The Legal Attack to Secure Civil Rights

Thurgood Marshall (1908–1993) became an attorney with the NAACP's Legal Defense Fund in 1936. He headed the legal attack on segregated education culminating in the landmark Brown v. Board of Education *decision, in which the Supreme Court found segregated schools to be inherently unequal. In 1967 he became the first African American to serve on the Supreme Court.*

The struggle for full citizenship rights can be speeded by enforcement of existing statutory provisions protecting our civil rights. The attack on discrimination by use of legal machinery has only scratched the surface. An understanding of the existing statutes protecting our civil rights is necessary if we are to work toward enforcement of these statutes.

Defining Civil Rights

The titles "civil rights" and "civil liberties" have grown to include large numbers of subjects, some of which are properly included under these titles and others which should not be included. One legal treatise has defined the subject of civil rights as follows: "In its broadest sense, the term civil rights includes those rights which are the outgrowth of civilization, the existence and exercise of which necessarily follow from the rights that repose in the subjects of a country exercising self-government."

The Fourteenth and Fifteenth Amendments to the Constitution are prohibitions against action by the states and state officers violating civil rights. In addition to these provisions of the United States Constitution and a few others, there are several statutes of the United States which also attempt to protect the rights of individual citizens against private persons as well as public officers. Whether these provisions are included under the title of "civil rights" or "civil liberties" or any other subject is more or less unimportant as long as we bear in mind the provisions themselves.

All of the statutes, both federal and state, which protect the individual rights of Americans are important to Negroes as well as other citizens. Many of these provisions, however, are of peculiar significance to Negroes because of the fact that in many instances these statutes are the only protection to which Negroes can look for redress. It should also be pointed out that many officials of both state and federal governments are reluctant to protect the rights of Negroes. It is often difficult to enforce our rights when they are perfectly clear. It is practically impossible to secure enforcement of any of our rights if there is any doubt whatsoever as to whether or not a particular statute applies to the particular state of facts.

As to law enforcement itself, the rule as to most American citizens is that if there is any way possible to prosecute individuals who have willfully interfered with the rights of other individuals such prosecution is attempted. However, when the complaining party is a Negro, the rule is usually to look for any possible grounds for *not* prosecuting. It is therefore imperative that Negroes be thoroughly familiar with the

rights guaranteed them by law in order that they may be in a position to insist that all of their fundamental rights as American citizens be protected.

The Thirteenth Amendment to the Constitution, abolishing slavery, the Fourteenth Amendment, prohibiting any action of state officials denying due process or the equal protection of its laws, and the Fifteenth Amendment, prohibiting discrimination by the states in voting are well-known to all of us. In addition to these provisions of the Constitution, there are the so-called Federal "Civil Rights Statutes" which include several Acts of Congress such as the Civil Rights Act and other statutes which have been amended from time to time and are now grouped together in several sections of the United States Code. The original Civil Rights Act was passed in Congress in 1866, but was vetoed by President Andrew Johnson the same year. It was, however, passed over the veto. It was reintroduced and passed in 1870 because there was some doubt as to its constitutionality, having been passed before the Fourteenth Amendment was ratified. The second bill has been construed several times and has been held constitutional by the United States Supreme Court, which in one case stated that "the plain objects of these statutes, as of the Constitution which authorized them, was to place the colored race, in respect to civil rights, upon a level with the whites. They made the rights and responsibilities, civil and criminal, of the two races exactly the same." (*Virginia v. Rives*, 100 U.S. 313 [1879])

The Thirteenth and Fourteenth and Fifteenth Amendments, along with the civil rights statutes, protect the following rights:

1. Slavery is abolished and peonage is punishable as a federal crime. (13th amendment)
2. All persons born or naturalized in the U.S. are citizens and no state shall make or enforce any law abridging their privileges or immunities, or deny them equal protection of the law. (14th amendment)
3. The right of citizens to vote cannot be abridged by the United States or by any state on account of race or color. (15th amendment)
4. All persons within the jurisdiction of the United States shall have the same right to enforce contracts, or sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings as is enjoyed by white citizens.
5. All persons shall be subject to like punishment, pains, penalties, taxes, licenses, and extractions of every kind, and to no other.
6. All citizens shall have the same right in every state and territory, as is enjoyed by white citizens to inherit, purchase, lease, sell, hold and convey property.
7. Every person who, under color of statutes, custom or usage, subjects any citizen of the United States or person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws is liable in an action at law, suit in equity, or other proper proceedings for redress.
8. Citizens possessing all other qualifications may not be disqualified from jury service in federal or state courts on account of race or color; any officer charged with the duty of selection or summoning of jurors who shall exclude citizens for reasons of race or color shall be guilty of a misdemeanor.
9. A conspiracy of two or more persons to deprive any person or class of persons of any rights guaranteed by constitution and laws is punishable as a crime and the conspirators are also liable in damages.

Most of these provisions only protect the citizen against wrongdoing by public officials, although the peonage statutes and one or two others protect against wrongs by private persons.

Despite the purposes of these Acts which the United States Supreme Court insisted in 1879 "made the rights and responsibilities, civil and criminal, of the two races exactly the same," the experience of all of us points to the fact that this purpose has not as yet been accomplished. There are several reasons for this. In the first place, in certain sections of this country, especially in the deep south, judges, prosecutors and members of grand and petit juries, have simply refused to follow the letter or spirit of these provisions. Very often it happens that although the judge and prosecutor are anxious to enforce the laws, members of the jury are reluctant to protect the rights of Negroes. A third reason is that many Negroes themselves for one reason or another hesitate to avail themselves of the protection afforded by the United States Constitution and statutes.

These statutes protecting our civil rights in several instances provide for both criminal and civil redress. Some are criminal only and others are for civil action only. Criminal prosecution for violation of the federal statutes can be obtained only through the United States Department of Justice.

Up through and including the administration of Attorney General Homer S. Cummings, Negroes were unable to persuade the U.S. Department of Justice to enforce any of the civil rights statutes where Negroes were the complaining parties. The NAACP and its staff made repeated requests and in many instances filed detailed statements and briefs requesting prosecution for lynch mobs, persons guilty of peonage and other apparent violations of the federal statutes. It was not until the [1939–1940] administration of Attorney General Frank Murphy that any substantial efforts were made to enforce the civil rights statutes as they apply to Negroes. Attorney General Murphy established a Civil Rights Section in the Department of Justice.

During the present [1944] administration of Attorney General Francis Biddle there have been several instances of prosecution of members of lynch mobs for the first time in the history of the United States Department of Justice. There have also been numerous successful prosecutions of persons guilty of peonage and slavery. However, other cases involving the question of the beating and killing of Negro soldiers by local police officers, the case involving the action of Sheriff Tip Hunter, of Brownsville, Tennessee, who killed at least one Negro citizen and forced several others to leave town, the several cases of refusal to permit qualified Negroes to vote, as well as other cases, have received the attention of the Department of Justice only to the extent of "investigating." Our civil rights as guaranteed by the federal statutes will never become a reality until the U.S. Department of Justice decides that it represents the entire United States and is not required to fear offending any section of the country which believes that it has the God-given right to be above the laws of the United States and the United States Supreme Court. . . .

There are, however, certain bright spots in the enforcement of the federal statutes. In addition to the lynching and peonage cases handled by the Washington office of the Department of Justice, there have been a few instances of courageous United States Attorneys in such places as Georgia who have vigorously prosecuted police officers who have used the power of their office as a cloak for beating up Negro citizens.

An Example of Civil Rights Enforcement

As a result of the recent decision in the Texas Primary Case [*Smith v. Allwright*], it is possible to use an example of criminal prosecution under the civil rights statutes by taking a typical case of the refusal to permit the Negroes to vote in the Democratic Primary elections. Let us see how a prosecution is started: In Waycross, Georgia, for example, we will suppose a Negro elector on July 4, 1944, went to the polls with his tax receipt and demanded to vote in the Democratic Primary. He should, of course, have witnesses with him. Let us also assume that the election officials refused to let him vote solely because of his race or color.

As a matter of law, the election officials violated a federal criminal law and are subject to fine and imprisonment. But how should the voter or the organized Negro citizens, or the local NAACP Branch go about trying to get the machinery of criminal justice in motion? Of course, the details of what happens must be put in writing and sworn to by the person who tried to vote and also by his witnesses. Then the matter must be placed before the United States Attorney. This is the *federal* district attorney.

I wonder how many of the delegates here know who is the United States Attorney for their district, or even where his office is. Every Branch should know the United States Attorney for that area, even if a delegation goes in just to get acquainted and let him know that we expect him to enforce the civil rights laws with the same vigor as used in enforcing other criminal statutes.

But back to the voting case. The affidavits must be presented to the United States Attorney with a demand that he investigate and place the evidence before the Federal Grand Jury. At the same time copies of the affidavits and statements in the case should be sent to the National Office. We will see that they get to the Attorney General in Washington. I wish that I could guarantee you that the Attorney General would put pressure on local United States Attorneys who seem reluctant to prosecute. At least we can assure you that we will give the Attorney General no rest unless he gets behind these reluctant United States Attorneys throughout the south.

There is no reason why a hundred clear cases of this sort should not be placed before the United States Attorneys and the Attorney General every year until the election officials discover that it is both wiser and safer to follow the United States laws than to violate them. It is up to us to see that these officials of the Department of Justice are called upon to act again and again wherever there are violations of the civil rights statutes. Unfortunately, there are plenty of such cases. It is equally unfortunate that there are not enough individuals and groups presenting these cases and demanding action.

Neglected Civil Rights Statutes

The responsibility for enforcement of the civil provisions of the civil rights statutes rests solely with the individual. In the past we have neglected to make full use of these statutes. Although they have been on the books since 1870, there were very few cases under these statutes until recent years. Whereas in the field of general law there are many, many precedents for all other types of action, there are very few precedents for the protection of civil liberties.

The most important of the civil rights provisions is the one which provides that "every person who, under color of any statute, ordinance, regulation, custom or usage of any state or territory, subjects or causes to be subjected any citizen of the United States or person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress." Under this statute any officer of a state, county or municipality who while acting in an official capacity, denies to any citizen or person within the state any of the rights guaranteed by the Constitution or laws is subject to a civil action. This statute has been used to equalize teachers' salaries and to obtain bus transportation for Negro schoolchildren. It can be used to attack *every* form of discrimination against Negroes by public school systems. . . .

This statute, along with other of the civil rights statutes, can be used to enforce the right to register and vote throughout the country. The threats of many of the bigots in the south to disregard the ruling of the Supreme Court of the United States in the recent Texas Primary decision has not intimidated a single person. The United States Supreme Court remains the highest court in this land. Election officials in states affected by this decision will either let Negroes vote in the Democratic Primaries, or they will be subjected to both criminal and civil prosecution under the civil rights statutes. In every state in the deep south Negroes have this year attempted to vote in the primary elections. Affidavits concerning the refusal to permit them to vote in Alabama, Florida and Georgia have already been sent to the United States Department of Justice. We will insist that these election officials be prosecuted and will also file civil suits against the guilty officials.

It can be seen from these examples that we have just begun to scratch the surface in the fight for full enforcement of these statutes. The NAACP can move no faster than the individuals who have been discriminated against. We only take up cases where we are requested to do so by persons who have been discriminated against.

Another crucial problem is the ever-present problem of segregation. Whereas the principle has been established by cases handled by the NAACP that neither states nor municipalities can pass ordinances segregating residences by race, the growing problem today is the problem of segregation by means of restrictive covenants, whereby private owners band together to prevent Negro occupancy of particular neighborhoods. Although this problem is particularly acute in Chicago, it is at the same time growing in intensity throughout the country. It has the full support of the real estate boards in the several cities, as well as most of the banks and other leading agencies. The legal attack on this problem has met with spotty success. In several instances restrictive covenants have been declared invalid because the neighborhood has changed, or for other reasons. Other cases have been lost. However, the NAACP is in the process of preparing a detailed memorandum and will establish procedure which will lead to an all-out legal attack on restrictive covenants. Whether or not this attack will be successful cannot be determined at this time.

The National Housing Agency and the Federal Public Housing Authority have established a policy of segregation in federal public housing projects. A test case has been filed in Detroit, Mich., and is still pending in the local federal courts. The Detroit situation is the same as in other sections of the country. Despite the fact that the Housing Authority and other agencies insist that they will maintain separate but equal facilities, it never develops that the separate facilities are equal in all respects. In Detroit separate projects were built and it developed that by the first of this year every single

white family in the area eligible for public housing had been accommodated and there were still some 800 "white" units vacant with "no takers." At the same time there were some 45,000 Negroes inadequately housed and with no units open to them. This is the inevitable result of "separate but equal" treatment. . . .

State Laws

We should also be mindful of the several so-called civil rights statutes in the several states. There are civil rights acts in at least 18 states, all of which are in the north and middle west. These statutes are in California, Colorado, Connecticut, Illinois, Indiana, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New York, Ohio, Pennsylvania, Rhode Island and Washington. California provides only for civil action. Illinois, Kansas, Minnesota, New York and Ohio have both civil and criminal provisions. In New Jersey the only action is a criminal action, or an action for penalty in the name of the state, the amount of the penalty going to the state.

In those states not having civil rights statutes it is necessary that every effort be made to secure passage of one. In states having weak civil rights statutes efforts should be made to have them strengthened. In states with reasonably strong civil rights statutes, like Illinois and New York, it is necessary that every effort be made to enforce them. . . .

Outside of New York City there are very few successful cases against the civil rights statutes because of the fact that members of the jury are usually reluctant to enforce the statutes. I understand the same is true for Illinois. The only method of counteracting this vicious practice is by means of educating the general public, from which juries are chosen, to the plight of the Negro.

It should also be pointed out that many of our friends of other races are not as loud and vociferous as the enemies of our race. In northern and mid-western cities it repeatedly happens that a prejudiced southerner on entering a hotel or restaurant, seeing Negroes present makes an immediate and loud protest to the manager. It is very seldom that any of our friends go to the managers of places where Negroes are excluded and complain to them of this fact. Quite a job can be done if our friends of other races will only realize the importance of this problem and get up from their comfortable chairs and actually go to work on the problem.

Bring Civil Rights Violators to Justice

Thus it seems clear that although it is necessary and vital to all of us that we continue our program for additional legislation to guarantee and enforce certain of our rights, at the same time we must continue with ever-increasing vigor to enforce those few statutes, both federal and state, which are now on the statute books. We must not be delayed by people who say "the time is not ripe," nor should we proceed with caution for fear of destroying the "status quo." Persons who deny to us our civil rights should be brought to justice now. Many people believe the time is always "ripe" to discriminate against Negroes. All right then—the time is always "ripe" to bring them to justice. The responsibility for the enforcement of these statutes rests with every American citizen regardless of race or color. However, the real job has to be done by the Negro population with whatever friends of the other races are willing to join in.