

After black lawyers effectively grasp the concepts of specialization and association, they must deal with the concept of renovation. They must renovate their entire perception of roles in the black community. For too many years, too many black lawyers have allowed themselves to become hired hands of the establishment, while leaving unaddressed issues which are crucial to the viability of blacks in the area of business. Black lawyers must strive to build confidence within the community. They must throw away the perception of Perry Mason and gain management techniques so they can emerge from the pits of pecuniary oppression and join the system before it breaks down.

## **BLACK LAWYERS CANNOT BE RELEGATED TO A PROFESSIONAL GHETTO\***

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There are few professions in America that have as great an impact on blacks and other minorities as the legal profession. At the most elementary level, the criminal justice system affects disproportionate numbers of blacks both as accused offenders and as victims.

The courts continue to be a major civil rights battlefield, as is seen in affirmative action cases, school desegregation suits and others. The process of defining and refining minority rights and protection continues.

The forest of federal, state and local laws and regulations—many of which profoundly affect minority interests directly—is framed and generally enforced by lawyers.

And as lawyers dominate policy making positions in government and corporations, their acts again heavily affect minorities.

Despite the important interactions between the profession and minority interests, the most vivid impression one gets is the gross underrepresentation of blacks and other minorities in the legal profession.

Barely two percent of all lawyers are black. These lawyers are overwhelmingly concentrated in the least lucrative and prestigious specialties, virtually absent from major law firms and corporate law departments. Future prospects for growth in the number of black lawyers is grim—only four percent of law students are black. The percentage of blacks entering classes at law schools has been at a steady five percent for the past several years. Their numbers have been frozen at about 2,000 for the past seven years and there were fewer black law school entrants last year than in either 1975 or 1976.

Thus it is clear that blacks have been largely excluded from a profession of tremendous importance and power in our society. Whether that exclusion

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\* This article first appeared in the BARRISTER MAGAZINE, published by the Young Lawyer's Division of the American Bar Association. Copyright 1980, ABA.

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 under-represented in the legal profession and are underserved by the profession.

The consequences of that underservice can be frightening. I have a vivid memory of participating in the case of a young black man who was railroaded to Georgia's electric chair on a false charge of rape in 1960. I was just out of law school then, and our firm was called into the case after virtually all legal remedies were exhausted. The case against our client was weak, and any minimally competent attorney should have been able to present a formidable defense. There was clear evidence of illegal search and seizure, illegal arrest and illegal detention.

The white, court-appointed attorney raised the wrong defense. He based his defense on violations of the defendant's rights under the Fifth Amendment, when he should have raised the 14th Amendment. Because he failed to raise the 14th at the trial, he thereby waived the right.

Whether this was through ignorance or design, no one will ever know, but a man died in the electric chair because of incompetent defense. When our black firm finally got into the case, our hands were tied.

That death and that miscarriage of justice might have been avoided had sufficient numbers of blacks been admitted to the practice of law in rural Georgia in 1960. At that time there was not a single black lawyer in Richmond County. There was no one whose ties to the defendant transcended the bare minimum of professional duty. There was no one who could bring to that man's case a sense of personal identification and commitment.

There have been many changes over the past 20 years, but it is just too glib to say it could not happen again. The fact is it is happening every day. While we sit here someone, somewhere is being subjected to an injustice that might otherwise have been avoided had there been more minority lawyers and if America did not have a split-level system of justice, with poor people effectively denied access to quality legal representation.

A major priority for the legal profession in the 1980's, therefore, must be to practice positive, vigorous, affirmative action that substantially increases the numbers of black and minority lawyers.

One step toward that goal may have taken place in February, when the ABA's House of Delegates considered the proposed new Standard 212. That standard calls for concrete action and commitment by law schools through special recruiting efforts and financial assistance programs. It represents a major step forward and should be supported and implemented by everyone in the profession.

While there is a pressing need for minority leaders to serve the minority community, it is as important for minority lawyers to become fully integrated into all aspects of the profession. Black lawyers cannot be relegated to a professional ghetto narrowly defined by the residential ghetto's legal services needs.

Rather, minorities must have access to the same positions of power and prestige as their white counterparts. The continuing absence of black partners and associates in major law firms is a disgrace to the profession. The

growing responsibilities and rewards of corporate legal employment have to include minority lawyers as well.

The 1980's will see the development of numerous flexible, nontraditional means of providing legal services. The changes in the profession should be geared to providing access for minority lawyers to mainstream activities.

This implies, among other steps, joint ventures between predominantly white and black firms, greater use of minority firms by corporate clients and an increase in the numbers of firms that are truly multi-racial.

Priority must be given to improving the quality and quantity of services available to the poor. The excellent work being done by federally funded legal services only reaches an estimated twenty percent of poor people in need of legal aid.

While the 80's must see an expansion of the provision of legal services to the poor, that expansion cannot be obtained at the price of quality. The principle that must be obtained is that all Americans are entitled to adequate legal representation without regard to personal income or wealth. To paraphrase Justice Hugo Black: there can be no equal justice where the kind of legal services someone gets depends on the amount of money he has.

Equal justice is one important element in the larger theme of equality in America. The 1980's will be a time of increased black determination to win full equality, and that thrust will have an impact on the legal profession, indeed, on all aspects of our society.

In January, the National Urban League released a major study—The State of Black America—which documents the continued erosion of black living conditions and the widening gap between black and white Americans.

The hopes raised by the civil rights victories of the 1960's withered away in the 1970's—a time of economic stagnation, racial antagonism and national indifference to the plight of the poor. Black people enter the 1980's faced with the popular myth that black progress has been so significant that further national concern is not necessary.

As The State of Black America report documents, many black people did make considerable progress. The decade of the 1970's did see a doubling of blacks entering law school. It did see blacks moving into jobs, homes and schools previously denied them.

But as that report also documents, the few who made gains are vastly outnumbered by the masses of black people whose lives became harder, whose prospects became dimmer, whose unmet needs became greater.

In every area of our national life blacks remain grossly disadvantaged.

- In jobs—blacks are still twice as likely as whites to be in low-paying, low-skill jobs and less than half as likely as whites to be in the jobs that count in America. Black unemployment rates are two and a half times those of white workers; unemployment is higher now than when we marched for jobs and freedom back in 1963.

- In income—that black middle class there is so much talk about comes to barely a tenth of all black families. And even they are earning middle class incomes because they have two or more family members working, something that can't last out a recession. Median black-family income is only fifty-seven percent of that for whites—lower than it was in 1966.

● In education—we have heard a lot about all the blacks in college. But we do not hear that the majority of them are in two-year schools while most whites are in four-year colleges that put them on career ladders denied to blacks. In some cities more black kids drop out of high school than graduate.

● In housing—far more blacks than whites live in deficient housing. Blacks pay more for less housing than whites. A recent Department of Housing and Urban Development study documents the continued strength of housing discrimination; Congress still has not put teeth in the fair housing law.

It is clear that black progress has been limited.

It is clear that blacks remain disadvantaged.

It is clear that, for all the progress some of us have made, half of all black Americans are boat people without boats, cast adrift in a hostile ocean of discrimination, unemployment and poverty.

So we cannot be satisfied with talk of progress. Black people do not measure progress by how far we have come, but by how far we have to go. Progress is not a substitute for full equality.

The 1980's must be a decade in which black people finally enjoy full equality. There is a goal that should be shared by all Americans, because the strength of America is dependent on a united citizenry sharing the rewards and the responsibilities of the society in which we all live. To the degree that racism, poverty and racially based injustice and inequality exist, America is weakened.

That is an important issue in 1980. When fanatics hold Americans hostage in Teheran and when Russians marched across borders of Afghanistan, Americans rightly feel threatened. The response we fashion to those external threats must be appropriate to the realities of the international situation and consistent with important domestic priorities.

If we recognize the truism that national security is as much a matter of domestic strength as of military might, then we must continue to fight for a more equal society.

The deteriorating international situation has resulted in calls for a renewed cold war and increased military spending. The same people who charged that social problems could not be solved by throwing money at them are anxious to try to solve international problems by throwing money at the Pentagon.

America needs a strong, lean defense posture, but important domestic problems should not be ignored in the process. The nation's energies are being focused on inflation, energy and defense to the neglect of racial equality, full employment and urban revitalization.

And the inevitable result of such a lopsided approach is further deterioration in the living conditions of black and poor people.

The state of black America can never be better than the state of America; the well-being of black people is dependent on the well-being of the total society.

But the state of America is interwoven with the state of black America; our nation can never be strong, economically healthy and just, as long as the

human resources of its black citizens are neglected. The well-being of black America is indispensable to the well-being of America.

Therefore, it is vital that approaches to inflation, energy and foreign policy be balanced by initiatives that include full employment, real welfare reform, health, education and urban policies designed to bring about black equality. Those measures also would benefit the white poor, other minorities and the nation.

The 1980's will be a time of turmoil, a time when the long-simmering stresses and strains in our society burst forth in public debate and societal change.

This must not be seen as threatening, but as creative. It is the way the democratic process operates; periods of calm alternate with periods of creative confrontation and change.

The legal profession will not be immune to change and upheaval. Indeed, it will be in the forefront of it. As in the 60's, some elements of the profession will be among the forces of reform while others will be in the trenches of resistance.

Lawyers should fight to help make our profession and our society models of equality and brotherhood. They should turn their eyes and spirits to the bleak underside of American life, to the cries of grinding poverty and to the victims of racism. They should advocate the changes our society must make if it is to become strong and just.

In the broadest sense, fighting for equality is a matter of self-interest. As Melville so aptly put it: *We cannot live for ourselves alone. Our lives are connected by a thousand invisible threads, and along those sympathetic fibers, our actions run as causes and return to us as results.*

That implies personal responsibility, which in turn is a profoundly moral issue. It may no longer be fashionable to talk of moral issues, but black equality is, at its core, a moral issue. The legal profession cannot evade its personal responsibility to do everything in its power to right the wrongs of the past and the present.

Helping to create an integrated, open, pluralistic society is a moral imperative. As America's public and private policy shapers, attorneys must exercise personal moral integrity. They are challenged to do right and to act right.

The profession's response to that challenge will tell much about what America is and what it hopes to become.