

# PREFACE

## THE NEW SOUTH—SOME OLD PROBLEMS

For the first time since its inception eighteen years ago, the NATIONAL BLACK LAW JOURNAL traversed familiar territory and arrived to breathe again the magnolias on the other side of the Mason-Dixon Line. Yes, this is the South's Premiere Edition—the first time in the history of the *Journal* that it has been published in the South.

The theme of the *Journal* is "Race Relations in the South," and consists of materials from authors of varying disciplines whose thoughts, insights, and opinions form a kaleidoscope for viewing various issues. It is indeed significant that this issue was given to Tulane University Law School, where a little over twenty years ago, because of a restrictive covenant contained in the will of the school's benefactor, Paul Tulane, Blacks were not allowed to attend this very law school.<sup>1</sup> Tulane was once a bastion for the rich and White. It is thus ironic that Tulane is penetrated by the emanations of Armstrong's trumpet, is perched in the city of jazz and the birthplace of the Southern Leadership Conference, the impetus of the civil rights movement.

What better place to check the pulse of the nation, specifically the subclass known as the law student? Are we alive and well and yet dreaming as did that great dreamer, Dr. Martin Luther King, Jr.? Or have we exchanged our dreams for delusions? Have we been lulled to sleep by the false lullaby that we have reached the promised land? Lest we forget, Dr. King's dream was a composite of dreams — some have come true, but many have not. Now, we as Black law students have a choice. We may matriculate to any law school on the "color spectrum" — from Harvard to Howard, from Southern University to Syracuse. Some channels have been opened, some paths made smoother. But the Struggle has not ended, and will not, not yet. It will not end as long as Black women and children comprise the largest numbers of persons living at or below the poverty level. It will not end as long as Black children are being inducted into the "society" of juvenile delinquency at alarming rates. It will not end as long as infant minds are destroyed and deluged by drugs, little girls beget little babies, and Johnny can neither read nor write. It also will not end as long as in a city the size of New York, there are approximately seven Black partners in the major national firms, and nationwide, Black lawyers comprise less than 1% of the population of partners in majority firms. The struggle does not always start at the bottom. It waits for those of us who are fortunate to reach the top, and when we arrive, it greets us and entreats us into singing what we may never have before sung — the blues.

In this issue we have gathered some of the finest Articles ever produced in any journal. Yet something will set this journal apart; for these works are not only scholarly, but spiritual, not merely informative, but inspirational, not limited to the philosophical, but provocative. And so we begin our trek through the "Heartland" with the thoughts and reflections of a native son,

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1. See *Guillory v. Administrators of Tulane University*, 203 F.Supp. 855 (E.D. La. 1962).

Raymond Diamond, who gives a historical overview of the Little Rock Crisis in his Article, *Confrontation as Rejoinder to Compromise: Reflections on the Little Rock Desegregation Crisis*. He takes us back to that explosive time in the history of this nation and gives a sense of the political and social climate surrounding the school desegregation era, as well the constitutional issues which originated therefrom.

Robert Collin and Robin Morris probe the plight of Blacks in major urban areas in their Article, *Racial Inequality in American Cities: An Interdisciplinary Critique*. The authors examine the social, economic and political factors that led to the migration of Blacks into these areas, emphasizing the problems of housing and lack of employment opportunities due to continuing racism.

Robert J. Cottrol lends his expertise in an Article entitled, *The Thirteenth Amendment and the North's Overlooked Egalitarian Heritage*. The Article focuses on the fourteenth and fifteenth amendments as well, since these amendments were also crucial in the civil rights litigation and legislation. Cottrol provides insight and answers that burning question: What was the Framers' intent? He also isolates the significant motivating forces that were at work before and after the Civil War.

The inability of southern courts to apply the fellow servant rule to slaves hired by southern industries is explored in Paul Finkelman's *Northern Labor Law and Southern Slave Law: The Application of the Fellow Servant Rule to Slaves*.

In *Federalism and Civil Rights: The Meredith Case*, Mitchell Crusto, another native son, explores the pressures and concerns of the Fifth Circuit Court of Appeals during the deliberations concerning the integration of "Ole Miss," when James Meredith applied for admission to the law school at Oxford. The Article chronicles the actions and reactions of President John F. Kennedy, Attorney General Robert Kennedy, and of course, Mississippi Governor Ross Barnett. The Article gives a synopsis of the heroic opinion of Judge John Minor Wisdom as he lamented the behavior of his fellow brethren of the bench.

Laurence Alexander brings insight into the problems that minorities face in the communications industry, specifically radio. In his Article, *An Update on the Minority Preference at the Federal Communications Commission*, he discusses the various relevant issues and warns of the present threat to the minority preference program that was instituted by the Federal Communications Commission. Alexander also suggests some ways to prevent the demise of this program and alleviate some of the problems in the industry as well.

The Honorable Judge Revius O. Ortique, Jr., provides a powerful speech that he delivered at the Cascade United Methodist Church in Atlanta for its Law Day celebration. The speech is incidentally entitled, *Struggle: A Power Reserved to the People*. He reminds us that we have not reached any "meaningful solution to the hurt of hunger that still persists in the land of plenty. . . ." He calls on us to celebrate, but to continue marching through the streets of Forsythe, raising our voices in Howard Beach, and awakening that determination that was instilled and inbred from our forefathers — to keep the Struggle alive, lest we perish.

This issue's Comment, *Law and the Black Experience* by Victoria

Taborn, represents a catharsis of the feelings and emotions of those of us who attend formerly segregated law schools throughout the country. It is as if the author tapped into our most secret thoughts and fears. Taborn also discusses the fact that the judicial process has proven to be a powerful weapon in our Struggle for equality. She does not merely discuss those feelings and emotions but challenges each of us to rise above them and act as catalysts, utilizing our knowledge of the law to bring about positive change in America by starting in our own community.

The Honorable Robert F. Collins, the first Black federal judge in the deep South, is profiled for his contributions to the civil rights movement as well as for his decisions in numerous landmark cases. Other profiles include Alexander Pierre Turead, a forerunner of the civil rights movement and Ivan Lemelle, magistrate for the Eastern District of Louisiana.

The book reviews consist of a review of *THE LAW OF FREEDOM AND BONDAGE: A CASEBOOK* by Paul Finkelman. In this review, Judith Shafer cites the book's usefulness as a casebook in that it is arranged by topic. An important feature of the book is that Finkelman chose to omit leading federal cases dealing with slavery and instead incorporated those less well-known state cases, since slavery had its greatest impact on state law during the antebellum period.

*MINORITY VOTE DILUTION*, edited by Chandler Davidson, is reviewed by Rebecca King. King cites this work as a "valuable guide" to those persons concerned about the participation of minorities in the electoral process. The book is a compilation of several essays written by pioneers in the Struggle for minority voting rights.

Throughout this preface, the word "Struggle" has appeared many times. It is hoped that its frequent usage does not comport redundancy or the lack of a sufficient vocabulary, but that it helps to reiterate what is required to bring about continuing change. It was required of our fathers, mothers, grandfathers, grandmothers. It is required of us; for without progression, digression is imminent. Change is not brought about by rhetoric or remorse, anarchy or apathy, but Struggle. This issue has attempted to rekindle that fire in all of us to continue the Struggle, for though much has changed, too much has remained unchanged — especially in our minds.

Thus, for some, the old South did not need to be changed or "fixed." For some, the new South appears to be fixed, so that Countee Cullen's<sup>2</sup> poem still rings true:

She even thinks that up in heaven  
Her class lies late and snores  
While poor black cherubs rise at seven  
To do celestial chores.

The undertaking and completion of this issue was born through Struggle. There were many setbacks, some almost devastating. Through the dedication, perseverance, and commitment of the NATIONAL BLACK LAW JOURNAL staff, we overcame.

An author<sup>3</sup> has expressed:

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2. CULLEN, *For A Lady I Know* in COUNTEE CULLEN 27 (A. Shucard ed. 1984).

3. The author of this poem is anonymous. The work was taken from an art gallery in New Orleans where Ms. Walker had been employed.

Nothing in the world can take the place of persistence.

Talent will not; nothing is more common than unsuccessful men with talent.

Genius will not; unrewarded genius is almost a proverb.

Education will not; the world is full of educated derelicts.

Persistence and determination alone are omnipotent.

Only persistence and determination will bring victory in this Struggle.

We celebrate the accomplishments of our past, but not by relinquishing our future. We believe as the songwriter, that the roads will someday come together — up the way. And paraphrasing that great poet Robert Frost, we too have promises to keep, and miles to go before we sleep . . . and miles to go before we sleep.

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