

August 1963: Martin Luther King's Dream

Summer 1963 was a heady time for a young lawyer from Oregon to be in Washington, D.C. Jim Crow still ruled the Old South, almost a century after the Civil War, enforced by beatings, shootings, and lynchings, tolerated and encouraged by the Southern white establishment. The Southern bloc in the Senate continued to stymie voting rights and antilynching legislation. Even John and Robert Kennedy, the most powerful officials in our government, though sympathetic, could do little. They had had to call out the 82nd Airborne to overcome an armed insurrection merely to enroll one black man, James Meredith, at Ole Miss the previous fall.

Yet, change was in the air. The people themselves, mostly black people, but whites too, began at great personal risk to challenge Jim Crow. Freedom rides, sit-ins at soda fountains and beaches, and bus and business boycotts by students, housemaids, ministers, and other plain folks were popping up around the South. Their repression with assassination, fire hoses, police dogs, and physical brutality only increased people's determination in what was rapidly becoming a mass popular movement.

It was in this context that I received a phone call at home asking if I could be a marshal for a great march. Black leaders were urging masses of black people and sympathetic whites to come to Washington to petition their government for freedom. The White House discouraged it, fearing violence and alienation of Congress. Southern white Citizens Councils urged segregationists to come to Washington to



Jacob Tanzer

counter-demonstrate. George Lincoln Rockwell announced that his American Nazi Party would be there. Newspapers warned of inevitable violence if that many assertive Negroes got together. I couldn't wait.

Despite warnings, hundreds of thousands of marchers poured into Washington from all around the South and all over the country. On the beautiful, sunny morning of August 28, 1963, most Washingtonians stayed inside. I walked through the silent, empty streets of the Capitol Hill neighborhood to my group's assembly point near the Washington Monument. We were adjacent to a space reserved for the Nazis and ringed by a cordon of National Guard troops. All morning, a mass of marchers flowed steadily into the assembly area, black people and white, young and old, working class, farmers, and professionals. A picnic atmosphere prevailed. After a few hours, Rockwell and the few Nazis who appeared skulked away and my group moved into the line of march down Constitution Avenue to the Lincoln Memorial. It was quiet, it was happy, and it was peaceful. I knew from my pocket radio that A. Philip Randolph, Walter Reuther, and other leaders were somewhere way ahead of us. The speech-making had already begun when we arrived. If you look at the famous photo of the crowd, my group is a minipixel to the upper right of the reflecting pool.

The event was unquestionably exciting and historic, but to tell you the truth, the loud but only semi-intelligible drone of oratory over the loudspeakers became less inspiring as it went on and on. After about two hours, I decided to wander up front so I could see and hear what was going on. I made my way through tens of thousands of people. As I approached the roadway in front of the memorial, in clear view of Honest Abe in his chair looking down at us all, I could hear over my radio Dr. Martin Luther King being introduced for his turn after the more prominent speakers had spoken.

The moment Dr. King began speaking, one knew he was special. His voice had richness and tremolo. His eloquence was majestic. His voice drew me in to his own profound conviction of the rightness of his message.

"Now is the time to rise from the dark and desolate valley of segregation to the sunlit path of racial justice. Now is the time to lift our nation from the quicksands of racial injustice to the solid rock of brotherhood. Now is the time to make justice a reality for all of God's children."

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Mississippi 1966

On June 11, 1963, President Kennedy told the country on national

Charles J. Merten

TV that justice demanded legislation to ensure the civil rights of all Americans. The next day Medgar Evers was murdered by a Klan member. On June 19, Kennedy's legislation was introduced in Congress. On June 21, he summoned 250 prominent ABA lawyers to the White House and urged them to provide legal assistance to civil rights workers and blacks throughout South so that the violence we had all seen on TV in Birmingham might be reduced. The Lawyers Committee for Civil Rights Under Law was founded as a result of that meeting. Portland lawyer Cliff Carlson was in Mississippi in 1965 as a Lawyers Committee volunteer. In the fall of 1966, he called me. "They have no lawyers. They need lawyers. Will you go?"

After three years as a prosecutor, I knew from experience that the legal system was not the friend of the poor and unrepresented, let alone the oppressed. Cliff said that after Freedom Summer white Mississippi lawyers had stopped representing blacks out of fear of Klan reprisal, and there were only two black lawyers in the state. My wife and I recalled, as best as we could, JFK's speech to the nation in June of 1963, which had prompted her to join

thousands of others for Freedom Summer in 1964. President Kennedy said:

"We are confronted primarily with a moral issue. It is as old as the scriptures and as clear as the American Constitution. The heart of the question is whether all Americans are to be afforded equal rights and equal opportunities. . . . One hundred years of delay have passed since President Lincoln freed the slaves, yet their heirs, their grandsons, are not fully free. They are not yet freed from the bonds of injustice. They are not yet freed from social and economic oppression. And this nation . . . will not be fully free until all its citizens are free. . . . Now the time has come for this nation to fulfill its promise. . . . The fires of frustration and discord are burning in every city, North and South, where legal remedies are not at hand. . . . A great change is at hand, and our task, our obligation, is to make that revolution, that change, peaceful and constructive for all."

I agreed to go. I arrived in Jackson, Mississippi, on November 30, 1966, and worked for the Lawyers Committee until December 23. In hindsight, the legal work I actually performed in Mississippi was no different than some of the more routine Legal Aid cases I

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About This Issue

This year marks the 50th anniversary of the enactment of Oregon's Public Accommodations Act. This year also marks the 40th anniversary of many historic moments in the civil rights movement across the country, including the March on Washington for Jobs and Freedom. On August 28, 1963, a quarter of a million people marched on Washington, and the Rev. Dr. Martin Luther King Jr. spoke to the nation about his dream.

The civil rights movement resulted in some of the most important legislation in this country's history: the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968. With this issue of our newsletter, the OSB Civil Rights Section commemorates the civil rights movement of the 1950s and 1960s and pays tribute to everyone who worked so hard, in Oregon and across the country, to secure civil rights. ♦

—Elise Gautier, Editor

OREGON CIVIL RIGHTS NEWSLETTER

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Oregon's Public Accommodations Act

A Foundation of My Childhood

On June 13, Oregon Senator Avel Gordly offered the following remarks at the 50th Anniversary Commemoration of the Oregon Public Accommodations Act:

"In 1844, the first of what would be known as the "Exclusion Laws" was passed in this state, prohibiting slavery but requiring all blacks to leave the territory within three years.¹

In 1849, a bill allowing black settlers and their children to stay, but preventing others from moving into the state, became law.²

In 1851, Jacob Vanderpool, a Salem businessman, was arrested and expelled from the state for the crime of being a black Oregon resident.

In 1857. . . the voters approved a black exclusion clause as part of the Oregon Constitution, a law that remained until 1926.³

In 1862, the Legislative Assembly added two additional Exclusion Laws, one charging blacks a poll tax, and the other prohibiting marriage between black and white Oregonians.

In 1919, an effort began to pass a law making discrimination in public accommodations illegal in this state. That effort did not succeed until 1953."⁴

Senator Gordly organized this event to honor the group of citizens who struggled to make passage of that 1953 legislation possible.⁵ Prominent among the attendees at the commemorative event was the last remaining member of that group, former Governor, Senator Mark O. Hatfield, who as a young state representative shepherded the passage of Oregon's Public Accommodations Act. The citizen group that lobbied for the act was the National Association for the Advancement of Colored People (NAACP). A bill had been sponsored

Charlotte B. Rutherford

and failed in 18 legislative sessions starting in 1919.

When the act passed in 1953 my father, Otto G. Rutherford, was the president, and my mother, Verdell Burdine Rutherford, was the secretary of the NAACP. They helped to write the act and had worked for its passage as NAACP members since the late 1930s. In 1953, our home was the NAACP's office, and in 1955, it became the office for the NAACP Federal Credit Union, which my parents helped to found. This article describes what Oregon was like for African Americans and the effect that my parents' civic activism had on my life.

My father's father and his brother, young black men from South Carolina, were recruited to come to Oregon in 1897 to work as room barbers in a newly built downtown hotel.⁶ At the time they arrived, housing discrimination was widely practiced against blacks, and black families found housing wherever they could.⁷ My grandfather, like many other African Americans, purchased a home through an African American intermediary who could "pass" for white.⁸

The black community of the early 1900s was more a product of association than physical location. The black family and church were the two most important institutions of African American life during this period. By the 1940s, blacks had become concentrated in the Albina area, the only available area because of, among other things, restrictive covenants in deeds that specifically forbade sale or occupancy of property by blacks or other people of color, and real estate codes that punished real estate agents who did not steer blacks to that area.⁹

My dad was born in Portland in 1911. In 1923, his family moved to

Northeast Portland at Ninth and Shaver streets. The neighborhood consisted largely of German immigrants. No other African Americans lived in the neighborhood, and none would until the 1950s, when Interstate 5 and later the Memorial Coliseum were built, and African Americans, who were concentrated in that area, moved into the neighborhood.¹⁰

My dad often talked about fighting as a child because he was called the "N" word daily. He was the only black child in his 1925 grade school graduating class and one of three who graduated from Jefferson High School in 1928. Race relations were not good during this period and were aggravated in 1921 by the emergence of the Ku Klux Klan. In 1922, Klan-backed candidates won in county and state elections.¹¹ My dad used to say that Seattle was more progressive than Portland because when the Klan marched in Seattle, they had to show their faces. But when the Klan marched in downtown Portland, they could wear their hoods.¹²

Employment opportunities for blacks were severely limited at that time. The only jobs available to blacks were service occupations (such as domestic servants and menial labor) and working on the railroad, particularly as Pullman porters and red caps (baggage handlers). With two years of college education, my father worked first as a chauffeur, and then as a waiter for the railroad. Employment opportunities did not open for my father until fair employment laws were passed.¹³

Social discrimination and segregation were the norm in Oregon before the Public Accommodations Act was passed. In 1906, the Oregon Supreme Court sanctioned the right of whites to racially discriminate against blacks in theaters in *Taylor v. Cohn*. Oregon had embraced Jim Crow.¹⁴ Black people were regularly refused admission to restaurants, theaters, and hotels.

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Medical care was difficult to obtain, unions barred blacks from membership, employment was confined to certain jobs, and integrated housing was resisted. "We Cater to White Trade Only" signs were posted in restaurant windows.

Even after the signs came down, segregated seating continued in theaters. I can remember sitting in the balcony of the Egyptian Theater in the 1950s. I had no idea that my mother and I *had* to sit there. I also remember skating at the Imperial Skating Rink on Mondays only in the early 1960s. I had no idea that we *couldn't* skate there the other days of the week. I didn't know that we couldn't skate at Oaks Park at all because I never went there.

I was six years old when my parents were leaders in the campaign to pass the Public Accommodations Act. I remember our house being full of their associates and spending weekends helping with the mailings—our living room floor was cluttered with the assembly line for thousands of flyers. I grew up knowing that I had ancestors who had been enslaved and thinking that it was my obligation to be involved with making things better for black people. I still think that.

I have worked as an Oregon civil rights investigator and as a civil rights attorney for the NAACP Legal Defense and Educational Fund, Inc. I currently work as an administrative law judge. I am certain that my interests are directly related to seeing my parents involved in the struggle. Following their example, I have always participated in community organizations and civic activities that sought improvements in conditions for black and poor people.

I am very proud of my parents' accomplishments, and I hope that all Oregonians recognize that without their efforts, and the efforts of all those who worked so hard for years, laws would not protect the rights of all who have been included in antidiscrimination laws over the years—women, the disabled, older people, injured workers, and, if lobbying efforts prevail, gays and lesbians. The efforts of a

group of people unwanted by this state continue to make life better for all Oregonians. ♦

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Endnotes

1. At three separate times, Oregonians adopted Black Exclusion Laws that made it illegal for an African American person to live in Oregon. The original Exclusion Law adopted by the provisional government in 1844 provided for public whipping of African Americans who violated it. BOSCO-MILLIGAN FOUNDATION, CORNERSTONES OF COMMUNITY: BUILDINGS OF PORTLAND'S AFRICAN AMERICAN HISTORY 6 (1995).

2. The Oregon territorial government adopted this new Black Exclusion Law in 1849. In addition, the 1850 Homestead Act excluded blacks from acquiring free land from the government. CORNERSTONES at 6.

3. As originally adopted in 1857, the Oregon Constitution included the following sections. The constitution took effect in 1859, when Oregon achieved statehood.

"Article I, Section 35. No free Negro, or mulatto, not residing in this State at the time of the adoption of this Constitution, shall come, reside, or be within this State, or hold any real estate, or make any contracts, or maintain any suit therein; and the Legislative Assembly shall provide by penal laws, for the removal, by public officers, of all such Negroes, and mulattoes, and for their effectual exclusion from the state, and for the punishment of persons who shall bring them into the state, or employ, or harbor them." [Repealed November 2, 1926.]

"Article II, Section 6. No Negro, Chinaman, or Mulatto shall have the right of suffrage." [Repealed June 28, 1927.]

"Article XV, Section 8. No Chinaman, not a resident of the State at the adoption of this Constitution, shall ever hold any real estate, or mining claim, or work any mining claim therein. The Legislative Assembly shall provide by law in the most effective

manner for carrying out the above provisions." [Repealed November 5, 1946.]

4. When passed in 1953, the original law prohibited discrimination "on account of race, religion, color or national origin." The current law, ORS 659A.400–659A.409, prohibits discrimination on the basis of race, religion, sex, marital status, color, national origin, or age (if the person is at least 18 years old). These are its basic provisions, including amendments enacted in 2003:

"659A.400 Place of public accommodation defined.

(1) A place of public accommodation, subject to the exclusion in subsection (2) of this section, means any place or service offering to the public accommodations, advantages, facilities or privileges whether in the nature of goods, services, lodgings, amusements or otherwise.

(2) However, a place of public accommodation does not include any institution, bona fide club or place of accommodation which is in its nature distinctly private."

"659A.403 Discrimination in place of public accommodation prohibited.

(1) Except as provided in subsection (2) of this section, all persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities and privileges of any place of public accommodation, without any distinction, discrimination or restriction on account of race, religion, sex, marital status, color, national origin or age if the individual is 18 years of age or older.

(2) Subsection (1) of this section does not prohibit:

(a) The enforcement of laws governing the consumption of alcoholic beverages by minors and the frequenting by minors of places of public accommodation where alcoholic beverages are served; or

(b) The offering of special rates or services to persons 55 years of age or older.

(3) It is an unlawful practice for any person to deny full and equal accommodations, advantages, facilities and privileges of any place of public accommodation in violation of this section."

5. An enlarged photograph of the group was "unveiled" at the event and will be permanently and prominently displayed in the Capitol at a later date. The members of the group in the photograph are then-state Representative Mark O. Hatfield and Senator Phillip S. Hitchcock, seated, and Edgar Williams, Marie Smith, Ulysses Plummer, Rev. J. Harold Jones, Lorna Marple, Verdell Rutherford, and Otto Rutherford, standing.

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MISSISSIPPI 1966

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handled in Portland after leaving the DA's office—drunk driving, welfare eligibility, licensing applications. Unlike some other Oregon lawyers who volunteered, I had no high-profile case. But in 1966, rendering even routine legal services on behalf of any black person in Mississippi made you a foot soldier in the revolution President Kennedy spoke of and which was ongoing when I arrived.

The Southern Courier, a black-owned weekly in Jackson, Mississippi, that advocated for civil rights, tracked the revolution and conflict in detail. Its four issues between Nov. 12 and Dec. 3, 1966, reported the following:

- A white man shot and killed a black man who ran for a county election in Macon, Alabama. The white was granted a change of venue from Macon County (which had a 2–1 black majority in its jury pool) to Lee County, which had only a token of one or two blacks in its jury pool. The judge said he felt he could not guarantee that civil rights workers

and sympathetic blacks would not show up on a Macon County trial jury.

- An SCLC worker was fined \$350 for a traffic ticket and sent to jail when he could not pay. His wife was held in contempt and sent to jail for shouting out, during the trial, that the sheriff was lying. His white lawyer was arrested the next day and jailed on a charge of practicing law in Alabama without a license.¹
- Stokely Carmichael, chairman of SNCC, was arrested and convicted in Selma for “inciting a riot” during the Selma marches.
- A black deputy sheriff in Mississippi stopped a young black man for drunk driving, and beat him with a club while two white state patrolmen held the man’s arms. He died two hours later.
- The white man who attempted to kill James Meredith in 1963 was given two years in jail by a white Mississippi judge.

- Black elementary teachers who engaged in civil rights marches on their own time were complaining of retaliation by their white school boards.
- In Philadelphia, Mississippi, home of Sheriff Rainey and Deputy Price, two black deputies kicked a young black man in the eye after arresting him for drunk driving, causing serious damage.
- A statewide school desegregation trial started in Montgomery, and the first thing the federal district judge did was hold the NAACP in contempt for refusing to answer interrogatories seeking the names and addresses of its Alabama members.
- A white man shot and killed a black man who was looking at his car for damage after the white man bumped it from the rear. The black had run for office to a local agricultural committee. A white jury acquitted the shooter.
- “Night riders” near Vicksburg, Mississippi, hit a 13-year-old black girl with a shotgun blast. She was the daughter of the local chapter head of the Mississippi Freedom Democratic party. She lost an eye.

- Last, but not least, the Santa at Gaylord’s Discount Center in Chickasaw, Alabama, refused to look at a black five-year-old boy when he told Santa what he wanted for Christmas, and refused to give him candy when the boy asked for it—but freely gave white children candy even when they didn’t ask.

Clarence Dunnivant, a black lawyer from New York, was another volunteer that December. We were shocked and sobered by the hatred we ran into when we worked together—looks that could kill, refusals of service, insults. Initially, we were tentative and looked over our shoulders. After a few days, we began acting like real lawyers—prudent but firm, and no fear.

My photo ID as a Multnomah County deputy district attorney worked wonders there. I brought it for

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OREGON’S PUBLIC ACCOMMODATIONS ACT

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6. See CORNERSTONES at 17–18 for discussion of the opening of the Portland Hotel in 1890 and the recruitment of black service workers from North and South Carolina.

7. Portland’s black population was 775 in 1900 and 1,045 in 1910, maintaining at less than 1% of the population. QUINTARD TAYLOR, IN SEARCH OF THE RACIAL FRONTIER: AFRICAN AMERICANS IN THE AMERICAN WEST, 1528–1990 193 (1998).

8. Although many style guides, including the style guide for this newsletter, do not capitalize the “b” in “blacks” or “black people,” for personal and political reasons, I prefer to do so. I use the term “African American” interchangeably. In this article, these terms refer to people of African ancestry in the United States.

9. In 1919, the Portland Realty Board adopted a policy of restricting the sale of properties to “Negroes and Orientals” to the Albina district—inner North and Northeast Portland, near the Steel and Broadway bridges. The Realtors Code of Ethics called for punitive measures against agents who violated the policy. ELIZABETH MCLAGAN, A PECULIAR PARADISE: A HISTORY OF BLACKS IN OREGON, 1788–1940 142 (1980).

10. See CORNERSTONES at 85–92 for discussion of urban renewal efforts and their impact on displacing the heart of the traditional African American community, whose population in Portland had grown from 1,931 in 1940 (0.6%) to 9,529 in 1950 (2.5%). Due to recruitment to support the steel industry for the war effort, the African American population in Portland’s metropolitan area had numbered more than 20,000 in the 1940s. IN SEARCH OF THE RACIAL FRONTIER at 223 and 254; CORNERSTONES at 53.

11. CORNERSTONES at 24.

12. For discussions of the Klan in Oregon, see CORNERSTONES at 26–29 and A PECULIAR PARADISE at 129–156.

13. A Fair Employment Practices Act was defeated in the state legislature in 1947 and then passed in 1949. This was the first piece of purely positive race-related legislation ever passed in the state. CORNERSTONES at 68. Today, Oregon’s statutes prohibiting discrimination in employment, public accommodations, and real property transactions are codified in ORS 659A.

14. CORNERSTONES at 26.

safety reasons—the Klan might hesitate. It turned out to be a sword. The Lawyers Committee had not been able to get any lawyer into the notoriously brutal state penitentiary at Parchman. I was told to go and interview two young men recently convicted of murder. Their parents believed they were being beaten. I phoned the warden, identified myself as a DDA from Portland, and asked if I could come to interview the two “convicts” in question. He agreed and set a date. I arrived, walked into his office, and presented my card and ID. We chatted for 30 minutes, the way southerners do. Finally, he asked if I was investigating a murder. I told him I was here on behalf of “the committee” to see if these “boys” were okay. Everyone in Mississippi knew what “the committee” was. The warden picked up my ID and stared at it for five minutes. Then he turned to a guard and said, “Bring the bastards in,” and left. I got the interviews.²

After that experience I was sent to the corporation commissioner’s office to examine its books and identify new corporations that might have Klan connections, such as “Desoto County Coon Hunting Club.” Again, the Lawyers Committee had had no luck in gaining access to the records, and was put off by constant excuses of one kind or another. I walked into the state house, presented my ID, and told the clerk I was conducting an investigation. I was given a table, coffee, and dozens of books to look at.³

That ID also helped me with the Mississippi Highway Patrol. A black mechanic, who sought a renewal of his license to inspect cars for the state, was denied the renewal because he refused to give a white Highway Patrol administrator whiskey in order to get his license approved. A hearing was set before A.D. Morgan, chief of the Highway Patrol. I introduced myself and showed him my ID. We talked about the differences between Oregon and Mississippi in weather, crime, fishing, and crops. He volunteered that there were race problems in Missis-

issippi, including beatings of blacks by whites. He laid the overall problem in the state to a lack of education for both races. I had my client stick to the facts, and tell his story about the whiskey. Morgan then called his subordinate in to hear his story. The subordinate had all the physical signs of an alcoholic. Morgan asked about the whiskey. The man confessed and dashed out of the room. My client got his inspection license reinstated.

While there, it was impossible to make much sense of what was happening. Too much happened too fast. Forces, efforts, and groups were inconsistent and in opposition. Older blacks were hesitant to do anything that risked losing whatever privileges they felt they had. Younger black men frequently were so hostile to whites that I and other volunteers were met with anger and rejection. White civil rights workers in the field were both terrified by the violence visited upon them and their friends, and determined to stick it out and do some good for the black population, particularly the kids.

In many counties, virtually no blacks were registered to vote, and the local sheriff and county politicians ran the counties like plantations. In a few counties, large numbers of blacks were registered, and things were quite different there. The white power structure solicited the black vote and was attentive to the needs of black voters.

White prosecutors pretended they hadn’t heard of the *Miranda* decision of July 1966, but privately told me and other volunteers that we should contact certain blacks being held in jail because they were being mistreated. Frustrated when a local sheriff 30 miles from Jackson lied to me three days in a row when saying that I could see a prisoner, I raised my voice and threatened to go to the DA. The deputy placed one hand on my shoulder and the other on his revolver and pushed me out the door. On the other hand, a white barber 70 miles from Jackson took a six-inch fishing knife from his friend and sent him away when the friend figured out that I was an “out-

side agitator” connected to the picketing of a grocery store by black kids and SCLC workers.

The one constant I did find, however, was that whether I talked to black or white, every Mississippian I spoke with had family stories about the trauma of the Civil War. Bullet holes in homes and stores were pointed out to me; tales of rape and pillage were told to me by both races. I left Mississippi knowing that the white legal and political stranglehold was dissolving, but that social acceptance and tolerance between the races was a long way off. ♦

The Mississippi experience was a defining moment for Merten. After returning to Portland, he soon left the DA’s office to work for Multnomah County Legal Aid, becoming its director in 1969. In 1971, he and three other attorneys formed Oregon’s first public interest law firm. He has twice been awarded the ACLU of Oregon’s E.B. MacNaughton Award for preserving civil liberties. In August of this year, the Oregon Trial Lawyers Association presented Merten with its Public Justice Award for leading a successful legal effort to save the lives of 100 schizophrenics who faced eviction from housing for the mentally ill due to state budget cuts. Merten is an employment law specialist, practicing in Portland.

Endnotes

1. In 1965 the Lawyers Committee made an agreement with the Mississippi Bar and the Mississippi Supreme Court. Committee lawyers were allowed to practice in Mississippi without a state license. The unstated benefit to local lawyers was, of course, that they were absolved of guilt for not representing the oppressed.

2. Parchman is about 120 miles north of Jackson. It was already dark when I left the prison. Klan cars, with their whip antennas for two-way radios, followed me in relays all the way to Jackson. High gear in my rental car inexplicably did not work, although it was fine on the trip to the prison. I drove in second gear all the way back. Coincidence or sabotage? Who knows.

3. Several years later, a Lawyers Committee staff person told me that the hundreds of names I jotted down helped in a successful effort to dissolve Klan corporations.

It was stunning. Dr. King gave voice to what was in our hearts. He did not so much demand social justice as he gave it biblical rightness and inevitability:

“and we will not be satisfied until justice rolls down like waters and righteousness like a mighty stream.”

I kept moving forward to where I could see him close-up and hear him without benefit of my pocket radio. And then, he invoked the American dream and made it our own:

“I have a dream that one day this nation will rise up and live out the true meaning of its creed: ‘We hold these truths to be self-evident, that all men are created equal.’ . . . I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character. I have a dream today.”

It was incredibly moving. He called on America, all of America, to “let freedom ring!”

“when we let it ring . . . we will be able to speed up that day when all” (and his voice rolled out the word like an organ) “allll of God’s children, black men and white men, Jews and Gentiles, Protestants and Catholics, will be able to join hands and sing in the words of the old Negro spiritual, ‘Free at last! Free at last! Thank God Almighty, we are free at last!’”

In a long program of florid oratory, Dr. King’s message had its own inspiring dimension. I still recall it with almost perfect clarity.

Much has happened to me and much happened to The Movement in the 40 years since that day. The March on Washington and Dr. King’s speech crystallized my determination to participate in what I regarded as a historic moment to bring freedom and equality to all people and particularly to the black people of the South. Already working at the U.S. Department of Justice, I was assigned ten months later to the Civil Rights Division’s grand jury team investigating the murders of Schwerner, Cheney, and

Goodman in Philadelphia, Mississippi. We returned the first civil rights indictments in modern U.S. history. And in 1967, I returned to Mississippi as a volunteer with the Lawyers Committee, as did 23 other Oregon lawyers, more than from any other state in the Union. Back home, I handled several civil rights cases for the Oregon Department of Justice, I hope in the same spirit. And I hope Dr. King’s ideals are ingrained in my character and in the patterns of my life.

As for Martin Luther King, we revere his memory, but we do not always honor—or even understand—his legacy. Dr. King’s greatness lay in his appeal to the best in us as human beings, whatever our color. He invoked the most fundamental of all American values, that all humans are created equal. He called for the triumph of love over hate between all of God’s children. His methods were constitutionally protected speech and peaceful petition of our government, not violence. He had faith that if people were judged by the content of their character and if whites and blacks interacted in peace, the brotherhood of all Americans could be achieved. All of that and more is reflected in his memorable speech.

Many of us forget that by the time Dr. King was assassinated in 1968, he and his philosophy had grown out of favor among civil rights militants. “Integration” was no longer the battle cry. Separatism came in vogue, preached by more dashing figures like Stokely Carmichael, H. Rap Brown, Eldridge Cleaver, Malcolm X. Their creed was based not on individual love, but on racial anger and hatred. They called for “Black Power,” a racial concept often expressed violently. Whites were disdained as “honkies” or “Uncle Charlies.” Even the NAACP dismissed its white employees. Dr. King’s warning not “to distrust all white people” because “we cannot walk alone” was displaced by “burn, baby, burn,” as America’s cities were torched. For many years, it was difficult for a well-meaning white person to participate except

by trying to live his or her own life in a way that reflected Dr. King’s values.

Ultimately, the values that endured were not black power, but the dream of integration to which Dr. King devoted his life. Dr. King preached integration, black and white children holding hands, not separatism. As individual human beings, he taught, we must live together without racial boundaries.

The watchword today, “diversity,” is a more chameleonic term than “integration.” For many, “diversity” describes some kind of confederation of respectful, but separate ethnic and racial groups, each with its proportional share of the American pie. That view would be utterly alien to Dr. King’s message. Dr. King’s goal was overall integration of individual human beings, each with equal opportunity, regardless of race or origin. We must be careful what we mean when we praise diversity. True diversity respects individual difference, but does not respect division.

Dr. King’s speech still has resonance today. The American dream remains as it was 40 years ago: that all Americans live together in peaceful equality. Martin Luther King was the spokesman and conscience of the greatest social revolution in American history, perhaps in the history of the world. Everyday life in America is far more integrated today than it was 40 years ago, but the task is far from completed. I have hope and faith that this great revolution will continue to stride forward, steadily and inexorably, as I was privileged to hear him say on that memorable day, just as “justice rolls down like waters and righteousness like a mighty stream.” ♦

Jacob Tanzer was Oregon’s first solicitor general and the first director of what is now the Oregon Department of Human Services. He served on the Oregon Court of Appeals and the Oregon Supreme Court, and practiced law in Portland for many years. He now does arbitration and mediation. In 1998, he and the other Oregon attorneys who volunteered with the Lawyers Committee received the ACLU of Oregon’s E.B. MacNaughton Award.

Supreme Court Update

Richard R. Meneghello
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Cases Decided

***Desert Palace, Inc. v. Costa*, No. 02-679 (June 9, 2003)**

The United States Supreme Court held unanimously that Title VII plaintiffs need not present direct evidence of discrimination to advance a mixed-motive theory of discrimination before a jury. The Court held that the statute's text does not mandate a heightened evidentiary burden but instead simply requires proof by a preponderance of the evidence, which can be shown through either circumstantial or direct evidence.

***Federal Election Comm'n v. Beaumont*, No. 02-403 (June 16, 2003)**

The Court held by a vote of 7–2 that a federal law prohibiting corporations from making direct corporate political contributions, as applied to nonprofit advocacy corporations, did not violate the First Amendment.

***Grutter v. Bollinger*, No. 02-241 (June 23, 2003)**

***Gratz v. Bollinger*, No. 02-516 (June 23, 2003)**

In a pair of related rulings, the Supreme Court allowed academic institutions to institute affirmative action admissions programs under restricted guidelines. In *Grutter*, the Court held 5–4 that the University of Michigan Law School could consider race in admissions decisions if the decisions are narrowly tailored to attain a diverse student body, and race is not the “defining feature” of the admissions decision. In *Gratz*, the Court applied this strict scrutiny standard to the school's undergraduate admissions policy, which automatically distributed 20 points, or one-fifth of the points needed to guarantee admission, to every “underrepresented minority” applicant solely because of race. In a 6–3 decision, the Court held that this process was not narrowly tailored to achieve the compelling government interest in educational diversity and therefore struck it down under the Fourteenth Amendment, Title VI of the Civil Rights Act, and 42 USC §1981.

***Lawrence v. Texas*, No. 02-102 (June 26, 2003)**

In a 6–3 ruling, the Supreme Court struck down a Texas statute that criminalized certain same-sex sexual activity, holding that an individual's right to liberty under the due process clause gives him or her the full right to engage in such conduct without government intervention. The case overruled the 1986 decision *Bowers v. Hardwick*, which had upheld a similar Georgia statute.

***Nike, Inc. v. Kasky*, No. 02-575 (June 26, 2003)**

The Court held that certiorari was “improvidently granted” in this case and dismissed it without a decision. Despite a written opinion indicating that three of the justices were prepared to rule on the issues, the Supreme Court avoided

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having to decide whether certain corporate speech was protected by the First Amendment or subject to state commercial speech laws.

***U.S. v. American Library Ass'n, Inc.*, No. 02-361 (June 23, 2003)**

In a 6–3 decision, the Court held that Congress could withhold federal funding from public libraries if the institutions failed to install Internet pornographic screening software on their computers. The Multnomah County Public Library served as lead plaintiff in the case, unsuccessfully contending that Congress violated the libraries' First Amendment rights.

***Virginia v. Hicks*, No. 02-371 (June 16, 2003)**

In a unanimous opinion, the Supreme Court held that a public housing authority could permanently bar individuals who had no legitimate business or social purpose from entering its property despite a challenge that such a rule was unconstitutionally vague and overbroad. ♦

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