



10-1-1972

# Notre Dame Law School Civil Rights Lectures - Foreword

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## Recommended Citation

Francis X. Beytagh, *Notre Dame Law School Civil Rights Lectures - Foreword*, 48 Notre Dame L. Rev. 5 (1972).

Available at: <http://scholarship.law.nd.edu/ndlr/vol48/iss1/1>

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## NOTRE DAME LAW SCHOOL CIVIL RIGHTS LECTURES

### Foreword

The institution of a major spring lecture series on civil rights at Notre Dame accomplishes at least three incidental and progressive steps for the Law School in addition to its primary educational purpose.

It brings to our campus an annual institution which has long graced many of our sister law schools.

It establishes in a place of special honor the high regard those who learn law at Notre Dame have for their University President.

And it continues a tradition first established in 1954 by Dean Emeritus Joseph O'Meara, who introduced Chief Justice Warren at the first lecture this year. In 1954 Dean O'Meara organized the first of eleven spring symposia on public law. The first symposium, announced in a dark era for American political and civil liberties, went to the heart of the nation's most sensitive issue in the early Fifties; it was entitled *Legislative Investigations: Safeguards for Witnesses*. That problem—the problem of the so-called “McCarthy Era” and of the heyday of the House Un-American Activities Committee—demanded, as Dean O'Meara said, “[H]ard thinking by all who love and serve the law. The responsibility rests on the law schools no less than on the practicing bar.”

Participants in that first symposium included Abe Fortas, William T. Gossett, Kenneth B. Keating, George Morris Fay, Telford Taylor, and Notre Dame's Professor Marshall Smelser. The proceedings of the symposium<sup>1</sup> did not reflect the significant pressure, brought from high places indeed, to cancel both the topic and the dangerously “leftist” guests who spoke to it. But Dean O'Meara, and the young University President this new lecture seeks to honor, endured the pressure. This Law School was and is a forum where even the most delicate issues of liberty can be discussed.

The symposium series continued in 1958:

1958: *The Role of the Supreme Court in the American Constitutional System*<sup>2</sup>

1959: *The Problems and Responsibilities of Desegregation*<sup>3</sup>

1960: *Labor Union Power and the Public Interest*<sup>4</sup>

1961: *Next Steps in Extending the Rule of Law*<sup>5</sup>

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1 29 NOTRE DAME LAWYER 157 (1954).

2 33 NOTRE DAME LAWYER 521 (1958): David F. Maxwell, Carl McGowan, Judge Robert A. Leflar, Dean Eugene V. Rostow, and Professor Sheldon D. Elliott.

3 34 NOTRE DAME LAWYER 607 (1959): Father Hesburgh, Governor Theodore R. McKelden, Senator John Sherman Cooper, Mayor William B. Hartsfield, Rev. Albert T. Mollegan, Dr. J. J. Murray, Bishop Vincent S. Waters, Dr. Carl F. Hansen, Dr. Omer Carmichael, Professor John Harvey Wheeler, Jr., Dr. Rufus E. Clement, Dr. George M. Johnson, and Howard C. Westwood.

4 35 NOTRE DAME LAWYER 591 (1960): Professors Charles O. Gregory, Bernard D. Meltzer, Sylvester Petro, David McCord Wright, and Archibald Cox; Daniel O'Connell and John E. Cosgrove.

5 37 NOTRE DAME LAWYER 1 (1961): Professors Wallace McClure, Arthur N. Holcombe, Stanley D. Metzger; Dean Louis H. Mayo and Charles S. Rhyne.

- 1963: *Interstate Organized Crime*<sup>6</sup>  
 1964: *Constitutional Amendments Proposed by the Council of State Governments*<sup>7</sup>  
 1965: *Violence in the Streets*<sup>8</sup>  
 1966: *Justice and the Poor*<sup>9</sup>  
 1967: *Fair Trial vs. Free Press*<sup>10</sup>  
 1968: *The Challenge of Crime in a Free Society*<sup>11</sup>

In addition, the Law School sponsored two off-the-record symposia on needed civil rights legislation, one in 1963 and another in 1966, and a conference on the employment of minority-group talent, which the United States Commission on Civil Rights co-sponsored, in 1966.<sup>12</sup>

Federal and state judges, other public officials, legal educators, businessmen, and leaders of other professions contributed to these symposia. They established an important tradition for this Law School, a tradition of concern and of free inquiry. It is a tradition which the new civil rights lectures will revive, and a tradition which will long cherish the week in 1972 when Chief Justice Earl Warren visited Notre Dame.

*Thomas L. Shaffer*  
 Dean  
 Notre Dame Law School



### Introductory Remarks

I cannot think of anything that is easier or more enjoyable than introducing the Chief Justice to this audience. I sensed in your welcome as he entered the room your own affection, which I share, for his person and his work. I think it is a monumental milestone that a person of his age comes to a relatively young audience at this University, and is received so enthusiastically as he speaks to us about a subject in which he has had an enormously historical role. I happen to believe, and the belief has been upheld by the frank admission of four Presidents in a row, that the problem of civil rights in America is a problem at the heart

6 38 NOTRE DAME LAWYER 626 (1963): Attorney General Robert F. Kennedy; Professors Monrad G. Paulson, Morris Ploscowe, Murray L. Schwartz and Richard C. Donnelly; and William G. Hundley, Rufus King, and Milton R. Wessel.

7 39 NOTRE DAME LAWYER 623 (1964): Albert E. Jenner and Professors Carl A. Auerback, Philip B. Kurland, Paul Oberst, and Arthur Earl Bonfield.

8 40 NOTRE DAME LAWYER 497 (1965): Commissioner Howard R. Leary, Dr. Gurston D. Goldin, Dean Joseph Lohman, William Stringfellow; Professor Allen D. Grimshaw, Arnold Sagalyn, and Roy Wilkins.

9 41 NOTRE DAME LAWYER 843 (1966): Orison S. Marden, E. Clinton Bamberger, Jr., Senator Birch Bayh, Dean A. Kenneth Pye, Raymond F. Garrity, Jr., William Pincus, Professor Thomas F. Broden, Jr., Edgar S. Cahn, and Jean Camper Cahn.

10 42 NOTRE DAME LAWYER 857 (1967): Grant B. Cooper, Professor Thomas L. Shaffer, John de J. Pemberton, Jr., Sam Ragan, Elmer W. Lower, Chief William H. T. Smith, Frank G. Raichle, and William B. Monroe, Jr.

11 43 NOTRE DAME LAWYER 811 (1968): Professor Henry S. Ruth, Jr., Lloyd E. Ohlin, Irving Lang, Peter Barton Hutt, Frank J. Remington, Norman Abrams and Eliot H. Lumbard.

12 Dean O'Meara in most cases chaired these symposia and published an introduction to them.

of our national being. It is the most pressing, the most important, the most serious problem that we face as a nation. Our civil rights problems transcend the importance of our economic status, the price of steak and other things that concern us so much. It even transcends our stance vis-à-vis the other nations of the world. Because in a very real sense, if America is not true to its promise which is unique in our world, we will not give the kind of leadership for which the world has looked to us for so many years.

Our speaker tonight and for the past three evenings has given you something of a historical view of how we have arrived at our present status in the whole area of civil and human rights. I heard it said recently that very few men in our times and in our nation have been given the opportunity to make a historical impression that will last for many years to come. Those of you who were here last night will recall his words about the fact that one man, President Hayes, by his words, by his actions and especially by his attitude slowed the progress that might have been made after the Civil War by fifty years. But somehow, one man standing in Atlanta, Georgia, and saying to the black population, "The best thing that can happen to you is to be left in the hands of these fine intelligent white people" was condemning them to another fifty years of slavery. I think that the history of this question is so important that of all persons, those of us in a university community should know about it, meditate upon it, and give it terribly serious thought as we plot our future path.

I recall once being at a meeting in Teheran where Ernest Wilkins was addressing the 25th Anniversary of the United Nations Declaration on Universal Human Rights, a declaration that is marvelous in its scope, in a sense far more detailed than our Constitution and our Bill of Rights, a declaration that was mainly sculptured by a great French jurist, Rene Cassin, and Eleanor Roosevelt. At that time Wilkins said that our country was at one of the lowest points in its history for it was right after the assassination of Martin Luther King. He said we were a nation with the highest of intentions since we began our life with a Constitution and a Bill of Rights, which took it as almost a divine proposition that all of us were born equal and all of us have equal rights to life, liberty, and the pursuit of happiness, and that this proposition was self-evident, which it really isn't but which we declared it to be. He said at the time we were making that claim, our President was the owner of 317 slaves and our architect for the Declaration of Independence, Thomas Jefferson, had to put it in his will that his slaves were to be freed upon his death. We were at that time a nation in which women could not vote, men who did not own property could not vote and where a great proportion of our population was slave. And in a sense at that point in history we were starting a large march forward.

What most people don't realize is that at that point of our history Thomas Jefferson gave us the biggest push forward. When the Constitution was written he happened to be our ambassador to France. When he came home and read it he said he would not put Virginia behind it, and if Virginia didn't vote for it, neither would New York. The reason he gave was that it was a beautifully symmetrical constitution that would certainly establish a government that would long endure but it did not have in its core and being the kinds of promises for

the individual that would be in his judgment essential to a healthy nation. And so he said, "Unless you give me those twenty rights for the individual which I will outline, I cannot go with the simple statement of this beautifully abstract symmetrical constitution which would do credit to France or Germany, or some other developed European nation." They boiled his twenty human, personal, civil, and political rights down into a proposition which became the first ten articles of our Bill of Rights; and on that basis he went ahead and worked for the approval of this Constitution which has so long endured.

Last night I had quite a discussion with one of our black students at the University about human rights. It was an interesting conversation because I felt that somehow this young man had no sense of the enormous historical watershed through which we are now passing. He had not been at the lectures the past two nights and for that reason he did not comprehend the sweep of our history, the constant struggle upward to recognize man's dignity, his honor and his rights.

This young student did not realize what had happened during those fateful sixteen years when the Chief Justice, our guest, was the head of the Supreme Court, the highest court in our land. Three years had passed since the *Brown* decision when the Civil Rights Commission was founded so I told him of our first foray into the field. We went to Montgomery, Alabama. We went there to have a hearing on voting. We went there to have a hearing on voting because of the simple fact that practically all the faculty at Tuskegee University, many of whom had Ph.D.'s, were not allowed to register to vote in that city. The first thing that happened regarding that hearing was that we tried to get reservations at a hotel. We wrote to every hotel in Montgomery telling them that we would like to stay at their hotel and that we had black members on our commission and our staff. Every hotel wrote back, "If you have black members, they can stay in the black hotels, but only whites can stay in our hotels—the good ones." The year was 1958.

We then decided that since we couldn't stay in a hotel and didn't have a tent, we would have to go to the Air University, which was located at Montgomery Air Force Base and, as a federal agency, we could stay there. Our chairman, John Hannah, felt quite at home in making these reservations since he had been Assistant Secretary of Defense for Manpower. He simply sent a routine letter to the commandant. He got a letter back from the major in charge of public relations saying that we could not stay there because it would be bad for their public relations in Montgomery to have a black staying in the bachelor officers' quarters. John didn't get excited about that; he just sent another letter to the general in charge of the Montgomery Air University and said, "I have this idiot letter from the major in charge of public relations. We are a federal agency which will be in Montgomery on a federal mission. Please confirm these reservations." He received a letter back from the general, "We are a government institution, of course, but we have a public relations officer to give us advice on public relations and I must follow that advice, therefore, you are not welcome." John still didn't get worried. He wrote the Secretary of the Air Force and said, "I have these two silly letters. Please confirm our reservations at the Air Uni-

versity.” The Secretary of the Air Force responded, “I am sorry but I think that I must uphold the Commandant of the Air University. You can’t stay there.”

John, with the greatest of patience, then wrote Charles Wilson, the Secretary of Defense. John wrote “Dear Charlie,” as he was a good friend since John was president of Michigan State University in Wilson’s home state, and said, “You will certainly write the General and tell him we will stay there.” Charles Wilson wrote back, “I am sorry, you can’t stay.” Then John got angry. He called up President Eisenhower. “Mr. President,” he said, “you have given us a job to do and we’re making our first foray into the field on the most important of all civil rights, the right to vote, and we can’t find a place to stay, not even in a federal installation. Since you have some acquaintance with the military, I would appreciate it if you would see that we can stay at the Air University. Also, I am sending a few letters for your edification.” One thing about President Eisenhower was that his heart was always in the right place; and he had a great temper. He immediately issued an Executive Order and we made our first trip into the field and stayed at a federal installation, but only by Executive Order of the President of the United States.

Now, as I told our student last night, on my way down to Montgomery I happened to run into the black member of our commission, a man named Ernest Wilkins, who once had told me that he had to move four times to get educated—once to go to a good elementary school, once to go to a good high school, once to go to a good university, and once more to go to a good law school. That was in the pre-busing days. He later became a top judicial officer for the Methodist Church, and also Under-Secretary of Labor. When I met him on the way to Montgomery, we were both flying in an old DC-3. As we were coming into the airport in Montgomery, Ernest got up to walk up to the restroom but as he did the landing light went on and he had to come back and sit down. So when we got off the airplane in Montgomery, I said, “Come on, Ernest, let’s go up to the restroom.” So we started up the aisle and we got to the gentlemen’s room and there was a sign on the door, WHITES ONLY. I was never so embarrassed in my life; I had never seen a sign like that except in South Africa. So I said, “Well, we will be out at the Air University in a few minutes,” so we walked into the main lounge of the airport. Above the main lounge was a sign WHITES ONLY. They had a crummy little lounge around the back for the blacks that looked out onto the parking lot; the “whites only” lounge looked out on the airfield. I became a little angry so I looked up the manager, asked him who paid for the airport, and found it was largely built with federal funds. Believe me, in my mind, that was the birth of Title VI, of the 1964 law. The expenditure of public money should be color-blind.

Today we are a far cry from those days. Back then, if you happened to be black, in many parts of this country you could not get a drink of water or a Coke; you could not get a room and stay in a hotel if you were tired, things which we all take for granted. You certainly could not get a meal in most restaurants, including Governor Maddox’s, where they used to serve chicken; and you could not go to a school that was any good. There were practically no

universities in the South, no state universities, anyway, that had black students. And, I might add, there were very few here in the North. There was practically no point of human life where human dignity could be abridged and wounded that we did not, as a nation, abridge and wound. People were saying you can't change any of this because it requires a change of heart, which indeed it does at the deepest level. And they said you can't change things by law. This was the discouraging message that we heard again and again.

I would like to tell all of you that the 200-year-old custom of wounding the dignity of every black person that wanted to do anything was struck down in one day by passing an appropriate law. And that the whole trend was completely obliterated, with the exception of the place where Governor Maddox served chicken, and he went out of business anyway. But the important thing, I think, is that we have come a long way since the days of President Hayes. I would have to say that President Lyndon Johnson redeemed his predecessor of the same name, no civil rights hero, and passed the most wide-sweeping civil rights acts we have ever had. But also, I have to say that he passed laws assuring the whole sweep of this upward motion towards respecting the dignity of human beings, giving them the kind of educational attention, the kind of housing and job opportunity, and the kind of political participation and opportunity at the most primitive level of just voting, including running for office. And, in that prior era there were six elected officials in the entire South; today there are 850. In the past, the standard fare for political campaigns was "keep the niggers in their place," but that day is gone forever, thanks to the black vote.

But the real watershed, the real high mark, was made in 1954 with the *Brown* decision. I doubt that there is any decision in the history of the Supreme Court of the United States that was more of a peak, more of a redemption of the past and a founded hope for the future. This decision remains so fundamental that I would guess that I have referred to it in the past week at least twenty-five times, some eighteen years after it was first announced.

*Brown v. Board of Education of Topeka* was a decision that was written by our guest here this evening. And it was a decision that said something that spoke of the spirit of man, that if America is going to be true to its pristine promise it cannot be true in terms of separate but equal because separate is fundamentally, historically and constitutionally unequal. That is the fact of the matter whether you are talking about education, housing, employment, administration of justice, public accommodations, or anything else. In a pluralistic society, there must be pluralistic opportunity for all equally.

It took enormous courage to say what Chief Justice Warren said as the head of the new Court in 1954. It took enormous wisdom to say it the way he said it; and I think that the fact that it was said gave this whole country new hope. While everyone but the courts dragged their feet for the decade that followed, this gentleman, and the courts around the country, particularly the federal courts that followed his lead, provided the total leadership that this country needed, desperately needed. The President of the United States would not even say that he thought *Brown* was a good decision, and I happen to know that he was asked to say that. It took the efforts of a Southern President, President Johnson, to

motivate Congress to enact these great landmark laws. The tripartite system of government of our country finally began to become operative in the civil rights area. The Civil Rights Act of 1964, and particularly Title VI, clearly determined that the expenditure of federal funds must be color-blind and used for the benefit of all the public, or none of the public.

I don't think we have had in the fourteen Chief Justices of the United States a man who has done more to get at the heart of the problem that bothers so deeply and so fundamentally the psyche of America, than has Chief Justice Warren. He has finished his three score and ten years, added another decade or so to it, and is still here tonight to speak on a subject so central at this precise point in history, which has been of such concern to everyone, including all of our people running for political office of the highest nature, our Congress, our President and the Executive Branch, and the Department of Justice. The one branch which has held the line so firmly when no one else would, the courts, is now under fire. They are trying to clip the wings of the Court, so that it cannot use all the means at its disposal—to declare unconstitutionality where it sees unconstitutionality and to declare proper a means of redress where it sees the need for the means of proper redress. We cloud it all under a word like busing, but the crisis goes much deeper than that.

I salute before you tonight a lawyer's lawyer, a judge's judge, and an American's American. A person who has not only seen the vision of America from on high, but has also spoken for people's ideals, and spoken to their courage, rather than catering to their fears and their myths; a person who has said what America must do to be truly honest and consistent with its most basic and most sacred political documents; a person who in an age of midgets stands out like a tall oak; a person who is a giant of a man in every field that he has graced for more than half a century of public life and service. I am proud to say that early in my presidency, in 1957, we made him an honorary Notre Dame Man and there are few honorary Notre Dame Men that I would be prouder to present to you than Chief Justice Earl Warren.

*Rev. Theodore M. Hesburgh, C.S.C.*  
President  
University of Notre Dame



### Earl Warren's Visit

Earl Warren came to Notre Dame in April, 1972; his visit left an imprint that will not soon be erased. His lectures, which are reprinted in this issue of the *Notre Dame Lawyer*, were largely historical in character and thus were considerably less controversial than the Supreme Court over which he presided. His message is one, however, that all should take to heart. How can we, as a society, know where we are now and where we should be going—in a field as complex and ongoing as civil rights—if we do not know from whence we have come?



That was the central question which Warren posed and sought to answer in these lectures.

As interesting as the formal lectures were, the Chief Justice's informal sessions with the students provided a unique opportunity to come to know the man personally. Those sessions were candid, comprehensive and stimulating. They were also spiced with the abiding humanism and wry humor that typify Warren. One brief recollection is illustrative. With several hundred students and faculty packed into the basement lounge, a barely audible question came from rather far back in the audience. It began: "Many have suggested that you were the greatest Chief Justice since John Marshall." There was a slight pause and Warren interjected, "Could you say that again just a little louder, please?"

Two points I sought to make in introducing the Chief Justice on the second evening of the lectures bear repeating, I think. One was that, unlike many persons who have occupied high governmental positions, Warren has been throughout a thoroughly consistent man, privately and publicly, something that those of us who had the privilege of serving as his law clerk have long known. This facet of his personality was borne out in the way he conducted himself at the informal sessions. It is a rare and wonderful quality which is impossible not to admire. The other point was a related one. In a time when many are questioning the basic premises of our system of government and expressing doubts about whether viable social change can be effected through it, Warren is, I suggested, a walking and living example that the system can be made to work. With cynicism and self-doubt abounding, and not without justification, his life and work give a message of affirmation mixed with realism, of hope blended with caution, of faith coupled with concern. The large legacy that Earl Warren leaves his country and the world was enriched a bit more by his gracious visit to Notre Dame.

Finally, it would be fitting, I think, to include the statement contained in the program for the first annual Notre Dame Law School Civil Rights Lectures which sought to describe the background underlying the initiation of this series of lectures. It reads as follows:

Most major law schools in this country annually sponsor a series of lectures on various legal and law-related topics delivered by distinguished jurists, educators or practitioners. It is the intention of the Law School administration and faculty to inaugurate such a series with the lectures given this year by former Chief Justice Earl Warren. In view of the monumental contributions of the President of this University—Rev. Theodore M. Hesburgh, C.S.C.—in the field of civil rights, as a charter member of the Civil Rights Commission (since 1957) and as its chairman (since 1969), it was thought that it would be fitting to name this new series after him. Father Hesburgh indicated, however, that he would prefer that this not be done until he had retired as President of Notre Dame. Thus, it was decided to call these lectures, as an initial matter, the Notre Dame Law School Civil Rights Lectures.

One might wonder why, apart from Father Hesburgh's involvement in the area, a lecture series devoted principally to civil rights would be initiated in the 1970's. For many the 1960's were "the decade" for civil rights, and, in many respects, other issues may now seem more pressing. In the view

of the Civil Rights Commission, however, civil rights issues will remain of great significance so long as discrimination on the basis of race, religion or ethnic origin exists in this country. That view is shared by many of us who are part of Notre Dame. In respect of that judgment and this institution's commitment to humanism in the fullest sense of the word, it was our feeling that a renewed emphasis on some of the "unfinished business" in the civil rights area, through focus upon the field in this new lecture series, would be fitting. It is our hope that this series will be a forum for discussion of both the background and the important and unresolved issues that remain in the civil rights field, that such a continuing discussion will assist in some small way in facilitating continued progress in the area, and that the University and the country will be better for it.

Former Chief Justice Earl Warren is one of the most prominent living Americans. It is difficult to overstate the impact on contemporary American society of his role and that of the Supreme Court over which he presided. One of the special concerns of the so-called "Warren Court" was with the field of civil rights. As author of the Court's opinion in the landmark school desegregation case in 1954, and in numerous opinions thereafter, the Chief Justice placed his personal imprint on the shaping of the law in this area. It thus seems particularly appropriate for him to inaugurate the Notre Dame Law School Civil Rights Lectures. . . .

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