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THE CIVIL RIGHTS LAWYER IN THE 1980's*

THELTON E. HENDERSON**

I. INTRODUCTION

I WOULD LIKE TO DISCUSS THE CIVIL RIGHTS LAWYER in the 1980's: the kinds of challenges that he or she will face, the skills that he or she will need in order to be effective, the goals to which he or she should aspire and, perhaps most importantly, the social history and perspective which he or she must always keep in mind in order to avoid the mistakes and profit from the triumphs of the past, and to provide the kind of service desired and needed by the people struggling to secure their civil rights. There has been a lot of discussion recently about civil rights and the future, if any, of the civil rights movement. Some ask whether the civil rights movement in this country is dead.¹ In response, I hope to answer this question by examining the civil rights movement along with the role of the civil rights lawyer in the 1980's.

II. WHAT IS A CIVIL RIGHTS LAWYER?

First, the phrase "civil rights lawyer" must be defined. In the 1960's, when I worked for the Civil Rights Division of the Justice Department, a civil rights lawyer was easily identified as an attorney who helped people (mostly black and mostly in the South) secure the vote,² overcome the various evils of racial discrimination³ and stay out of jail when they demonstrated nonviolently in protest of violations of their civil rights.⁴

Much has happened since those heady days of the civil rights movement. We have seen the growth of legal services lawyers, environmental lawyers, employment discrimination lawyers, consumer protection lawyers, prison rights lawyers and others, all fighting to secure certain rights in which they believe. As a result, precisely what one means by the term "civil rights lawyer" is not always apparent.

* These remarks are based on an Address delivered at the Legal Traditions Program in May, 1982, at the Cleveland-Marshall College of Law, Cleveland State University.

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¹ See, e.g., Denton, THE END OF THE CIVIL RIGHTS ERA, THE NEW REPUBLIC, Sept. 30, 1981, at 15, 15-17.

² See, e.g., D. GARROW, PROTEST AT SELMA: MARTIN LUTHER KING, JR., AND THE VOTING RIGHTS ACT OF 1965 (1978).

³ See, e.g., N.Y. Times, Aug. 12, 1963, at 1, col. 2.

⁴ *Id.*, May 21, 1963, at 19, col. 2.

Black's Law Dictionary, a book that is, unfortunately, only sometimes helpful in defining legal terminology, lends some guidance. *Black's* defines "civil rights" as a subset of constitutional rights which "are such as belong to every citizen of the state or country . . . or . . . are rights appertaining to a person in virtue of his or her citizenship in a state or community."⁵ *Black's* also tells us that these rights are capable of being enforced or redressed in a civil action. Typically, this is where the civil rights lawyer enters. For purposes of this discussion, the civil rights lawyer is a lawyer who works to preserve and uphold those basic and inalienable rights to which a person is entitled by virtue of his or her citizenship.

III. HISTORICAL BACKGROUND

Based upon that definition, the civil rights lawyer is one who fights for the civil rights of any individual or group of individuals, regardless of race, religion, creed or sex. I want to focus on the somewhat narrower area concerning the efforts of civil rights lawyers to make those rights a reality for blacks and other dispossessed elements of our society.

Before we can understand the nature of those efforts in the 1980's, we must look back a quarter century to the 1950's and the 1960's when the modern movement for civil rights began.⁶ Specifically, we must look back to one Friday afternoon in December, 1955, when a black seamstress in Montgomery, Alabama did something many of us do almost everyday: She got on a public bus to go home after a hard day at work. Like many of us when we head home in the late afternoon, Rosa Parks was tired. Her feet were aching. She walked with a slight limp. However, there was one big difference. When Rosa Parks got on the Cleveland Avenue bus in 1955, she confronted something none of us face today. A section of the bus, from the front to about the middle, was reserved for white people. Blacks could sit only in the rear.⁷

Rosa Parks sat down in the black section as the bus rapidly filled with people. Several blacks and whites had to stand. Minutes later, the white bus driver told Rosa Parks and three other blacks to give up their seats and stand in the rear so that more whites could sit. The three other blacks moved as ordered. Rosa Parks refused. That day, for reasons she has never been able to articulate fully, she had had all she could take.⁸

Rosa Parks was arrested for refusing to yield her seat on a public bus to a white man, a crime against the long-established order in Montgomery, Alabama in 1955.⁹ As she was led away by two Montgomery policemen,

⁵ BLACK'S LAW DICTIONARY, 1190 (5th ed. 1979).

⁶ See generally, M.L. KING, STRIDE TOWARD FREEDOM: THE MONTGOMERY STORY (1958).

⁷ L. LOMAX, THE NEGRO REVOLT, at 81-82 (1962).

⁸ *Id.*

⁹ N.Y. Times, Dec. 6, 1955, at 31, col. 2.

no immediate disturbance ensued. However, this incident and indignity gave spark and momentum to the civil rights movement in the 1960's.

Word of Rosa Parks' arrest swept quickly through the black community in Montgomery. Leaders of the black community responded by calling for a boycott of city buses for the following Monday, only three days away.¹⁰ The monumental task of mimeographing and distributing printed materials in support of the boycott and organizing Montgomery's 50,000 black citizens, fell to a young, twenty-seven year old Baptist minister who had recently arrived in town. His name was Martin Luther King.¹¹

As we look back to that December of 1955, it is important to note that Martin Luther King and his advisors did not immediately demand an outright end to segregated seating on municipal buses. Instead, they asked that: 1) Black bus riders be treated courteously; 2) All riders be seated on a first come, first served basis, whites in front and blacks in the rear; and 3) Black drivers be hired on routes that primarily served the black community. Only after these requests for decent treatment were rejected did Martin Luther King and his followers fight for more.¹²

The story of their fight is civil rights history. The Montgomery bus boycott succeeded.¹³ Its success helped inspire blacks in other cities, who had been suffering similar indignities and deprivations of rights, to take comparable actions. Black and white lawyers from every part of the country flooded into the South to lend their talents to the cause.¹⁴ Finally, the boycott's success gave Martin Luther King recognition as the very symbol and voice of the black persons' struggle for civil rights and equality in this country.

That struggle for civil rights, which Rosa Parks helped ignite, and which Martin Luther King shepherded, bore fruit in large part because of well-planned and well-organized actions, such as the Montgomery bus boycott undertaken by members of the black community and their supporters in white society. Civil rights lawyers played a significant role in the success of many of these programs and protests.¹⁵ The various instances in which legal action was central to progress on the civil rights front are far too many to mention and describe in any detail here. However, the following example may illustrate the assistance provided to the movement by civil rights lawyers.

One of the goals of the civil rights movement, in addition to securing the right to vote, was to elect blacks to public office. Like many ethnic and racial groups today and in the past, blacks recognized that the pur-

¹⁰ *Id.*

¹¹ LOMAX, *supra* note 7, at 82-83.

¹² N.Y. Times, Dec. 10, 1955, at 13, col. 4.

¹³ See KING, *supra* note 6.

¹⁴ See B. MUSE, *THE AMERICAN NEGRO REVOLUTION*, 17-23 (1968).

¹⁵ *Id.* See also N.Y. Times, June 18, 1963, at 36, col. 5 (letter from Bruce Bromley, Bethuel M. Webster and Samuel I. Rosenman); and GARROW, *supra* note 2.

suit of civil rights and the goals and interests of the black community could be advanced by electing candidates who understood and shared their concerns to city, state and federal offices. In the Atlanta area, Andrew Young, Vernon Jordan and Maynard Jackson all loomed as potential candidates for the United States Congress. That did not please southern segregationists. To avoid the possibility of a black congressman in their midst, members of the Georgia legislature reapportioned certain congressional districts so that Young, Jordan and Jackson were placed in rural districts in which they would have little or no support.

Had the reapportionment stood, many blacks in Atlanta would have been effectively disenfranchised. However, the discriminatory scheme did not pass. Through the use of legal means and the enforcement of the Civil Rights Act, redistricting was achieved in a manner that provided representation for the blacks of Atlanta. Andrew Young was elected to Congress.

The actions of civil rights lawyers were crucial elsewhere as well: 1) in obliterating the remnants of "Jim Crow" laws, including segregated drinking fountains, restrooms and lunch counters;¹⁶ 2) in passing the Voting Rights Act and the Civil Rights Act;¹⁷ 3) in creating the Equal Employment Opportunity Commission and developing affirmative action programs; 4) in opening legal services offices throughout the country, providing minorities and the poor some access to legal action on their behalf; and 5) in forming the Lawyers Committee for Civil Rights Under the Law, in response to President Kennedy's urgent call to the organized bar, and enlisting the nation's major law firms to increase their commitment to equal justice for all by providing *pro bono publico* services in their communities.

The vital importance of these and other nonviolent, lawful steps towards securing civil rights for those who had previously been denied them cannot be underestimated. These were tremendous steps forward. I do not mean to suggest, however, that these actions by civil rights lawyers and others solved all, or even most, of the problems of discrimination, injustice and racial inequality in this country. They did not. They did not prevent the racial explosions in Watts in 1965¹⁸ or in Harlem, Newark, Detroit and one hundred other American cities during that long, hot summer of 1967, when the password in the ghetto was "Burn, Baby, Burn."¹⁹

¹⁶ See, e.g., N.Y. Times, June 18, 1963, at 36, col. 5; *Id.*, May 21, 1963, at 1, col. 8; *Id.*, Dec. 9, 1955, at 23, col. 5.

¹⁷ See generally GARROW, *supra* note 2.

¹⁸ J. FRANKLIN, FROM SLAVERY TO FREEDOM: A HISTORY OF NEGRO AMERICANS, 480 (5th ed. 1980).

¹⁹ See NEWSWEEK, Aug. 7, 1967, at 18-34; MUSE, *supra* note 14, at 290-307. According to Muse: "The summer of 1967 brought more widespread and destructive civil disorder than had ever been seen before in the nation's peacetime history." *Id.* at 290. During the three year period 1965-67, American cities experienced 101 major riots during which more than 100 people were killed, more than 3,500 injured and almost 30,000 arrested. Property damage exceeded \$700 million. *Id.* at 295.

Fourteen years ago, in 1968, I tried to understand why these explosions had occurred, why the civil rights triumphs of earlier years had left so many sores still festering. I tried to explain these explosions in terms of the inability of our legal system to handle effectively the plethora of problems being hurled at it by discontented people in our society, people who had lost hope of getting meaningful results within the system.

At the same time I could not help thinking how much greater the explosions of discontent and outrage would have been, and how much longer they would have persisted, had we not at least achieved the things described above, and also had we not at least demonstrated that real progress could be made, through lawful means, toward resolving the massive problems of injustice and inequality which so trouble our society.

In discussing the role of legal action in general and the NAACP Legal Defense Fund²⁰ in particular, Andrew Young stated:

I think, had it not been for the Legal Defense Fund, a nonviolent strategy would have been impossible. Had it not been for a nonviolent strategy, there is nothing that could have kept this country from looking like Northern Ireland, or Iran, or the chaos that we see almost anywhere and everywhere in today's world.

The fact that we made the law live, the fact that on a day-to-day basis the law was applied to redress the grievances of the least of those in our society, essentially has made possible not only freedom for a small minority of 10 percent or 12 percent of this population, but it has meant liberation and progress and prosperity for this nation that perhaps would not have been possible had we not had the kind of struggle to fulfill the rights of those who have been deprived and oppressed in our society.²¹

I could not agree more.

IV. THE CHALLENGE OF THE 1980's

The legacy of the Civil Rights Movement of the 1960's is, I believe, a great and glorious one, filled with acts of sacrifice, dedication and courage. Yet, despite the triumphs I have described, and many others

²⁰ The importance of the NAACP Legal Defense Fund in the struggle for civil rights and racial equality was echoed by attorneys Bruce Bromley, Bethuel M. Webster and Samuel I. Rosenman in a letter they wrote to the New York Times, where the authors stated:

It is difficult to picture what race relations in the United States would be today if this modest organization of nine lawyers working with eighty cooperating attorneys in the South had not been so successfully using the processes of the courts, relying on the Constitution of the United States to bring about equality for all Americans

N.Y. Times, June 18, 1963, at 36, col. 5.

²¹ Address by Andrew Young, NAACP Legal Defense Fund, New York City (June, 1980).

of equal value, the fight for civil rights and the need for the civil rights lawyer is far from over. However, the tasks that remain are different from those in Rosa Parks' day.

Although blacks and other minorities have gained the *legal rights* to vote, to attend integrated schools, to ride at the front of the bus and to eat and live where they choose, their most basic needs for adequate housing, education and jobs have not been satisfied. Until these needs are properly addressed and met, the ability of blacks and other dispossessed minorities to exercise in a meaningful way the civil rights acquired by law in the 1960's will remain in doubt. After all, the right to sit down at the lunch counter in Selma or Birmingham, or Detroit or Cleveland does not mean much if one cannot afford the price of a meal. The right to live in Washington or Los Angeles does not mean much if one cannot afford to buy a house or rent an apartment. Finally, the right to vote does not mean much if one cannot read the ballot or has no candidate who will represent his or her interests in public office.

In other words, it would not be hyperbole to say that the struggle for real civil rights, *i.e.*, a decent way of life or substantive equality, is just beginning. This struggle, which civil rights lawyers and advocates must pursue in order to avoid another Selma and another Watts, faces a number of special problems in the 1980's.

First, we must hold the ground already won. We must ensure that the rights so many fought so hard to secure in the 1960's are not lost in the 1980's. There is real cause to fear this loss. Consider, for example, the recent legislative attempts to revise and weaken the Voting Rights Act. Despite an ACLU study which showed that although there has been significant progress in minority voting strength since the 1965 Act was passed, voting discrimination remains widespread and persistent. The study showed that many blatant techniques of discrimination, including poll taxes and literacy tests, have been replaced by more subtle methods such as: at-large elections purposely designed to dilute minority voting strength; the reversing of prior governmental policy by granting tax exempt status to private schools that openly practice racial segregation; attempts to place on the United States Civil Rights Commission, the long faithful watch dog of this country's commitment to civil rights, persons who are opposed to such traditional civil rights values as equality for women; recent acts of political backlash against blacks in the South, including the sentencing of two black women in one of our southern states to five years in jail for helping other blacks fill out their voter registration forms; and the fact that in the Northern District of California, most civil rights suits are prosecuted by the plaintiffs themselves, presumably because they cannot afford attorneys. Also, it is extraordinarily difficult for a man or woman alleging employment discrimination to find an attorney who will handle his or her case. The reasons for this are very complicated, but I suggest that the poor and oppressed face tremendous difficulty in obtaining legal representation in the 1980's. All of these ex-

amples unmistakably confirm that, absent due diligence on the part of civil rights lawyers and advocates, the precious gains of the 1960's easily could be lost or destroyed.

Second, we must recognize that the successes of the 1960's have in some ways made the job more difficult in the 1980's. Having won the battle for symbolic equality and abolished the badge of inferiority imposed by second class citizenship, the civil rights lawyer has left for himself the hardest task of all: achieving substantive equality.

This task is difficult in large part because many people are not convinced that the needs of blacks and other minorities for quality education, housing and jobs can be classified legitimately as civil rights issues. Many who do not begrudge a black the right to live in a decent community recoil at the notion that public funds must be expended for adequate housing to realize that right. The same can be said for education, jobs, health care and various other city services. Put another way, many who do not balk at the abstract notion of equality do balk at the prospect of actually sharing the national pie.

Part of the problem we face in convincing people that sufficient expenditures of public funds must be made in these areas stems from another interrelated stumbling block to be hurdled: the current depressed American economy. As I have suggested, much money is required to continue the fight for civil rights. Individuals and governments are much less inclined to spend money where social issues are concerned when interest rates, deficits and unemployment are as high as they are now. We see the devastating impact of a troubled economy on the civil rights movement on a daily basis. Cutbacks in funding for the Legal Services Corporation, which funds most local legal aid offices, is one especially sad example. For many indigent individuals who need legal assistance, only free legal clinics are available to offer them assistance in protecting their civil rights. Without these legal clinics, those rights will be seriously jeopardized or lost.

Other disturbing examples are equally plentiful. Public funding available for student loans and higher education has been reduced substantially. Sufficient funds are no longer available for the revitalization of our inner cities, where most black citizens live and, I might add, where most civil rights movements actually begin. This is where the Rosa Parks live, and this is where, unless something is done to improve their lives, blacks will once again refuse to take it anymore and, instead, take to the streets.

In short, the challenges and problems civil rights lawyers and advocates now face in trying to hold the territory gained in the past and in trying to achieve new goals are significant. They were significant in the 1950's and the 1960's also, yet advances were made. The crucial question is not *whether* we can surmount these obstacles and meet these challenges, but rather, *how* to do it. How can the civil rights lawyer in the 1980's help accomplish the goals described above?

First and foremost, he or she must remain, as Andrew Young has said,

in the battle on a daily basis. It is not enough to lend assistance when CBS or NBC finally report that people are suffering. People are suffering now. It is not enough to lend assistance when the *New York Times* reports that people are getting restless. Blacks, hispanics and other minorities are restless now. Finally, it is not enough to lend assistance when Miami, Boston or some other city explodes in racial violence. The civil rights lawyer must attempt to prevent such violence by working to achieve the goals outlined above.

We must also recognize the role of the attorney within the civil rights movement. Just as the civil rights lawyers of the 1960's were only a part, although an essential part, of that phase of the struggle, civil rights lawyers in this decade must view their role in the context of a broader social and political movement. To do this requires a commitment to understand the shift in goals of the movement, a shift dictated by the past achievements and current realities described above.

Put another way, much of what every lawyer does from day to day includes helping other people find lawful ways to do the things they want to accomplish. This is really what civil rights lawyers have been doing, in a special context and a special way, for many years. Civil rights lawyers have been using our legal system and their knowledge of the law to discover means to aid people in achieving the rights that, as *Black's Law Dictionary* states, belong to all the people. In offering assistance, civil rights lawyers have had to understand what the people who are part of the civil rights movement are trying to achieve. Only by understanding what those people need and want today, and how that differs from what they needed and wanted in the 1960's, can a civil rights lawyer in the 1980's be most effective.

V. CONCLUSION

I began by asking the question: What is a civil rights lawyer, and what is his or her role today? I conclude by approaching this question from a somewhat different perspective.

The history of the civil rights movement teaches us that cures for civil rights deprivations are rarely achieved in a short period of time. These cures take time. Before society recognizes and remedies inequities, at least two or three decades must pass. Sometimes, as was true of freeing the slaves and of securing the vote, many more than twenty or thirty years slip by. Of course, the passage of time alone does not result in the recognition of the wrong, but it does seem essential in convincing a mass of people that an injustice exists and must be corrected.

What this means for the civil rights lawyer of today is that the struggle to achieve the post-1960's goals of better housing, jobs and education will probably extend to the end of this century, and perhaps beyond. As in the 1950's and 1960's, the struggle will require the time and effort of many who are dedicated to realizing equal justice and opportunity for all Americans. They need not be NAACP or ACLU lawyers to help

achieve these goals. A real estate lawyer functions as a civil rights lawyer when he or she devotes legal skills to creating and maintaining open neighborhoods, and perhaps more importantly, when he or she refuses to employ those same skills to create closed neighborhoods. A lawyer in a downtown firm functions as a civil rights lawyer when he or she works to establish an affirmative action hiring program at that firm. A corporate lawyer functions as a civil rights lawyer when he or she devotes *pro bono* time to helping a nonprofit community organization get started. In other words, a lawyer functions as a civil rights lawyer whenever he or she participates in an activity which advances the goals that are now the focus of the civil rights movement.

Any lawyer could be the civil rights lawyer of the 1980's. We can never again afford the luxury of thinking that the civil rights problem is limited geographically and ideologically to the southern United States, and that we must wait for a "Bull" Connor, with his cattle prods and his snarling dogs, before we take action. The civil rights problems are here and now, and you are all potential *civil rights lawyers*. All attorneys can be civil rights lawyers if they seize the opportunity and accept the challenge of the 1980's.

