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Federal Bar Association

DR. J. CLAY SMITH, JR.*
NATIONAL PRESIDENT
FEDERAL BAR ASSOCIATION
before the
BOARD OF DIRECTORS
WASHINGTON BAR ASSOCIATION
WASHINGTON, D.C.

SEPTEMBER 10, 1981**

LOUIS ROTHSCHILD MEHLINGER: THE FIRST BLACK MEMBER
OF THE FEDERAL BAR ASSOCIATION (1945)

As the first Afro-American to be elected to a national office of the Federal Bar Association^{1/} and to the presidency of the Association, I am delighted to address the Board of Directors of the Washington Bar Association on the subject: "Louis Rothschild Mehlinger: The First Black Member of the Federal Bar Association (1945)." This occasion is especially historical because on September 30, 1981, I will complete my term as president of the Federal Bar

*/ Dr. Smith is National President of the Federal Bar Association (1980-1981). He served a two year term as president of the Washington Bar Association from 1978-1980 and is currently a member of the Board of Directors of the Washington Bar Association. Dr. Smith received his J.D. degree from the Howard University School of Law in 1967; and the LL.M. and S.J.D. degrees from the George Washington National Law Center in 1970, 1977 respectively. He is currently the Acting Chairman of the U.S. Equal Employment Opportunity Commission.

**/ This paper was presented to the Board in Dr. Smith's absence as he was officiating at the National Federal Bar Association Convention in Denver, Colorado.

1/ In 1975 Dr. Smith was elected as the FBA alternate delegate to the House of Delegates of the American Bar Association. At that time this was a national office and made him a member of the Executive Committee of the FBA.

Association, and because Louis Rothschild Mehlinger who, on December 20, 1981, will reach his 99th year of age, has lived to witness my ascendancy to the presidency of the FBA. This occasion has another important meaning to me since Mr. Mehlinger was a co-founder and is the last living founder of the Washington Bar Association^{2/} which I was privileged to lead as president from 1978-1980.

Louis Rothschild Mehlinger was born December 20, 1882, in Union Point, Louisiana (Concordia Parish) to Ferdinand Mehlinger, an immigrant from Bavaria, Germany, and Catherine Hayes, born a slave in 1863. Mr. Mehlinger, the oldest of five children, completed his studies in Industrial Education at an all Black Mississippi college. He came to Washington in 1907 to assume a position as clerk in the Treasury Department. Concurrently, he enrolled in Howard University's evening Dental School, but never completed the course owing to illness and termination of the evening program in dentistry. In the interim, he studied shorthand, typing and bookkeeping, and as a result of the courses, he became a stenographer in the Treasury Department.

During World War I, Mr. Mehlinger served as an intelligence officer with the 300th Infantry Division in the St. Die Sector, the Argonne Forest, and was promoted to the rank of captain. At the conclusion of the war, he studied law at night at the Howard University School of Law, graduating magna cum laude

^{2/} J. Clay Smith, Jr., Louis Rothschild Mehlinger -- A Founder of the Washington Bar Association, 20 Howard L.J. 17 (1977).

in 1921. Shortly after graduation, Mr. Mehlinger assumed the position of clerk at the Department of Justice, when after a number of years, he was appointed senior attorney and assigned to argue cases in the Court of Claims.

Mr. Mehlinger, along with Ulysses Simpson Garner, George E. C. Hayes, Charles Hamilton Houston, Isaiah Lisenby, Charles E. Robinson and J. Franklin Wilson founded and incorporated the Washington Bar Association on May 26, 1925. In addition to the founding of the Washington Bar Association, he and five other Black lawyers founded the Robert H. Terrell Law School which served the Washington community well before closing its doors in 1950. In 1972 the Washington Bar Association cited Mr. Mehlinger for 50 years in the practice of law. Mr. Mehlinger is married to the former Gladys Muse. Today, at 98.9 years of age, Mr. Mehlinger is alive and well.

When I was elected president-elect of the Federal Bar Association in 1979, I called Mr. Mehlinger on a matter involving the history of the Washington Bar Association. During that conversation Mr. Mehlinger congratulated me on becoming the first Black president of the Federal Bar Association and then began to tell me about the membership race policy of the Federal Bar Association in 1942, the year he first applied for FBA membership. He told me that he had been used as "a guinea pig to apply for membership in the FBA." Mr. Mehlinger indicated that it was clear to him prior to 1945 that his interest to qualify for membership in the FBA were met with signals that his application would be rejected if submitted. Based upon several conversations with Mr. Mehlinger

and no evidence to the contrary, I conclude that he is the first Afro-American to qualify for membership in the Federal Bar Association.

According to Louis Rothschild Mehlinger, at age 62 he first applied for membership in the Federal Bar Association in 1942.^{3/} However, his application was not presented to the National Council until February 14, 1944. From February 1944 until October 1944, the National Council took no action on Mr. Mehlinger's application. While the first application is not available, it is clear to me based upon documents referred to herein and from my discussions with him, that Mr. Mehlinger identified himself as a "Negro" on the "race" identification line when he first applied for membership in the FBA.

Louis Rothschild Mehlinger applied a second time for membership in the Federal Bar Association on October 13, 1944. His application was on a standard printed form addressed to "The National Council." He identified himself as a "senior attorney" in the "Claims Division" at the Department of Justice, Room 3638, Washington, D. C., and indicated that he was a member of the U.S. District Court and Court of Appeals for the District of Columbia, the U.S. Court of Claims and the U.S. Supreme Court. On the "Race

^{3/} Conversation between J. Clay Smith, Jr. President of the FBA and Mr. Mehlinger in November, 1980. The author of this paper was born in 1942.

(White, Colored, Other)" line of the membership application, Mr. Mehlinger identified himself as "other-mixed parentage-Jewish and Creole." On his application he did not indicate that he was Black or Negro.

Mr. Mehlinger was recommended for membership by Wendell Berge. On December 5, 1944, J. Harry Byrne, Chairman of the Admissions Committee, certified to the National Council "that the admission Committee has made investigation of (Louis R. Mehlinger) for membership in the Association and recommends to the National Council that the application be considered in the light of the contents of the attached letter." ^{4/} The "attached letter" dated December 5, 1944 and signed by Mr. Byrne was addressed to the Honorable Tom Campbell Clark, ^{5/} President, Federal Bar Association, and stated,

On October 28, 1944, the Admissions Committee transmitted to you, without recommendation, for action by the National Council the application of Mr. Louis Rothschild Mehlinger, Senior Attorney, Claims Division, Department of Justice, Washington, D. C., for admission to the Federal Bar Association. This application bears date of October 13, 1944, and is recommended by Mr. Wendell Berge.

^{4/} The application showed that Mr. Mehlinger had tendered his dues of \$4.50. The words underscored were typed on the line which was intended for the words "approved" or "disapproved."

^{5/} Tom Campbell Clark was Assistant Attorney General in charge of the Criminal Division from August 1943 to June 15, 1945, and served as U.S. Attorney General from June 15, 1945 to August 24, 1949. He succeeded Marguerite Rawalt as president of the FBA. Clark served as an Associate Justice on the United States Supreme Court from August 24, 1949 to June 12, 1967.

In the above communication of October 28, 1944, attention was invited to the fact that on February 14, 1944, the Committee presented to the National Council an application by Mr. Mehlinger and applications by three other persons in connection with a matter of policy. 6/ (emphasis added) The Committee further stated that insofar as its records disclose, it has never received any communication from the Council as to what action was taken in respect of the policy question. (emphasis added)

Under date of November 8, 1944, the Committee received a communication from William G. Hamilton, Secretary of the Association, reading as follows:

"The National Council of the Federal Bar Association, at a duly called meeting on November 4, 1944, adopted the following motion in connection with the application of Louis R. Mehlinger. It was moved, seconded and carried that the application be referred back to the Admissions Committee to pass upon the merits of the applicant's qualifications regardless of race or color."

On November 29, 1944, the Committee received from the Secretary of the Association two other applications for membership therein. One is from Mr. Walter Arthur Gay, Jr., Philadelphia, Pennsylvania, Assistant U.S. District Attorney, Department of Justice. This application bears date of November 13, 1944, and is recommended by Mr. Meyer L. Casman. The other application is from Mr. Robert R. Bond, Baltimore, Maryland, an attorney in the General Counsel's office of the Federal Security Agency. This application is dated October 21, 1944, and is recommended by Mr. Robert C. Ayers.

At a meeting duly held the Admissions Committee, after full consideration, has to inform you that the applications of Messrs. Gay and Bond appear to meet the eligibility requirements set forth in Section 1, Article IV,

6/ This "matter of policy" was whether Mehlinger qualified for membership by virtue of his race.

of the constitution of the Federal Bar Association. In this connection, having in mind the provisions of Section 3 of the aforesaid Article of the constitution, as chairman of the Committee I have to inform you that the Committee did not unanimously approve the applications for membership.

You are further informed that, respecting the application of Mr. Mehlinger, the Committee was not unanimously of the opinion that Mr. Mehlinger met the eligibility requirements of Section 1, Article IV,^{7/} of the Association's constitution.

On January 20, 1945, the president of the Federal Bar Association, Tom C. Clark, appointed a special committee of the National Council to review the Mehlinger matter. The Special Committee consisted of William G. Hamilton, Robert H. Shields and Douglas B. Maggs. Mr. Maggs was Chairman of the Special Committee.

On January 27, 1945, the Special Committee filed its report with President Clark, stating,

This is a report of the Special Committee appointed by you pursuant to a motion adopted at the meeting of the National Council of the Federal Bar Association held in your office on January 20.

Louis R. Mehlinger had filed at different times two applications for membership in the Federal Bar Association. In the first of these applications, filed in 1942, he stated that his race was "Negro." In the second application filed October 13, 1944, following the printed

^{7/} Pursuant to Section I, Article IV of the constitution of the Federal Bar Association only "any white person of good moral character..." was qualified to be a member. See Constitution of the Federal Bar Association adopted on April 20, 1926, F.C. Baggerly, president, M.G. McVey, Secretary.

words "Race (White, Colored, Other)" he stated "Other-mixed parentage, Jewish and Creole." The Committee was authorized to investigate and report to you whether this variation in Mr. Mehlinger's statements with respect to his race constituted reason for considering him ineligible for membership. It had been suggested that the statement in the second application might amount to a misrepresentation.

The Committee was supplied with the Association's file on Mr. Mehlinger. After studying it, the Committee met with Mr. Mehlinger. He has been in Government service since 1907. He was a Captain in the United States Army during World War I, and served in France. He has been an attorney in the Department of Justice since 1923. His father, Fred Mehlinger, who was Jewish and wholly white in ancestry, was born in Bavaria. He came to this country, went to New Orleans, and there married a Creole woman - i.e., a woman whose ancestry was part white and part colored.

After fully discussing the matter with Mr. Mehlinger, the Committee is unanimously of the opinion that he did not intend to, and did not, misrepresent his race when he stated in his 1944 application that he was of mixed parentage, Jewish and Creole. The Committee, after discussing the matter with Mr. Mehlinger and making other investigations, is unanimously of the opinion that the word "Creole" is most often used to designate persons of part white and part Negro ancestry. Mr. Mehlinger informed the Committee that, in making his first application, he described himself as a Negro in accordance with the American custom of regarding as a Negro any one with a small percentage of colored blood. In making the second application, he decided to be more specific -- to state in more detail just what his ancestry was. The Committee is unanimously of the opinion that if Mr. Mehlinger's purpose had been to suppress the fact that his ancestry was part Negro, he would not have used the words "mixed parentage." While the word "Creole" is sometimes used to designate white residents of the region centering around New Orleans whose ancestors are French or Spanish, that use is comparatively rare; the Committee is unanimously convinced that a person, one of whose parents was a Creole in the sense last referred to, whose other parent was Jewish, would never describe himself as of

"mixed parentage." That is to say, the Committee is convinced that when the ambiguous worded "Creole" was used in connection with the words "mixed parentage," it is perfectly apparent that the word "Creole" was employed in its more usual sense -- a person whose parents were part white and part colored.

The Committee's final conclusion, which was unanimous, was that Mr. Mehlinger is qualified for membership in the Federal Bar Association. Hence, the Committee recommends that his application be accepted and approved. 8/

Mr. Mehlinger's application was apparently accepted and approved by the National Council in 1945. By this action he became the first known member of the Federal Bar Association ^{9/} of Afro-American descent.

According to Dr. George M. Johnson, Dean of the Howard University School of Law, between 1940 to 1945 there was much controversy over the admission of "Negro lawyers" to the Federal Bar Association, as well as the American Bar Association. In 1951 Dean Johnson wrote an article in The Integration of the Negro Into American Society entitled, "Legal Profession"10/ in

8/ In view of the race restrictions set forth in Section I, Article IV of the FBA constitution, either Mr. Mehlinger was considered a white person on the basis of his Jewish father, or the association qualified Mr. Mehlinger for membership in spite of the race restriction. In a conversation with Mr. Mehlinger on September 23, 1980, he indicated that he believed that after he was voted into the membership, the race restriction was deleted from the constitution.

9/ Mr. Mehlinger has never forgotten the pain of this experience as he indicated to me that he lost his enthusiasm for the FBA as a result of this experience. Perhaps this is a reason why Mehlinger subsequently dropped his membership, see letter from J. Thomas Rouland, Executive Director of the FBA to J. Clay Smith, Jr., president, FBA, December 12, 1980.

10/ This book includes papers contributed to the Fourteenth Annual Conference of the Division of the Social Sciences, May 3-4, 1951, published by The Howard University Press for the Graduate School, Howard University, Washington, D.C. See pages 87, 98 (footnote omitted) I am indebted to Dr. Fletcher Robinson of Washington, D. C./B.W.I. for access to this rare book.

which he referred to the race admission policy of the Federal Bar Association. Dean Johnson stated,

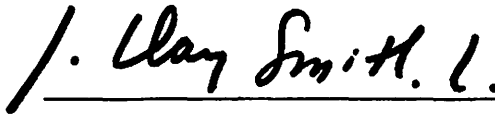
The Federal Bar Association was organized in 1920 as a national organization of federal government lawyers. During its early years, the bulk of the Association's membership was composed of lawyers and judges connected with the federal government in the nation's capital. It has expanded greatly, however, and now includes lawyers in private practice who were formerly with the federal government in a legal capacity. At present it boasts more than 3,000 members. In addition to advancing the science of jurisprudence and "holding high the standards of the federal judiciary and of the attorneys representing the government, this Association has as one of its objectives the encouragement of cordial and friendly relations among members of the profession." Prior to World War II, no Negro lawyers were admitted to membership although several Negro lawyers were employed by the federal government in Washington, D.C. During World War II there was extended controversy over the admission of Negro lawyers to membership. At least four Negro lawyers are known to be members of the Federal Bar Association today, but the Association's policy remains unclear.

As I close my term as president of the Federal Bar Association, I believe that the legal profession should remember the courage of Louis Rothschild Mehlinger for daring to make the Federal Bar Association open to all races. Tom C. Clark and the other key people on the Mehlinger Special Committee should be given much credit also for clearing the way for Mr. Mehlinger's approval as a member.

I leave the presidency of the Federal Bar Association with an expectation that I shall not be the last national president of Afro-American descent. As the twentieth century closes and as the twenty-first century is born, the Federal Bar Association must

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continue to be faithful to the principle of race and sex diversity in its leadership ranks at the local 11/ and national levels. Thank you, Louis Rothschild Mehlinger. 12/



J. Clay Smith, Jr.
National President

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11/ The Federal Bar Association has done well in its leadership at the local level in recent years. The following Afro-Americans have been elected as chapter presidents: Emmanuel A. Coleman, President of the North Alabama Chapter 1980-1981; Professor Jeanus B. Parks, Jr., President of the District of Columbia Chapter, 1979-1980; The Honorable James Williams, U.S. Attorney for Cleveland, Ohio, President of the Cleveland Chapter, 1980-1981; Paul Wallace, President of the Capitol Hill Chapter, Washington, D. C., 1980-1981; and The Honorable William F. Hall, Jr., U.S. Magistrate for the U.S. District Court of Pennsylvania (in Philadelphia), as President of the Philadelphia Chapter, 1980-1981; and James Purdy, President of the New Jersey Chapter served two terms, 1979-1980, 1981-1982. Mr. Purdy may be the first Black Chapter President in the history of the Association.

Messrs Parks and Wallace served as national Circuit Vice-Presidents from 1980 to 1981 (Parks) and from 1981-1982 (Wallace). Reference to many of these leaders can be found in various issues of the Federal Bar News. I would like to think that my election as a national officer in 1975 had something to do with the recent diversity of leadership in the Federal Bar Association.

12/ Mr. Mehlinger's picture is featured on the cover of Vol. 43, No. 4, Negro Hist. Bull. (Oct.-Nov.-Dec. 1980).