

**AN ENCAPSULATED LEGAL HISTORY OF
THE CIVIL RIGHTS MOVEMENT FROM 1955-1965
&
THE SEMINAL OPINIONS OF JUDGE FRANK JOHNSON, JR.**

Robert D. Bickel
Professor Emeritus, Stetson University
&
Gene Policinski
Senior Fellow for The First Amendment, The Freedom Forum

INTRODUCTION

“The only weapon that we have in our hands this evening is the weapon of protest.”

Dr. Martin Luther King, Jr., Montgomery, Alabama, December 5, 1955

This encapsulated legal history of the Civil Rights Movement was conceived and is presented for college and university professors, undergraduate students, graduate students, law students, judges, and practitioners in law, and all related social science disciplines, and all citizens concerned about social justice. Our purpose is to facilitate the understanding and appreciation of the inherent interdependence between The First Amendment, the Fourteenth and Fifteenth Amendments and the substantive constitutional principles of civil, political, and social equality that were the basis for The Civil Rights Movement, and its timeless legacy. It is the story of a legal history captured in the opinions of a select group of special cases along with video interviews of the people who were the direct subject of those cases, as significant participants in the Legal History, and in the Direct Action Campaign for Civil Rights.

The First Amendment’s freedoms and protections empowered the essence of nonviolent mass protest, and the right to petition the government for the redress of the grievances of citizens who were denied the basic promise of democracy, based on their race. But beyond their time, and into our future, the mass protests for civil rights, especially between 1955 and 1965, and the southern opposition to the fundamental mandates of Brown v. Board of Education present a legal and social history that holds lessons related to every major issue of social and economic injustice that affects those who, in the words of Robert F. Kennedy, *“still suffer within our country.”*

The relationship between Constitutional Law and The Civil Rights Movement is the subject of the most significant judicial decisions in American legal history. But, as John Dewey observed in 1938, knowledge of the past cannot be an end in itself; we must make acquaintance with the past a means of understanding the present. That connection is presented here in a five part legal history of the Civil Rights Movement that combines the interpretation of essential Movement jurisprudence with video interviews of carefully selected actual Movement veterans who shaped this legal history.

The readings and interviews are not meant to be simply an archive. Rather, inspired by Professor Derrick Bell's belief in using storytelling to present a storied history, the interviews related to this text individually reflect distinct aspects of the Movement, *and* collectively reveal the way prominent and ordinary people together shaped legal and social history in just Thirteen years. In this way, it is our goal to explain the story behind the jurisprudence that connected The First, Fourteenth and Fifteenth Amendments with the substantive rights at stake, and to reveal the template upon which future efforts to sustain and advance a true and honest democracy must be based. Each story is compelling in itself, and together they bring law and direct social action together to facilitate our understanding of our past, our present and our future.

We believe this approach to the presentation of the subject will allow this history to become personal and transformative, thereby shaping more effectively our approach to current and future social justice issues and initiatives for students and practitioners who serve in, or who are preparing for, a special position to influence civic responsibility and community engagement in ways that advance the principle of equality, through both legal advocacy and direct social and political leadership at all levels of our society.

PREFACE

In 1967, even after President Lyndon Baines Johnson had signed the monumental 1964 Civil Rights Act and the 1965 Voting Rights Act, which were the subject of contentious debate about race and the rights of citizens under the Fourteenth and Fifteenth Amendments, he appointed a 12 member national Commission, chaired by Governor Otto Kerner of Illinois, to examine the troubling situation that challenged our democracy, as an institution, and our society. In 1967, that issue, which had been the *raison d'être* of the Civil Rights Movement, was ongoing racial inequality and racial injustice. It is noteworthy that the Commission included not only U.S. senators and representatives, but leaders of private industry & commerce, unions, and police chiefs in America. In February 1968, the Commission wrote:

" Our nation is moving toward two societies, one black, one white--separate and unequal." * * * "White society is deeply implicated in the ghetto. White institutions created it, white institutions maintain it, and white society condones it."

But the Commission reminded us in 1968 that America's deepening racial division was not inevitable. The Commission wrote: "The movement apart can be reversed. Choice is still possible *** It is the realization of common opportunities for all within a single society. This alternative will require a commitment to national action – compassionate, massive and sustained, backed by the resources of the most powerful and the richest nation on this earth. From every American it will require new attitudes, new understanding, and, above all, new will."

This Freedom Forum project was conceived and produced because this challenge, to shape "new attitudes, new understanding, and, above all, new will" must be the work of students and faculty in higher education, every person involved in civic leadership,

whether in politics *per se*, or in any community initiative, and any person in any position of corporate leadership — indeed anyone who can identify themselves with any aspect of civic responsibility.

The first step in our effort to create "new attitudes, new understanding, and, above all, new will" is to recognize that at no time since the 1960s has the Civil Rights Movement and The First Amendment that enabled it, taken center stage as the history we must study in shaping a template that will guide our destiny as an inclusive democracy.

In 1967, the year President Johnson established The Kerner Commission, Robert Kennedy wrote, in the last paragraph of a book that is a part of his legacy:

“Our future may lie beyond our vision, but it is not completely beyond our control. It is the shaping impulse of America that neither fate, nor nature, nor the irresistible tides of history, but the work of our own hands, matched to reason and principle, that will determine destiny. There is pride in that, even arrogance, but there is also experience and truth. In any event, it is the only way we can live.” This encapsulated legal history and the videos that accompany it are designed to facilitate an efficient yet comprehensive study of the Movement, and reveal the essential message of its legacy, so that we may overcome all of the factors that make us a divided society, and reawaken all of the aspects of The Civil Rights Movement’s success, so that we may become a nation of reasoned compromise, with a commitment to the common good.

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[This would be an appropriate time to view Professor Robert Bickel's video interview with John Seigenthaler, contained in the Oral Histories section of this website.

A former president of the American Society of Newspaper Editors, John Seigenthaler served for 43 years as an award-winning journalist for *The Tennessean*, Nashville’s morning newspaper. John Seigenthaler left journalism briefly in 1960 to serve for 2 years in the United States Justice Department as Assistant to Attorney General Robert F. Kennedy. He served as chief negotiator on behalf of Attorney General Kennedy with Governor John Patterson of Alabama during the Freedom Rides. Mr. Seigenthaler later served on the 18-member National Commission on Federal Election Reform organized in 2001. He was also a member of the Constitution Project on Liberty and Security, created after the September 11 tragedies in New York and Washington. In 2002, the trustees of Vanderbilt University created the John Seigenthaler Center, which houses the offices of the Freedom Forum, the First Amendment Center, and the Diversity Institute. The interview with Mr. Seigenthaler explores his early involvement with the Movement as a journalist, and his experience with southern politics and popular southern resistance to racial equality, while serving the Kennedy White House and Justice Department].