Welcome and Session I: Overview of Martin Luther King's Career

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MARTIN LUTHER KING’S LAWYERS: FROM MONTGOMERY TO THE MARCH ON WASHINGTON TO MEMPHIS: A SYMPOSIUM COMMEMORATING THE CONTRIBUTIONS OF DR. MARTIN LUTHER KING’S LAWYERS

TRANSCRIPT OF PROCEEDINGS held at Northwestern University School of Law, Thorne Auditorium, 375 East Chicago Avenue, Chicago, Illinois, on the 31st day of October, A.D. 2014, at 8:45 a.m.

MS. KIMBERLY SEYMOUR, Symposium Chair, Journal of Law and Social Policy; MR. LEN RUBINOWITZ, Professor and Faculty Advisor to the Journal of Law and Social Policy; MR. ALDON MORRIS, Leon Forrest Professor of Sociology and African American Studies, Northwestern University.

REPORTED BY: PATRICIA ANN LAMBROS, C.S.R. No. 84-1790.

WELCOMING REMARKS

MS. SEYMOUR: Good morning. Thank you for making it here this early on a cold Chicago morning. We’re delighted to have you here.

My name is Kimberly Seymour. And I’m a 3L here at Northwestern, and the Symposium Chair for the Journal of Law and Social Policy. I’m so pleased and honored to welcome you here for our Eighth Annual Symposium, commemorating the achievements of Dr. King’s lawyers. Before I continue, I’d like to take a moment to thank our sponsors, without whose generous contributions this event wouldn’t be possible.

Our sponsors include the Gordon Symposia Fund; Katten, Muchin, Rosenman; Foley & Lardner; Hughes, Socol, Piers, Resnick & Dym; the Lloyd A. Fry Foundation; Sidley Austin; the American Bar Foundation; Loeyv & Loeyv; Faegre, Baker, Daniels; Miner, Barnhill & Galland; the Chicago Bar Association; Rosen, Bien, Galvan & Grunfeld; and Northwestern’s Student Bar Association, the Black Law Students Association, and the Diversity Coalition.

Once again, we’re very grateful for your generosity, and we thank you very much. Today, we will hear from civil rights activists, experts, and scholars on Dr. King’s work and the Civil Rights Movement. And we have the great honor of having with us today a truly remarkable group of Dr. King’s personal legal counsel. I say “remarkable,” not only because of their experience personally representing Dr. King and supporting his
movements through advocacy in the courts, but also, because this is the first time that these individuals have come together to share their experiences.

I’d like to read just an excerpt for you from a speech that Dr. King gave in Chicago in 1966. He said, “I choose to identify with the underprivileged. I choose to identify with the poor. I choose to give my life for the hungry. I choose to give my life for those who have been left out of the sunlight of opportunity. I choose to live for and with those who find themselves seeing life as a long and desolate corridor with no exit sign.”

The individuals presenting today had the great courage to accompany King down that desolate corridor, zealously serving those who were left in the shadows. Their legacy challenges us to lift up the underprivileged and to confront injustice with conviction and compassion.

At this time, I’d like to introduce Professor Len Rubinowitz. It was his great scholarship on the work of Dr. King’s lawyers and his vision for this historical and unprecedented gathering that has made this symposium possible. Thank you.

(Applause.)

PROFESSOR RUBINOWITZ: Well, here is our goal for today. There have been many lawyers who have played a very important role, made major contributions in the movements and events associated with Dr. King. By and large, those lawyers have played their role behind the scenes. What we want to do today is to move them center stage, literally and figuratively, and also hear from scholars who have studied Dr. King and Dr. King’s lawyers.

Dr. King had more than 60 lawyers in his short career of less than a decade and a half. He referred to himself at one point as a “notorious litigant and a frequenter of jails,” which is also the title of a forthcoming article. Sadly, few of those lawyers are still with us. In fact, one, Judge Leo Holt, passed away last month. He was active with Dr. King here in Chicago, and if you look at your program, you’ll see, “In Memoriam.”

We have five of those lawyers with us today. We’re very fortunate. Let me take care of a few housekeeping items, and then, I’ll do a very brief overview of the day. For practicing lawyers, there is CLE, continuing legal education credit available. There is a table outside to go to about that. I hope you all have the packets. The packets include the program, biographies of all of the speakers today, and some other material about a photographer we’ll hear from later on, Bernie Klein.

We’re going to keep the introductions to speakers very brief today, partly because you have their biographies in your packet, but mostly because we want to hear from the speakers and not take time with the introductions. We have a very tight schedule today.

So here is the overview of the day. We’re going to start with two speakers who will give context: Professor Aldon Morris who will start, will give his overview of the Civil Rights Movement and Dr. King’s role, an important context to set the stage for the rest of the day. Professor Clay Carson will talk about lawyers more generally and set the context for the discussion of the lawyers. Then, the rest of the time, we’re going to turn to the individual lawyers. And that will be partly their remarks and partly in a conversation format, which is why the chairs and the table are here. And then, we are extraordinarily fortunate to have, as a concluding keynote, Dr. Clarence Jones, a member of Dr. King’s
inner circle from the time they met in 1960 to the time when Dr. King was assassinated in 1968. He was with Martin Luther King every step of the way.

So our first speaker is going to be Professor Aldon Morris, Leon Forrest Professor of African American Studies and Sociology here at Northwestern. He wrote a classic book, “Origins of the Civil Rights Movement,” which, 30 years later, remains a classic and readily available. I recommend it strongly, and so, I’m also about to recommend his forthcoming book which is coming out soon, “The Scholar Denied: W.E.B. DuBois and the Birth of Modern Sociology.” His book on the Origins of the Civil Rights Movement is on display out in the lobby with a number of other books by and about our speakers.

So Professor Morris, I turn the floor to you.

(Applause.)

SESSION I: OVERVIEW OF MARTIN LUTHER KING’S CAREER

PROFESSOR MORRIS: Good morning. Let me begin by thanking Professor Len Rabinowitz and Symposium Chair Kimberly Seymour for organizing this important symposium regarding the contributions of Martin Luther King’s lawyers. I’m honored to participate in this conversation and to learn from lawyers who assisted the Civil Rights Movement in pushing America toward democracy.

There is a note that I want to sound loudly at the outset: the great Martin Luther King, Jr., did not create the Civil Rights Movement, nor was he its only architect, determining whether the Movement succeeded or failed. It takes thousands of people including leaders, organizers, lawyers, and ordinary people to generate and sustain a great struggle like the Civil Rights Movement.

To embrace the view that a great Moses is required before an oppressed people can burst free of oppression is a form of oppression itself because it signals that those in bondage must wait for a messiah to lead them to the Promised Land. This myth robs people of the insight and self-confidence that they, themselves, can become transformative agents of social change.

Yet, I want to be clear about the role of charismatic leaders and the masses. Great charismatic leaders are often crucial ingredients of effective social change movements because they enable them to articulate a vision that guides protests and engenders masses of people to become social change agents capable of overthrowing oppression.

Moreover, Martin Luther King, Jr. proved to be one of history’s most able, charismatic leaders who inspired millions in mass struggle that transformed America and empowered the dream of freedom for millions across the world. Reverend James Lawson captured King’s importance in this matter. He said, “It was the nature of the struggle at that time, that King was the single overwhelming symbol of the agitation and the struggle. He gave the Black community an advantage the Black community has never had, and has never had since his death. He had the eyes of the world on where he went. And the Black community, it never had that kind of person.” Thus, it is important to bear in mind that great movements may combine charisma and the talents of thousands of ordinary people, and together, they create the power to achieve change.

Here, I wish to introduce the concept of “leadership team” in contrast to the idea of the omnipotent leader. According to Marshall Ganz, great leaders are not great merely
because of their individual gifts but because they assemble a leadership team of diverse people who possess the skills and talents needed to do social change work. This arrangement really differs little from the President of the United States who assembles a cabinet to carry forth the work of the state. So to understand Martin Luther King’s great achievements, one must grasp his ability to assemble around him diverse thinkers and expertise that encouraged creative thought, strategizing, and actions that led to the overthrow of Jim Crow.

King’s Morehouse classmate and long-time editor of Ebony, Leone Bennett, understood this aspect of Dr. King. He wrote that, “King had an unexcelled ability to pull men and women of diverse viewpoints together and to keep their eyes focused on the goal. King demonstrated a rare talent for attracting and using the skills and ideas of brilliant aides and administrators.” It is important to learn from King’s lawyers because they constituted a crucial dimension of King’s leadership team as did organizers, experts on nonviolence, clergy, war veterans, student leaders, labor leaders, and so on.

When we think about the classic Civil Rights Movement, we have in mind the 1955 Montgomery Bus Boycott, the 1963 Birmingham confrontation and the March on Washington, and the 1966 Chicago Freedom Movement, and the 1968 Memphis sanitation movement, during which King was assassinated. Yet, these specific movements do not capture the diverse struggles of the Civil Rights Movement which really occurred over decades and across the nation.

For example, other pivotal struggles included the 1957 Little Rock crisis, the 1960 sit-in movement, the 1961 Freedom Rides, and numerous school confrontations such as the one that was initiated by James Meredith when he attempted to enroll at the University of Mississippi in 1961.

So for my remarks today, I have in mind this entire Civil Rights Movement with a particular focus on the movements, the classic battles that I mentioned above. The direct cause of the modern Civil Rights Movement was black oppression, especially the Jim Crow regime that emerged in the South following Reconstruction. Jim Crow replaced formal slavery and differed from it only in details.

To explore the reasons for the Civil Rights Movement, I briefly visit my own childhood. I was born in the heartland of Jim Crow racism in rural Tutwiler, Mississippi, in 1949. As a boy, I experienced and witnessed black life in the Deep South of the 1950s, drinking from the “colored” water fountain and receiving ice cream through the shutter of the segregated Dairy Queen.

I attended the ill-equipped colored schools where, during fall terms, my classmates, who had not yet reached puberty, disappeared for several months to pick cotton so that their families could survive. I was aware in the early hours of fall mornings white men drove pickup trucks to the Negro side of town, loaded blacks on those trucks, and dropped them off on farms.

I remember in blistering hot weather, how whites sat under shade trees while blacks worked the fields, dripping with sweat from sunup to sundown. Yet, with all of this backbreaking work, we never had enough clothes or food.

There was also fear and violence, which I experienced through the indoctrination of Jim Crow laws that I learned early in life. Those rules dictated how blacks were to respond to whites with deference, respect, and formality. They prescribed how black
males were to act toward white women, including looking down when in their presence, and crossing the road when approaching them.

Violating Jim Crow rules, either out of ignorance or deliberately, could result in severe punishment, including death. I also sensed the presence of fear and violence through hearing adults whispering about the horrors of blacks hanging from trees. They embodied Billie Holiday’s classic song, “Strange Fruit,” where she sadly cried, “Southern trees bear a strange fruit, Blood on the leaves and blood at the root, Black bodies swinging in the southern breeze, strange fruit hanging from the poplar trees.”

An early memory is the 1955 lynching of 14-year-old Emmett Till, a Chicagoan visiting Money, Mississippi, located very close to my home. I am a member of the “Till Generation,” which consists of blacks traumatized by the lynching, which left a lasting imprint. When I was six, Till’s murder rudely awakened me to horrible racism and caused me to ask why whites committed such a horrendous crime against a boy slightly older than I.

Prior to the Civil Rights Movement, black people suffered economic exploitation, political disenfranchisement, and personal oppression. Personal oppression was immediate, for it robbed blacks of their personhood and ate away at their dignity. It reinforced the main ideological pillar of black domination, which was the view that black people were inferior, and, at best, subhuman.

This personal oppression left blacks to struggle over whether they were worthy of the privileges and respect that whites routinely enjoyed. Personal oppression was personified in the strict legally enforced system of racial segregation. The logic insisted that a people so inferior had to be kept separate from whites so as not to taint their superior civilization.

Scholars have tended to misunderstand Jim Crow’s personal system of oppression. They reduce it to so-called more basic forms of domination, including economic exploitation and political disenfranchisement. Some even claim segregation was relevant only to middle-class blacks who desired to swim and to ride on airplanes with whites.

But for those who lived it, segregation meant something entirely different. It was a daily albatross that taught its victims that they were less than others. Segregation dictated that blacks deserved dirty and unsanitary restrooms, and the use of the woods as toilets while traveling.

It taught them that they were inferior and therefore received poor health care, and sometimes, none at all; that they were the victims of beatings from whites because they simply thought that it was fun; inferior education, largely worthless; rituals of using back doors and sitting in the rear of buses and trains; and enduring hundreds of insults routinely.

Economic and political oppression reinforced segregation, forcing blacks to move around in a straitjacket of daily humiliations that ate away at their soul. For blacks, the Civil Rights Movement was personal. It sought to incorporate them into the nation as citizens and to destroy the imposed blankets of inferiority so that they could shed the burdens of being treated as subhuman.

The problem with Jim Crow segregation is that it was legal. The 1896 Plessy vs. Ferguson Supreme Court decision declared that racial segregation was the law of the
land. This decision made it clear for whites to treat blacks as subhuman, that the bottom line, that while they claimed that it was separate but equal, they were hiding behind a lie.

Thus, the question confronting black people of the 20th century was how to overthrow racial domination that was perfectly legal. This legal backing of Jim Crow presented black people with a major problem: How do you disobey the law when you believe in just laws? How do you confront white oppressors, sure to use all of the legal and extra-legal powers to defeat any challenge that you mount?

Yet, this is a common problem faced by movements of the oppressed because if they are to be successful, they must disrupt the system of domination they face. They must break the laws of servitude. Indeed, the power of social change movements rests with their ability to generate social disruption. It is social disruption that provides the leverage on which movements negotiate with power-holders to initiate change. Without disruption, the oppressed colludes in their own oppression, their own subordination.

The production of social disruption was the underlying thread running through the Civil Rights Movement from Montgomery to Memphis. Underneath all of King’s deeply held beliefs in racial brotherhood, the need for reconciliation, turning the other cheek, and loving thy enemies, was his shrewd understanding that the Movement had to disrupt Jim Crow in order to overthrow it. He came to understand that it was disruptive, mass demonstrations that created the fire to burn down Jim Crow.

America itself was the product of protests. The transcendentalist philosophers, especially David Thoreau, preached that dissent was just because the moral laws of the universe transcended unjust laws of man. The call for civil disobedience resonated with King, but it was the Gandhi movement that provided the ultimate model for King, which justified breaking unjust laws on moral and political grounds.

A generation of black freedom-fighters before King caught the Gandhian fire. Howard Thurman, Benjamin Mays, Mordecai Johnson, Bayard Rustin, and James Lawson were all students of Gandhi’s nonviolent revolution. And they traveled to India to study Gandhi long before King led the Montgomery Bus Boycott. They counseled King on this tactic of disruption before he visited India himself in 1959.

Even closer to home, the great black leader, A. Philip Randolph, had used mass, nonviolent techniques to force President Roosevelt to ease racial discrimination in the military and its defense industries during World War II.

During the Montgomery Bus Boycott, King embraced mass nonviolent direct action and utilized it throughout his career. Therefore, boycotts, marches, sit-ins, freedom rides, mass arrests, filling the jails, defying injunctions, kneel-ins, wade-ins, all had one purpose: disrupt the Jim Crow order and force segregation lists to capitulate to Movement demands. In this regard, King broke from the exclusive reliance on legalistic approaches.

Nonviolent direct action was a strategy only effective if implemented by the masses. Again, Reverend James Lawson captured the tactical shift: “The point of the whole problem is that when people are suffering, they don’t want rhetoric and processes which seem to go slowly . . . so nonviolent direct action put into the hands of all kinds of ordinary people a positive alternative to powerlessness and frustration. That’s one of the great things about nonviolent direct action.”

King became the model of mass revolt through implementing nonviolent direct action. Dr. King was clear about his mission: “I must confess that I am not afraid of the word ‘tension.’ I have earnestly worked and preached against violent tension, but there is
a type of constructive tension that is necessary for growth. Nonviolent direct action seeks to create such a crisis and establish such creative tension that a community that has constantly refused to negotiate is forced to confront the issue. . . ."

Now, King understood that he was calling upon the oppressed to become law-breakers. “A law is a man-made code that squares with moral law or the law of God that is a just law. An unjust law is a code that is out of harmony with moral law. One who breaks an unjust law must do so openly, lovingly, and with a willingness to accept the penalty.”

In hindsight, it is easy to misapprehend the revolutionary nature of nonviolent direct action. It challenged the black Church, the most powerful institution in the black community, which preached that it was also necessary to render to Caesar that which was Caesar’s. It challenged the NAACP, the most powerful civil rights organization, whose lawyer’s reigned supreme and believed Jim Crow could only be overthrown through the courts.

Nonviolent direct action challenged lawyers trained to keep people out of jail rather than defending those who openly defied laws, landing them in jail. And most of all, it challenged ordinary, poor, oppressed black people who were being asked to risk livelihoods and even the lives of their babies and spouses who would be placed in the path of beatings and bombs. Because they knew law-breaking protests would land them in jail, they wondered who would provide the lawyers to defend them, bond money to protect them from murder while in jail.

It challenged King because it meant that he would be targeted as the chief leader of the law-breakers who deserved jail or assassination. And, of course, nonviolent direct action challenged white supremacy. That system had always relied on compliance by the black masses. If they revolted and rendered the system ungovernable, Jim Crow would collapse because it thrived on social order and a calm climate in which enormous economic profits could be realized.

In this light, nonviolent direct action would usher in a mass revolt that rocked white supremacy and called upon the oppressed to shoulder the burden of change. This would not be easy.

King was the product of the black Church. His father and grandfather were Baptist preachers. King grew up imbibing the Church’s music, riveting sermons, historic traditional oratory. And he witnessed the organizing genius of the masses who constituted the foundation on which that Church stood. The Church was the rock that allowed King to live a privileged life, and its walls provided the sanctuary enabling him to escape the most brutal wounds inflicted by racism. As a result, it was natural for King to view the Church as a powerful enterprise that could liberate black people. After all, because of the Church, he had become highly educated, secure in his own skin, and steeped in an oratory capable of moving masses in the tradition of Moses and Jesus.

But King’s call for the Church to embrace a nonviolent revolution did not sit well with many Church leaders. King’s vision that the Church was a sleeping giant that would awaken and destroy Jim Crow was quickly tested. The most powerful black Baptist group in the world was the National Baptist Convention, headed by its influential president, Reverend Joseph H. Jackson.
King knew that if the Convention backed the nonviolent revolution, the Movement would have unprecedented access to financial resources and thousands of warm bodies needed to commence a mass uprising.

Jackson crushed King’s dream, and he used the cover of law to do so. He argued that nonviolent direct action was incapable of freeing black people. Jackson reasoned that the Federal Constitution was the supreme law of the land, and it had to be obeyed because it contained self-correcting mechanisms that would liberate black folks.

Jackson claimed nonviolent law-breaking was wrong and that those who advocated it were simply law-breakers who engaged in criminal behavior. Worse, Jackson argued that those who engaged in so-called nonviolent direct action were not peace-seekers, but irresponsible agitators who provoked violence and destroyed racial harmony. Such action was not only an affront to Federal law, Jackson argued, it violated God’s law.

Rather than awakening the sleeping giant, King found the call for nonviolent direct action generated a revolt between warring factions within the black Church. And when the dust cleared, he had been excommunicated from the National Baptist Convention, and his vision of a united Church propelling the Civil Rights Movement forward, an exercise in futility. The NAACP shared the objections to nonviolent direct action held by the National Baptist Convention.

Thurgood Marshall, a major architect of the NAACP’s legal strategy and future Supreme Court Justice, led NAACP’s opposition to King and nonviolent direct action. Marshall insisted that lasting changes in race relations could only be achieved through the law and the United States Constitution. Marshall revealed that “he couldn’t imagine a worse prescription for bringing about change than disobedience to the law.” For American Negroes or American civil rights people, black or white, to start disobeying laws on grounds that it was against their conscience would set it all back. It would just devastate and undermine the progress that has been made. Thus, convincing many leaders of the two most important institutions of the black community—the Church and the NAACP—that nonviolent direct action was the panacea, was an uphill battle for King and the Civil Rights Movement.

I believe an objective analysis of the Movement and these two institutions would be compelled to conclude that their lack of substantial support for direct action and Martin Luther King hampered the struggle and curtailed what the Movement might have been able to achieve.

Yet, the great lesson is that King and the Civil Rights Movement were able to mobilize enough people to break laws of white supremacy and to cause the walls of segregation and Jim Crow to collapse. This was an amazing feat, given the opposition from without and within.

When the major victories of the Movement are seriously studied, it becomes obvious that it was social disruption generated by masses of people in Montgomery, Birmingham, and Selma that provided the political leverage enabling the Movement to overcome jailing, snarling dogs, high-powered water hoses, Billy clubs, and the assassin’s bullets; that is, law-breakers precipitated the revolution.

This brings me to Movement lawyers. Segregation laws were powerful enemies, maintaining white supremacy. Yet, law was a two-edged sword because it was also a powerful ally that could be used as a weapon for liberation.
Democratic principles and laws written into the nation’s legal documents calling for equal treatment under the law were key values that could be mobilized to attack Jim Crow. The irony was that laws undermining justice had to be broken for laws of racial justice to prevail. But the great legal task of that day concerned how the law-breakers would be handled by the legal system and protected from that system. Indeed, the law-breaking change agents needed to be empowered legally as they approached jail and languished within them.

These challenges called for a new kind of lawyering that’s not commonly taught in law schools. Lawyers are taught to be leaders for their clients because they are the legal experts. While good lawyers may listen to clients, it is their wisdom and legal authority that largely determine the major issues and the legal strategies that should be pursued to increase the likelihood of favorable rulings.

Because lawyers are imbued with legal authority, they enjoyed high status within the black community. And this was especially the case in the 1950s because there were so few black attorneys, and the law was so detrimental for black people.

Moreover, stunning legal victories by the NAACP challenging racism established lawyers as the leaders of social change during the Jim Crow era. The Civil Rights Movement challenged the traditional roles and authorities of lawyers.

All of a sudden, preachers and activists, especially King, advanced a new strategy for black liberation. They were asking lawyers to chart new legal strategies addressing novel situations. The new leaders wanted to learn how to deal with legal challenges stemming from explicit and deliberate decisions to break the law.

At times, activists chose to engage in Courtroom Theater that violated expected decorum in order to reveal racial biases rooted in legal proceedings. At other times, activists refused bond, opting to remain in dangerous southern jails rather than to acquiesce to injustice. Following principles of nonviolent direct action, some activists chose to risk death over obeying legal rulings. Much of this activist behavior called for a new type of jurisprudence to assist insurgents dedicated to tactics designed to achieve immediate overthrow of the system of domination. This new approach embraced social disruption rather than employing the master’s tools that required centuries for mass results.

Looking back, we are able to discern that some attorneys became Movement lawyers who identified with the goals of the insurgents. They undertook the task of creative legal thinking to support those viewed by many of their colleagues as criminals disguised as peace-makers enduring redemptive suffering for the liberation of their people. I should add here that all was not new because the Movement needed conventional lawyers, often working in the background, to promote the Movement. Others creatively combined conventional lawyering with Movement lawyering, bringing new legal viewpoints to the think tanks of the Movement. Because some lawyers stepped forward as legal guides of the Movement, they became important actors in the leadership team that hastened the fall of Jim Crow.

There will always be dialectical tension between social change movements and the law. Movement attorneys demonstrated that if the tension is managed creatively, lawyers can be creative agents of social change.

Thank you.

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(Applause.)

PROFESSOR RUBINOWITZ: What a terrific start. I’m going to steal most of that for anything I write in the future. Thank you.

(Short pause.)

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I, PATRICIA ANN LAMBROS, a Certified Shorthand Reporter, C.S.R. No. 84-1790, of the State of Illinois, do hereby certify that I reported in shorthand the proceedings had at the symposium session aforesaid, and that the foregoing is a true, complete and correct transcript of the proceedings as appears from my stenographic notes so taken and transcribed under my personal direction.