A HISTORY OF DISCRIMINATION AND PROGRESS WITHIN CALIFORNIA'S BAR ASSOCIATIONS

By John S. Caragozian

California's lawyers have long led efforts to protect and expand civil rights. While those lawyers deserve praise, we California lawyers must also be aware of our own mixed history of segregation and other discrimination within the profession.

California's 1849 constitution extended voting only to white male citizens. Similarly, upon statehood in 1850, California's first legislature barred persons of color, including "blacks and mulattoes," from serving on juries or from being witnesses in civil or criminal trials involving whites. *See, e.g., People v. Hall,* 4 Cal. 399, 403-04 (1854).

Unsurprisingly, during these early years, California permitted only white male citizens to be lawyers. Fortunately, in 1878, California's first woman lawyer, Clara Foltz, successfully lobbied for any citizen, regardless of gender or race, to be admitted as a lawyer. (My Nov. 8, 2022, Daily Journal column, "Clara Foltz, Pioneer Lawyer for Women, Criminal Defendants and All Californians," is about Foltz and her accomplishments.)

Nine years later, California admitted to the bar its first African American lawyer, R. C. O. Benjamin. When California adopted a formal unified bar in 1927, all qualified persons, regardless of race or gender, were entitled to admission. *See* Charles Smiley, https://www.duanemorris.com/events/history_black_lawyers_judges_california_0221.html. (setting forth some of Alameda County Superior Court Presiding Judge Smiley's extensive research into California's early African American lawyers and judges).

As for voluntary bar groups, the American Bar Association, which has epitomized the legal establishment since its 1878 founding, refused to admit African American lawyers until 1952.

In California, voluntary groups' records were uneven. The Bar Association of San Francisco admitted its first African American member in 1916.

In Los Angeles, however, the voluntary bar—founded in 1878 and later to become the Los Angeles County Bar Association— refused to admit lawyers of color or women. This refusal was significant because L.A.'s bar association was "the only game in town" for new lawyers. *See* Kathleen Tuttle, "Lawyers of Los Angeles: 1950 to 2020," at 46, 53 (2020).

By the 1930s, LACBA was admitting women but remained all white. In 1945, the bar's board stated that, given the bar's "past history," the bar "has no other course than to deny members of the Negro race membership…." That same year, members voted 768 to 604 to remain segregated. *See, e.g.,* W.W. Robinson, "Lawyers of Los Angeles: A History of the Los Angeles Bar Association and of the Bar of Los Angeles County," at 168 (1959).

In December 1947, LACBA members voted again, this time on two proposals. The first was to amend LACBA's constitution to provide that membership "shall not be denied by reason of

race, color, creed, or national origin," but it was rejected by a vote of 642 yeses to 844 noes. The second proposal was an advisory question, "Shall qualified Negroes be admitted to membership…?," but it too was rejected.

Thereafter, LACBA's board of trustees determined that it did not need an amendment to the LACBA constitution to permit the admission of African American lawyers because the exclusion of African Americans had been "as a matter of practice" (and not based on express language). Nonetheless, the board deemed that it had a "mandate" to continue the racial discrimination per membership's 1947 advisory vote to exclude African Americans.

The board renewed the question yet again on the January 1950 ballot: whether lawyers should be admitted to LACBA membership "regardless of race or color." The 1950 ballot noted that the question remained "controversial," but justified another vote on the ground that "some of the members may have changed their views" and that lawyers joining after the 1947 vote "should be allowed to express their convictions."

In some ways, 1950 was an inauspicious time to seek to advance civil rights, even though this particular advance was the obvious step of eliminating racial discrimination in local bar membership. Jim Crow was still the law of the land, with landmark cases such as *Brown v. Board of Education*, 347 U.S. 483 (1954) (holding "separate but equal" to be inapplicable to public schools), and *Barrows v. Jackson*, 346 U.S. 249 (1953) (holding racially restrictive covenants in real estate deeds to be unenforceable with money damages) years in the future.

More broadly, the repressive Red Scare of the early 1950s, also known as McCarthyism, was peaking nationwide and was antithetical to progressive change.

McCarthyism's hysteria had extended into lawyers' organizations. In 1950, the ABA president opposed membership for members of the National Lawyers Guild, which was composed of left-leaning lawyers. *See* "Bar Leader Holds Loyalty Oath Good," L.A. Times, Oct. 4, 1950, pt. I, p. 14, col. 1. Similarly, the Southern Methodist University Law School Dean spoke at the California State Bar's annual meeting and opposed government spending on legal aid because such spending was advocated by the "legal bulwark of the Communist Party…." *See* "State Bar Given Warning on Threat of Socialism," L.A. Times, Oct. 6, 1950, pt. I, p. 21, col. 1. Indeed, it seems likely that liberal lawyers' support was a kiss of death for LACBA desegregation during the McCarthy era. *See, e.g.,* Kathleen Tuttle, supra, at 52.

Still, when the January 1950 votes were counted, LACBA membership voted 1018 to 593 to admit all lawyers, regardless of race or color, thereby ending its discriminatory admissions practices. Some of the credit may go to the bar's leadership, including Latham & Watkins co-founder Dana Latham, who was elected LACBA president on the same ballot. Behind the scenes, Latham and the other leaders added the "regardless of race or color" question to the ballot at the last minute, ensuring that a polarizing Left-versus-Right campaign would lack time to develop. An absence of polarization, in turn, increased the likelihood that LACBA members could vote to end discrimination without being accused of being pro-Communist. *See, e.g.,* id.

Since the end of segregation, LACBA and other bar groups have often been at the forefront of progressive change. Here are two examples.

First, through the 1970s, LACBA leadership began pushing for more pro bono work to improve poor people's access to legal representation. In 1977, LACBA became a joint sponsor with the Beverly Hills Bar Association of Public Counsel, which is now the nation's largest non-profit public interest law office, having a direct annual budget of approximately $17 million. *See, e.g.,* id. at 146-51. More important, Public Counsel's staff and thousands of volunteer lawyers—whose time equates to over $45 million—serve 10,000 clients each year.

Second, LACBA trustees began to agitate against gender, racial, and religious discrimination at large clubs, especially downtown Los Angeles's California Club and Jonathan Club, both of which had refused to admit minority, Jewish, or women members. In 1974, the trustees adopted a policy barring LACBA events at "clubs … which discriminate on the basis of race, religion, sex or national origin," even though prominent lawyers belonged to such clubs. Soon, law firms and clients followed LACBA's lead. Eventually, the clubs began to open membership, and, in 1987, the City of L.A. adopted an ordinance barring this discrimination. *E.g.,* id. at 162-65; L.A. Muni. Code §§45.95.00-45.95.04.

We lawyers may note the progress of bar organizations from their origins of overt segregation. The real lesson, though, is that progress was not automatic. Instead, it required—and will continue to require—individuals' repeated efforts and courage to risk personal and professional status.

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