NEW YORK STATE UNIFIED COURT SYSTEM

Franklin H. Williams Judicial Commission on Minorities

May 2004

A message from the Chair

ON MAY 17, 1954, THE SUPREME COURT DECIDED *BROWN v BOARD OF EDUCATION,* striking down the separate, but equal doctrine in educational facilities. The impact of the *Brown* decision on African American lawyers is best understood by comparing where we were in 1954 and where we are today. In Brooklyn, the lawyer's organization was known as the Brooklyn and Long Island Lawyers Association. Judge Phillip Roache, who was my mentor, and I were two of three African American lawyers in the Brooklyn Law School.

IN THIS ISSUE:

There was only one African American assistant district attorney and one Municipal Court judge. There were no African American Supreme Court judges, law assistants, or claims adjusters. No African American lawyers had offices on Court Street or below 125th Street in Manhattan. African Americans were routinely stricken from serving on criminal or civil cases as jurors.

Whenever we contrast where lawyers fit into the workforce as compared to other workers, the following facts were apparent. In 1956, no African American repaired city streetlights. Moreover, it took six weeks of picketing to hire the first African American at the White Castle located in Brooklyn. The progress made is the result of the convergence of two events: the *Brown v Board of Education* and the extraordinary brilliance and bravery of those involved in the civil rights movement. The brilliance is confirmed in the strategy of Charles Houston Hamilton and finally executed in the *Brown* decision by Thurgood Marshall. This bravery is confirmed—but not limited—by those who drove the dark, dusty roads in Mississippi and the brave men and women who stood up to the state troopers on the Edmund Pettus Bridge in Selma, Alabama.

The anniversary of *Brown* allows us to acknowledge to ourselves and others, that in 1954 and after, we were engaged in the most successful social revolution in history. In two generations, we undid an insidious caste system. The anniversary of *Brown* also serves as a reminder that those who most benefited from the opportunities of *Brown* must reach back and work even harder to open up additional opportunities for others. As Charles Hamilton Houston stated, "I am … concerned…that the Negro shall not be content simply with demanding a share in the existing system. [H]is fundamental responsibility and historical challenge is … to make sure that the system which shall survive in the United States of America…shall be a system which guarantees justice and freedom for everyone". ■

MISSION STATEMENT

It is the mission of the Franklin H. Williams Judicial Commission on Minorities to educate and advise decision makers in the New York Court System on the issues affecting both minority employees and litigants; and to implement recommendations developed to address said issues.

THE COMMISSION GOES TO WASHINGTON

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In April 2004, five members of the Franklin H. Williams Judicial Commission on Minorities joined one hundred and seventy–five (175) judicial and non-judicial court personnel in the nation's capital at the 16th Annual Meeting of the National Consortium on Racial and Ethnic Fairness in the Courts. The conference theme was "Fifty Years after *Brown*: A National Dialogue on Racial and Ethnic Fairness in the Courts." The meeting provided a forum for us to review the historic context of this landmark case and to examine the progress and work yet to be continued to ensure fairness and accessibility for all. There were several outstanding speakers, many of who had personal stories related to the *Brown v Board of Education* case. Here are some of the highlights from the conference. (Right: Commission member, the Honorable Richard B. Lowe, III and Alice Chapman-Minutello listened to the speakers during the plenary sessions.)

THE PROMISE OF EQUAL JUSTICE

Jonathan M. Smith

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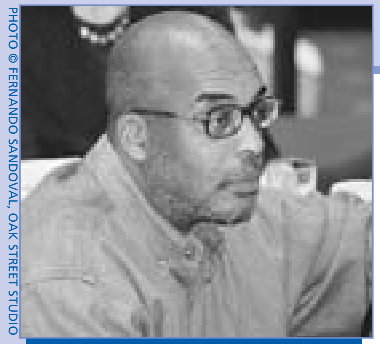
Jonathan M. Smith, Executive Director of the Legal Aid Society of the District of Columbia, presented the Keynote Address for the Opening Session. The following is a highlight of his presentation:

- Despite a growing sensitivity by the bench to pro se litigants, the laws and rules are simply not designed to accommodate an untrained pro se advocate.
- The Federal government dedicates approximately $336 million to provide legal services to the nations poorest 31 million residents. Approximately $1.5 billion is available for civil legal services from all sources—public and private. This sounds like a lot of money until it is placed in context of the legal industry. Total law firm revenues exceed $175 billion each year. Legal Services for the poor make up less than 1% of the industry, while servicing nearly 15% of the population.
- A recent study of the Housing Court in New York City found a dramatic difference in outcome between represented and unrepresented tenants. Attorneys were randomly assigned to litigants and compared to an unrepresented control group. The researchers found that the rate of entry of judgment was reduced from 52% to 31%, warrants of eviction were cut nearly in half, and defaults dramatically reduced. Most significantly, 18.8% of tenants with a lawyer obtained a stipulation for an abatement of rent while only 3.2% got one without counsel. Tenants with a lawyer obtained a stipulation requiring repairs at a rate of 45.9%, while only 28.2% of unrepresented tenants were able to reach such an agreement.
- The work of legal services lawyers is, in part, the struggle for racial justice. Racial minorities are dispropor-

continued on page 4

MANAGING DIVERSITY IN THE JUDICIAL WORKFORCE



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Commissioner Bill Etheridge sat in on the presentation made by fellow UCS colleague Chapman-Minutello.

AS A MEMBER OF THIS PANEL, ALICE CHAPMAN-MINUTELLO, Deputy Director, Office of Court Administration—Human Resources Workforce Diversity Office, discussed the court system's Diversity Program. Ms. Chapman-Minutello provided an overview of the various components of the program. She discussed the court system's establishment of goals and timetables and the components of that process, i.e. analyses, demographic studies, etc.

Chapman-Minutello talked about outreach and recruitment initiatives and presented information on the following: the appointment of local Equal Employment Opportunity (EEO) Liaisons for each New York City court and judicial district; the creation of an employment hotline used to communicate information on the UCS employment and examination announcements and non-competitive job vacancies; use of the court system's web-site address to reach potential candidates; the creation of interview panels for high-level positions; and the use of the "structured interview" format. An overview of the courts system's Handicapped Set-A-Side Program and a special recruitment initiative for the most recent court officer examination were also covered.

A major focus of her presentation on the UCS's programs was an overview of the court system's newest program, the Legal Fellows Program—a twelve-month, full-time fellowship for recent law school graduates. She shared information with the audience on the Franklin H. Williams Judicial Commission on Minorities, particularly its role regarding the court system and the necessity to continue to address areas of under-representation of minorities in the court system's workforce. She also discussed the New York State Judicial Committee on Women In The Courts, its role, programs and publications. ■

THE LATINO INFLUENCE ON *BROWN v BOARD OF EDUCATION*

IN A WORKSHOP EXAMINING THE INFLUENCE OF LATINOS ON THE CIVIL RIGHTS MOVEMENT, the Honorable Frederick P. Aquirre—Superior Court Judge of Orange County, California—gave the historical background of these cases. Judge Aquirre explained that *Mendez* was not cited in *Brown*, but that the National Association for the Advancement of Colored People (NAACP) used the *Mendez* as a "test case" to attempt "to topple the separate but equal" doctrine in public education.

Judge Aquirre explained that in 1945 California public school authorities refused to enroll Mexican-American children and ordered them to attend the "Mexican" school a few blocks away. During the two-week trial under Federal Court Judge Paul J. McCormick, the Garden Grove School District Superintendent (James L. Kent) testified that he considered Mexican-American children "inferior." Kent also testified that "he would never allow a Latino child to attend an all-white school even if that child met all the qualifications to attend such a school." After similar testimony from other school authorities, Judge McCormick ruled against the four school districts, citing that "commingling of the entire student body instills and develops a common cultural attitude among the school children which is imperative for the perpetuation of American institutions and ideals." He also held that "it is also established by record that the methods of segregation prevalent in the defendant school districts foster antagonisms in the children and suggest inferiority among them where none exists."

continued on page 4

"DID YOU UNDERSTAND WHAT I SAID…" COURT INTERPRETER

Joyce Hartsfield greeted the banquet keynote speaker, Congresswoman Eleanor Holmes Norton, and the Honorable Inez Smith Reid—the sister of George Bundy Smith, New York State Associate Judge of the Court of Appeals.

L. Dew Kaneshiro, Project Director for the State of Hawaii Office on Equality and Access to the Courts, was the moderator for the panel. The workshop focused on the responsibilities, challenges, issues, and best practices of the court interpreter. The most important fact about a court interpreter is that he/she is an officer of the court who can have either a negative or positive influence on the outcome of a case by the performance of his/her duties. The interpreter must be qualified to translate and/or interpret for the defendant or witnesses, accurately informing the court of the responses made by said persons.

It is also the responsibility of the court to understand the role and need for a court interpret to provide defendants with a fair and equal trial. From an anthropologically perspective, court personnel (especially judges) need to be aware of the cultural factors that could have an impact on the outcome of a trial, particularly the communication nuances that may be unique to the cultural background of the respondents. Some states have recognized the significance of these factors and require their judges to participate in a two-day training session each year.

The panel expressed two concerns: (1) the lack of continuity in the certification of interpreters; and (2) the inadequate

continued on page 4

EQUAL JUSTICE *continued*

tionately subjected to poverty and thus disproportionately suffer the impact of a lack of meaningful access to justice. The consequences that flow from the denial of representation—such as an avoidable eviction, unnecessary family instability, or the improper loss or denial of an income—further exacerbate economic inequality and perpetuate racial disparities in income, wealth, and social status.

- Equal access is a necessary component of our civil justice system.

- Untempered by sufficient resources to ensure equal and meaningful access to justice, our legal system has become so brittle it is reaching a breaking point. It is as important today as it has every been in our history to heed Judge Learned Hand's warning: "If we are to keep our democracy, there must be one commandment: "Thou shalt not ration justice." ■

LATINO INFLUENCE *continued*

In his presentation, Judge Aguirre delineated how the ruling in *Brown* mirrored the language and sentiment of McCormick's decision in *Mendez*. For example:

Mendez: "The evidence clearly shows that Spanish-speaking children are retarded in learning English by lack of exposure to its use because of segregation…"

Brown: "Segregation with the sanction of law therefore has a tendency to retard the educational and mental development Negro children and to deprive them of some of the benefits they would receive in a racially integrated school system."

Judge Aquirre concluded that Justice Warren thoroughly absorbed Judge McCormick's ruling in *Mendez*, which helped shaped Justice Warren's sense of fairness and equity manifested in the *Brown* case. He postulated that the underlying principle of *Mendez* and *Brown* is that they exemplify the best in our American cultural values: **courage**, **fairness**, and **equality**. He applauded the **courage** of the parents in the *Mendez* and *Brown* lawsuits to challenge the racist educational system, the **fairness** epitomized by our judicial system, and the **equality** of opportunity for all children. Through this process, a metamorphic evolution occurred in our society. This, he concluded, was the true legacy of *Mendez and Brown.* ■

COURT INTERPRETER *continued*

use of court interpreters for the English-challenged litigants and defendants. It was the consensus of the panel and workshop participants that the courts must become sensitized to the diversity of the parties involved in the judicial process. Only through such sensitivity can the courts take the necessary steps to ensure that all receive a fair and equal justice. ■

SAME TIME NEXT YEAR

After three days of dialogue on a variety of issues, the members of the Commission agreed with our colleagues that the conference was both stimulating and inspirational. We learned more about the responsibilities we each have in our court systems. We parted with a renewed commitment to face the challenges still existing for our respective court systems. We also look forward to our next gathering to see how we have progressed.

CONTACT US

If you have concerns you would like to present to the Commission, please contact us at:

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WHAT'S NEW

- On May 24, 2004, the Commission will host the *Leadership Development Conference: Courts in the 21st Century* for the upstate judicial districts. This conference represents Part II of the conference that was presented for the downstate judicial districts at the Judicial Institute in May 2003. The purpose of the conference is to bring together minorities from all levels of the court system to assess the progress that has been made in the courts concerning racial matters, and to also voice our concerns about the racial issues that are still of concern.

- Chief Administrative Judge Jonathan Lippman announced the appointment of the **Honorable Leslie G. Leach** as the Administrative Judge of Queens Supreme Court.

- **Honorable Jan H. Plumadore** was named Deputy Chief Administrative Judge for Courts Outside New York City. His appointment is effective mid May. He replaces Honorable Joseph J. Traficanti, Jr., who leaves to begin a career in international legal consulting.

- Governor George E. Pataki appointed **Honorable Steven W. Fisher** to the Appellate Division, Second Department.

- In January 2004, the Commission published Findings from the *Leadership Development Conference*, a compilation of the findings and recommendations made at the downstate conference held in May 2003. The report was presented to the Chief Judge, the Honorable Judith S. Kaye. You may request a copy from our office or review the report online at:
  http://nycourts.gov/whatsnew
  http://nycourts.gov/reports/index.shtml

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