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## The Future of the Black Lawyer in America-- Part ·II: The Career Patterns of Black Lawyers in the 80's

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COMMISSIONER, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
before the  
NATIONAL CONFERENCE OF BLACK LAWYERS  
GEORGETOWN UNIVERSITY LAW CENTER  
Washington, D.C.  
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THE FUTURE OF THE BLACK LAWYER IN AMERICA--PART II:  
THE CAREER PATTERNS OF BLACK LAWYERS IN THE 80'S

Today's roundtable discussion on "The Career Patterns of Black Lawyers In The 80's" is an important subject for the public forum. Indeed, this roundtable discussion is important from an historical perspective of the Black lawyer: from his beginning in the New England states in 1844 and from her beginning at the Howard University School of Law in 1871. The career patterns of Black lawyers in the 1980's must be analyzed against the backdrop of the 136 year development of the Black lawyer in American history, and indeed, in the systems of the jurisprudential matrix.

On May 26, 1979, I delivered a paper before the Old Dominion Bar Association's annual convention in Lynchburg, Virginia, entitled, "The Future Of The Black Lawyer in America". The opportunity to address this forum affords me an opportunity to expand on this theme.

The persons attending the convention held in Lynchburg seemed stunned when I reported that there were no more than 11,000 Black lawyers in the United States. The participants at the conference were equally stunned to discover that there

has been virtually no growth in the percentage of Black lawyers in the nation vis-a-vis the Black population from 1935 to the present time. Most people are shocked to learn that Black lawyers constitute probably no more than 2 percent of the total number of white lawyers in the nation whose statistical population is rapidly approaching 550,000 lawyers, a 400,000 statistical growth pattern since 1935. In 1935 there were 1,230 Black lawyers constituting .007 percent of the white lawyer population. In 1935 there were 159,375 white lawyers.

While I admit that I have not made a study of the number of Black women lawyers in existence at this time, based on my general knowledge of the Black lawyer and what I know about the history of the Black lawyer in the nation, I do not believe that there have ever been more than 1,800 to 2,000 Black women lawyers graduated from any law school since 1871 when Charlotte E. Ray became the first to be graduated from the Howard Law School. The figure 2,000 may be a slightly inflated figure.

I make this assumption on the fact that it was not until the 1940's that a few white law schools opened their doors to 3 to 10 Black women. Prior to that time, the training ground for Black women or men for that fact were the predominantly Black law schools. Between 1871 when Charlotte E. Ray was graduated from the first graduating class at Howard Law School and admitted to the District of Columbia Bar on April 23, 1872, until Ollie May Cooper was graduated as the 13th woman graduate of Howard Law School in 1921, and admitted to the District of Columbia Bar Association on October 11, 1926, there were no

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more than 25 Black women lawyers in the nation. We know that Ollie May Cooper was the 13th woman graduate of Howard Law School in 1921, but because white women, denied admission to white law schools, attended Howard Law School, Ollie May Cooper was probably the 6th or 7th Black American woman graduated from any law school. The fact that two other predominantly Black colleges had law departments towards the end of the 19th century probably, though not certainly, substantiates the figure of 25 Black women in the law area by the early 1920's. The two schools to which I refer are: Central Tennessee College in Memphis, Tennessee and Allen University Law Department in Columbia, South Carolina.

According to interviews I have conducted, between 1925 and 1950 there was a paucity of Black women admitted to law school, graduated, or admitted to the bar. During the 1940's and 50's a sprinkling of Black women were admitted to practice in a few state law schools, as well as private schools, although in the latter category on a smaller and less quantifiable scale. During this same period, Howard Law School and other predominantly Black colleges created as a result of segregation continued to admit women, however, the post depression years had been hard on Black people in the country and law was hardly within the reach of Black men let alone Black women who dared to enter a profession dominated by white men.

The opening of the Robert Terrell Law School in Washington, D.C. may have opened the opportunity for an increased number of Black women lawyers. Terrell Law School opened in the 1930's after Howard Law School terminated its evening classes. Terrell Law School "graduated 600 lawyers during a 15 year period closing its doors in 1950" as a result of more liberal admissions policies in white law schools growing out of the legal activism of Thurgood Marshall, Charles H. Houston, Leon Ransom, James M. Nabrit, Jr., William H. Hastie the NAACP and a legion of other Black and white distinguished lawyers.

The point is that the decision to close the evening division of Howard Law School and the opening of Terrell Law School actually allowed the number of Black lawyers, which might otherwise not have been as great today, to continue to grow. It is my opinion that without Terrell Law School the number of senior Black women lawyers at the bar would be significantly lower today. There were other law schools in Washington, D.C., and other places in the nation, but the duration of some of these law schools were limited in years and it is presently not known how many of their graduates were admitted to the bar, although we know that several of them were and that they served the bar and the community with distinction.

This dialogue takes us to the post Houston era, the post Brown v. Board of Education years of the 1950's, and the pre-Black 1960 revolution. By this time the surge for law as a career began to look feasible, if for no other reason than Black lawyers had become more visible in the cause for justice and because the bulk of Black lawyers were in private practice and

lived and associated with the people in the community.

For Black women, the last twenty years (1960-1980), and of this period, the last ten years has witnessed the largest number of women being admitted and being graduated from sundry law schools across the nation.

Women and Black women in particular face high hurdles in all categories of the legal profession in this decade. If my earlier historical perspective is correct, Black women are just being baptised into several professional areas of the law. This, of course, may slow the upward mobility of Black women and other minorities in the law until this century ends. This will not be the case for all Black women, as the political mood of the country and the growing political power of Black women may usher in at a more rapid pace affirmative acceptability than has worked for Black male lawyers in this century.

Netherless, Black women may face obstacles qualifying for legal judicial positions, unless they, too, began to structure their careers towards the private practice of law, and trial related jobs in the Federal or private sectors. Hence, from now until the end of this century, and indeed far into the twenty first century Black lawyers whatever their gender will continue to struggle for survival, acceptance and upward mobility, unless conditions change in the society and within the profession.

II.

Now that we are aware of the birth of the Black lawyer and his and her growing pains, career patterns for Black lawyers in this decade should now take on more meaning. Before 1950 the career patterns of the Black lawyer covered the gamut: private practice, international trade, foreign relations and diplomacy, corporate and transportation law, journalism, banking, and law teaching. Indeed, Black lawyers, albeit Black male lawyers, such as William H. Lewis held positions in the Department of Justice in the early 1930's as assistant attorney generals of the United States and other influential advisory government positions. Many Black women lawyers never entered the practice of law because of sex-racism. Regrettably sex-racism exist today, but the impact on Black women was much more severe than on her white counterpart.

Hence, since 1844, when Macon Allen was admitted to the Bar of Maine to this very day, Black lawyers have been pushing the judicial system to let them in the door of the legal profession. There has been much resistence to cracking the doors of the legal profession over the past 136 years for Black lawyers, and certainly today, the Black woman lawyer is on the frontier of acceptability and allowed achievement. With this in mind, I believe it is appropriate to set out by category and gender the estimated totals of Black lawyers in the nation:

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	<u>Black Men</u>	<u>Black Women</u>	<u>Total</u>
Federal/State Government Lawyers.....	2,800	700	3,500
Federal State Judges.....	325	75	400
Corporations/Non Legal & Legal.....	2,000	300	2,300
Public Interest Law Firms.....	350	150	500
Law Teachers.....	125	25	150
Non Legal/Non Corporate Jobs or Unemployed..	2,150	500	2,650
Private Practice.....	1,400	100	1,500
Total <sup>*/</sup> .....	9,150	1,850	11,000

The Career patterns of Black lawyers in the 1980's will not significantly deviate from the general work categories outlined above. There are several reasons for this prediction: (1) the economy is forcing private practitioners into government; (2) consumer advocacy for "no fault" law whatever the merits or demerits of the arguments is making private practice less attractive; (3) the trend of specializing may be taking its toll on the Black lawyer, especially with movements to require additional examinations or conditions to practice in the Federal Court system; (4) ethic rules restricting the so call "revolving door"

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<sup>\*/</sup> The total does not take retirement into account. However, if retirement is taken into account the total number of Black lawyers may be reduced by 1,000 leaving an estimated total of 10,000 Black lawyers. While the figure of 1,850 Black women lawyers may appear to be low, it is not when evaluated against the dearth of Black women lawyers in the midwest, the northwest and southwest of the nation. However, there could be another 200-300 Black women lawyers in the nation who are discouraged workers, or who may enter or reenter the job market after raising families, or who cannot get into or back into the profession because of family demands. This is an area for additional study.



will have a direct impact on minority lawyers at a time when the Black lawyer population in high level government positions working in specialized areas may be the largest in American history; (5) the current stabilization of admissions into law schools is an ominous post-Bakke signal that affirmative action has refocused from a moral issue to a "let's admit enough to stop being criticized" issue--neither of which has produced enough Black lawyers to praise; (6) prepaid legal services is not benefiting the Black private practitioner--in fact, prepaid legal services may be the greatest blow to the small practitioner many of whom are Black. This is so because a large number of Black workers are covered by prepaid legal service plans serviced by nonminority law firms. According to sources at the National Bar Association, no Black firm services a prepaid legal service plan.

In this decade the most ominous sign in the legal horoscope for minorities and the poor in America is the rapid decline of private practitioners in the community. Of course, many of the existing private practitioners are graduates of the 1940's, who because of segregation and racism in the legal system were forced into private practice. The civil rights movement which was fought by many of these private practitioners brought justice to many. However, the Black lawyer victories and personal sacrifices for civil liberties for the liberation of their people may have cost them dearly. The cost of the involvement of Black lawyers in civil rights cases has been used by state bar associations to establish that Black lawyers are not qualified

to sit on the Federal Courts of this country when, in fact, the most complex areas of the law have been developed by the litigation of civil rights cases. On the other hand, nonminority lawyers have qualified for the Federal Bench as a result of the trial experience gained in defending civil rights cases.

It is significant to point out that the morality awaken in America in the 1960's benefited few, if any, Black private practitioners in terms of significant retainers from either white or Black businesses. Black businesses often have no choice but to go with a law firm which can facilitate the necessary financing of the deal which is critical to their own survival, and, of course, once a business becomes viable it is often impossible to change legal horses and stay afloat. In the 1980's younger Black lawyers may face the same economic boycott as a result of a declining economy forcing Black private practitioners into government, and non-legal positions with fixed and larger incomes. This phenomenon, of course, leaves the Black community vulnerable to great abuse and may provide a drama resembling the dogged years of the 1930's. If minority law firms do not grow-- and the fact that they have not in the last 100 years should tell us something: the Black lawyer of today may personify the Black lawyer forever, and yet, as Charles H. Houston wrote in 1935-- there is still a critical "need for the Negro lawyer."

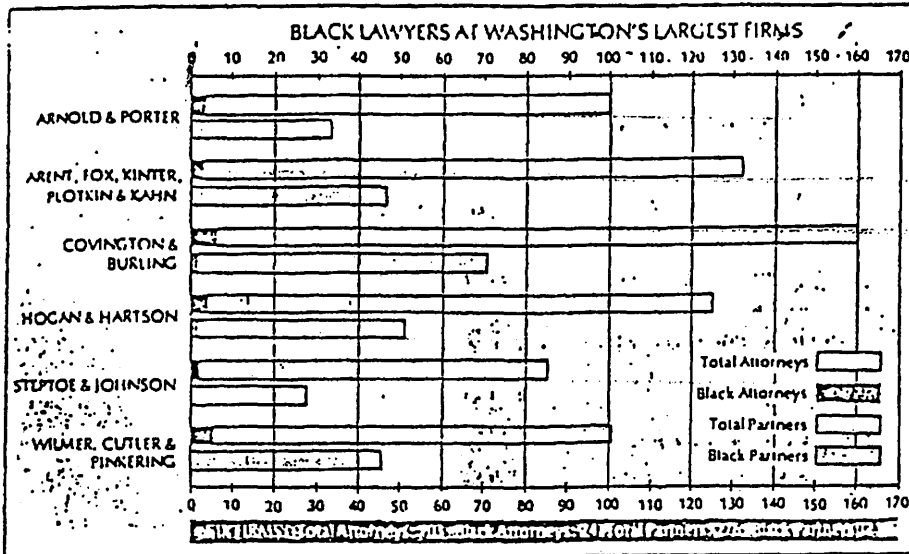
Unless there is a recognition by corporate America to rescue the Black private practitioner from its economic boycott, the career patterns of the Black lawyer in private practice will be

snuffed out. Social policy urges, if not compels a more detailed analysis of the impact of this phenomenon on the nation. There will always be those who prosper in private practice--that has been the case since the 1920's. Perhaps, the migration of the Black lawyer to private practice is not being encouraged today by those in private practice and as a career choice by law schools because there exist few success models upon which to build.

### III.

In the private sector, corporate law practice in a predominantly white firm is still a career option. However, in a study conducted in 1978, I found that there had been a decline in the number of Black lawyers at several of the largest firms in the District of Columbia and a recent study conducted this year by the National Law Journal indicates that the affirmative action of the 1960's ushered a paucity of Black partners into the management structure of the nation's 50 largest law firms.

I am gravely concerned about the dearth of Black lawyers recruited to associate and partner positions in law firms in the District of Columbia. On April 4, 1976, the Washington Post at p. A5, col. 4, carried an article on Black lawyers in so called "uptown law firms" in the District of Columbia. That chart follows:



By Ken Burgess—The Washington Post

Six firms were studied by the Post. The total number of lawyers practicing in these firms at that time totaled 703 lawyers of which only 23 were black. Two hundred and seventy six (276) of the 703 lawyers in these major firms were partners, but only 2 Black partners existed at that time. Today, these same six firms, we are advised that the number of Black lawyers who are partners has increased by one. Hence, there are now 4 Black lawyers who are partners as against nearly 300 cumulative partners positions in these 6 law firms. The total number of Black lawyers remains approximately the same, although a random count of Black attorneys in these six firms shows that there are fewer Black lawyers in 1980 than there were in 1976. There are now between 15 to 20 Black lawyers in the six major firms in the District of Columbia, and maybe fewer.

While these comments have been directed to the six largest law firms in the District of Columbia, I am obliged to add that these firms' track records are substantially better than law firms with fewer than 80 attorneys.

According to the 1978 edition of Martindale-Hubbell Law Directory there are over 130 law firms in the District of Columbia out of a total of nearly 600 listed firms which have between 10 to 20 lawyers in their firms. If the number 15 is used as a measuring rod there are between 1300-1700 lawyers in the District of Columbia employed in medium sized firms. In this category Black lawyers are presently almost extinct. At best, there are fewer than 15 lawyers in these 130 law firms composed of 10-20 lawyers and there are no more than 4 Black partners with this category.

Based upon the study compiled by the Myers-Whitaker series in the Washington Post in 1976, current listing in Martindale-Hubbell, and our general knowledge based upon contacts with Black lawyers in law firms in the city -- I conclude that today there are fewer than 30 Black lawyers employed in both major and medium size firms in the District of Columbia out of a universe of 4000 lawyers.

There are numerous small firms employing anywhere between 4 to 8 lawyers. I do not have any figures of employment in this category. However, I doubt that more than 5 Black lawyers are included in the category. I recognize, however, that there are

a couple of firms in this category which have named Black partners. The dearth of Black partners is not a local issue. On July 2, 1979 the National Law Journal reported that of 3,700 partners in the largest 50 law firms only 12 are Black. This is some progress because in 1970 there were probably no more than 3 or 4.

Turning to another career observation, or phenomenon, I have noticed that the number of Blacks being elevated to the bench are younger. Of course, this is a good sign in that in a democracy, diversity augments a system of justice. However, there may be a negative side to the willingness of younger Blacks to go to the bench -- and, I merely throw this concept out for discussion -- and that is: a great amount of talent is being pulled out of the advocacy ranks which has always suffered and which now, in my opinion, faces the most severe crisis in modern times. It may be time for the Black lawyer to assess the extent Blacks in the nation must begin to scientifically apportion their legal population in order to assure their interests are protected on all fronts. Of course, the advocacy for diversity in public decision-making arenas, such as judges and public administrators, must continue.

I do not wish to continue to paint the future dark -- but the signs point in that direction and, I consider the status quo as bleak. However, law schools are going to be graduating hundreds of minority students in this decade and a movement must begin to make them aware of their obligation to dare to do the impossible -- to start a civil rights movement in the legal com-

munity. This movement must focus on the plight of minority lawyers and the need for minority laws in the legal profession. The movement must be directed against those who would allow the death bell to toll for the private practitioner, to toll for minority lawyers. Whatever shape or form such advocacy takes, the message must reach the ears of those in corporate America who understand the danger signals of communities in this nation with substantial minority populations with declining legal representation.

#### IV.

I will now turn to what career patterns are dictated by the economy and the times with full recognition of the barriers discussed above.

A. Telecommunications Law. There are several hundred radio and television stations in the nation and a small, but growing number of Black owned radio stations. Hence, some exposure to communication law is feasible. This is so, not only in the television and radio licensing, but in the area of rate making in the common carrier area. There is a great need for minorities to demand that Black lawyers be trained and exposed to rate making areas in law firms representing common carriers, in telephone companies -- all of which have departments fully dedicated to rate making.

In addition, public policy may be affected by the proper application of the Fairness Doctrine and knowledge about Equal Time provisions of the Communications Act of 1934. The Equal Time provision may be critical to minority political candidates as the Equal Time provision protects candidates from preferences given to one candidate over another in the use of broadcast facilities. With the growing number of minority candidates, Black lawyers must have some exposure to these areas.

B. Energy. It is not arguable that in the 1980's a civil right may attach to access to and the possession of fuel and other energy sources. Black lawyers must channel their careers into these areas and companies must open their doors to allow these lawyers to learn the ins and outs of energy policy and law. Continued boycott of Black lawyers in these vital areas may be met with great suspicion on the part of policy makers who act on rates as the political pressure from communities mount due to high fuel bills in the current economy. Hence, the Black lawyer must begin to seek, and people of good will must begin to allow or to advocate or agitate -- for the good of the nation -- for the exposure of Black lawyers into energy sensitive positions.

C. Transportation Law. The application of laws governing the ability of people or things to move from one place to another is basic to American commerce and to survival. Black lawyers must begin to investigate transportation law more carefully in



relationship to the tradition of the minority lawyer to probe and unlock doors which contain the poor, and powerless underclass. On the other hand, representation of corporate clients requires some exposure to the regulatory area of the Interstate Commerce Commission, which until recently, never had a minority member on the Commission. The same applies to most Commissions in Federal and state government.

C. Labor Law. A large segment of citizens in the nation are employed and unionized. Large numbers of Blacks, other minorities and women now hold major positions in unions, in both the public and private sectors. In fact, unions campaign for membership on the basis of the benefits they can provide to their members and their political power. Labor law or personnel management principles are nearly one and the same.

Management is compelled to have in-house labor counsel and more companies use outside counsel to negotiate collective bargaining agreements and to advise them on a day-to-day basis on all labor disputes.

Labor law is a high demand area. Black lawyers have been deeply involved in labor law over the years, but the involvement has been in the fight to integrate unions as opposed to representing them. I say that it is time for unions to do what you demand to corporate entities, and that is a greater and more effective utilization of Black lawyers and Black law firms in particular.

While most people do not realize it today, the "fair representation doctrine" was the result of the legal advocacy in the Steel case of Dr. Charles H. Houston. Labor law is one of the most, if not the most lucrative practices of any specialized area of the law. Black lawyers have a historical tie to labor law as a consequence of the Black experience on the assembly lines of America.

D. Tax and Probate. Blacks are making more money today and have need of estate planning. Many Black people are giving their money away to the state because they are not sophisticated to the ways of tax and estate planning. Black lawyers have been discouraged in the tax and estate planning areas because the assumption is that all Black people are poor. This, of course, is not so. And, with the increase of minority businesses and the inter vivos transfer or testamentary disposition of property, minorities need help to assure that their heirs are properly protected against governmental enrichment caused by ignorance.

E. International Law. Black lawyers are first Americans, but we too, have foreign interests. When the food and energy cost soar due to international diplomacy or international commercial trade transactions, we must speak to the economic policies of the nation or corporate America. In order to do this, the Black lawyer must be allowed to enter trade and banking areas where the real international law and policy decisions are articulated and made. This legal area can no

longer be considered esoteric advocacy; it is as real as the cost of fuel and food.

I could continue to explore specific career patterns to direct Black lawyers. My failure here to address other areas is simply because all of them are important and there is as much a need to agitate for inclusion in the law of space, where one day our people may dwell as there is in the law of the sea, where important minerals are lodged which may give rise to a more healthy environment.

F. Government. There is no doubt that employment of minority lawyers in the Federal and state governments will continue to be attractive in the 80's. This is so, because the government is the largest employer in the land and therefore should affirmatively attract minorities. However, I believe that career patterns in government should be evaluated very carefully because it is my impression that in the more specialized government regulation areas, such as the Federal Communications Commission, the Federal Trade Commission and the Securities Exchange Commission, with a few exceptions, Black lawyers are not moving into critical policy areas which affect the political process and the broad public interest. In addition, Black lawyers are not being recruited from government into private industry in the same skill area. Law firms specializing in securities, labor law, or antitrust are not hiring Black and other minority lawyers now employed by the government with these specialized skills. So, it is a myth that government is a good avenue to the private sector -- at least for Black lawyers.

In recent years several Black lawyers have been appointed by presidents of the nation to solid leadership positions. However, among the bar it is generally known that these superstars, many of whom gave up lucrative jobs to serve the public, are often surprised when upon completion of their government service they face difficulties in obtaining equivalent positions for equivalent pay. These matters need to be studied; they must be evaluated.

V.

No career issues can be realistically discussed unless there is a notion of respect for the minority lawyer built into the system of jurisprudence. Black lawyers must generate respect and demand respect. The Black bar fought to free justice from the prison of narrow minded and segregated oriented jurisprudents and it is time that Black scholars be given the credit that is due them. This means that law facilities which remain predominately white must begin to recognize that the revolution which Black lawyers have been about since 1844 is to diversify the jurisprudential matrix with their own thought processes under every philosophical category. This declaration is a direct challenge to the status quo. The revolution of thought will ultimately shape the law and give rise to mutable ideas of relevant scholarship and study for not only minorities and women, but for the decision-making process in both the private and public sectors.

VI.

That there is a continuing need for the study of the Black lawyer and other minorities is critical in this new born decade. It just doesn't make sense for a Black lawyer to be celebrating his 136 birthday and her 109th birthday and to still be talking about survival. Yet, we must face a stark reality. Unless many of us cease to be truants from thought and vagabonds to reality, the Black lawyer shall surely parish from the face of the bar. However, the nation and all of its vital institutions will suffer because if it had not been for the Black lawyer in the society who by his/her presence gave confidence to the rule of law during the most repressive periods of American history, the consequences of segregation and economic discrimination could have resulted in violence as opposed to a non-violent movement in America. As an American citizen, I firmly believe our nation will never reach its full potential until we recognize the worth of all of its citizens. The same applies to the survival of the Black lawyer. Admission statistics to predominantly white law schools are meaningless unless there is a place in America for the Black lawyer to learn, to grow and to diversify their legal talents. To do less is to cast the Black lawyer on the sea with a boat with holes in it or to provide him or her with a full suit of clothing without undergarments. The Black lawyer remains in a pre-access position in the legal profession.

The struggle of the Black lawyer must go on and while the truth is hard to accept -- accept it we must. But, now is the

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time for those who are genuinely concerned and understand the potential dangers facing the nation from an unrepresented community to open the doors wider for minority admission to law schools, and to the legal profession itself and not fear the Black lawyer's quest to diversify legal career areas in the law. If something is not done in this decade, nothing will be done in this century.