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July 10, 1963

\* ON LEAVE OF ABSENCE.

Honorable Louis F. Oberdorfer,  
Assistant Attorney General,  
Department of Justice,  
Washington, D. C.

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Dear Lou:

Enclosed is a copy of the Press Release and the attachments which I released today on behalf of the Lawyers' Committee for Civil Rights Under Law. The attachment contains a complete list of the Committee members to date.

Sincerely yours,

JEROME J. SHESTACK

Jerome J. Shestack

cc. Honorable Nicholas deB. Katzenbach  
✓ Honorable Burke Marshall  
Edward S. Smith, Esquire  
Mr. Edwin O. Guthman

PRESS RELEASE - July 10, 1963

Leading members of the Bar throughout the nation, both white and Negro, have volunteered their services for the newly organized Lawyers' Committee on Civil Rights Under Law, according to an announcement by Harrison Tweed and Bernard G. Segal, Co-Chairmen of the Committee.

The Committee was formed at the request of President Kennedy at a White House Conference of lawyers on June 21, at which the President stressed the contribution which the nation's lawyers could make towards assuring that all citizens enjoy equal rights under law. At that Conference the President asked Messrs. Segal and Tweed to assume the Co-Chairmanship of the Lawyers' Committee.

Among the lawyers who have volunteered to serve on the Committee are 5 past Presidents of the American Bar Association, the Presidents of the State Bar Associations of 12 states, 4 members of the Board of Governors of the American Bar Association, 3 officials of the N.A.A.C.P. and its Legal Defense Committee, the Deans of 12 law schools, the President of Howard University, the President and past President of the American College of Trial Lawyers, the President and Director of the American Law Institute, 5 members of the Executive Coun-

cil of the Junior Bar Conference of the American Bar Association, Officers of the American Judicature Society, and many other leaders of the organized bar.

The Co-Chairmen of the Committee stated that the Committee plans to stimulate, supervise and participate in various activities helpful to a solution of the problems in the field of civil rights under law, for which lawyers are especially qualified to take the lead. The Committee will serve as a liaison between the government and the legal professions as problems develop. It will also serve as a central agency to which lawyers of the country can report situations as they arise and make suggestions so that, where possible, action can be secured. In conducting its activities the Co-Chairmen stated that the Committee would seek the cooperation of the American Bar Association and state and local bar associations.

Mr. Tweed and Mr. Segal reported that Committee members have already played a prominent role in stimulating action on the part of the organized bar in the civil rights area, including the formation of bi-racial committees of lawyers. The Committee Co-Chairmen noted the following recent examples:

The State Bar Association of New Hampshire adopted a resolution offered by its President, Joseph A. Millimet of Manchester, New Hampshire, which called upon the members of

the Association to volunteer their services as counsel in cases of a claimed violation of civil rights where local counsel in the Southern states were not available.

In New York, yesterday, Herbert Brownell, President of the Association of the Bar of the City of New York appointed a bi-racial Committee on Civil Rights headed by Judge Francis E. Rivers, of the Civil Court of the City of New York.

In North Carolina, the constitution of the charter of Winston-Salem and Forsyth County Bar Association was amended to admit every attorney to the business and social membership regardless of race or color.

In Birmingham, Alabama, members of the Committee have asked the President of the Birmingham Bar Association to take steps enabling Negroes to become members of that Association.

In California, William P. Gray, President of the California Bar Association, and a member of the Lawyers' Committee, held a meeting this week with the leaders of 101 California bar associations for the purpose of working together in the solution of civil rights in local communities.

In New Jersey, the President of the New Jersey Bar Association, Walter Leichter, will meet on July 12 with the President of the 21 County Bar Associations in New Jersey to explore ways in which lawyers can be helpful in the civil rights area.

In North Carolina, California, and Ohio, resolutions have been adopted within the past two weeks, by state or county bar associations establishing bi-racial committees to work in the civil rights area. In a number of other states Committee members are taking the initiative in proposing the formation of bi-racial committees.

Mr. Tweed and Mr. Segal stated that the excellent response from lawyers throughout the nation indicated a most encouraging beginning for the Committee's work.

For the use of Editors and Announcers  
the following sets forth some of the  
affiliations of Committee members

Former past-Presidents of the American Bar Association:

Cody Fowler	Tampa, Florida
Harold J. Gallagher	New York, New York
David F. Maxwell	Philadelphia, Pennsylvania
Charles S. Rhyne	Washington, D. C.
John C. Satterfield	Yazoo City, Mississippi

Members of the Board of Governors of the American Bar Association:

Telford B. Orbison	New Albany, Indiana
William Poole	Wilmington, Delaware
George B. Powers	Wichita, Kansas
William B. Spann	Atlanta, Georgia

President of the American Law Institute:

Norris Darrell	New York, New York
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President and past-President of the American College of Trial Lawyers:

Grant B. Cooper	Los Angeles, California (President)
Leon Jaworski	Houston, Texas (past-President)

Officials of the N.A.A.C.P. and its Legal Defense and Educational Fund:

William R. Ming	National Board of Directors of N.A.A.C.P.
William T. Coleman, Jr.	Board of Directors of the Legal Defense Committee
Jack Greenberg	Director-Counsel of the Legal Defense Committee

Presidents of the Bar Associations of:

California	New Jersey
Connecticut	New York
Indiana	Pennsylvania
Louisiana	South Dakota
Nevada	Vermont
New Hampshire	Wisconsin

The Deans of the following Law Schools:

Henry Brandis, Jr.	University of North Carolina
Robert J. Drinan, S.J.	Boston College
Jefferson B. Fordham	University of Pennsylvania
William B. Lockhart	University of Minnesota
Vernon X. Miller	The Catholic University of America
Joseph O'Mears	University of Notre Dame
F. D. G. Ribble	University of Virginia
J. W. Riehm	Southern Methodist University
John Ritchie	Northwestern University
Eugene V. Rostow	Yale University
John W. Wade	Vanderbilt University
William C. Warren	Columbia University

ATTACHED ARE: (1) A COMPLETE LIST OF COMMITTEE MEMBERS; AND  
(2) A LETTER SENT BY THE CO-CHAIRMEN TO THE MEMBERS FOLLOWING  
THE CONFERENCE WITH PRESIDENT KENNEDY.

As of July 9, 1963

VOLUNTEERS FOR MEMBERSHIP ON THE  
LAWYERS' COMMITTEE FOR CIVIL  
RIGHTS UNDER LAW

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Chairman, Commission on  
Human Relations, City of  
Philadelphia.

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President, State Bar of Nevada.

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Christian, Barton, Parker,  
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Past President, Virginia  
State Bar.

Berl I. Bernhard,  
United States Commission on  
Civil Rights,  
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Staff Director, United  
States Commission on Civil  
Rights.

Francis Biddle,  
Bound Brook Island,  
Wellfleet, Massachusetts.

Former Attorney General of  
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Past President, Forsyth  
County Bar Association,  
North Carolina.

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Dean, University of North  
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Past President, State Bar of  
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Nuclear Testing & Dis-  
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President, New York State  
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Dean, University of Penn-  
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Past President, American  
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Dean, Vanderbilt University  
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Former Deputy Attorney  
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Philadelphia 2, Pennsylvania.

# Lawyers' Committee for Civil Rights Under Law

FORMED AT THE REQUEST OF THE PRESIDENT OF THE UNITED STATES

*Co-Chairmen*

HARRISON TWEED  
1 Chase Manhattan Plaza  
New York 5, N.Y.

BERNARD G. SEGAL  
Packard Building  
Philadelphia 2, Pa.

July 1, 1963

To the Lawyers invited by President Kennedy  
to the White House Conference on Friday, June 21st:

As the Joint Chairmen designated by the President at the White House Conference, we are writing to all of those invited to that meeting.

At the Conference the President, the Vice President, and the Attorney General emphasized the significant role that lawyers can play in assuring equal rights to all citizens. Lawyers have a special responsibility and are particularly qualified to take the lead in this critical situation, for any solution must be reached under the law of the land including specific decisions of the courts. The profession recognizes its obligation, and welcomes the opportunity to serve in this national emergency.

It is important that there be a liaison between the Government and the legal profession as problems develop in the months ahead. It is essential, too, that there be some central agency to which the lawyers of the Country can report situations as they arise and make suggestions, so that where possible, action can be secured. Our Committee plans to serve in these capacities. In conducting our activities, we shall, of course, cooperate with the American Bar Association and state and local bar associations. Wherever they undertake to handle a particular situation, the Committee will leave the matter to them.

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The Committee will also assist in the obtaining of counsel by any individual or group otherwise unable to do so. In such instances, wherever possible, the Committee will work through the agencies presently constituted for such purposes.

Each of you has received a letter from Attorney General Kennedy in which he summarizes the eight objectives presented by the President at the White House Conference.

Both the President and the Attorney General placed at the head of the list the initiation, organization and participation in local bi-racial committees. These committees have already proved their usefulness in preventing violence, restoring order, and clarifying the rights of individuals. In some cases, such committees consist of lawyers only; in others, they include men and women from a cross-section of professions, vocations, and businesses. The lawyer is especially fitted for the task of bringing conflicting parties together for face to face discussions and helping them to resolve their differences in an atmosphere of understanding and cooperation. Our Committee could perform no more useful function than to take the leadership in appropriate situations, in forming such committees where they do not exist and in giving them support where they are already constituted.

We recognize that the procedure of organizing a bi-racial committee is not always the only or perhaps the best approach. Quite often lawyers can accomplish the particular objective by mediation between groups or individuals who are in conflict with each other. Our Committee will use whichever approach is indicated by the circumstances.

Another and important area of activity by our Committee is to take the lead in securing full public understanding of the judicial and legal processes involved in these controversies. An example of just such a situation prompted the recent statement by forty-six lawyers when obedience to a decree of a Federal Judge was in question. Your Committee will endeavor to alert lawyers wherever such a situation calls for action.

There are, of course, numerous other important areas for activity by our Committee, and we shall welcome any suggestions you may have for ways in which the Committee can be useful. Our purpose is to marshal action by the lawyers of the nation wherever this can be helpful in resolving disputes

and relieving tensions. We should appreciate it if each of you would send to us a brief report of the current situation in your community and would thereafter keep us advised of any progress which is made, including special mention when lawyers have participated or assumed leadership roles.

We thank those of you who have written to us indicating your willingness to become members of the Committee, and we urge the rest of you to let us hear from you promptly.

You will notice at the masthead, the name which has been selected for our Committee. We will assume approval in the absence of a majority preference for some other name.

We are now in the process of selecting an Executive Committee, which will have as much geographical diversity among its members as is consistent with the need for frequent meetings.

Substantial expenses will certainly be incurred if the Committee is to serve its purpose. Accordingly, we are asking contributions from the larger law firms in the major cities of the country.

With your aid, we look forward to activities and achievements which will be of service to the Nation in resolving some of the difficult problems which face us. In this way, we hope to demonstrate the willingness and the ability of the legal profession effectively to serve the public interest.

Sincerely yours,

  
Harrison Tweed

  
Bernard G. Segal

P.S. We should be grateful if you send to us both copies of all letters you may send.



*meeting  
file*

DEPARTMENT OF JUSTICE

TO Mr. Marshall

- ATTORNEY GENERAL
  - EXECUTIVE ASSISTANT
  - OFFICE OF PUBLIC INFORMATION
- DEPUTY ATTORNEY GENERAL
  - EXECUTIVE OFFICE—U. S. ATTORNEYS
  - EXECUTIVE OFFICE—U. S. MARSHALS
- SOLICITOR GENERAL
- ADMINISTRATIVE DIVISION
  - LIBRARY
- ANTITRUST DIVISION
- CIVIL DIVISION
- CIVIL RIGHTS DIVISION
- CRIMINAL DIVISION
- INTERNAL SECURITY DIVISION
- LANDS DIVISION
- TAX DIVISION
- OFFICE OF LEGAL COUNSEL
- OFFICE OF ALIEN PROPERTY
- BUREAU OF PRISONS
- FEDERAL PRISON INDUSTRIES, INC.
- FEDERAL BUREAU OF INVESTIGATION
- IMMIGRATION AND NATURALIZATION SERVICE
- PARDON ATTORNEY
- PAROLE BOARD
- BOARD OF IMMIGRATION APPEALS
- ATTENTION: \_\_\_\_\_

REMARKS:

July 2, 1963

Yes. In the AG's letter.

L.F.O.

- |   |   |
|---|---|
| <input type="checkbox"/> SIGNATURE                                | <input type="checkbox"/> NOTE AND RETURN  |
| <input type="checkbox"/> APPROVAL                                 | <input type="checkbox"/> SEE ME           |
| <input type="checkbox"/> RECOMMENDATION                           | <input type="checkbox"/> PER CONVERSATION |
| <input type="checkbox"/> COMMENT                                  | <input type="checkbox"/> AS REQUESTED     |
| <input type="checkbox"/> NECESSARY ACTION                         | <input type="checkbox"/> NOTE AND FILE    |
| <input type="checkbox"/> YOUR INFORMATION                         | <input type="checkbox"/> CALL ME          |
| <input type="checkbox"/> ANSWER OR ACKNOWLEDGE ON OR BEFORE _____ |   |
| <input type="checkbox"/> PREPARE REPLY FOR THE SIGNATURE OF _____ |   |

FROM ASSISTANT ATTORNEY GENERAL  
Tax Division

DEPARTMENT OF JUSTICE

TO

- ATTORNEY GENERAL
  - EXECUTIVE ASSISTANT
  - OFFICE OF PUBLIC INFORMATION
- DEPUTY ATTORNEY GENERAL
  - EXECUTIVE OFFICE—U. S. ATTORNEYS
  - EXECUTIVE OFFICE—U. S. MARSHALS
- SOLICITOR GENERAL
- ADMINISTRATIVE DIVISION
  - LIBRARY
- ANTITRUST DIVISION
- CIVIL DIVISION
- CIVIL RIGHTS DIVISION
- CRIMINAL DIVISION
- INTERNAL SECURITY DIVISION
- LANDS DIVISION
- TAX DIVISION
- OFFICE OF LEGAL COUNSEL
- OFFICE OF ALIEN PROPERTY
- BUREAU OF PRISONS
- FEDERAL BUREAU OF INVESTIGATION
- IMMIGRATION AND NATURALIZATION SERVICE
- PARDON ATTORNEY
- PAROLE BOARD
- BOARD OF IMMIGRATION APPEALS
- ATTENTION: \_\_\_\_\_

- |   |   |
|---|---|
| <input type="checkbox"/> SIGNATURE        | <input type="checkbox"/> NOTE AND RETURN  |
| <input type="checkbox"/> APPROVAL         | <input type="checkbox"/> SEE ME           |
| <input type="checkbox"/> RECOMMENDATION   | <input type="checkbox"/> PER CONVERSATION |
| <input type="checkbox"/> COMMENT          | <input type="checkbox"/> AS REQUESTED     |
| <input type="checkbox"/> NECESSARY ACTION | <input type="checkbox"/> NOTE AND FILE    |

- ANSWER OR ACKNOWLEDGE ON OR BEFORE \_\_\_\_\_
- PREPARE REPLY FOR THE SIGNATURE OF \_\_\_\_\_

REMARKS:

June 28, 1963

Lou Oberdorfer:

Are we sending all the lawyers the President's points?

BM  
*Yes. In the AB's letter*



FROM \_\_\_\_\_

632/63

LEE C. BRADLEY (1871-1942)  
M. M. BALDWIN (1873-1955)  
SAMUEL M. BRONAUUGH (1900-1958)

WM. BEW WHITE  
ERNEST L. ALL  
LEE C. BRADLEY, JR.  
DOUGLAS ARANT  
WM. ALFRED ROSE  
WM. BEW WHITE, JR.  
JOHN J. COLEMAN, JR.  
JOSEPH H. JOHNSON, JR.  
J. REESE MURRAY  
ROMAINE S. SCOTT, JR.  
EDWARD M. SELFE  
HARRY R. TEEL  
ELLENE WINN

WHITE, BRADLEY, ARANT, ALL & ROSE

2100 COMER BUILDING  
BIRMINGHAM 3, ALABAMA

323-1551

ROBERT B. DONWORTH, JR.  
DAVID J. VANN  
ROBERT R. REID, JR.  
JOHN N. WRINKLE  
THOMAS N. CARRUTHERS, JR.  
J. ROBERT FLEENOR  
FRANK H. HSFADDER  
JOHN E. GRENIER  
JOHN H. MORROW  
HOBART A. MEWHORTER, JR.  
CHARLOTTE RAILEY KIEFFER  
J. VERNON PATRICK, JR.  
MACBETH WAGNON, JR.  
ROBERT H. WALSTON  
THOMAS W. THAGARD, JR.

June 25, 1963

*outline  
of what  
I.*

Dear Burke:

I am grateful for having been included in the White House meeting last Friday. I feel sure that it will be helpful. Some of us here already have under discussion some things that should be done and I think will be done.

Please do not forget that you are going to send me a copy of the outline.

With best wishes.

Sincerely yours,

*Arant*

The Honorable Burke Marshall  
Assistant Attorney General  
Department of Justice  
Washington, D. C.

*Low O hand refer  
As we searched  
all the lawyers the  
President's points.  
for*

*lawy. meetings*

LAW OFFICES  
**SCHNADER, HARRISON, SEGAL & LEWIS**  
1719 PACKARD BUILDING  
PHILADELPHIA 2

WILLIAM A. SCHNADER	BERNARD G. SEGAL
FRED L. ROSENBLUM	GILBERT W. OSWALD
W. BRADLEY WARD	FRANK B. MURDOCH
ROBERT M. BLAIR-SMITH	HAROLD B. BORNEMANN
IRVING R. SEGAL	LOUIS F. FLOGE
J. PENNINGTON STRAUS	ARLIN H. ADAMS
JAMES J. LEYDEN	ROBERT J. CALLAGHAN
SAMUEL D. SLADE	THOMAS P. GLASSMOYER
BERNARD J. SMOLENS	GEORGE P. WILLIAMS, III
EDWARD W. MULLINIX	J. B. MILLARD TYSON
JEROME J. SHESTACK	THOMAS G. MEEKER
ARTHUR J. SULLIVAN	FRANK H. ABBOTT
KIMBER E. VOUGHT	MILTON A. DAUBER
BANCROFT D. HAVILAND	CHARLES C. HILEMAN, III
JOHN E. LITTLETON	GEORGE H. NOFER, II
HERBERT S. MEDNICK	TOM P. MONTEVERDE
PHILIP M. HAMMETT	S. JAY COOKE
J. GORDON COONEY	RALPH S. SNYDER
STUART M. NEELY	JAMES M. RICHARDSON
SANFORD M. ROSENBLUM	ROBERT L. KENDALL, JR.
WILLIAM M. BARNES	SHIRLEY S. BITTERMAN
THOMAS E. EICHMAN	HARVEY LEVIN
JOHN W. PELINO	VINCENT P. HALEY
ROBERT P. OBERLY	IRA P. TIGER
JAMES A. DROBILE	WILLIAM ANDREW KERR
	THOMAS B. RUTTER

ON LEAVE OF ABSENCE

FRANCIS A. LEWIS\*  
1935-1945  
EARL G. HARRISON  
1948-1955  
—  
LOCUST 3-2550  
—  
CABLE ADDRESS  
WALEW

July 2, 1963.

Malcolm W. Berkowitz, Esquire,  
Robert N. C. Nix, Jr., Esquire,  
Frank Shields, Esquire,  
Lynwood Blount, Esquire,

Norman Jenkins, Esquire,  
Aubrey R. Newlin, Jr., Esquire,  
Leonidas A. Allen, Esquire,  
R. Lawrence Clay, Esquire.

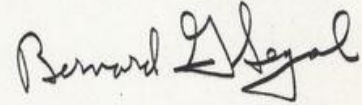
Gentlemen:

This will acknowledge your letter of June 25th with which you enclosed copy of letter of June 24th to Mayor Tate. I appreciate your sending this to me and hope you will continue to keep me advised of any action your group or any of you individually may take as lawyers in the general area of Civil Rights.

You may be interested to know that as Chairman of the Human Relations Commission, Mrs. Alexander had already been in touch with me concerning a phase of the problem to which your letter addresses itself, prior to my receipt of your letter. As Co-Chairman of our Committee I have already taken steps to see what can be done to alleviate the situation concerning the admission of apprentices, particularly to the craft unions in the building trades.

For the time being this letter is being sent to each  
of you personally and is not for publication.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Bernard G. Segal". The signature is written in dark ink and is positioned above the typed name.

Bernard G. Segal

Tax Division  
Assistant  
Attorney General



July 2, 1963

**The Attorney General**

Attached is a copy of the letter which Messrs. Tweed and Segal circulated to the lawyers attending the White House meeting.

They plan a press release for the Monday or Tuesday papers. They hope that you and the President will comment publicly at the time of the release. We are taking this up with Ed Guthman.

L.F.O.

cc: Mr. Guthman ✓  
AAG Marshall

# Lawyers' Committee for Civil Rights Under Law

FORMED AT THE REQUEST OF THE PRESIDENT OF THE UNITED STATES

*Co-Chairmen*

HARRISON TWEED  
1 Chase Manhattan Plaza  
New York 5, N.Y.

BERNARD G. SEGAL  
Packard Building  
Philadelphia 2, Pa.

July 1, 1963

To the Lawyers invited by President Kennedy  
to the White House Conference on Friday, June 21st:

As the Joint Chairmen designated by the President at the White House Conference, we are writing to all of those invited to that meeting.

At the Conference the President, the Vice President, and the Attorney General emphasized the significant role that lawyers can play in assuring equal rights to all citizens. Lawyers have a special responsibility and are particularly qualified to take the lead in this critical situation, for any solution must be reached under the law of the land including specific decisions of the courts. The profession recognizes its obligation, and welcomes the opportunity to serve in this national emergency.

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Sincerely yours,

  
Harrison Tweed

  
Bernard G. Segal

P.S. We should be grateful if you send to us both copies of all letters you may send.

July 9, 1963

15/  
MEMORANDUM OF MEETING OF HARRISON TWEED,  
JEROME SHESTACK AND EDWARD S. SMITH

Mr. Smith met with Messrs. Tweed and Shestack at 12 Noon in the office of Milbank, Tweed, Hadley & McCloy.

Mr. Tweed had seen the article on Mitchell's having been employed by the John Birch Society. He had been in further touch with Satterfield and had more or less brushed him off on this subject. Mr. Tweed looked at the material concerning the Mississippi legislative report on the Oxford riots and was advised of your thoughts about that document.

The immediate needs of the Committee are to complete formation of its Executive Committee and to send out a letter soliciting money. We discussed the possible complications respecting the request of ruling of deductibility and it was determined that Mr. DeWind and Mr. Milton Dauber, of Shestack's office, would undertake to obtain the ruling on behalf of the organization, rather than for us to do it. I told them that I was sure you would approve of this and later so advised. I am to pave the way with Rogovin.

Edward S. Smith  
Assistant for Civil

Mr. Shestack said that he had been able to obtain pledges of around \$2,500 from firms in Philadelphia and Mr. Tweed stated that his firm would probably give \$1,000.

Mr. Shestack furnished us with a list updated through July 8, 1963, of attorneys who have joined the Committee. I delivered to him the copy of Jerome Cooper's letter to the Birmingham Bar Association. Mr. Tweed stated that he had acknowledged everything received prior to July 3rd and since that date only those things addressed to him or to both him and Segal. The originals of all letters were turned over to Shestack, who will keep a central file. They will coordinate the revisions of the lists of attorneys.

They noted that in their first letter they stated that "You will hear from us further" and they are taking steps to make certain that this happens.

Gray will let Shestack know what took place at the California meeting and will see him in Washington Friday.

cc: ✓ Mr. Marshall  
Mr. Oberdorfer  
Messrs. Tadlock and Perkins  
File

Mr. Tweed dictated a letter to Satterfield acknowledging his membership on the Committee, confirming a telephone conversation they had had the day previous.

Mr. Segal came in on a conference call through his Philadelphia office and stated, among other things, that he had a long talk with Sylvester Smith who was offended by the Schweppe letter. Smith wrote all of the questions contained in the Schweppe letter except the objectionable portion about the "New Federal Party" which was apparently thrown in by Schweppe. Mr. Segal stated that Walter Craig will be at the Washington meeting, that Tweed and Segal are officially advisors to the ABA Committee, should be present (Shestack substituting for Segal), and should be outspoken in asserting their views. Segal also suggested that Charlie Rhyne would be a good man for Vice Chairman of the Tweed and Segal Committee, and acting in his individual capacity might be helpful in corraling support for the legislation by Republican lawyers.

Segal stated that he would be in on the 20th rather than the 19th. They plan to meet that week on Wednesday the 24th rather than Tuesday and they will probably be in touch with each other during that previous weekend.

Shestack emphasized that the local bar associations are looking to this Committee to come up with suggestions for action.

We worked on a press announcement for release at noon tomorrow which will be given widest publicity and submitted in the form of release, together with the latest list of members, a copy of the Committee's letter which went out last week.

I am to confer with Guthman with respect to getting a comment from the President on this news release. (This has been done and he will probably handle it at his next press conference.) Messrs. Tweed and Shestack thought it would be helpful if some representative of the Department could be in attendance at the Schweppe Committee meeting and if not perhaps we could stand by to meet with them Saturday morning. (I later confirmed your approval.)

Edward S. Smith  
Assistant for Civil Trials

*Pres. Meeting*

Meeting with Business Council - July 11, 1963 - 4:00 p.m., East Room

AVILDSEN, Charles  
Chairman and President  
Avildsen Tools & Machines, Inc.  
100 Lafayette Street  
New York 13, New York

BATTEN, William M.  
President  
J. C. Penney Company, Inc.  
330 West 34th Street  
New York 1, New York

BLOUGH, Roger M.  
Chairman  
United States Steel Corporation  
71 Broadway  
New York 6, New York

BOESCHENSTEIN, Harold  
President  
Owens-Corning Fiberglas Corporation  
Post Office Box 901  
Toledo 1, Ohio

BOHEN, Fred  
President  
Meredith Publishing Company  
1716 Locust Street  
Des Moines 3, Iowa

BRANCH, Harilee, Jr.  
President  
The Southern Company  
1330 West Peachtree Street NW  
Atlanta 9, Georgia

BROWN, George R.  
President  
Brown & Root, Inc.  
Box Three  
Houston 1, Texas

**BURGESS, Carter L.**  
Chairman  
American Machine & Foundry Co.  
261 Madison Avenue  
New York 16, New York

**CABOT, Paul C.**  
Chairman  
State Street Investment Corporation  
140 Federal Street  
Boston 10, Massachusetts

**CISLER, Walker L.**  
President  
The Detroit Edison Company  
2000 Second Avenue  
Detroit 26, Michigan

**CLAY, Lucius D.**  
Senior Partner  
Lehman Brothers  
One William Street  
New York 4, New York

**CONNOR, John T.**  
President  
Merck & Co., Inc.  
126 East Lincoln Avenue  
Rahway, New Jersey

**CORDINER, Ralph J.**  
Chairman  
General Electric Company  
570 Lexington Avenue  
New York 22, New York

**DANIEL, Charles E.**  
Chairman  
Daniel Construction Company  
Post Office Box 2286  
Greenville, South Carolina

**DANIELS, John H.**  
President  
Archer-Daniels-Midland Co.  
Investors Building  
Minneapolis 2, Minnesota

**DAVIES, Paul L.**  
Chairman  
FMC Corporation  
Post Office Box 760  
San Jose 8, California

**DONAHUE, Alphonsus J.**  
President  
Donahue Sales Corporation  
41 East 51st Street  
New York 22, New York

**ELLIOTT, W. Y.**  
Department of Government  
Harvard University  
Cambridge 38, Massachusetts

**FRANKLIN, John M.**  
Chairman  
United States Lines Company  
One Broadway  
New York 4, New York

**GRAY, Elisha H**  
Chairman  
Whirlpool Corporation  
St. Joseph, Michigan

**GREENWALT, Crawford H.**  
Chairman  
E. I. duPont de Nemours & Co.  
Wilmington 98, Delaware

**GRUENTHER, Alfred M.**  
President  
The American National Red Cross  
Washington, D. C.

**HALL, Joseph E.**  
Chairman  
The Kroger Company  
1014 Vine Street  
Cincinnati 1, Ohio

**HOTCHKIS, Preston**  
President  
Bixby Ranch Company  
523 West Sixth Street  
Los Angeles 2, California

**DUFFIELD, Hugh K.**  
Vice President  
Sears Roebuck and Company  
925 South Homaa  
Chicago, Illinois

**FUNSTON, G. Keith**  
President  
New York Stock Exchange  
Eleven Wall Street  
New York 5, New York

**FREEMAN, Gaylord**  
Vice Chairman  
First National Bank  
Chicago, Illinois

**HELM, Harold H.**  
Chairman  
Chemical Bank New York Trust Co.  
New York, New York

**HUMPHREY, Gilbert W.**  
Chairman  
The M. A. Hanna Company  
1300 Leader Building  
Cleveland 14, Ohio

**HOUGHTON, Amory**  
Chairman, Executive Committee  
Corning Glass Works  
Corning, New York

**JOHNSON, Robert B.**  
President  
The Hawaiian Electric Company, Ltd.  
Post Office Box 2750  
Honolulu 3, Hawaii

**JONES, Alfred W.**  
Chairman  
Sea Island Company  
Sea Island, Georgia

**KAPPEL, F. R.**  
Chairman  
American Telephone and Telegraph Company  
195 Broadway  
New York 7, New York

**KEENER, J. Ward**  
President  
The B. F. Goodrich Company  
500 South Main Street  
Akron 13, Ohio

**KIMBERLY, John R.**  
Chairman  
Kimberly-Clark Corporation  
Neenah, Wisconsin

**KINGSON, Justin**  
President  
Millburn Mills, Inc.  
West Warwick, Rhode Island

**LANIER, Joseph L.**  
President  
West Point Manufacturing Co.  
West Point, Georgia

LAZARUS, Ralph  
President  
Federated Department Stores, Inc.  
222 West Seventh Street  
Cincinnati 2, Ohio

LONG, Augustus C.  
Chairman  
Texaco Inc.  
135 East 42nd Street  
New York 17, New York

MacNICHOL, George P., Jr.  
President  
Libbey-Owens-Ford Glass Co.  
811 Madison Avenue  
Toledo 3, Ohio

MALOTT, Dean W.  
President Emeritus  
Cornell University  
Ithaca, New York

McASHAN, S. M., Jr.  
President  
Anderson, Clayton & Co., Inc.  
Cotton Exchange Building  
Houston 1, Texas

McCABE, Thomas B.  
Chairman  
Scott Paper Company  
Front and Market Streets  
Chester, Pennsylvania

McCOLLUM, L. F.  
President  
Continental Oil Company  
Box 2197  
Houston 1, Texas

McELROY, Neil  
Chairman  
The Proctor & Gamble Company  
Post Office Box 599  
Cincinnati 1, Ohio



**McGOWIN, Earl M.**  
Vice President  
W. T. Smith Lumber Company  
Chapman, Alabama

**MILLER, Irwin**  
Chairman  
Cumming Engine Company, Inc.  
301 Washington Street  
Columbus, Indiana

**MUELLER, Frederick H.**  
318 Birdkey Drive  
Sarasota, Florida

**MURPHY, W. E.**  
President  
Campbell Soup Company  
375 Memorial Avenue  
Camden 1, New Jersey

**PACKARD, David**  
President  
Hewlett-Packard Company  
1501 Page Mill Road  
Palo Alto, California

**RATHBONE, M. J.**  
Chairman  
Standard Oil Company (New Jersey)  
30 Rockefeller Plaza  
New York, New York

**REYNOLDS, R. S., Jr.**  
Chairman  
Reynolds Metals Company  
Reynolds Metals Building  
Richmond 18, Virginia

**ROBINSON, William E.**  
Quaker Lane  
Greenwich, Connecticut

**SAUNDERS, Stuart T.**  
President  
Norfolk and Western Railway  
8 North Jefferson Street  
Roanoke, Virginia

**SMITH, Alcott D.**  
President  
Aetna Insurance Company  
151 Farmington Street  
Hartford, Connecticut

**SMITH, Blackwell**  
Austin, Burns, Appell & Smith  
535 Fifth Avenue  
New York 17, New York

**SNYDER, John W.**  
Chairman, Finance Committee  
The Overland Corporation  
Security Building  
Toledo 4, Ohio

**STALEY, A. E., Jr.**  
Chairman  
A. E. Staley Manufacturing Company  
Decatur, Illinois

**STANTON, Frank**  
President  
Columbia Broadcasting System, Inc.  
485 Madison Avenue  
New York 22, New York

**STEVENS, Robert T.**  
Chairman and President  
J. P. Stevens & Co., Inc.  
1460 Broadway  
New York 36, New York

**STILES, Hardwick**  
Scudder, Stevens & Clark  
300 Park Avenue  
New York 22, New York

**STRAUSS, Lewis L.**  
Room 308, Mercury Building  
1925 K Street NW  
Washington, D. C.

**SYMONDS, Gardiner**  
Chairman  
Tennessee Gas Transmission Co.  
Post Office Box 2511  
Houston 1, Texas

**TAYLOR, A. Thomas**  
Chairman and President  
International Packers Limited  
135 South LaSalle Street  
Chicago 3, Illinois

**THOMAS, Charles Allen**  
Chairman  
Monsanto Chemical Company  
800 North Lindbergh Boulevard  
St. Louis 66, Missouri

**TURMAN, Selon B.**  
Chairman  
Lykes Bros. Steamship Co., Inc.  
1300 Commerce Building  
New Orleans 11, Louisiana

**VIRDEN, John C.**  
Chairman and President  
Eaton Manufacturing Company  
739 East 140th Street  
Cleveland 10, Ohio

**WARD, J. Carlton, Jr.**  
2 Colton Street  
Farmington, Connecticut

**WATSON, Thomas J., Jr.**  
Chairman  
International Business Machines Corporation  
590 Madison Avenue  
New York 22, New York

**WHITE, Walter**  
2546 Massachusetts Avenue, NW  
Washington, D. C.

**WHITNEY, John Hay**  
Whitney Communications Corporation  
Time and Life Building  
Rockefeller Center  
New York 20, New York

**WINGATE, Henry S.**  
Chairman  
International Nickel Company, Inc.  
67 Wall Street  
New York 5, New York

Misc.

June 18, 1963

Sylvester C. Smith, Jr., Esq.  
President  
American Bar Association  
Prudential Plaza  
Newark 1, N.J.

Dear Mr. Smith,

The impetus of the President's invitation to a Conference on Civil Rights on June 21 stirs me to think of what we might be doing and should be doing as lawyers to help resolve present conflicts over the position of Negroes in ways which fulfill the command of the Constitution.

There is need, I think, for a continuing body of lawyers to help lead opinion by speaking out on the succession of issues bound to arise in the course of so fundamental a struggle. The occasional statements of the Board of Governors and of the President should be reserved for fundamental issues, and kept to a minimum, in order to avoid diluting their effect. The Board's recent effective and important criticism of the constitutional amendments proposed by the Council of State Governments is an excellent example of what the Bar Association can and should do from time to time in helping to form public opinion.

I have long felt that our Standing Committee on the Bill of Rights should become a Section of the Bar Association, better able than the Committee to organize educational programs, and to sponsor activities intended to educate the bar and the public. I suggest that we take this particular step forward in August as one emergency response to the present crisis, and that Arthur Freund of St. Louis, distinguished and tireless battler in this and other good causes, be considered as its first Chairman. As you may know, Mr. Freund was the first person to sound the alarm about the constitutional amendments proposed by the Council on State Governments.

Secondly, and still in the realm of public opinion, I suggest that the group of men who signed the Statement of June 10th become the nucleus of a larger Committee -- a Committee to Defend the Union, or a Committee of Forty-Six, or a Committee identified by a better title. Such a Committee, whose Honorary Chairmen could well be men like Judge St. John Garwood, John Lord O'Brien, and Harrison Tweed, would stand ready to speak and act on a variety of problems that are bound to emerge as we proceed through the long process of painful adjustment on this front. It could help mobilize opinion. It could defend or criticize the government with far more freedom and speed than the Board of Governors or an A.B.A. Section. It could prod the nation's conscience, and stir our will to act, on a variety of problems on which thought and action will be needed in the years ahead.

Sylvester C. Smith, Esq.

June 18, 1963

Third, I should like to suggest for consideration the list of proposals I made in the fall of 1961, in a lecture printed in the American Bar Association Journal during 1962. I enclose an offprint of the Lecture, entitled "The Lawyer and His Client", for ready reference. The suggestions for action by the national and state bar associations appear on the last three (unnumbered) pages of the offprint. They concern the availability of counsel.

With every good wish,

Yours sincerely,

EVR/m

CC - Hon. Burke Marshall ✓  
Hon. Nicholas deB. Katzenbach  
Arthur Freund, Esq.  
Hon. Louis Oberdorfer  
Dean Erwin N. Griswold  
Bernard G. Segal, Esq.

# The Lawyer and His Client

This is the Alexander F. Morrison Foundation Lecture for 1961. It was delivered by Dean Rostow on September 28, 1961, at the Annual Meeting of the State Bar of California, held at Monterey, California. Because of the length of this outstanding lecture, it is necessary to publish it in two parts. The first part appears below; the second part will appear in the February, 1962, issue of the *Journal*.

by Eugene V. Rostow • *Dean of the Law School, Yale University*

## I.

MY TOPIC IS NOT NEARLY so erudite as those of some of the papers which have been presented as Morrison Lectures in the past. My thoughts in preparing this talk turned to a more mundane feature of the landscape described by the terms of the lecture. Those terms, you may recall, are as follows:

It is desired that the lectures deal with subjects relating to the advancement and development of our law as a system for the administration of justice, or which will deal with the subject of the professional ideals of the lawyer and of his duties to the public, and of the duties of the public with respect to the administration of justice.

In seeking to satisfy the command of the trust, I thought it might be useful to consider some aspects of the relationship between the American lawyer and his client, and the way in which that relationship affects the professional ideals of the lawyer. The view we take of our duties and responsibilities as lawyers determines the social performance of the law. And it measures the possibility that our profession fulfill its ideals of professional and civic morality.

I should like to approach this theme in its social setting. The lawyer is an integral part of a legal system, including the courts and legislatures, the

police and the penal institutions, the law schools and the professional organizations. That legal system is in turn part of a larger society—the whole panorama of habits and ideas, of organizations and arrangements which constitute the United States of America today. All legal systems have certain common characteristics. They perform certain common functions. And their literatures show the influence, in a pattern of endless debate, of common ideas about the nature of law and its goals. Yet any particular legal system is the product of the particular social, moral and intellectual experience which determines its shape and structure, and fixes the limits of its capacity for change. It is easy to fall into error about the rules of a given legal system by viewing it too abstractly, and without reference to the social context—the whole universe of forces—which brought it into being, and to the functions it actually performs, and those we think it should perform.

No professional group exists, as Durkheim has said, without its own moral discipline, its own ethics.<sup>1</sup> Every man is a citizen, a member of a family, and usually a member also of a variety of social organisms and bodies, private and public, depending on his interests. A lawyer, like members of other specialized professional groups, is subject to the special ethical rules of his guild, which often present problems of

conflict and accommodation with the ethical rules applicable to individuals and to families, and to those of citizenship generally.

As professors, we have duties which are not those of merchants. Those of the industrialist are quite different from those of the soldier, those of the soldier from those of the priest, and so on. . . . We might say in this connection that there are as many forms of morals as there are different callings, and since, in theory, each individual carries on only one calling, the result is that these different forms of morals apply to entirely different groups of individuals.

These differences may even go so far as to present a clear contrast . . . a real opposition. The scientist has the duty of developing his critical sense, of submitting his judgment to no authority other than reason; he must school himself to have an open mind. The priest or the soldier, in some respects, have a wholly different duty. Passive obedience, within prescribed limits, may for them be obligatory. It is the doctor's duty on occasion to lie, or not to tell the truth he knows. A man of the other professions has a contrary duty. Here, then, we find within every society a plurality of morals that operate on parallel lines.<sup>2</sup>

One of the main functions of codes of professional ethics, Durkheim says at a later point, is to reconcile these

1. Emile Durkheim, *PROFESSIONAL ETHICS AND CIVIC MORALS* (Leçons de Sociologie Physique des Moeurs et du Droit) (American edition, 1958) pages 14-15.  
2. *Id.*, pages 4-5.

contrasts and conflicts between individual and group interests, and those of the community at large. In order for groups within a society to persist, he remarks, "each part must behave in a way that enables the whole to survive".<sup>3</sup> The moral discipline of the professional group, he adds, "is a code of rules that lays down for the individual what he should do so as not to damage collective interests and so as not to disorganize the society of which he forms a part".<sup>4</sup> We might add to Durkheim's exposition the more affirmative thought that the function of professional ethics in the life of the group is not merely to avoid damaging conflicts between the code of the group and that of society, but actively to further, through the work of the group, the fulfillment of goals approved by the society to which the professional group belongs, and which it should serve.

It is the interplay between such groups within society, and society as a whole, and, equally, the interplay between the individual member of the group and the group itself, which do much to fix the character of a given society. Adjustments of this order help to determine whether a society allows much or little freedom to the individual, whether group interests prevail in a feudal way, or whether general interests keep group interests in check, and give the individual member of the group a larger field for his own discretion and creativeness.<sup>5</sup>

## II.

With these cautions in mind, I should like to contrast the English, and more generally the British view of the lawyer's relation to his client with that which prevails among us.

In his novel, *John Caldigate*, Trollope describes the dilemma of a great barrister, Sir John Joram, to whom newly discovered evidence is brought after his client has been convicted of bigamy at the Assizes. Sir John's client had gone to Australia and made a fortune in gold. On returning to England, he married a most respectable lady. While in Australia, however, Trollope's rather susceptible hero had lived with a woman who now sought to blackmail him on the strength of the claim that he had

married her there. The evidence discovered after the trial indicated that the testimony and the principal exhibit which established the Australian marriage were fraudulent. Reluctantly sacrificing part of his holiday to the task, Sir John composed a document for the Home Secretary, who was charged with recommending clemency to the Crown; and the Minister sent the papers to the judge who had presided at the trial—a stern and impeccable judicial figure named Bramber. The barrister concluded his presentation with these words:

As it is quite manifest that a certain amount of false and fraudulent circumstantial evidence has been brought into court by the witnesses who proved the alleged marriage, and as direct evidence has now come to hand on the other side which is very clear, and as far as we know trustworthy, I feel myself justified in demanding her Majesty's pardon for my client.<sup>6</sup>

Trollope's account of Mr. Justice Bramber's ordeal is a brilliant elucidation of the ways in which evidence is weighed, and evaluated, by a first-rate lawyer who is also a human being. The Judge started by reacting strongly against the barrister's submission. As a matter of principle, he hated the reconsideration of cases after trial. And he hated even more the tone of the lawyer's document.

He first read Sir John Joram's letter and declared to himself that it was unfit to have come from anyone calling himself a lawyer. There was an enthusiasm about it altogether beneath a great advocate—certainly beneath any forensic advocate employed otherwise than in addressing a jury. He, Judge Bramber, had never himself talked of "demanding" a verdict even from a jury. He had only endeavored to win it. But that a man who had been Attorney-General,—who had been the head of the bar—should thus write to a Secretary of State, was to him disgusting. To his thinking, a great lawyer, even a good lawyer, would be incapable of enthusiasm as to any case in which he was employed. The ignorant childish world outside would indulge in zeal and hot feelings,—but for an advocate to do so was to show that he was no lawyer,—that he was no better than the outside world. . . . It had been the jury's duty to find out whether that crime had been committed, and his

duty to see that all due facilities were given to the jury. It had been Sir John Joram's duty to make out what best case he could for his client,—and then to rest contented.<sup>7</sup>

By way of comparison, let me recall an episode in which Herbert Clark and I were both involved, with some sixty other people, mostly lawyers, which illustrates for me a quite different attitude towards the lawyer's identification with his client, and his client's position. Some years ago, we were members of the Attorney General's National Committee To Study the Antitrust Laws, a meritorious project which produced a report I regard as decidedly useful. At an early stage in the life of the Committee, the issue arose as to how divergent or dissenting views were to be presented, and whether members should have the privilege of identifying themselves by name with minority opinions in which they happened to believe. In the course of an entirely amicable discussion of the problem with Judge Barnes, who was Co-Chairman of the Committee, it became apparent that there was a difference of opinion on the question, which represented a considerable problem in reality. By and large, the academic members of the Committee, for whom ideas are the principal business of life, took it for granted that each member of the Committee should assume full personal responsibility for each position taken in the report. For the members who were in practice, however, the issue was not nearly so simple. Many felt that a rule of anonymity would give them more professional and intellectual freedom to support views of the law which they believed to be sound, as students of the subject, than the principle of personal responsibility. As counsel for their clients, or as habitual counsel for plaintiffs or defendants in antitrust cases, they were in fact so identified with views of the law they advanced in practice that they would have been embarrassed, or even compromised, in their relations with clients and prospective

3. *Id.*, page 14.

4. *Ibid.*

5. *Id.*, page xxxix (Introduction by Prof. Georges Davy).

6. Anthony Trollope, *JOHN CALDIGATE* (Dodd, Mead edition, 1923) Vol. 2, page 237.

7. *Id.*, at pages 247-248.



clients by espousing a contrary view in public as members of the Committee. At the time, I found this attitude a disturbing indication that practitioners were not in fact as independent as I thought they should be. I could not imagine a physician, for example, or an engineer, being inhibited in writing an article for a scientific journal, because his professional opinions might not be congenial to those of his patients or clients.

It became clear that the problem we faced was a genuine one, reflecting fundamental aspects of the lawyer's role and status in our society, and that it was far beyond the jurisdiction of our Committee to resolve or alter. It was therefore agreed that each member would be free to identify himself with minority views as he saw fit. In the main, only the academic members of the Committee availed themselves of the privilege, which to some seemed a duty as well.<sup>8</sup>

The same point emerged in another way when the Committee's report was published. Some members of Congress sought to discredit the report on the ground that it was the product of a group dominated by lawyers for very large companies, who were presumed to be interested in eviscerating the antitrust laws, if not in abolishing them. This seemed to me an unfair attack on the professional integrity of the Committee's members, and I protested against it.

In this debate, I think, we see in microcosm an aspect of the life of our profession which is worth examination. We are all familiar with the fact that most lawyers today, even in smaller communities, are no longer detached professional gladiators of the Bar, whose services, in court or out of it, are available to any litigant. The inevitability of specialization, and the decline in the relative importance of litigation in the lawyer's work, have had their impact. And I suspect that the romantic vision of the old-fashioned barrister as a knight in shining armor, ready to try any lance offered to him, was never quite so true in the United States as we like to think. Even in Lincoln's time, in the fellowship of circuit-riders to which we sometimes

look back with nostalgia, there were railroad lawyers and those who fought the railroads, men who habitually wrote the best wills, and those who didn't.

Whatever the actual position was a century ago, today, in every community I know anything about, we have not lawyers only, as a single homogeneous group, but a complex hierarchy of lawyers: plaintiffs' lawyers and defendants' lawyers; men who represent insurance companies, and refuse all plaintiffs' cases, and those who live to prosecute tort claims. In the corporate field, lawyers who habitually defend stockholders' suits or antitrust cases often decline to bring them, on grounds of professional policy. The problem is the same in many other fields—labor law, for example, or the handling of malpractice cases. The men who represent publishers in libel cases are sometimes unavailable to those who wish to initiate such suits. In a few areas—taxation, admiralty and criminal law, for example—the link between the lawyer and his clients' position is somewhat weaker, although even in criminal law it is hard to imagine some men with a reputation for the defense becoming district attorneys.

This feature of our professional life has given rise to grave concern throughout our history, when lawyers hesitated to accept clients who were violently unpopular, or were involved in controversies which aroused strong hostile feelings. John Adams defending the British soldiers in Boston; William H. Seward establishing the defense of insanity against a charge of murder; Clarence Darrow and Arthur Garfield Hays in some of their adventures at the Bar; Whitney North Seymour in the *Herndon* case; and many like episodes are part of our professional memory, and of our professional pride. But the problem symbolized by these great moments persists, in the difficulty the Bar has faced in recent years in providing counsel of the highest professional standing in many controversies over civil rights—those stemming from the enforcement of the Smith Act, for example; those arising out of the loyalty-security programs of the national and state governments; and the cycle of cases asserting the rights of



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Negroes under the Fourteenth Amendment.<sup>9</sup> Cases of this order, where the legal process confronts an inflamed public opinion and challenges social habits with deep roots, provide the ultimate moral test of our profession and of the law. The troublesome questions such controversies present go beyond the issue of providing an adequate defense for the legal rights of unpopular defendants. They raise queries about the genuineness of our professional independence—questions which touch and color every aspect of our professional performance. I know we should all agree that without independent lawyers, capable of asserting the claims of the law in the courtroom

8. United States Congress, House of Representatives (84th Cong., 1st Sess., 1955), Judiciary Committee, Subcommittee No. 5, Hearings on Current Antitrust Problems, Part III, Serial No. 3, 1865-1919, 1946-1948, 1954-1965; Rostow, *Report of the Attorney-General's Committee in Perspective, ANTITRUST LAW SYMPOSIUM* (Commerce Clearing House, 1956) page 64.

9. See Leon Jaworski, *The Unpopular Cause*, 47 A.B.A.J. 714 (July, 1961); Charles H. Tuttle, *The Ethics of Advocacy*, 18 A.B.A.J. 849 (January, 1932); American Bar Association, *Report of the Standing Committee on the Bill of Rights*, August, 1961, 86 A.B.A. Rep. . . . ; *Report of the Special Committee on Individual Rights as Affected by National Security*, 1953, 78 A.B.A. Rep. 304-308; *Supplemental Report of the Special Committee on Individual Rights as Affected by National Security*, 1956, 81 A.B.A. Rep. 335-337.

without fear of reprisal, our legal system cannot be true to itself, and cannot hope in the long run to meet its basic social duties. I think we should equally agree that in the less dramatic affairs of the everyday world, the lawyer is not really a lawyer in advising a client about a contract, a will, or a merger, unless he can freely insist on the professional position he regards as right, in the accommodation of his client's interests to the law, even if the client doesn't like it. In the delicate equilibrium between the lawyer's duty to his client, and his duty to the law, every device for protecting the lawyer's professional integrity is worth careful consideration, for much is at stake. The real problem, as I see it, is whether lawyers represent the law as officers of the court, or whether they are no more than paid agents for the interests and preconceptions of their regular and expected clients.

### III.

The prevailing view in Britain provides a useful starting point for analysis.

It is of course commonplace that the profession of law with us is organized quite differently from the dual system of solicitors and barristers which flourishes in England, and that our Bar, by and large, is less unified, less controlled, and far more loosely organized than the profession in Britain. It is equally commonplace that the history, atmosphere and tradition of the English, Scots, and Irish Bars have greatly influenced not only our past, but our present sense of what our calling is, and should be. The pugnacious independence of Coke and Erskine, like other features of the struggle for constitutional liberty in Britain, is as much a part of our bone and blood as of theirs. The image of the lawyer's duty which dominates our minds is a mosaic in which the wiggled figures are almost as conspicuous as those in homespun and broadcloth.

The comparative method in law can teach us much, but it must be employed with discretion. No rule or practice from one system can be transferred bodily to another, without a careful exploration of its origins, functions, and position in the network of rules

and habits constituting the legal systems of which it is a living part. Indeed, it is a reasonable presumption that no such wholesale transfer can ever be safely accomplished.

In order to compare the British and American rules about the lawyer's duty we must consider why the profession has developed so differently in the two countries, despite their common beginnings.

We and the British are alike in our general views of the law, in our methods of trial and adjudication, in our stubborn notion that the law protects the individual not only against other persons, but against the state as well. Unlike many other peoples, both we and the British take an incurably sporting view of litigation, which generations of procedural reformers have been unable entirely to destroy, and we both cherish rules which give the underdog a fighting chance. Our judges, like theirs, are encouraged to write opinions in the form of personal essays, in an ancient fashion which lawyers trained in other traditions can never quite accept or understand. And both we and the British believe that an independent Bar is as vital to the rule of law as an independent judiciary. It is our common conviction that the legal process, conducted by independent judges, will be incapable of resisting public or private tyranny unless the judges are aided in the course of trials, and in all other aspects of the work of the profession, by equally independent lawyers, who have been schooled to provide a fearless and intransigent enquiry into every relevant circumstance of the problem being dealt with. We take it for granted, in our trials of Soviet spies or Japanese generals, that the lawyers for the defense should press every factual and legal issue to the limits of proper advocacy, as the British do—for example, in the trials of Roger Casement or Lord Haw-Haw. We can appreciate the fundamental importance of that practice to the reality of our constitutional safeguards for the individual if we recall the recent trial of Francis Powers, the American U-2 pilot, in the Soviet Union. In that case, Powers' Russian lawyer, evidently a competent technician, did not raise what would seem to have been the most

important legal issue available to his client—whether flights over the Soviet Union at 60,000 feet were to be regarded as trespasses within the municipal air space, like flights at 10,000 feet, or legitimate voyages in outer space, like the trips of Sputniks and similar space-ships.<sup>10</sup>

Despite the basic similarities of the law and the legal profession in Britain and the United States, there are fundamental differences as well. The formal distinction between barristers and solicitors is no longer known among us. Our barristers are often members of large firms, providing a variety of specialized services to their clients, and most of them do solicitors' work as well as practice in court. In Britain, barristers cannot form partnerships; they practise alone, aided only by a few young lawyers. In the realm of business and governmental affairs, our lawyers normally play a far more active role in the formation of policy than their British counterparts. The work of British lawyers, save in the case of comparatively few solicitors, is limited to the more narrowly technical aspects of the lawyer's work. Many of the business policy services provided for corporate clients in this country by lawyers are supplied in England by accountants. We regard it as sound and desirable professional practice for a corporate lawyer to be continuously familiar with his client's business problems, and to participate in the shaping of his policies. It is common in the United States for lawyers to be directors of their corporate clients, although the professional wisdom of the practice has been questioned. In England, a barrister who is a director of a company cannot accept a brief for that company, or advise or settle documents professionally for it, although solicitors may represent companies of which they are directors.<sup>11</sup>

10. See L. Lipson, *The Gagarin and Powers Flights*, 17 *BULL. OF ATOMIC SCIENTISTS* 274 (1961); *Poland Pressing Curb on Lawyers*, *NEW YORK TIMES*, September 17, 1961, 1st Section, page 15, col. 1. (Report of criminal proceedings against lawyers for excessive ardor in defense of their clients in cases with political implications.)

11. W. W. Boulton, *CONDUCT AND ETIQUETTE AT THE BAR* (2nd ed., 1957), page 26. The rule for solicitors is stated in Sir Thomas Lund, *A GUIDE TO THE PROFESSIONAL CONDUCT AND ETIQUETTE OF SOLICITORS* (1960), pages 13, 32-33.

More generally, the role of lawyers in our public and private affairs is far larger than that of the profession in Britain. In proportion to population, we have many more lawyers than the British, and we need them. We live under a constitution which frequently requires lawyers to advise, and judges to decide, on the boundaries of governmental power. We live in a federal system which has in modern times developed formidable habits of regulation, and generates legal problems unknown in Britain, so that with us major business transactions are almost never undertaken, and should not be undertaken, save on advice of counsel. These features of our public life have given the law, the courts and the Bar a set of functions, and a place in the political process, quite different from those which prevail in Britain. This atmosphere of special importance for the law has carried over from the public realm to those generally deemed more private. While the duties of counsel in criminal and civil trials are similar in the two countries, the other labors of the profession are quite different. And even in criminal cases the similarities may be misleading, since in Britain much of the work of prosecution for crime, and other representation of governmental interests, is handled by barristers briefed in individual cases, rather than by full-time civil servants.

For the British, the ultimate guarantee of the independence of the Bar in all its functions—the accepted symbol of its professional detachment—is the rule that a barrister is bound to accept any brief in the courts in which he professes to practice. Normally, but not in cases of great public moment, the barrister can refuse a brief only if the fee offered is not properly professional, in view of the length and difficulty of the case. Otherwise, he can decline a brief only under special circumstances of conflict of interest, embarrassment, and the like.<sup>12</sup>

This ancient rule, acknowledged in Scotland by the sixteenth century, was recently discussed by Lord Shawcross, then the Rt. Hon. Sir Hartley Shawcross, Q.C., M.P., as Chairman of the General Council of the Bar, in the following terms:

I have recently heard it said, although I believe incorrectly said, that certain members of the Bar in one of Her Majesty's Colonies refused to accept a brief to defend an African, accused of offenses of a quasi-political nature against public order. The suggestion is that those barristers made excuses and declined to act, their true reason being that they thought their popularity or reputation might be detrimentally affected by appearing for the defense in such a case. For the prosecution they might appear, but not for the defense.

I believe this report is incorrect. I profoundly hope it is, for if it were true it would disclose a wholly deplorable departure from the great traditions of our law and one which, if substantiated, both the Attorney-General and the Bar Council, of which I happen to be Chairman, would have to deal with in the severest possible way.

It remained true that among laymen on both sides of politics there were some foolish and short-sighted enough to think that a barrister might, and should pick and choose the cases in which he was prepared to appear. Socialist lawyers had been thus subjected to bitter attack in Communist organs and by fellow travellers who did not like the subject matter of cases in which those lawyers had been briefed to appear or the politics of the clients who might have retained them.

It would be well if those gentry remembered how the present rule—that a barrister must accept a brief on behalf of any client who wished to retain him to appear before any court in which he held himself out to practise—was finally established. It arose in 1792 over the prosecution of Tom Paine for publishing the second part of his *Rights of Man*. The great advocate, Erskine, who accepted the retainer to defend Paine, and was deprived of his Office as Attorney-General to the Prince of Wales for doing so, said—and said truly—in a famous speech: "From the moment that any advocate can be permitted to say that he will or will not stand between the Crown and the subject arraigned in the Court where he daily sits to practise, from that moment the liberties of England are at an end."<sup>13</sup>

The idea was pungently stated by Mr. Justice Neville in 1913: "As it once was put to me, always remember that you are in the position of a cabman on the rank, bound to answer to the first hail."<sup>14</sup> The principle is alive in British practice, and is regarded there as an indispensable bulwark of

personal liberty, and a vital protection for the integrity of the profession. Ingrained in the public mind, accepted by public opinion as the order of nature, this doctrine more than any other keeps lawyers in Britain at one remove from their clients, as a group apart, and makes it impossible to imagine a situation in that country in which lawyers are long identified with their clients' views, or criticized or penalized for providing them with professional services. I don't mean to suggest that lawyers in England are more popular than they are elsewhere, or that they are greatly loved. In England, as in every other country, the old suspicion persists, in Swift's famous words, that lawyers are men bred in the art of proving "that white is black and black is white, according as they are paid". But what I do mean is that in England, under the protection of the "cab rank" rule, the Bar can perform its basic task of representation or counsel on a stiffly professional and independent footing, without the restrictive influence of reprisal or penalty, and without becoming permanently identified with the views or status of any one client or class of clients. The barrister is much more closely linked to the law and to the courts than to his clients.

The code of ethics of the American Bar has never accepted the British rule in its full majesty, even in criminal cases. Canon 31 of the Canons of Professional Ethics adopted by the American Bar Association declares that "no lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment." The Canon stresses the lawyer's individual responsibility for accepting or declining requests for professional services. And it makes no reference, directly or indirectly, to the principle of the English rule as a factor the lawyer is to take into account in exercising his responsibility. It should be added, however, that the lawyer's oath, recom-

12. W. W. Boulton, *op. cit. supra*, note 10, pages 4, 17, 24-31.

13. *THE TIMES* (London), February 19, 1953, page 4, col. 3.

14. *THE TIMES* (London), June 16, 1913, page 3, col. 1.

mended by the American Bar Association, and widely used, contains these words: "I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed." At least one authority has said that "where the English rule is obligation to accept except under special circumstances, the American rule is obligation not to refuse where special circumstances exist".<sup>15</sup>

Many circumstances have led to this development within the American legal profession. Prof. Simeon E. Baldwin thought the unity of the Bar in America, as contrasted with the divided profession in England, was a fundamental factor. The English barrister has no direct contact with his client; he is briefed by a solicitor, who can if he wishes refuse to accept a client or a case. The barrister confronts a brief backed by the solicitor's professional opinion that the matter is worth pursuing, and therefore to decline a brief is a breach of professional etiquette as well as of principle.<sup>16</sup> Beyond this distinction, I should suggest that the

sustained responsibilities of many American lawyers for the policy problems of their clients, especially in business, labor and government, would make the British rule unworkable, and probably undesirable among us, for the larger part of the profession. Responsibilities of this order, implicit in the political system of the United States, and the extraordinary importance of the legal element in the process of making policy decisions throughout our society, can best be discharged by counsel who are thoroughly familiar with the factual realities of their client's position, without losing their professional detachment and freedom of maneuver.

On the other hand, the American Bar has long felt uneasy about its departure from the British rule. Many of our greatest men, especially among our trial lawyers, have sought to live by it.<sup>17</sup> We have tried to preserve the essential idea behind the British rule, and to achieve its goals by other means. Thus the Bar has acknowledged, as a part of its uncodified tradition, the

obligation "to see that all defendants, however unpopular, have the benefit of counsel for their defense".<sup>18</sup> For the Bar, this rule is clearly implicit in the Sixth Amendment. Courts and bar associations pay deference to the principle, but it is still too often honored in the breach. We have as yet developed no mechanism to vindicate it, comparable in effectiveness to the British "cab rank" rule.

(To be concluded in the February, 1962, issue of the Journal)

15. E. S. Cox-Sinclair, *The Right To Retain an Advocate*, 29 LAW MAGAZINE AND REVIEW 406, 411 (1904). See, however, J. F. Sutton, Jr., *Guidelines to Professional Responsibility*, 39 TEX. L. REV. 391, 406-407 (1961).

16. Simeon E. Baldwin, *The New American Code of Legal Ethics*, 8 COL. L. REV. 541, 544-46 (1908).

17. Felix Frankfurter, *A Lawyer's Duty as to a Retainer in an Unpopular Cause*, 34 A.B. A.J. 22 (1948) (views of Arthur Hill of the Boston Bar, on his duty to accept representation in the Sacco-Vanzetti case); S. G. Brown, *THE WORKS OF RUFUS CHOATE, WITH A MEMOIR OF HIS LIFE* (1862), vol. 1, pages 274, 282-283. See J. W. Hurst, *THE GROWTH OF AMERICAN LAW—THE LAW MAKERS* (1950) 366-375; H. F. Stone, *The Public Influence of the Bar*, 48 HARV. L. REV. 1, 4-12.

18. American Bar Association, Report of the Special Committee on Individual Rights as Affected by National Security, 1953, 78 A.B.A. REP. 304, 305 (1953).

# The Lawyer and His Client

This is the second and concluding part of the Alexander F. Morrison Foundation Lecture for 1961. The lecture was delivered by Dean Rostow on September 28, at the Annual Meeting of the State Bar of California held at Monterey, California. The first part of the lecture was published in the January, 1962, issue of the *Journal*.

by Eugene V. Rostow • *Dean of the Law School, Yale University*

## IV.

A COMPARISON OF THE professional position of the lawyer in Britain and in the United States illuminates several problems which we should face, and solve, within the pattern of our own history. In defining those problems, we should accept the present functions of the lawyer in our complex society, and particularly those of the specialist in business and corporate law, as necessary and desirable. They represent a creative response to the special circumstances of American life. At its best, as Mr. Justice Brandeis once said, the role of the American corporation lawyer is an influence in the direction of professionalizing business.<sup>19</sup> At its worst, to recall Chief Justice Stone's warning, it is a factor tending to commercialize the profession of law.<sup>20</sup> We should acknowledge that both these comments represent aspects of reality. Starting with that premise, we must recognize that we have much to do—both individually and collectively—in developing the ethical code of our profession, and its sense of discipline, before we can claim that we are in fact meeting and discharging our fundamental duties to society.

Our weakness as a professional body is a corollary of our strength. The Bar in this country has undertaken, and in the main it has carried out well a share in the process of making policy

decisions which has no real counterpart in Britain. But the pendulum has swung too far. In many instances, we have become so identified with our clients, so much a part of their daily lives, that we have lost a large part of our professional freedom and our professional standing, both in our own minds, and in public opinion. Too many lawyers find themselves in situations of conflict between their professional convictions and their continuing connections with their clients. We all know many counterparts, in business, in labor, and in government, to the moment when President Franklin Roosevelt turned on a distinguished lawyer, who held a high post in his first Administration, and had just given him some unpalatable advice. In a state of considerable irritation, the President said, "When I want to do something, I expect my lawyers to tell me how it can be done, and not why it can't be done." And, beyond the implications of this anecdote, somber as they are, it is apparent that lawyers exclusively involved in the affairs of one client, or one limited class of clients, have lost a large part of their freedom to represent the Tom Paines of this world. Such occasions do not arise often, and not all of us can expect to face tests of this order even once in a professional life-time. But they do arise, and in the United States they

arise more frequently than they do in Britain. When they come, they measure the difference between life and death.

If we aspire to fulfill the professional ideals which are the essence of our history, a series of steps are indicated in the interest of strengthening the professional independence of the Bar, and of dramatizing that position in the consciousness of the American people. I hasten to add that I am talking about acts and deeds, and not about programs of public relations. The public sees the Bar, and reaches conclusions about its performance, in thousands of everyday transactions. Those events properly have more weight in shaping its judgments than all the releases all the bar associations have ever issued. I do not minimize the importance of explaining the law, and the duties of the Bar, to the wider public, for many reasons. But we should be sure first that our house is in order, so that our programs of public education rest on reality, and do not defeat their larger purpose by revealing inconsistencies between what we say, and what the public sees. Such conflicts can only encourage cynicism about the law, and

19. L. D. Brandeis, *The Opportunity in the Law*, 39 AMER. L. REV. 555, 558 (1905), reprinted in *BUSINESS—A PROFESSION* (1933), pages 329-343. See also *The Living Law*, 10 ILL. L. REV. 461 (1916), reprinted in *THE COURSE OF BUSINESS* (Ed. O. K. Fraenkel, 1934), pages 316-326, and in *BUSINESS—A PROFESSION*, at pages 344-363.

20. H. F. Stone, *The Public Influence of the Bar*, 48 HARV. L. REV. 1, 7 (1934).

the lawyers, and weaken the respectful public acceptance of law on which a society of consent must rest. They can also discourage the flow of some of our ablest and most idealistic young people to the law, and thus irrevocably weaken the profession in the long run.

Let me give a few examples of the kind of acts and deeds I have in mind, to illustrate what might be done to carry out a policy of fortifying the independence of the Bar.

First, I suggest that lawyers reconsider their established habit in many types of cases of accepting only clients on one side of the battle—only plaintiffs or only defendants, as the case may be—only trade unions or only management in labor controversies, only stockholders or only directors in situations of corporate conflict. Nothing could be more offensive to Trollope's Judge Bramber than the idea of a lawyer so suffused with enthusiasm for a single class of clients that he would refuse briefs in behalf of their rivals. By breaching this destructive custom, a few resolute lawyers in every community could do much to restore the concept of the lawyer as primarily an officer of the court, and an agent of wide public interests.

I recognize, of course, the claims of specialization, although I rather think they are overdone in many instances. It is after all more comfortable for all of us, and more conducive to a pleasant life, to specialize more and more narrowly. The leading lawyer of Connecticut, general counsel to large corporate interests, some years ago took on a political libel case, in behalf of an artist accused of sympathy with communism, and did a masterly job in the spirit of Erskine. And several members of the Yale Law faculty, rebelling at specialization, have done some roaming in recent years, and found it an exhilarating experience. Our distinguished professor of taxation, for example, has taught constitutional law, and has been designated as appellate counsel by the Court of Appeals for the Second Circuit in several criminal cases involving problems under the Fourteenth Amendment. His status as a tax expert has not suffered in the event, and he has enjoyed the work, and the warm commendation of

the court for jobs well done. Still, I acknowledge that it takes a great deal of time and experience to master some of our more complex bodies of law, and I recognize that many good patent lawyers might well be at sea in a will contest. But the legitimate claims of specialization, sympathetically considered, hardly require a lawyer to appear for a single kind of litigant within his field of specialization.

In this connection, our governmental agencies, national, state and municipal, could do much to develop the professional independence of the Bar by enlarging the practice of retaining outside counsel to represent them in a certain number of cases and negotiations. The procedure is well known in our history, and once was more familiar than it is today. Many of the most important cases handled by Charles Evans Hughes, Henry L. Stimson, John Lord O'Brian, and others of an earlier generation were cases in which they represented public bodies, while chiefly engaged in private practice. I don't suggest that we consider adopting the British practice, or weakening the full-time legal staffs of government agencies. Nor do I criticize in any sense the way in which government lawyers discharge their duties. But, from my own observation, I think governmental legal staffs would be stimulated by the occasional participation of distinguished outside lawyers in their counsels. And the effect of such a trend on the Bar, and on its capacity to fulfill its public functions, should be genuinely constructive. Many more lawyers would gain the inestimable advantage of viewing the world in the perspective of governmental interests, an experience which invariably contributes much to their professional outlook. The pattern of professional life would be altered, as lawyers habitually represented both public bodies and private clients. The consequence of such experience should be, in many cases, the formation of more detached and more professional lawyers, primarily identified with the law rather than with the interests of any single class of clients. In my experience, such lawyers always provide their clients with better and more valuable services than lawyers so

deeply absorbed in their clients' viewpoints that they fail to see the strength of the opposing case, and to meet it in time. I know that the conscious fostering of this practice would present problems, particularly in connection with conflict-of-interest statutes. I submit that the public advantages to be gained over the long run by reviving and extending the custom are well worth the effort.

Third, we should re-examine the practice of lawyers serving as directors of corporations, or officers of trade unions. Both Paul D. Cravath, head of the great New York firm which still bears his name, and Mr. Justice Brandeis took the view that lawyers should not serve as directors of corporations they represented professionally. "Long ago it was recognized", Justice Brandeis wrote, "that 'a man who is his own lawyer has a fool for a client'. The essential reason for this is that soundness of judgment is easily obscured by self-interest."<sup>21</sup> A corporation needs and should have lawyers, bankers, and other professional advisers who give advice based on full knowledge. But it should be *outside* advice; such professional counsel should never represent a judgment upon the wisdom of counsel's own acts as part of management.<sup>22</sup> Can the general counsel of a corporation give truly professional advice to his client, taking into account the interests of stockholders and bondholders, if he is also a director, whose interests may conflict with those of other participants in the corporate process? In a union situation, counsel may find himself in a position of conflict with the rights of members, if he also takes on the responsibilities of being an officer, or member of an executive committee. Does the lawyer gain a professional advantage by being a director as well as general counsel of the corporation, or an officer as well as general counsel of a union? Would it be more con-

21. OTHER PEOPLE'S MONEY AND HOW THE BANKERS USE IT (Norman Hapgood edition, 1932), page 198. The view is widely though not universally held. See for example, Robert T. Swaine, THE CRAVATH FIRM AND ITS PREDECESSORS, 1819-1948 (1948) vol. 2, pages 9-10 (with rare exceptions, members of the Cravath firm have not owned securities of a client, nor served as directors). See also J. W. Hurst, THE GROWTH OF AMERICAN LAW (1950), page 368.

22. Brandeis, *op. cit. supra*, note 21, at pages 198-199.

sistent with a strictly professional view of his duties as lawyer to maintain the boundaries of his position with care and emphasis, in order to preserve his full freedom as a lawyer, and to avoid even a remote risk of conflicting interests?

I have suggested several practical areas where we might well take steps, individually and as members of the organized Bar, to carry out a policy of guiding the evolution of the Bar along lines which should more effectively protect its independence and integrity, and deepen its sense of professional responsibility. Other actions to the same end will suggest themselves, if we pursue the policy as a major goal. Action of this order is needed, if our performance at every level is to match our professions, and if the Bar is to remain capable of providing society with the great services to human liberty which are the burden and the promise of our heritage.

I am one of those who have expressed concern, over the years, about the future of the profession: both about its capacity to attract a fair share of our best young people to the study and practice of law, and about its ability to prevent an undue attrition of outstanding lawyers from the independent Bar to business, banking and other pursuits.<sup>23</sup> In this connection, there is high promise in the decision of the American Bar Association, at its August, 1961, meeting in St. Louis, to approve the thoughtful recommendations of its Special Committee To Study Current Needs in the Field of Legal Education, under the chairmanship of Bethuel M. Webster, of New York. The program proposed by that Committee should do much to help the law schools of the nation, and to attract to the law a larger number of students of high professional promise. The activities which will develop, following the adoption of the Webster report, will be in vain, however, if the existence of a truly independent Bar is threatened both by an excessive rate of withdrawal from the Bar to other pursuits, and by trends within the Bar which compromise its autonomy, and its capacity to take independent action in time of stress. It is for this reason that

I put so much emphasis on the fundamental importance of an ethical code, and a sense of professional discipline, which could confirm in fact our belief that lawyers should be a free guild within society, serving their clients best by serving the law first. A Bar which lives by this rule, a Bar which serves a variety of clients, and enjoys a variety of experiences, will not have trouble in protecting itself against the risks of excessive attrition. And such a Bar, visibly independent, should be able to do much more than we have been able to do thus far in those situations which most urgently challenge the legal process—the provision of counsel for the poor, and for unpopular litigants.

The provision of legal services to the poor, both in civil and in criminal matters, is in most communities of the nation scandalously inadequate. And for that failure we of the Bar are primarily responsible. There are outstanding Legal Aid bureaus here and there, and some effective Public Defender programs. But their strength only highlights our general failure to meet a real social need. The poor man cheated of a few hundred dollars by his landlord or his finance company, the boy swept up by mistake in a police raid, suffer losses and indignities quite as important to them and to society as those incident to lapses of the law which touch larger interests. Here, as in other fields of social welfare, we may be sure that if private and professional organizations fail to act, government will sooner or later take the initiative.<sup>24</sup>

My final illustration is that which presents the simplest and most searching test of our legal system—protecting the constitutional rights of persons involved in controversies which stir great passions. Aroused feelings have been, and always will be a normal incident of the cases in which the great constitutional guarantees of personal freedom are vindicated. Such rights are rarely challenged save under the pressure of difficult circumstances, which stir strong and hostile feelings. It was precisely for this reason that the makers of our Constitution entrusted a major part of the task of enforcing it to the courts. They thoroughly under-

stood both the capacity of the American people for political turbulence, and their overriding respect for law. As Jefferson said, writing to Madison,

In the arguments in favor of a declaration of rights, you omit one which has great weight with me; the legal check which it puts in the hands of the judiciary. This is a body, which, if rendered independent and kept strictly to their own department, merits great confidence for their learning and integrity. In fact, what degree of confidence would be too much, for a body composed of such men as Wythe, Blair and Pendleton? On characters like these, the "civium ardor prava pubentium" would make no impression.<sup>25</sup>

Our history has confirmed Jefferson's insight. The development of judicial review as a check on the legality of official action has been one of the great achievements of our political system, and one of the basic guarantees of democratic procedure among us. In that process, as Prof. Hurst points out, an independent Bar was an indispensable auxiliary of the independent judges.

The availability of an independent bar, supported by private retainer, bulwarked the courage of individuals and groups to put officials upon their proof and justification, and provided more skill and knowledge than private persons typically could muster otherwise to meet the maneuvers of official power.<sup>26</sup>

Under the goad of circumstance, our law of civil rights has been developing rapidly for about thirty years—and developing, in the main, along lines which should fortify our pride. In the nature of the cold war and of the transformations occurring in American society, we can expect conflicts over civil rights to persist, and perhaps to become more acute, unless the mediating influence of the law is made more effective by the wise and vigorous action of the courts, the legislatures and the Bar.

23. Annual Report of the Dean, Yale Law School, December 15, 1956, page 3.

24. United States Congress, Senate Committee on the Judiciary, Subcommittee on Constitutional Rights, *Legal Counsel for Indigent Defendants in Federal Courts* (87th Cong., 1st Sess. 1961); Emery A. Brownell, *A Decade of Progress: Legal Aid and Defender Services*, 47 A.B.A.J. 867 (1961).

25. Jefferson, *LIFE AND SELECTED WRITINGS*, page 462 (Modern Library ed., 1944).

26. Hurst, *LAW AND SOCIAL PROCESS IN UNITED STATES HISTORY* (1960) pages 324-325.

It is prudent to anticipate at least as much growth in the law of personal liberty during the next thirty years as has occurred since *DeJonge v. Oregon*<sup>27</sup> and *Powell v. Alabama*,<sup>28</sup> a generation ago.

Nowadays, controversies of this kind involve not only the propriety of prison sentences, but the legality of private and public actions which touch men's reputations; their rights of privacy; their political privileges; and their opportunities to study, to travel, to live where they choose, or to pursue callings of their choice. The patient, sober exploration of these novel and difficult problems, invariably touching acute sensibilities, will require even greater efforts of the Bar than have been made in the past.

I have two areas of action by the Bar particularly in mind—the defense of the courts against misguided and unwarranted public attack, and the establishment of arrangements which could assure the leadership of the Bar itself, and of its ablest members, in the preparation and presentation of cases involving civil liberties.

On other occasions, I have criticized the organized Bar for its posture of general silence during the controversy over the Supreme Court in recent years, and I do not propose to repeat those criticisms now.<sup>29</sup> Suffice it to say that with a few notable exceptions, the organized Bar has left the federal judges almost alone in their lonely efforts to uphold the law. I do not believe that we have begun to meet our obligations, recited in the first Canon of Professional Ethics, to help maintain the capacity of the courts to discharge their supremely important functions in these stormy times. The Canon includes this sentence: "Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamor." There has been a great deal of clamor against the Supreme Court lately, and not nearly enough support from our professional organizations.

With regard to the provision of counsel in civil liberties cases, much remains to be done before we can claim that we are living up to our responsi-

bilities. The American Bar Association adopted an important Resolution in 1953, on the recommendation of its Special Committee on Individual Rights as affected by National Security. The heart of that Resolution, for present purposes, is its second Article:

## II. Resolved,

1. That the American Bar Association reaffirms the principle that the right of defendants to the benefit of assistance of counsel and the duty of the bar to provide such aid even to the most unpopular defendants involves public acceptance of the correlative right of a lawyer to represent and defend, in accordance with the standards of the legal profession, any client without being penalized by having imputed to him his client's reputation, views or character.

2. That the Association will support any lawyer against criticism or attack in connection with such representation, when, in its judgment, he has behaved in accordance with the standards of the bar.

3. That the Association will continue to educate the profession and the public on the rights and duties of a lawyer in representing any client, regardless of the unpopularity of either the client or his cause.

4. That the Association request all state and local associations to cooperate fully in implementing these declarations of principles.<sup>30</sup>

Thus far, in many communities, the Resolution remains an aspiration at best. In its 1961 Report, the American Bar Association's Standing Committee on the Bill of Rights noted a number of situations in different parts of the country where the constitutional right to the assistance of counsel was "restricted or violated". The Report commented in the following terms:

Complaints have come from different areas where accused persons have been deprived of right to counsel because of the refusal of members of the bar to represent discredited defendants or become involved in unpopular cases.

Throughout the year, and particularly in recent weeks, instances have been reported to the Committee of the fact that persons under criminal charges in certain sections of the South have been deprived of their right to effective counsel because of the refusal of lawyers of the Caucasian race to appear in the defense of colored defendants; and a late request has come to the Committee that it assist in pro-

viding counsel to represent so-called "freedom riders" when they are arrested in the South and cannot obtain the services of local white lawyers to defend them.<sup>31</sup>

We should acknowledge the fact that the kind of problem to which the Committee's Report calls attention is implicit in the relationship between the American lawyer and his client, as it has emerged over the years, and that it will not be cured by prayer and admonition.

If we consider the development of our law of civil rights, and the present and prospective pressure on the law in this area; if we face the social conflicts which that pressure involves, including its bearing on the integrity and independence of the courts, then I think we should agree that the time has come to contemplate more fundamental changes than those as yet recommended by the American Bar Association's useful Committee on the Bill of Rights. The various piecemeal devices we have employed to accomplish the accepted goal of Lord Erskine's principle have not worked as well as they should. Thus far, we have depended on the sense of duty of a small number of individual lawyers, who have rendered a service to the law in these cases beyond praise. And excellent work has been done over the years by the American Civil Liberties Union, the National Association for the Advancement of Colored People, the Association on American Indian Affairs, and certain other special groups, interested in the welfare of aliens, immigrants, and similarly disadvantaged people. In view of the nature and magnitude of the task, it is wrong to leave the burden of representation in civil liberties cases entirely to individuals, and to organizations of this kind. If we believe what we have

27. 299 U. S. 353 (1937).

28. 287 U. S. 45 (1932).

29. *American Legal Realism and the Sense of the Profession*, John R. Coen Lecture at the University of Colorado, April 7, 1961, to be published in the *ROCKY MOUNTAIN LAW REVIEW*, and *Education for a Society of Law*, in *MAN AND LEARNING IN MODERN SOCIETY* (University of Washington Press, 1959), page 17, at 25-27. See also, A. J. Goldberg, *New Frontiers for Lawyers and the Law*, 45 J. AM. JUD. SOC. 56 (August, 1961); R. E. McGill, *View from a Tight Small Compartment*, 12 HARV. L. SCH. BULLETIN, No. 6 (June, 1961), page 6.

30. American Bar Association, *Proceedings of the House of Delegates, 1953*, 78 A.B.A. REP. 133.

31. American Bar Association, *Report of the Standing Committee on Bill of Rights, 1961* (mimeographed text) page 7.



always said on the subject, the organized Bar itself, as the body primarily charged with the duty of articulating and enforcing our code of professional ethics, has an ultimate and non-delegable responsibility to see to it that no man's rights be lost for want of a qualified lawyer to present them. Any lesser rule for our profession could make due process of law a mockery. A visible and effective program for carrying out the principle, as it was expressed in the American Bar Association's 1953 Resolution, could do more than any other single act to clarify public thought on the role of law and lawyers in society, and to strengthen the influence of law in the evolution of public opinion with respect to the controversies which now swirl about the heads of the justices of the Supreme Court of the United States.

What concrete steps are now indicated to make such a program a living part of the daily life of our society?

At the level of educating the Bar to its obligations, it might prove useful if the principle of the American Bar Association's 1953 Resolution, declaring the Bar's continuing duty to provide counsel "even to the most unpopular defendants", were stated in the somewhat more solemn and readily available form of the Canons of Professional Ethics. The Canons are hardly self-enforcing. Still, such a declaration could help keep the problem more firmly in the foreground, both for lawyers and for bar associations.

A formal step of this kind could hardly have a revolutionary impact on our habits. One possible approach to a practical answer may emerge from the development of the College of Trial Lawyers, that honorific organization of some of our most eminent specialists in trial practice. Over the long run, the rules of that distinguished society might well embrace a considerable part of the "cab rank" principle of the English Bar, at least for civil liberties cases, where the need is most acute. It would have a most salutary effect on public opinion, and provide a most wholesome example to the Bar as a whole, if the leaders of our trial Bar regularly took some of the most difficult and controversial of our civil rights cases. No practice could more

effectively demonstrate the independence of the Bar, and the weight we attach to the importance of protecting the humblest and most despised persons against arbitrary action by the state or by private groups.

I do not believe that such steps would be sufficient to meet the weight of our obligation at this time. We have faced in our country, and we face today, a mood of resistance to law which denies the premise of our national existence. This denial of legality has not reached the point of open revolt which the Algerian conflict has so tragically produced in France, or that which the Curragh mutiny represented in Great Britain almost fifty years ago. But the issues are the same, and the challenge is quite as real. In the national effort to overcome this menace to the rule of law, the organized Bar should play a far more active and decisive role. In some areas of the South, conflicts over the Constitution have given rise for the moment to a state of opinion which even the most eminent lawyers hesitate to confront alone. We must avoid the easy course of being self-righteous about the difficult problems of the South. Comparable situations have developed, from time to time, in other parts of the country, and will doubtless do so again. I might recall, here in California, the war-time controversy about the deportation of Japanese aliens, and of American citizens of Japanese descent, as an instance of the nature of the risks we all face. In confronting this phenomenon, I propose that we build on the successful experience developed by several state bar associations during the most heated period of Senator Joseph McCarthy's heyday: that of providing counsel by court assignment, through strong committees of the bar associations themselves. Action of this kind should suffice to meet the difficulties unpopular litigants sometimes encounter, under our legal system, in obtaining the aid of counsel.

What I have in mind, however, would go farther. The American Bar Association's Committee on the Bill of Rights is authorized, under certain circumstances, to appear in court as *amicus curiae*, or as counsel of record, where "vital issues of civil liberties are

deemed to be involved". State and local bar associations have similar powers, exercised either through committees, or through the governing bodies of those associations. We do not hesitate to go to court or before legislatures in the name of the Bar itself, to protest against what we regard as the unauthorized practice of law, or to seek tax privileges for our period of retirement. I do not criticize such programs, but they hardly exhaust our capacity for collective action. Why should we not be as vigorous in maintaining some of the more affirmative canons of our code of ethics as we are in protecting our economic interests? The troubled history of our law during the last twenty years, and the prospects of trouble ahead, require, I suggest, a more sustained effort not only by lawyers, but by their professional organizations. I am sure that some of our public spirited foundations would support such programs of the Bar, as they have supported and now support other worthy initiatives of our professional bodies. What I envision is the development of vigilance and the habit of action, on the part of our national, state and local bar associations, in the interest of protecting and helping to develop those constitutional guaranties which distinguish free societies from tyrannies. Programs of this kind would include the making of studies and the publication of reports—a field in which the Association of the Bar of the City of New York has provided such notable leadership in recent years. It would also, and in my view indispensably include court appearances, and appearances before legislative committees, to put the weight and prestige of the Bar itself into the process through which our law evolves. I do not suggest that the American Bar Association's Committee on the Bill of Rights acquire a monopoly of representation in civil liberties cases—Heaven forbid. Nor do I have in mind that it replace the individual lawyers, and civic associations, who now carry so much of the load, and carry it, on the whole, so well. What I do propose is that such agencies of our national, state and local bar associations emerge as forceful participants in this area of

law, whose content is of such far-reaching significance to the character and quality of our legal system, and that they do so on a continuing basis. By such action, I think, we could match the performance of the British Bar, in ways more appropriate to our customs than any attempt to take over the English rule for ourselves.

## V.

When we meet together to consider our profession as a profession—as a working part of society's quest for justice—we necessarily face large and difficult questions, easily passed over with platitudinous answers. Let me conclude by recalling the theme of Lord Radcliffe's recent Rosenthal Lectures at the Northwestern Law School, "The Law and Its Compass". Lord Radcliffe starts with the proposition that it is more important to decide what law is for than what it is.<sup>32</sup>

Let us apply his method to our problem—the lawyer and his client.

We are all taught to believe that the freedom of a lawyer to represent only the law and his client, without pressure from the government, the judges, or from the thrust of public opinion is an extremely important—indeed an indispensable—feature of the life of our profession. Why? What ends are served by independence in that sense?

Erskine gave one answer, which has never ceased to echo in our conscience:

I will for ever, at all hazards, assert the dignity, independence, and integrity of the English Bar; without which, impartial justice, the most valuable part of the English constitution, can have no existence. . . . If the advocate refuses to defend, from what he may think of the charge or of the defense, he assumes the character of the Judge; nay, he assumes it before the hour of judgment; and in proportion to his rank and reputation puts the heavy influence of, perhaps, a mistaken opinion into the scale against the accused, in whose favour the benevolent principle of English law makes all presumptions, and which commands the very Judge to be his Counsel.<sup>33</sup>

The reason for the rule extends beyond the area of criminal law, and

related fields, like libel, admission to licensed callings, and other proceedings where the liberty of an individual is in forfeit, either because he may go to prison, or because he may lose his reputation, his privacy, or his capacity to pursue his chosen work, to travel, to live where he would, to exercise his privileges of freedom of speech, of thought, or of religion. We also believe the independence of the Bar is important to the effective discharge of our professional obligations of counselling in chambers: of representing the law to our clients, and our clients to the law, in the vital work of guiding and shaping the mass of social conduct which is organized by lawyers, but rarely tested in the courts.

We live in an age of crisis—a crisis compounded equally of external threats, and of rapid changes in the structure of domestic society. The modern liberal state, to use Lord Radcliffe's phrase, is more complex, more highly organized, more regulated by government, than any of its predecessors since mediaeval times. At the same time, it has freed itself from the older view that positive law, for all its patent imperfections, was "one link" in a "majestic and harmonious sequence", drawing its sanction from the Divine.<sup>34</sup> That link cannot be recreated in its original form. Unless we accomplish its equivalent, Lord Radcliffe urges, law loses its meaning, and loses also its hold upon the loyalties of men.<sup>35</sup> The citizen looks to law as more than the repository of his own views—"he feels in his bones that the law which the learned judge interprets to him from the bench is the voice of something more stable and more fundamental than the aspirations or convictions either of himself or of the judge".<sup>36</sup> In the adaptation law must make to the changed climate of ideas in which it functions, our most vital obligation is to understand the purposes, the goals, the values, which animate our most routine duties, and infuse them with meaning.

"Often I think", Lord Radcliffe remarks, "that the work of the lawyer has dwindled, in these smooth modern societies, to that of the traffic police-

man. It is only redeemed, as so much of the institutions and activities of those societies can be redeemed, if there burns the fire of belief in the value of what is guaranteed, which is the symbol of an undiminished faith."<sup>37</sup> For us, that faith is the conviction "that the purpose of society and all its institutions is to nourish and enrich the growth of each individual human spirit. This is liberty in the sense in which we have chosen to understand it".<sup>38</sup> Our Constitution and its amendments help to remind us daily that these are indeed the goals of law, by drawing an "enduring outline of what it is to be a free man and so by implication declare the national faith and the purposes from which the law of the nation must never turn away".<sup>39</sup> The body of beliefs which these precepts represent is the compass of the law, in Lord Radcliffe's argument, the compass by which we must steer, at our peril, as we seek to apply the values of our heritage to the novel and difficult problems of an extremely difficult and dynamic society. The vastness of the task, under modern circumstances, is formidable. If we are to help build a legal order which fulfills the goal of individual liberty, in our law of corporations and contracts and restraint of trade, as well as in our criminal law; in our handling of trade unions, and licensed callings, as well as in our law governing the press, television, and the conduct of congressional committees, we shall require all the learning, all the courage, all the independence which our professional tradition commands.

That the work is hard, and the stakes high, is what makes the prospect exhilarating. Who enjoys climbing a little mountain?

32. Lord Radcliffe, *THE LAW AND ITS COMPASS* (1960), page 4.

33. *THE SPEECHES OF THE HON. THOMAS ERSKINE, WHEN AT THE BAR, ON SUBJECTS CONNECTED WITH THE LIBERTY OF THE PRESS AND AGAINST CONSTRUCTIVE TREASONS*, collected by James Ridgway (1810), Vol II, pages 90-91.

34. Lord Radcliffe, *THE LAW AND ITS COMPASS* (1960), pages 5-6, 69.

35. *Id.*, pages 8-11.

36. *Id.*, page 11.

37. *Id.*, pages 71-72.

38. *Id.*, page 65.

39. *Id.*, page 79.

July 10, 1963

15/  
MEMORANDUM OF TELEPHONE CONVERSATION  
WITH JEROME SHESTACK

Mr. Shestack telephoned before I had an opportunity to see Mr. Guthman and he read the corrected statistics for the press release. He stated that Bill Ming, a Negro Chicago lawyer and member of the board of NAACP, telephoned yesterday and joined the Committee. He was also at the President's conference. The President of Howard University has also joined. We discussed the advisability of pointing out in the press release that certain members of the Committee were members of the NAACP. My first thought was that it would be best not to single out one organization, but Mr. Shestack felt that in view of the criticism of the Schweppe Committee it would be wise to make it clear that this was a bi-racial Committee.

He stated that they would also get a member of the National Lawyers' Guild merely as a member of the Committee.

Edward S. Smith  
Assistant for Civil Trials

cc: ✓ Mr. Marshall  
Mr. Oberdorfer  
Messrs. Tadlock and Perkins  
File

July 11, 1963

Honorable Woodrow Seals  
United States Attorney  
Houston 2, Texas

Dear Woodrow:

Thank you for your thoughtful letter. I think there is merit in the suggestions made. The President met last month with the leading churchmen of the nation in an effort to stimulate the kind of action you have achieved, as a matter of national conscience. That is bearing a good deal of fruit, but we could do more.

Best regards,

Burke Marshall

United States Department of Justice

UNITED STATES ATTORNEY

SOUTHERN DISTRICT OF TEXAS

P. O. Box 61129  
Houston 2, Texas  
July 9, 1963

IN REPLYING PLEASE REFER  
TO THIS FILE NUMBER

Honorable Burke Marshall  
Assistant Attorney General  
Department of Justice  
Civil Rights Division  
Washington 25, D. C.

Dear Burke:

I thought you and the Attorney General would be interested in the enclosed resolution which was adopted by the Texas Methodist Conference on June 6, 1963 in Houston, and a copy of one of the news clippings. At the last meeting of the Official Board of St. Stephens Methodist Church before the Methodist Conference, I introduced a resolution at this board meeting asking the board to instruct the two lay delegates to the Texas Conference, (Seals & Young) to introduce a resolution at the Texas Conference calling on all Methodists and Methodist related institutions to desegregate. This resolution passed our Official Board with only one person dissenting out of approximately 70 board members present. Also, I was the only person that spoke in behalf of this resolution at our board and there was no trouble at all, although my church is located in a conservative area of Houston.

At the Texas Methodist Conference, Mr. Young and I presented the resolution to the Resolution's Committee and spoke in its behalf, with our Preacher, and it passed the Resolution's Committee unanimously.

When the resolution was presented on the floor of the conference by the Resolution's Committee, I thought it best that I not speak in its behalf because some of the delegates might think that I was bringing my politics into the church.

The only dangerous opposition we had with our resolution was that of Senator John Tower's (R.-Tex.) father, Reverend Joe Z. Tower, the long-time Secretary

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Best regards,  
[Signature]*

of the Methodist Conference, but he just couldn't pull himself together to oppose the resolution on its merits and he went off on a technical reason that was not honest, and everyone at the conference knew what he was doing and his opposition was not effective.

Although it is like swimming in a pool of syrup to get a resolution like this through a Methodist conference, our Presiding Bishop, Paul E. Martin, did not oppose us and in a meeting with him the week before the conference convened, I was able to convince him that I was not trying to help the negro as much as I was trying to help the Methodist Church.

He was the Presiding Methodist Bishop at Little Rock during the crisis there, and I told him that because he failed to speak out there that Methodism had suffered. He assured me that he did take a strong stand in Little Rock.

Bishop Martin's concern was that since we were making progress in the hotels, theatres and restaurants, and that this was being done in secrecy, that the church should follow that example. My answer to him was that the church is not a restaurant, hotel or theatre, but must publicly make a stand on moral issues.

I reminded him that basically there were two ways to look at history - an economic interpretation and a providential interpretation, and that if this great moral issue is going to be solved by the merchants on a cold dollar and cent basis that history might see that Marx was right. I reminded him that this was a moral problem and had to be solved in a moral realm and if it was solved anywhere else, we were all going to be the losers, the negro as well as the white. I reminded him that if the Mississippi Methodist Bishop, Marvin Franklin, had given any moral leadership at all, that Oxford would not have happened the way it did.

What I am trying to say to you, Burke, is that looking at this at the grass roots level, it is apparent

to me that if the administration could direct the peoples' concern to the moral aspects of this problem that we will achieve a more lasting result. In other words, I think we should now de-emphasize the commercial aspects of this problem and when you and the Attorney General speak, speak in righteous indignation of the failure of the American people to live up to their moral and spiritual heritage.

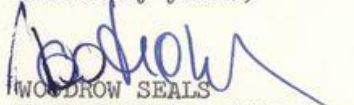
Last week-end I attended on the campus of Texas Christian University in Fort Worth, a seminar and study sponsored by the National Council of Churches on Church and State relations. There were lay and clergy representatives from all the major church groups of the Southwest, and in our conversations I sensed that they were looking for moral leadership more than anything else.

I am also enclosing a copy of an editorial by Reverend E. S. James, Editor of the Texas Baptist Standard, which probably has the largest circulation of any church paper. Mr. James was present at the White House meeting on June 17 for representatives of all major denominations and you can see what effect that meeting had on him.

I think the President might seriously consider declaring a National Day of Prayer, and although there will be some cynics who will accuse him of playing politics, I think the great majority of Southerners are beginning to realize their moral responsibility and they need leadership.

I did not intend to write such a long letter to you because I know that you must receive tens of thousands of letters offering advice, but one of the Assistants in your office might get to see it and in your conferences up there in the Justice Department it might be of some help.

Sincerely yours,

  
WOODROW SEALS  
United States Attorney

WS:cp  
enc-

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Sincerely yours,

WOODROW SEALS  
United States Attorney

WS:cp  
enc-

RESOLUTION

The 124th Session of the Texas Annual Conference, meeting in assembly at Houston, Texas, First Methodist Church, June 3 - 7, 1963, commends those Methodist and Methodist related institutions for the progress made in racial de-segregation and now calls upon all church institutions and church related institutions to make their services and facilities available to all persons regardless of race.

/s/ EDWIN N YOUNG

/s/ WOODROW SEALS

# Methodist Body Asks Integration; Time Open

By MELVIN STEAKLEY

The Texas Annual Conference of the Methodist Church has passed a precedent-making resolution asking integration of its institutions, but it did not set forth time or manner for compliance.

The resolution, approved here Wednesday, "calls upon all church institutions and church-related institutions" to integrate.

#### Not Defined

The resolution did not spell out whether this was a directive or a request, and "institutions" were not defined.

However, the consensus of delegates was that the resolu-

tion does not cover local church congregations.

Institutions of the conference, embracing Houston and East Texas, include homes for the aged, hospitals and encampments.

The conference supports two colleges, Southwestern at Georgetown and Lon Morris at Jacksonville.

The institutions are operated by boards, whose members are elected by the conference.

#### Not a Majority

The resolution was approved by a 6-1 ratio, but fewer than half of the conference's 450 delegates voted. Abstentions ran much higher among lay delegates.

The resolution was drafted by St. Stephen's Methodist Church of Houston. No one spoke in outright opposition.

Dr. Joe Z. Tower, conference executive secretary, termed the

resolution "not brand-new" and unnecessary.

He said the conference had previously approved 1962-63 and 1963-64 reports of the board of Christian Social Concerns on integration.

"We (Methodists) have not been dragging our feet, and the public should know this," Tower said.

#### No Connection

Other churchmen said there is no connection between the resolution and C.S.C. reports.

The resolution says the conference "commends those Methodist and Methodist-related institutions for the progress made in racial desegregation."

Rev. Jack Schoultz, pastor of St. Stephen's, said:

"It is best to say something about the (race) situation before it gets completely out of hand."

"This resolution confirms what many of our agencies are doing and confirms in the eyes of the public what Methodists believe" on racial equality, Schoultz said.

#### Elected Delegate

Dr. Charles L. Allen, pastor of First Methodist Church here, host church, was elected clerical delegate to the 1964 South Central Jurisdictional Conference in Dallas.

Rev. Nace B. Crawford, superintendent of the Lakeview Assembly, near Palestine, also was elected one of the 12 delegates.

Brothers Dr. W. C. Windham of Center and Dr. L. B. Windham of Tyler were among the seven lay delegates elected.

#### The Others

Others were Mrs. W. E. Horton, St. Luke's, Houston; Mrs. W. W. Fondren, St. Paul's, Houston; E. C. Claybaugh, Carthage; Bryan J. Butts, San Augustine, and J. R. Pease, East Bernard. Four more will be elected.

The conference adopted the first funded pension plan for retired ministers with a transition to begin in 1964. Ministers would pay 3 per cent of the average annual salary (now \$6641) in the Texas Conference and the conference would pay 9 per cent.

Now the conference provides from current funds pensions of about \$65 for each year of service.

# Editorials

E. S. James

## Distressed in White House Conference

There were plenty of reasons why some of us were ashamed when we sat in a group of some 250 representatives of all major denominations meeting in the White House June 17 (See story on page 11). Perhaps no person present was ashamed to be there. When the chief of government in any nation calls on churchmen to meet with him in the interest of moral problems, they ought to go if possible. We had no reason to feel that as preachers of all faiths we were being enlisted in support of some political program. There was not a hint that our help was even desired in the administration's civil rights program submitted to Congress two days later. Very few of the ministers present said anything after the President reminded us that the present race problem is a moral one. Apparently most of them agreed with him. Nevertheless, this editor was about as ashamed as he has ever been in his life.

As we listened to a review of the racial strife that prevails in the North and the South and as we heard the plea that we gospel preachers and laymen face up to it as a moral problem, this editor was ashamed that representatives of religion had to be reminded of their moral duty by representatives of government. When we heard some others tell of what their denominations have done to make desegregation peaceful and effective we could not help remembering how many of our own Southern Baptists have fought against it all the way. We were ashamed to acknowledge the truth to ourselves that we, the second largest religious group in the nation, have done so little to secure justice and equality of opportunity for all men.

Why was it necessary for the head of the national government to have to ask for the help of ministers in finding a solution for a moral problem? Why did not we ministers of the gospel act first and seek the moral support of government? Why have most of us Baptist preachers been so dilatory that we sat there knowing that every other group represented has done far more about it than we Southern Baptists? With the exception of the courageous secretaries of the Christian Life Commissions and the men who work with them, how many of us have ever really risked our necks in defense of the Negro's rights? It could not be simply because we live in the South where Negroes are numerous. Other denominations in our section have far outstripped Baptists in preaching and teaching that the colored man is entitled to every opportunity that is ours.

Our missionaries have pleaded with us to work for desegregation of all races. Our consciences tell most of us that it is right in the sight of God. Five and one half million Negro Baptists looked to us first to set the pace in their behalf, and we failed to do it—why? How much longer will we leave it to other religious groups and to the power of government to do what we Baptists could have led the South to do peacefully many years ago if we had only tried? Now the hour of crisis is upon the nation, and we are in a large measure responsible for it. Will we 10 million Southern Baptists continue to sit back and leave it to chance that the problem will solve itself?

One does not have to like the justices of the Supreme Court, nor does he have to agree with all their judicial decisions; but the Christian does have to be Christlike. If Jesus were here in the flesh there is no doubt that He would defend the rights of the downtrodden just as He did when He was here. As His followers we can do no less. Integration is here, and it is here to stay. It will be far more becoming for Christians to help implement it, whether they like it or not, than it will be to hurl their epithets at the court which has ruled that the constitution demands it.

If anyone is in doubt about what is right in the matter, then there is a simple answer. When the welfare of a human being is at stake the Christian must put aside prejudice and personal pleasure in the matter and come to that being's defense. There is never any doubt about it being right to help the person who is less fortunate than we. And "to him that knoweth to do good, and doeth it not, to him it is sin."

ALE UNIVERSITY · LAW SCHOOL

*Inter*

Peru, Vermont  
July 12, 1963

Honorable Louis F. Oberdorfer  
Assistant Attorney General  
Department of Justice  
Washington, D.C.

Dear Lou,

I enclose some correspondence for your information and amusement, and that of Nick and Burke.

I'm glad to hear that the Tweed-Segal-Oberdorfer Committee is moving ahead. I have written to Magnuson, responding to his request, that I shall try to supply a letter on the Commerce Clause within two weeks. I hope in all the shuffle and drama we don't lose sight of the practical fact that appropriations this year for 150 men in Burke's division, to carry out the 1960 Voting Act, and for a like number in E.E.W. to work with local School Boards, Community Councils, Human Relations groups, etc., could do more to advance the process of peaceful social change than all the oratory of August. Am I wrong in this?

Yours, as always,

EVR/m

CC - Mr. Katzenbach  
Mr. Marshall

*All the best,  
Burke,  
Gene*

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Mr. Marshall

*All the best,  
Burke,  
Gene*

Peru, Vermont  
July 12, 1963

Sylvester C. Smith, Jr., Esq.  
Prudential Plaza  
Newark 1, New Jersey

Dear Mr. Smith,

I appreciated and enjoyed your spirited letter of June 27th, and I shall certainly call the mote in Brother Black's eye to his attention. I had not realized you took to the hustings so early about the constitutional amendments proposed by the Council of State Governments, or indeed that you took so effective a part in reasoning with Governor Wallace. Congratulations, and thanks. That's exactly how I want the President of the A.B.A. to behave, and I am very grateful that you did.

If I understand you correctly, I suspect we agree, or come very close to agreeing. I too think the A.B.A. should speak officially only rarely and on great occasions, after full compliance with its deliberative procedures. It is inevitably slow to act, and the Chairmen of its Committees are bound often to be tied up, as Wyman was. It should, however, speak, and speak effectively, as it did in 1937 on Court Packing, and as it did now on the constitutional amendments proposed by the Council of State Governments. There are two or three other problems on which I should support public action by the Association as such, as authorized and required by its own objectives.

It is for this very reason that I urged the formation of an Ad Hoc Committee in my letter of June 13th -- a Committee that could shout "Fire" more easily and more often than the A.B.A., and participate more actively in the current civil rights crisis than it was desirable or possible for the A.B.A. to do. Such a Committee has now been formed, under the Chairmanship of Messrs. Tweed and Segal, and I am most hopeful for its future.

Still, I agree with you that we shouldn't rely entirely on the Tweed-Segal Committee, or the occasional action of the Board of Governors or the House of Delegates of the A.B.A., acting on their own motion or on the Reports of Committees or Sections. I don't know enough to have an opinion of my own about the work of the Criminal Law or Administrative Law Sections. But what you say has the ring of (exasperated) truth, and I certainly don't dissent! I gather that the Committee on Scope and Correlation of Work has some ideas in mind by way of reorganization in this area. And I do remain of the view, despite the doubtless excessive number of A.B.A. Sections, that a Section on Civil Rights, or the Bill of Rights, would be a step forward, especially if it were manned by strong people, and actively led.



Sylvester C. Smith, Jr., Esq.

- 2 -

July 12, 1963

I know that our Antitrust Section speaks out from time to time on a variety of subjects, and sponsors programs of considerable (and increasing) intellectual value. Such a Section would have more continuity and capacity to act than the present overlapping Committees in the area. And it could initiate a variety of programs of the kind discussed in my lecture.

If, of course, you want to lead a resolution to shake up the Sections on Criminal Law and Administrative Law, you can count on my support, just on principle.

As for advocacy, I enclose a copy of a letter Edward Bennett Williams wrote me last fall, after a visit to the School. You will not be surprised that in the Law School of Clark, J. W. Moore, and Fleming James, the Federal Rules are sacred. My complaint is that the students are never allowed to find out about the forms of action at common law. Most of our procedure work is taught by men who have had a great deal of court experience as well as good academic background -- A. S. Goldstein, for example, was a successful Washington lawyer and litigator before he decided to become a law teacher, and I don't have to mention the qualifications of Moore and James, I know. Both in Moot Courts, and in subsequent efforts, I often hear good things of our young graduates as trial lawyers. Many go into District Attorneys offices for training and experience. I don't think Nicholas Katzenbach, Burke Marshall, Louis Oberdorfer, Norbert Schlei, or John Douglas, all Yale graduates, are doing badly, in court or out of it. Do you?

Of course I join you in hoping Congress will pass the bill more systematically to provide counsel for indigent defendants.

I look forward to seeing you at Chicago next month. Please let me know if I can help in any way to move things forward at the Convention, or otherwise.

Yours sincerely,

EVR/m

CC - Prof. Charles L. Black, Jr.  
Arthur Freund, Esq.  
Harrison Tweed, Esq.  
Bernard Segal, Esq.  
Lloyd N. Cutler, Esq.  
Honorable Burke Marshall ✓  
Honorable Louis Oberdorfer  
Honorable Nicholas deB. Katzenbach

AMERICAN BAR ASSOCIATION

OFFICE OF THE PRESIDENT  
SYLVESTER C. SMITH, JR.  
AMERICAN BAR CENTER  
CHICAGO 37, ILLINOIS  
HYDE PARK 3-0533

June 27, 1963

NEW JERSEY OFFICE  
PRUDENTIAL PLAZA  
NEWARK 1, NEW JERSEY  
TELEPHONE MITCHELL 3-8000

Eugene V. Rostow, Esq., Dean  
Yale University Law School  
New Haven, Connecticut

Dear Dean:

This will acknowledge your very thoughtful and challenging letter of June 18th. I have also re-read your Morrison Lecture which was published.

I have some rather firm views in this matter:

First, I think that bar associations because they represent all faiths, all political parties except communism, all shades of social attitudes from "Birchers" to radicals, plaintiffs' lawyers as well as defendants' lawyers, white and colored lawyers should stick to the objectives of their associations.

The prime objectives are the improvement of the administration of justice, the defense of the constitution, the preservation of our balance of powers and form of representative government, and most important our obligation to defend the courts as an independent institution in our democratic form of government. The opinion of lawyers on other matters carry no greater weight frequently than that of the average citizen. For example, on the question of whether or not capital punishment should be retained, it is my opinion that this is a polity question on which any citizen may have a moral view or may have a view as a member of society who has suffered or had relatives suffer from a capital crime.

On the other hand, the views of lawyers through the Criminal Law Section on penal proceedings after conviction deal with due process. Through due process these procedures may involve psychiatry, parole preparation, re-instatement in society after confinement by job opportunity, pardon and restoration of citizenship. In these matters, lawyers speak with greater knowledge and authority in my opinion than either the social worker, the police or the church, though each of them may have an interest and their views should have an effect upon the ultimate solutions.

Lawyers are individualists. They should remain so. They deal in controversy in the courts. There are generally two sides -- one loses and one wins and sometimes neither are satisfied. Many lawyers have formed and expressed opinions on decided court cases being wrongly or rightly decided. They have not the right in my opinion, however, to attack the personal integrity of the judges unless they have absolute proof of venality.

Thus on matters involving civil rights many lawyers differ.

I was shocked at the off-the-bench remarks of Mr. Justice Black on libel and slander. Some member of the bar might well challenge his sitting on a case involving that legal subject when such a case came before the Supreme Court of the United States. Mr. Justice Douglas made a statement ex-cathedra in public challenging stare decisis and referring to the opinions of "fuddy-duddy judges". Yet the Court and the President ask the bar and the public to comply with the Brown case because it lays down the present principles of law as decided by our Supreme Court. These remarks made by justices outside of the court are harmful to the court. They diminish the respect for it as an institution which the people should hold high and we lawyers should most earnestly defend.

You propose a Section on Civil Rights. In my opinion the American Bar Association has too many sections now. We are split in all directions. We are dividing our interests into special bread and butter sections, personal position sections and not emphasizing the public interest responsibility. Civil rights under the Constitution has the Sixth Amendment provision for assistance of counsel. Our Legal Aid Committee for years has pressed without real emphasis this proposal. The Association, its Board of Governors and House of Delegates have approved the emphasis on this since 1922. The Criminal Law Section, now apparently dominated by the military who want to preserve their present military criminal procedures which recognize few civil rights, has not had any earnest discussion of assistance of counsel or the right to the cost of a record on appeal in the last 20 years. When I urged the creation of the Special Committee on Defense of Indigents Accused of Crime, it took four letters to get the Council of the Criminal Law Section to even go along with the proposal for the creation of this Special Committee. The Criminal Law Section has practically neglected the Fifth Amendment, essential as this right is. This is the Section which should bring to the attention of the police the need for observance of the civil rights by the police enforcing authorities.

The declining emphasis on criminal law, criminal procedures and defense in the law has alarmed judges, federal and state, throughout the country. I have been told by them during the past two years that where young lawyers admitted to the bar are appointed to defend indigents they have shown a woeful lack of ability and training. In many instances the court has to uphold them because of their dislike for the assignment and distrust of their own ability to defend indigents.

In the Administrative Law Section almost daily civil rights are being violated by the Immigration Division. They pay no attention to the Fifth Amendment. The NLRB and POC have delayed consideration of cases deliberately thus defeating, in my opinion, due process by arbitrary action. Yet many teachers of this subject are completely unaware of this. Jim Landis' report was well supported by the factual situation which general practitioners know of this state of facts.

I have a high regard for Arthur Freund and the others you mention but sometimes I am surprised that they are not aware of how in a representative body, such as the House of Delegates, you get action. May I give you an example? I first learned of the action of the Council of State Governments in very early January, before Arthur Freund wrote me. I requested Headquarters to obtain copies of the official proposals that had been adopted. It was two weeks later, after some terms had been published in newspapers that I received a copy which they told me was "official". They differed from the news releases. I immediately referred these proposals to the Committee on Jurisprudence and Law Reform, urging them to have an early meeting and to call on Headquarters staff for assistance. The Chairman of the Committee is Congressman Louis Wyman of New Hampshire. Being new, he was busy in Washington. He never got to calling a meeting of the Committee until shortly before the House of Delegates meeting in New Orleans. The Committee never met and some members declined to take a position because they did not have sufficient information. While Wyman made an oral report to the Board at New Orleans, the Board felt that since the majority of his committee urged a meeting it could not act on his personal proposals. This committee did act immediately before the Board of Governors meeting in Washington in May, with very little preparation or information to its members.

As President, I spoke my individual opinion on the proposals of the Council of State Governments before many groups. Many of the papers quoted me although Professor Black seems to have completely been ignorant of this fact.

The Board of Governors acted on the super-Supreme Court and the amendment proposals in Washington disapproving them. They also struck out the "whereas" clauses which were critical of the court. In New Jersey, the Senate action approving two of the resolutions was rescinded. In North Carolina, only after the American Bar Association action was presented to them did the Legislature defeat the proposals. I have been advised that this could not have been done without the American Bar Association's official action because there was within the Legislature strong personal feeling against members of the court and particularly against the Chief Justice.

The official action of the American Bar Association must come through the House of Delegates. If the attention of the officers is called promptly to matters which should be considered by committee, the President can direct the attention of this to the appropriate committee or section and request them to act as promptly as they can to bring it before the House of Delegates. Most of the State and Local Bar Associations prevent expressions of opinion on matters which are deemed political. They restrict them to matters within the objectives in the respective Constitutions.

Your letter indicates that the organized bar or a part thereof could defend or criticize the government with more freedom if we had a Section or Committee to defend the Union. As a matter of fact under the present Constitution (I am sure it would not be changed by the majority of the members) no such group or section could speak without the approval of the Board of Governors or the House of Delegates because no section and no committee can speak without such approval.

The old order hath changed. The American Bar Association is either a representative body with members from all of the state and local bar associations predominating or it will go back to what it was prior to 1936 -- a "Town Meeting" controlled and run by an Executive Committee that was self-controlling and could kill the expressions of opinion which were given in the Assembly Meetings.

I have had some experience in this matter with reference to the proposals to remake the court by legislation in 1937. We had just created the House of Delegates at Boston in 1936. The President's message of February 5th was, according to the Iokes' diary, a well kept secret and surprise. I had been a supporter of the President and the New Deal up to that time. I was shocked at the proposal. The Board of Governors was convened promptly and voted (dividedly) on the proposal and authorized the appointment of a Special Committee, of which I eventually became Chairman. When I became Chairman of the Committee, the Committee urged the Board of Governors to conduct first a referendum mail ballot of the Board. This was done and surprisingly the division in the House was almost the same as the division in the board. Then, even though we were short of money, we urged the Board of Governors to conduct a mail ballot of all of the lawyers, including those non-members, in the United States and sent out over 140,000 ballots. Strange as it may seem, the percentage of lawyers voting against the plan was almost of the same proportion as the number of members of the House voting against the plan.

Our Committee did two things: First, we decided that we would call no names; Second, we decided that this was a question of the independence of the court, a preservation of the separation of powers and that this decision had to be left with the people who had to be persuaded through argument rather than name calling.

With the approval of the Board and the House, we conducted hundreds of meetings at which lawyers on both sides debated this question. Unfortunately, we sometimes had difficulty getting lawyers to defend the administration's point of view. The result was decided in the Senate and would have been decided by a greater majority in the House because the people at the country courthouses and in the grass roots sections of the country, as well as in the big cities, were waking up to the fact that the proposal was a request for more power for the executive than was good for him or for the country.

I recall one letter received from New York City, written by a German refugee who had just become a United States citizen, in which he called attention to the fact that the first thing Hitler did was to destroy the independence of the courts of Germany and following that to destroy the independence of the bar. It was this type of reasoning by the people that led to the overwhelming public opinion that the proposal was wrong and that the decision of the Senate to turn it down was right.

In the present serious situation of widespread dissension among our colored citizens with the delay in granting full enjoyment of their civil rights, I am of the opinion we can best proceed by trying to establish a better communication with the intelligent and sober leaders of the negroes to ascertain the basic objectives. From this we can create a public opinion under bar leadership within the local communities that will speed up the elimination of these color barriers. As a national organization we can request Local and State Bar Associations to follow our example, our basic principles of professional obligation and thus relieve the terrific pressure and social ostracism which is visited upon lawyers in the southern states because of the color question. Thus they will have behind them the expression of this representative body of the legal profession.

Meanwhile much has been done. In the American Bar Association, the President, the President-elect and the President-elect nominee, who comes from Virginia, have been in communication with Deputy Attorney General Katzenbach, with lawyers in Alabama, in Mississippi, in South Carolina and in Georgia. We have quietly and effectively, without publicity, obtained great cooperation from strong leaders of the bar in these states towards working out a peaceful solution. The stumbling blocks have frequently been those leaders on both sides who by reason of compensation or personal interest and egotism have been unwilling to comply with reasonable requests. If I say so myself, I claim some credit for the peaceful entrance of two students at the University of Alabama beyond the letter of the Committee of 46 because my negotiations with Governor Wallace had been taken prior to that time.

During my year, I have been speaking on the availability of good trial counsel in unpopular causes and for those who cannot afford to pay for counsel.

I have also pointed out what judges are continually telling the President of the American Bar Association -- there is a lack of competent trial counsel in the general field. Advocacy has been a neglected subject in the law schools. The young Attorneys General representing the United States are best known by the courts and the bar for their prolixity and lack of knowledge of the limitations of evidence, their unwillingness to assume the responsibility for stipulation until they get written authority from Washington, generally denied by a man who has never been in court. There is also, strange as it may seem, according to federal judges a great lack of knowledge of the federal rules on the part of many of the young men who are sent out to try these government cases. This in my opinion is a problem which your law school as one of the great law schools of the country, as well as other law schools, should face. If advocacy cannot be taught in the law schools, then perhaps the bar must again return to the apprentice system. If advocacy can be taught (I think it can) then it must be taught by one who has been in the courts and not by one who has lived in the cloisters. The Committee headed by Whitney North Seymour on defense of the indigents, and the proposed legislation to provide for defense of indigents in the federal courts either through compensated, assigned attorneys, or the public defender or legal aid or bar associations, or a combination, are great steps forward. After many years the American Bar Association is hopeful that this Congress will enact such bills into law and this in my opinion would be the beginning of making available to a person charged with federal criminal violation

an adequate defense. If we can start here, I am convinced we will get a new spirit of defense in civil matters by competent and able white lawyers who are willing to defend unpopular causes.

You have made many good suggestions. My opinions are based upon 48 years of practice -- a political democrat with advanced views, and some teaching experience. The disappointed minority say of us "we think right but no action." I want action, considered, debated in accordance with our democratic method. But I do not want propaganda by groups who feel they speak for all without consulting the many or their representatives. The advocates of advanced views should be heard. The conservatives when they stop name-calling should be heard in argument. But my concept of democracy in the nation -- and particularly in the profession -- must be the majority rule and decision after considered opinion.

Sincerely yours,

*Stephen G. Smith*  
President.

THE STATE BAR OF CALIFORNIA

mtgs.  
file



Office of the President  
WILLIAM P. GRAY  
458 SOUTH SPRING STREET  
LOS ANGELES 13, CALIFORNIA  
MADISON 6-1252

July 15, 1963

Jerome J. Shestack, Esq.  
Schnader, Harrison, Segal & Lewis  
1719 Packard Building  
Philadelphia 2, Pennsylvania

Re: White House Conference Concerning  
Civil Rights Problem

Dear Jerry:

Supplementing my letters to Bernie Segal of June 28th and July 3rd, the three regional meetings of the Presidents of the bar associations of California were held as scheduled. There were about 13 in attendance at Sacramento on July 8th, and approximately 50 in San Francisco and the same number in Los Angeles on the two succeeding days.

I believe that the reactions to the meetings were quite hopeful. Those present expressed, among other things, their awareness that the problem is a serious one for the nation, and that it needs careful attention in each community. Most of the local Presidents agreed to make certain that there was responsible bi-racial conversation established among the leaders of their respective communities.

The press coverage of the meetings was reasonably sympathetic, as is illustrated by the enclosed clippings. I also participated in a television interview in San Francisco before the meeting there, and in a radio interview after the Los Angeles meeting, and made my "pitch" in both instances.

As reports of local activity are received, they will be summarized and forwarded to you in your clearing house capacity.

I enjoyed very much the opportunity to associate



Jerome J. Shestack, Esq.

-2-

July 15, 1963

with you and with Mr. Tweed during our recent discussions in Washington. I rather imagine that we will have some collaborating to do as a result of those meetings.

Faithfully yours,

  
WILLIAM P. GRAY

WPG:gw

cc: Honorable Harrison Tweed  
Honorable Burke Marshall ✓

Comm. Relations  
Service

July 17, 1963

BM:WJH:vqb

Mr. Milton F. Davis  
3644 Miami Cove  
Memphis 11, Tennessee

Dear Mr. Davis:

The Attorney General has asked me to thank you for your letter of July 12, 1963, in which you offer your services to help eliminate the racial problems which face our nation.

While the Department of Justice does not have any non-legal positions in your field of interest, your letter, which sets out your impressive background and experience, will be retained for appropriate consideration when the proposed Community Relations Service is established.

We appreciate your concern and interest in this vital area and your offer of assistance.

Sincerely yours,

BURKE MARSHALL  
Assistant Attorney General  
Civil Rights Division

meeting

July 25, 1963

Mr. James H. Merritt  
Executive Vice President  
National Assoc. of Chain Drug  
Stores, Inc.  
1625 Eye Street, N.W.  
Washington, D.C.

Dear Mr. Merritt:

Thank you very much for the copy of  
the editorial from Chain Store Age. It  
is most helpful. We understand and agree  
with the position expressed concerning the  
possibility of covering only chains.

Very truly yours,

BURKE MARSHALL  
Assistant Attorney General  
Civil Rights Division

# NACDS

NATIONAL ASSOCIATION OF CHAIN DRUG STORES, INC.

1625 EYE STREET, N.W.

WASHINGTON 6, D.C.

TEL. 393-7233  
Area Code 202

**President**

M. R. SHLENSKY, Pres.  
KATZ DRUG COMPANY

**Vice Presidents**

C. W. EVANS, Pres.  
GRAY DRUG STORES  
H. A. WOODS, Pres.  
H. A. WOODS DRUG CO., INC.

**Treasurer**

AUGUST F. HOOK, Pres.  
HOOK DRUGS, INC.

**Executive Vice President**

JAMES H. MERRITT

**Secretary**

THOMAS J. GOLDEN

**Director, Trade Relations**

ROBERT J. BOLGER

Mr. Burke Marshall  
United States Assistant  
Attorney General  
Department of Justice  
Washington 25, D. C.

Just a note, Mr. Marshall --

-- I thought you might like to see an editorial on the civil rights question which has been sent to some 25,000 executives of drug chains and managers of individual chain drug stores.

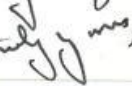
Cordially,


  
James H. Merritt  
Executive Vice President

Is

July 17, 1963

(Encl.)

① Dear Mr. Merritt:  
Thank you very much for the copy of the editorial from Chain Store Age. It is most helpful. We understand and agree with the position expressed concerning the possibility of covering only the chains.  
Very truly yours,  


② Lou Sporkin  


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S. J. BESTHOFF, Pres., KATZ & BESTHOFF, INC. • G. B. BURRUS, Pres., PEOPLES DRUG STORES, INC. • C. W. EVANS, Pres., GRAY DRUG STORES • AUGUST F. HOOK, Pres., HOOK DRUGS, INC. • W. J. HUG, Pres., SUN DRUG CO. • C. B. LARSEN, Pres., LUNNINGHAM DRUG STORES, INC. • M. R. SHLENSKY, Pres., KATZ DRUG COMPANY • C. R. WALGREEN, JR., Pres., WALGREEN DRUG STORES • MARSHALL K. WOOD, Pres., THE GALLAMER DRUG CO.

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By GODFREY M. LEBHARR  
Editor-in-Chief

## "A moral crisis"

□ June 12—Yesterday two Negroes were enrolled in the University of Alabama, but only after the State's die-hard segregationist Governor had been confronted by federalized National Guard troops directed by President Kennedy to enforce a federal court order.

A few hours later, President Kennedy used a nationwide television broadcast to tell the nation (1) why anti-Negro discrimination must be brought to an end without further foot-dragging; (2) what measures he will ask the Congress to take to facilitate that result; and (3) why he expected every American to back up his position.

Within another few hours, Medgar W. Evers, a Negro leader active in the current movement to end segregation, was shot to death as he entered his home in Jackson, Miss.

That this cold-blooded murder will touch off widespread racial violence throughout the nation seems almost inevitable as this page is written. By the time it reaches you, the casualties may already have reached catastrophic proportions.

### **Congress must act**

But whether the casualties prove heavy or light, recent events make clear that the time has now arrived to end what the President so clearly depicted last night as our moral crisis. And because one of the steps he will ask the Congress to take directly involves retail stores and restaurants, the chains will be materially affected by what-

ever action the Congress may take or fail to take.

Although the President did not state that his proposal would be based on the power of Congress to regulate interstate commerce, that is understood to be the new angle the Administration has in mind. On the other hand, the Congress may be asked merely to exercise its "general welfare" power by specifically banning racial discrimination "in places of public accommodation," and specifically defining that term to include "stores and restaurants whether publicly or privately owned or operated."

Whether Congress will enact such far-reaching civil rights legislation and whether, if enacted, it would stand up in the courts are matters for the future to decide. But retailers will be called upon very soon to take a position for or against whatever proposals are introduced.

That a federal law prohibiting racial discrimination in retail outlets would be helpful to retailers in localities where segregation is still required by local law or local custom would seem to be rather obvious. Integration of store facilities, even though required by law, won't, of course, satisfy the die-hard segregationists. They will still have the right to stay out of stores or restaurants whose facilities they don't want to share with Negroes.

But once the elimination of segregated facilities becomes universal, the great majority of our people may be expected to accept the new conditions even though not everyone will welcome them. In that event, retailers and restaurant operators would no longer be forced to take sides and suffer the consequences in the shape of lost sales as they are in so many areas under present conditions.

One possible feature of the proposed new legislation, which the chains will have to oppose with their utmost vigor, is a suggested provision limiting its coverage to large-scale retailers or those operating stores or restaurants in more than one State.

### **The ban must be total**

Not only would any such ill-conceived limitation be basically unfair to those covered by the law, but it would to a large extent defeat the law's only purpose—to give all Americans equal service in all "places of public accommodation whether privately or publicly owned." *To emancipate the Negro in some stores and restaurants but to permit discrimination against him in others would be to perpetuate what we must continue to regard as "a moral crisis" until it is wiped out altogether.*

*Personal  
Meeting*

26 July 1963

Mr. Macy C. Duke  
Chairman  
Public Relations Committee  
St. Albans Civic Improvement Association, Inc.  
193-19 Linden Boulevard  
St. Albans 12, Queens, New York

Dear Mr. Duke:

Thank you for your letter. If any opportunity to use your offer comes to my attention, I will let you know. We are most grateful for your interest.

Very truly yours,

Burke Marshall  
Assistant Attorney General  
Civil Rights Division

**ST. ALBANS CIVIC  
IMPROVEMENT ASSOCIATION, INC.**

Real Americanism

Founded 1906

Humane Progress

BE LOYAL TO YOUR COMMUNITY

193-19 Linden Boulevard  
ST. ALBANS 12, QUEENS, NEW YORK

118-47 201 Street,  
St. Albans 12, N. Y.,  
July 24, 1963.

The Honorable Burke Marshall,  
Assistant Attorney General for Civil Rights,  
The United States Department of Justice,  
Washington, D. C.

Dear Mr. Marshall:

On June 18, 1963, I wrote Mr. Douglas Dillon, The Secretary of the Treasury, advising him of my activities with the National Association for the Advancement of Colored People, The National Urban League and the Kiwanis Club of Downtown New York.

Also, I advised him of my availability to serve on a bi-racial committee in New York.

In response to my letter, Mr. Dillon informed me that due to my past experience as mediator in local community racial disturbances, it is possible that I would make a very useful member of such a committee.

Mr. Dillon further stated that he was sending a copy of his letter and other pertinent material along to you in order that you may be aware of my availability.

Because of the gravity of the civil rights problem confronting the citizens of New York City, I trust that I shall have the pleasure of hearing from you at your earliest convenience.

With kind regards, I am

Sincerely yours,

*Macy C. Duke*

Macy C. Duke, Chairman  
Public Relations Committee

*Dear Mr. Duke:  
Thank you for your letter. If any opportunity to use your office comes to my attention, I will let you know. ~~Blah~~ We are most ~~appreciative~~ grateful for your interest.  
Sincerely yours,*



EQUITY WILL NOT SUFFER A WRONG TO BE WITHOUT A REMEDY



*chron*

Mr. Lee White  
The White House

October 22, 1963

*L.F.O.*

Louis F. Oberdorfer  
Assistant Attorney General

LFO:meg

The Attorney General suggests that the President write to Mr. Kappel along the lines of the enclosed draft.

The press accounts referred to are attached.

Attachments

*cc: Attorney General*



DRAFT  
10/22/63

Mr. Frederick R. Kappel  
Chairman of the Board  
American Telephone & Telegraph Company  
195 Broadway  
New York, New York

Dear Mr. Kappel:

I note with great interest the press accounts of your remarks at the Business Council meeting last week about the work being done in the business community to end discrimination in employment.

The Attorney General has kept me advised of the continuing cooperation between business leaders and the Government in this and other areas where we are trying to relieve the pressures and solve the problems of racial discrimination. I think it is most appropriate that the Business Council has concerned itself with these matters and I want you to know how much I appreciate it.

Sincerely,

John F. Kennedy

LFO:meg

THE WHITE HOUSE  
Washington

October 24, 1963

Dear Mr. Kappel:

I note with great interest the press accounts of your remarks at the Business Council meeting last week about the work being done in the business community to end discrimination in employment.

The Attorney General has kept me advised of the continuing cooperation between business leaders and the Government in this and other areas where we are trying to relieve the pressures and solve the problems of racial discrimination. I think it is most appropriate that the Business Council has concerned itself with these matters and I want you to know how much I appreciate it.

Sincerely,

s/ John F. Kennedy

Mr. Frederick R. Kappel  
Chairman of the Board  
American Telephone & Telegraph Company  
195 Broadway  
New York, New York



Mr. Robert F. Kennedy  
The Attorney General

May 28, 1963

L. F. O. Louis F. Oberdorfer  
Assistant Attorney General  
Tax Division

LFO:meg

I am attaching lists of the representatives who will attend the two meetings in your office tomorrow -- at 2:00 P.M. a meeting with department and variety store executives and at 3:00 P.M. a meeting with cafeteria and restaurant executives.

Attachment

cc: Deputy Attorney General  
Assistant Attorney General Marshall ✓  
Mr. John Nolan

DEPARTMENT AND VARIETY STORES  
EXECUTIVES MEETING

OFFICE OF THE ATTORNEY GENERAL  
MAY 29, 1963 2:00 P.M.

BELK BROTHERS COMPANY 111 East Trade Street Charlotte 1, North Carolina	George W. Dowdy Executive Vice President
THE AUG. W. SMITH COMPANY 174-182 East Main Street Spartanburg, South Carolina	Tom Q. McGee President
W. S. PEEBLES & COMPANY, INC. 205 Main Street Lawrenceville, Virginia	C. W. Peebles President
J. B. IVEY & COMPANY 127 North Tryon Street Charlotte 1, North Carolina	George M. Ivey President
JAMES L. TAPP COMPANY 1644 Main Street Columbia 2, South Carolina	James L. Tapp President
MILLER'S, INCORPORATED Henley Street Knoxville 2, Tennessee	G. M. Handly President
THALHIMER BROTHERS, INCORPORATED 615 East Broad Street Richmond 19, Virginia	William B. Thalhimer, Jr. President
MILLER & RHOADS, INCORPORATED 517 East Broad Street Richmond 17, Virginia	Edwin Hyde President
PROFFITT'S STORES, INCORPORATED 123 North Jackson Street Athens, Tennessee	H. W. Proffitt President
ALLIED STORES CORPORATION New York (Theodore Schlesinger, Pres.)	John McGrath Vice President
FEDERATED STORES, INCORPORATED (Ralph Lazarus, Pres.)	Robert Foose, Sam Bloom
GOLDSMITH'S 123 South Main Street Memphis 1, Tennessee	Jack L. Goldsmith President

MEETING WITH CAFETERIA AND RESTAURANT REPRESENTATIVES  
OFFICE OF THE ATTORNEY GENERAL  
Wednesday, May 29, 1963  
3:00 P.M.

HOT SHOPPES & MARRIOTT MOTELS  
5161 River Road  
Bethesda, Maryland  
OL 6-2700

J. Willard Marriott, Sr., Pres.  
Foster Kunz, Industrial Relations  
Woodrow Marriott, Vice Pres. in  
charge of stores

NATIONAL RESTAURANT ASSN.  
1012 14th St., N. W.  
Washington, D. C.  
ME 8-3011

Thomas Powers, Counsel

BLUE BOAR CAFETERIA CO.  
644 So. 4th Street  
Louisville 1, Kentucky  
JU 5-3289

L. Eugene Johnson, President

WHITE TOWER MANAGEMENT CORP.  
580 Main Street  
Stanford, Conn.  
324-5707

Arnold Saxe, President

HOWARD JOHNSON'S  
630 5th Avenue  
New York, N. Y.  
CI 5-2020

Howard Johnson, Jr., President  
Robert Graham

PUTSCH'S 210 RESTAURANTS  
Kansas City, Mo.  
LO 1-2000

J. W. (Jud) Putsch, President  
(recently elected President of  
National Restaurant Assn.)

NATIONAL RESTAURANT ASSN.  
1530 Lake Shore Dr.  
Chicago 10, Illinois  
SU 7-2525

Don Greenaway, Exec. Vice Pres.

ROYAL CASTLE SYSTEM, INC.  
3800 N. W. 62nd St.  
Miami, Fla.  
TU 7-8121

L. E. Singer, President

DAVIS FINE FOOD CAFETERIA  
3 Houston St., N.E.  
Atlanta, Georgia  
JA 5-3386

A. T. Davis, President

NIGHT HAWK RESTAURANTS, INC.  
P. O. Box 1055  
Austin, Texas  
GR 2-3119

Harry Akin, President

S & W CAFETERIAS  
116 West Trade Street  
Charlotte, N. C.  
FR 5-3388

Frank Sharrell, President

~~Handwritten~~  
Meetings  
folder

June 4, 1963

Mr. Robert F. Kennedy  
The Attorney General

L. F. O. Louis F. Oberdorfer  
Assistant Attorney General  
Tax Division

LFO:meg

Attached is an outline of some thoughts for use  
in the President's presentation to the businessmen  
meeting at the White House today.

Attachment

cc: Mr. Lee White, The White House  
Assistant Attorney General Marshall ✓

June 4, 1963

Suggested Items for Conference With Businessmen

1. Pleased at the interest in the problem shown by attendance at Attorney General's meetings and at this meeting.

2. The problem is a serious one bordering on a national crisis--

(a) Image abroad

(b) Dangers and evils of any civil disturbances

(c) Negroes' desire to redress grievances justified and national conscience requires that they be redressed.

(d) Civil disturbance, disorder and discord bad for living and bad for business.

3. Substantial progress already achieved by voluntary action of some local governments, citizens and businesses--

(a) Atlanta, Dallas and Charlotte have had a strong, far-seeing local leadership and have made great progress.

(b) Individual businesses, particularly national chain retail stores and theaters, have made and are making great progress. National chain variety stores have desegregated lunch counters in several hundred cities; 12 to 17 cities with segregated lunch counters are all that remain.

(c) Since May 22, the Attorney General has received reports of material progress in racial practices in over 40 cities.

4. More Needed

(a) Legislation. It will be much easier to enforce and much more palatable if it is preceded by substantial voluntary effort to desegregate.

(b) Continued voluntary effort by individual businessmen. The Attorney General has supplied a list of 90 cities in the South where changes have been made or could be made with a little effort. Desegregate your own public facilities and hire and upgrade Negro employees to the fullest extent possible.



(c) Effort to mobilize civic and community desegregation. In 49 other Southern cities changes are feasible if a community effort can be organized.

(d) Other efforts - newspaper cooperation, church support, local political and civic activity.

LIST OF PERSONS WHO ATTENDED MEETINGS WITH PRESIDENT KENNEDY  
AT WHITE HOUSE WITH RESPECT TO VOLUNTARY DESEGREGATION

<p>B Aarons, Stuart 1585 Broadway New York, New York</p>	<p>E Albrecht, Dr. Herbert E., President North Dakota State University Fargo, North Dakota</p>
<p>R Abernathy, Ralph D., Reverend So. Christian Leadership Conference Atlanta, Georgia</p>	<p>E Albright, Dr. A. D. Interim President University of Kentucky Lexington, Kentucky</p>
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