

Tuesday, September 16. 2008

"You're not wanted in these parts."

A Bill of Rights (From public domain.) The late Supreme Court Justice Thurgood Marshall knew the ugliness of racism in Maryland right through his bones. In one televised interview, Justice Marshall recounted one day as a youth, when he was in a section of Baltimore where he could not find a bathroom other than those designated for white people only. Unable to find a bathroom where he would not get arrested for answering the call of nature, he decided to use the bathroom at home far away, but by that time, the urine was running down his leg. The ugliness of segregation did not stop there. As only a for instance, Justice Marshall wanted to enroll in the University of Maryland law school, but he knew the school did not admit African Americans, so he enrolled in Howard University law school. I understand that he declined an invitation to attend the opening ceremony decades later of the Thurgood Marshall library at the University of Maryland, thus helping to avoid whitewashing the school's shameful racist, segregationist past. Even after Justice Marshall won the *Brown v. Board of Education* school desegregation case in the United States Supreme Court, blatant segregation continued in Maryland. In fact, Robert M. Bell -- the Chief Judge of Maryland's highest court -- was arrested in 1960 and convicted for trespass in a Baltimore restaurant desegregation sit-in. The United States Supreme Court left it up to the Maryland courts to decide whether the intervening change in Maryland's sit-in/trespassing laws would dictate a different result. Unfortunately, the Maryland Court of Appeals said no. *Bell v. Maryland*, 236 Md. 356 (1964). This past Sunday, I saw a Montgomery County, Maryland, police officer take a man down face first onto the pavement when the large police officer apparently was not satisfied with the apparent stiffness of the much older and smaller man's body when the officer tried to complete his search of the man after arresting him for trespassing, for allegedly violating a written stay away order from the Seven Eleven store where he seemed to be unobtrusive enough outside the store when I entered before the cop arrived. I watched the whole ordeal for quite some time. The arrested man looked disoriented and seemed to be looking in my direction for help. What useful help could I have given other than to offer my services pro bono? I wondered whether the court commissioner would impose a bond on him, and whether he had money to pay a bond. The sole consolation there as far as the court system is concerned is that at least this county's public defender's office provides legal representation at bond hearings, but the inmates appear only on closed circuit television, and the public defender lawyers ordinarily do not have an opportunity to meet with them before such initial bond hearings. Today, cops are not permitted to enforce segregation. However, when a store hands a customer an order not to return, who knows whether the stay away notice is based on racial reasons? In this instance, I have no reason to believe that this arrested man was being banished from the Seven-Eleven or arrested for racial reasons. I have no reason to know either way whether the man was banished for good reasons, either (e.g., for trying to shoplift before) or bad ones. His arrest on the one hand seemed very removed from the shameful days when Thurgood Marshall could not find a bathroom open to him (though this man was born when segregation was very alive and well in Maryland), and when Robert Bell had his trespass/sit-in conviction upheld by Maryland's highest court. However, how rampant is unspoken segregation still with us today in the United States, from the many overwhelmingly lily-white country clubs, to the apartment leasing agents who tell an African American couple that no apartments are available but then rent to the white couple that arrives five minutes later, to the taxi driver who passes an African American woman clearly waving for the cab and then picks up two white women two blocks later (and who urges me to hush when I insist that he tell his passengers to vamoose and that he pickup the woman he snubbed)? The list goes on and on. What will you do to erase that list? Jon Katz

ADDENDUM: When the United States Supreme Court reviewed Robert Bell's above-discussed trespassing conviction, dissenting justice Hugo Black -- who belonged to the Ku Klux Klan when a lawyer in Alabama -- included the following footnoted excerpt (n.2) of the restaurant owner's testimony painting himself as a buck-passing anti-segregationist victim of economics: "I set at the table with him and two other people and reasoned and talked to him why my policy was not yet one of integration and told him that I had two hundred employees and half of them were colored. I thought as much of them as I did the white employees. I invited them back in my kitchen if they'd like to go back and talk to them. I wanted to prove to them it wasn't my policy, my personal prejudice, we were not, that I had valuable colored employees and I thought just as much of them. I tried to reason with these leaders, told them that as long as my customers were deciding who they wanted to eat with, I'm at the mercy of my customers. I'm trying to do what they want. If they fail to come in, these people are not paying my expenses, and my bills. They didn't want to go back and talk to my colored employees because every one of them are in sympathy with me and that is we're in sympathy with what their objectives are, with what they are trying to abolish . . ."

Bell v. Maryland, 378 U.S. 226 n.2 (1964).

Posted by Jon Katz in Constitutional Law at 00:00

It is interesting to discuss racial biases and prejudice in general. The structural prejudice of the system is also interesting. Unconscious or subconscious prejudice or biases usually continue for generations or centuries. I find it interesting that Maryland had sit-ins and racial bigotry just like the southern states. I thought the North was proud of its superiority in regard to supposedly

being leaders in the civil rights movement.

Martin had a dream that some day people would not be judged by the color of their skin. Has that dream come close to being realized --- or are we getting closer to the dream ?

People claim not to be prejudiced and then when you ask them on jury voir dire --- questions about how many minority friends they have ---- where they live --- how often they socialize with other people ---- they results sometimes indicate a separated society --- where people publicly deny being prejudiced but privately lack any real social contacts with other cultures. People who publicly deny prejudice but have no friends who are minorities and no contacts with other cultures. A separate but equal doctrine in practice while publicly claiming not to be prejudiced. A subconscious feeling of prejudice while consciously claiming to be egalitarian. Fascinating. Jon, Fight the Good Fight, Keep Up the Good Work. Love your blog.

Yours in the Defense of Fellow Human Beings,

Glen R. Graham, Tulsa Criminal Lawyer, Tulsa, OK <http://www.glenrgraham.com>

Anonymous on Sep 16 2008, 23:32

Jon,

I'd like to invite you to an exhibit about the early life and career of Justice Marshall, which is being unveiled at 5:30 p.m. Friday, Sept. 19, at the Thurgood Marshall Law Library at the University of Maryland School of Law, 500 W. Baltimore St. in Baltimore. Justice Marshall's widow, Cecilia, will be there to do the honors. Professor Larry Gibson will also be available to discuss his research into the early career of the pioneering jurist, including his surprising findings that dispel many rumors and untruths.

Anonymous on Sep 17 2008, 09:27