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WHITHER THE BLACK LAWYER IN VIRGINIA?

by J. Clay Smith, Jr.*

I

Introduction and First Steps

A new era in Virginia history was ushered in when Governor Charles S. Robb appointed John Charles Thomas, a distinguished black lawyer, to the Virginia State Supreme Court.^{1/} The selection of Justice Thomas was a declaration against the past that enslaved his ancestors; and who, after their emancipation passed "Black Laws" to assure that blacks would never be allowed to participate in the definition of American liberty.^{2/}

I am here today at the invitation of Waller H. Horsley, Chairman of the Virginia State Bar Association's Special Committee on Minority Participation in Bar Association Activities. I am honored to be here, and I think that Virginia Beach must be a favorite meeting place of the Virginia State Bar Association. In preparing my remarks, I discovered that the Association held its Sixth Annual Meeting here on the 10th-12th of July, 1894. In 1894, the Association had 472 members.^{3/}

It is unlikely, that the Association membership included any black or women lawyers in 1894. The exclusion of black lawyers

*/ Dr. Smith is a professor of Law at Howard University. He received his B.A. degree from Creighton University; J.D., Howard University School of Law; LL.M. and S.J.D. degrees from the George Washington National Law Center. This paper was delivered before the annual meeting of the Virginia State Bar Association, on June 14, 1985, held at Virginia Beach. Copyright retained by author.

from the Virginia State Bar Association for decades, the silence of its members on such exclusion, the insensitivity to the needs of the black community to be represented by black lawyers, the unwillingness to assure that the courts of this state and its public offices appointed and hired black lawyers is the reason why today there is a special need for a committee on minority participation in Bar activities. In the memory of the black lawyers of Virginia yesteryear, who were never invited to speak to this learned body, I salute the Virginia State Bar Association for this first step, to hopefully many steps, forward.

II

A. Early Black Virginia Lawyers

It has yet to be determined who became the first black lawyer admitted to practice in Virginia. However, Thomas Calhoun Walker is one of the first black lawyers in Virginia. Admitted in the County of Gloucester in 1886, he practiced law in Virginia for 67 years prior to his death in 1953.^{4/} Walker is "the first black man to have his portrait hung in a Virginia [Gloucester County] courthouse."^{5/}

In 1900 John Thomas Hewin was admitted to practice in Virginia. Born in the County of Dinwiddie on December 24, 1871, he attended Boston University Law School (entering in 1896). Hewin was active in Richmond, Virginia for many years.

It is reported that in 1919 B.F. Harris, a black lawyer from Petersburg passed the Virginia bar examination held in Charlottesville. Notably, B.F. Harris became not only one of the

first second generation black lawyers in Virginia's history, but one of the first to study law under his father-lawyer, Alfred W. Harris.6/

It has only been in recent years that blacks have been actively recruited and admitted to law schools in Virginia. In 1921, recognizing the need for black lawyers in the state, Virginia Union University opened a law department which, inter alia, claimed among its graduates Richmond lawyer, Spottswood William Robinson, Jr., the father of Spottswood William Robinson, III, Chief Judge of the United States Court of Appeals for the Circuit of the District of Columbia.7/ Admitted to the Virginia bar in 1926, Spottswood William Robinson, Jr., practiced in Richmond serving a diverse clientele.

The dearth of black lawyers in Virginia during this century has been appalling. In his 1937-1938 Negro Year Book, Monroe Work reported that in 1930 the ratio of black citizens to black lawyers was 1 lawyer for every 11,020 black citizens in the nation. At that time, Virginia was not one of the states with a growing black lawyer population.8/

The Commonwealth of Virginia has been deprived of many outstanding black students who have been educated outside of the Commonwealth, but who serve with distinction in position of public trust. For example, the Howard University School of Law is proud to claim as one of its most distinguished 1936 graduates, the Honorable Spottswood William Robinson, III, a native of Richmond,

Virginia, as Chief Judge of the United States Court of Appeals for the District of Columbia, and the Honorable Ruth Hankins Nesbitt, the immediate past Chair of the D.C. Public Service Commission, who was graduated from the Terrell Law School in Washington, D.C. in 1950. Because woman like L. Marion Poe could not get a legal education in Virginia, she attended the Howard Law School. Ms. Poe became the first black woman in Virginia to be admitted to the bar in 1925. She practiced in Newport News, Virginia.^{9/}

B. The Origins of the Old Dominion Bar Association and the National Bar Association.

The Old Dominion Bar Association composed of predominantly black lawyers was born out of racism. The black lawyers who founded the Old Dominion Bar Association were barred from membership in the Virginia State Bar Association. There was no opportunity for black lawyers to share information, clients, or secrets of the profession with their white counterparts. In 1925 a few black lawyers met in the Bethel A.M.E. Church of Richmond, Virginia and organized a state bar association for black lawyers. The preamble to the 1925 Constitution read, in part, as follows:

And whereas we the Colored members of the legal profession, deem it as highly necessary to take our place where we may best perform the duties required to us, consider it highly necessary that there should be formed among us an organization through which the functions of our profession may be discharged for the best interest of our race.

The first officers of the Old Dominion Bar Association were: Henry D. Dolphin, of Roanoke, president; Thomas H. Reid, of Ports-

mouth, Vice-President; Harry Green, of Richmond, secretary-treasurer.^{10/} Today the Old Dominion Bar Association under the leadership of its president Raymond A. Jackson, of Norfolk, continues to carry out the objectives of their founders.

In that same year the National Bar Association (NBA) was organized by black lawyers in Des Moines, Iowa forty seven years after the ABA was organized. Its purpose was to organize black lawyers as a federation to do what the ABA did for white lawyers.^{11/}

C. The Belva A. Lockwood Zeal

The nobility of Virginia is exemplified in the person of Belva A. Lockwood. Ms. Lockwood was one of the first white women to be graduated from a law school in the nation's history. She attended the National University Law School graduating in 1873. In 1879 she obtained "the passage of a law permitting women to practice before the United States Supreme Court, and in the same year was the first woman to be so admitted."^{12/}

Ms. Lockwood, though admitted to practice before the United States Supreme Court, was denied admission to the Virginia Court of Appeals because she was a woman. An editorial commenting on the refusal of the court to admit Ms. Lockwood to practice stated, "It would be remarkable, that a Virginia woman should be denied the privilege of becoming a practicing lawyer in the courts of the State....If Ms. Lockwood ever expects to practice in [Virginia], she must prevail on the Legislature to give her the status of a man."^{13/}

Ms. Lockwood was not a native Virginian, but she apparently lived in Virginia during a portion of her life. However, the zeal that she showed in Virginia for her own admission to the bar in the 1880's was demonstrated again when she moved for the admission of a black Alabama lawyer, Samuel R. Lowery, into the United States Supreme Court on February 2, 1880. This was the first time that a white woman had done this in American history.^{14/} Virginia needs more people like Belva A. Lockwood in the legal profession.

As stated by one distinguished American:

[I]t is clear that blacks have been largely excluded from a profession of tremendous importance and power in our society. Whether that exclusion is due to past active discrimination, to the class disadvantages that deny access to expensive professional education to poor people, or to simple inertia, is immaterial. The fact is that blacks and other minorities are grossly underrepresented in the legal profession and are underserved by the profession.^{15/}

This statement applies to Virginia.

III

Northern Virginia Employment of Black Lawyers is Indicative of a State Problem.

A. Alexandria, Arlington, Fairfax and Prince William Counties

A recent study of Northern Virginia Black Attorneys Association (NOVABAA) demonstrates the problem of the black lawyers. NOVABAA reports the following statistics in public sector hiring of black lawyers in Alexandria, Arlington, Fairfax and Prince William Counties, Virginia from 1976 - 1985.

1. ALEXANDRIA, VIRGINIA:

City Attorneys Office.

Since 1977, only one black lawyer has been hired.

Commonwealth Attorneys Office.

Since 1978, only one black lawyer has been hired.

United States Attorneys Office.

The United States Attorneys Office has one black lawyer out of 17 lawyers on staff.

2. ARLINGTON, VIRGINIA:

City Attorneys Office.

Since 1976, only one black lawyer has been hired.

Commonwealth Attorneys Office.

This office has never had a black lawyer on its staff.

3. FAIRFAX COUNTY:

City Attorneys Office.

This office employs two black attorneys out of 23. This county was the subject of an equal employment opportunity law suit brought by the United States Department of Justice in or about 1981-1982. In 1983, the County spent over 1.5 million dollars on outside counsel. According to a report from the county, the Northern Virginia Black Attorney's Association states that only \$1,050 was paid to a minority lawyer or law firm.

Commonwealth Attorneys Office.

In this office only one minority lawyer has been hired.

4. PRINCE WILLIAM COUNTY:

County Attorneys Office.

This office "has never employed a black lawyer."

Commonwealth Attorneys Office.

This office "has never employed a black lawyer."

B. State and Federal Court Systems

The employment profile of the Federal and State judiciary in Virginia is disturbing. In Northern Virginia, no black lawyers have ever been hired in nonjudicial positions.

The United States District Court for the Eastern District of Virginia at Alexandria has three judges. Each judge selects two law clerks for two year clerkships. No black graduates have ever been selected to serve as clerks. No black or woman has ever served as a United States District or Circuit Judge in the history of Virginia.

1. PRIVATE LAW FIRMS:

A random survey of private law firms in Northern Virginia indicates a paucity of black lawyers. According to the Northern Virginia Black Attorneys Association, in "the last 8 years, the major law firms with 10 or more lawyers have hired at best three minority lawyers."^{16/} These figures may be worse. However, given the number of minority lawyers available in the Metropolitan Washington area, and those being graduated from George Mason, The University of Richmond, William and Mary and The University of Virginia^{17/} Law Schools, these statistics do not demonstrate an

active effort on the part of firms to diversify their workforce. There is little doubt that Virginia has moved slowly to increase the number of black lawyers in the state.

C. Black Lawyers In Virginia, 1960.

According to United States census data, in 1960 the Virginia state population was 3, 142, 443. The black population was 816,258. There were only 59 black lawyers in the State Commonwealth of Virginia in 1960, and of this number fewer than twelve were black. There were 5,442 white lawyers in Virginia in 1960, and of this figure there were fewer than 160 white female lawyers.

D. Black Lawyers In Virginia, 1970.

According to United States census data, in 1970, the Virginia state white population was 3,761,514. (There were 1,864,716 white males and 1,896,798 white females). The black population numbered 816,368. (There were 419,248 black males and 442,120 black females). There were a total of 54 black lawyers in the Commonwealth of Virginia in 1970: 44 black and 10 black female lawyers. The total number of lawyers in Virginia, excluding blacks and Hispanics numbered 8,421. There were 8,021 white male and 400 white female lawyers in the Commonwealth in 1970. There were 78 Hispanic lawyers in Virginia in 1970. The 1970 census did not identify any Hispanic female lawyers.

Somewhere between 1960-1970, three black lawyers became judges at the local level in Virginia; namely, the Honorable James Overton, Portsmouth, Virginia; the Honorable William Stone, Williamsburg, Virginia and Phillip Walker, Hampton, Virginia.^{18/}

E. Black Lawyers In Virginia, 1980.

According to United States census data, in 1980, the Virginia state white population was 4,229,798. (There were 2,080,189 white males and 2,149,609 white females). The black population numbered 1,008,668. (There were 484,406 black males and 524,262 black females). There were a total of 388 black lawyers licensed to practice in the state: 294 black males and 94 black females.^{19/} There were 16,761 white lawyers: 14,515 white males and 2,246 white females. Other minorities, such as Native Americans, Eskimos and Alutes numbered 35. In this category, no woman were recorded.

IV

From Saratoga To Virginia Beach:

Will It Make a Difference?

I am positive that the Old Dominion Bar Association welcomes the opportunity to participate in the annual meeting of the Virginia State Bar Association and the Special Committee on Minority Participation in Bar Association Activities. Since 1925, the year Old Dominion Bar Association was founded, it has sought to persuade the American Bar Association and every state bar association in America about the worth of the black lawyer. Their efforts have resulted in increasing the number of minority judges at the state level. These efforts, however, have not been without difficulty. Bar associations have resisted the upward mobility of black lawyers, law firms have shunned them, and government has

been slow to appoint black lawyers to work in specialized areas of the law.^{20/} Nevertheless, in the face of hostile racism, we have established -- in spite of it all -- that the Black lawyer is an anchor in American law. ^{21/}

When the call went out to organize a federation of state bar associations later to become the American Bar Association, that call was made to a white and male society. Hence, no women and no blacks met at Saratoga, New York on August 21, 1878 "to consider the feasibility and the expediency of establishing an American Bar Association."^{22/}

Since black lawyers were finally admitted to membership of the American Bar Association in the 1940's ^{23/} it has taken a long time for the American Bar Association and affiliate state bar groups to collectively deal with problems confronting the black lawyer.^{24/}

On February 13-14, 1985, the American Bar Association held hearings concerning the black lawyer. Several distinguished people attended those hearings and gave compelling testimony. The ABA requested commentators to address four areas; namely, legal education and admission to the bar, professional employment opportunities and career development, judicial selection and judicial clerkships, and bar association involvement. These are concerns -- so I am informed -- of the Virginia State Bar Association.

My statement is directed to the Virginia State Bar Association and the ABA. These comments do not cover all the areas of concerns that the Old Dominion, the Virginia State, Virginia

Women's and the American Bar Associations must jointly resolve. There are others. Hopefully through trust and the exercise of reason the Virginia Beach meeting for black lawyers will have a greater meaning than the meeting in Saratoga. It is difficult to trace each of the four categories back to 1844, the year that Macon Allen became the first black lawyer in American history admitted to practice law in the state of Maine. Our hope is that the ABA Task Force studying the problems faced by minority lawyers is a sincere effort to do something which will open windows of opportunity to minority lawyers in American law.

At this time in American history, we see the winds moving the clouds backwards rather than forward in time. We hear the leaders of our country, and the Department of Justice urging the courts to forget about the racism of the yesteryear as it relates to present effects on American blacks. We are witnessing a focus on materialism and a rejection of the concerns for the human elements in our society.25/

In spite of these ominous signs, I am here in hope that change will come as a result of the activity of this Committee. We are encouraged by your efforts to raise the moral question associated with too few black lawyers in the legal profession, and too few black lawyers in Virginia.

My statement treats ABA's four principle issues: (1) Legal Education and Admissions to the Bar, (2) Professional Employment Opportunities and Career Development, (3) Judicial Selection and Judicial Clerkships, and (4) Bar Association Involvement.

1. Legal Education and Admission to the Bar.

Access to legal education by black men and women is not increasing at a rate in proportion to the percentage by blacks in the nation. There has been progress, but the fact of entry is limited by a host of factors which should concern the American bar as a whole.26/

The educational system of this nation has not created materials or books in which a positive image of the black lawyer is projected.27/

Black lawyers are rare or nonexistent in several communities in the nation. However, many communities with sizeable Black populations have no black judges, and law firms within such communities make no effort -- indeed are not even conscious of the need to recruit black lawyers to apply for law firm positions. Hence, many black youth infer that the law is a profession of and for "white men."28/. Of course, it is not. This is a regrettable inference. This inference is also drawn from the lack of black professional role models in common textbooks and in other teaching aids, the failure of teachers to expose black students to the history of the the black lawyer, and a general lack of understanding that there is an affirmative need to suggest law to black students as a career. Hence, we suggest that:

- a) ABA undertake a project to assist the National Bar Association and other like groups in the creation of materials on and about the black lawyer for classroom use;

- b) ABA approach, open discussions and suggest that publishing houses produce a series of childrens books about black lawyers for popular purchase or for use by children in the classroom;
- c) ABA, in the event all efforts fail to persuade others to publish children's and general books on or about the black lawyer, assume this responsibility;
- d) ABA inaugurates junior lawyer clubs in affiliate state bar associations in cities, counties and townships with black children, and especially in those localities where the number of black lawyers is small or non-existent;
- e) ABA affirmatively encourages the Chief Justice of the United States and the Judicial Conference of the United States to encourage the Bench and bar to step out of the courtroom and into the classrooms of inner-city and country schools to encourage black students to consider the law as a career.

The law schools of this nation are woefully underrepresented by black professionals.^{30/} Until the number of black teachers are increased in the law teaching area, white law teachers carry the obligation of exposing all law students to the history of the black lawyer and relevant cases authored by black judges. In addition, law teachers in majority law schools must affirmatively assimilate the concepts of black lawyers and scholars into their lectures and most assuredly into their casebooks. Casebooks are probably the most segregated tools used in law schools. Few of the most prominent scholars have cited black lawyers in the note materials of their casebooks or in law review articles. Hence, there is little hope for growth and development of a new, diverse scholar community composed of black lawyers in American Law.

2. Professional Employment Opportunities and Career Development.

The recruitment, hiring and retention of black lawyers in the private sectors is a moral imperative. This imperative was most

recently asserted in the Creighton Law Review.^{31/} It has also been emphasized by the National Law Journal.^{32/}

The problem is one of moral commitment of American law firms to change their image by casting off the yoke of bias against black law graduates and black lawyers. So serious is the dearth of Black lawyers in certain regions of the country with large black populations that there is talk about boycotting the companies represented by such firms until they clean up their act.^{33/}

It is a shame that talk of boycotts has surfaced as a remedy to get qualified black lawyers into majority law firms. However, each year the record shows hardly any change by the law firm industry to alter existing discriminatory patterns.^{34/} Consequently, black law graduates are discouraged from applying to large and medium size firms as options for employment.^{35/} This effectively limits black lawyers from specializing in several areas from litigating in federal courts, from influencing the law in these same areas, and from qualifying for the federal judiciary under ABA standards.^{36/}

American law firms must recognize that they are part of the problem limiting black lawyers in the legal profession. This is not a perception. It is a fact.^{37/}

Career patterns in the public sector are slightly better. The public sector has benefitted from the discriminatory hiring patterns of the law firm industry. In recent years the number of Black lawyers has increased at the state level. The pattern

developing in state governments suggests that after the race barrier has lifted allowing Black lawyers an opportunity to work, they found a high performance and production level among Black lawyers. Private law firms would do well to use some state governments as models for their own hiring practices.

Career development is vital to Black lawyers hired by large firms and government agencies. Most lawyers, and particularly minorities know when they are present for show or accommodation as opposed to "on the ladder" for partnership or promotion.

Its time to start packing when no partner suggests that you attend continuing education seminars, does not take you to Judicial Conference meetings, or fails to include you in discussion with clients. Career underdevelopment may be designed to eliminate a Black lawyer from partnership consideration, and built-in failure.

On the other hand, law firms recognizing the delicate need for Black lawyers in the profession should affirmatively expose Black lawyers in the firm to continuing legal education activities and client exposure as soon as possible. Every effort should be made to assure early and fair evaluations of their work and offer encouragement, and if need be, an opportunity to attend graduate law training.

The black law firm is being neglected by corporate America. On June 25, 1984 author Charles W. Stevens of the Wall Street Journal published a front page story entitled, "Black Lawyers Begin To Enter Mainstream of Legal Profession." The article

Painted a rosey picture of what is really a grim situation. The heart of Steven's article is buried in two sentences. One sentence states that "Precisely how many black firms are developing corporate practices isn't known." A second sentence states that "[B]lack firms [are not] usually paid an annual retainer by corporate clients. . .they are paid on a case-by-case basis.

Black law firms have existed since post-reconstruction, and they have faced a dogged battle for survival since that time because corporate America has been slow to recognize and to utilize the services of black lawyers. Today, there is a dearth of black lawyers in corporate legal offices, and few black general counsels. There lies the problem.

Corporate board members and corporate counsels select law firms from among their friends, business acquaintances and personal networks. Few black lawyers are among these groups. If they are among these groups, black lawyers are still not considered as candidates for corporate legal services. Unless corporate executives, board members and general counsels become more sensitive to the exclusion of black lawyers from among their ranks the growth and development of predominantly black law firms appears grim. A small law firm (and the majority of black firms are small) cannot easily develop a corporate practice unless corporations have confidence in the firm. Confidence may be generated by the amount of dollars the firm earns, where it is located, list of corporate clients, law school affiliations, political affiliations, and a host of other personal factors.

As mentioned in the Steven's article, a few black law firms may boast of annual billings of \$500,000. However, this is a far cry from billings of white law firms that gross \$10 to \$20 million dollars per year. The bottom line is that black law firms cannot develop corporate practices because corporations are simply not sending any significant business to them.

The lack of corporate clients impedes black law firms from obtaining acceptable ratings from lawyer directories, and unofficial behind-the scene inquiries. Naturally, corporate clients want and deserve the best and most efficient lawyers to represent them. Since black law firms are not utilized by corporate America, it is difficult to meet the Competition of their white counterparts no matter how good, brilliant or efficient the firm is.

Secondly, as the Steven's article points out, black law firms are recent recipients of retainers from municipal governments where blacks control city hall. While black control should and ought to bring change in the society, white law firms have not lost any financial position representing these same cities. On the other hand, in cities that are controlled by non-blacks, black law firms receive little or no consideration by city administrators for retainers. Why?

The answer to this question is far from certain. The reason for nonuse of black firms by cities may be the same reason why corporations do not retain black law firms. These firms are often invisible to the commercial and political world. However, all this may be changing given the awareness of minority communities

to spend their money with companies who do not put blinders on to black capitalism; and to vote for political candidates who respond to the support of black people. But, by-and-large black law firms are not being retained by corporate America, state and local governments and this is reflected by the disappointing growth of black law firms in the past 100 years.

If black lawyers are to increase their numbers in America, black youth must see that they can succeed as corporate lawyers. If the legal community is the guardian of the rule of law, it must take the lead in opening corporate doors for the employment of black lawyers and for the retention of black law firms. If the corporate ethic is to be accepted by minorities in this country, it must put its money where its mouth is to enlarge the free enterprise system wherein black law firms struggle to survive.

Corporations that have made an effort to use the services of black law firms are to be commended. However, much more awareness of the use of these firms is required by corporate America.

3. Judicial Selection and Judicial Clerkships.

Judicial Selection at the Federal level under the Reagan administration has been very limited. Appointments seem to be based upon ideology. There is an assumption that black lawyers do not measure up to the President's ideology.^{39/} There's little that the black lawyer can do about this. We call on the ABA to consider standards so that presidents of the United States may be assisted in their power of appointment by diversification factors, including race, gender, geography and other like factors.

In recent years, Governors of various states, especially in the South have made interim appointments of black lawyers until the term of the incumbent has expired. This is a positive sign that state judicial systems may now be recognizing the moral imperative that a segregated judiciary is contrary to the values of a free country.^{40/}

However, there are several states that remain colorblind to the black lawyer, even though they are ready, willing and able to serve on the bench. The ABA and affiliate state bar associations must take their blinders off and urge political arms of the state to affirmatively seek out and seriously consider black lawyers for the bench.

Regarding judicial clerkships, it is noted that the Justices of the United States Supreme Court has been slow in selecting black law clerks. However, we note recently that Justice John P. Stevens did select a black clerk (James McCullom) from Howard University School of Law -- Howard's first Supreme Court clerk in its 115 year history.^{41/} This is regrettable since the Supreme Court in all things important usually sets the pace for lower courts. However, the Circuit Courts of Appeal and District Courts seem to have increased the number of blacks in spite of the low number of black law clerks that have been appointed to clerk at the U.S. Supreme Court in its long history. This increase may be a direct consequence of the number of black federal judges appointed by Presidents John F. Kennedy, Lyndon Johnson, Gerald Ford

and Jimmy Carter. Non-Black judges are reaching out more and more to Black law graduates as the word gets around that these graduates are dedicated to the law and are as brilliant, or even more so, than their white counterparts.

The hiring of black law clerks has certainly increased; however, it appears that a clerkship, once a sure ticket to a law firm does not seem to apply to black law clerk's. Nevertheless, judicial clerkships are viewed as valuable experience by federal agencies and state government recruitment programs.

The number of judicial clerkships at the state level remains sparse, especially in the midwest, the south and the southwest. The ABA must do more study on the applicant flow to state courts for judicial clerkships of black applicants. State courts must be more concerned about their images as "white courts" and seek to diversify their judicial clerkship ranks.

4. Bar Association Involvement.

The ABA and state bar associations may hold the key to the entry of Black lawyers into the profession. In all of the categories mentioned in this paper, the plight of black lawyers is proportionate to the advocacy of the bar. The ABA is familiar with its early history of racial exclusion of blacks from ABA membership.^{42/} ABA's discriminatory acts alone limited the upward mobility of Blacks in the legal profession as a whole. Black lawyers were affirmatively shunned by ABA and nearly every bar association of this country. Black lawyers survived because they

refused to allow racism to impede their personal quests for intellectual advancement and collegiality. So it is today. However, the ABA through its affiliates continues to maintain considerable weight in all aspects of law in this country. We therefore look to you to correct the obvious.

At the state level, more Blacks are becoming involved in the bar. However, even in states with a sizable black bar population, threats of suits have been made due to the failure of the membership to elect any Blacks that run for office.^{43/}

The Federal Bar Association -- for its size -- is probably the leading bar association in the country where Black lawyers have held positions of leadership, including the post of president.^{44/} The FBA, however, opened its doors at the national and local levels long before ABA.^{45/} As a matter of fact, FBA was one of the first bar associations to take a stand against the racial exclusionary policies of the ABA in the 1940's.^{46/}

Today, NBA recognizes other historic elections of Black lawyers to lead bar associations in the east, west, and in the industrial states. The numbers are not great, but what numbers there are offer hope that eventually past barriers will fade away.^{47/}

CONCLUSION

The black lawyer is going to have something to say about American jurisprudence. The sooner America realizes that black lawyers hold a key to peace in this land, the sooner the defini-

ions of freedom and liberty will be understood by all. As a former president of NBA stated in 1937, "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."48/

There has been race progress in the state of Virginia since the turn of the century. More is needed. Virginians pride themselves -- as they should -- on the history of America. However, there are some words uttered by the fathers of Virginia on the proper treatment of blacks that have gone unheeded. Even Thomas Jefferson favored the emancipation of black slaves.49/ However, the deep and powerful anti-slavery sentiments of James McDowell, a white man, speaking as a representative from Rockbridge County on January 31, 1832 are the words that I leave for assessment with the good people of Virginia, and especially to the legal profession. McDowell was clearly on the side of emancipation of blacks from slavery and I believe that today McDowell would oppose the philosophy of some of our national leaders, such as William Bradford Reynolds, Assistant Attorney General for Civil Rights at the Department of Justice whose policies threaten to undermine the gains made by black Americans during this century.

The words of James McDowell describe the meaning of liberty as understood and believed by blacks in 1832 and by the black lawyer today:

Sir, you may place the slave where you please--you may dry up to your uttermost the fountains of his feelings, the springs of his thought--you may close upon his mind every avenue of knowledge and cloud it over with artificial night--you may yoke him to your labors as the ox which liveth only to work and worketh only to live--you may put him under any process, which, without destroying his value as a slave, will debase and crush him as a rational being--you may do this and the idea that he was born to be free will survive it all. It is allied to his hope of immortality--it is the ethereal part of his nature which oppression cannot reach; it is a torch lit up in his soul by the hand of the Deity and never meant to be extinguished by the hand of man.50/

Thank you.

FOOTNOTES

¹Franklin, First Black Named to Virginia Court, N.Y. Times, April 12, 1983, at A21, col. 1; Bohlen, Black named to High Court Seeks Answers for Virginia, Wash. Post, April 15, 1983, at B3, col. 1. The first promising era in Virginia was the election of John Mercer Langston, a black lawyer, to the 51st Congress (House of Representatives) from the Northern District of Virginia. F. Styles, Negroes and the Law 19 (1937).

²J.P. Guild, Black Laws of Virginia (1936).

³Virginia State Bar Association, 1 Va. L. Register 73, 74 (1895).

⁴T.C. Walker Rites at Gloucester, Daily Press, November 8, 1953, at 8, col. 1.

⁵Boyd, The Legend of Gloucester County, Wash. Post, February 26, 1984, at C1, col. 1.

⁶Passes Virginia Bar Examination, New York Age, October 13, 1919.

⁷See Kiernan, The Fire Still Burns, Wash. Post, May 27, 1981, at 1, col. 5 (article principally about Judge Spottswood William Robinson, III. Brief mention is made about his father). See also, W. H. Bryson, Legal Education in Virginia 1779-1979 at 53, 237, 283, 341, 392, 399, 549, 553 (1982) (biographical data on the law faculty at Virginia Union).

⁸M. Work, The Negro Year Book, 1937-1938, at 277.

⁹W. Dyson, Howard University The Capstone of Negro Education A History: 1867-1940, at 237 (1941).

¹⁰See Roanoke Man Elected Head of Virginia Negro Lawyers, Wash. Eagle, September, 1925.

¹¹Smith, The Black Bar Association and Civil Rights, 15 Creighton L. Rev. 651 (1981).

¹²Vol. 17 Encyclopedia Americana 643 (1970).

¹³Mrs. Belva A. Lockwood, Attorney at Law, 1 Va. l. Register 151 (1895).

¹⁴See Admission of A Colored Lawyer To The U.S. Supreme Court, Black Book 124-125 (1974); W.J. Simmons, Men of Mark 144, 145 (1887).

¹⁵Jordan, Black Lawyers Cannot be Relegated to a Professional Ghetto, 7 Barrister 46, 47 (Spring, 1980).

¹⁶This figure seems consistent with even the largest Virginia firms such as Hunton and Williams in Richmond founded in 1900. According to one source, in 1979 Hunter and Williams had a total of 61 partners and 89 associates. Only 1 of the associates (John Charles Thomas, now a member of the Virginia State Supreme Court) was black. Daniels, The New Professionals, Change, at 39, October, 1979. Since 1979 the firm has grown to nearly 200 lawyers (almost evenly split between partners and associates). Three black associates (2 women and 1 male) are associated with Hunton and Williams. Not a lot of progress has been made.

¹⁷Virginia has not been totally insensitive to the need of increasing the number of black lawyers in the Commonwealth. In 1969, "[Dean] Monrad Paulsen of [The University of] Virginia [Law School], . . . indicated a strong interest in admitting more black students. . . ." Sperman, From Student To Intern To Attorney, A Step Toward Justice Programs to Increase Black Lawyers in the South, 1969-1973, at 16, 24 (1973).

In 1968 there were 3 first black law students at The University of Virginia Law School; in 1969, 13; in 1970, 12; in 1971, 9; in 1972, 17; in 1973, 9. In 1973 there was a total of 32 black law students enrolled at the Law School out of a total of 962. Id. at 23.

¹⁸It is noted that in 1982 Judge Thomas R. Monroe, Sr., was elevated from the 17th Judicial District Court in Arlington, Virginia where he had served for six years to a Circuit Court judge. He therefore became the second black judge on the Virginia Circuit Court bench in 113 years. Washington Afro-American, March 27, 1982, at 1, col. 4.

In the early 1970's, Judge Monroe served as a judge in the Juvenile and Domestic Relations Court in Arlington, Virginia. The first black lawyer appointed to a Circuit Court in Virginia was James Edwin Sheffield of Richmond. In 1974, Judge Sheffield was appointed to the Circuit Court of Richmond. Sheffield, an outstanding judge, was nominated to a vacancy only to be "blocked in 1980 by the U.S. Senator Harry F. Byrd, Jr., seen by many as the symbol of the state's Jim Crow Democratic order." Franklin, First Black Named to Virginia Court, N.Y. Times, April 12, 1983, A24, col. 1.

Only time will tell whether Democratic or Republican Senators from Virginia will defer to considerations other than race alone in the support of a black candidate for the U.S. District or Fourth Circuit Court of Appeals in Virginia.

It is reported that Willard H. Douglas was elected by the Virginia General Assembly in 1974 becoming the first black man to serve as a full time judge in Virginia in the Juvenile and Domestic Relations Court in Richmond. Note, Vol. 6, The National Bar Bull. 5 (Jan-June 1974).

In the state regulatory area, in 1968 Victor Ashe of Norfolk became the first non-white member of the Virginia State Board of Welfare and Institutions. He was appointed by Governor Mills E. Godwin. See Victor Ashe, 1940 Appointed to State Board, 1 Howard Lawyer 3 (Winter, 1968).

¹⁹The increased number of black lawyers in the 1970's is directly attributed to the affirmative action programs designed to increase the number of minority and women in the legal profession. The current attacks on affirmative action by William Bradford Reynolds, Assistant Attorney General of the Civil Rights Division of the Department of Justice belies the history of our nation as documented by the central government that blacks have been denied an equal opportunity in Virginia to become lawyers. See, H. Hammerman, A Decade of New Opportunity-Affirmative Action in the 1970's 88-89 (The Potomac Institute, 1985).

²⁰See Barbash, ABA Won't Require Law Schools to Widen Opportunities for Admission of Minorities, Wash Post, Feb. 6, 1980, at B7, col. 4; Burke, 3,700 Partners. . 12 Are Black, Nat't L. J., July 2, 1979, at 1, col. 1; Note, Former FCC Chief Attorney Highlights History of Commission's Black Lawyers and Engineers, 5 Air Time 10 (Jan./Feb. 1979).

²¹Smith, Forgotten Hero, 98 Harv. L. Rev. 482 (1984).

²²E.R. Sunderland, History Of The American Bar Association And Its Work 3 (1953).

²³In 1912 the ABA admitted three black lawyers. This caused such an uproar that the ABA refused to admit another lawyer until 1943. In 1943 Judge James S. Watson from New York was admitted after years of race resistance and callous disregard to public criticism of its Jim Crow admissions policies. Judge Watson was followed in 1944 by Judge Francis Ellis Rivers of New York. Still, the ABA was slow to encourage blacks to join resulting in a negative response by black lawyers. Memory of ABA policies last until today.

²⁴See "Invitation Regarding Conference on the Practice of Minority Lawyers in the Future," (at Howard University School of Law sponsored by the ABA on May 15, 1982), Smith, President's Page - An Unusual Year in ABA History, 67 ABAJ 952 (August, 1981); Appleson, ABA involvement in minority bar institute draws bouquets, brickbats, ABA Bar Leader 4 (July-August, 1981)(The ABA Institute of Minority Lawyer Concerns was instituted by ABA president Wm. Reece Smith, Jr., and Jane Barrett, Chairperson of the Association's Young Lawyer's Division).

²⁵See Hechinger, Students are Mirrors of Society, N.Y. Times, January 22, 1985, at C11, col. 1.

²⁶See G. Segal, Blacks in the Law 1 (1983); Steven, Law School 245 (1983); Zigli, The Law School Boom Is Over, USA Today, November 14, 1984, at D1, col. 6.

²⁷Smith, The Role of Primary and Secondary School Teachers in the Motivation of Black Youth to Become Lawyers, 52 J. of Negro Ed. 302, 311 (1983).

²⁸Carl and Callahan, Negroes and The Law, 17 J. of Legal Ed. 250, 255 (1964).

²⁹Washington, Constance Baker Motley: Black Woman, Black Judge, 1 Black L. J. 173 (1973); The Black Women in The Legal Profession, 5 BALSA Repts. (Fall/Winter, 1975); Smith, The Black Bar Association and Civil Rights, 15 Creighton L. Rev. 651, 669 (1982).

³⁰Kaplan, Hard Times for Minority Profs., Nat'l L. J., December 10, 1984, at 1, col. 1; Hockstader, George Mason Law School Problems Noted, Wash. Post, December 22, 1984, at C5, col. 1 (noting claim of race discrimination of law teacher, Dr. John Ebiasah). See also, Moore, C. Clyde Ferguson, Jr., Memorial, 97 Harv. L. Rev. 1264 (1984).

³¹Spires, The Much Needed and Long Overdue Broadening of the Legal Profession, 17 Creighton L. Rev. 799 (1984).

³²See Smith, Statistics on Minority Hiring are Shameful, Nat'l L. J., June 25, 1984, at 12, col. 3; Attorney Raps Firms For Not Hiring More Blacks, Jet, October 1, 1984, at 37, col. 1; Feeney, Black Attorneys Discuss Setbacks, Nat'l L. J., August 13, 1984, at 3, col. 1.

³³Sargent, Jackson Plans to Push Corporations, Wash. Post, June 9, 1984, at B3, col. 1.

³⁴But see, Twelve Who Made It, 70 ABAJ 58 (August, 1984).

³⁵See Lowe, Firm Offers Few To Blacks: Minorities Dwindling at Largest Offices, Philadelphia Daily News, September 25, 1984, at 21, col. 2.

³⁶Smith, Career Patterns of the Black Lawyer, 7 Black L.J. 756 (1980).

³⁷Note, Women, Minorities, Nat'l L.J., May 21, 1981 at 12, col. 1.

³⁸Stevens, Black Lawyers Begin To Enter Mainstream of Legal Profession, Wall St. J., June 25, 1984, at 1, col. 1.

³⁹See, e.g., GOP Lists No Black Judges, Wash. Afro-American, September 9, 1984, at 2, col. 4. To date the Reagan Administration has appointed fewer than three black lawyers to the Federal bench. Golden, Reagan's Judicial Appointees: White, Male, and Wealthy, 13 Focus 4 (March, 1985).

⁴⁰See, First Black Justice Named To Mississippi High Court, Wash. Post, Jan. 12, 1985, at A7, col. 1 (Reuben v. Anderson); Margolick, Republican Judge Is Named by Cuomo To Top Court Post, New York Times, Jan 3, 1985, at 1, col. 3 (refers also to Judge Fritz W. Alexander, the first black to serve on the New York State Court of Appeals in other than an interim term.) See also, Black Judge Wins Georgia Election, New York Times, Aug. 16, 1984, at B28, col. 1 (referring to Robert Benham); Justice Adams Sworn In To Alabama High Court, Jet, Feb. 7, 1983, at 22 (Oscar Adams); Alabama Gets Black Female Judge, Wash. Post, Aug. 15, 1984, at A9, col. 3 (referring to appointment of Jo Celeste Pettitway to Wilcox County District Court); Gov. Robb Appoints Black Judge, Wash. Afro-American, April 16, 1983, at 1, col. 2 (John Charles Thomas); Governor Names 1st Black To S. Carolina High Court, Jet Feb. 7, 1983, at 22 (Henry Frye); Judge Ernest A. Finny, Jr. on the Bench, Nat'l L.J., at 2, col. 4 (Finny has become the second black elected to the Court, the first since Reconstruction).

⁴¹Sylvester, Supreme Court Clerk Named for Next Term, Nat'l L.J., July 30, 1984, at 4, col. 3.

⁴²Stiteler, Bar chief issues warning, Dallas Morning News, Aug. 7, 1980, at 33A, col. 3 (quoting Robert L. Harris former national president of NBA: "Today the reason so few blacks are lawyers is a direct result of [former] ABA exclusion.") See also, J. Blackwell, Mainstreaming Outsiders: The Production of Black Professionals 243 (1981).

⁴³Kiernan, Bar Controversy: No Blacks on Board, Wash Post, October 15, 1979, at C1, col. 3.

⁴⁴First Black Chosen--[J] Clay Smith, Jr., Elected Federal Bar President, Jet, October 9, 1980, at 6; G. Segal, Blacks In The Law 203 (1983).

⁴⁵Smith, Louis Rothschild Mehlinger: The First One Hundred Years, 26 How. L.J. 359, 362 (1983).

⁴⁶See [FBA] Demand ABA Take Negro Lawyers, World-Telegram, May 25, 1943.

⁴⁷See e.g., Dennis Archer, First Black to Head the Michigan State Bar, Jet, Sept. 24, 1984, at 10, col. 1; Abramson Will Become Bar President in 1985, 12 D.C. Bar Rept. 1, col. 3, (June/Jul. 1984); Bodine, FBA Elevates First Black President, National L.J., Sept. 1, 1980, at 17, col. 2 (J. Clay Smith, Jr.).

⁴⁸F. Styles, Negroes and The Law xi (1937) (quoting E. Washington Rhodes).

⁴⁹B.B. Munford, Virginia's Attitude Toward Slavery and Secession 94 (1909).

⁵⁰Id. at 94-95. Finally, it is to the credit of the people of Virginia that for the first time in its distinguished history that a black man from Richmond, State Senator Lawrence Douglas Wilder, a lawyer, and native Virginian has been nominated for Lieutenant Governor on the Democratic ticket. The McDowell legacy lives on in Virginia. Moore and Sherwood, Democrats Nominate Baliles-Virginia Party Puts First Black, Woman on Ticket, Wash. Post, June 9, 1985, at 1, col. 6.