

A Bumpy Road to Equality

Panelists say courts are backpedaling on minority issues

BY STEVEN KEEVA

In a series of ABA Annual Meeting programs dealing with racial inequality in the justice system and in law firms, there appeared to be a consensus that minorities still have a long way to go.

This year marks the tenth anniversary of the ABA's Commission on Opportunities for Minorities in the Profession and the 100th anniversary of the notorious Supreme Court opinion, *Plessy v. Ferguson*, which made the doctrine of separate-but-equal the law of the land.

Back to the Past

Speakers at the August sessions were quick to point out that while the commission is celebrating some very real achievements, minorities are nonetheless experiencing legal setbacks that remind them of *Plessy*.

The theme emerged at a variety of programs, ranging from the topical "Racism and the American Legal Process" to the more generic "The Greatest Law School Lecture You Never Heard."

Other highlights of the meeting included ABA House of Delegates action on new law-school accreditation standards and high-profile speakers such as U.S. Attorney General Janet Reno and U.S. Supreme Court Justice John Paul Stevens. (For more in-depth coverage, see "Your ABA" beginning at page 104.)

One well-known speaker, O.J. Simpson defense attorney Johnnie Cochran, was among those who spoke about a backlash against affirmative action.

"The Supreme Court of 1996 seems very similar to the Court of *Plessy v. Ferguson*," Cochran told a standing-room-only audience. "If you go to the Supreme Court now, you're told that race can never be used to benefit anyone. It can only be used to punish."

The current climate is defined by rulings adverse to affirmative action and a perception that it is no longer necessary, speakers said.

"After 30 years of modern civil

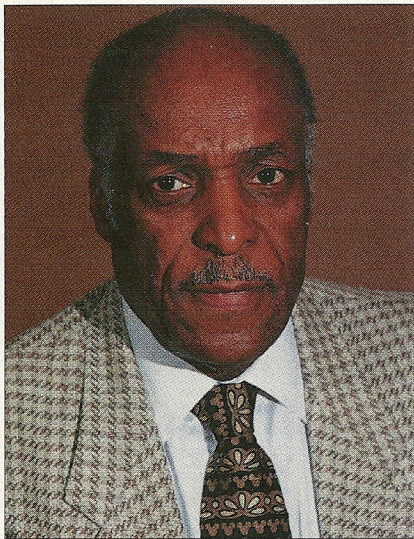
rights statutory protections, and after 40 years of constitutional rulings ... in the courts, we now see a sense of fatigue," said Barbara Arnwine, executive director of the Lawyers Committee for Civil Rights Under Law. Today, the Supreme Court does not recognize the vestiges of racism in society, she charged.

Judge Nathaniel R. Jones of the 6th U.S. Circuit Court of Appeals based in Cincinnati referred

affirmative action programs.

Having visited South Africa both before and after the end of apartheid, Tigar said he knows firsthand what can happen when one racial group occupies all the positions of authority and excludes all others from any meaningful participation in society: People lose confidence in the rule of law.

And what is happening now in the United States, he suggested,



Judge Nathaniel Jones (left) and law school Professor Michael Tigar lament what they see as a trend toward resegregation by way of a backlash against affirmative action.

to Justice John Marshall Harlan's dissenting opinion in *Plessy* in which he wrote that "justice is colorblind." Harlan's phrase is "now being used by those attempting to turn the 14th Amendment on its head," Jones lamented.

Also lambasting the courts was University of Texas law school Professor Michael Tigar, who is on leave from his job while he defends Terry Nichols, a co-defendant in the bombing of the federal building in Oklahoma City.

What is happening, he said, is that the federal appeals courts, following the lead of the U.S. Supreme Court, have embarked on a course of action that threatens the notion of a multiracial democracy. They have done so, Tigar suggested, through a series of decisions applying the strict scrutiny standard to

should be raising those same concerns. The country is witnessing resegregation, he said, without ever having achieved the goal of a completely desegregated society.

Dalton A. Roberson, chief judge of the Detroit Recorder's Court, referred to the report by the Kerner Commission in 1967, in the wake of widespread social unrest. "The conclusion was that people took to the streets because they had lost faith in the justice system," he said. "I'm here to tell you that it's coming back to that."

Cochran put it more forcefully. "Our society is a tinderbox," he said. "Living in Los Angeles, it's frightening to see how [unrest is] always triggered by a criminal justice issue."

In an interview that coincided with the meeting, Professor David