

BLACK JUDGES IN WHITE AMERICA

Introduction by MICHELE WASHINGTON

"From the very first, American law has been the handmaiden of American racism. It has been the means by which the generalized racism in the society has been made specific and converted into the particularized policies and standards of social control."

HAYWOOD BURNS

Can a Black Man Get a Fair Trial in This Country?

WITHIN THE LEGAL PROFESSION today there is a growing community of Black judges who preside over their courts displaying a courageous determination to compel the legitimization of justice for Black people. Refusing to become alienated from the agony of the Black experience in this land, these men and women are consciously motivated from within that experience, and are committed to the task of compelling this society to fulfill its promise of "liberty and justice for all."

The fact that the number of Blacks within the judiciary has increased over the past two decades has been an important element in the development of this new determination and commitment: In numbers there is strength. Therefore, the issue of Black participation within the judiciary is becoming one of the pivotal points in the movement for Black power. Beverly Blair Cook has analyzed the current status of this participation and will present a comprehensive account of Black representation in the Third Branch.

Black judges have also realized that this society frequently uses formal organization as an index of power. An outgrowth of this realization has been the organization of the Judicial Council of the National Bar Association. Founded in August of 1971, this activist-orientated group of Black judges is beginning to work to redefine and revitalize this nation's legal institutions (see Organizational News). At the head of the group is the Honorable George W. Crockett of Detroit. For Judge Crockett, the Council represents but the latest achievement in a career long dedicated to the struggle for Black liberation. In this section honoring Black judges in the law, it will be our privilege to present in the feature story the life and accomplishments of this dynamic Black jurist. We will also recognize the accomplishments of several other members of the Black judicial community: Judge Damon Keith of Detroit, Judge Harry T. Alexander of Washington, D.C., and Judge Bruce McM. Wright of New York.

IN ASSUMING THEIR POSITIONS as judges, these and other Black people have determined that their contribution to the struggle for liberation will be made from within the bounds of the established system. They have recognized that many changes are necessary and have accepted the responsibility for effecting them. As judges, they have been asked to assume the role of impartial adjudicators and to apply the law in a fair and honorable manner. As Black men and women they know and understand that their impartiality must be adjusted to accommodate a biased legal institution, their fairness tempered to survive within a bigoted society, and the honorableness of the law viewed from the perspective of historical reality.



I feel that it is my duty to utilize the Constitution of the United States to protect all Americans, Black or white, respected or suspected. I would hope to thereby reaffirm some of the lost faith of many generations in the American system." So speaks the Honorable DAMON J. KEITH. For the past four years, Judge Keith has presided in the U.S. District Court in Detroit, Michigan. During this time, he has consistently worked to protect the constitutional and statutory safeguards which this legal system employs to uphold the rights of the people. Recently, his endeavors have brought him nationwide attention and have placed him right in the middle of two of the country's most controversial legal fights.

In 1970, Judge Keith ordered the Pontiac School Board to employ busing as a means of eradicating the *de jure* segregation which it had helped to perpetuate. This was the first time that a Northern school district had been found guilty of the typically Southern *de jure* form of segregation. In a precedent-setting opinion, Judge Keith stated that "if school officials [had] discriminated at any time on account of race and thereby created an unfair situation, the effects of which presently persist, then the present day officials have an immediate obligation to overcome the effects of past discriminatory acts when such acts resulted in *de jure* segregation." He declared that the mere pronouncements of good intentions to integrate, with nothing more, amounted to "monumental hypocrisy" and that the court would no longer tolerate the use of the neighborhood school concept as "a disguise for the furtherance or perpetuation of racial discrimination." The fire bombings which followed this pronouncement are now a matter of national history and disgrace. The integration which was effectuated in September stands as a sign of hope that the law *can* work to combat the effects of racism.

Less than one year after his Pontiac decision, Judge Keith launched another Constitutional broadside. In January of 1971, he declared that neither the U.S. Attorney General nor the U.S. President were above the Constitutional safeguards for an individual's privacy. The case involved the government's surveillance of the politically active White Panther Party and the warrantless wiretaps which were ordered by the Attorney General (acting as the President's agent), pursuant to the Omnibus Criminal Bill. Judge Keith informed the government that such plenary authority was permissible only in the field of foreign relations and was not to be tolerated in the area of domestic affairs. He stated that ". . . in our democracy all men are to receive equal justice regardless of their political beliefs or persuasion. The executive branch . . . can not be given the power or the opportunity to investigate and prosecute . . . simply because certain accused persons espouse views which are inconsistent with our present form of government." In this decision, Judge Keith took a firm stand against the "Big Brother" activities which have become increasingly popular within the past few years and firmly reminded the government that citizens *must* be assured of their constitutional right to be free from unreasonable searches and seizures. "We are a country of laws and not men."

Judge Damon Keith developed his deep dedication to the Constitution during his years as a law student at Howard University. While there he and other young students worked with many of the nation's top Black attorneys on the cadre of desegregation cases which were then being instituted during the forties. This training and dedication was the beginning of a long career devoted to the preservation of the principles of Constitutional rights. "I feel that my role in the Black movement as a jurist permits me to continue the struggle for human rights that I engaged in long before I took the bench. For too many Black persons in this society, the ordeal of justice has yet to become a reality. The legal system *must* become a responsive and viable mechanism for *all* citizens." For Judge Keith, the Constitution is the hope — the answer. Through it, the long awaited promise of freedom will be achieved. And Damon Keith stands ready to challenge all and any who would deny the coming of this dream.



The flowing script of the letterhead informs us that it is the Criminal Court of the City of New York, and the gold leaf on the door heralds the chambers of the HONORABLE BRUCE MCM. WRIGHT. You may enter expecting to find an Anglosized Solomon dispassionately serving up the day's course of law and order à la Nixon-mitchellburger. After a few moments of quiet observation, however, the mistake becomes obvious and one perceives instead, a dedicated Black man working at the task of making the law equitable.

Judge Bruce Wright is, by anyone's standards, a truly unique individual. He has been on the bench for less than 2 years, but in that short period of time he has already managed

to establish a reputation as an extremely capable, sensitive, and perceptive jurist. As a judge in a criminal court in New York, he daily encounters the human destruction which is a product of the repression, exploitation, and racial hatred in this country. A lesser man would succumb to the task and retreat behind a protective barrier of insensitive impartiality. For Judge Wright, however, such a response is untenable. "Black judges who have themselves escaped the gravitational pull of the ghetto, but who still bear the marks of their narrow escape, know the rough tensions of a two-culture existence. There is, therefore, a special insight of compassion which only a Black judge can bring to the law." Judge Wright has accepted this responsibility of tempering law with compassion.

A graduate of Yale Law School, Judge Wright spent most of his pre-judicial career in private practice. He specialized in appellate cases and gained considerable expertise in this area. Just prior to his appointment to the bench he served as the general counsel to New York's Human Resources Administration. In addition to his legal career, Judge Wright has also pursued a literary profession. His dedication to poetry dates back to his undergraduate years, and the fruits of this dedication appear in various anthologies throughout the world. His most recent effort is a book entitled "My Collected Poems" which is scheduled for publication next year in Paris.

A jurist by profession, a poet by heart, and a cynic by experience, Judge Wright presides over his courtroom with a curious combination of dedication and despair. To him, Justice means "seeking some desperate way to make sense out of a system which its victims never made and never have a chance in." He describes his judge-role as being that of "a keeper in the Black and Hispanic zoo where those crippled by America's sabre-toothed racism have given themselves over to narcotics, hard liquor and hopeless; all of which is somehow laced together with the romantic nonsense of Christianity: that faith of the white Protestant slave-owners whose Dred Scott decisions constitute as much a part of the environmental pollution as the dredge of industrial poison." In other words, "Justice for a Black man in our society generally means a dirty joke, of which he is the butt."

Yet, in spite of this incisive cynicism, Judge Wright still maintains a deep dedication to his profession. "Unless we are to risk annihilation by waging guerrilla warfare, judicial fiat is perhaps the overall strongest arm we have for social change." But he's not speaking of a passive judiciary or a legal profession bound by the mistakes of yesterday. To him, the law is a tool of change: A tool which *must* be used if this nation is to survive. The challenge is great and the obstacles are many. American justice has always been characterized as being "blind:" a maxim supposedly denoting a fair and impartial legal system. For the Blacks and the poor of this nation, however, this blindness has only meant that the law has been unable to recognize or respond to the racism and classism which runs rampant within our society. Judge Wright has determined that the blindfold must be removed and that the law must become an active force in the struggle for change. This is the task to which he is totally committed. In his courtroom, Justice must stand with eyes fully opened to the needs of the people.



In his own courtroom a judge is often declared to be the absolute lord and master of all that transpires before him. In the courtroom of the HONORABLE HARRY T. ALEXANDER this is the undisputed truth. Judge Alexander has presided over the Court of General Sessions in the District of Columbia since November, 1966, and during this period he has become one of the most controversial figures in the District's judiciary. Outspoken, uninhibited, and totally impervious to criticism or castigation, Judge Alexander has declared open warfare against racism and prejudice in this society. He has acted to transform his courtroom into a frontline of battle and he regards as the enemy every person and every act which would deny the application of equality in justice.

An honor graduate from the Georgetown University School of Law, Judge Alexander candidly includes among his previous experiences jobs as a bootblack, delivery boy, cobbler, mail clerk and disc jockey. His employment since graduation rates a bit more prestigiously. After passing the bar he was appointed Attorney-Advisor for the Office of Price Stabilization. A year later he was appointed Assistant U.S. Attorney for the District of Columbia. He served in this position for seven years, developing his expertise in the field of criminal law and building an impressive record for professional competence. In 1961 Judge Alexander received an invitation to join the Justice Department from Robert Kennedy. There he served as Special Trial Attorney for the Criminal Division in the Organized Crime and Racketeering Section, as Staff Assistant for the Criminal Division, and finally was appointed to the position of First Assistant United States Attorney.

Judge Alexander received his judicial appointment during the administration of President Johnson. He came to the bench with a well developed background in the criminal law and an almost fanatical determination to make the concept of "equal justice for all" a living principle. He has no delusions about his special role as a Black judge in a white judicial system. He readily acknowledges that this is basically a "racist society" and that all Black people in this country, whether they wish to admit it or not, are regarded as "second class citizens" (himself included). He feels that he, and all other Black judges, have a special duty to work to change this. "The Black judge must be courageous enough to take the chances, courageous enough to make innovations, courageous enough to try, when all his peers and all his associates and all his law clerks say he's wrong. The Black judge has got to have the fortitude, the feeling, and the courage of his convictions to make the changes necessary."

In his courtroom, Judge Alexander has backed his words with action. He refuses to allow any reference to race to appear in the formal papers which are filed with the court and has ordered that the federal marshalls delete "race" from their official reports (these reports being the basis for the appointment of counsel and other important court activities). He will not tolerate a police officer referring to a Black person without using the title of "Mr.," "Mrs.," or "Miss," and he usually orders that policemen be excused from the juries in his courtroom. Judge Alexander says that "Black people may be treated differently in this city, but they can not be treated differently in my courtroom. And that's not just because I am Black; that is just because that's the way I am." He is a judge who believes that all people, irrespective of color, have certain guaranteed rights when they walk into the courts of this land, and in his courtroom, he insures that these rights are both observed and respected.

Judge Alexander's concern for the differential treatment received by Blacks often extends beyond the walls of his own personal courtroom. In one recent case the entire D.C. Probation Department was the subject of his wrath when he discovered that it had approved the hiring of rehabilitating drug addicts as counselors for young Black children. After questioning the sociological sanity of an institution which would support such a program, the Judge observed that "That is the hysteria of this City: Keep it cool, keep it quiet, and give these youths just any old thing. I'm sick and tired of the whole system in this Court with the philosophy 'anything is good enough for Black youth,' as long as you keep them quiet." He then ordered that the defendant in that

particular case be removed from the Black school and told the case workers that if they were going to let him be a counselor for children, they could send him to one of the white schools.

Because of this type of action, Judge Alexander has been the object of much discussion, debate, and of course, dismay. The D.C. Policemen's Association charges abuse of its officers, while Senator Byrd of West Virginia charges petulance and intemperance, while various civic-minded whites call for his impeachment; all of which the white Washington press inflames with distorted reports of his courtroom actions. On the other hand, the Black community organizes and rallies to his support, determined not to lose this man who they believe is sincerely fighting for the dignity of all Black people.

Judge Alexander, himself, remains aloof and unruffled. He says that he will continue to conduct his courtroom as he has always conducted it: in that manner which will best insure justice and equality and respect for all who enter it. "There are only two things that a Black man can be today: He can either be strong or he can be an Uncle Tom. The time has come when Black men have to rid themselves of fear. The time has come for Black men to stand up and be real men; STRONG men. It is for the good of the whole country that we try and change it."

Judge Alexander: A STRONG BLACK MAN.

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