

Diversity Conference – Much Accomplished Though Challenges Remain

by Clarence M. Dunnaville Jr.



The seventy-fifth annual meeting of the Virginia State Bar held this past June was an enormous success by any standard. It was attended by nearly a record number of Virginia lawyers: women and men—black and white—Asian, Hispanic, and Muslim—straight and gay. The program covered a variety of subjects, and it featured a panel discussion on diversity attended by a standing-room-only audience.

The success of the annual meeting was a testament to the good work of the dedicated, hardworking State Bar staff and the many volunteer lawyers who make the Virginia State Bar a model for the nation.

Any tribute to the VSB should commend it for the diverse composition of the membership and its leaders. The immediate past president is a member of a prestigious Richmond firm, and a native of far southwestern Virginia. The new president is a woman from northern Virginia. The Council is composed of men and women of all ethnic groups, from all parts of the commonwealth.

The VSB mirrors the commitment of most lawyers to public service, to the principal of equal justice under the law, the improvement of our judicial system, and access to justice for all.

Former state bar president George Warren Shanks's President's Message in the April 2012 *Virginia Lawyer* details the varied programs and extraordinary services of the state bar, and their benefits. President Shanks's message praises "the boundless energy of the bar, and its unswerving commitment to excellence and its dedication to the precepts of our calling."

Virginia has changed dramatically since the State Bar was established. In 1938, there were approximately 3,100 members of the bar, composed of about 3,000 white men, fifty white women, and fewer than fifty black lawyers. Fewer than six were women.

Compare that with approximately 47,000 members of the VSB today. The Office of Bar Counsel alone receives and screens about 4,000 complaints each year, 25 percent more than the entire bar membership when the State Bar began.

In 1938, the nation was still recovering from the Great Depression and Europe was in the beginning stages of World War II. In Virginia, and in much of the nation, legally-mandated racial segregation prevailed against people of color. Discrimination was also the norm against women, especially in employment, regardless of whether they were white.

Lawyers were required to be admitted in each jurisdiction in which they appeared. A lawyer practicing in Richmond, retained to represent a client in a court case in Wytheville, had to be admitted in the Wytheville court before he could appear there. As you might expect, some lawyers admitted to practice in Virginia encountered difficulty simply getting admitted in a court in another part of the state.

Oliver W. Hill Sr., who was admitted to the Virginia bar in 1934, in his autobiography, *The Big Bang*, recalls that during his early years of practice he was retained to represent a client in Wytheville. On the trial date, he traveled to the Wytheville Circuit Court. When he arrived, he offered the commonwealth's attorney his card and asked him to move his admission to practice in that court. The commonwealth's attorney responded, "I don't know you," and declined to move his admission.¹ Hill states that fortunately, when the clerk called for motions, he moved his own admission, and the judge admitted him.

When the Virginia State Bar began its bar leadership in 1938, and for almost two decades thereafter, "Negroes" could not study law in Virginia. No law school in Virginia admitted Negroes. It was difficult for Negroes to receive a legal education outside of Virginia. Harvard



accepted few Negroes, as did some of the prestigious law schools. But in many states, as in Virginia, if you were black you could not study law. Nearly two decades later, when I applied to law school, Columbia University School of Law accepted me, but told me their quota of Negroes was filled for that year and I needed to wait to enter the following year. Virginia was still not training law students of color in any law school, even then.

Prior to 1930, the all-Negro Howard University in Washington, D.C., had an evening law school. Supreme Court Justice Louis Brandeis “believed Howard could be a good law school, but only if they put energy and resources into it.”² In the late 1920s, Justice Brandeis told Mordacai Johnson, the newly appointed president of Howard, “You’ve got to get yourself a real faculty out there or you’re always going to have fifth-rate law school.”³

Following Justice Brandeis’s advice, Howard established a full-time law school in 1930 with Charles Hamilton Houston, a Harvard graduate, in charge. Among the students who entered Howard in the first year of Houston’s tenure were Virginia’s Oliver W. Hill Sr. and Thurgood Marshall of Maryland. Hill, Marshall, and a number of the students in the entry class of 1930 challenged the constitutionality of segregation.⁴ Hill and Marshall graduated in 1933.

In 1938 the disciples of Houston, including Hill and Marshall, had already begun challenging mandatory discrimination. That year, Houston and some of his disciples prevailed in the United States Supreme Court in the landmark case of *Missouri ex rel. Gaines v. Canada*.⁵

Gaines had been denied admission to the all-white University of Missouri Law School. Chief Justice Hughes stated in his opinion that the state of Missouri was required to furnish Gaines a legal education substantially equal to those afforded persons of the white race. Gaines mysteriously disappeared after the case was decided. It was widely suspected that he was a victim of criminal activity, however, it was never established what happened to him.⁶

Although the Supreme Court, in the year that the Virginia State Bar was formed, upheld the right of Negroes to obtain a legal education in their states substantially equal to that

afforded whites, it was nearly two decades before people of color could obtain any legal education in Virginia. Still, the small number of black lawyers who attended law school outside Virginia and were admitted to the Virginia bar were subjected to numerous indignities even in the Supreme Court of Appeals (the Supreme Court).

One documented insult occurred in the library of the Supreme Court of Appeals. That occurrence, in 1941, necessitated the involvement of the chief justice. On that occasion, the assistant librarian asked a black attorney who was using the library to relocate his seat to a corner alcove out of the general sight of others in the library. When the lawyer refused to move, the assistant librarian called the police and sought to have him arrested for using the library in the plain sight of the white lawyers. The police appeared at the library, but declined to arrest the attorney, who had broken no law. The outraged attorney reported the incident to the newly formed Old Dominion Bar Association. Hill, an officer and one of the founders of the bar association, along with the insulted attorney and another officer of the Old Dominion Bar met with Chief Justice Preston White Campbell regarding the incident, and received the assurance of the chief justice of Virginia that lawyers of color would be able to use the state law library in plain sight, without harassment.⁷ This is but one example of the insults and difficulties the small number of approximately four dozen lawyers of color faced during the early days of the Virginia State Bar.

The small band of black lawyers was a brave and determined group. They took on the challenge to overcome “Jim Crow” discrimination almost completely on a pro bono basis. By 1954, a decade and a half after the state bar was established, they had achieved the Supreme Court victory of *Davis v. Prince Edward County School Board* (one of the cases consolidated into *Brown v. Board of Education*). Notwithstanding the decision in *Brown*, some white lawyers refused to accept the United States Supreme Court decision and supported “Massive Resistance.” Indeed, Massive Resistance, led by some leaders of the



Diversity Conference continued on page 27

Diversity Conference continued from page 25

bar, dogged Virginia for another decade and a half. Fortunately, the Virginia State Bar is now representative of all segments of our society, and its leadership is at the helm in the search for equality.

As lawyers, we have the obligation to see equal justice done under the law. Today, there are new challenges, including the legal rights of women to control their own bodies, and the rights of gays and lesbians.

There is a great need to improve the judicial system and to provide access to justice for all Virginians.

It is within the mission of the Virginia State Bar to “assist in improving the legal profession and the judicial system.” There is plenty of room for improvement. I will be working hard to foster access to justice for all Virginians, and for the VSB to lead the nation as a laboratory and model of self-regulation and promotion of justice. I am looking forward to the future.

Endnotes:

- 1 Hill, Oliver White “The Big Bang Theory”, p. 96.
- 2 Urofsky, Melvin I, “Louis D. Brandeis, A Life” Pantheon Books, NY 2009, p. 640.
- 3 Ibid.
- 4 Hill, Id pp. 76-78.
- 5 305 U.S. (1938).
- 6 Hill, Id. p. 154.
- 7 Smith, J. Clay, “Emancipation, The Making of the Black Lawyer 1844-1944”. University of Pennsylvania Press, 1993, p. 235.



Clarence M. Dunnville Jr. of Richmond has worked in civil rights matters throughout his career, most recently was a member of the Virginia State Bar Diversity Task Force and head of the foundation that preserves the boyhood home of Oliver W. Hill Sr. in Roanoke. He is the recipient of the 2009 Lewis F. Powell Jr. Pro Bono Award from the VSB Special Committee on Access to Legal Services and was the first recipient of the VSB Diversity Conference’s Achievement Award, which was then named in his honor.



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