

PENNSYLVANIANS ON THE BENCH: PROFILES OF BLACK JUDGES

Renee Chenault

Between the idea
and the reality
Between the motion
and the act
Falls the shadow. . . .

from *The Black Mood*
by Lerone Bennett, Jr.

Any discussion of the changing role of the black attorney would be incomplete without an examination of the role of the black judge. Several years ago, Judge Bruce McM. Wright of the Civil Court of the City of New York, unfavorably criticized the black judge. In an article appearing in *Judicature* magazine, Judge Wright, declaring the law as basically a conservative discipline to which black judges readily conformed, characterized black judges as pillars of the black bourgeoisie who were grossly preoccupied with status as opposed to black progress. Few would dispute Judge Wright's description of the law's conservative nature. In an era when black judges are being chastised for their failure to take other blacks into their clerk and administrative ranks, their inability to unite into a cohesive force, and their general reluctance to challenge the status quo, one might readily accept Judge Wright's assessment of the black judge. No doubt Judge Wright's criticism poses important questions which strike, in general, at the theme of this issue of the *Journal*, and specifically at the theme of the profile section.

In observance of the Black Centenary, a year-long commemoration of one hundred years of black presence at the University of Pennsylvania, the Penn Board of Editors elected to profile those black judges who have earned degrees from the University of Pennsylvania. They are: The Honorable Margaret A. Burnham of the Boston Municipal Court, The Honorable Curtis C. Carson of the Philadelphia Court of Common Pleas, The Honorable Horace A. Davenport of the Court of Common Pleas, The Honorable Doris May Harris of the Philadelphia Court of Common Pleas, The Honorable A. Leon Higginbotham of the United States Court of Appeals for the Third Circuit, The Honorable Harvey C. Johnson of the New Jersey Municipal Court, The Honorable Robert Burk Johnson, retired justice of the New Jersey Supreme Court, The Honorable H. E. Millen (deceased), Philadelphia Municipal Court, The Honorable Robert N. C. Nix, Jr., Justice of the Pennsylvania Supreme Court, The Honorable Barrington D. Parker of the United States District Court for the District of Columbia and The Honorable Joseph D. Roulhac of the Akron Municipal Court.

The judges who are profiled in this issue present their various views on the judge's role. Their accomplishments, affiliations and opinions on the issue of race, racism, law and politics provide powerful insight into the ethos of the black judge. Until a verdict is finally reached on the status of the

black American judge, the profiles presented on the following pages go a long way towards challenging the criticisms of those who believe the black judge falls short of the expectations of the black community.



Birmingham has aptly been described as a watershed in the civil rights movement. Perhaps it is ironic that The HONORABLE MARGARET A. BURNHAM, L'69, who was born and raised in that city and was a childhood friend of revolutionary Angela Davis, would in 1972 represent Ms. Davis in a trial which had no parallel in American judicial history. It is not inconceivable that these two women grew up in Birmingham, sharing similar experiences and ideas, and although it is obvious that their lives took radically different paths, Judge Burnham like Ms. Davis should be viewed as a revolutionary—revolu-

tionary in the sense that she has managed to obtain significant victories for the oppressed while working within the strictures of a profession that vigorously thwarts all attempts to challenge the status quo. The accomplishments of Judge Burnham bespeak a dedication and sensitivity to the needs and concerns of the black community and have served as a hallmark of her career to date.

Judge Burnham earned the Bachelor of Arts degree from Toogaloo College in 1966 and the Juris Doctor from the University of Pennsylvania in 1969. Prior to law school, Judge Burnham worked as a SNCC organizer in the black community of Jackson, Mississippi. Her law school summers were devoted to work in the Philadelphia black community.

Culture shock is an appropriate term to describe Judge Burnham's initial reaction to the University of Pennsylvania Law School. "Coming from a small black college in the South, it took a while for me to adjust to Penn's very formal, European environment. However, I was fortunate to receive support from my black colleagues. Coming from diverse backgrounds they were able to provide comfort and guidance during those years. Penn was definitely a different experience yet I never regretted attending the Law School."

Judge Burnham was admitted to both the New York and North Carolina bars in 1970 and the Massachusetts bar in 1973. She began her career as a staff attorney for the N.A.A.C.P. Legal Defense and Education Fund. From 1971-1972, she worked exclusively as a member of the legal defense team for her long-time friend Angela Davis. In 1972, Judge Burnham was profiled in the *Black Law Journal* as one of the attorneys on the Angela Davis defense team. In that profile she spoke of the need for black lawyers to view their role as occurring both inside and outside the court. "Since a successful courtroom defense literally depends on the perspective and commitment of out-of-court forces, the lawyer is obligated to construct his defense outside as well as inside the court. His arguments must be exposed widely to the people. He has an instrumental role to play in amassing the

broad support movement necessary to give substance and integrity to the courtroom activity." Eight years later Judge Burnham has not changed her assessment of the black lawyer's role and finds it readily applicable to the role of the black judge. "Black members of the legal profession, be they lawyers or judges, must redress issues both within and outside the courtroom. This is even more true today than it was in the past." Expanding on the role of the black judge, she further states, "black judges also have an instructive role to play in terms of re-educating our colleagues who are carriers of racist ideology. Although we are to a certain extent confined by the strictures of the job, we can have a significant impact on the traditionally repressive elements of the court within the confines of the job. On a more pragmatic level, black judges can have influence in changing the composition of the administrative personnel of the court which has a practical impact on the day to day lives of people."

While on the bench Judge Burnham has had ten clerks; of that number four have been black.

Judge Burnham holds membership in many activist organizations, and in commendation of her service to the community she has received the N.A.A.C.P. Outstanding Service Award, the Judge of the Year Award from the NCBL and the 1978 Criminal Justice Award from the Justice Resource Institute of Boston. She has taught at various institutions in the Boston area and is a regular speaker on the lecture circuit, discussing issues of racism, social justice, and women's rights.

Judge Burnham has dedicated the better part of her life in service to the black community. Her presence on the bench and the positive benefits that have and will continue to flow therefrom herald a victory for both blacks and women alike.



In discussing the role of black judges, the HONORABLE CURTIS C. CARSON, L'46, distinguishes the activism of black judges of the state judiciaries from those of the federal judiciaries. Carson asserts that "judges at the state level have managed to take a more active role in correcting judicial imbalance than have those judges on the federal bench." He attributes this difference in the level of activism partly to logistics. "At the state level," he observes, "most of us are located in urban areas; we are members of the same party and find ourselves affiliated with similar causes and concerns. These factors tend to synthe-

size us into a united force."

Concerned with the imbalance of blacks currently in the judiciary, Judge Carson specifically referred to the shortage of black law clerks. "The imbalance in the judiciary permeates the system, extends to the administrative level and explains why I'm very adamant in my position on hiring law clerks, all of whom have and will continue to be black. Many of my black colleagues are under the mistaken impression that they have to present a

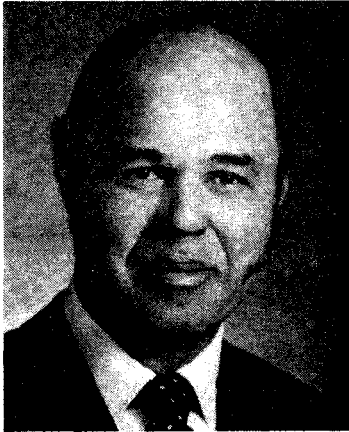
certain image. They fail to recognize that there is a pressing need for black clerks and that this need will never be met until black judges take aggressive action by hiring blacks for their clerks. If that's considered racist, well, it's nothing more than the results of an inequitous system."

Judge Carson began his legal career as an Assistant District Attorney for the City of Philadelphia. During his tenure with the District Attorney's office he was the first black ever to represent the Commonwealth in a capital case. Judge Carson also served as General Counsel for the Philadelphia branch of the National Association for the Advancement of Colored People during the mid-1960's. As counsel for the N.A.A.C.P. he litigated cases of significant impact to the black community. These cases ranged from the N.A.A.C.P.'s right to picket to negotiations in segregation cases involving Girard College and Greyhound and Trailways bus lines.

As a judge on the Court of Common Pleas Judge Carson believes it is his duty to take an activist role. He views it as "a responsibility to serve as leaders in correcting the injustices which plague this country. Black judges certainly can serve as a force in terms of fighting racism through our active presence on the bench as well as our sensitivity to the plight of the poor and oppressed." Judge Carson also believes that black judges have an obligation to members of their profession. It is "a duty to be available to our attorneys and to provide guidance, and assistance."

Judge Carson earned the Bachelor of Arts degree from Virginia State College in 1943 and the LL.B. from the University of Pennsylvania in 1946. When he was a law student at Penn, the school was very small. There were only nineteen students in his first year law class and no more than forty students in the entire school. As one would expect in such an environment, there existed a feeling of warmth and companionship. Judge Carson recalls two events which illustrate this point.

In 1943, tuition at Penn was two hundred dollars. In the fall, Dean Edwin Keedy posted a bearer bond in this amount for Carson. Finding himself unable to make the payment for the second semester, Judge Carson wrote the Dean a letter withdrawing from the school. The same day Dean Keedy received the letter, he contacted Carson and requested that Carson come in to see him immediately. Dean Keedy referred Judge Carson to Professor Reeves, who inquired about Carson's grades. After discovering that they were of law review caliber, Professor Reeves readily made the necessary arrangements which allowed Judge Carson to continue in school. In another instance, a social gathering was held outside of the school by one of the white law students. Although invited, Judge Carson chose not to attend. Being the only black in the law school, Judge Carson was conspicuous by his absence at the social affair. The next day Dean Keedy again called Judge Carson into his office and in Judge Carson's words "gave me hell" for not attending. Gestures like these gave Judge Carson a sense of belonging and reflect favorably on the law school and its administration during that time.



In recent years, increasing numbers of black law graduates have begun to recognize the significance of accepting a judicial clerkship prior to entering legal practice. Although competition is stiff and black graduates do not always expect a welcome response from white judges, in many instances they are discovering that even black judges are either unable or unwilling to hire them. The HONORABLE HORACE A. DAVENPORT, L'50, of the Court of Common Pleas of Montgomery County, Pennsylvania, is aware of this criticism facing black judges but does not agree that it is completely warranted. He explains that "while I have only had one black law clerk, it has not been attributable to a lack of effort on my part. Oftentimes it is difficult, if not impossible to locate black graduates who are willing to settle outside of the large urban areas." Judge Davenport also spoke of the incredible demand for clerkships and its effect on black graduates. Davenport points out that "there are more black law graduates seeking positions than there are black judges to satisfy the demand; even though white judges will hire black clerks, the reality is that they only take students in the top five to ten percentage of their class. Thus, it becomes the responsibility of black students not only to seek clerking positions, unrestricted by geographic preference, but also to work for the highest grades possible. However, this is not to say that the entire burden is to be placed on black students. I see it as more of a two-way street—black students must strive for the best grades and black judges are responsible for actively searching for qualified black students to serve as their clerks."

Prior to ascending to the bench, Judge Davenport worked as a private practitioner for over twenty years, handling cases in the areas of domestic relations, zoning, real estate, negligence, decedents' estates and insurance. In conjunction with his private practice, he has served as solicitor for many organizations, including area school and election boards.

Judge Davenport is an active participant in civic activities and is affiliated with the Republican party. He foresees significant changes taking place under the new Administration. Judge Davenport predicts that "government programs will be initiated and/or continued on a much more selective basis. In the long run this will prove beneficial. When handouts are at an abundance there is a tendency to become overly dependent upon them as opposed to relying on one's own resources to get ahead. The long range benefits will be incalculable when individuals are called upon to rely on themselves, as opposed to the government."

Unlike several of his elder colleagues who were graduates of smaller, more congenial law classes at Penn, Judge Davenport remembers the law school experience as impersonal, and fiercely competitive. He recounts that "[d]uring the first week of school we were told that one-third of the class would not make it. Prophetically, of the one hundred and eighty people in my first year class, only one hundred matriculated into the second year class.

On that number, only two were black." In reflecting on the school's attitude towards blacks, Judge Davenport says, "although the school was not anti-black, there was never an effort made to insure our continued presence. Therefore, getting through law school required, in addition to the normal prerequisites, an inordinate amount of self-confidence, initiative and strength."

Judge Davenport earned the Bachelor of Arts degree from Howard University in 1946. A year later he earned the Master of Arts degree in economics from the University of Pennsylvania, and subsequently earned the LL.B. from the Law School in 1950.



On December 31, 1971, black Philadelphians acquired a significant voice in the legal process when the HONORABLE DORIS M. HARRIS, L'49, was appointed to the Court of Common Pleas of Philadelphia. As a black judge, Judge Harris believes that she and others of her ilk have a distinct role to play in the judicial system. "By being black, we bring to the bench a certain sensitivity, especially in matters involving black litigants. This is very important in the criminal court due to the various social forces which are at work. Because we share in the black experience, recognition of these forces creates a degree of empathy for black litigants." However, Judge Harris is emphatic in asserting that her empathy does not take the form of leniency for blacks. She stresses, "black judges are not absentee entities. We live in the black community as do our families and friends. We want to make the streets on which we walk and live safe. To show favoritism to those factions who defeat this purpose is to do irreparable harm to the community as a whole. The sensitivity we bring to the bench does not result in leniency towards the black litigant, but rather lends dignity to the process and to those who come before us." As a black woman, Judge Harris is acutely sensitive to the plight of young offenders. "In the Family Court Division of the Court of Common Pleas, I have contact primarily with juveniles, ninety-five percent of whom are black. Many of these individuals find themselves in trouble because they have not been required to meet a set standard of behavior. In dealing with juveniles, I ask that this standard be met. One must be responsible for one's actions. This is a requirement of living in society and cuts across economic and social backgrounds."

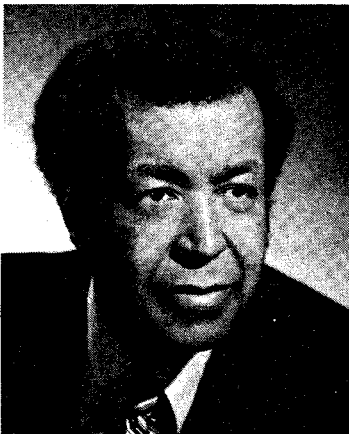
Judge Harris' sensitivity to the problems of the young is not confined to those entrapped in the criminal justice system. She has traditionally hired minority law graduates and during her nine years on the bench all eight of her clerks have been black women. In an era when black judges are justifiably criticized for their failure to hire black law clerks, Judge Harris sets an admirable example which her colleagues are encouraged to follow.

Judge Harris commenced her legal career by serving as Attorney-Advisor to the United States Regional Counsel of the Office of Price Stability.

Following this position, she served as an Assistant City Solicitor for Philadelphia. Then in 1955, Judge Harris joined forces with jurist *par excellence* Austin Norris, present United States District Court Judge Clifford S. Green and present United States Court of Appeals Judge A. Leon Higginbotham to form the venerable firm of Norris, Green, Harris and Higginbotham.

In recognition of her continual contribution to the community, Judge Harris has been the recipient of numerous awards which here can be but briefly summarized. She has received the Achievement Award from the Philadelphia Links, The Women in Education Award, the Achievement Award from the Traveler's Club, the Berean Institute Achievement Award, and Citizen of the Year Award from the Ole Philadelphia Club.

Judge Harris graduated from Howard University in 1946 *magna cum laude*. She studied colonial administration in the Virgin Islands for a year before accepting a three year scholarship to the University of Pennsylvania Law School. On remembering her years at Penn, Judge Harris recounts, "I am pleased that no other black women subsequent to my graduation have had to experience the problems of being the only black and the only woman in the class." Her words should serve as a reminder to the sometimes myopic generation of blacks currently in law school who often choose to succumb to insignificant problems confronting them. Judge Harris sets an example which lends strength and encouragement to all.



While a judge on the United States District Court, The HONORABLE A. LEON HIGGINBOTHAM, Honorary LL.D., 1975, wrote an opinion which eloquently set forth the role of the black judge. In *Commonwealth v. Local 542, Int. U. of Op. Eng.*, 388 F. Supp. 155 (E.D. Pa. 1974), a case involving a civil rights suit arising out of alleged racial discrimination, the defendants moved to have Judge Higginbotham recuse himself from the case. They alleged that he was personally biased because of his race and his active affiliation with "Black Causes." In setting forth why it was essential that he not withdraw from the

case, Judge Higginbotham stated that, "Blacks on the bench, although not legislators, politicians or appointed officials, should be free to speak out on the injustices and inequalities of society. Furthermore, black judges should not be requested to disparage blacks in order to placate whites who would otherwise be fearful of our impartiality." 388 F. Supp. at 180. As Judge Higginbotham noted, his Jewish colleagues on the bench are active in their community relations councils and publication boards, as are Catholic and Episcopalian judges active in their respective churches and organizations. He concluded by saying that as long as they continued to preside over matters where Jew and Gentile or Catholic and Protestant disagree then he too would preside where blacks and whites disagree. Judge Higginbotham's words on the role of the black judge have a two-fold significance. Not only do they point out the irrationality in the argument that a black judge should

ever recuse himself merely because of skin color, but they also serve as important precedent for those minority judges who are hesitant to take a more activist role for fear that they might appear partial in the eyes of the majority.

Judge Higginbotham's career reflects one of the most noteworthy and distinguished endeavors of any black American. A native of Trenton, New Jersey, he earned a Bachelor of Science in Engineering from Antioch College and the LL.B. from Yale University in 1952. In addition to the more than twenty honorary degrees from colleges and universities, he received an honorary Doctor of Laws degree from the University of Pennsylvania in 1975. This degree, in conjunction with the significant contribution that Judge Higginbotham has made to the legal, academic and spiritual community at Pennsylvania, merits his inclusion in our profiles.

Judge Higginbotham's embarkment upon his legal career began in service as a law clerk to Justice William Curtis Bok of the Philadelphia Court of Common Pleas, in 1952. Over the next decade he earned a distinguished reputation in the state and federal government, as well as in private practice with the firm of Norris, Green, Harris and Higginbotham. On September 25, 1962, he was nominated by President John Fitzgerald Kennedy for a seven-year term as a Commissioner for the Federal Trade Commission, thus becoming the first black to be a member at the commission level of a federal regulatory agency. Two years later Judge Higginbotham began his judicial career when he was appointed to the United States District Court for the Eastern District of Pennsylvania. Then, in 1977, in recognition of his stellar accomplishments, President Jimmy Carter appointed Judge Higginbotham to the United States Court of Appeals for the Third Circuit. During his seventeen years on the bench Judge Higginbotham has had twenty-five law clerks. Of that number, thirteen have been black and one a latino.

Judge Higginbotham has received more than fifty local, regional and national honors. He has served on the board of trustees or as a member of more than thirty national organizations. He has lectured at numerous universities, and currently serves as an adjunct professor at the Wharton Graduate School and a lecturer in law at the University of Pennsylvania Law School. Quite the quintessential scholar, Judge Higginbotham has published more than forty articles and his recent book *In The Matter of Color: Race and the American Legal Process: The Colonial Period* (Oxford U. Press, June 1978) has received several national awards. Judge Higginbotham is currently writing two books in his *Race and the American Legal Process* series and also is editing an anthology of *Documents on Race and the American Legal Process*.



The HONORABLE HARVEY C. JOHNSON, L'69, judge, lawyer, entrepreneur and community developer is, at 36, a young and dynamic judicial activist. Judge Johnson earned his Bachelor of Arts degree from the University of Delaware in 1966. He then enrolled in the University of Pennsylvania Law School, where he is credited with being one of the founders of the Black Law Students Union.

Judge Johnson remembers his law school experience as a positive one. He recalls "the black students at the school came from a variety of backgrounds and held widely differing views and opinions. Yet we all recognized that we were black and in a sense this made us one. During my three years at Penn we had across-the-board participation from the black students in recruitment projects to increase the number of minority students and administrators and in voter registration drives to enfranchise blacks in the South. The camaraderie which developed from participation in these activities extended beyond our graduation. To this day the members of my class keep in close contact with one another and are abreast of the concerns which affect each of us."

Judge Johnson operates in a multiplicity of roles yet is able to bring meritorious distinction to each. He presently serves as a municipal court judge for the Borough of Lawnside, New Jersey, as solicitor for the Chesilhurst, New Jersey Board of Education and as President of Black People's Unity Movement (BPUM). BPUM is an economic development corporation based in Camden, New Jersey. Its financial holdings currently include the ownership and development of a twenty-acre industrial park, two restaurants, three day care centers and several investment interests.

Judge Johnson is rather outspoken on the role of the black judge; his views are perhaps representative of the newer generation of jurists. "As a black person, I bring to the judiciary my own feelings and emotions. Therefore, it cannot be denied that an impact is made in terms of my hearing a case. However, I also bring to the judiciary an ability to apply the system equitably to everyone based on the facts before me." Judge Johnson echoes the sentiments of many of his elder brethren when he states the impropriety of showing special consideration to black litigants. "Black litigants who come before me expect me to do my job. They do not seek any special favors. What they seek is that I treat them with dignity and insure that justice is done." Concerning the import of a black presence on the bench, Judge Johnson states, "by being black and a judge, a blow is struck. An impression is made on the minds of those who enter my court and see a black man on the bench, as well as those attorneys who litigate before me and are unaccustomed to seeing a black presence."

Despite his position as a judge and his involvement with the Board of Education solicitorship and the Presidency of BPUM, Judge Johnson finds time to engage in numerous other civic activities. In recognition of his vigi-

lant service to the community, he has been the recipient of various awards and honors.

In the struggle against racism, injustice and oppression, Judge Johnson believes that each attorney has a role to play. According to his definition, "our role as lawyers must be to concern ourselves with doing the best job possible—that means actually helping people as opposed to 'showboating' in the self-serving role of the lawyer."



The career of the HONORABLE ROBERT BURK JOHNSON, L'27, reflects a distinguished example of excellence in scholarship. He earned the Bachelor of Arts in Education from Lincoln University in 1924. The following year he applied to the University of Pennsylvania Law School and was accepted on a *probational* basis. In order to gain admittance into the law school, Judge Johnson was expected to meet three requirements. The first two—that he complete undergraduate school and receive a recommendation from that college's dean—presented no problem. However, the third requirement—that he be

in the top ten percentile of the class, which he was not—almost kept him out of the school. Judge Johnson recalls that the Dean of Lincoln University wrote another recommendation to the Law School's Dean assuring him that "young Johnson" could have ranked in the upper ten percentile of his class if he had so desired. Proving these words to be true, Judge Johnson went on to become one of only two black students in the Law School's one hundred and ninety-one year history to serve as an associate editor of the Law Review.

After graduation, Judge Johnson practiced law in Philadelphia from 1932-1936; from 1936-1966 he practiced law in Camden, New Jersey. It was while practicing in Camden that he played a role in an event that perhaps was instrumental in kindling Martin Luther King, Jr.'s interest in the civil rights cause. According to the 1950 county records, a young theology student named "M. L. King, Jr." and three of his companions were involved in an incident in which they were denied service in a cafe because they were black. Johnson was contacted by the N.A.A.C.P. to represent the four. Aware of a recently enacted civil rights law in New Jersey, he filed a complaint with the county prosecutor alleging discrimination. The complaint eventually was dismissed because the witnesses failed to appear. Needless to say, in 1950, the name "M. L. King, Jr." held no special significance for Johnson and after the dismissal, the case soon was forgotten. It was years later, when Judge Johnson read a passage from Dr. King's book, *Why We Can't Wait*, that he connected the earlier event to the famous slain civil rights leader. In that passage King states that he became interested in the civil rights movement when as a theology student he was refused a drink in a cafe in suburban Camden.

In discussing the role of the black judge, Judge Johnson recognizes that

"I owe an allegiance to my people; I feel I can demonstrate that allegiance by doing the best job possible — that is by seeing to it that the people who come before me whether black or white, rich or poor, receive justice." Understanding the dimensions of society, which often places black people in the midst of the judicial system, Judge Johnson adds, "as one who has lived as long as I have with my people, I am cognizant of the social and economic handicaps which besiege us; yet . . . I do not believe poverty and [social or political] disadvantages are justifications to commit crime. Individuals have to be held accountable for their actions. My role as a black judge is to see that this is done in a fair, equitable and dignified manner."

Judge Johnson was appointed to the bench of the Camden County District Court in 1966. Proving himself to be a most able and skilled jurist, he was elevated to the Camden County Court in 1971, and subsequently in 1972, he became the first black in New Jersey history to be appointed to the New Jersey Supreme Court. Out of the five clerks who have served with Judge Johnson during his tenure on the Supreme Court, three have been black. Two of these individuals were actively recruited through the Judge's contacts with Rutgers-Camden Law School.

In 1974, Judge Johnson reached the age of compulsory retirement and was required to step down from the bench. Not one to quickly settle into the comfortable inertia of retirement, he continued to take an active part in the legal community. He served in the dual capacities of special counsel for the Fidelity Bank and Trust Company of New Jersey and as a Commissioner for the Delaware River Port Authority. Fortuitously, in 1975, the law in New Jersey changed and Judge Johnson had the distinction of becoming the first judge over seventy-five to be recalled to active service by the New Jersey Supreme Court. He remained in service until January of 1978. Judge Johnson is presently of counsel to the law firm of Freeman, Zeller and Bryant in Camden, New Jersey.



The HONORABLE H.E. MILLEN, L'20 was the first black ever appointed to the bench in Pennsylvania. Judge Millen was born in 1892 in Lancaster, Pennsylvania. He earned his undergraduate degree from Lincoln University and in 1917 he enrolled in the Law School of the University of Pennsylvania. During his three years at the school he paid for his tuition, room and board by working the full night shift at the Philadelphia Post Office, averaging four hours of sleep daily in order to meet his classroom schedule. Judge Millen graduated from law school in 1920 and in the same year was admitted to practice

in the Pennsylvania Bar.

In the next decade, Judge Millen grew in stature as an outstanding leader. He was acknowledged as having great influence among Philadelphia voters and was the recognized leader of the Black Republican Party in Pennsylvania. His first public appointment came in 1934 when Governor Gifford

Pinchot named him Deputy Attorney General. In 1940 he was appointed Assistant Director of Public Safety—the first black in the nation to act in such a capacity. Judge Millen resigned the post in 1946 after he was passed over for a judgeship vacancy in the Municipal Court. Protest was so great from the black community as well as from liberal white organizations that in October 1947, Governor James H. Duff appointed Judge Millen to fill the vacancy in the Municipal Court. Thus, Judge Millen became the first black to be named to any bench in Pennsylvania and the thirteenth black judge in the United States. Two years later he was elected to a full ten year term; and he polled more votes—a total of 771,993—than any other Municipal Court judge re-elected to office that year.

Judge Millen served on the bench for over a decade yet continued his active leadership role in religious, humanitarian and fraternal organizations. In 1948 he was elected a member of the General Council of the Presbyterian Church of America, the first time a black was so honored. And from 1948 to 1958 he was president of Mercy-Douglass Hospital and School for Nurses, during a period when lack of funds threatened the closing of the institution. With a few others, Judge Millen worked unceasingly to raise funds for the hospital and to raise the standards of the hospital. He resigned the post only after the hospital had been placed on a solid foundation. In 1944, Judge Millen was appointed a member of the Philadelphia County Board of Law Examiners, and again, he was the first black to serve on that body. These were only a few of the activities in which Judge Millen participated. He was also President of the Philadelphia branch of the N.A.A.C.P. and for more than thirteen years served as fiscal director of the Police Benevolent Association.

Commensurate with the scope of his involvement in community affairs, Judge Millen was the recipient of numerous awards including the B'nai B'rith citation for civic affairs, the Seltzer Award for Service, the Jewish War Veterans Award for Community Service and the Alpha Kappa Alpha Sorority citation for distinguished service.

Most of Judge Millen's judicial service was in the juvenile division of the Municipal Court where he became a somewhat unwilling expert on juvenile delinquency. Asking in 1957 to be transferred to another judicial responsibility, he wrote his story in a Philadelphia newspaper, "I am frustrated, because day in and day out a steady stream of juvenile offenders has been brought before me—many of them second, third and even fourth offenders. I always have been and I always will be interested in the welfare and well being of children. That was why I was only too willing to sit in the juvenile division when I became a judge. But just sitting and listening to the failings of boys and girls and seeing them go down further on each appearance before me has become too much." Although a heart attack was responsible for Judge Millen's untimely demise in 1959, the burden that took his health and, according to his closest friends, broke his heart was the frustration of dealing with the still unsolved problems of urban youth.



The HONORABLE ROBERT N.C. NIX, JR., L'53, Associate Justice of the Supreme Court of Pennsylvania, is a second generation Penn Law School alumnus. His father, The Honorable Robert N. C. Nix, Sr. former member of the United States House of Representatives, graduated from the Law School in 1928. The younger Nix experienced the usual fear, anxiety and apprehension of most first year law students. Yet, the fact that his father had been a student at the Law School compounded the feelings. As Nix reflects, "Fear results from the knowledge that following in one's footsteps does not necessarily mean the

movants have the same size feet."

What has become a vivid remembrance of the law school years occurred for Justice Nix on the third day of law school. The Dean of the Law School, Edwin Keedy, summoned the young Nix to his office. It was widely rumored among the students that a determined percentage of the first year class would be asked to leave. Assuming he would be among them, Justice Nix appeared at the appointed time with "a little courage and a lot of bravado." Recalling the experience, Justice Nix recounts, "a concise 'come in' rang out and I entered. Anti-climactically, Dean Keedy welcomed me to the School and shared his remembrance of having taught my father. At that point I knew the dragons of the night must be banished if I were to complete the studies and be a lawyer."

In speaking of the legal profession's responsibility, Justice Nix states, "today, as I sit on the bench of the Supreme Court of Pennsylvania, one is ever-mindful that dragons of the night (still stalking the perimeters of lawyering and decision making) have no place in this area of life. Lawyers are responsible for providing the best and most effective representation of their clients they can muster. Judges and justices carry permanent obligations to face up when difficult choices are before them if justice, that almost primal need which wells within the breast of all human beings, is to be done."

Currently, Justice Nix is embroiled in a controversy which has the potential of foretelling the future of his career. This year he will run for retention election. If successful, in 1984 when two senior justices retire, he will become the first black to serve as Chief Justice of the Pennsylvania Supreme Court. However, as is often the case with talented black individuals, there are forces at work which seek to destroy his chances for such an honor. An investigation is currently underway to determine the veracity of allegations that a member justice on the Pennsylvania Supreme Court has promised to work for the defeat of Judge Nix. Because of the investigation, Judge Nix was unable to comment on any aspect of the controversy. However, various black legal organizations have begun to mobilize against those who oppose Justice Nix. The Honorable Curtis C. Carson, L'46, is one of the individuals who is active in the mobilization and was very outspoken in his defense of the Justice. "We have long been aware of the fact that Justice Nix was in line for the chief justice position and of course we knew there would be

opposition. However, we never expected it to present itself so blatantly. And while none of us were surprised that the most conservative individual on the court has decided to spearhead this racist campaign, it would be myopic to think he is alone in his efforts. There is an underground movement which opposes the presence of black men like Nix. The job that faces the black legal community is to insure that within the confines of our code of ethics we actively work to guarantee the continued presence of Justice Nix on the Pennsylvania Supreme Court."



In the Book of Micah in the Old Testament the question is asked, "What does the Lord expect of you?" The response is, "To do justice, to love mercy and to walk humbly with thy God." The HONORABLE BARRINGTON D. PARKER, G'38, of the District Court for the District of Columbia, refers to this biblical passage to explain his approach to the law. His distinguished career indicates that this approach has been a successful one.

Judge Parker earned the Bachelor of Arts degree from Lincoln University in 1936, the Master of Arts degree in Economics from the University of Pennsylvania in 1938 and the law degree from the University of Chicago School of Law in 1947. While working towards the Masters degree at Penn, Judge Parker was employed part-time and attended classes in the evening. Therefore he did not gain much exposure to the University or its people. Differing dramatically was his law school experience at the University of Chicago. "The students who were there at that time were extremely close—we worked, studied and socialized together. There was also a great deal of contact with professors, most of whom were 'giants' in their respective fields. Chicago was a stimulating intellectual environment and I enjoyed it immensely."

After graduation from law school, Judge Parker entered into practice with his father, a founder of the Robert H. Terrell Law School in Washington, D.C. The School was established in the 1930's, during a time when white law schools in Washington were not admitting blacks and Howard University did not have an evening program for those students who were unable to attend law school during the day. Judge Parker taught at the Terrell Law School until the era of *de jure* segregation came to an end and the school closed. He continued the practice of law in the firm of Parker and Parker until December 19, 1969, when President Richard M. Nixon appointed him to the United States District Court for the District of Columbia.

Judge Parker's decisions have gained national attention in recent years and reflect his staunch adherence to the judicial principles enunciated in the Constitution. In *American Fed. of Labor v. Kahn*, 472 F. Supp. 88 (1979), *rev'd* 618 F.2d 784 (1979), Judge Parker ruled that President Carter did not have the power to invoke economic sanctions to enforce voluntary wage and price guidelines. His stance has been likened to the position taken by the Supreme Court in the 1952 *Steel Seizure Cases*, in which the President, ab-

sent congressional authority, attempted to seize private industrial enterprise in an effort to thwart a strike. Although Judge Parker gained attention for these decisions, challenging the Carter administration, his decisions do not favor party lines. In 1973 Judge Parker barred price controls imposed by President Nixon, labeling them "capricious" and "arbitrary." The boldness of Judge Parker's decisions derive their strength from his faithful adherence to the Constitution and his perception of his role as a judge. "As a federal judge with life tenure, I render opinions without fear or favor, beholden only to God and the Constitution."

Recent opinions and rulings of interest rendered by Judge Parker include *McKenzie v. McCormack*, 425 F. Supp. 137 (1977), a case concerning a Title VII class action suit. Judge Parker found the evidence supported plaintiff's class action claim of a discriminatory promotion policy by the government printing office against black workers. In *NAACP v. Levi*, 418 F. Supp. 1109 (1976), Judge Parker denied a motion by the United States Attorney General to dismiss a complaint challenging the failure of the FBI to investigate the shooting of a black in the custody of an Arkansas state trooper. *Giles v. Secretary of Army*, 475 F. Supp. 595 (1979), involved a discharged Army enlistee who challenged the interpretation of a decision invalidating an order compelling a urinalysis test to measure alleged drug intake. The court, in a decision written by Judge Parker, found the enlistee's rights were violated by the test and that the admission of tainted urinalysis evidence required plaintiff's discharge be upgraded to an honorable one despite the contention that other evidence supported a general discharge. Several of Judge Parker's decisions have been in the area of voting rights. In *Hale County v. United States*, 496 F. Supp. 1206 (1980), he ruled that acts of the Alabama legislature, establishing an at-large election had the effect of denying voting rights to blacks. In another opinion, *National Black United Fund v. Campbell*, 494 F. Supp. 748 (1980), the court found that the eligibility requirement for participation in the Combined Federal Campaign, an on the job solicitation directed at federal government employees by charitable organizations, violated the First and Fifth amendment rights of the National Black United Fund.

When asked about the number of black clerks he has employed while on the bench, Judge Parker did not provide a specific number; he stated, "I have not had as many black clerks as I would have liked yet I will not hire a clerk simply because he or she is black. My primary concern has to be with whether the individual is qualified."

Judge Parker, currently an adjunct professor at The American University, Washington College of Law, was very active in Washington civic and political affairs prior to being appointed to the bench. Although he is not critical of those judges who choose to remain active in organizations while serving on the bench, he personally elects not "to identify myself with cases or issues. It is important to avoid positions which present a possible conflict of interest, in propriety or which might raise a question of partiality."

It is apparent that Judge Parker views his role as guided by constitutional restraints and precedent. And it is equally apparent that within these constraints he has made significant accomplishments. His own words best illustrate this point, "The Constitution is a living document. As a judge

there is a great deal that can be done within this framework to help those who are less fortunate.”



A resident of Ohio since being admitted to the Ohio Bar in 1949, the HONORABLE JOSEPH D. ROULHAC, L'48, is the only Alumni judge to have ventured into the heartland of America. Judge Roulhac's decision to move to Ohio was partly precipitated by rumors that in 1949, Pennsylvania was "piercing the veil of anonymity in order to determine who was taking the Bar."

A native of Selma, Alabama, Judge Roulhac earned the Bachelor of Arts degree from Lincoln University. He earned the Master of Arts degree in 1940 from the University of Pennsylvania and subsequently, in 1948, the Juris Doctor degree from the Law School. Recalling his law school experience, Judge Roulhac, especially remembers the continuous exhortations of Professor Edwin R. Keedy, instructing students to "first find the problems and then think like lawyers in terms of solving them."

Judge Roulhac began his legal career as an assistant prosecutor in Summit County, Ohio. Thereafter, he worked for a number of years in general practice, handling cases in a multitude of areas including criminal litigation, trusts and estates. In a short period of time, Judge Roulhac established himself as an expert in the area of trusts. A 1952 University of Pennsylvania Law Review note discussed his work in *Douglas v. Hubbard*, 91 Ohio App. 200, 107 N.E.2d 884 (1951), where the court used the doctrine of resulting trust to find an interest in one not having a certificate of title. The case is significant because on reversal by the court of appeals it had the potential for rewriting the Certificate of Title Act in Ohio.

In 1967, Ohio Governor Rhodes appointed Judge Roulhac to the Akron Municipal Court. He was elected to the bench in 1967 and then re-elected for two additional terms. His present term ends in 1983. During his tenure on the bench Judge Roulhac has had only one black clerk in his employ. To an extent this small number is attributable to the clerk selecting process in the Akron Municipal Court. Law clerks do not work with judges on an individual basis. Rather, one clerk is appointed to serve a group of six judges, thereby eliminating a great deal of individual discretion in terms of hiring. Moreover, Judge Roulhac notes that when attempts have been made to actively recruit blacks the response from black graduates has been less than encouraging.

Judge Roulhac brought an insightful perspective to our discussion on the role of the black judge by emphasizing the importance of the black presence on the bench and using a case he decided in 1971 to illustrate the point. In *State v. Norwood*, 55 Ohio Misc. 19, 6 Ohio Op.3d 413, Judge Roulhac directed a verdict of acquittal where the jury was unable to reach a decision. Quite aware that a judge must "be cautious of the precedent set when you direct a verdict (in the instant case the jury had voted 6-2 for acquittal), it's a

judge's duty to be cognizant of what is taking place in the courtroom in order that it conforms with the requirements of justice." The *Norwood* case followed a number of cases forming a recurring pattern, i.e., cases involving black defendants vs. white police officers. In these cases, as in the *Norwood* case, Judge Roulhac believed the jury's hesitancy appeared to stem from the color of the defendant's skin. Moreover, Judge Roulhac noted that when race had not been at issue, past cases of this nature never reached trial because the state opted against prosecution. In the *Norwood* case race formed the element of confusion for the jury. Commenting further on the role of a black judge in a *Norwood* type case, Roulhac states, "as a black, I bring a certain awareness to the bench, reflective of my background and experiences. A judge who came to the bench without this perspective, unique to black judges, would not have been as cognizant of the factors operating in the *Norwood* case."

Judge Roulhac has been the recipient of numerous honors and citations from the community as well as several Excellent Judicial Service Awards from the Ohio Supreme Court. Most recently, Judge Roulhac was awarded an Honorary Doctor of Laws degree from Baldwin-Wallace College in Berea, Ohio. Perhaps his career is best summarized by the citation he received on conference of that honorary degree:

More than wisdom and skill, knowledge and efficiency, your career has been distinguished by an overriding concern for people. Your accomplishments cut across all lines of religion, race and politics and honor you as a person committed to the betterment of all mankind.