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THE CONTRIBUTION OF THE HOWARD UNIVERSITY SCHOOL OF LAW TO THE  
RIGHT TO VOTE OF THE AMERICAN NEGRO AND INTRODUCTORY REMARKS OPENING  
THE HOWARD LAW JOURNAL'S SYMPOSIUM ON THE VOTING RIGHTS ACT.

By J. Clay Smith, Jr.\*/

When people have been intimidated for years  
it takes courage to walk into the courthouse  
and ask where the registrar's office is. . . .  
The only way a lot of people will ever get  
registered is for the federal government to  
send more federal examiners, to places other  
than the courthouse, Saturday's as well as  
weekends.<sup>1/</sup>

Disenfranchisement has never been an objective of the American Negro.  
See e.g., Hearings Before The U.S. Commission On Civil Rights, Vol. 1 (Jackson,  
Mississippi, Feb. 16-20, 1965). See also, Report of the U.S. Commission on  
Civil Rights (1959). Brought to America as slaves, freed by the Emancipation  
Proclamation; thereafter, denied the opportunity to vote by political and  
racial discrimination, and by physical abuse, the American Negro, nevertheless,  
fought and died to acquire the right to vote. Minority Vote Dilution (ed. C.  
Davidson, 1984).

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\*/ Professor of Law at Howard University School of Law. The  
Symposium, sponsored by the Howard University Law Journal was held on  
January 19, 1985, at the Law School in Washington, D.C.

<sup>1/</sup>Gay, Justice Official Says Department Should Alter Voting Rights  
Policy, Southern Courier, March 26, 1966, at 2, col. 4 (Quoting Wiley  
A. Branton, Sr., then Assistant To The Attorney General of the United  
States speaking at Tuskegee Institute in Alabama. He later became  
dean of the Howard University School of Law from 1977 to 1983).

Howard University School of Law, founded in 1869, through its law graduates and faculty has played a major role in the development of legal theories to increase the number of Black voters in America.

In 1944 Dr. William Henry Hastie, then Dean of the Howard Law School, joined, by Dr. Leon A. Ransom, a member of the law faculty, and several other Black leaders issued a document entitled, "A Declaration By Negro Voters." The Declaration stated, in part, that:

The Negro. . .vote cannot be purchased by distributing money to and through party Blacks. It cannot be won by pointing to jobs given to a few individual Negroes. . . the Negro vote no longer can be won by meaningless generalities in party platforms which are promptly forgotten on election day.

The signatories to the "Declaration" then insisted on the right to vote. They stated:

We insist upon the right to vote in every state, unrestricted by poll taxes, white democratic primaries, the gerrymandering of districts, or any other device designed to disfranchise the Negro and other voters. Any political party in power, or aspiring to power must demonstrate its determination through

legislation and through vigorous criminal prosecution by the Department of Justice to protect and secure voting as a fundamental right of citizenship.<sup>2/</sup>

It is clear from this declaration that "the Negro vote [was not] tied to [any] political party." H.L. Moon, Balance of Power: The Negro Vote 11 (1948). It is also clear that Black Americans were certain that legislation was necessary to secure, what to other was a fundamental right, that is, the right to vote. Hence, Dean Hastie and Dr. Ransom, joined by other Blacks,; namely, H. Elsie Austin, Belford V. Lawson, Jr., Z. Alexander Looby, Thurgood Marshall, to name a few, recognized that the courts were not the sole answer in achieving the right to vote. After all, Black Americans had been stung by the United States Supreme Court decision in Grovey v. Townsend, 295 U.S. 45 (1935) wherein the court upheld the exclusion of Negroes from primary elections. The U.S. Supreme Court had decided Grovey v. Townsend, supra, in the face of Nixon v. Herndon [273 U.S. 536], in 1927, and Nixon v. Condon [286 U.S. 73] in 1932.

The decision in Townsend was a set back for Black America. However, Howard Law School, through the advocacy of its Dean Hastie,<sup>3/</sup> changed the

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<sup>2/</sup>For full text of declaration, see, A Declaration By Negro Voters, 51 Crisis 16 (1944).

<sup>3/</sup>Hastie, however, had to be simulated and inspired, and no doubt intellectually guided by the other Black lawyers involved in this case; namely, Thurgood Marshall, Leon A. Ransom, Carter Wesley, W.J. Durham, W. Robert Ming, Jr., and George M. Johnson. For other accounts of Hastie's involvement in this case, see, Ware, Grace Under Pressure (1984).

course of American political history with his victory in Smith v. Allwright [321 U.S. 649] in 1944. In Smith v. Allwright, a Texas Negro voter sued a primary election judge in the District Court of the United States for damage suffered when he presented himself at the polling place on primary day and was denied a ballot by the defendant. The claim of the constitutional right to vote was founded on the 14th and 15th Amendments, as in Grovey v. Townsend, and also upon Article I and the 17th Amendment, consistent with the theory in United States v. Classic, 331 U.S. 299, 314, 318 (1941). Smith v. Allwright overruled Grovey v. Townsend making it unconstitutional to deny Blacks the right to vote in primaries. As Dean Hastie wrote a year after the Smith decision, "the potential of this decision, both in its effect upon political institutions and in analogical projections into other fields, is a matter substantial interest and consequence." Hastie, Appraisal of Smith v. Allwright, 5 Lawyers Guild Rev. 65,65 (1945).

The Crisis Magazine reported the immediate reaction of the Smith decision. Senator Maybank of South Carolina stated that "regardless of any Supreme Court decision. . .we of the South will maintain our political. . .institutions as we believe to be in the best interest of our people. . . . The White people of the South will not accept these interferences. . . . We do not intend for (the Negro) . . . to take over our electoral system." Other newspapers fumed at the court's decision. For example, The Macon Telegraph wrote that "the first duty of the incoming Congress. . .is wholesale impeachment . . . directed, first of all, to . . . members of the Supreme Court." The Charleston News and Courier wrote that to "admit 300,000 Negroes, men and women, to vote in (the primaries)

State Bar Association passed a resolution condemning the decision and stated that "the Supreme Court of the United States is losing. . .high esteem. . . ." See, Supreme Court Rules Out White Primaries, 51 Crisis 164, 165 (1944).

On the other hand, there were favorable editorials in the Richmond Times-Dispatch and the San Antonio Enterprise. The Times-Dispatch wrote that the Smith decision "is one more milestone on the way to fairness and justice for the Negro. . . ." The Enterprise stated that the Smith decision was "more realistic than . . . the 1935 opinion, which the tribunal . . . reversed." Id.

The purpose of my remarks is not to focus on the detailed discussions that will take place today here in the James A. Cobb Mootcourt Room at Howard Law School. They are to remind you that discussions, as will go on today, are a continuation, a renewal of the dialogue of individual liberty that have predominated at this law school for nearly a half of a century. Yesterday the focus was solely on Blacks. Today, the focus extends to Hispanics and other non-white American citizens.

Throughout these discussions today, the presence of Black lawyers such as William Henry Hastie and Thurgood Marshall will be called upon because of their assiduous efforts to bring about political equity for Black Americans. Howard University School of Law -- to a large extent -- is one of the seeds leading to the initial passage of the Voting Rights Act. It is for this reason that, we are delighted that the Howard Law Journal has undertaken to sponsor this symposium. On behalf of the Acting Dean, Dr. Oliver On behalf of the Acting Dean, Dr. Oliver Morse, the law faculty, and the student body, I wish to thank the organizers of the symposium, and the distinguished scholars participating in this important event.