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BLACK LAWYERS IN THE FEDERAL GOVERNMENT: 1844 - 1940

By

Dr. J. Clay Smith, Jr.\*

Nothing pleases me more than to have been asked to address this, the first luncheon sponsored by the Howard Law School Alumni Association in conjunction with a Federal Bar Association Convention. The Federal Bar Association (founded in 1920) and the Howard University School of Law (founded in 1869) share an historical relationship. The nexus of that relationship is in the person of Louis Rothschild Mehlinger. Mehlinger was graduated from the Howard law program in 1921. In 1945, he broke the color barrier of the FBA becoming the first member of Afro-American descent admitted to national membership.<sup>1/</sup>

Howard University School of Law has produced many Black lawyers who have chosen government as a career. Howard law graduates have served and are presently serving their nation with honor, dignity and a commitment to its purpose and mission as a democratic institution.

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<sup>1/</sup> Smith, Louis Rothschild Mehlinger: The First One Hundred Years, 26 How. L.J. 359 (1983).

Race distinctions and race prejudice by the national government has had a negative effect on the Black lawyer. Due to racial restrictions, Black lawyers were not hired in legal positions in great numbers prior to the turn of the century. After 1900 Black lawyers remained in a second class status in connection with legal jobs in the national government. Nevertheless, in spite of the racial attitudes of the national government, Howard and other Black law graduates made a significant mark as civil servants. Howard law graduates were pioneers in the Federal government labor force.

Though Federal jobs were not easy to come by, Howard and other Black law graduates were hired in administrative clerk positions previously closed to them because of the color bar. At the Department of Justice it was not unusual to have Howard law graduates transporting the Attorney General of the United States to his office as an elevator operator. During the opening years of this century, Black lawyers were hired predominantly as clerks, messengers, elevator operators and in other menial jobs. The value of a law degree opened the door for Black Americans to work in areas of the Federal government once closed to them.

There has been little or no research exclusively focused on the Black lawyer's role in the Federal service. We know that Robert Morris was admitted to the bar in Maine in 1844. He is reportedly the first Black lawyer admitted to the bar in the United States. Between 1844 and the early 1880's the record is incomplete as to Black lawyers employed by the Federal government even though it is almost certain that Black lawyers served in the Federal government in some capacity during the Post Reconstruction years. Discussions concerning the Black lawyer in the Federal government between 1844 and 1880 must be

addressed at another time as more research is necessary to fill in the lost knowledge during this period. By the 1880's the names of identifiable Black lawyers serving in the Federal government began to surface.

For example, Albert Pierre Albert was graduated from Howard Law School in 1885. He was initially a Clerk of Police Jury in Louisiana in 1881 and after being graduated from Howard Law School, he worked for the U.S. Mint in New Orleans and then worked as an Examiner of Pensions in Washington, D.C. John T. Oatneal, an 1893 graduate of Shaw University Law Department also served as an Examiner in the United States Pensions Bureau in Washington. John Roy Lynch, admitted to the bar in the State of Mississippi in 1896 was Auditor of the Treasury for the Navy Department during the administration of President Harrison from 1889-1893. Richard Whitfield Tompkins, a 1922 graduate of Howard Law School worked as a contact officer, at the U.S. Veteran's Hospital in Tuskegee, Alabama, from 1923-1924, and his classmate W. Arvey Wood worked as a clerk at the Department of Commerce for a brief time after graduation.

As Black Americans began to increase their voting strength and become more aware of the privilege of the franchise, more legal jobs opened in the Federal sector. Although there is no discrete history of when the first Black lawyers began to move into top rank Federal jobs, I am able to say with some degree of certainty that upward mobility for Black lawyers in the Federal government did occur between 1900-1925.

For example, various records list Black lawyers in key government jobs in the early 1900's. Walter Cohen is listed as a Collector of Internal Revenue in New Orleans. James A. Cobb, a 1900 graduate of Howard Law School was named as Special Assistant United States Attorney on November 11, 1907 and served in that capacity until August 15, 1915.

Another lawyer, Edward Austin Johnson, an 1891 graduate of Shaw University Department of Law is listed as an Assistant U.S. District Attorney in the Eastern District of North Carolina -- a position that he held for seven (7) years. While I have not confirmed the exact date of Mr. Johnson's appointment, based on available data, he was probably appointed around 1907.

Clarence Benjamin Curley, a 1914 Howard law graduate was General Secretary and administrative director of the movement that secured the officers training camp at Des Moines, Iowa, during World War I. In 1927, Arthur G. Froe was Recorder, Office of the Recorder of Deeds for the District of Columbia. Froe served as Recorder of Deeds for several years. He was appointed successively to this position by Presidents Warren Harding, Calvin Coolidge and Herbert Hoover. He is believed to have attended and been graduated from Howard Law School between 1900-1905. Another Black lawyer by the name of La Fayette McKeene Hershaw, a 1892 graduate of Howard Law School worked in the Interior Department as an Executive in the civil service in 1927.

As the concerns of Black Americans increased in America and claims of injustices in the courts increased, the need to have Black lawyers in the Department of Justice increased, also. The following list of lawyers serving in the Justice Department is impressive.

In 1905, it is reported that a Black lawyer named George Hays, Jr., from the State of Ohio was hired as the first Black clerk in the United States Court for the Southern District, a post that he held for fifteen years. In the same Southern District of Ohio, A. Lee Beaty also Black, distinguished himself as an Assistant United States Attorney.

In 1913, William Clarence Matthews, a 1907 graduate of Boston University was designated Special Assistant, United States Attorney of Massachusetts by President Taft. He was reappointed in 1925 by President Calvin Coolidge.

From 1911 to 1921 William H. Lewis, a Harvard law graduate was an Assistant U.S. Attorney General in Philadelphia. He was first appointed by President William Howard Taft. Lewis had previously served as an Assistant U.S. Attorney and a Chief of the Naturalization Bureau for New England since 1907.

Harry J. Capehart, a 1913 graduate of Howard Law School served as a U.S. Assistant District Attorney in West Virginia from 1917 to 1923.

In 1921 Perry Wilbon Howard, a 1904 graduate of De Paul University School of Law was appointed as Special Assistant to the Attorney General of the United States. In the same year James G. Cotter was appointed Assistant Attorney General for the Northern District of Illinois by Attorney General Harry M. Daugherty.

In 1922 John Hawkins served as Special Assistant U.S. Attorney for the Southern and Eastern Districts of New Jersey and New York from 1922-1927.

In 1924 Alexander Hamilton Martin from Ohio was appointed Special Assistant to the Attorney General of the U.S., a post he held for one year.

Between 1925 and 1937 several Black lawyers were appointed by Presidents and U.S. Attorney Generals as special or assistant attorney generals. Among this group included the following lawyers:

James Thomas served for six years as an Assistant U.S. District Attorney of New York. He was an expert in immigration law.

In the 1940's Louis Rothschild Mehlinger, served as an Assistant U.S. Attorney General specialist in cases before the U.S. Court of Claims.

Richard L. Baltimore, a 1904 law graduate of Howard served as an Assistant U.S. Attorney in New York.

Eugene Washington Rhodes, a 1925 graduate of Temple University was appointed Assistant United States Attorney for the Eastern District of Pennsylvania in 1925. Rhodes represented the U.S. government in the Quaker Industrial Alcohol Bonding case, securing a verdict for the government of \$114,000.00.

William L. Offord, a 1914 graduate of Howard Law School served as a Special Investigator for the U.S. Department of Labor.

In 1927 H. Gray Lucas, a graduate of Boston University Law School was appointed Commissioner of the U.S. Circuit Court for the Eastern District of Arkansas, and Hubert T. Delaney was appointed Assistant U.S. District Attorney from 1927-1932 in New York. Delaney is said to have prosecuted five hundred cases and lost only two.

In 1932, Robert L. Vann, a graduate of the University of Pittsburgh Law School was appointed Assistant U.S. Attorney General by President Franklin D. Roosevelt becoming the first Black to receive such an appointment from the Democratic Party.

In 1936 Theron Hamilton was appointed as an Assistant U.S. Attorney as was William P. Houston in 1937. Houston, the father of the lawyer, Dr. Charles Hamilton Houston held his first federal job in 1897 as a clerk in the Record and Pension Office in Washington, D.C.

There is no doubt that other Black lawyers, whose names remain anonymous, that served their nation as lawyers in the Department of Justice and other affiliate government positions during this period. More research must focus on lawyers such as Alexander T. Francis of Indiana, a diplomat and consul to Liberia, John W. Lyons, who served as Register, U.S. Treasury, and judges such as Robert H. Terrell, who was in 1909 appointed to the Municipal Court in the District Columbia by President Roosevelt and subsequently reappointed to this position by Presidents Taft and Wilson.

James A. Cobb was also appointed to the Municipal Court of the District of Columbia by President Coolidge in 1926, and reappointed by President Hoover in 1930. Further research on these men must focus on the impact these men had on American law.

Louis Rothschild Mehlinger, who today is one hundred and one years and nine months old served his government for thirty years. He and the other names of Black lawyers -- Howard law graduates among them -- are the pioneers in the Federal service as a career.

The Black lawyer has been a solid, and loyal servant in the Federal service for over one hundred years. And yet today, the Black lawyer faces obstacles in the Federal service similar to those that existed in yesteryear. This is not to say that great strides have not been made by Black lawyers in the Federal work force. Such strides are not new -- they are as old as the first appointment of Blacks to be Special Assistants to the U.S. Attorney Generals. However, one is required to pause and ask these questions: Between 1844 and now why has no Black lawyers qualified to be designated as the Attorney General of the



United States, Chief Justice of the U.S. Supreme Court, Counsel to the President, General Counsels of numerous Federal agencies? Available information reflects an initial callous rejection of the services of Black lawyers as staff members by the Federal government because of race. The refusal on the part of Federal agencies to hire Blacks on their legal staffs was very apparent during a ten year span between 1930-1940, according to William H. Hastie, who was Dean of Howard's Law School between 1939-1945. On April 13, 1940 John C. Fitzgerald of the Chicago Chapter of the National Lawyer's Guild wrote to Dean Hastie about "the federal government's practice in making appointments to its various legal staffs." The Guild was conducting a national survey. On April 25, 1940, Dean Hastie responding to the Fitzgerald letter wrote: "Of [Howard Law School's] one hundred and three graduates during the last ten years only one man is employed on a legal staff of a federal agency...we have been particularly interested and concerned because of the reluctance of and members of federal agencies to appoint Negroes to their legal staffs...." The discrimination by the Federal government, coupled with that of white law firms has had a direct impact on the growth and development of law firms headed or shared by Blacks. If Black lawyers both men and women had been recruited and hired by the Federal government in 1844 and in greater proportions in 1871 (the year that Howard Law School graduated its first law class), and given competitive assignments, like their white counterparts, and allowed to revolve in and out of government with technical knowledge and hired by established firms, and had been allowed to develop in such firms, and permitted to ascend to partnerships and allowed to fully participate in the American Bar Association and affiliate state bar associations: the Black lawyer would today have a totally different status in American law. Without race distinctions and

racism in our society and government, there is no doubt in my mind that more than one Black would have served on the United States Supreme Court, that at least one Black Attorney General or Deputy Attorney General of the United States would have been appointed and confirmed by the Senate, and many more Federal agencies would have had Black agency heads, general counsels and staff lawyers.

Today, Black lawyers are moving into specialized areas of law such as telecommunications, antitrust, transportation and international trade law areas.<sup>2/</sup> However, we are several years behind in many areas of specialization because Federal jobs in these areas have been closed to Black lawyers and because law firms have neglected to direct, hire, or train them; and because corporate America has been slow to support an imperative of the need for more minority lawyers in government.

In closing, the Howard Law Alumni Association by hosting this luncheon during the Annual Convention of the Federal Bar Association has done an historic act. An event such as this has never happened before. Just think, prior to 1945, by a constitutional provision only whites could qualify for national membership in FBA. In 1951 Dr. George M. Johnson, Dean of the Howard Law School questioned the admissions policy of FBA due to the dearth of FBA

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<sup>2/</sup> Smith, Career Patterns of Black Lawyers in the 80's, 7 Black L.J. 75 (1980).

Black membership.<sup>3/</sup> Yet, by 1979, Howard law Professor Jeanus B. Parks, Jr., had become the first Black president of of the D.C. Chapter of the Federal Bar Association,<sup>4/</sup> and in the subsequent year, I had become the first Black FBA National President.<sup>5/</sup>

Louis Rothschild Mehlinger -- a Howard graduate -- by his desire to make a difference has made a difference for us today. The history of Black lawyers in the Federal service has been passed on to us. We must now make a difference, the Federal Bar Association must make a difference and the Federal government must make a difference. Black lawyers have served their nation with high distinction. Their contributions to the government must continue to inspire others to follow in their footsteps. Research in the area of Black lawyers in the Federal service during their initial years must continue so that history can properly credit the contributions of Black lawyers to American law.

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<sup>3/</sup> Cited in Smith, supra n. 1, at 368.

<sup>4/</sup> Id. at 368-69, n. 11.

<sup>5/</sup> Id. at 363.