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Lena Olive Smith: A Minnesota Civil Rights Pioneer

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Lena Olive Smith: A Minnesota Civil Rights Pioneer

Abstract

Lena Olive Smith and the National Association for the Advancement of Colored People (NAACP) created a spirited partnership in the public interest during the 1920s and 1930s. Throughout their long collaboration, this woman lawyer, her clients, and the Minneapolis branch of a national grassroots organization faced similar challenges: to stay solvent, to end segregation and increase equality, and to live with dignity. This article is divided into four sections. The first three roughly correspond with stages in Smith's life and work. Part II briefly chronicles Smith's first thirty six years, 1885 to 1921, as a single African-American woman in the north searching for meaningful and remunerative work. It sketches the formation of the NAACP and the legal and social context that framed Smith's life and the civil rights struggles that followed. Part III covers 1921 to 1926, from the time Smith became licensed to practice law to the year she developed as a leader in the Minneapolis NAACP. Part IV focuses on five events during Smith's leadership of the Minneapolis NAACP. In the conclusion, the article outlines a few simple lessons for today's lawyers and those working for social justice.

Keywords

Lena Olive Smith, NAACP, Minnesota lawyers, African-American lawyers, women lawyers, social justice, race and the law, civil rights

Disciplines

Civil Rights and Discrimination | Human Rights Law | Law and Gender | Law and Society | Legal History | Social Welfare Law

**LENA OLIVE SMITH:
A MINNESOTA CIVIL RIGHTS PIONEER**

Ann Juergens[†]

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I. INTRODUCTION

Lena Olive Smith and the National Association for the Advancement of Colored People (NAACP) created a spirited partnership in the public interest during the 1920s and 1930s. Throughout their long collaboration, this woman lawyer, her clients, and the Minneapolis branch of a national grassroots organization faced similar challenges: to stay solvent, to end segregation and increase equality, and to live with dignity.

Lena Smith became a lawyer in 1921, the first African-American¹ woman licensed to practice in the state of Minnesota.² Smith, who commanded great respect, devoted a good portion of her practice to civil rights matters and was considered militant and eccentric in her time. Women lawyers were rare—as few as a dozen white women before Smith had gained law licenses in Minnesota.³ She was the lone black woman to practice law in Minnesota until after 1945 and was among the first dozen African-American women lawyers in the country.⁴

The NAACP is an organization that changed American history by giving a voice to people who had been silenced for generations.

1. This article will use the terms African-American, black, and white while understanding that race is a historically contingent and socially constructed concept. The nature of race is not the primary focus of this article, yet my hope is that we can better understand its meaning by telling how the concept has been used and misused in our past.

2. J. CLAY SMITH, *EMANCIPATION: THE MAKING OF THE BLACK LAWYER 1844-1945*, 464 and 612 (1993).

3. Jean J. McVeety, *Distaff Centenary*, *HENNEPIN LAW.*, May 1969, at 44, 45-47. See also Thomas A. Woxland, *In re Dorsett: Opening the Minnesota Bar to Women*, *BENCH & BAR OF MINN.*, Nov. 1990, at 16, 16-20 (discussing early white female lawyers and their attempts to practice law). Verification of Lena Smith's status as one of the earliest women lawyers in Minnesota by searching the Minnesota Supreme Court's own bar admission records was beyond the capacity of this researcher, as it involved reading hundreds of cards, many of which use only initials for the first names of the admittees.

4. SMITH, *supra* note 2, at 464, 612.

The Minneapolis chapter was formed in 1914, and, like its sister chapters across the nation, accomplished that change with the support of hundreds of ordinary citizens and the work of activists like Smith.

Smith's life and work with the NAACP are a lens through which we can view the ways that lawyers and community organizations worked for change when written law was silent, was not enforced, or was directly counter to the desired change. This glimpse also reveals a northern state's social and legal culture during the 1920s and 1930s. The tale does not revolve around impact litigation and constitutional arguments in the appellate courts of the state and federal government. Rather, this article tells of a woman who took her cues from the racial injustices she saw around her, and from clients' and community leaders' requests. She adroitly gained entrance to the halls where decisions were made and presented her constituents' causes to those with the direct means to change the unfair policies—chiefs of police, unruly crowds of demonstrators, the governor, mayors, the Minneapolis City Council, the Regents of the University of Minnesota, hotel managers, theater, and restaurant owners. Smith used the power of the press as well. These strategies were chosen because recourse to the courts was expensive and often unlikely to succeed, and because the press was powerful, efficient, and designed to educate the public as well as the mandarins of the judiciary. Smith aimed to affect public attitudes, language, and political behavior more than to change legal doctrine itself.

The locus of action for Smith and the NAACP was at the disjunction between law on the books—reflecting the ideal of equal opportunity for all people—and practice in the real world. In Minnesota, as in other northern states, there was a real chasm between the ideal and real, and Smith searched for ways to expose and bridge that gap. Smith and the local NAACP were not unique; across the nation people were battling inequality.

Yet the situation in the north differed from that in the south. The national NAACP office focused on the south and spent the bulk of its meager resources on assaulting state-ordered segregation.⁵ Strategies to end northern-style informal segregation and discrimination referred to national models, but those strategies

5. See MARK V. TUSHNET, *THE NAACP'S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION, 1925-1950* (1987) (discussing the planning of the national litigation strategy against segregation).

had to be adapted to local conditions if they were to succeed. Smith was a key actor in the development of civil rights strategies in Minnesota.

This article is divided into four sections. The first three roughly correspond with stages in Smith's life and work. Part II briefly chronicles Smith's first thirty six years, 1885 to 1921, as a single African-American woman in the north searching for meaningful and remunerative work. It sketches the formation of the NAACP and the legal and social context that framed Smith's life and the civil rights struggles that followed. Part III covers 1921 to 1926, from the time Smith became licensed to practice law to the year she developed as a leader in the Minneapolis NAACP.

Part IV focuses on five events during Smith's leadership of the Minneapolis NAACP: (1) an early case of state-sponsored discrimination in education, resolved through multi-party negotiation and the help of the legislature; (2) a fight to stanch hate speech, that is, to prevent the showing of 'Birth of a Nation', a popular movie rife with racial stereotypes; (3) a challenge to housing segregation, where Smith's clients, Arthur and Edith Lee, stood their ground in a white neighborhood in the face of a frightening siege; (4) a lawsuit for equal treatment in public places, an area where state statute forbade discrimination but the courts dragged their feet; and (5) efforts to hold the criminal justice system accountable for its racism by raising the issue in criminal defense arguments, by leading the local rally to free the Scottsboro Boys, and by taking the offensive against the police for brutality and disrespect toward African-Americans.

The civil rights stories written here are the tip of the iceberg—many more remain to be retold. Those chosen are representative of this northern state's struggle during the decades before the national Civil Rights Movement, before the passage of the Civil Rights Act and before any involvement of the federal government on the side of those opposing segregation.⁶

In the conclusion, the article outlines a few simple lessons for today's lawyers and those working for social justice. A solo practitioner, Smith earned her bread and butter with day-to-day issues for working and professional people, handling divorces, real

6. See MARY FRANCES BERRY, *BLACK RESISTANCE WHITE LAW: A HISTORY OF CONSTITUTIONAL RACISM IN AMERICA* (1994) (detailing the author's compelling historical study of the involvement of the federal government in the furtherance of discrimination against black people).

estate, probate, and criminal defense matters. She lived and died among those clients, and they supported her work for justice on behalf of those with fewer resources. Smith always collaborated with others on civil rights issues, whether individual actors or groups. Her affiliation with the NAACP, in particular, magnified her effectiveness. It gave her direct access to a national movement, reminded her of the larger issues embedded in her clients' problems, and kept her in touch with the art of compromise. Tapping the strength of the group at times also meant that Smith's clients had to agree that their individual needs would be subject to the needs of the larger group and to the overarching goal of ending segregation.⁷

It is sometimes difficult to extricate Smith's individual actions from those of the NAACP as an entity. The historical record does not always reveal which NAACP leaders met with a mayor or negotiated with business owners. This sometimes frustrating fact serves to highlight another reality—that the work of the individual Lena Smith and the work of the Minnesota NAACP branches are of one piece, important for many of the same reasons. Together they provide a window on lives eloquent and distinguished in their defiance, on the nature of racism and exclusion in a northern state, on methods used to foster inclusion and fight for social justice.

II. SEARCHING FOR A MEANS TO MAKE AN INDEPENDENT LIVING IN AN INCREASINGLY SEGREGATED SOCIETY

A. *"She Could Do Everything:"⁸ Smith's First 31 years, the NAACP's First Two Years (1885-1916)*

Lena Smith was thirty-five years old when she was licensed to practice law in 1921.⁹ She tried at least five professions before

7. The ethical question of whether individual clients' wishes were sometimes subordinated to leaders' and lawyers' ideas of the public interest is open to further examination. That issue is examined elsewhere, particularly in Derrick A. Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L. J. 470 (1976) and Susan D. Carle, *Re-Envisioning Models for Pro Bono Lawyering: Some Historical Reflections*, 9 AM. U. J. GENDER SOC. POL'Y & L. 81 (2001).

8. Telephone Interview with J. Melva Brown, Widow of Lena Smith's nephew (Mar. 7, 1997).

9. Kansas State Board of Health, Delayed Certificate of Birth of Lena Olive Smith (born Aug. 13, 1885), No. 63 04496 (Aug. 1, 1963). Smith was sworn in to the Minnesota bar on June 16, 1921. *The Doings In and About the Great "Flour City,"*

settling on the law. Few of her direct words are available today,¹⁰ but Smith's early years speak clearly of her creative and intrepid spirit.

Born in 1885 and schooled in Lawrence, Kansas, in 1905 Smith journeyed with her father to the town of Buxton, Iowa to find work, leaving her mother and four younger siblings behind. Buxton was unusual for Iowa in that fifty five percent of its almost 5000 residents were black and enjoyed almost as many advantages as its white citizens.¹¹ It was a coal mining town, and Smith found a job at the coal company store while her father worked in his trade as a printer.¹² Gaining work at a department store was unusual for African-Americans at the time, as employment discrimination was commonplace¹³ and, though some asserted it was forbidden by the Constitution, it was not yet prohibited by statute or court interpretation of the Constitution.

When her father died of heart failure in Buxton in 1906,¹⁴ Smith moved to Minneapolis with her mother, three younger brothers, and young sister, whose ages ranged from four to fourteen years. Having just turned twenty-one, the only adult child at home, Smith had a lot of responsibility for the family. Yet she played the piano and studied elocution and drama in Minneapolis with Blanche Booth, niece of the famous actor Edwin Booth, then began working as a "dramatic reader" on the Chautauqua.¹⁵

Within a short time, Smith was also working as a

APPEAL, June 18, 1921, at 4.

10. There are only three appellate cases where Smith's briefs could be read: *State v. Brown*, 209 Minn. 478, 479, 296 N.W. 582, 583 (1941); *State v. Turner*, 196 Minn. 176, 176, 264 N.W. 681, 681 (1936); *In re Smith*, 183 Minn. 220, 220, 236 N.W. 324, 324 (1931). Her office papers were lost after her death in 1966. Few personal letters survive, but she wrote handfuls of business letters to the national office of the NAACP.

11. DOROTHY SCHWIEDER ET AL., *BUXTON: WORK AND RACIAL EQUALITY IN A COAL MINING COMMUNITY* 148 (1987).

12. Telephone Interview with J. Melva Brown, Widow of Lena Smith's nephew (Mar. 13, 1997); *see also* photograph inscribed "Lena O. Smith (with staff of clerks of Co. Store in Buxton, Iowa)" (copy on file with author and Educ. Dep't, Minn. Historical Soc'y) (confirming her employment at company store).

13. EARL SPANGLER, *THE NEGRO IN MINNESOTA* 90-92 (1961); *see also* Interview with Barbara Cyrus, Newspaper columnist, Retired, in Minneapolis, Minn. (Nov. 19, 1996).

14. Monroe County, Iowa, Death Index (1906) (showing that John H. Smith, born in 1850, died Aug. 21, 1906, at age fifty six of "mitral stenosis") (on file with Iowa State Historical Soc'y).

15. *A Minnesota "Portia,"* TIMELY DIGEST, June 1931, at 11.

“dermatologist” out of her home.¹⁶ Next, she attended the Barnes School of Sanitary Science and Embalming in Minneapolis. She was the only woman and appears to be the only person of color in her graduating class in 1910.¹⁷ Smith likely saw an opportunity there to build a business for herself,¹⁸ but she did not succeed at it: there is no record of her ever having worked primarily as an undertaker or embalmer.¹⁹

By mid-1910, Smith had switched to hairdressing, and was commuting to a job downtown rather than working from home.²⁰ Her mother and brothers worked too. Smith’s mother, Geneva, did “general day work” which likely meant that she took in laundry or worked as a domestic.²¹ Barred formally or informally from most other jobs, a vast majority of employed African-American women worked in the “unskilled” service trades in Minnesota at the time.²² African-American men were also excluded from many jobs other than porter, cook, barber, waiter, and janitor.²³ Smith’s four brothers were literate, but none was self-employed or became a professional, as did their eldest sister. The youngest child, Frances, who went to school and then married, was the only Smith sibling to do so. She earned a law degree, but took the more traditional route of the time for a young woman with a well-employed husband—she raised children and worked long hours as a

16. *Minneapolis City Directory*, Residential section, at 1449 (1908). Smith’s residence and business address were listed as 3710 Chicago Avenue with her mother and several siblings. *Id.*

17. Photograph (Jan. 1910) (copy on file with author and Educ. Dep’t of Minn. Historical Soc’y) (confirming her attendance at the school).

18. Undertaking was a trade where black men could count on the business of black families, as those families almost always sought out black-owned funeral services. Angelo B. Henderson, *Death Watch? Black Funeral Homes Fear a Gloomy Future as Big Chains Move In*, WALL ST. J., July 18, 1997, at A1.

19. Telephone Interview with J. Melva Brown, *supra* note 12. Many undertakers at the time advertised that a “lady assistant” was available for those who preferred that a woman handle their loved one’s (female) body. *See, e.g., Undertaking Firm Changes Hands*, TWIN CITY STAR, July 13, 1912, at 2 (noting “Lady assistant if desired”). Preparing bodies for burial may have been a source of part time work for Smith, as it would have utilized her skills as a “dermatologist” and, shortly later, as a hairdresser.

20. *Minneapolis City Directory*, Residential section, at 1601 (1910); *see also Minneapolis City Directory*, Bus. section, at 1597 (1910).

21. DEP’T OF COMMERCE AND LABOR, THE BUREAU OF THE CENSUS-THIRTEENTH CENSUS, Sheet No. 16A (Apr. 29, 1910).

22. SPANGLER, *supra* note 13, at 56.

23. David Vassar Taylor, *The Blacks, in THEY CHOSE MINNESOTA: A SURVEY OF THE STATE’S ETHNIC GROUPS* 73, 78 (June Drenning Holmquist ed., 1981).

volunteer, particularly on civil rights issues.²⁴

Lena, the second child and eldest daughter, was the entrepreneur of the family. In 1913, she opened her own hairdressing salon, Olive Hair Store,²⁵ with a white woman partner.²⁶ As a hairdresser she was practicing one of the few occupations where a black person could gain customers outside of the African-American community. In towns with relatively small black populations (Minneapolis had 2592 black residents out of 301,408 in 1910),²⁷ this meant that hairdressing was one of the few ways an African-American woman could hope to earn decent money working for herself. Smith aimed her store primarily at the white trade, rented a storefront downtown on Nicollet Avenue, and advertised in the main (white) newspapers and in Metropolitan Opera programs.²⁸ She and her partner outfitted it in high style, with velour curtains and drapes, ostrich shades, velvet carpet, mahogany furniture, six manicure stations, two massage couches, one hair cutting chair, and three hair dressing stations.²⁹

Smith reached too far. By December 1913, the Olive Hair Store was behind on the rent and the landlord went to court to evict her.³⁰ This triggered Smith's bankruptcy in early 1914.³¹ The declaration of inability to repay debts, most owed to family members and friends, must have been a difficult step. Her partner began listing herself in the City Directory using her middle name

24. Frances Smith Brown graduated from Minnesota College of Law—another predecessor school of William Mitchell College of Law—in 1928. William Mitchell College of Law and Its Predecessor Colleges, 1928 Graduate List (on file with Alumni Relations Office, William Mitchell College of Law). She married a third generation black physician, W.D. Brown, Jr., also prominent in the Twin Cities' community.

25. *Minneapolis City Directory*, Bus. section, at 2131 (1913).

26. DEP'T OF COMMERCE AND LABOR, THE BUREAU OF THE CENSUS-FOURTEENTH CENSUS, Sheet No. 2A (Jan. 3, 1920) (designating Beulah B. Gesser's race).

27. See Taylor, *supra* note 23, at 81; DEP'T OF COMMERCE AND LABOR, THE BUREAU OF THE CENSUS-THIRTEENTH CENSUS, Population Reports by States, at 970 (1910).

28. Untitled note, MINN. MESSENGER, July 29, 1922, at 1 (noting Lena O. Smith "conducted one of the leading white hairdressing parlors").

29. *In re Smith & Gesser*, co-partners of the Olive Co., and individually (Bank. D. Minn. Mar. 6, 1914) (Sched. B-2) (enumerating partnership assets).

30. Metzger, et. al. v. L.O. Smith, et al., Henn. Co. Municipal Ct. (filed December 1913); see also *In re Smith & Gesser*, co-partners of the Olive Co., and individually (Bank. D. Minn. Mar. 6, 1914) (Sched. A-3) (noting \$1,326.08 owed to Metzger, Adelsheim, Louis, & Moses as unpaid rent).

31. *In re Smith & Gesser*, co-partners of the Olive Co., and individually (Bank. D. Minn. Mar. 6, 1914).

instead of her first name.³² Smith and her family moved to another rented house in south Minneapolis and disappeared from the City Directory for a year.³³

As Smith sorted out her financial future, Minnesota continued to sort through competing visions of the relations between the races. Fear of integration percolated to the surface as African-Americans migrated from rural south to cities and the north. Minneapolis' black population increased by 51.5% from 1910 to 1920, from 2592 to 3927.³⁴ (The population of the city as a whole increased from 301,408 to 380,582.)³⁵ The incidence of lynching and physical intimidation of blacks by whites around the nation swelled, especially in the south.³⁶ Although physical racial violence in Minnesota was not widely reported, it was not unknown. Actions that kept African-Americans on the economic margins were prevalent.

The festering contradiction in Minnesota was that a few egalitarian legal rules and aspirations masked racist social practices. The law had prohibited enslavement of Minnesota citizens, but not others, from the time the state had a constitution.³⁷ The few laws requiring segregation mostly were repealed during Reconstruction: an ordinance requiring St. Paul school segregation was repealed in 1869; African-American men were given the vote in 1868. A rule requiring segregated boxing that was promulgated in 1915 was

32. *Minneapolis City Directory*, Residential section, at 787 (1916).

33. *Minneapolis City Directory*, Residential section, at 1865 (1915).

34. See Taylor, *supra* note 23, at 81.

35. DEP'T OF COMMERCE AND LABOR, THE BUREAU OF THE CENSUS-THIRTEENTH CENSUS, Sheet No. 16A (1910); DEP'T OF COMMERCE AND LABOR, THE BUREAU OF THE CENSUS-FOURTEENTH CENSUS, Sheet No. 2A (Jan. 3, 1920).

36. WALTER WHITE, *ROPE AND FAGGOT*, 230-33 (1929); SEAN CASHMAN, *AFRICAN-AMERICANS AND THE QUEST FOR CIVIL RIGHTS, 1900-1990*, 34 (1991) (stating that over 1,000 African-Americans were lynched between 1900 and 1915).

37. MINN. CONST. art. I, § 2.

No member of this State shall be disenfranchised, or deprived of any of the rights and privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers. There shall be neither slavery nor involuntary servitude in the State otherwise than the punishment of crime, whereof the party shall have been duly convicted.

Id. This guarantee was interpreted to apply only to citizens of the state, to accommodate vacation and business visitors from the South with their slaves and slave-holding Army officers stationed at Fort Snelling. Kevin Golden, *The Independent Development of Civil Rights in Minnesota: 1849-1910*, 17 WM. MITCHELL L. REV. 449, 451 (1991).

repealed in 1923.³⁸

Yet Alexis de Tocqueville, visiting the United States in the 1830s, observed “Race prejudice appears to be stronger in the states that have abolished slavery than in those where it still exists, and nowhere is it so intolerant than in those states where servitude has never been known.”³⁹ In the South racial segregation was both written into the law, the so-called Jim Crow laws, and practiced. In Minnesota and other northern states, in contrast, it was against the law to discriminate in public accommodations,⁴⁰ yet discrimination quietly flourished.⁴¹

It is in this context that the real boldness of Smith’s business ventures can be understood. At the time she was operating the Olive Hair Store, pressure was building for greater segregation—in housing, jobs, and schools. Organizations of African-Americans that had been working against discrimination became more active in response to this pressure. The strategy of accommodation of

38. See SPANGLER, *supra* note 13, at 104. A regulation of the Minnesota Boxing Commission forbid mixed race matches. The regulation was promulgated in 1915 and repealed by the commission in 1923 after it was sued. *Id. Cf. Minnesota Boxing Commission Is Served with Injunction*, MINN. MESSENGER, Mar. 17, 1923, at 1 (describing black community activism for repeal).

39. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 359 (Henry Reeves trans., 1966).

40. The Equal Accommodations Act, ch. 224, 1885 Minn. Gen. Laws 295, Ch. 41, §1 (currently codified in MINN. STAT. § 363.12 (2000)). As of 1950, only 18 states prohibited discrimination in public accommodations. PAULI MURRAY, *STATES’ LAWS ON RACE AND COLOR* 8 (1997).

41. Despite the Equal Accommodations Act, famous African-Americans such as Marian Anderson and Jack Johnson could not find hotels that would accept them when they came to Minneapolis and most fine restaurants would not serve them in front of the public. Randy Furst, *Local Chapters Did Their Part to Move Civil Rights Forward*, MINNEAPOLIS STAR TRIB., July 8, 1995, at A1; *Jack Johnson to Sue Hotel*, TWIN CITY HERALD, Dec. 30, 1939, at 1; see also Taylor, *supra* note 23, at 83. Perhaps the smaller black population and ideals articulated during the fight for the abolition of slavery led citizens of the North to construct legal rules that they had little experience in living. C. Vann Woodward, the historian of the South, argued that racial segregation was in fact a practice that originated largely in the North and spread to the South only after Reconstruction. C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* 17-21 (2d ed. 1966). Rules evolved in non-slave states to confine and control “free” African-Americans that were not contemplated in states where the majority of the African-American population was enslaved. *Id.* Scholars have revised Woodward’s arguments by documenting widespread segregation in the south from before the Civil War. His insights about great separation of the races in the North are still important. *Cf.* Howard N. Rabinowitz, *From Exclusion to Segregation: Southern Race Relations, 1865-1890*, in *THE AGE OF JIM CROW: SEGREGATION FROM THE END OF RECONSTRUCTION TO THE GREAT DEPRESSION* 351 (Paul Finkelman ed., 1992).

segregation, long espoused by Booker T. Washington, fell into disfavor, and many African-Americans in Minnesota and elsewhere began turning to dignified activism.⁴²

In 1913, a branch of the NAACP was formed in St. Paul, and a year later the Minneapolis branch was chartered. By 1914, there were branches of the NAACP in fifty cities around the nation.⁴³ Their mission was “[t]he advancement of the colored people . . . to lesson race discrimination and to secure full civil, political and legal rights to colored citizens and others.”⁴⁴

That mission was soon implemented. In 1913, the Minnesota legislature considered a proposal to make it a misdemeanor for white and black persons to marry. “Negro” was defined as any person with one-eighth or more African blood. The bill was defeated only after a committee of NAACP leaders protested to legislators.⁴⁵ The next year the NAACP used “quiet persuasion” to convince a private library and business college to reverse their decisions to exclude African-Americans.⁴⁶

Apparently businesses and government were susceptible to behind the scenes pressure by both white and black community leaders. It was a strategy that was used repeatedly by the NAACP in Minnesota. One advantage to it was that influential white allies who avoided public association with the NAACP would help more often if the conversations were held behind closed doors.⁴⁷

42. See David V. Taylor, *John Quincy Adams, St. Paul Editor and Black Leader*, 43 MINN. HISTORY 283 (1973) (recounting the role of black Minnesotans in the birth of the Niagara Movement and the NAACP).

43. See Harry A. Ploski & James Williams, *THE NEGRO ALMANAC: A REFERENCE WORK ON THE AFRICAN AMERICAN* 260 (5th ed. 1989). The NAACP was formed on Abraham Lincoln’s birthday in February 1909 to fight racial exclusion and segregation. *Id.*

44. MINNEAPOLIS NAACP CONST. (adopted Feb. 3, 1914). Library of Congress, Records of the NAACP, Container I.G-104 [hereinafter NAACP records]. This paper draws extensively on NAACP National Office records in the collection of the Library of Congress, Manuscript Division. The author has retained copies of those documents referred to in this paper. Though the bulk of the NAACP archive is available on microfilm, those NAACP records that deal with Minnesota are not.

45. SPANGLER, *supra* note 13, at 92.

46. Letter from Mrs. Lillian A. Turner, Secretary, St. Paul NAACP to Miss M.C. Nerney, NAACP National Office (Feb. 1, 1915) (giving the annual report of the St. Paul Branch NAACP for 1914) (NAACP records, I. G-104).

47. Letter from Mrs. Lillian A. Turner, Secretary, St. Paul NAACP, to Miss M.C. Nerney, NAACP National Office (Oct. 21, 1914) (NAACP records, I.G-104). It is indicative of the deep conflict that some white people felt about the subordination of black people that many of those who used their influence to stop

After closing the hair salon, the feisty Smith decided upon a profession that had been virtually barred to her race and to her gender—she became a realtor. Once again she opened an office in downtown Minneapolis, on the 6th floor of the Plymouth Building, and turned to advertising to attract customers.⁴⁸ Smith's racial group was not the only characteristic that caused her to be treated as inferior by society: her gender resulted in segregation from many civic activities as well.⁴⁹ The rarity of women in this work was noted in a black newspaper, which wrote that Minneapolis was one of the few cities that "can boast of [having] a lady real estate dealer . . . in the person of Miss L. O. Smith."⁵⁰

In choosing to become a realtor Smith entered a profession filled with overt race prejudice. Many cities, including northern ones, were enacting laws requiring residential segregation as their African-American populations increased.⁵¹ The national office of the NAACP organized a challenge to this practice, this time going to the courts. The NAACP won *Buchanan v. Warley*⁵² in the United States Supreme Court in 1917, invalidating Louisville's residential segregation ordinance and securing its first major victory in litigation designed to have a national impact.⁵³

Entrenched racist practices are not magically ended by judicial decree, however, and the *Buchanan* case did not "settle the matter" of residential segregation as the NAACP had hoped.⁵⁴ Following

the worst discrimination did not want their actions to be made public.

48. *Minneapolis City Directory*, Residential section, at 1865 (1915). The 1915 Minneapolis City Directory proclaimed in large type: "Smith Lena O., Real Estate Rentals Investments." *Id.*

49. U.S. CONST. amend. XIX. Women did not yet have the right to vote when Smith became a realtor. That came in 1920, with the ratification of the 19th Amendment to the U.S. Constitution. *Id.* Thus Smith was enfranchised when she was thirty-five years old. Her three younger brothers were allowed to vote for years before she could do so.

50. *The Doings In and About the Great "Flour City,"* APPEAL, July 17, 1920, at 4.

51. SEAN CASHMAN, *supra* note 36, at 22 (1991); WOODWARD, *supra* note 41, at 106-07. No segregation ordinances were enacted in Minnesota towns, though such an event was not considered impossible.

52. 245 U.S. 60, 60 (1917).

53. *Id.* at 72 (ruling that residential segregation ordinances violated the Constitution's fourteenth amendment because they allowed state acts to deprive people equal protection of the laws).

54. Letter from Roy Nash, Acting Secretary of NAACP, National Office, to Charlotte Gillard, Secretary, St. Paul NAACP (Apr. 13, 1916) (NAACP records, I.G-104). The national NAACP office had solicited funds from Minnesota's branches to finance the suit, arguing "[a]ny money which you may have for fighting segregation could probably be used to better advantage here than by sending it to

the decision, realtors and neighborhoods turned to private agreements to restrict the sale of property according to race and religion.⁵⁵ This was private action, not state action, and courts at the time upheld such contracts.⁵⁶

Minneapolis swayed with the winds of the *Buchanan* decision even though it had not enacted a segregation ordinance: restrictive covenants became widespread there as in the rest of the country.⁵⁷ This meant that black clients of Smith's realty business were severely restricted in the homes that they could buy. A populace seeking to avoid sales to African-Americans in most locations must have been conscious of the race of the saleswoman as well, no matter the race of her clients.

By 1919, restrictive covenants had become so pervasive in Minnesota that other groups began to chafe. A lawyer acting in concert with the Jewish Anti-Defamation League drafted legislation banning restrictive covenants that excluded people of a specified religious faith or creed.⁵⁸ The bill was passed by the legislature without any apparent discussion of including race or color in the prohibitions.⁵⁹ At the time, racial segregation in housing was seen as a matter of morality and common sense, even if it was sometimes unfair: the passage of a clause forbidding race discrimination simply must have seemed impossible.⁶⁰ It was not until 1953 that

the local branches. If we succeed in winning the fight before the United States Supreme Court, it will settle the matter for all of the other cities." *Id.*

55. CASHMAN, *supra* note 36, at 22.

56. *Corrigan v. Buckley*, 271 U.S. 323, 330 (1926) (deciding unanimously that restrictive covenants entered into by private individuals did not pose a constitutional question since they did not violate the 14th Amendment and thus were not subject to review by the Court). *Id.* It was not until 1948 that the Supreme Court signaled the end for restrictive covenants by deciding that states acted in discriminatory fashion when the covenants were enforced through the court system. *Shelley v. Kraemer*, 334 U.S. 1, 13-14 (1948). However, the Court also made clear that no constitutional guarantee was violated when these agreements were followed voluntarily. *Id.* at 4.

57. Taylor, *supra* note 23, at 81 (stating that "[b]y 1920 restrictive housing covenants . . . isolate Blacks of both cities"); see also SPANGLER, *supra* note 13, at 131-33, 138-45 (noting that purposeful segregation of Minnesota African-Americans in housing was persistent from 1890 to his writing).

58. W. Gunther Plaut, *THE JEWS IN MINNESOTA: THE FIRST SEVENTY-FIVE YEARS* 270 (1959) (describing lawyer Emanuel Cohen's work on the bill prohibiting religious discrimination in restrictive covenants).

59. 1919, ch. 188, 1919 Minn. Laws 191, 191-92 (currently codified as MINN. STAT. § 507.18 (2000)).

60. Twenty seven years later, in 1946, when asked in a Minnesota Poll "Should a Negro be allowed to move into any residential neighborhood where there is a vacancy?", sixty percent of white respondents stated that Negroes should *not* be

race discrimination in restrictive covenants was expressly forbidden in Minnesota.⁶¹

B. Law School, Lynchings & Lurking Segregation: 1916-1921

With barriers to members of her race in the housing real estate market and with sentiment in favor of residential segregation rising,⁶² Smith matriculated at Northwestern College of Law, a predecessor to William Mitchell College of Law, in the fall of 1916.⁶³ The law school was an independent, part-time school that held classes in the evenings on the seventh floor of the Plymouth Building in downtown Minneapolis. Smith had only to walk up one flight from her realtor's office to listen to lectures in Torts, Contracts, Historical Jurisprudence and other prescribed courses taught by practicing lawyers and judges. Three women joined her in the class of sixteen students.⁶⁴

Shortly after starting law school, Smith began to experiment with litigation designed to end segregation. In December 1916, she joined with four black men, entered a theater known for segregation and tried to sit in its white section. When refused admittance and offered the balcony instead, each person went individually to court seeking enforcement of Minnesota's law against discrimination in public accommodations.⁶⁵ Smith sued for the maximum damages available for violation of the statute, five hundred dollars, and added a claim for one thousand dollars for assault committed when the theater owner ejected her.⁶⁶ The Twin City Star, a black newspaper, hailed this "crusade for justice" and "test of endurance" and urged every African-American who was

allowed to do so. Spangler, *supra* note 13, at 132. Ten percent had no opinion and thirty percent answered that they should be able to move where they desire.

61. 1953, c. 480, § 1 (adding race and color to the prohibitions) (currently codified as MINN. STAT. § 507.18).

62. President Woodrow Wilson introduced segregation to federal government jobs in 1913, and steadfastly defended it as not discriminatory, only necessary "to avoid friction between the races." See *The Anti-Segregation Protest*, APPEAL, Nov. 14, 1914, at 2; *Screening Off Negroes*, APPEAL, Aug. 23, 1913, at 2; *Scores Segregation . . . Takes President Wilson to Task for His Administration's Injustice to Afro-Americans*, APPEAL, Jan. 3, 1914, at 2.

63. Lena O. Smith's Matriculation card, dated Sept. 13, 1916 (on file with author).

64. Class list, Northwestern College of Law 1921 graduates (copy on file with author and with Alumni Relations office, William Mitchell College of Law).

65. See *supra* note 40.

66. *Suit Against Pantages*, TWIN CITY STAR, Dec. 23, 1916, at 4.

denied rights to also go to court.⁶⁷ Smith went to trial that fall and lost; however, the real victory had been won. Due to the string of lawsuits, the theater already had ended its segregation practices.⁶⁸

The next spring, in April 1917, the United States declared war on Germany, and many African-Americans, including two of Smith's brothers, began serving in segregated units of the Army. Black people flocked to the cities for jobs created by the war effort.⁶⁹ Black and white workers competed for jobs and black families attempted to find decent housing, sometimes in white neighborhoods.⁷⁰ The resulting racial tensions surfaced violently in East St. Louis, Illinois, when 6,000 African-Americans were driven from their homes, their neighborhoods destroyed, and forty-eight people were killed during a citywide race riot.⁷¹ African-American citizens around the country watched the events closely and wondered how to prevent further lethal attacks on their neighborhoods.

The Minneapolis branch of the NAACP responded with a campaign to persuade "every member of the Race [to] . . . feel it an imperative duty to join the Association."⁷² Others within the community urged people to "lay aside all racial aspirations until after the war" as NAACP advocates called for "a new and stronger Race loyalty."⁷³ NAACP membership jumped from fifty-four to 478; among the new members were Smith, her mother and sister, Mayor Thomas Van Lear, and Congressman Thomas Schall from Minneapolis.⁷⁴ Annual dues were one dollar per person.⁷⁵ Smith would be a member for the rest of her life.

When African-American soldiers began coming home after armistice was declared on November 11, 1918, a period of violent

67. *Id.*

68. *Pantages Theatre Owners Sued*, TWIN CITY STAR, Sept. 29, 1917, at 4; *Local News*, TWIN CITY STAR, Oct. 6, 1917, at 4 (stating that Smith lost her suit).

69. CASHMAN, *supra* note 36, at 26.

70. Berry, *supra* note 6, at 115.

71. *See, e.g., 20 to 75 Dead, Scores Hurt in East St. Louis Riots*, ST. PAUL PIONEER PRESS, July 3, 1917, at 1; *see also* CASHMAN, *supra* note 32, at 29.

72. Letter from R. Augustine Skinner, Secretary, Minneapolis NAACP, to James Weldon Johnson, Secretary, National NAACP (Jan. 18, 1918) (NAACP records, I.G-103).

73. *N.A.A. of C.P. Meeting*, CHI. DEFENDER, Apr. 6, 1918 (detailing the NAACP mass meeting).

74. NAACP Membership Report, Minneapolis Branch, at 13 (June 20, 1918) (NAACP records, I. G-103).

75. *See id.*

turmoil began. In the words of historian John Hope Franklin, “[f]ew Negro Americans could have anticipated the wholesale rejection they experienced at the conclusion of World War I.”⁷⁶ The summer of 1919 saw twenty-five race riots around the country in which hundreds of people died, were injured, or displaced from their homes.⁷⁷ The riot closest to Minneapolis and St. Paul, in Chicago, was the worst.⁷⁸ Thirty-eight people died—twenty-three of them black, fifteen white—and 537 were injured.⁷⁹ Almost a thousand were left homeless.⁸⁰

While the cities rioted, lynchings stained the countryside. In one year, 1919, more than seventy black people were lynched in the United States.⁸¹ Between 1918 and 1927, 456 men and women, of whom 416 were African-Americans, were lynched by being hung, shot, burned, dismembered, or beaten to death.⁸² Black soldiers still in uniform were among the victims.⁸³ The war that had been fought to “make the world safe for democracy”⁸⁴ did not make it safe for African-Americans.

Still, Minnesota’s black citizens had not suffered much overt racial violence.⁸⁵ By 1930, they had higher literacy and home ownership rates than most other urban black populations.⁸⁶ The proportion of black citizens was small, and Minnesota simply seemed not as likely to detonate over race as other states and cities. Smith was an educated, employed woman. In Minnesota she could have chosen to live and work without controversy, to stay safely apart from racially charged situations and to absorb the dozens of small insults rather than try to change the conditions that allowed them.

Smith, however, took the other road. She read the black

76. JOHN HOPE FRANKLIN, *The Two Worlds of Race: A Historical View*, in RACE AND HISTORY: SELECTED ESSAYS, 1938-1988 132, 145 (1992).

77. CASHMAN, *supra* note 36, at 29.

78. WOODWARD, *supra* note 41, at 114.

79. CASHMAN, *supra* note 36, at 30.

80. Exhibit interpretive notes, Museum of American History, THE GREAT MIGRATION 1915-1940, (Wash. D.C., Mar. 1997).

81. WOODWARD, *supra* note 41, at 114-15.

82. WALTER WHITE, *supra* note 36, at 20-21.

83. FRANKLIN, *supra* note 76, at 145.

84. President Woodrow Wilson, War Message at the 65th Cong., 1st Sess. Senate Doc. No. 5, Serial No. 7264, Wash. D.C., (Apr. 2, 1917).

85. See generally Taylor, *supra* note 23, at 82 (noting relative lack of racial unrest in Minnesota).

86. *Id.*

newspapers and was well informed on events affecting members of her race around the nation.⁸⁷ She entered fields of work that were unusual for her race and sex, sought out opportunities to confront segregation, and joined the NAACP. With hindsight, Smith's early "race loyalty" and instinct toward resistance appear wise. In the summer of 1920, an eruption of violence alerted African-American citizens of Minnesota that even in this liberal northern state they were not immune from the worst harm that could be caused by racial hatred.

On June 15, 1920, three African-American men were lynched by a cheering mob in Duluth.⁸⁸ They were part of a group of six black circus roustabouts that had been held on accusations of assault by a young white woman.⁸⁹ That evening, a horde of white men battered down the doors and walls of the Duluth jail, held a kangaroo court and threw three of the men outside to a gathered mob.⁹⁰ Those three—Elias Clayton, Elmer Jackson and Isaac McGhie—were hung from a telephone pole as thousands urged the lynchers on and police stood by ineffectually.⁹¹ Police had been warned early in the afternoon of the lynching that a mob was planning to dynamite the jail and kill the suspects, but did little to head off the evening's attack.⁹²

Smith had become a member of the Executive Committee of the Minneapolis NAACP in 1920,⁹³ and it snapped into action upon news of the lynchings. Along with the St. Paul NAACP, the group sent branch officers to Duluth to investigate. They helped to form a Duluth branch of the NAACP in the first week after the violence. The investigators reported back to the Twin Cities' membership on the grand jury investigations into the police inaction,⁹⁴ into

87. Interview with J. Melva Brown, Widow of Lena Smith's nephew, Burnsville, Minn. (July 16, 1996).

88. *4-Hour Battle Waged by Mob to Get Victims*, THE DULUTH NEWS TRIB., June 16, 1920, at 1.

89. *Attack on Girl was Cause of Negro Lynching*, THE DULUTH NEWS TRIB., June 16, 1920, at 3.

90. *4-Hour Battle*, *supra* note 88, at 1.

91. *Police Powerless in Face of Angry Crowd Fired by Vengeance*, THE DULUTH NEWS TRIB., June 16, 1920, at 1.

92. *Plan to Hang Negroes Bared to Police Tuesday Afternoon*, THE DULUTH NEWS TRIB., June 18, 1920, at 1.

93. *National Association for the Advancement of Colored People: Minneapolis Branch Elects Officers*, TWIN CITY GUARDIAN, Jan. 10, 1920, at 1.

94. Letter from Mrs. M. E. Hall, Secretary, Minneapolis NAACP, to National NAACP (July 14, 1920) (NAACP Records, I.C-359).

indictments of the lynchers (on a variety of charges ranging from murder to rioting),⁹⁵ and on the defense and condition of the circus workers still held in the jail.⁹⁶ The branches raised money to ensure that the surviving black men accused of rape were represented by experienced attorneys, and later to appeal one of their convictions. Of the thirty white lynchers indicted, only two men served any jail time, for rioting, and each served two years or less.⁹⁷ Of the black accused rapists, one was convicted and served five years.⁹⁸

In the days immediately following the lynchings, white leaders in the state and town expressed grief and outrage.⁹⁹ Yet shame was offset with continuing hostility toward black people. The owner of a traveling carnival fired all of his black employees, declaring he did so: “. . .out of sympathy with the employes [sic] of the show and the citizens of . . . Duluth, because of the terrible occurrences in Duluth, I have discharged them all and I shall never hire another one, even though I have never as yet had any trouble with them.”¹⁰⁰

In spite of Duluth's searing example, “a wave of race prejudice” continued to wash over Minneapolis.¹⁰¹ But life continued, and social rituals marked Smith's summer in 1920. She joined more than a hundred people on June 26, 1920, for a wedding held in the bride's family home in the 13th ward in Minneapolis.¹⁰² A few weeks later, on July 7, 1920, Smith's family held a debut party and ceremony for her only sister, Frances. The rented hall was decorated with “Japanese fans and lanterns, flowers,

95. Letter from Charles Sumner Smith, President, Minneapolis NAACP, to James W. Johnson, Field Secretary, National NAACP (July 22, 1920) (NAACP records, I. C-359).

96. Letter from Charles Sumner Smith, President, Minneapolis NAACP, to Walter F. White, Assistant Secretary, National NAACP (July 31, 1920) (NAACP records, I.G-104).

97. *A Lynching in Duluth*, MINNEAPOLIS STAR TRIB., Oct. 26, 1921, at 12A.

98. *Id.*

99. *Duluth's Disgrace*, DULUTH NEWS TRIB., June 17, 1920, editorial page; *Minnesota's Disgrace*, APPEAL, June 19, 1920, at 2 (quoting editorials from other newspapers).

100. *Superior Police to Deport Idle Negroes at Once*, DULUTH NEWS TRIB., June 17, 1920, at 1.

101. Letter from Charles Sumner Smith, President, Minneapolis NAACP, to James W. Johnson, Field Secretary, National NAACP (July 15, 1920) (NAACP records, I.G-103).

102. *Gibbs-Lewis [Wedding]: Two of the Flour City's Popular Society People Form a Matrimonial Alliance According to God's Holy Ordinance and Become One*, APPEAL, July 10, 1920, at 2. Smith collaborated with eleven others to give the newlyweds a bedspread. *Id.*

ferns and palms . . . Miss [Frances] Smith wore pink crepe de chine trimmed in white net, a corsage bouquet of pink roses and baby breath, and white kid slippers.”¹⁰³ More than 150 guests attended, listened to a singer and an orchestra, and drank “elegant punch.” Frances was a freshman at the University of Minnesota and her sister was a year from becoming the state’s first black woman lawyer.

Smith’s real estate business must have been producing enough income to help with the gala party for her sister and to pay for law school. Yet even highly respectable, socially prominent African-Americans, such as Smith and her family, were subject to the intensifying racial hostility. In November 1920, about 200 white men and women gathered in the 13th ward to protest and plan how they could prevent African-Americans from buying homes there. They elected a committee to investigate the numbers of “residents with colored blood and ascertain who had sold the property to them” and then report back to the larger group. The Minneapolis Tribune wrote a story about the meeting, headlined “Negro Question Causes Protest.” The proper location of black people’s homes was still considered by many to be a “question.”¹⁰⁴

The Minneapolis NAACP Legal Redress and Legislation Committee, of which Smith was a member, responded by launching its own investigation of the racial make up of the 13th ward. It then tried to convince the Tribune to “give the same space to the report of our committee and the facts, as was given these unconscientious objectors.”¹⁰⁵ Between fifty and a hundred black families had owned homes in the ward for years.¹⁰⁶ Yet a spokesperson for the white residents accused the black residents of being opportunists: “They know they are undesirable as neighbors and hope to make a greater profit on their investment by forcing white people to buy them out to get rid of them.”¹⁰⁷

The rationale that black people moved into white

103. *The Debut Party: Given in Honor of Misses Marvel R. Jackson and Frances K. Smith Was Recherche*, APPEAL, July 10, 1920, at 2.

104. *Negro Question Causes Protest*, MINNEAPOLIS TRIB., November 16, 1920, at 2.

105. Letter from Charles Sumner Smith, President, Minneapolis NAACP, to Catherine Lealtad, Assistant Director of Branches, National NAACP (Nov. 17, 1920) (NAACP records, I.G-103).

106. Letter from Mrs. M.E. Hall, Secretary, Minneapolis NAACP, to James W. Johnson, Field Secretary, National NAACP (Dec. 3, 1920) (NAACP records, I.G-103); Letter from Smith to Lealtad, *supra* note 105.

107. *Negro Question Causes Protest*, *supra* note 104.

neighborhoods for the purpose of coercing residents into paying them to move out was heard repeatedly in the early decades of the struggle for equal access to housing. The accusations solidified Smith's and the Minneapolis NAACP's resistance to "settlements" that involved payments to black families to move out of white neighborhoods.

The neighborhood group's efforts to align residents against selling homes to African-Americans were not entirely successful. Within two years Smith and her mother bought a lifelong home in the 13th ward—at 3905 Fourth Avenue South.¹⁰⁸ Publicity given those who would exclude black people had drawn out expressions of support from "many good white friends of our race in this ward."¹⁰⁹ The NAACP had also prevailed on white leaders of the Minneapolis Civic and Commerce Association and the Real Estate Board—some of them members of the NAACP—to exert "influence to prevent injustice being done to colored people."¹¹⁰

In other parts of the country, racial hatred roared further out of control. In the north, black people were profoundly moved while most white people were hardly aware of the trouble. White rioters leveled a middle class black neighborhood in Tulsa in June of 1921.¹¹¹ A year and a half later, in January 1923, the mostly black town of Rosewood, Florida, was burned to the ground and seven people were killed by a white mob.¹¹² Town, state, and federal governments looked the other way. The national NAACP organized legal defenses and asked its branches for money to send to the sufferers. The Minnesota branches responded promptly with donations, asking assurances that the money be identified as

108. Minneapolis Registered Voters 1902-1923, cards for Mrs. Geneva D. Smith and Miss Lena O. Smith, located in Minneapolis City Hall Archives, Rm. 300, City Hall (copy on file with author). The house at 3905 Fourth Avenue South in Minneapolis was put on the National Register of Historic Places in 1991 because of its status as Lena Smith's home. Letter from Nina Archabal, State Historic Preservation Officer, to Vernell and Loretta Thomas, Homeowners of the historic house (Oct. 22, 1991) (copy on file with author).

109. Letter from Smith to Lealtad, *supra* note 105.

110. Letter of Walter F. White, Assistant Secretary, National Office, to Pierce Atwater, Secretary, Minneapolis Civic and Commerce Association (Dec. 8, 1920) (NAACP Records, I.G-103); *see also* Letter from Charles Sumner Smith, President, Minneapolis NAACP, to Catherine Lealtad, Assistant Director of Branches, National Office (Dec. 1, 1920) (NAACP records, I.G-103).

111. Sam Howe Verhovek, *75 Years Later, Tulsa Confronts Its Race Riot*, N.Y. TIMES, May 31, 1996, at A8.

112. Eric Morgenthaler, *Big Law Firm Works Free to Seek Justice In 71-Year-Old Case*, WALL ST. J., Apr. 8, 1994, at 1.

coming from a "colored" organization.¹¹³

The national NAACP was too busy fighting elsewhere to give much attention to the racial situation in Minnesota. And in truth, what the national officers understood from their legal battles around the country was often not helpful to the Minnesota situation. When the Minneapolis NAACP appealed to the national office for legal ideas for dealing with residential segregation, their query brought a copy of the recent Supreme Court decision forbidding ordinances that required residential segregation.¹¹⁴

The Minnesota group would have to find its own strategies for ending northern-style segregation. Jim Crow laws that were spreading throughout the country did not make it onto the books in Minnesota. Those pressuring for segregation in Minnesota maintained a low profile. While racism was considered natural, it was also shameful to many, perhaps most, Minnesotans. The Duluth lynchings reinforced Minnesotans' shame of racist actions. To prove its resolve against a repetition of that tragedy, Minnesota led the nation in 1921 by becoming the first state to adopt an anti-lynching statute.¹¹⁵ Minnesotans also elected politicians who aligned themselves with the idea that the races should be treated equally. In 1921, the Governor, J. A. A. Burnquist, was titular President of the St. Paul NAACP, and Mayor Thomas Van Lear and Congressman Thomas Schall were members of the Minneapolis branch. With vigilant NAACP branches, quiet counter pressure from both white and black leaders was exerted on segregationists.

For example, a white Presbyterian Church proposed to present a playground to colored children in St. Paul. The Presbyterians' intentions were charitable, but that did not prevent the plan from being oblivious to equality. The black citizenry reacted strongly. The NAACP held a mass meeting, passed resolutions condemning

113. Letter from Mrs. M. E. Hall, Secretary, Minneapolis NAACP, to James W. Johnson, Secretary, National Office (Jan. 6, 1922) (NAACP records, I.G-103) (stating also that \$125 had been sent to the "Tulsa Riot Fund").

114. *Buchanan v. Warley*, 245 U.S. 60, 60 (1917); Letter from Mrs. M. E. Hall, Secretary, Minneapolis NAACP, to James W. Johnson, Field Secretary, National Office (Dec. 3, 1920); Letter from Walter F. White, Assistant Secretary, National Office, to Mrs. M.E. Hall, Secretary, Minneapolis NAACP (Dec. 7, 1920); Letter from Walter F. White, Assistant Secretary, National Office, to Charles Sumner Smith, President, Minneapolis NAACP (Dec. 8, 1920) (NAACP records, I.G-103).

115. 1921 Minn. Laws c. 401. (H.F. No. 785). This was at a time when Southern Democrats were killing similar legislation in Washington, D. C., on grounds that the federal government had no constitutional basis for interfering in what were essentially local matters. WHITE, *supra* note 36, at 222.

the idea and its promoters, and wrote editorials urging the “Colored people of this city to refuse to accept this jim-crow gift”, until, finally, the proposal died.¹¹⁶

It was tricky to fight segregation in Minnesota when it was dressed as charity and offered by wealthy and seemingly well-intentioned white people. In another example, Smith watched quietly as an organization of mostly white women, the Women’s Cooperative Alliance [WCA], planned a segregated home for “colored girls.” Smith was a member of the WCA, whose purpose was to improve conditions for young women and children in the city.¹¹⁷ The officers were all white, except for a designated “colored secretary.” In the fall of 1920, the WCA asked the Minneapolis NAACP to support a separate institution for “colored girls,” on grounds that those girls were at times excluded from those already maintained by the WCA. True to its mission, the Minneapolis NAACP wrote a letter to the WCA strongly opposed to facilities separated by race.¹¹⁸ The WCA forged ahead in spite of the NAACP’s distress at the idea, reasoning that the plan to segregate needy girls would be linked with an increase in services to African-American girls. Smith remained silent at WCA meetings in spite of her opposition to the home.¹¹⁹ She knew she had to pick her battles if she was to be effective.

While navigating and opposing segregation, it was prudent to band together with like-minded people, i.e. with African-American people. Smith helped to form a “Negro Council” of the Women’s Cooperative Alliance, where women could hold offices and chair committees without a special “colored” designation.¹²⁰ A key

116. Letter from Birdie High, Branch Secretary, St. Paul NAACP, to Mary White Ovington, Chairman of the Board, National Office (Dec. 8, 1920) (NAACP records, I.G-104); *We Do Not Need It*, THE NW. BULL., Apr. 15, 1922, at 2; see also Maurine Boie, *A Study of Conflict and Accommodation in Negro-White Relations in the Twin Cities Based on Documentary Sources* 134 (1932) (unpublished Master’s thesis, University of Minnesota) (on file with the University of Minnesota Library).

117. Minutes of Women’s Cooperative Alliance, Inc. (July 18, 1921) (WCA papers, Box 1, Minn. Hist. Soc.).

118. Letter from Charles Sumner Smith, President, Minneapolis NAACP, to Catherine Lealtad, Assistant Director of Branches, National Office (Sept. 20, 1920) (reading “. . .we do not need this opening wedge for permanent Jim Crowism in Minnesota . . .”); Letter of Catherine Lealtad, Assistant Director of Branches, National Office, to Charles S. Smith, President, Minneapolis NAACP (Sept. 25, 1920) (NAACP records, I.G-103).

119. See Minutes, *supra* note 117.

120. *Negro Alliance Announces Officers*, THE NAT’L ADVOC., June 19, 1920, at 1.

purpose of the Negro Council was “shaping public opinion for law enforcement.”¹²¹ A law enforcement committee was formed, and Smith was chosen chair in June of 1920.¹²² Convincing the public to seek enforcement of anti-discrimination laws was an ambitious task. It would be decades before blatant violations of such laws were taken seriously as most segregation was simply assumed to be legal.¹²³ Less than a year later, Smith helped form another club whose members were primarily black, the Business Women’s Club. Smith, “our most efficient real estate dealer,” was elected its President.¹²⁴ Her activity in social, business, and public service groups of mostly black membership allowed her to emerge as a leader and gave balance to her parallel world of majority white institutions where she could neither lead openly nor speak freely of her convictions.

Finally, Smith graduated from law school and soon after became a member of an even more exclusive club. On June 16, 1921, she was sworn into the bar with twenty-two others, including another woman, her classmate, Anna E. V. Carey.¹²⁵ African-American attorneys were nearly as rare as women attorneys. There had been no more than sixteen black attorneys in the state up to June 1921, and, as noted above, Lena Smith was the first black woman in the group.¹²⁶ At the time she entered practice, she and

121. *Id.* Discrimination in public accommodations was against the law in Minnesota, but enforcement of the law was slack. Segregation and discrimination in housing and employment were not expressly banned. Equal Accommodations Act, ch. 224, 1885 Minn. Gen. Laws 295.

122. *Negro Alliance Announces Officers*, *supra* note 120.

123. “Separate but equal” style segregation was not found to be discriminatory until 1954 when the Supreme Court ruled that separate schools were inherently unequal. *Brown v. Board of Education*, 347 U.S. 483, 495 (1954).

124. *Something Worth While*, APPEAL, Mar. 5, 1921, at 4.

125. *The Doings In and About the Great “Flour City,” supra* note 9. Lena Smith and Anna Carey were among the last attorneys in the state to be admitted without having to sit for the bar examination. MINN. STAT. § 4946 (1917) (requiring a bar examination for those beginning law school after Apr. 1917, but exempting those already enrolled at an approved law school).

126. J. Clay Smith, *supra* note 2, at 460-64 (listing eight black attorneys who precede Lena Smith); NAACP National Negro Lawyers Directory (Mar. 7, 1928) (NAACP Records I.C-330) (adding six names not included in Prof. Smith’s work, which were checked with Minnesota Supreme Court bar admission records to verify that four of them were admitted before Lena Smith); Letter of R. Augustine Skinner, Secretary, Minneapolis branch, to James Weldon Johnson, Field Secretary, National Office (Jan. 18, 1918) (NAACP Records I.G-103) (revealing that the Secretary, R. Augustine Skinner, was a black attorney); *John Hickman Funeral Friday*, PIONEER PRESS, Jan. 1, 1947, at 17 (stating that John Hickman studied law at nights at the St. Paul College of Law, completed his course work in

her family believed that there were only two other African-American women lawyers practicing in the nation.¹²⁷ Whatever number pioneer she was, Smith and her family knew that she was special, that in her work and life she would challenge stereotypes for both her race and her gender.

III. LEARNING TO USE & CHANGE THE LAW, HAND IN HAND WITH THE NAACP: 1921-1926

A. *The Hard Beginning*

1. *Her First Lawsuit and the Arrival of the KKK*

Lena Smith was 35 years old when she hung out her law shingle. Her real estate office, moved the year before to the Northwestern Building at Hennepin and 3rd Street, was easily transformed into a law office. Already a prominent person in her community, Smith had six years experience in the realty business, belonged to the Minneapolis NAACP, the Women's Cooperative Alliance and its Negro council, and was a founder and President of the Business Women's Club. She had clients from the moment she opened her doors.

In what must have been Smith's first lawsuit, filed eleven days after she was sworn into the bar on June 27, 1921, Smith sued white landowners, W. C. J. and S. E. Hermann.¹²⁸ Her elderly black clients, John and Mary Parkinson, probably knew of her through their membership in the NAACP.¹²⁹

1907, and practiced law for a short time).

127. *Lena O. Smith Attorney Here 45 Years Dies*, THE SPOKESMAN, Nov. 10, 1966, at 1; *Memorials: Lena Smith*, 23 BENCH & BAR OF MINN. 42, (Dec. 1966). This statistic was at times translated into the statement that Smith was the third black woman attorney in the nation. That is most certainly not true: one website listing of first black attorneys would make Smith the eighth known black woman attorney in the nation. <http://www.jtbf.org/exhibit/exhibit.htm> (last visited Sept. 2, 2001). Since four of the seven women attorneys preceding her were licensed in the 1870s and 1890s, however, it may well be true that in 1921 only two or three other black women were practicing law (Estelle A. Henderson, 1919, Alabama; Gertrude E. D. Rush, 1918, Iowa; Daisy D. Perkins, 1919, Ohio).

128. DEP'T OF COMMERCE AND LABOR, THE BUREAU OF THE CENSUS-FOURTEENTH CENSUS OF THE U.S. Vol. 28, Sheet 9 (1920) (designating Hermanns' race).

129. *Id.* at sheet 12 (designating Parkinsons' race as mulatto). NAACP Membership Report, Minneapolis Branch (May 1918) at 9 (NAACP records, I.G.103).

The lawsuit arose when the landowners tried to cheat the Parkinson's of ownership of their home after they had made payments and improvements on it for over a quarter of a century. In 1896, the Parkinsons bought a small house at 2417 Fifth Avenue South in Minneapolis by what they believed to be a contract for deed. They made regular payments to the Hermanns over the next twenty-five years. They also brought running water into the house, installed a bathroom, gas piping and light fixtures, added a front porch, painted, papered, and re-roofed the house.

When the older couple asked the Hermanns to give them a statement of their account, and, ultimately, to sign over the property to them, the Hermanns repeatedly put them off. Finally, the Parkinsons requested an accounting and backed it up with a threat to sue. The Hermanns responded that if they were sued, they would claim that the Parkinsons were mere tenants and all of their payments were simply rent.¹³⁰ This replicated a trap that unscrupulous southern landowners used with tenant farmers and sharecroppers.¹³¹

At that point, Lena Smith brought a lawsuit on behalf of the Parkinsons. The suit asked for an accounting of all monies paid and for an order directing the Hermanns to sign over a deed to the home. The Hermanns defended as promised, on grounds that the agreement was not for the purchase of the house, but for its rental. Smith tried the case before a jury, who awarded the Parkinsons title to the home after requiring they pay some balance due the Hermanns.¹³²

Smith's first lawsuit secured the Parkinsons' long-term home for their old age and prevented a serious injustice. It signaled her willingness to take on difficult cases and to work for people of little means. The Parkinson case's importance to Smith is apparent in that its papers were found among her personal effects half a century later. How or whether the Parkinsons paid her for her

130. Parkinson v. Hermann, Compl. ¶ 7, (June 27, 1921) (copy on file with author).

131. See GUNNAR MYRDAL, AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY 227-29, 232-34, & 245-50 (1962) (describing the exploitative tenancy system for freedmen farmers after the Civil War and into the mid-twentieth century); see also CASHMAN, *supra* note 36, at 30 (describing a 1919 riot that had white landowners literally up in arms after tenant farmers in Arkansas united to fight abusive practices, charging their landlords with peonage).

132. Parkinson v. Hermann, Plaintiff's brief (June 27, 1921) (copy on file with author).

work is unknown. Given the poor circumstances of her clients, this case was not likely to be one where Smith earned much of a fee.

Racial animus was under the surface in the fight for the Parkinsons' home. At the same time that Smith was pursuing that case, a more explicit and virulent form of racial antagonism displayed itself in Minneapolis: the Ku Klux Klan organized as a non-profit corporation within the State of Minnesota. The local NAACP protested its incorporation to Governor J. A. O. Preus, the Mayor of Minneapolis, the Chief of Police, and the United States District Attorney.¹³³ Yet the Klan was duly incorporated and initiated 100 new members at a meeting in a woods near Minneapolis on September 12, 1922. Leaders boasted that the Klan had 1000 members in Minnesota and the Dakotas.¹³⁴ The NAACP had good reason to watch these events carefully, as the Klan was well known for cultivating a climate of fear in those who worked for equality. The same week that the Klan first met in Minnesota, newspaper headlines screamed of the severed hand of a black man that was mailed to A. Phillip Randolph, editor of a national black newspaper, with a note threatening him with the same treatment if he did not cease writing against the Klan.¹³⁵

The Klan held two more mass public meetings in St. Paul and Minneapolis in September 1922. One thousand people attended in St. Paul and about 3000 people in Minneapolis, where the speaker declared that "Native born, white, gentile, Protestant Americans [are] the salvation of the country."¹³⁶ This was the revived Klan that sponsored showings of "Birth of a Nation" to advance its ideas,¹³⁷ that was bolder in public displays of white supremacy, but still wore disguises and kept members' identities secret. A few months later, rumors that three Minneapolis police officers were members of the Klan surfaced in the press and triggered an investigation.¹³⁸ Though the results of that

133. Letter from James Weldon Johnson, Secretary, National Office, to Louis Valle, Chairman, Grievance Committee, Minneapolis NAACP (Aug. 9, 1921) (NAACP Records, I.G-103).

134. *100 New Members Initiated at Weird Services Near City*, THE NW. BULL., Sept. 16, 1922, at 1.

135. *Ku Klux Klan Sends Human Hand Threatening Editor of Messenger*, THE NW. BULL., Sept. 16, 1922, at 1.

136. *Klan Speaker is Barred from Mill City Auditorium*, THE NW. BULL., Sept. 30, 1922, at 1.

137. Scott M. Cutlip, *Klan Made Potent Use of "Birth of a Nation,"* N.Y. TIMES, May 12, 1994, at A14 (letter to the editor).

138. *City Probes Klan Activities & Alderman Gets Warning to 'Lay Off Klan'*, MINN.

investigation were reassuring, fear of the Klan in Minnesota was real.

2. *The Terrible Job Market for Black Minnesotans . . . & Its Toll*

The Ku Klux Klan's emergence in Minnesota and across the nation¹³⁹ in the early 1920's was born out of racist fear and further fueled racial fear. That fear caused unemployment to hit Minnesota's African-Americans hard after the war.¹⁴⁰ The Minneapolis NAACP was flooded with calls and complaints that employment opportunities were few and that many establishments in Minneapolis were being persuaded not to employ African-Americans.¹⁴¹

The Minneapolis NAACP needed a plan to tackle employment discrimination, which was not yet forbidden. It required the cooperation of sympathetic white people to solve racial antagonism in the workplace, yet its members understood that most white people simply had no idea of the disparate treatment that African-American people in Minnesota experienced.¹⁴² "Many [white people], even locally, do not know [these conditions] exist The white people here have no real interest in the prejudice, segregation, disenfranchisement, lynching and other forms of oppression that exist in the South . . . [and are] ignorant of . . . the serious local problems that face us in this city."¹⁴³ "They [the white people] are very much surprised to find we are situated like we

MESSENGER, Jan. 20, 1923, at 1.

139. CASHMAN, *supra* note 36, at 36 (describing the national revival of the Ku Klux Klan that reached its height in 1924 with two to five million members).

140. A Minneapolis minister's letter to the NAACP in 1922 summarized the situation:

The conditions that the working class of colored people are existing in in [sic] the City of Minneapolis, Minnesota are deplorable. They fired great numbers of colored folks last winter for nothing other than prejudice and jealousy . . . They should tell the colored people if they are not desired as citizens; not starve them as they are doing.

Letter from Reverend Jack Williams, to NAACP National Office (May 27, 1922) (NAACP records, I.G-103).

141. Letter from George G. DeVaughn, President, Minneapolis NAACP, to Mrs. William D. Cratic, President, Booker T. Washington Study Club (Mar. 1924) (NAACP records, I.G-103).

142. *Id.* See also Boie, *supra* note 116, at 64-65 (expressing that white people never thought about discrimination against African-Americans).

143. Letter from Lillian Francis, Secretary, St. Paul NAACP, to May Childs Nerney, National Office (Oct. 21, 1914) (NAACP Records, I.G-104).

are.”¹⁴⁴

The idea of an employers survey was born, designed to raise consciousness about discrimination as much as to gather data.¹⁴⁵ A questionnaire and cover letter were created and sent to 300 large businesses in Minneapolis in March of 1924. It asked eleven questions, centered on whether the business employed “colored persons” and whether the firm was satisfied with their work. If there were no “colored” employees, the survey asked whether the employer would be willing to accept any.¹⁴⁶

Survey responses proved to the NAACP that its constituents were not imagining race discrimination.¹⁴⁷ A majority of employers stated that they had no “colored” employees and would not be willing to accept any.¹⁴⁸ The survey’s discouraging results were made public at a meeting in City Hall. Soon after, Smith and other black leaders invited the National Urban League to establish a branch in Minneapolis.¹⁴⁹ The Urban League was a social service agency aimed at helping African-Americans find and keep jobs and housing.¹⁵⁰ Formed at the beginning of the African-American migration north, it aimed to ease the economic and social transition from country to city. Its purpose was community development, while the NAACP aimed to gain and enforce civil rights.

The Urban League responded to the call and a branch was founded in 1925, the year after the NAACP’s employment survey was taken.¹⁵¹ In its first year of existence in Minneapolis, the Urban

144. Minutes of Minneapolis NAACP Executive Board meeting (Mar. 2, 1929) (NAACP records, I.G-104) (quoting the Chair, Mr. William M. Smith).

145. Letter from George G. DeVaughn to Mrs. William D. Cratic, *supra* note 141.

146. Employment Survey with cover letter, Minneapolis NAACP (Mar. 15, 1924) (NAACP records, I.G-103).

147. The survey’s raw data have not survived to the present, but its impact is described in Report of Minneapolis NAACP to National Office from George G. DeVaughn, President, Minneapolis NAACP (Dec. 1924) (NAACP records, I.G-103).

148. *See generally* Boie, *supra* note 116, at 95-112.

149. *In Memoriam, Lena O. Smith*, MEMORIALS FOR DECEASED MEMBERS OF THE HENNEPIN COUNTY BAR, May 25, 1967, at 31 (stating that Smith was “instrumental” in the establishment of the Urban League in Minneapolis); *Urban League Honors Founders, Past Presidents, King Given Huge Ovation*, MINNEAPOLIS SPOKESMAN, Apr. 29, 1960, at 1 (noting that Smith served on its first Board of Directors).

150. St. Paul Urban League, Board Member’s Guide, 1959 (Minn. Hist. Soc’y).

151. THE URBAN LEAGUE STORY 1910-1960: A HISTORY OF THE URBAN LEAGUE ON A NATIONAL SCALE 34-35 (William R. Simms ed., 1961); *Special Membership Edition*, BULLETIN OF THE MINNEAPOLIS URBAN LEAGUE (Minneapolis Urban League,

League surveyed another aspect of African-American employment problems: unions. The survey found that of the forty-seven unions responding, seven formally prohibited black membership, thirty-two found it “impractical or undesirable” to admit blacks to membership, and only eight had ever had black members.¹⁵²

Smith was active in attempting to assess and expand employment opportunities for African-American people, yet—or because—the men in her family were affected by the bleak employment landscape. Of her brothers, only the oldest, Herman, held a regular job as a porter for the Canadian National Railroad. Her three younger brothers, John, Harold, and Prentiss, were employed in a changing mix of low status jobs. They were very young when their printer father died and access for black men to the skilled trades was meager. During the early 1920s, over eighty percent of all employed black men in Minneapolis worked in unskilled trades such as porter, laborer, and janitor.¹⁵³

Harold and Prentiss Smith worked as porters at hotels before the war but returned from service in the Army with higher aspirations, as did many black men who risked their lives for their country in the Great War. In 1922, both Harold and Prentiss told the Minneapolis City Directory that they were selling real estate out of Lena’s office.¹⁵⁴ Yet neither man listed himself in the business section of the City Directory or advertised elsewhere. In reality, Harold worked as a stock clerk in a shoe store, a position open to black men because stock clerks had no customer contact.¹⁵⁵

Lena Smith had steady work, but things went from bad to worse for her brothers. On Halloween evening in 1922, Prentiss stayed out late. When he came home in a taxi, he asked Harold for money to pay the bill.¹⁵⁶ A violent quarrel began, with Harold cursing and hitting Prentiss.¹⁵⁷ Prentiss escaped to an acquaintance’s house and later returned with a pistol in his coat pocket. When Harold attacked him again, he brandished the gun

Minneapolis, Minn.) Spring, 1946, at 4 (Minn. Hist. Soc’y).

152. ABRAM L. HARRIS, *THE NEGRO POPULATION IN MINNEAPOLIS: A STUDY OF RACE RELATIONS* 36-38 (1926).

153. *Id.* at 16 (citing the urban league studies).

154. *Minneapolis City Directory*, Residential section, at 1906, 1900 (1922) (indicating Prentiss and Harold listings through 1922).

155. Certificate of Death of Harold C. Smith, No. 3588, Minnesota (Nov. 1, 1922) (on file with author) (noting his occupation as stock clerk).

156. *Minneapolis Man Held for Murder of Brother*, *MINNEAPOLIS MORNING TRIB.*, Nov. 2, 1922, at 14.

157. *Young Man Slays Brother*, *MINN. MESSENGER*, Nov. 4, 1922, at 1.

in order to scare Harold off. It discharged, and Harold fell to the floor, shot in the stomach. Only their mother, Geneva, was home. While neighbors called the ambulance and police, Prentiss walked alone to the police station, laid the gun on the desk and turned himself in.¹⁵⁸ He told police that the gun went off accidentally in the course of the fight. He was led to a cell, his beaten “face badly cut and still oozing blood.”¹⁵⁹ Harold died at Fairview Hospital within an hour of the shooting.¹⁶⁰

A few days later, Prentiss was indicted for first-degree murder. He asked his older sister to defend him. Little more than a year out of law school, she agreed.¹⁶¹ Any murder defense was high stakes for a novice lawyer. Defending one’s own brother was a challenge that even most seasoned lawyers would have declined had there been an alternative. Prentiss defended on grounds that he acted in self-defense and that the shooting was accidental. At his trial, Geneva testified that Harold told her as he died that the shooting was an accident. She also said that she found an open pocketknife on the floor after the shooting.¹⁶²

After a week long trial, a hung jury could not decide whether to convict Prentiss or to let him go. The prosecutor vowed to retry the case.¹⁶³ A few weeks later, in February 1923, Prentiss pled guilty to second-degree manslaughter.¹⁶⁴ He served about half of his five-year sentence and eventually moved to Los Angeles where he died in 1959 after a long illness.¹⁶⁵

Lena Smith lost a brother that Halloween night, but she stood by another. In the aftermath of Harold’s death, her mantle as the strong one of the family wrapped more tightly around her. She was the sibling who stayed home and earned money, who took care of her sister and mother until one married and the other died, and who joined with her mother to hold the family together. There are

158. *Id.*

159. *Minneapolis Man Held for Murder of Brother, supra* note 156.

160. *Young Man Slays Brother, supra* note 157.

161. *Will Defend Her Brother*, MINN. MESSENGER, Nov. 25, 1922, at 1.

162. *Jury Dismissed in Smith Murder Trial; Disagrees After Thirty Hours*, MINN. MESSENGER, Jan. 13, 1923, at 1.

163. *Id.*

164. *State v. Prentiss Smith*, Hennepin County Criminal File No. 20495 (Feb. 8, 1923) (copy on file with author).

165. *Graveside Services Held for Prentiss Smith Former Resident*, MINNEAPOLIS SPOKESMAN, Sept. 4, 1959, at 4. Smith brought his body back home for burial beside Harold and their mother at Lakewood Cemetery in the heart of the 13th ward in Minneapolis. *Id.*

several possible reasons why Smith never married or joined with a partner, but one was surely that she spent much energy caring for others and reserved only a little for filling her personal desires.

B. Encouraging Homeowners to Stand their Ground: Early Battles Against Housing Segregation

If getting and keeping employment was difficult for Minnesota's African-Americans, the same was true of decent housing. The areas where African-Americans could rent or buy homes tended to be crowded and shabby. When people of color succeeded in finding homes in less run-down neighborhoods, they were too often met with hostility and threats, as had happened in the 13th Ward.¹⁶⁶

Smith was one of those who saw that the NAACP responded quickly and vigorously when harassment came to its attention. Individual refusal to sell or rent to people because of their race was not yet illegal, though the NAACP took the position that such exclusion violated their constituents' constitutional rights.¹⁶⁷ Instead of filing lawsuits, the Minnesota NAACP branches supported beleaguered families and encouraged them to stand their ground while supporters applied moral and political pressure to city leaders. Elected mayors tended to be more helpful than police chiefs, so the NAACP would seek to have both present at a meeting, in which case the chief usually would defer to the mayor and agree to offer some protection to families who were threatened.¹⁶⁸

The NAACP saw threats against families in white neighborhoods as part of a "nationwide conspiracy to enforce residential segregation" that must be fought with an eye for each case's impact on future cases.¹⁶⁹ As an informed black citizen and member of the NAACP Executive Committee, Smith saw how ugly it could become when a black family refused to move from a white neighborhood. In the same year that a family in Minneapolis had

166. Boie, *supra* note 116, at 6-41.

167. Telegrams from James Weldon Johnson, Secretary, NAACP National Office, to Mayor of St. Paul, Sheriff of Ramsey County, St. Paul, Minn., St. Paul Chief of Police (Dec. 6, 1924) (NAACP records, I.G-104).

168. Cases Handled by the Minneapolis Branch NAACP 1924 (Dec. 10, 1924) (NAACP records, I.G-103).

169. Letter from Walter White, Assistant Secretary, NAACP National Office, to William T. Francis, attorney (Dec. 3, 1924) (NAACP records, I.G-104).

all the glass broken out of its windows and doors, another African-American family in St. Paul endured even worse terror tactics. This family set a standard for resistance that would be a guide for Smith seven years later in the Lee housing case.¹⁷⁰

William T. Francis, a well-established attorney¹⁷¹ and his wife, Nellie, bought a new home at 2092 Sargent Street, not far from Cretin Avenue. Before construction of the house was complete, a committee of neighbors went to Mr. Francis and asked him not to move in, "claiming that they had no objections to [him] personally, but that if [he] came into the neighborhood it would result in other colored people buying there and that the value of their property would thereby be greatly reduced."¹⁷² Francis declined to give up the house and assured the "Cretin Improvement Association" they had nothing to fear.

It was not unusual for white Minnesotans to try to appear polite and deny racist motives while working for separation of the races. The neighborhood group claimed that this was not personal and was only a matter of preserving their investments, yet quickly escalated its activity to include personal threats. Eight hundred neighbors signed a petition to restrict the area to white people. A proposed nighttime parade by the Francis' house with horns, a brass band and torchlight was announced in the newspaper, but was stopped by Mayor Arthur Nelson.¹⁷³ Instead of holding the parade, 200 residents demonstrated with flares and horns in front of the house and lit flares and blew horns at a black-owned barbershop located a few blocks away at 2028 St. Clair Avenue.¹⁷⁴ Ernest Starks, the barber, had to promise to close the shop for three days and negotiate with a white lessee before the demonstrators would leave.

A few nights later, a cross was burned in front of the Francis'

170. See *infra* Part IV.C (discussing Lee case).

171. William T. Francis graduated in 1904 from St. Paul College of Law, one of William Mitchell's predecessor schools. Douglas R. Heidenreich, *William T. Francis '04, in 100 WHO MADE A DIFFERENCE 23* (2001) (providing a sketch of the life of William T. Francis).

172. Letter from William T. Francis, Attorney, to Walter White, Assistant Secretary, NAACP National Office (Dec. 13, 1924) (NAACP records, I.G-104).

173. *Cretin Residents To Stage Gesture Against Negroes*, ST. PAUL PIONEER PRESS, October 4, 1924. Francis' letter to Walter White, *supra* note 172 (stating that the proposed parade was stopped by the Mayor).

174. Letter from Valdo Turner, M.D., President, St. Paul NAACP, to James W. Johnson, Secretary, NAACP National Office (Nov. 3, 1924) (enclosing clipping entitled *Colored Homes Besieged*) (NAACP records, I.G-104).

home. The significance of the cross was not lost on the Francis family or the NAACP. This was a warning signal used by the Ku Klux Klan. Black leaders worried that the family might be risking their lives if they moved into the house. The head of the St. Paul NAACP wrote the national leadership for help:

The situation is very tense, and any advice that you might give us would be greatly appreciated. It looks to me now as if we may have serious trouble, which may end in violence. We are not getting the protection from the police department that we should get. Would you advise them to move in even at the risk of their lives, or at the risk of causing a riot?¹⁷⁵

After receiving that letter, the national NAACP office telegraphed the Mayor, Sheriff, and Chief of Police with appeals to take swift action to stop any lawlessness. The national office did not offer false comfort or easy outs to the local black leaders: "We think that . . . the persons who have purchased these homes [should] stand upon their rights and occupy them. We . . . would not wish to be placed in the position of advising anyone to risk his life, but we feel that a firm stand will most often forestall any such risk."¹⁷⁶

Francis hired a private detective to monitor the Improvement Association and two watchmen to guard the house. Then he asked the NAACP to help. Again, the first step was to apply moral and political pressure. A meeting was called with Mayor Nelson, the Commissioner of Public Safety, NAACP leaders, and neighborhood leaders.

Recent words from the national NAACP notwithstanding, the group decided that to avoid a larger conflict the couple should not move into the home. The Francises reluctantly agreed. The Improvement Association promised to raise money to pay their costs and the price of the home. They agreed to have the money to the Francises before the time for moving out of their old house passed. When the neighbors failed to deliver the money by the deadline, Mr. Francis declared his family's intent to move to Sargent Street. He believed after the fact that the neighbors never intended to reimburse them, only to trick him into moving

175. *Id.*

176. Letter from James Weldon Johnson, Secretary, NAACP National Office, to Valdo Turner, M.D., President, St. Paul NAACP (Nov. 5, 1924) (NAACP Records, I.G-104).

elsewhere on the promise of future payment.¹⁷⁷

The Francis family moved into their new home on Sargent Street and refused a second attempt by the Association to buy them out. The Association's leader, Oscar Arneson, berated the Francis family and told the white newspapers that the Association must "disclaim responsibility for what may take place,"¹⁷⁸ as "the matter will now be left to the community to settle as it sees fit."¹⁷⁹

Another cross was burned in front of the house. The Francises received threatening telephone calls and for ten days received two post cards each day, one addressed to W. T. Francis at his office and one to Nellie Francis at the house. Intimidating and insulting messages were scrawled across them. Yet the Francises stayed on, calmly going about their business, reporting the harassment to the police, postal authorities, and NAACP. The local NAACP branch appealed to the national office for financial help to defray the cost of the night watchman it hired, but were refused.¹⁸⁰

In late December, Nellie Francis wrote to the national NAACP office: "We have been having SOME TIME with our white friends, but believe we have the matter in hand now. At least we hope so, as there is a limit to physical endurance under such circumstances."¹⁸¹ The national office replied, "We think you have acted very wisely throughout the whole affair and your firm stand has undoubtedly served notice upon these would-be mobbists that they are up against *a new type of colored people*."¹⁸²

Nellie and W. T. Francis remained unfailingly polite throughout their ordeal. But being polite did not mean avoiding confrontation with their tormenters, though many others thought that would be best for the immediate well-being of the larger

177. Letter from William T. Francis, Attorney, to Walter White, Assistant Secretary, NAACP National Office (Dec. 13, 1924) (NAACP records, I.G-104).

178. Letter from James Weldon Johnson, Secretary, NAACP National Office, to Valdo Turner, M.D., President, St. Paul NAACP (Dec. 13, 1924) (enclosing undated newspaper clipping entitled *Francis To Get Letter, Negro Will Be Given Chance to Settle House Pact*) (NAACP records, I.G-104).

179. *Id.* (referencing article entitled *Colored Attorney Will Retain Home in Groveland Park*).

180. Letter from James Weldon Johnson, Secretary, NAACP National Office, to Valdo Turner, M.D., President, St. Paul NAACP (Dec. 9, 1924) (NAACP records, I.G-104).

181. Letter from Nellie F. Francis, St. Paul, to James W. Johnson, Secretary, NAACP National Office (Dec. 21, 1924) (NAACP records, I.G-104).

182. Letter from Walter F. White, Assistant Secretary, NAACP National Office, to Nellie F. Francis (Jan. 8, 1925) (NAACP records, I.G-104) (emphasis added).

community. Accommodation and avoidance were short-term strategies. Now was the time to show the nation “a new type of colored people,”¹⁸³ that is, people who stood firmly in order to change things instead of bending in order to keep the temporary peace. W. T. and Nellie Francis’ bravery in defying the mob was little noted at the time, except within the NAACP.

Smith knew the Francises and followed their fight in their new home while she laid a foundation for her leadership of the Minneapolis branch of the NAACP.

IV. “I AM FROM THE WEST AND FEARLESS”: SMITH’S LEADERSHIP YEARS

Smith was the primary attorney consulting with the Minneapolis NAACP during the mid to late 1920’s and was head of the Legal Redress Committee from 1926 until she became President of the branch in 1930.¹⁸⁴ In her role as consulting attorney and head of Legal Redress, Smith walked boldly into the battle against discrimination in education, housing, public accommodations, the criminal justice system, and against hate speech in the public arena.

These fights were seldom focused on a simple “win.” Smith’s legal work with the NAACP aimed to give a voice to people long silenced by myriad informal means in the north and by formal rule in the south. That silencing ensured that many white people in Minnesota remained peacefully unaware of the relentless and sometimes grisly discrimination that African-American people endured, whether locally or nationally.¹⁸⁵ Black people, on the other hand, were well aware of national events affecting their people through a network of black newspapers, relatives, and publications such as *The Crisis*, the NAACP’s national newsletter. Smith was one of the lawyer warriors who understood early on that African-Americans were fighting a battle for greater territory—for ground in the law, in the press, in the hearts and minds of all America. An array of weapons would be necessary in that battle, and the faint of heart would not last as leaders.

183. *Id.*

184. Letter from Essie Mason, Secretary, Minneapolis Branch, to Robert W. Bagnall, Director of Branches, National Office (Dec. 1, 1927) (NAACP records, I.G-104) (identifying Smith as a member of the executive committee of the Minneapolis branch and its lead attorney).

185. *See supra* notes 142-44 and accompanying text.

Smith proved to be effective both at cultivating respect and at taking very aggressive stands in negotiation, in the press, and in court.¹⁸⁶ After building her reputation for excellent legal work, Smith was elected President of the Minneapolis branch of the NAACP.¹⁸⁷ Smith was the first woman ever in that position. She had disregarded most conventions for womanhood in order to get there. Those who knew Smith recognized that she was different.¹⁸⁸ Likely the first lawyer to engage so much of her effort in civil rights cases, Smith gained a reputation as “a woman ahead of her time.”¹⁸⁹ She wore dark, mannish suits, cut her hair short, and used her initials instead of her given name. She spoke briskly, not warmly, but with power and economy. At times, she caused discomfort to men who were put off by her untraditional manner and appearance, but her competence and dignity had them turning to her for help. She held the office of President for ten years, from 1930 through 1939.¹⁹⁰

Smith was interviewed by a graduate student studying race relations in the Twin Cities early in her time as NAACP President. In that interview she explained some of the characteristics that led her peers to elect her to this leadership role:

Some of them [those favoring a less confrontational approach to segregation] were raised in the South and are used to catering to white men. I'm from the West and fearless. I'm used to doing the right thing without regard for myself. Of course battles leave their scars but I'm willing to make the sacrifice. I think it is my duty. It's a hard place to be—on the firing line—but I'm mighty glad I'm there Of course I want peace but I don't want it

186. Interview with Kim Hines, Playwright, in St. Paul, Minn. (Oct. 6, 1996).

187. Letter from L.O. Smith, President, Minneapolis NAACP, to Robert W. Bagnall, Director of Branches, NAACP National Office (Nov. 25, 1930) (NAACP records, I.G-104).

188. Telephone Interview with Barbara Cyrus, Newspaper columnist, Retired, in Minneapolis, Minn. (Aug. 6, 1990) (on file with author). *See generally* Interview with Mary Lee Forman, neighbor of Lena Smith and daughter of Arthur and Edith Lee, in Minneapolis, Minn. (May 13, 1994) (discussing how Smith was different from other neighbors).

189. Interview with Mary Lee Forman, *supra* note 188. *See generally* KAREN BERGER MORELLO, *THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA 1638 TO THE PRESENT* 153 (1986) (discussing Lena Smith's leadership in the civil rights movement).

190. *Rev. C. F. Stewart Elected Mpls. NAACP Head*, Minneapolis Spokesman, Nov. 3, 1939, at 1 (identifying Smith as the outgoing president).

at that price.¹⁹¹

Smith displayed her toughness on the firing line and her understanding of the stakes time and again for the NAACP and her clients. Although more research is needed to chronicle Smith's entire advocacy with the NAACP, important representative examples are discussed here.

A. *Developing Shrewd Strategies: Frances McHie and the University of Minnesota Nursing School*

Smith knew that education was key to her own economic well-being and to the advancement of others in her community. No institution of higher education was more important in Minnesota than its great land grant university. While the university did admit some African-American students,¹⁹² many methods were used to discourage them along the way. In 1929, young Frances McHie and her supporters refused to be discouraged.

The Director of the University's School of Nursing, Marian Vannier, put racial reasons for the denial of McHie, an African-American woman, into writing. This gave the civil rights community concrete evidence to work with. Frances McHie had been encouraged to apply to nursing school by her favorite high school teacher, Mary Burns. The letter denying McHie's admission was unusually clear about why she was not admitted:

Your letter inquiring about admission to the School has been received. The question of the admission of Negro citizens has been taken up before, and because there are no colored wards in connection with the hospitals of the school, we are unable to provide the necessary clinical experience.

I am very glad, however, to recommend to you the school connected with the Provident Hospital of Chicago. This is a fully accredited school of about 75 beds capacity, and the graduates are eligible for state registration. I was personally acquainted with the former superintendent of

191. Boie, *supra* note 116, at 40. Though Boie tried to mask the identity of her interviewees, she did give them numbers; repeat references and the context in which the speaker quoted at 40 appears make it clear she is Smith. *Id.* at 15, 16, 32, 36, 55.

192. For example, John Frank Wheaton was the first African-American man to graduate from the University's law school in 1894. J. CLAY SMITH, *supra* note 2, at 462.

nurses and know it to be an excellent school. . . . I feel sure that you would make no mistake in entering the Provident Hospital School. With best wishes, believe me, Marian Vannier¹⁹³

This feigned politeness while turning away a black person sounded a familiar theme: rather than admit outright that the school would be hostile to a black woman's attendance, the (white) Director's letter was framed in terms of an outside obstacle—no colored ward—and then patronizingly refers McHie elsewhere.

McHie's parents and high school teacher turned to the NAACP for help.¹⁹⁴ The NAACP consulted Smith¹⁹⁵ who was on the Executive Committee as was a state legislator, S. A. Stockwell. First, Stockwell brought the matter before the legislature. On the floor of the legislature, he told his fellow representatives what the University had done. Their reaction was of disbelief.¹⁹⁶ When his veracity was challenged, Stockwell had the Director's letter read aloud.¹⁹⁷ Soon thereafter, Stockwell and the NAACP arranged to have Frances McHie appear at the legislature, accompanied by Gertrude Brown, head of the Phyllis Wheatley settlement house.¹⁹⁸

McHie remembers dressing in her best clothes and sitting on a chair on a stage in front of the legislature while her story was told: this was theater as well as law and politics. At the end of the discussion, the legislature wrote urging the Regents of the University to override the decision denying her admission. Meanwhile, Smith and George Leonard, a prominent white attorney who was also on the NAACP board, brought legal

193. Boie, *supra* note 116, at 47-48 (quoting the text of the original letter). See also Telephone Interview with Frances McHie Rains, Long Beach, Cal. (Jan. 21, 1997) (confirming the letter).

194. See Press Release, NAACP, Color Bar Removal Won by NAACP from University of Minnesota (Oct. 11, 1929) (NAACP records, I.G-104). But see WILLIAM P. EVERTS, JR., STOCKWELL OF MINNEAPOLIS: A PIONEER OF SOCIAL AND POLITICAL CONSCIENCE 277 (1996) (asserting that the McHies turned to Phyllis Wheatley House director Gertrude Brown first, yet this version omits the NAACP's role entirely).

195. A Minnesota "Portia," TIMELY DIGEST, June 1931, at 11, 12 (stating that the local NAACP "retained" Smith to force McHie's admittance).

196. See *supra* notes 142-44 and accompanying text (discussing the lack of awareness of the white public of racial discrimination).

197. Journal of the House (Apr. 9, 1929) at 964 (62nd Day).

198. That same year Gertrude Brown had reported to the Minneapolis branch of the NAACP that she and her organization, Phyllis Wheatley House, stood ready to be at the service of the NAACP. This reflected a close working relationship that is illustrated in the McHie case. See NAACP Women Start Drive at Dinner Meet, TWIN CITY HERALD, April 13, 1929, at 1.

arguments to the Regents and the University administration.¹⁹⁹ They had drafted a lawsuit, but never needed to file it.²⁰⁰ Embarrassed, the University reversed its position and admitted McHie, a month after classes had started.

McHie's admission gained national attention in the black press and brought joy to those involved. Admission had not guaranteed her equal treatment, however. All nursing students roomed together. Nursing school administrators reacted to McHie's admission by creating segregated rooming. While every other student had a roommate, McHie was assigned to live alone. In her second year, another black woman was admitted to the school and was made McHie's roommate. This state of affairs hurt and irked McHie. Since she was happy to be at the school and was otherwise treated well by the other students, she did not arouse another protest.²⁰¹

There were to be many battles in this war: white people often chose to segregate after being forced to include black people. In the late 1920s, law often was interpreted to sanction widespread segregation, so African-Americans usually chose to appreciate each victory of inclusion and declined to fight the forced isolation that followed.

Young McHie's case illustrates the collaborative approach that Smith and the NAACP took in handling discrimination. Courage, cooperation skills, and the ability to boil many pots at once were necessary qualities in the people who managed these efforts.

B. Stopping Hate Speech: Attempts to Prevent the Showing of "Birth of a Nation"

The NAACP fought for access to education, living space, and fair trials, but it also engaged in the battle for respectful language and depictions of African-American people. The use of ridicule and epithets in reference to African-Americans were not

199. More research is needed to find the exact path they took. The TWIN CITY HERALD reported on the process of forcing the admission of McHie, but those issues are not in the MHS collection and have not been found elsewhere. So I rely again on the Boie thesis, *supra*, note 116, at 48.

200. No copy of the draft suit has been found. Presumably, it argued constitutional grounds, and perhaps also the interpretation of an old statute overturning segregation in the public schools. The University of Minnesota was funded primarily by the taxpayers of Minnesota, which included its African-American residents.

201. Interview with Frances McHie Rains, *supra* note 193.

uncommon in the media of the day and the NAACP often lobbied to end their use.²⁰² Most media outlets and companies responded to polite letters by ceasing to use the offensive terms, usually claiming ignorance of their conduct's harmful effects.²⁰³

Smith and the NAACP twice resorted to political pressure and the courts in efforts to stop what they considered the most harmful of all depictions of African-Americans—the movie “Birth of a Nation.” Based on the Thomas Dixon novel *The Klansman*, the movie was closely identified with the Ku Klux Klan, whose hooded members were its heroes. In spite of its vicious tone, the film was acclaimed for its technological and artistic breakthroughs. Its director, D.W. Griffith, was hailed as a genius, even as his film exploited stereotypes in its portrayals of black people, who, seeking power and sex with white women, were stopped only by valiant white men—the Ku Klux Klan.²⁰⁴ The KKK was inextricably linked to brutality and lynchings of African-Americans, and this movie, “canonizing the lawlessness of the Ku Klux Klan,”²⁰⁵ created a real sense of fear in the black community.

In 1930, the original silent film was dubbed with sound and reissued, and “Birth of a Nation” began another tour of movie theaters around the country. Mindful that a 1915 NAACP campaign against the first version of the film had backfired by providing publicity, the national NAACP sent letters to local branches warning them of the reissue. This time it suggested that efforts to prevent its showing not be pursued openly so as to avoid

202. For example, the NAACP protested when the words “nigger,” “darky,” and “pickaninny” appeared in advertising, on radio and in newspaper stories, reasoning that racial insult leads to ill treatment. Boie, *supra* note 116, at 73-74.

203. *Id.*

204. See JOHN HOPE FRANKLIN, *The Birth of a Nation: Propaganda as History, in RACE AND HISTORY: SELECTED ESSAYS 1938-1988* 10, 15 (1989). The movie itself is still available through video rental stores.

205. L.O. Smith Aff. ¶ 8 (Jan. 5, 1931). Smith wrote in an affidavit against the film “[It] is historically false as characterizing the Southern Negro as . . . brutal, inhuman and treacherous, as ‘a humiliating caricature of the Colored Race’, as calculated to engender race hatred and animosity, as ‘canonizing’ the lawlessness of the Klu Klux Klan, as reviving sexual prejudices and ‘dead animosities’, the play has a tendency to result in despairing remarks regarding Negroes and subjecting them to indignities in public places.” *Id.* (relating to NAACP v. Auditorium Co., Hennepin County Dist. Ct. No. 312086); see also Letter from Will W. Alexander, Director of Commission on Interracial Cooperation, Atlanta, to Will Hayes, Motion Picture Producers Association, New York City (July 23, 1930) (NAACP records, I.C-302) (stating that the showing of this film has intensified the feelings out of which lynchings grow).

giving the film free advertising.²⁰⁶

The Minneapolis NAACP was prepared to lobby against the showing of the movie when they learned it was booked for a run in Minneapolis. A committee of nine—including Smith, Congressman S.A. Stockwell, and Mrs. Robbins Gilman, Secretary of the WCA—met with Mayor William F. Kunze on December 27, 1930, and lobbied vigorously to shut it down.²⁰⁷ The Mayor agreed and issued an order prohibiting the showing of the picture. The theater responded by obtaining a temporary restraining order in state court on Saturday, January 3, 1931. The court order stopped the Mayor's enforcement of the prohibition until Wednesday, January 7, when a hearing would be held on whether a longer injunction should issue. Smith reacted by going to court on Monday morning, January 5. She obtained a temporary counter order stopping all showings of the movie until the next day when a further hearing could take place.²⁰⁸ Even one showing of the film was an affront that was worth stopping.

For one heady evening, Smith succeeded in halting the movie by court order. The next day, Tuesday, Smith's request for one more day's injunction was turned down. The movie played at the Lyceum Theater on Tuesday night, but on Wednesday the theater lost its plea for an injunction so the movie was again shut down. Within a few days, however, the Lyceum managers went to federal court. Smith helped muster arguments for Mayor Kunze.²⁰⁹ On January 14, the federal court gave the theater a temporary injunction against the city, allowing the film to be shown once again. "Birth of a Nation" played for a short time and then

206. Letter from Walter White, Acting Secretary, NAACP National Office, to "The Branches," at ¶ 5 (Sept. 9, 1930) (NAACP records, I.C-302). "It is the feeling of the National Office that no advertising should be given the film by open protest. [Instead, it recommended that the local branches] approach local authorities and request these officials to recommend to local moving picture theatres that they do not exhibit the film." *Id.*

207. *Injunction Allows Birth of a Nation to Open in Mpls.*, NORTHWEST MONITOR, Jan. 6, 1931, at 1; NAACP v. Auditorium Co., Hennepin County Dist. Ct. No. 312086 (denying application for a restraining order because the plaintiff failed to file a lawsuit as an underpinning for the TRO).

208. *A Good Fight Against A Bad Thing*, Editorial, TWIN CITY HERALD, Jan. 10, 1931 (NAACP records, I.C-302).

209. Smith telegraphed the national NAACP with an urgent request for information on places where the film had led to "[r]ace riots or any other trouble." Telegram from L.O. Smith, President, Minneapolis NAACP, to NAACP, New York (Jan. 15, 1931); Special Delivery reply letter from Director of Branches, to "Mr. L.O. Smith" (Jan. 16, 1931) (NAACP records, I.C-302).

closed.²¹⁰

In 1940, the “race-boiling” movie again made a national tour.²¹¹ Smith fired the “first guns in the fight” to prohibit its showing.²¹² No longer NAACP President, but chair of its Legal Redress Committee, Smith went to acting Mayor Marvin Kline on Thursday, April 4, 1940. Later that same day a group of civic leaders from the black community met with the Mayor. On Friday morning the Mayor told the theater it risked its license if it showed the film, but the theater said it had a right to a hearing before the revocation could take effect. The film continued to play.

Smith represented the NAACP at a hearing that was held concerning the license revocation on Monday, April 8, 1940. Searching for a settlement, the theater managers asked that they be allowed to show the picture through the following Sunday and many present were inclined to relent. But Smith “absolutely refused to agree to a continuance.”²¹³ The Mayor deferred to her lead. Eventually, a compromise allowed the film to run until Wednesday, April 10, an event noted in the local black press as being the first time the film was stopped by agreement in Minneapolis.²¹⁴

Smith led the fight against the movie, acting quickly and aggressively both in 1931 and in 1940. She did not seek press attention, as advised by the national NAACP, but was comfortable bargaining with the mayors. Referring to the 1915 Minnesota Supreme Court decision secured in the original fight against the film, she persuaded each mayor that he had the power to stop the film and that it was the right thing to do.²¹⁵

The extraordinary efforts expended to prevent every showing of this movie testify to the pain it inflicted upon the black citizens of Minnesota. Smith and the NAACP believed that insulting imagery in the media increased insulting treatment and physical

210. That fall, the Eighth Circuit Court of Appeals dissolved the temporary injunction as moot since the film was no longer being shown. *Kunze v. Auditorium Co.*, 52 F.2d 444, 444 (8th Cir. 1931).

211. *Citizens Protest Showing of Birth of a Nation at Local Theatre*, TWIN CITY HERALD, Apr. 6, 1940, at 1.

212. *Acting Minneapolis Mayor Forces Theatre to Stop Showing Anti-Negro Film*, MINNEAPOLIS SPOKESMAN, Apr. 12, 1940, at 1.

213. *Id.*

214. *Id.*

215. *Bainbridge v. City of Minneapolis*, 131 Minn. 195, 198, 154 N.W. 964, 965 (1915) (affirming a mayor’s power to use “honest and reasonable discretion” to revoke a theater’s license if it insisted on playing “Birth of a Nation”).

threats. Even in this liberal northern state, the African-American leadership and its constituents worked long days and nights to prevent this slander from recurring.

C. *The Right to Buy a Home: The Case of Arthur and Edith Lee*

A year into Smith's presidency she faced the most difficult test of her leadership. An African-American family, Arthur and Edith Lee and six-year-old Mary, had broken custom by buying a clapboard house at 4600 Columbus Avenue—a white neighborhood in south Minneapolis. It had everything they wanted, in particular two bedrooms on one floor.²¹⁶ Despite threats from members of the community association, they moved into the little white bungalow during a sweltering July in 1931.

Once word of the family's arrival spread, they were approached and asked to sell their home to the neighborhood group for \$300 more than they had paid for it. When the Lees refused, the neighbors grew angry. Thousands of people began to mill about each evening in front of the home. Vending wagons came by every night to sell ice cream and refreshments. Traffic was diverted from the street, and police stood by, though they did nothing to disperse the crowd. The mood remained hot and threatening. Night after night for a week the locals gathered outside. As shouts of "Let's go get him," "Burn them out!" rang in the air; the Lee family and their supporters crouched below darkened windows with guns in hand to defend against the threatened attack. Stones pelted the walls, black paint was thrown on the house, and the family dog was killed with poison. Whenever someone went in or out of the house the crowd jeered. The mob continued this harassment from evening until the early hours of the morning.

While this was going on, Lee, a World War I veteran, was consulting with H.E. Maag, an attorney who was head of the Minneapolis American Legion. They had many meetings in the Mayor's office with a mediator, H.W. Rubins, President of the Minneapolis Urban League, and Albin J. Lindgren, the head of the Citizens Committee formed to oust the Lees from the neighborhood.

Maag and Rubins, trying to avoid a full-fledged race riot, urged the Lees to leave the home and take a long vacation. The idea was

216. Interview with Mary Lee Forman, *supra* note 188.

that while the Lees were away things would quiet down and the neighborhood association would use the time to raise more money to buy the house back from the Lees.²¹⁷ All of the men at these sessions, except for Lee, were white and agreed that this would provide a speedy solution to this “problem.” The Lees were struggling to stand on principle. Lee told the newspapers “Nobody asked me to move out when I was fighting for this country in France. . . . [a]ll I want is my home, and I have a right to establish one and live in it.”²¹⁸ But the next day’s headlines reported attorney Maag’s words, that the Lees were willing to leave the home if they received a reasonable offer for it.²¹⁹

Tremendous pressure was being exerted on the Lees to leave. They were NAACP members, and had consulted with Smith before they moved into the house, and now they called her again. Smith’s attitude toward the situation differed sharply from that of the Lees’ other advisors. She advised them not to move out in spite of the relief that a “settlement” would bring. To Smith, the level of threatened violence only highlighted the importance of the principle at stake: that African-American people may live wherever European-American people live. Smith believed that “it would be unwise and unfair to this man to be forced to leave his home under the circumstances” and that agreeing to move out “would have no effect other than to convince the mob that their action has been successful.”²²⁰

Lena Smith took a longer and broader view of the struggle over this little white house than did Maag and Rubins. As a member of the race being vilified, she saw the community impact of the decision facing the Lees and she did not hesitate to explain to him “the position he was placing the Negro in by accepting a proposition of this kind.”²²¹ She reminded the Lees of their original ideals—they were members of the NAACP and knew that

217. Letter from L. O. Smith, President, Minneapolis NAACP, to Walter White, Secretary, NAACP National Office (July 25, 1931) (NAACP records, I.G-104).

218. *Police Guard Negro’s Home; Mayor Acts as Mediator*, MINNEAPOLIS STAR, July 15, 1931, at 1.

219. *Lee Agrees to Sell Home on Columbus Ave., Will Consider Reasonable Offer, His Attorney Tells Mayor*, MINNEAPOLIS STAR, July 18, 1931, at 1; *Negro Willing to Give Up Home*, MINNEAPOLIS J., July 16, 1931, at 12. The Star and Journal were “white” newspapers.

220. Letter from L. O. Smith to Walter White, *supra* note 217; reply letter from Walter White, Secretary, NAACP National Office, to L.O. Smith, President, Minneapolis NAACP (July 29, 1931) (NAACP records, I.G-104).

221. Letter from L. O. Smith to Walter White, *supra* note 217.

they were breaking a taboo when they planned to buy this home—and persuaded them to remain on for the race. The Lees decided to endure this treatment and stay in their home. They dismissed Maag as their representative and agreed that Smith would now represent them in this matter.²²²

The next day Smith met with the Mayor's Secretary, Rubins, Police Chief William Meehan, and Lindgren. Smith spoke calmly and clearly against the plan to have the Lees leave: "I [made them] thoroughly understand that Lee would not move."²²³ She prodded the Chief to make the police more diligent and called on Governor Floyd B. Olson to threaten to call out the National Guard. Then she gave an emphatic statement to the press.²²⁴ Friends of Lee who had served with him in World War I organized a group of armed guards, and after almost a month the crowds no longer gathered at the Lee's home.²²⁵ Young Mary was asked not to go to the neighborhood school, Eugene Fields, but was asked to attend a black community school, Warrington, which was further away from her home. The police escorted her to kindergarten during the following year.²²⁶

The case made headlines in both the white and black press. According to Mary Lee Forman, most in the black community at the time did not approve of her family moving into a white neighborhood.²²⁷ Lena Smith was attacked by some for taking an "inflammatory" stand that would "start further strife."²²⁸

The following year, 1932, after a few weeks when white youth once again had been hurling epithets at his family from his front yard, Lee went out, ordered them off his property, and then struck one of them. That evening fifty persons milled about in front of the house, repeating the insults. Smith immediately requested a return of police protection for the family.²²⁹ Lee was soon arrested

222. Smith represented the Lees without charge. Letter from L. O. Smith to Walter White, *supra* note 217. Whether Smith's personal interest in the outcome of this matter created a conflict of interest under lawyers' ethical guidelines with the Lees' interests is subject to debate. See Bell, *supra* note 7; Carle *supra* note 7. Most any action with important civic repercussions would affect a lawyer who lived in the same community as her clients.

223. Letter from L. O. Smith to Walter White, *supra* note 217.

224. *Id.*

225. Forman interview, *supra* note 188.

226. *Id.*

227. *Id.*

228. Letter from L.O. Smith to Walter White, *supra* note 217.

229. *Lee Home Again Threatened After Trouble With Boys*, TWIN CITY HERALD, Sept.

and charged with assault and battery on the youth. Smith represented him in court, and made a passionate argument that this man should be acquitted as he had had to endure more than any reasonable person should be expected to do.²³⁰ She also asserted that this was part of the systematic scheme to run Lee out of the neighborhood. Lee reportedly was told that the charges against him would be dropped if he moved out of the neighborhood.²³¹ He was convicted by a judge, given a lecture, and fined five dollars.²³²

The entire ordeal was particularly difficult for Edith Lee, who stayed home alone all day while Arthur was at his job at the post office and Mary was at school.²³³ After remaining enough years to make the point that they could not be forced out, the Lees moved into the 13th ward near other black families. Principal was served at significant personal cost, but a battle had been won in the long struggle for fair housing. Since the Lee's courageous stand, Minnesota has not seen white mob demonstrations against housing integration.

D. The Limits of Litigation: The Law Against Discrimination in Public Places

Many early cases brought with the help or encouragement of the NAACP involved the right to go to public places and be treated the same as any other citizen. Because discrimination in public accommodations was forbidden by statute, public places were an obvious locus for resistance. Minnesota's civil rights statute provided both criminal and civil penalties and was perfectly clear:

No person shall be excluded, on account of race or color, from full and equal enjoyment of any accommodation, advantage, or privilege furnished by public conveyances, theaters, or other public places of amusement, or by hotels, barber shops, saloons, restaurants or other places of refreshment, entertainment, or accommodation. Every person who violates any provision of this section, or aids or incites another to do so, shall be guilty of a gross

17, 1932, at 1.

230. *Lee Case Again Topic as Assault Case Is Heard*, TWIN CITY HERALD, Sept. 24, 1932, at 1.

231. *Id.*

232. *Arthur Lee Gets Small Fine for Assault on Boy*, TWIN CITY HERALD, Oct. 1, 1932, at 1.

233. Forman interview, *supra* note 188.

misdemeanor, and, in addition to the penalty therefore[e], shall be liable in a civil action to the person aggrieved for damages not exceeding five hundred dollars.²³⁴

Nevertheless, discrimination at restaurants and movie theaters persisted. People asserting their rights under the civil rights law often met aggressive and insulting arguments in the courts. In 1938, the *Twin City Herald* exhorted its readers not to raise the civil rights law on their own before judges in conciliation court, but rather to employ a competent attorney and go before a jury in district court. The newspaper cited the example of a plaintiff defeated by the argument that she was refused service because of her offensive body odor, not because of her color.²³⁵ These were the real risks in asserting the law—being held up to public ridicule and emboldening defendant businesses to get around the law. Hiring an attorney still engaged those risks and certainly used more resources than did going to conciliation court on one's own. Many people turned instead to the NAACP.

The NAACP usually met success in having “Colored patrons not wanted” signs removed from café windows. If the restaurant owner did not take it down on request, the NAACP officers would meet with the mayor and police. Typically a phone call from City Hall or a patrol visit was all that was needed for the sign to come down.²³⁶ More often, restaurants would post no sign but would tell African-American patrons that they did not serve colored people.²³⁷ Because of the Equal Accommodations Act, by far the most common form of discrimination at restaurants was not a refusal of service, rather, it was simply to ignore black patrons, give them bad service, or seat them in a separate section of the restaurant—even the kitchen—where they might be hidden from others.²³⁸ If

234. MINN. STAT. § 7321 (1923). The Equal Accommodations Act, as revised in 1923, eliminated the twenty-five dollar minimum on the possible damages. The statute was amended earlier, in 1899, to specifically include saloons after the Minnesota Supreme Court limited the law. *Rhone v. Loomis*, 74 Minn. 200, 201 77 N.W. 31, 32 (1898) (deciding that saloons were not a “place of public refreshment” covered under the statute).

235. *Do Not Be Misled*, *TWIN CITY HERALD*, Aug. 27, 1938, at 2.

236. When the Sears was being built on Lake Street, a nearby café put such a sign in its window. Some Sear's laborers were black, and their southern co-workers asked that they be excluded from the whites' favored café. Boie, *supra* note 116, at 50.

237. *Id.* at 42-44.

238. *Id.* at 43 (citing Minneapolis. Mun. Ct. No. 257293)(n.d.)(awarding

confronted, a manager might blame the waiter, who would then explain that he or she was only doing as instructed by the manager.²³⁹ These were the cases where an attorney was needed.

Lena Smith confronted the latter argument in a 1939 case against the Nicollet Hotel, one of the finer hotels in downtown Minneapolis. Martin Brown, an African-American NAACP member, was at the annual meeting of the Standard Oil Dealers Association and went with some fellows to the hotel bar for a glass of beer. The waiter refused to serve him and he later brought suit with Smith as his attorney.²⁴⁰

At the trial, a hotel manager testified that the hotel did not discriminate against African-Americans and that it had told its employees not to do so. Smith challenged this line of testimony, countering that the hotel was responsible under the law for the actions of its employees no matter what it claimed to have told them.²⁴¹ The bartenders, predictably, testified that they had refused to serve Mr. Brown only because he was drunk.²⁴² However, two white witnesses for the plaintiff made it clear that Brown was not drunk and that he was refused service because of his race, and the judge ruled that the hotel had violated the public accommodations law. He awarded Brown only twenty-five dollars in damages, however, and made comments on and off the record that expressed deep skepticism about the underlying law.²⁴³ The judge did award costs on top of the damages, and those were expected to bring the total amount paid to \$300. The Minneapolis Spokesman hailed this achievement, for it was the deterrence to the hotel, rather than the reward to the plaintiff that was the heart

plaintiff the full seventy-five dollars in damages that she requested after being shown the kitchen when she complained about lack of service in the dining room of a department store restaurant).

239. *Id.* at 42 (citing Minneapolis Mun. Ct. No. 261945) (1930) (holding that the plaintiff was entitled to \$150 in damages when the waiter stated he was under orders not to serve Negroes).

240. *Nicollet Hotel Loses Suit to Martin Brown: Costs Hotel \$300 to Refuse Man Glass of Beer*, MINNEAPOLIS SPOKESMAN, Oct. 13, 1939, at 1 [hereinafter *Nicollet Hotel Loses Suit*].

241. *Id.*

242. *Judge Anderson Hears Brown vs. Nicollet Hotel: Judge Takes \$500 Damages Suit Under Advisement*, MINNEAPOLIS SPOKESMAN, Apr. 28, 1939, at 1. This newspaper account states that R. A. Skinner was also Brown's attorney, but it is clear that Ms. Smith conducted the trial in the matter. *Id.*

243. *Strange Reasoning from Judge Guilford*, MINNEAPOLIS SPOKESMAN, Oct. 13, 1939, at 2.

of the matter.²⁴⁴

Small verdicts discouraged attorneys and people of color from the investment of time and effort and exposure to racist arguments that going to court required. In the *Nicollet Hotel* case, for example, the twenty-five dollar damage award in 1939 was the equivalent of \$308 dollars in the year 2000.²⁴⁵ Meager damage awards reveal much about the courts' understanding, or lack of understanding, of the nature of discrimination. It was as if restaurants' refusals to serve persons of color were basically an innocent social custom, as if discrimination were borne of no ill motive.²⁴⁶ Minnesota courts and society generally were not willing to acknowledge that hatred and purposeful ignorance of another race were the underlying sources of discrimination. The courts displayed real reluctance to cause pain to any white person in the course of enforcing the law on the books.

Ironically, the law also did not acknowledge that discrimination against African-American people could cause pain to white people. During the summer of 1927, a group of men, including one black man, went to Sunset Bathing Beach in St. Paul. The beach attendant refused to rent a bathing suit to the black man, William Hall, saying that people of color were not allowed at the beach, which was otherwise open to the public. Two white men and Hall sued on grounds that they had been damaged—publicly humiliated and disgraced—by this discrimination.²⁴⁷ This was a

244. *Nicollet Hotel Loses Suit*, *supra* note 240.

245. See Robert C. Sahr, *Consumer Price Index (CPI) Conversion Factors to Convert to 2000 Dollars*, Oregon State University, at http://www.orst.edu/dept/pol_sci/fac/sahr/cv2000.pdf (last revised Mar. 1, 2000).

246. One judge explained his award of ten dollars in damages:

The evidence . . . that a waitress of the defendant corporation refused, on account of his race and color, to serve Plaintiff with food, is uncontradicted. . . . It does not appear, however, that the refusal to serve him, was accompanied with any malice, or ill will, or that any considerable number of people heard what transpired. However, injury to his feelings was obvious. The amount of damages is apportioned on these principles. It is not large enough to encourage the wrongful use of the statute, nor small enough to encourage proprietors of public places to similar wrong doing.

Boie, *supra* note 116, at 44 (quoting Judge's memorandum from Minneapolis Conciliation Ct. Case No. 113029 (1931)).

247. *Heidenreich v. McCarron Lake Co.*, No. 179987 (Ramsey Co. Ct. filed Sept. 22, 1927) (ruling demurrer sustained and ordering plaintiff to pay defendant fees and costs); *St. John v. McCarron Lake Co.*, No. 179985 (Ramsey Co. Ct. filed Sept. 22, 1927) (ordering plaintiff to pay defendant fees and costs); *Hall v. McCarron Lake Co.*, No. 179986 (Ramsey Co. Ct. filed Sept. 22, 1927)

straightforward idea—that white people, too, are hurt by discrimination against their black friends—but the court did not accept the concept. Their complaints were thrown out on grounds that the state civil rights statute did not protect white people.²⁴⁸

White people suing for injury when black people were discriminated against was an uncommon strategy. Society simply was, and still is, reluctant to recognize the harm caused to white people by such discrimination. While on the one hand this keeps the law aimed at remedies for the people who are most directly harmed by race discrimination, it has also meant that the problem of discrimination is seen largely as a burden for the minority population and of correspondingly smaller concern to the majority.

William Hall's case was also thrown out, but he was given the opportunity to amend his claim to correct its flaws.²⁴⁹ The white men were not allowed to revise their claims and return to court. Their experiment had failed. After this, the known suits brought with NAACP involvement in the 1920's, 1930's and 1940's were brought solely by African-American plaintiffs.

Smith understood that legal challenges were only one piece in the puzzle of ending discrimination in America. When asked in April 1934, to speak at a symposium on "the problems of the Minneapolis Negro," Smith named her topic: "Is Mass Demonstration Advisable?"²⁵⁰ On the night of the meeting, other prominent leaders spoke of the need for greater cooperation among all classes, about how to create more employment opportunities and lift morale within the race. Smith, on the other hand, called for mass demonstrations, arguing that they were "necessary in most cases to obtain rightful consideration for the Negro."²⁵¹ She was years ahead of her time: the most effective American mass demonstration of the 20th century, the March on Washington, did not help prompt civil rights changes for almost thirty more years.²⁵²

(ordering plaintiff to pay defendant fees and costs, but permitting plaintiff to amend complaint). See also Boie, *supra* note 116, at 45-46.

248. Def.'s Mem. Supp. of Dem. and Order Sustaining Dem.; *Heidenreich v. McCarron Lake Co.*, No. 179987.

249. *Hall v. McCarron Lake Co.*, No. 179986 (Ramsey Co. Ct. filed Sept. 22, 1927). There is no record of Hall amending and refilling his case.

250. *Church to Devote Evening Service to Local Problems*, TWIN CITY HERALD, Apr. 14, 1934, at 1.

251. *Speakers Urge Cooperation as Rallying Cry*, TWIN CITY HERALD, Apr. 21, 1934, at 1.

252. The March on Washington, organized by a coalition of civil rights groups

E. Helping the Accused & Holding the Criminal Justice System Accountable: Earl Haywood, The Scottsboro Boys, Curtis Jordan and Ioleta Ampey

Racism in the criminal justice system was a concern for Smith throughout her life. She knew that many criminal trials were tainted, sometimes subtly, with race prejudice. She knew that the police mistreated African-Americans, and she did not shrink from calling them to account for it during an age when few people challenged the police.²⁵³

Before she gained renown in the Lee's housing desegregation case, Smith established her reputation by winning a new trial for Earl Haywood in 1928.²⁵⁴ Haywood was a young African-American man convicted by a jury of raping an older white woman. Smith represented Haywood at trial, and moved for a new trial following the conviction.²⁵⁵ Her motion detailed critical inconsistencies in the testimony of witnesses, errors of law in excluding certain evidence, irregularities in the handling of the jury, and, finally, misconduct by the prosecutor.

The heart of the misconduct was the prosecutor's appeals to racial prejudice. During cross-examination, he asked one of defendant's black witnesses whether it were not true that he was married to a white woman, though that was irrelevant to any issue in the case. In his final argument to the all white male jury, the prosecutor asked, "Are you gentlemen going to turn this Negro loose to attack our women?"

Smith's motion for a new trial took into account that each member of the jury had denied feeling any prejudice based on color:

The Court fully realizes I am sure, that the very fact that the defendant was a colored boy and the prosecutrix a

including the NAACP, took place on the Capital Mall on Aug. 28, 1963. Martin Luther King, Jr. gave his "I Have a Dream" speech there that day.

253. William R. Carter, III, *The Politics of Police Education and Higher Education: The Minnesota Experience from 1920-1938*, 67-71 (1995) (unpublished doctoral dissertation, University of St. Thomas) (on file with the University of St. Thomas Library). Carter is currently Manager of Training and Organizational Development at Minneapolis Community & Technical College.

254. *A Minnesota "Portia," supra* note 15, at 11-12 (naming Smith "one of the best attorneys regardless of color or sex in the state of Minnesota," citing the Haywood case).

255. *Def.'s Mot. for New Trial, State of Minn. v. Hayward [sic]* (4th Dist. Ct. 1928) (No. 26421) (filed June 18, 1928).

white woman, and the entire panel composed of white men—there was a delicate situation to begin with, and counsel for the State took advantage of this delicate situation. . . . [P]erhaps [the jurors] were, with a few exceptions, conscientious in their expressions [of no race prejudice]; yet it is common knowledge a feeling can be so dormant and subjected to one's sub-consciousness, that one is wholly ignorant of its existence. But if the proper stimulus is applied, it comes to the front, and more often than not one is deceived in believing that it is justice speaking to him; when in fact it is prejudice, blinding him to all justice and fairness.²⁵⁶

This was a more sophisticated view of race and its operation in the legal system than the law was ready for. Based on the other grounds Smith cited, the court ordered a new trial for Mr. Haywood and he was eventually freed. Word of Smith's legal accomplishment spread through the black grapevine.²⁵⁷

In 1933, Smith initiated local support for the movement to acquit the Scottsboro Boys, eight black teenagers who were sentenced to death by an all white male jury in Alabama after allegedly raping two white women. The trial was riven with serious flaws, and one of the women soon recanted her testimony. The Scottsboro Boys' case became a national cause, taken up quickly by International Labor Defense (I.L.D., affiliated with the American Communist Party), and more slowly by the national office of the NAACP, which was wary of defending black men accused of raping white women.²⁵⁸ As soon as the national NAACP joined the cause, Smith began organizing for the condemned young men. She held large and small meetings to raise money for their defense and to educate the public about conditions for African-American people in the criminal justice system. She served as chair of the coalition of local groups that joined to form the Scottsboro Defense Committee, running it out of her law office for several years.²⁵⁹

256. *Id.* at 7-8.

257. *A Minnesota "Portia,"* TIMELY DIGEST, *supra* note 15, at 11-12.

258. JAMES GOODMAN, *STORIES OF SCOTTSBORO* 33-34 (1994); David M. Oshinsky, *Only the Accused Were Innocent*, N.Y. TIMES, Apr. 3, 1994, at 14 (book review).

259. *See Scottsboro Mass Meeting Planned by Local NAACP*, TWIN CITY HERALD, Apr. 22, 1933, at 1. *Scottsboro Mass Meeting Draws Large Audience*, TWIN CITY HERALD, May 6, 1933, at 1. *National Organizations Unite Behind Defense for Menaced Scottsboro Boys*, MINNEAPOLIS SPOKESMAN, Jan. 24, 1936, at 1. *Scottsboro Defense Committee Calls Public Mass Meeting*, MINNEAPOLIS SPOKESMAN, Apr. 17, 1936, at 1.

Here was another cause she attacked with vigor, until several of the young men were released and the NAACP withdrew from their defense over clashes with the I.L.D.

While the Scottsboro Boys' case was bringing attention to a travesty of southern justice, Smith was called to advocate in a case of Minneapolis police misconduct. Curtis Jordan, a black waiter, was beaten in north Minneapolis in the early morning of Monday July 19, 1937. Two staggeringly drunken off-duty policemen took offense at Jordan putting his head on his arms at the counter of a café. They beat him outside then took him to the police station and beat him further, using fists and flashlights. Jordan's entire body, especially his face, was bloodied. A youth worker witness contacted the editor of the Spokesman, Cecil Newman, who went with other eyewitnesses to the police station. The Acting Chief set a hearing on the incident for 10 p.m. the following night.²⁶⁰

Lena Smith was called, whether by Mr. Newman or someone from Phyllis Wheatley House or another NAACP member is unknown. She went to work and on Tuesday night appeared at the police station with twenty citizens, most of whom were witnesses to the beating. The witnesses told the story: the two officers were the aggressors and Jordan had done nothing more than lay his head on the counter. The Acting Chief said he would wait until Jordan's criminal case, on drunk charges, was resolved before he dealt with the two policemen. Smith responded that if the men were not suspended the group would file charges against them directly with the Civil Service Commission.²⁶¹

Within a few weeks, however, Smith reluctantly settled the Jordan matter, for Jordan did not want to appear in court. There was another warrant outstanding for his arrest, and he feared being picked up and sent to the workhouse.²⁶² Smith was prepared to defend him in a trial and to have witness testimony recorded for the Civil Service Commission, but she could do neither in court without her client. The City Attorney dismissed the criminal case, and Smith then settled Jordan's civil damages with the police. Jordan was paid fifty dollars (rumored to be for a train ticket out of town), and the offending officers were transferred out of the North

260. *Brutal Attack by Mill City Police Stirs Entire City*, MINNEAPOLIS SPOKESMAN, July 23, 1937, at 1.

261. *Id.*

262. *Officers Involved in Jordan Case Are Penalized*, MINNEAPOLIS SPOKESMAN, Aug. 13, 1937, at 1.

Side district where the beating had been inflicted.²⁶³ This was a paltry sum for his real injuries, and Smith felt she had to justify her actions and her client's decision to the community. She spoke with surprising frankness about the matter when questioned by the Spokesman.²⁶⁴ Even had Jordan been willing to make a court appearance, Smith believed he was not an ideal plaintiff for bringing a suit against the police, which would be better prosecuted by someone without a criminal record.

It was almost a decade before Smith found a suitable plaintiff willing to confront officer misconduct.²⁶⁵ In 1946, Ioleta Ampey joined with Smith to sue an officer. This differed from the Jordan matter in that it involved the gratuitous insult of a black woman, not the physical beating of a black man. An F.B.I. agent, G. Parnell Thornton, had come to Ampey's door and inquired about her next door neighbor who was wanted by the F.B.I. When Ampey said she did not know where the man was, the agent called her a "bitch" in front of other people. Smith sued Thornton for slander on behalf of Ampey.²⁶⁶

Neither woman could have expected to win very much money in the lawsuit, as the F.B.I. humiliated Ampey at her own home and she did not lose wages or sustain other special damages. Rather, this case was brought to send a message that this kind of treatment hurt people and should be stopped.

Record of the case disappears after the agent lost an attempt to have it heard in federal court. The federal court found that he could not have been acting in the course of his employment when or if he slandered Ms. Ampey, and so the case was sent back to state court. One hopes that he got the message and settled with Ampey and Smith rather than pursue a defense. This was a small but symbolic fight, designed both to change the behavior of F.B.I. agents and to shift out of the defensive voice. Smith was a forceful

263. *Jordan Case Closes*, TWIN CITY HERALD, Aug. 21, 1937, at 1.

264. *Officers Involved in Jordan Case Are Penalized*, MINNEAPOLIS SPOKESMAN, *supra* note 262.

265. Smith counseled other people who were mistreated by the police, but no one was willing to file suit. Interview with Barbara Cyrus, Newspaper columnist, Retired, in Minneapolis, Minn. (Nov. 19, 1996). In the mid-1940s, as a young adult, Ms. Cyrus was detained for a day as a suspect in two robberies. The police refused to speak to her alibi witness; nor did she match the physical description of the robber in any way other than being a black woman. Ms. Cyrus consulted with Smith, and both were ready to sue the police, but Ms. Cyrus' parents were frightened at the thought and asked her not to pursue legal action. *Id.*

266. *Ampey v. Thornton*, 65 F.Supp. 216, 217 (D. Minn. 1946).

litigator when she and her clients decided to sue. It must have been a relief to balance her frequent role as defender of the accused with this role as aggressor choosing the territory—here, the facts and law of slander—for the skirmish.

V. CONCLUSION: LESSONS FOR LAWYERS

Smith wound down most of her NAACP leadership responsibilities by the mid-1940s, when she was in her sixties. During her last years of practice, in the 1960s, she played a quiet leadership role, serving on various bar association committees, such as the Legislative Committee, the Public Relations Committee, and the Special Committee on Civil Rights.²⁶⁷ Her age must have mellowed her, for the bar association met upstairs at a restaurant that would not serve African-Americans.²⁶⁸ A personal high point came when she attended the inauguration of Lyndon Johnson as President in January 1965, at the invitation of Hubert Humphrey.²⁶⁹

In 1966, Smith died still practicing law at the age of eighty-one. Her life had spanned the period just following Reconstruction to the passage of the Civil Rights Act by Congress in 1964.²⁷⁰ Smith was a true pioneer in the changes that accompanied that historic period. Her small Minneapolis law practice provided work that was filled with nourishing significance for her, for her community and for society. Lawyers seeking a way to make a difference in the quality of justice may learn a few lessons from her example.

First, studying history is a relatively simple way for lawyers to practice the good habit of mentally stepping outside of their own settings and becoming aware of their own preconceptions. This habit fosters lawyers' ability to empathize with clients, evaluate their claims wisely, and understand justice issues. As lawyers learn how the justice system operated in the past, it becomes more difficult to see today's operations of justice as inevitable or immutable. Smith herself knew well the history of those who led in political and civil rights before her and shared that knowledge with her

267. Committee Memberships, *BENCH & BAR OF MINN.*, August 1963, at 25, 30; *BENCH & BAR OF MINN.*, August 1964, at 33-35, 46; *BENCH & BAR OF MINN.*, August 1965, at 33, 49; *BENCH & BAR OF MINN.*, August 1966, at 40, 47.

268. Irene Scott, *A Century of Progress*, *HENNEPIN LAW.*, Mar.-Apr. 1993, at 4-5.

269. James S. Griffin, *Lena Smith: A Tribute to Women, Blacks and Minnesotans*, *TWIN CITIES COURIER*, Feb. 19, 1981, at 1.

270. 42 U.S.C. § 2000(a) (1964).

community.²⁷¹

Second, meaningful work in the public interest is more readily achieved if one lives and works in the same community. Though Smith was personally reserved and well aware of her professional status, she shared friends, family, clubs, a city council, community leaders, social service agencies, a police force, churches, restaurants, movie theaters, and experiences of discrimination with her clients. Some of the passion in her work surely flowed from a sense of connection and responsibility to those around her.

Deep attachment to client communities may mean that one must be extra alert to ethical difficulties such as conflicts of interest.²⁷² Yet Smith's unity with the community and with the grassroots organization of the NAACP also added to her value as a lawyer: by increasing her understanding of conditions for those less educated and solvent than she; by contributing weight to her negotiating positions; and by providing a steady stream of people without money or power who needed her help. Her closeness led Smith and her clients to reach together for long-term public solutions to problems, rather than for private resolutions with little meaning to anyone beyond the individual parties.

This leads to a corollary, third lesson: social justice issues permeate the every day legal issues that are brought to lawyers' offices, and work with clients should take those larger issues into account. Smith recognized the larger issues underlying her clients' disputes, and she pulled them to the surface in her work. She worked with ordinary people, not organizations of elites, corporations, or credentialed experts. Those people were at the heart of the civil rights progress that was made in the days before national impact litigation, mass protests covered by the national press, and federal legislation.

For Smith, taking the larger issues into account meant that when a matter arose that affected civil rights for the group, she

271. Lena O. Smith, Minneapolis Forum Speech (Mar. 18, 1934) (speaking on "Negroes in Congress") (on file with Minn. Historical Society in Phyllis Wheatley Papers, Box 1); Lena O. Smith, Minneapolis Forum Speech (1935) (speaking on "A Study in Lynching") (on file with Minn. Historical Society in Phyllis Wheatley Papers, Box 1); Crowd Hears Discussion on Leadership: Speakers Volunteer Varied Opinions, MINNEAPOLIS SPOKESMAN, May 19, 1940, at 1 (quoting "Historical Contributions of persons who have lived in Minneapolis were discussed by Miss L.O. Smith . . .").

272. See, e.g., Nancy D. Polikoff, *Am I My Client?: The Role Confusion of a Lawyer Activist*, 31 HARV.C.R.-C.L.L. REV. 443 (1996).

counseled her clients to resist thinking of themselves alone and instead to confront the injustice. Many of Smith's peers were far more patient with injustice and far more fearful of the costs of confronting it than was Smith. Their fears were not unreasonable. But in hindsight, accommodation, mediation and private resolutions did not encourage much change in the racial status quo. For example, it seemed that settling housing integration disputes only encouraged more segregation. To make a change in public habits surrounding housing integration, someone—as it turned out, Arthur and Edith Lee and Lena Smith—needed to take a stand, not settle the conflict.

Finally, strategies for justice evolve over lifetimes and ask a lifetime of commitment. Smith began her career by relying on law on the books (the Equal Accommodations Act and the Constitution) and seeking to enforce it or protect her clients with it. She soon saw that more than lawsuits were needed, and turned to advocacy outside the courthouse with the NAACP. Eventually, when in her seventies, Smith moved inside and worked with the bar association. For an African-American woman, this was a new arena in which to wield influence. Smith's strategies took into account that she was trying not just to "win" specific cases, but also to influence rhetoric and public behavior over time. The Director of the Institute on Race and Poverty, John Powell, puts it this way:

The law is the way in which we talk about things and is the way in which we talk to each other. . . . One of the functions of the public interest lawyer is to ensure that this language evolves in a manner responsive to the needs of our entire society and not just to the needs of those with money and power.²⁷³

Lena Smith was a lawyer who pushed the law, government and the public to become more responsive to those without money and power. That project is ongoing.

273. John A. Powell, *Righting the Law: Seeking a Humane Voice*, 96 W. VA. L. REV. 333, 348 (1993).
