett, Jr., The Employee Remedy Under the Fair Labor Standards Act, 1 NBAJ 16 (1941).

^{59/} Harry J. Capehart, Negro Workers Face the American Labor Front Under The National Labor Relations Act, 1 NBAJ 65 (1941).

^{60/} C. Francis Stradford, What Constitutes Citizenship, 1 NBAJ 45 (1941).

^{61/} Z. Alexander Looby, New Slants On The Ballot, 1 NBAJ 174 (1941).

legal aid for the poor,^{62/} racism in the armed services and inequities in the draft,^{63/} urban removal and race restriction on the use and sale of land,^{64/} difficulties by Blacks to pass the bar examination,^{65/} and police brutality.^{66/} The Journals also demonstrate that the Black lawyers were interested and concerned about world peace and^{67/}

62/ Henry J. Richardson, Jr., The Legal Aid Division of the National Bar Association, 1 NBAJ 130 (1941).

63/ William Henry Hastie, Legal Aspects of Racial Discrimination In the Armed Forces, 2 NBAJ 17 (1944).

64/ Loren Miller, Race Restrictions on the Use or Sale of Real Property, 2 NBAJ 24 (1944).

65/ Arthur D. Shores, The Negro At The Bar, 2 NBAJ 266-267 (1944).

66/ Sidney R. Redmond, National Bar Day, 1 NBAJ 87, 88 (1941). In his last message to the NBA membership, Robert L. Harris focused on police brutality and the Miami Riots of 1980. See, The President Speaks, 12 NBA Bull. 1 (April, May, June 1980).

67/ Perry W. Howard, The United Nations Conference, 3 NBAJ 291 (1945); Vincent Monroe Townsend, Jr., The United Nation's Organization--Its Mechanism and Possibilities, 3 NBAJ 333 (1945), (Townsend was one of the official observers for the NBA at the U.N. Conference on International Organization in San Francisco, California, on April 25-June 29, 1945). Today, the NBA and its members remain vocal on questions of international law and policy. A glance at the history of the NBA justifies this interest. See Junius W. Williams, President of the NBA, Letter to President Jimmy Carter re: Continuation of Economic Sanctions Against Rhodesia, 11 NBA Bull. 1 (May 1979); Note, New York Black Summit Forges U.S. Foreign Policy, 11 NBA Bull. 1 (Oct. 1979); Robert L. Harris, President Speaks, 11 NBA Bull. 2 (Sept. 1979); Robert L. Harris, President Speaks, 11 NBA Bull. 2 (Dec./Jan. 1979-80); R. Arnold, The Changing Standards of International Law, 11 NBA Bull. 4 (Dec./Jan. 1979-80); William S. Thompson (former president of NBA), Eighth World Law Conference To Be Held In Manila, 9 NBA Bull. 9 (Jan. 1977); Judge William S. Thompson, Re-Elected Secretary-General of the World Peace Through Law Center, 12 NBA Bull. 3 (Feb. 1980); J.C. Smith, Minority Participation in International Trade, 12 NBA Bull. 3 (March, 1980); J.C. Smith, World Peace Through Law, 22 Federal Bar News 245 (1975); Curtis T. White, Uprooting the Squatters, 34 Foreign Policy 148 (1979); J.C. Smith, The Application of Title VII of The Civil Rights Act and Its Underlying Principles to International Law and Custom, Vol. 72, BNA Daily Labor Reporter A-11, E-1 (April 12, 1979).

telecommunications policy.^{68/} Other important concerns of the Black bar included a review of the trends of the United States Supreme Court,^{69/} federal jurisdiction,^{70/} licensing revocation as a remedy to enforce civil rights laws,^{71/} and the promotion of the arts and sciences.^{72/}

^{68/} Note, Radio--Program Control, 6 NBAJ 14 (1948); Book Review, 6 NBAJ 64 (1948). It has taken over 30 years, but today there are members of the Black Bar interested in and writing about telecommunications policy. See Edward Hayes, Jr., Satellite Communications: The Technology Of The Future Has Arrived, 12 NBA Bull. 1 (Feb. 1980); D. Humphries, The Image Of Black Lawyers In Communications, 2 Air Time 1 (Aug. 1976) (National Association of Broadcasters); J.C. Smith, The FCC and the FTC, 32 Adm. L. Rev. 457 (1980); C. McKee, "A Few Issues And Concerns Related To Minority Ownership Of Broadcast Facilities," before the National Association of Broadcasters and the National Association of Black-Owned Broadcasters on Minority Ownership, Washington, D.C. (unpublished) (Sept. 20, 1979); J.C. Smith, The Broadcast Industry and Equal Employment Opportunity, 30 Labor L.J. 659 (Nov. 1979); J.C. Smith, Primer On The Regulatory Development Of CATV (1950-1972), 18 How. L.J. 729 (1975); and see, Testimony of J.C. Smith on Rewrite of the Communications Act of 1979, Vol. II, Part I Hearings before the Subcommittee on Communications, 96 Cong., 1st Sess. 377-400, 433-36 (1979). Note, Former FCC Chief Attorney Highlights History of Commission's Black lawyers and Engineers, 5 Air Time 10 (Jan./Feb. 1979) (National Association of Broadcasters).

^{69/} Oscar W. Baker, Jr., Trends of the United States Supreme Court Decisions as Affecting Negroes' Rights, 1 NBAJ 30 (1941).

^{70/} William T. Coleman, Jr., The Effect of the Presence of a State Law Question on the Exercise of Federal Jurisdiction, 5 NBAJ 238 (1947).

^{71/} Gertz, Enforcement of Civil Rights Laws Through Municipal Licensing Power, 4 NBAJ 43, 48 (1944).

^{72/} Charles W. Anderson, Jr., The South's Challenge to the Negro Lawyer, 3 NBAJ 29, 39 (1945). (Anderson, (Louisville, Ky.) was president of the NBA 1943-1944).

This sampling of scholarship reflects an abiding faith by Black lawyers in the principle of free speech, the unyielding fidelity to the rule of law and the use of law as a tool for social engineering.^{73/} The faith of this scholarship lives on today. This faith cries out for reactivation of the National Bar Journal on a regular basis.

VIII.

The NBA And The Amicus Brief

The National Bar Association recognized early in its existence that significant decisions by the courts would enhance or inhibit the political, social and economic future of Black America. Yet, the NBA recognized that unless it participated as amicus curiae before the courts the voices and the interests of Black people would not be heard. Hence, one of the vehicles of free speech and agitation used by the NBA has been the tool of the amicus brief. The amicus brief has often been the only voice of Black people before the courts of this nation. Fortunately, the NBA has been able to rally dedicated volunteers to prepare these briefs which in many instances have altered the course of American jurisprudence and American history. In 1941, Sidney R. Redmond was proud to indicate that the NBA "ha[d] filed briefs amicus curiae before the United States Supreme Court and other courts in matters of vital interest

^{73/} You will also note that many of the authors of the above articles stand out today as historic players in the quest for pure legal existence. J.C. Smith, *Towards a Houstonian School of Jurisprudence and the Study of Pure Legal Existence*, 18 *How. L. J.* 1 (1973).

to the race."^{74/} Redmond was quick to emphasize that "the lawyers who are leading the crusade for equality of rights for Negroes are active members of the National Bar Association."^{75/}

The number of amicus curiae briefs that the NBA has filed before the U.S. Supreme Court and the success rate of such filings are matters for future research. However, it is generally known, recognized and accepted that when the NBA files a brief before the U.S. Supreme Court, it becomes a matter which the Court pays special deference.^{76/}

IX.

The NBA And The Afro-American Woman Lawyer

I have elsewhere discussed Black women at the bar.^{77/} However, the role of women in the National Bar Association deserves mention today. From the very beginning of the National Bar Association

^{74/} Sidney R. Redmond, National Bar Day, 1 NBAJ 87, 88 (1941).

^{75/} Ibid.

^{76/} See brief filed by the NBA, et al., Regents of the University of California v. Bakke on June 7, 1977, by Herbert O. Reid, Sr., and J. Clay Smith, Jr., counsel. Referring to this brief, Associate Justice Thurgood Marshall hailed it as "the best brief." Speech by Associate Justice Thurgood Marshall, on November 18, 1978, at the Howard University School of Law on the occasion of the Investiture of Dean Wiley A. Branton, and the Dedication of the James Cobb Moot Courtroom, 8 The Barrister 3 (Jan. 15, 1979). (over 60 briefs were filed in the Bakke case.) Note, NBA is signatory to Bakke Amicus, 9 NBA Bull. 1 (June, 1977); Bakke Case To Be Heard, 9 NBA Bull. 1 (Oct. 1977); Supreme Court Decides Bakke, 10 NBA Bull. 1 (July 1978).

^{77/} See supra n. 15.

women have participated in the affairs of the Association.^{78/} In fact, the NBA has the distinction of having a woman as one of its co-founders: Gertrude E. Rush, from Des Moines, Iowa.

One of the most influential women in the National Bar Association's history is Dr. Sadie Tanner Mossell Alexander, who for nearly a decade was Secretary of the NBA. Dr. Alexander, though married to Raymond Pace Alexander, was distinguished in her own right. In 1918 she received her Bachelor of Science degree from the University of Pennsylvania with honors; in 1919 and 1921 Dr. Alexander received her Master of Arts and the Doctor of Philosophy degrees from the University of Pennsylvania. Subsequently, Dr. Alexander received her LL.B. degree from the University of Pennsylvania in 1927 and, as a student, served on the Law Review

^{78/} The Women's Division of the NBA was approved in October 1972. Various chapters of the Division have been initiated throughout the United States. They are involved in a host of activities including the honoring of the achievements of Black women lawyers. See Trescott, "Firm Acclaim for Women in Law," The Washington Post, col. 1, Section C-4, June 24, 1980.

Available information indicates that in 1947, six members of the Washington Bar Association planned the entertainment "for visiting women lawyers" when the NBA met in the District of Columbia; namely, Miss Wihelmina Jackson, Mrs. Isadore A. Letcher, Miss Ollie M. Cooper, Ms. Margaret Hawthorne, Charlotte Pinkett, Mildred M. Alexander and Bessie Chase. Afro-American News, November 15, 1947, at p. 26. In 1943, during the NBA convention in Baltimore, Maryland, Ollie M. Cooper, L. Marion Poe, Isadore Letcher, Georgia Jones Ellis, Margaret A. Haywood, and Bessie J. Chase were in attendance. Pittsburgh Courier, December 4, 1943. Many of the same women lawyers were in attendance during the 1948 convention held in Atlanta, Georgia. Atlanta Daily World, September 19, 1948. I am deeply indebted to Ollie M. Cooper for the substance of this footnote. See J.C. Smith, Ollie May Cooper: "The Real Dean" of the Howard University School of Law, 23 How. L. J. 365 (1980). Afro-American women barristers have attended NBA conventions throughout its history. These women are highlighted because their participation merited public recognition and press coverage in the 1940's.

and the Law Review Editorial Board from 1926-1927. Admitted to the Pennsylvania Bar in 1927, she was involved in an organization known as the National Association of Women Lawyers, as well as the National Bar Association.

Concerning women, in a speech given before the 1939 Juridical Congress of Lawyers of the Republic of Haiti, and later published in the National Bar Journal, Dr. Alexander stated,

There are fifty-seven women of the Negro race/ admitted to practice before the various courts of the United States. They therefore constitute about five percent of the Negro Bar in America. Geographically, they are distributed as follows: One each in Indiana, Michigan, Missouri, Oklahoma, Oregon, Minnesota, Pennsylvania, Rhode Island, and Wisconsin; three each in Virginia and California; four in Massachusetts; four in the District of Columbia; six in Ohio; eleven in Illinois; and twelve in New York. 79/

To my knowledge, during the initial decade of the National Bar Journal, no other article appeared on the specific subject of women; and, no other article was published that was authored by a woman, until Volume 10, No. One was published--twenty-six years after Volume 10. 80/

79/ Sadie T. M. Alexander, Women as Practitioners of Law in the United States, 1 NBAJ 56, 61 (1941). "This accounts for fifty-two of the fifty-seven women admitted to practice before the various state courts. Three of the remaining number are deceased, and the present location of the other two is unknown." Ibid. See also, Moore, Overdue Honor For Sadie Alexander, Philadelphia Inquirer, col. 3, 3-B March 25, 1979.

80/ In Volume 10, No. 1 of the NBAJ dated 1978-1979, articles on Title VII of the Civil Rights Act were authored by the following women: Ruth Harvey Charity (Virginia), Gabrielle Kirk McDonald (Texas), Joan M. Wilbon (District of Columbia) and Eleanor Holmes Norton (District of Columbia).

Available records reflect that women have held key committee assignments, served on the Resolution Committee, the Nominations Committee, as officers and on the Board of Governors, filed amicus briefs before the U.S. Supreme Court. However, to date no woman has served as president of the National Bar Association.^{81/} In the not

^{81/} Many women attorneys have held significant posts in the NBA, including Ollie May Cooper, Allie Latimer Weeden, Ruth Harvey Charity, Jewel Stradford Rogers LaFontant, Wilhelmina Jackson Rolark, Georgia Jones Ellis, Arthenia L. Joyner, Renee Jones Weeks, Arnette Hubbard, Lucia T. Thomas, and Leona Pouncey Thurman, to name a few. There are several other women who have contributed to the growth and development of the NBA over the years. A review of many of the articles cited in this paper will prove helpful for further research on this subject. In connection with the women listed above see, Seventh Annual NBA Convention Program (held in Cleveland, Ohio, in 1931) (Georgia Jones Ellis listed as vice-president); 9 NBA Bull. 1 (Sept. 1977)-(Ruth Harvey Charity noted as "First Female Vice President in Recent Times"); 7 NBA Bull. 5 (June 1975)-(Allie L. Weeden was secretary of the NBA and unsuccessfully contested against Carl J. Character for the presidency); 7 NBA Bull. 1 (June 1975)-(Wilhelmina Jackson Rolark served as national secretary); 9 NBA Bull. 9 (July 1977)(Arthenia L. Joyner is serving as national treasurer); 11 NBA Bull. 3 (1979)-(Annette Hubbard serves as national secretary); 9 NBA Bull. 13 (Sept. 1977)-(Renee Jones Weeks has served in several local offices and is currently a national vice president). See also, 10 NBA Bull. 5 (Jan. 1978) and 11 NBA Bull. 4 (Jan. 1979). Lucie T. Thomas and Leona P. Thurman are listed in Toles, History of The National Bar Association, 23-26 (50th Annual Convention Program, 1974).

Today, Ollie May Cooper is one of most senior women members of the NBA. She also served as a National Assistant Secretary. See n. 76, supra; J.C. Smith, Washington Bar Association Establishes the Ollie Cooper Award, 11 NBA Bull. 6 (Feb. 1979).

In 1973 Wilhelmina J. Rolark founded the National Association of Black Women Attorneys (NABWA), a group which is separate from the NBA. However, it seems that NABWA could facilitate the growth and development of the National Bar Association by the language in an article about NABWA in the NBA Bulletin. The article stated, "Women have always played a significant role in NBA...and lawyers such as Mrs. Rolark are continuing to make NBA a vital link in world justice." 7 NBA Bull. 1 (June, 1975).

too distant future this metaphysical accident is likely to be corrected. A bar association co-founded by a woman over a half century ago deserves to have a woman elected as its president before the close of this decade in recognition of the union of gender which gave birth to the National Bar Association.

X.

NBA Policy Of Encouragement Of Black
Youth To Choose Law As A Profession

The pioneers of the NBA recognized from the very beginning that in order to increase the number of Black lawyers in this nation young people must be encouraged to consider law as a career. In fact, this policy was considered important enough to be in the original constitution of the NBA.^{82/} Nearly 20 years later NBA convention resolutions continued to contain statements concerning the encouragement of Negro youth to enter the later profession. During the 18th Annual NBA Convention held in Baltimore, Maryland, the NBA passed a resolution consistent with the policy set forth in 1925. The resolution stated,

Encouragement should be given the Negro youth of the country to enter the field of law. To this end, we recommend the appointment of a committee to contact the colleges of the nation. The per-

^{82/} See language cited by R.P. Alexander, The National Bar Association--Its Aims and Purposes, 1 NBAJ 1 (1941).

sonnel of the committee to be drawn from various sections of the country.83/

The theme of this resolution was adopted again in 1945 at the Cleveland, Ohio, meeting of the NBA. It is within the Cleveland resolution that the NBA specifies the reason why it believes that "colored youth" must be encouraged to enter the legal profession.

It stated,

Since there is a direct relation between the number of representatives in the courts and the measure of protection afforded colored American citizens, the National Bar Association urges more and more young colored Americans to pursue the study of law...84/

In 1972, during the 46th Annual NBA Convention in Atlanta, the NBA tried to organize a student division. According to one source, "For the first time, law students had been officially invited to the NBA convention to organize their own [division]^{85/}". At that time, the number of Black law students equaled the number of Black lawyers in the nation. Most of these students were enrolled

83/ 2 NBAJ 80, 81 (1944). This issue of the Journal reflects that Louis Rothschild Mehlinger, among others, served on the Resolutions Committee. In 1925, Mr. Mehlinger was a co-founder of the Washington Bar Association in the District of Columbia. At 98 years of age, at the writing of this paper, Mr. Mehlinger lives and still practices law in the District of Columbia. He remains committed to the Baltimore resolution of "getting more colored young people into the legal profession." Telephone conversation: Mehlinger and J.C. Smith, July 11, 1980. In connection with Mehlinger, see also, Meyer, The Only Colored Man...At Justice, The Washington Post, col. 1, A-18, April 11, 1976.

84/ NBA Resolution, 4 NBAJ 91, 97 (1946).

85/ J. Dreyfuss, The National Bar Association, 2 Juris Doctor 22 (Jan. 1972).

in predominantly white schools. The student division concept fell apart as the generation gap, militancy and opposition by Howard law students to the Black American Law Student Association^{86/} majority which would have dominated the Division. There is some indication that the NBA leadership may have been concerned about losing control of the NBA to a student group.^{87/} The NBA may have lost a real opportunity to capture the student population at that time. Today, a student division of the NBA exist and is growing. Only time will tell whether the division will facilitate the membership base of the NBA.

The obligation of the NBA to formulate programs encouraging minority youth to consider law as a career option and to formulate programs within the NBA for law students is as vital today as it was in 1925. To the extent that this policy direction has not been pursued is the extent to which the wishes of the founders of the NBA have not been realized.

XI.

The NBA, NCBL and Other Black Legal Organizations

The National Bar Association has not been totally free from competitive forces. In December 1968, seventeen Black lawyers, some of whom were active members of the NBA, became dissatisfied with the direction of the NBA and moved to establish another group:

^{86/} Id. at 23.

^{87/} As Dreyfuss pointed out, "The challenge of sheer numbers poses a threat to the very makeup and orientation of the NBA..." Ibid.

The National Conference of Black Lawyers (NCBL).^{88/} Various reasons have been given for the causes precipitating the schism. However, some of the main reasons given by the founders of NCBL was that the NBA had lost its mission as an advocacy organization and had slipped into a country club environment, at a time when the nation was living in the post-Martin Luther King era and in the midst of the Vietnam War, and "law and order" politics.^{89/} This, of course, is disputed by some of the members of the NBA. NCBL continues to exist and continues to be involved and is considered by some to be a more activist organization.

Discussions have ensued by the NBA and NCBL Boards of Governors separately and collectively to bury their differences and to reunite. Only time will tell whether NCBL will return to the NBA. Both NBA and NCBL actively court membership of Black graduates from major

^{88/} The Declaration of Concern and Commitment establishing NCBL was issued on December 7, 1968, in Capahosic, Virginia and states, in part, "Today as virtually never before in our history, Black communities across the nation face a crisis of racism which threatens not merely our constitutional rights but our homes, our safety, and our survival... If the Black revolution demands that Black attorneys organize for a mutual exchange of plans and programs for a major effort to achieve dignity and a fair share of power for Black people, we must do it... There is no existing institution of the legal profession as presently constituted available to address itself to the problem of white racism as it affects substantial justice for the Black Americans of this country." See 1972 Report of The National Conference of Black Lawyers and the Ten Year Report, A Decade In Defense of Human Rights 1968-1978 (emphasis added). Note, Clark & Clark, The Black Lawyer, 3 Black Enterprise 14, 17, 48 (1973).

^{89/} See J. Dreyfuss, The National Bar Association, 2 Juris Doctor 22 (Jan. 1972).

American law schools and support programs to increase the number of Black lawyers and other minorities.^{90/}

In recent years, the leadership of the NBA and NCBL has stabilized and it has become traditional for the Executive Director or co-chairperson^{91/} of NCBL to be given deference at NBA functions, and vice-versa. In fact, concerning some issues, both groups have worked closely together to advocate for Black lawyers and Black people.^{92/} Indeed, the National Bar Association Bulletin^{93/} has allowed space to NCBL to report on its activities. In one of his presidential messages, Junius W. Williams diplomatically expressed the cooperative spirit during the NBA Mid-Winter Conference in New York City, where NCBL's National Headquarters is

^{90/} Both NCBL and the NBA have supported the Council on Legal Education Opportunity (CLEO), created in 1968 to increase the number of lawyers from economically and educationally disadvantaged backgrounds. Both the NBA and NCBL view the Black American Law Students Association, Inc. (BALSA) and graduates from the Howard and North Carolina Central Law Schools as potential members. J. Dreyfuss, The National Bar Association, 2 Juris Doctor 22 (Jan. 1972). BALSA was founded in 1967 at New York University Law School. BALSA has chapters in many American law schools and NCBL has traditionally allowed the National BALSA chairperson to sit as a member of its Board. Likewise, the NBA has allowed BALSA leadership access to Board participation. See Harris & Burke, NBA Reaches Out To New Bar Admittees, 9 NBA Bull. 11 (Jan. 1977).

^{91/} NCBL has co-chairs of both genders.

^{92/} For example, there was much discussion between the groups in preparation of their independent filings in Regents of the University of California v. Bakke, 438 U.S. 265 (1978). Note, NBA on Bakke Case, 9 NBA Bull. 1 (Jan. 1977). In fact, representatives from NBA, NCBL and CLEO met in November and December of 1976 to formulate legal strategies regarding the Bakke case.

^{93/} Note, NCBL's 1978 Delegation to Cuba, 11 NBA Bull. 6 (Jan. 1979).

situated. Williams said,

This conference was also testimony to the working partnership between the National Bar Association and the National Conference of Black Lawyers [NCBL], the fulfillment of one of the goals of this Administration. Many of the panelists and strategists were members of both organizations, and it did not go unnoticed that a spirit of cooperation existed between NBA and NCBL.^{94/}

It is difficult to estimate the impact of so many Black legal organizations in America when the number of Black lawyers remains so pitifully few. In the not too distant future the time may come for a serious review of the proliferation of interest oriented Black legal organizations, if for no other reason than the cost of membership, may exceed the ability of many Black lawyers to pay for membership in these groups,^{95/} or to participate effectively therein, or to plan a unified legal agenda for the next century. Without sound financial membership bases, the ability of these organizations to provide services to a growing new breed of

^{94/} Junius W. Williams, The President Speaks, 11 NBA Bull. 2 (March 1979). In its Ten Year Report, A Decade of Change of Human Rights 35 (1978), NCBL lists the NBA as one of 15 or more groups with which it has "linkages" and "is working cooperatively."

^{95/} e.g., The National Bar Association, The National Conference of Black Lawyers, The Affiliate Chapters of the NBA, The National Association of Black Women Attorneys, Section, Division and Judicial Council dues of the NBA, and national chapter dues of NCBL and NBA. Indeed, dues to belong to these groups do not include the dues Black lawyers pay for membership in other bar associations, and traditionally memberships in groups such as the NAACP and the Urban League. In addition, there is overlap about the issues that each of these groups are concerned. The organizational structures of some are quite similar. In Cleveland, Ohio, there are at least five bar associations composed of Black lawyers, yet, there are no more than 300 Black lawyers in the city. Black lawyers have formed other groups which are not affiliated with any other bar groups. See Meyer, Young Lions Split Black Legal World, Washington Post, col. 4, A-5, April 14, 1976.

Black lawyers in this nation may be severely undercut. This possibility must be carefully watched by all who love and cherish the survival of the Black lawyer. ^{96/}

96/ This is particularly so when one carefully reviews social indicators on the decline in the admission of Black students in American law schools. See, J.P. White, Law School Enrollment Continues to Level, 66 ABAJ 724, 725 (1980), where the following information is noted: "In 1979 the total enrollment of black students decreased by 1.74 percent, or 93 students, from 5,350 enrolled in fall, 1978, to 5,257. Black students constituted 4.28 percent of the total 1979 enrollment, compared with 4.4 percent of the total 1978 enrollment. (As of fall, 1979, Black Americans constituted 11 percent of the population of the United States.) This is the second academic year since 1975 in which black enrollment declined. In Fall, 1977, black enrollment declined by 198 students from Fall, 1976. The growth rate for black enrollment was 2.64 percent in 1975, 7.33 in 1976, and 8.48 in 1978. First-year black student enrollment declined from 2,021 in Fall, 1978, to 2,002 in Fall, 1979.

These statistics suggest that the negative growth rate of first year black student enrollment was a little more than one-half the negative growth rate of total black student enrollment. Attrition of previously enrolled students accounts for part of this negative growth rate."

White reported the similar ominous facts in 1975. See White, Is The Burgeoning Law School Enrollment Ending? 61 ABAJ 202 (1975).

See also, Barbash, ABA Won't Require Law Schools to Widen Opportunities for Admission of Minorities, Washington Post, col. 4, B-7, February 6, 1980; Greenhouse, A.B.A. Defers on Minority Admissions Plan, New York Times, col. 3, A-13, February 6, 1980. The articles report that the American Bar Association refused to require law schools to adopt affirmative admissions policies as a condition of accreditation. These conditions and ABA policies should cause the NBA, NCBL and other groups to come to the table for future planning sine die.

XII.

Conclusion: Projecting the Universality of Humankind

As the National Bar Association closes out this century, the question of whether there remains a need for the National Bar Association is moot, and not arguable. The history of the civil rights movement and the quest for justice in America clearly establishes that the National Bar Association is a protective shield of Black America. It is no longer arguable that there are now appropriate alternatives to the NBA.^{97/} As Revius O. Ortique, Jr., a former president of the NBA has written: "...the NBA is a symbol of emancipation."^{98/} The quest for liberty is tied to the very existence of the NBA. Its mission is to assist in the eradication of race distinction, and to provide a forum through and from which Black lawyers speak. Ortique has proclaimed that "the NBA is the soul of the black community."^{99/}

Contemporary presidents of the NBA, even to this day, echo this view. As former president of the NBA, Mark T. McDonald stated, "Full freedom for Black Americans cannot be achieved without the full-scale involvement of the organized Black bar."^{100/} Robert Harris, in the tradition of former presidents, asks this question: "What other group is better prepared to deal with the very structure of this country -- the legal structure is the very foundation--

^{97/} Revius O. Ortique, Jr., The National Bar Association--Not Just an Option, 53 Judicature 390 (April/May 1970).

^{98/} Id. at 392.

^{99/} Id. at 394.

^{100/} Mark T. McDonald, President Speaks, 9 NBA Bull. 2 (Dec. 1977).

than the NBA?" ^{101/}

As the National Bar Association and the Afro-American lawyer enter a new decade, and as they evaluate the challenges of a new century, they must decide how to carry out the mandates of the "Greenville Movement." These are new times and these times have brought new challenges, but many of the conditions of yesterday remain constant in the society. The question remains: Are we as brave as the women and men who brought us out of the house of bondage? Can we still comprehend the roots of our legal origin? Is it possible that we are now incapable of understanding the problems confronting the new minorities of the land? Where is the creative spirit of the Black bar and where is the feeling of companionship, brotherhood and sisterhood which we have shared together over the years as a matter of common survival? Why have we allowed our sense of history to escape us? Without this knowledge how can we plan the sojourn into the new century?

It is time for the National Bar Association and its membership to again touch the roots of its beginning, to nurture its scholarship and by so doing you will discover your personality, self worth and purpose as a Black lawyer; and, then you will better understand the meaning of the jurisprudential revolution which projects the universality of humankind.

J. Clay Smith, Jr.
Commissioner Equal Employment
Opportunity Commission