At Sidebar

by Kim Koratsky

We've Come a Long Way, Maybe

The theme of this issue of The Federal Lawyer is civil rights. As an employment lawyer, when I think about civil rights, Title VII comes to mind first. Title VII is the part of the Civil Rights Act of 1964 that prohibits discrimination in the workplace on the basis of race, color, religion, sex, or national origin. The act goes much farther, however, covering areas from voter rights to prohibiting discrimination in public accommodations. But the development of civil rights laws began well before the Civil Rights Act of 1964, going back nearly 100 years to just after the Civil War.

The post-Civil War statutes, also known as the Reconstruction Civil Rights Acts, were passed by Congress after the Civil War ended in an effort to provide a means of enforcing the new status of the ex-slaves as free citizens. Passage of the Thirteenth Amendment to the Constitution in 1865 abolished slavery, but no other laws actually indicated what the new freedom meant. In response, some states enacted "Black Codes" in an attempt to codify discrimination on the basis of race. In response to these efforts on the part of some states, Congress began enacting the Reconstruction Civil Rights Acts starting in 1866.

First, in 1866, Congress passed 42 U.S.C. § 1981, making all African Americans born in the Unites States citizens and giving them the same right to make and enforce contracts "as enjoyed by white citizens." Two years later, Congress passed the Fourteenth Amendment, prohibiting states from "mak[ing] or enforce[ing] any law which shall abridge the privileges or immunities of the citizens of the United States" and guaranteeing that citizens will not be deprived "of life, liberty, or property, without due process of law." In 1871, Congress passed 42 U.S.C. § 1983, which gives citizens protection from deprivation of rights by someone acting on behalf of the state (i.e., under "color of law"). That same year, Congress passed the Ku Klux Klan Act, 42 U.S.C. § 1985, which prohibited conspiracy to interfere with civil rights.

In the years that followed these post-Civil War Acts, Congress, as well as the U.S. Supreme Court, continued to expand and protect civil rights. For example: *Brown v. Board of Education* (1954), a landmark decision that allowed for the desegregation of schools. *Gideon v. Wainwright* (1963) provided for any accused individual to have the right to an attorney in cases beyond just those that involved the death penalty. *Heart of Atlanta v. United States* (1964) held that companies involved in interstate commerce would be required to follow all rules of the federal civil rights legislation (ruling that a motel that wanted to continue segregation was unable to do so because they did business with people from other states). Congressional action included the Civil Rights Act of 1964 and the Voting Rights Act (1965). The Voting Rights Act was probably the most successful congressional civil rights legislation, truly guaranteeing what had been promised in the Fifteenth Amendment: that no one would be denied the right to vote based on race. It ended literacy tests and gave the U.S. attorney general the right to intervene on behalf of those who had been discriminated against.

As I said earlier, as an employment lawyer, I think of Title VII when I think of the Civil Rights Act of 1964, but it contains so much more. The act consists of 11 "Titles" (Title I through Title XI) and covers such areas as:

- Barring unequal application of voter registration requirements (Title I).
- Outlawing discrimination based on race, color, religion, or national origin in hotels, motels, restaurants, theaters, and all other public accommodations engaged in interstate commerce (Title II).
- Prohibiting state and municipal governments from denying access to public facilities on grounds of race, color, religion or national origin (Title III).
- Preventing discrimination by government agencies that receive federal funds (Title VI).

Certainly, as these laws evolved from the 1860's to the present, public views on the laws and their impact have continued to differ. These laws came out of a divided nation and acceptance came hard. I am old enough to remember the late 1960's and those were, as they say, tumultuous times. (As a shameless plug for tourism where I live, you can take an excellent visual tour of the civil rights movement at the National Civil Rights Museum in Memphis, Tenn.) Our country has moved from a time of slavery, through segregation, and, now, to a point where we have the first black U.S. President. While there were no doubt some in the

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Indian Law Section

Annual Indian Law Conference in Santa Fe, N.M.

The 38th Annual Indian Law Conference took place in Santa Fe, N.M., at the Pueblo of Pojoaque's Buffalo Thunder Resort on April 11-12. The theme of the conference was "Energy! Enlightening & Invigorating the Practice of Indian Law." Topics that were covered reviewed and analyzed current litigation, legislation, and policy developments in the field of Indian Law.

Panel discussions included discussions on topics such as the Indian Gaming Regulatory Act's effects on tribal economies as well as its legislative efforts and the financial and legal impacts in Indian Country. Other plenary sessions included talks on innovations in tribal state compacting and tobacco taxes as well as Indian mascots. The topic of the use of Federal Rules of Civil Procedure Rule 19 and the shifting vitality of tribal sovereign immunity was discussed. Breakout sessions included specialized panels on preserving *Morton V. Mancari*'s legacy and same-sex marriages as an emerging trend in tribal polices, as well as strengthening the practice of Indian law regarding state bar exams. Speakers included respected professionals from private practice, education, and government to help make this year's conference a success.

Carole Goldberg, Jonathan D. Varat Distinguished Professor of Law at UCLA and recent appointee to the Indian Law and Order Commission by President Barack Obama, was presented with the Lawrence R. Baca Lifetime Achievement Award. The award is given annually by the FBA Indian Law Section to an outstanding practitioner or professor in the Indian law community who has practiced for 20 years or longer.

The section would like to thank this year's conference chairs for their dedication and hard work: Patrice H. Kunesh, deputy solicitor–Indian Affairs, U.S. Department of the Interior; Andrew Adams III, associate, Jacobson, Buffalo, Magnuson, Anderson, & Hogen P.C.; Angelique Townsend EagleWoman, associate professor, Univ. of Idaho College of Law; and Venus McGhee Prince, attorney general, Parch Band of Creek Indians. ⊙

Indian Law Section: At the Annual Indian Law Conference in Santa Fe, N.M.—(left photo l to r) Conference chairs Andrew Adams III, associate, Jacobson, Buffalo, Magnuson, Anderson, & Hogen P.C.; Angelique Townsend EagleWoman, associate professor, Univ. of Idaho College of Law; Patrice H. Kunesh, deputy solicitor–Indian Affairs, U.S. Department of the Interior; and Venus McGhee Prince, attorney general, Parch Band of Creek Indians; (right photo l to r) Section Chair Jennifer Weddle; Lawrence R. Baca Lifetime Achievement Award Recipient Carole Goldberg; Angela Riley; director, UCLA American Indian Studies Center; and D. Michael McBride, FBA Board of Directors member and past section chair.

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1860's who envisioned a black President, most in that time would never have thought such a thing possible. Even today, it seems that views on progress differ. Some say we have come a long way, others feel that we have not come far enough and still have a long way to go. Minorities and women have attained positions of great wealth, power, and responsibility, yet we have inner-city poverty and schools where children have an easier time finding drugs than an education. Where does lack of education lead? According to statistics from the Pew Center on States, in 2010, one in three young black men who are behind bars do not have a high school diploma or GED. Speaking of prison, we have more than 2.3 million people incarcerated in the United States and, of that number, some 67 percent of the overall prison population are of a minority race. According to a recent study, once convicted and imprisoned, more than 40 percent of released prisoners commit crimes within three years of their release and wind up back behind bars.

I will leave it to you to decide where we are on the civil rights progress continuum and suggest you ponder that as you peruse the remainder of this issue on civil rights. Also, remember that those who fail to learn from history are doomed to repeat it. ⊙