THE NEW BLACK LAWYER AS COMMUNITY BUILDER

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The black lawyer historically has focused his energies on advocating the rights of black people in the courtrooms of America. Yet, to the masses of black people, who continue to suffer from racism, economic exploitation and political impotence, freedom, equality and justice are nothing more than grand slogans. Although there are more black lawyers in America today practicing law in a variety of ways, the economic survival of black people in America is in serious question. Should each black lawyer within the context of his or her practice focus on contributing to the development of power wielding black institutions serving the black community? This essay will consider this question and examine the role that black attorneys employed by legal services programs can play in institution building.

Generally black lawyers, like other black professionals, have made little attempt to reorient or redefine their profession. Our primary concern has been to be financially successful at our endeavors and then, to whatever degree practical, to devote our spare time to the general advancement of our race. Thus the common practice of black lawyers has been and continues to be to advance rapidly through the lucrative ranks of the profession.

The combination of a general legal practice and, with few exceptions, occasional civil rights activity, was the natural consequence of a fundamental premise that is only now beginning to wane. This premise is that the legislative and judicial institutions of this country are capable of securing the social and political gains of its subjugated minorities. It is still generally believed that liberal legislation such as the Civil Rights Acts[1] or a landmark court decision such as *Brown v. Board of Education*[2] hails a shift in the imbalance of power in America and secures another rung up the ladder toward equality. From this perspective the black lawyer is seen as a member of an elite class capable of translating the protest and angry rumblings of the masses into the concrete building blocks of a new social order.

But in this bewildering silence that is the aftermath of the 1960's and the systematic neutralization of Black leadership in the 1970's, a strange sound is heard. It is the sound of these new building blocks crumbling and falling away to reveal once again the old walls of exploitation and hate that never were destroyed.

While the future is unclear, it is relatively certain that the 1980's will be seen as a turning point in American political thought. The age of liberalism is dead. Gone with it is the hypocritical, but nevertheless popular notion

1. Civil Rights Act of 1964, Pub. L. 88-352, July 2, 1964, 78 Stat. 241 (codified at 42 U.S.C. §§ 1971, 1975a-1975d, 2000a-2000h-6 (1976)).
Civil Rights Act of 1968, Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 73-92 (codified at 42 U.S.C. §§ 1973, 3533, 3535, 3601-3619, 3631 (1976)).
2. 347 U.S. 483 (1956).

that the suffering Third World masses, both within and without America, are disinherited unfortunates whose uplift is the burden of the white Western World. In its stead emerges the general realization that white America is engaged in a life and death struggle with the so-called developing nations over control of the world's limited natural resources. The ravaging effect of the Arab oil embargo on the American economy and the equally devastating effect of the Iranian hostage situation on the American international image are just recent examples of the growing power of the historically exploited nations of the world.

The domestic reaction to these shifts in power has been unequivocal. In addition to the advocacy of record defense spending by both liberals and conservatives, there is the clear popular mandate for both politicians and the judiciary to roll back the paper gains of the civil rights movement. The frightening but very real possibility that conservatives like the new head of the Senate Judiciary Committee, Senator Strom Thurmond (D.-S.C.) might be successful in repealing the Voting Rights Act of 1965[3] or sounding the death knell for federal affirmative action, are just examples. Such conservative legislative strategies are compounded by the likelihood that President Ronald Reagan's right wing administration may appoint as many as four justices to the United States Supreme Court reflecting such political views.

Indeed, our current situation is not unlike the post reconstruction era in our history when North and South conspired to undo every gain we had won after the Civil War. During that time and thirteen years before the doctrine of separate but equal was established in *Plessy v. Ferguson*,[4] the United States Supreme Court entered a series of decisions known as the Civil Rights Cases of 1883.[5] These cases were an attempt to strike down the Civil Rights Act of 1875,[6] which sought to secure equal rights for all citizens at theaters, hotels and other places of public amusement and also outlined racial discrimination in jury selection. The Court found the Act unconstitutional eight years after its passage and it was another seventy-five years before a similar measure was passed.[7]

The current right wing renaissance simply serves to highlight something that we, as black lawyers, always knew but were afraid to confront: namely that so long as the dominant white society controls the legislative and judicial institutions of this country any legal gains made by the black community are tenuous and reversible. The irony of this predicament is enhanced by recognition of the fact that these "gains" were largely symbolic in the first place. *Brown* failed to have a significant effect on segregation in education in this country and the host of affirmative action programs have left the average black family even further behind its white counterpart.

Our current vulnerability as a people results from our inability to control those institutions that we have used to consolidate our gains. Therefore we must refocus our energies on building independent institutions which we

3. Voting Rights Act of 1965, Pub. L. 89-110, Aug. 6, 1965 (codified at 42 U.S.C. §§ 1971, 1973-1973 (1976).

4. 163 U.S. 537 (1896).

5. 109 U.S. 3 (1883).

6. Civil Rights Act of 1875, ch. 114 §§ 3-5, 18 Stat. 336, 337.

7. Civil Rights Act of 1964, Pub. L. 88-352, July 2, 1964, 78 Stat. 241 (codified at 42 U.S.C. § 1971, 1975a-1975d, 2000a-2000h-6 (1976).

can control and simultaneously organize to defend and protect these institutions from those who would destroy them.

The role of the black lawyer in the development of such institutions is potentially critical. In contrast to the "preacher/politician" whose skills in articulation inspire, motivate and sustain the continuing era of protest, the black lawyer can serve as the hub of a technocratic infra-structure, pulling together into legally recognizable forms the various skills and services necessary for the growth and self-determination of our communities.

This call for institution building is not meant to be arbitrary. Institutions formed in the '80's for the sole purpose of meeting short-term community needs are likely to be abandoned when well-financed slick alternatives which we do not control arise. Too often, we tend to neglect our own schools, banks and neighborhood stores when it appears that we have won greater access to the mainstream of American society. Furthermore, we must not continue to overlook the fact that institutions which allow a few of us to exploit the remainder of our community do not deserve community support. Our efforts must be community oriented and for the long-term purpose of developing our economic power and self-determination. Therefore it should be no surprise that like many Third World developing nations, black Americans should make greater use of the cooperative model as the foundation of our development program. Indeed, it may be time to examine more closely the admonition of W.E.B. DuBois that we form a "cooperative commonwealth" within the larger American economy in order to better serve our own interests.

DuBois' concept of a cooperative commonwealth was the outgrowth of his realization rather late in life that genuine equality for blacks in America would not come for a long time despite our best efforts. While he was philosophically opposed to separatism, DuBois nevertheless concluded that black people had to plan and collectively control their own community economics in order to successfully wage their social and political struggles. Thus, in his landmark essay *Dusk of Dawn*,[8] DuBois outlined a plan of forming a network of consumer and producer cooperatives that could eventually result in an organized national black economy. DuBois' inability to implement his plan was due to several factors including old age, the disruption of the Second World War, and his latest fear that too strong a sense of nationalism would frustrate black attempts to fully participate in American society. Nevertheless, until his death DuBois pursued his dream of full economic self-determination for blacks in America.

The black lawyer's need for a greater role in the economic development of our communities is not meant to preclude involvement in our necessarily continuing protest efforts. Ours is a protracted struggle; yet we must recognize the fact that our social and political gains have far outstripped our economic organizations and have therefore left us without a true power base from which we can protect them. The result has been that our only immediate recourse to the erosion of our political and social advance is to attempt to re-win them by returning to the streets in protest. The fact that Miami, Phil-

8. DuBois, *Dusk of Dawn*, in THE SELECTED WRITINGS OF W. E. B. DUBOIS (1970).

adelphia, Chattanooga and elsewhere in this country were rife with rioting and protest during the first year of this decade bears witness to this.

While this strange political dance of two steps forward and one step back is a demoralizing waste of our common energy and organizational resources, it may be a necessary part of our history until we are better able to consolidate our gains through our own institutions. Nevertheless, black lawyers who continue to participate in protest struggles for civil rights should be sensitive to the potential pitfalls. It is no accident that lawyers have traditionally acted as counselors and tacticians rather than the leaders and organizers of protest movements. The presence of lawyers in mass movements tends to create an overdependence on our expertise and on the dominant legal system which we inevitably represent. While the attorney's natural sensitivity to existing law is an essential asset for institution building, it can be a stultifying limitation on effective protest.

On the other hand, independent institution building is not an easy task for black legal practitioners either. Whether they practice in the private or public sector they naturally encounter difficulty in mobilizing the resources of the black community towards its own economic development. In the private sector the major handicap results from the simple fact that independent community institutions are initially too marginal to compensate adequately the needed legal expertise. It can take years before precious hours spent on the necessary research and consultation is rewarded—and most black legal practice is itself too economically marginal to pursue such activities.

LEGAL SERVICES AND COMMUNITY BUILDING

Black lawyers working in legal service programs are limited by the very nature of those programs. Legal services, like other "war on poverty" programs, were the outgrowth of the rebellions and political agitation of the 1960's. Government funded legal services for poor people were grand in concept. The programs were designed to achieve social and economic justice for poor people through equal access to the American judicial system.[9]

Legal services programs from the outset were defective in their design and structure. They are patterned after traditional law firms and based on the white-middle class assumption that the legal system will protect one's legitimate interests. Yet, there is a fundamental difference between the legal problems of poor blacks and those which confront middle-class whites. The legal problems of the middle-class are but occasional interruptions in their lives. Typically, white middle-class Americans seek counsel to prepare a will, to provide representation in a personal injury case or divorce proceeding. On the other hand, the legal problems of poor blacks are systemic and inextricably intertwined with racism and the resulting political, economic and social consequences.

A typical example of a legal services client is someone whom we will call Mary Jones. She is a black woman and a mother of three who seeks legal representation because the Department of Public Welfare has filed dependency charges against her. The grounds are that she is not providing adequate care for her children because she is a squatter in an abandoned

9. *See*, Preamble to the Legal Services Act of 1974, 42 U.S.C. § 2996 (1976).

house which has been certified as unfit for human habitation. Ms. Jones was forcibly evicted from her previous home for nonpayment of rent and had no other choice but to move into an abandoned house because landlords of more habitable houses refuse to rent to welfare mothers. To provide Ms. Jones only with legal representation in the dependency action does not address the fundamental issues which confront her and the masses of black people—the need for decent housing, full employment and responsive social service agencies.

Furthermore, individual representation in the form of class actions and major litigation, which is standard fare for legal services, does little to change the status quo. Since the inception of these programs, symbolic changes have been made in the area of welfare rights, housing law and consumer transactions through impact litigation. Yet despite imaginative litigation on the part of legal services programs, the masses of black people remain a powerless segment of American society, unable to exert any meaningful control over their lives.

The saga of Whitman Park[10] illustrates the limitation of impact litigation. In 1971, black public housing tenants filed a class action on behalf of "all low-income minority persons residing in the city of Philadelphia, who by virtue of their race are unable to secure decent, safe and sanitary housing outside of areas of minority concentration."[11] The complaint alleged that the failure on the part of various city and federal agencies to build a public housing project in a predominantly white neighborhood of Philadelphia, known as Whitman Park, violated plaintiffs' constitutional and civil rights and as relief ordered the construction of 120 housing units. The United States District Court found for the plaintiffs and held that the government agencies involved had an affirmative duty under the Fair Housing Act[12] to integrate the city's neighborhoods by building public housing projects in racially deconcentrated areas. The defendants were ordered to proceed immediately with the construction of the Whitman Park Townhouse Project.[13]

Although the legal victory was sweet, it soon turned sour. The white residents of Whitman Park have obstructed justice successfully; and now, ten years later, a single townhouse still has not been built. Innumerable injunctions have been issued prohibiting physical and verbal abuse of the construction workers by Whitman Park residents, and the construction site is an armed police camp. The earliest projected date for completion of the housing project is now 1983 and the cost of building the townhouses is nearly $80,000 per unit—more than double the original cost. The protracted litigation thus far has required the expenditure of thousands of dollars in court costs alone on the part of the Philadelphia Legal Services Program and a $360,000 legal services attorney's fee's petition is currently before the court. But still, black public housing tenants live in deplorable conditions. The costly litigation of a legal principle—the right to life in white neighbor-

10. Resident Advisory Boad v. Rizzo, 425 F. Supp. 987 (E.D. Pa. 1976), *aff'd in relevant part* 564 F.2d 126 (3rd Cir. 1977).

11. *Id.* at 993.

12. *Id.*

13. *Id.*

hoods—has simply failed to provide black Philadelphians with decent and affordable housing.

Since one step towards the acquisition of power is the development of cooperatively owned black institutions, the limited resources of legal services programs must be used to assist the black community with the formation of such institutions. Because black legal services lawyers, unlike their colleagues in private practice, are not subjected to the financial pressures of lawyering, there is greater freedom to be innovative. Projects may be undertaken which are not economically feasible for the solo practitioner or small black law firm. Traditionally, however, work with community groups by legal services attorneys has been limited to litigation issues. Endeavors in community and economic development projects thus far have been ad hoc and a more creative representation of community organizations has not been encouraged within the programs. Hence, it is imperative that black lawyers working in legal services programs redirect their priorities away from individual oriented representation and towards community development projects.

Black legal services lawyers can be instrumental in explaining to grass roots organizations the merits of forming their own housing, food, health care and day care cooperatives. Additionally, technical assistance in planning and funding cooperatively owned black economic development projects can be provided through legal services programs. Information on the relative merits and implications of incorporation, federal tax-exempt status and public and private financing must be made available to groups. Organizations also will need assistance in dissecting the existing maze of complex federal and state laws. Legislations designed to facilitate economic development must be drafted, introduced and enacted.

Innovation, however, is curtailed by the political realities of legal services practice. Caseload statistics, budget cutbacks and political dependence have hampered the effective rendering of legal assistance. Already inundated with unmanageable case-loads, legal services programs in recent years have been the target of ever increasing pressure to justify their existence in terms of the mere numbers of individuals served. As lawyers, legal services attorneys are constantly on the defensive, reacting to fundamental social ills with superficial remedies. As a result little time remains to be allocated to planning and building cooperatively owned institutions in the black community.

Furthermore, funding for legal services is in jeopardy. It is unlikely that death will be immediate, but legal services programs may instead be strangled by restrictions on their activities. This tactic has already been employed by the Pennsylvania legislature, when it sought to tie the restoration of Title XX monies for fiscal year 1979-1980[14] to amendments restricting group representation. Although this attempt was unsuccessful, the groundwork for further restraint by Congress and state legislatures has been laid with the recent popular affirmation of right wing ideologies.

14. *See generally, City Poor Protest CLS Budget Cut*, Philadelphia Daily News, Aug. 15, 1979, at 22, *Legal Aid for Poor in Trouble*, Philadelphia Inquirer, Sept. 30, 1979, at 1B, *Panel votes to Add Funds for Legal Aid*, Sept. 30, 1979, at 2D.

The delivery of legal services to black people must ultimately be defined and controlled by the black community. Accordingly, it is incumbent upon black lawyers in the 1980's also to create institutions designed to deliver legal services in a manner which would impart power to black people. By definition, lawyering of this nature cannot be delivered through the traditional vehicles of the solo practice or litigation-oriented law firm. New structures must be designed, utilizing and combining the expertise of legal and nonlegal personnel such as economists, architects and community organizers. In light of this, black law students should not limit their legal education to the study of law, but should also acquaint themselves with other related disciplines.

There is an unpleasant irony about recognizing the need to build at a time in our history when our existing resources are declining and our past gains are under attack. However, our struggle has never been easy and perhaps our current desperation will lend us the courage to question past assumptions and engage in more creative solutions. If it does we must develop not only a new collective direction towards building independent institutions, but there must also be new community minded and highly skilled black lawyers to help pave the way.

TWO-WAY VISION

Gilbert Ware

Look Back and Be Proud,
Look Ahead and Achieve
Poster
Enid Bas Library
St. Thomas, V.I.

When I think about history, I think about parenthood.

Often the acknowledgment of parenthood is an exercise in braggadocio rather than an acceptance of responsibility. One result is the constant human condition that stimulated Albert Camus' plea.

Camus says, "[p]erhaps we cannot prevent this from being a world in which children are tortured. But we can reduce the number of tortured children. And if you don't help us, who else in the world can help us do this?"[1]

When I think about black judicial history, I substitute "people" for "children," restrict "we" and "you" to Afro-Americans who are or aspire to be lawyers, and pray that they respond favorably to the altered—but, I hope, unadulterated—plea from Albert Camus.

Judge William H. Hastie offers very sound logic with regard to black judicial history. Judge Hastie states, "[s]omeone has written that whom the gods would destroy they first deprive of a sense of history. I think this is true. For history informs us of past mistakes from which we can learn with-

1. R.F. KENNEDY, *Dedication*, TO SEEK A NEWER WORLD (1967).