



“Living the Dream” - Lawyers’ Committee Law Firm Campaign Kick-Off & Reception
July 21, 2010 - Hosted by Morrison & Foerster LLP

The Fight for Civil Rights Continues:

A call of action to private lawyers and law firms

Remarks by Guest Speaker:

Bill Lann Lee

Lewis, Feinberg, Lee, Renaker & Jackson P.C.

The “Living the Dream” Awards remind us that lawyers and law firms continue to answer President Kennedy's call to action on civil rights that he issued at the dawn of the civil rights era. I am honored to speak to lawyers who have answered the call.

Lateefah has asked me to talk about the fight for civil rights. The topic raises a number of questions.

Is there a fight for civil rights?

Sometimes it appears not. One index is the *New York Times* on May 17th. For most of my life, the *Times* could be counted to run a story about civil rights issues on that day, the anniversary of the Supreme Court's landmark decision in *Brown v. Board of Education*, the 1954 decision striking down racial segregation in public education. This year there was no story.

Elena Kagan was criticized by some senators at her confirmation hearing because she clerked for Thurgood Marshall, the chief lawyer in the Brown case who ascended to the Supreme Court. An association with the most well-known civil rights lawyer is now something to be ashamed of in some quarters.

We have an African American president and are supposed to live in a post-racial world.

Personally, I think the best answer was given by my son Mark a decade ago. He was 8. His mother and I had asked him to pick up and put his clothes away even though we did not ask his 6-year-old brother to pick up. Socks were a particular problem. When I asked him to pick up his socks, his reaction was to scream at me: "WELL, MR. CIVIL RIGHTS DIVISION, WHAT ABOUT MY RIGHTS?"

Mark's point, however inartfully put, was that being treated fairly is one of those chronic concerns for all of us, including 8-year-olds. Aside from his vehemence, it was nice that Mark seemed to understand the nature of the work of the Justice Department's Civil Rights Division. But, in a sense, the civil rights movement has succeeded: being treated equally and fairly are preoccupations that we all have every day.

With sentencing in the BART police shooting incident pending, the gay marriage decision pending, the California Supreme Court decision on the constitutionality of SF's affirmative action program for minority contractors pending, our society is not yet post-racial. The fight for civil rights continues.

Perhaps the best proof of the continuing fight for civil rights is the work in the trenches for which we recognize our awardees.

But what is "civil rights"?

Not just laws on the books.

The great post-Civil War constitutional amendments are almost a century and a half old. Their being on the books was not enough to stop the Black Codes or Jim Crow.

The great federal civil rights statutes of the 1960's through the 1990 Americans with Disabilities Act were not enough to stop discrimination and exclusion in our era.

There are still laws that are needed. Congress passed hate crimes legislation just last year. Immigration reform, laws protective of sexual orientation and gay marriage laws are examples of needed legislation.

But the essence of the fight for equality and fairness today is about making real the promises that our society has made its members in our law. Dr. King said it best. The civil rights movement has come to collect on the promissory note embodied in our constitution and laws.

Lawyers have a special role to play in the fight for civil rights: After all, we know what a promissory note is. We know how to collect payment. We know that the civil rights that matter are those that are paid in full; we know that the rest are just collection cases.

Do private lawyers really need to do anything? We have a Democratic Administration after all.

We all have friends who have gone back East to work for the Obama Administration. Tony West from the Bay Area, one of us, is head of DOJ's Civil Division. The head of the Civil Rights Division is Tom Perez, who was a deputy in the Clinton administration. The head of EEOC is Jackie Berrien from the NAACP Legal Defense Fund.

Isn't government enforcement sufficient? Federal civil rights laws authorize Justice Department law suit enforcement as well as private attorney general suits by private individuals.

In DC, money talks. The Obama Administration has put money into civil rights enforcement, and given healthy increases to all the civil rights enforcement agencies. So why do we need private enforcement and the Lawyers Committee?

I happen to know a lot about budgets. In my time, the Clinton Administration moved the Civil Rights Division from dead last among the Justice Department litigating divisions to second from the bottom, by 2001, by increasing the budget 40% and hiring 100 more lawyers. Tom Perez's budget increases in the last year are greater than what we achieved in three years. He is staffing up like crazy.

The sad truth is that you usually get big budget increases only for compelling reasons. My budget increases were designed to balance out the lean years of under-funding under the Bush I Administration; they weren't really increases. Perez's increases follow eight years of efforts to dismantle the Civil Rights Division including politicizing the Department, firing the Civil Rights Division's civil service managers, and replacing over half of the Division's lawyers with inexperienced lawyers to handle a larger mission. They aren't really increases either.

The Civil Rights Division and the rest of the government will not be on its game for a while. The Division will likely be making a splash in the short term by intervening or filing amicus briefs in cases filed by the Lawyers Committee' and other private counsel.

The ironic lesson of these budget increases is the importance of private attorney general enforcement of nation's civil rights laws. When President Kennedy issued his original call to action to the bar, the Attorney General was Robert Kennedy and it was the heyday of the Civil Rights Division when it was really active protecting the civil rights of African American communities in the South, civil rights demonstrators, and the civil rights movement. Even then the Department of Justice played a secondary role to the Lawyers Committee and other civil rights advocates.

What then are the current civil rights battles?

What are the cutting edge issues? The truth is the cutting-edge issues are *recurrent* rather than current. They are problems that keep coming back because we have not solved them.

Immigration reform. Cracking down on immigrants unfortunately is how our nation sometimes responds to economic distress and upheaval. The Chinese Exclusion Act in the 19th century and restrictions on Eastern European immigration in 20th century are examples. State law restrictions like AZ law and restrictions on asylum petitions stand in a long line.

Criminal justice reform. More African American men are in prison than attend college. In *The New Jim Crow*, Michelle Alexander has written a troubling book that incarceration levels for African American men have reached such a high level that it is appropriate to think of our era for the African American community as Jim Crow in disguise.

Economic reform. The mortgage crisis is a crisis for all communities, but a major calamity for African American and Latino communities. They are where many of the problem mortgages were specifically marketed even when minority families qualified for lower rate mortgages. It was a foreseeable tragedy. Ten years ago, civil rights advocates and the Civil Rights Division were bringing cases against lenders for targeting minority communities with high interest rate loans

Last, educational reform. To return to where I started. *Brown v. Board of Education*, the great civil rights landmark, is in danger of irrelevance. Racial segregation levels are as high in most parts of the country as at the time of *Brown*. In the north and west, segregation levels are higher than in 1954. The segregation levels are so high that social scientists say they indicate racial isolation. The facts on the ground have eclipsed the law on the books.

What is racial isolation? When my son Mark (the civil rights advocate) engaged in his civil rights discourse, I read a book by Ron Suskin called *A Hope in the Unseen*. It is the story of the life of Cedric Jennings, a black Washington DC high school student and the pressures he faced not to achieve in his all-black school. He didn't give in and ended up at an Ivy League college.

Although he grew up in our nation's capital, he had so little interaction with white people that he used to identify his white college friends by the television sit com characters they reminded him of. That is racial isolation.

A decade later, Mark is now a student at the post-209 University of California. He says that there are so few African American and Latino students that they are usually identified by race by the other students. Many of his friends have grown up in suburban communities with few, if any, minority friends. They are the mirror image of Cedric Jennings a decade before. That is racial isolation.

Conclusion

A society marked by racial isolation is not the society envisioned by our civil rights constitutional amendments and laws. The promissory note has not been paid. Ours is not a post-racial society.

The “Living the Dream” Awards we celebrate today are not just recognition for a job well done. They are a reminder of the need for we and our firms to join with the Lawyers Committee to do more.

For each of those recurrent cutting edge issues--immigration reform, criminal justice reform, economic reform and educational reform--the Lawyers Committee is on the case today. They need our help.

Thank you.

Bill Lann Lee, formerly the nation's top civil rights prosecutor, is a shareholder with Lewis, Feinberg, Lee, Renaker & Jackson, P.C., where he specializes in prosecuting employment discrimination and human rights class actions. Prior to joining the firm in 2007, Lee was a partner at Lieff, Cabraser, Heimann & Bernstein LLP. From 1997-2001, he served as Assistant Attorney General in the U.S. Department of Justice in the Clinton Administration. A Yale College alumnus (1971) and Columbia Law School graduate (1974), Lee was an attorney for 18

years with the NAACP Legal Defense and Educational Fund, the law firm founded by Justice Thurgood Marshall, heading the Legal Defense Fund's Western Regional Office in Los Angeles. He is the recipient of numerous honors and awards, including the ABA Spirit of Excellence Award, the U.S. Department of Justice John Randolph Distinguished Service Award and the Pioneer Award from the Organization of Chinese Americans. Lee has also been named a "Northern California Super Lawyer" in the Employment & Labor, Civil Rights/First Amendment category each year from 2004 to the present. He served on the Board of Directors of the Lawyers' Committee from 2005 to 2010.