A Unique Perspective on Civil Rights: Hon. Arthur L. Burnett Sr., The First African-American U.S. Magistrate Judge

In light of the 50th anniversary of the Civil Rights Act of 1964 and the subsequent impact it has had on every aspect of society, including the workplace, we were fortunate to discuss civil rights with the Hon. Arthur L. Burnett Sr. In addition to being the first African-American U.S. magistrate judge, he has served in a number of leadership roles in the Federal Bar Association (FBA) over the years, including president of the District of Columbia Chapter. He is also a recipient of several national FBA awards.

Judge Burnett has a unique perspective due to his involvement with civil rights in multiple ways throughout the course of his career. On Oct. 20, 2013, he celebrated his 55th anniversary as a member of the Bar of the District of Columbia (the D.C. Bar). The vote to desegregate the Bar Association of the District of Columbia occurred on Oct. 14, 1958, and less than a week later, Judge Burnett was one of two members of color admitted, thereby officially desegregating the volunteer bar, which had up until that point been limited to Caucasians. While African-Americans could be admitted to the Bar of the District of Columbia as lawyers, they had not, up to that point, been permitted to join the volunteer Bar Association of the District of Columbia, which was a separate organization from being admitted to practice law before the courts.

In the fall of 1952, Judge Burnett began his college education at Howard University. He became Howard’s spokesperson to advocate for desegregation on the Adam Clayton Powell radio program, and it became his focus.

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Judge Burnett's junior year at Howard University was a pivotal point in his life. In October 1954, the university vice president called him to the office for what he thought involved his role as a student leader. Instead of a discussion about his activities at Howard or continuing on to Howard's law school as he had planned, he was asked to become the lead plaintiff in the Prince Edward and Farmville School cases in the Commonwealth of Virginia. Essentially, he was asked to apply to the University of Virginia and the other law schools in the top 10 in the nation, which would admit a student with an outstanding academic record, as he had, after completion of the junior year in college. Judge Burnett was told, "It may mean you will face death. The KKK is threatening to kill any Negro kid or colored kid who would dare attempt to desegregate the schools in Virginia." This brought new meaning to the phrase, "talk the talk and walk the walk." In November 1954, he went home and told his parents that he was not going to Howard Law School but had agreed to become involved in the Brown case.

Judge Burnett applied to Columbia, New York University, Syracuse University, Boston University, and the University of Virginia. The first four law schools admitted him based solely on his application papers and did not even ask him to come for an interview. The University of Virginia, however, was a different story. He was introduced to Thurgood Marshall, then chief counsel to the National Association for the Advancement of Colored People (NAACP) and later associate justice of the U.S. Supreme Court, who said the NAACP would do everything it could to protect his life. Organization representatives told him that they had talked with the U.S. attorney general, and he had agreed to assign two deputy marshals to Judge Burnett to protect him from any harm once the case went public. His case was ultimately settled as a result of then Gov. Orval Faubus (D-AR) ordering the force of eight or nine people to see if Lee Harvey Oswald was a threat on the day that President Kennedy was assassinated. He projected the message, "Persons should be judged by their abilities and the quality of their performance" during the year before the decision in Brown v. Board of Education came down on May 17, 1954.

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was the spokesperson for the Attorney General's Office in communications with the U.S. Attorney, the Secret Service, and the FBI in Dallas. He later had to tell Bobby Kennedy early in the morning of the next day that the task force could find no information or evidence that Oswald had acted with the assistance of others in any kind of conspiracy, which would have given the federal government a basis for jurisdiction and to remove him from the custody of the Texas authorities. Subsequently, early the next day, Jack Ruby got into the jail compound and killed Oswald.

Following the assassination of King in April 1968, the mayor of the District of Columbia and the chief of police decided to hire an attorney as the legal adviser of the Metropolitan Police Department. Judge Burnett applied for that position and was appointed the department's first in-house lawyer. He developed general orders for the police to prevent police brutality and civil rights violations and to assure compliance with the constitutional decisions of the U.S. Supreme Court as to arrest, search and seizure, interrogation, and lineup procedures. That position was subsequently redesignated general counsel, with Judge Burnett serving as the first for several months in 1968 and 1969.

He had contemplated serving three to five years before moving on to another assignment, but in December 1968, Congress passed the Federal Magistrates' Act, and Burnett was urged to apply for one of the two positions being created. He ended up being assigned to the U.S. District Court for the District of Columbia. This court was one of the five pilot federal district courts to establish the federal magistrate's system to replace the old U.S. commissioner system and establish a system of federal intake judicial officers, or as some would say, "misdemeanor judges," and deputy federal judges operating in a broad range of judicial matters as assistants to the federal judges in pretrial civil and criminal cases.

On June 26, 1969, Judge Burnett became the first African-American U.S. magistrate judge in the history of the nation. He served in that position until December 1975, when he left to become the legal adviser in the general counsel's office of the former U.S. Civil Service System and later, detail legislative counsel to President Jimmy Carter on all personnel laws in the executive branch of the federal government. This involved serving as the principal lawyer in the drafting and obtaining the enactment of the Civil Service Reform Legislation in 1978, creating the Merit Systems Protection Board, the Federal Labor Relations Authority, and the Office of Special Counsel, and defining the powers and authority of the Office of Personnel Management. He also helped to create and set up the Senior Executive Service. In January 1980, he was appointed for the second time as U.S. magistrate judge in the U.S. District Court for the District of Columbia, where he served until he was appointed by President Ronald Reagan to be an associate judge of the Superior Court of the District of Columbia in November 1987. Judge Burnett served as an associate judge until October 1998 and thereafter on almost a daily basis as a senior judge until Aug. 1, 2004. The Civil Rights Act of 1964 reflected the power structure of the political system and set the tone for the acceptance of minorities in society. Judge Burnett's appointment reflected the legitimacy of the Civil Rights Act—it was a means of setting public policy and changing the attitudes of Americans.

"Life oftentimes leads us down paths that we wouldn't think of coming to," he says. While serving as a U.S. magistrate judge, Judge Burnett was pulled into another historically significant event. When he was assigned as deputy judge to handle then Chief Judge John Sirica's entire regular calendar, he assisted in the Watergate matter and the related Nixon impeachment issues. In essence, he was an understudy to Chief Judge John Sirica during this time. He later became chair of the magistrate's judicial educational program and the legislative committee and served as president of the National Council of Magistrate Judges.

He had a pioneering role in several areas during his time as U.S. magistrate judge, including search and seizure warrants, the scope and right of defense counsel to present evidence to negate probable cause at a preliminary hearing defense, such as evidence of mistaken identity or consent in a rape case or self-defense in a homicide case. See Coleman v. Burnett, 477 F.2d 1187 (D.C. Cir. 1973). There are very few cases today that get to the court of appeals because of the standards Judge Burnett set. Some of these included the information required to be included in an affidavit for an arrest or search warrant, the content and nature of preliminary hearings to refer a case to a federal grand jury, and what bail conditions should exist while the grand jury considers a case as to whether it warrants an indictment and bringing a defendant to trial.

There are two notable instances where he directly addressed the Civil Rights Act from the bench. In the U.S. District Court, during his second term, most of the equal employment opportunity cases were referred to him. He was also one of the first judges to preside in the superior court at a trial involving Title IX dealing with discrimination in sports events. Here, the coach of the women's basketball team earned a salary of less than 70 percent than her male counterpart at Howard University. The jury awarded a several-million-dollar verdict. Another case involved the World Bank and sexual harassment in relation to contract employees. Judge Burnett has more than 40 reported decisions dealing with civil rights–related issues and is the author of the Civil Service Reform Act of 1978 (Pub. L. 95-454 (Oct. 13, 1978)). Its final form reflects the draft bill he authored.

On Aug. 1, 2004, Judge Burnett went on sabbatical to serve as the national executive director of the National
African-American Drug Policy Coalition, an umbrella nonprofit of 26 member organizations that have come together to remove all remaining vestiges of unlawful discrimination in the public sector. On Feb. 15, 2013, Judge Burnett completely retired from the bench and now devotes himself exclusively to being the chief executive officer and national spokesperson for the coalition.

In light of the rich history of civil rights—as expressed in the Civil Rights Act of 1964 and the Civil Service Reform Act of 1978—and Judge Burnett’s involvement in so many aspects of these pivotal laws over the years, he continues to use his vast knowledge and experience to promote the advancement of equality in America. April 1, 2014, marks the 10th anniversary of the National African-American Drug Policy Coalition representing more than a million African-American professionals and those aspiring to attend National Historically Black Colleges and Universities. “The organization is structured much like the United Nations or the United States,” says Judge Burnett, who is now the coalition’s vice president of administration and national executive director. “It is a coalition of 26 organizations dealing with reforms needed in health care matters and in the criminal and juvenile justice systems.” His mission is to carry on the vision of Thurgood Marshall and Dr. Martin Luther King, Jr., to eliminate disparate treatment and unlawful discrimination under the Equal Protection Clause and Due Process Clauses of the U.S. Constitution. In particular, the organization is assisting African-Americans and other minority youth through a prevention program related to drug abuse, juvenile delinquent behavior, and conduct, which in fact would eliminate race-based discrimination in this area and reduce drastically the mass incarceration of minority individuals throughout the United States.

The design of the program builds upon former first lady Nancy Reagan’s “Just Say No” drug awareness campaign to combat substance abuse but goes far beyond to include an affirmative program of building self-esteem in minority youth and motivating them to excel in academic achievement to the same extent they endeavor to excel in sports and entertainment. It emphasizes self-determination and self-affirmative action, which Justice Sandra Day O’Connor has talked about for 25 years. Minority leaders in a multitude of professions are involved through educating and mentoring youth who are at risk. More information about Judge Burnett’s work with the coalition can be found on its website at www.naadpc.org.

The Federal Lawyer is looking to recruit current law clerks, former law clerks, and other attorneys who would be interested in writing a judicial profile of a federal judicial officer in your jurisdiction. A judicial profile is approximately 1,500–2,000 words and is usually accompanied by a formal portrait and, when possible, personal photographs of the judge. Judicial profiles do not follow a standard formula, but each profile usually addresses personal topics such as the judge’s reasons for becoming a lawyer, his/her commitment to justice, how he/she has mentored lawyers and law clerks, etc. If you are interested in writing a judicial profile, we would like to hear from you. Please send an e-mail to Sarah Perlman, managing editor, at sperlman@fedbar.org.