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Martin's March

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His name is rarely mentioned with the case that sent him to jail, and few associate him with the legislation that vindicated his actions. But 30 years ago this July the nation saw the dream that Martin Luther King Jr. asked it to embrace cast into law.

It was a different United States three decades ago when King went to Birmingham, Ala., to help lead a campaign to integrate downtown store facilities. Less than three months earlier the state's newly elected governor, George Wallace, had vowed in his inaugural address, "Segregation now, segregation tomorrow, segregation forever."

Laws forbade integrated restaurants, drinking fountains, rest rooms, dressing rooms, taxi cabs, ambulances, jail cells, hospitals, cemeteries, theaters or hotels. Birmingham gave up a minor-league baseball team rather than permit it to be integrated. It closed its parks, playgrounds, swimming pools and golf courses rather than comply with a federal court's desegregation order.

Any segregation that the law could not enforce, racist violence did. Bombings of homes and churches of black leaders were so common that Birmingham had been nicknamed "Bombingham." The city's best black neighborhood was known as "Dynamite Hill."

That was the spring of 1963. By the next summer the nation was ready to respond. The message of the Civil Rights Act of 1964 was simple: segregation never.

In the years that have followed, the memory of King's victory opening Birmingham store facilities and employment to blacks, and preparing the way for introduction of the Civil Rights Act, has faded. A generation of lawyers has graduated having studied the U.S. Supreme Court decision upholding his conviction for violating a local court injunction against demonstrations and marches, but only to examine the obscure rule of law it illustrates. It is typically taught without reference to its social framework or consequences; many texts omit any reference to King.

But the legacy of the act trumpets the effectiveness of civil disobedience when practiced by a leader with the courage of a Mahatma Gandhi or Martin Luther King Jr.

King went to Birmingham at
Shuttlesworth and King would call for a boycott of downtown businesses. Mass meetings each evening in churches would rally support. The strategy was to force enough arrests so as to overwhelm the jails and focus the nation's conscience. The campaign was to continue until merchants agreed to desegregate dressing rooms and lunch counters, and to hire blacks in noncustodial positions.

On April 3, the demonstrations began. As many as 350 people had volunteered to engage in civil disobedience, but to King's disappointment, only 65 appeared and fewer than half were arrested. In the days that followed, the number arrested continued to be disappointing. By the end of the first week of the campaign, fewer than 200 demonstrators had gone to jail. Unless there was a dramatic increase in the number willing to be arrested, the strategy of commanding widespread attention by filling the jails would fail. The campaign appeared to be withering.

But at 9 p.m. April 10, city attorneys unwittingly changed the nation's history. Without informing King or his attorneys, they asked Alabama Circuit Court Judge William A. Jenkins Jr. for an injunction prohibiting further demonstrations. They claimed that demonstrators had violated parade-permit and trespassing laws, and were endangering peace and safety. Jenkins immediately issued a temporary injunction.

The injunction raised a special problem for King. Prior to the injunction, the demonstrators had been arrested for violating local ordinances: trespass (for sitting-in violation of the segregation laws), vagrancy and parading without a permit. These ordinances, passed by an all-white government and never judicially reviewed, held no inherent legitimacy for King. They were unjust laws to be deplored, but the demonstrations had deplored the sit-ins and demonstrations; King took them to task for failing to deplore the conditions that caused them. In this, he found support from the clergy of the city. On April 10, seven ministers and a rabbi-issued a statement calling for demonstrations to end. They called the campaign "unwise and untimely."

As Shuttlesworth's lawyers described it in the U.S. Supreme Court, "at about 2:15 p.m., 52 persons emerged from the church. They formed up in pairs on the sidewalk and began to walk in a peaceful, orderly and non-obstructive way toward City Hall. They walked about 40 inches apart, carried no signs or placards and observed all traffic lights. At times they sang. ... The walk proceeded about four blocks-to the 1700 block of Fifth Avenue-where all the participants were arrested." King, in handcuffs, was dragged by his belt to a paddy wagon and taken to solitary confinement in the Birmingham jail.

The day after his arrest, eight white Birmingham clergymen-seven ministers and a rabbi-issued a statement calling for demonstrations to end. They called the campaign "unwise and untimely."

To write a reply—his "Letter From Birmingham Jail"—King used the edges of the newspaper in which the statement was published and paper smuggled in by his attorney. As a call for liberty, it is reminiscent of the works of Jefferson, Paine and Mill. As a defense of civil disobedience, it stands with the works of Gandhi and Thoreau.

King began the letter by answering the clergy's charge that he had no business coming to Birmingham. Invoking the apostle Paul, he explained: "I am in Birmingham because injustice is here." The clergy had deplored the sit-ins and demonstrations; King took them to task for failing to deplore the conditions that required the demonstrations—the racial violence and segregation in the city, and the unwillingness on the part of the white power structure to desegregate.

Sensitive to the criticism that by marching the demonstrators were arrested and charged with contempt.

On April 12, Good Friday morning, King and his closest advisers met in his hotel room to decide what to do. His father recommended that he obey the injunction and put off a planned march; another adviser agreed. Young and others said they would support whatever decision King made.

After all had spoken, he left the room and, alone, prayed for guidance. When he returned, he had changed to clothing suitable for jail.

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King in Sept. 1963

violating the law, King turned to natural law to justify the illegal demonstrations. There are two types of laws, he argued, just and unjust. “An unjust law is no law at all.” Citing Thomas Aquinas, St. Augustine and Martin Buber, he explained that a law by which a majority compels a minority to obey, without imposing the same obligation on itself, is “difference made legal,” and thus unjust. In contrast, a just law—one that all must obey—is “sameness made legal.”

As King sat in jail, he and 12 other ministers and one layman were charged with contempt of court for violating the injunction. The trial began April 22, in a segregated courtroom. King and 10 others were convicted of criminal contempt and sentenced to five days in jail. The sentences were stayed pending appeal, and the group remained free on bail.

With the close of the trial, King knew that a dramatic new step was needed. Shuttlesworth announced that on May 2 there would be a massive march on city hall. But with an injunction prohibiting marches, and all marchers facing the threat of arrest, King wondered where the large number of demonstrators would come from. With bail coffers bare, and lengthy jail sentences a growing likelihood, few adults could afford the financial sacrifice now required.

The Rev. James Bevel, a field organizer, offered a solution. He had been running nonviolence workshops for weeks with high school students. Attendance at the meetings was growing day by day, and younger and younger students were asking to take part. The movement leaders were divided on whether to allow children younger than college-age to participate. But with few adults being arrested, King understood that here were the troops needed to fill the streets and fill the jail. King turned to the black children of Birmingham to save the campaign.

Shortly after 1 p.m. May 2, a group of 50 teen-agers stepped out of the Sixteenth Street Baptist Church, singing “We Shall Overcome.” As had occurred with their adult counterparts, the Birmingham police warned them of the injunction, and then began to arrest them. But before the arrests could be completed, another 50 students marched singing from the church, and then another and another.

In wave after wave, the young marchers overwhelmed the police. Some were able to evade arrest and almost complete their planned march on city hall; others succeeded in marching to the downtown business district. Almost 1,000 were arrested. They submitted to arrest peacefully, singing and praying as they were taken to jail.

The following day 1,000 more children volunteered to march and be jailed. But Birmingham’s jails were filled beyond capacity. King and Walker’s strategy of filling the jails last occurred in a single day, and Commissioner Connor knew he had to respond to the march with a new strategy of his own.

He turned to the answer the South had historically used in conjunction with the power of law to suppress blacks: the power of violence. With police dogs and water cannons, the demonstration was suppressed. But the images of the police attacks on unarmed young people were indelibly etched into the national consciousness.

As the scenes of that violence reached the American public on national television and the front pages of many newspapers, the civil rights movement entered a new era.

May 7 would be the final day of demonstrations. Thousands again gathered at the Baptist church. A few small groups began to march from the church. The police turned them back into the adjoining black neighborhood, informing them that they could march there without arrest; there was no more room in the jails. But these marchers were a diversion. As the police gathered at the church, about 600 teen-agers, traveling surreptitiously in small groups, converged in the downtown business section, where they picked up picket signs hidden earlier and began picketing at the segregated stores.

With hundreds of black demonstrators now behind the police lines, many police units turned and sped for downtown. As soon as they left, thousands of demonstrators emerged from the church and surged past the remaining police, heading for downtown. By early afternoon, more than 3,000 demonstrators had gathered in the business district. Unable to arrest them, police brought out water cannons, as well as a tank-like armored car. For most of the day, all commerce was paralyzed. The boycott was now a success; not only were Birmingham’s black residents boycotting the downtown stores, by circumstance so were the whites.

All through the day, Burke Marshall, head of the U.S. Department of Justice’s Civil Rights Division, pressured white community leaders to negotiate. President Kennedy, the attorney general and several other Cabinet members made calls to key community leaders, urging them to talk with King. Late on the night of May 7 white community leaders agreed to open negotiations and named a negotiating committee.

By midnight, they sought out King. By 4 a.m., the blueprint for a settlement had been drawn. On May 10, four weeks after King’s Good Friday arrest, the settlement was announced. The fitting rooms at stores would be integrated by May 13. A biracial committee to discuss desegregation of schools, reopening
brothers and sisters. Segregation has been outlawed, but if people are racist at heart they will come up short of the mark of what is called for in a democracy.

Odessa Woodolls, then a high school teacher of many students who participated in the marches, now president of a Birmingham civil rights center:

"I'm a little concerned that in the past to make the law colorblind, many of the objectives of the civil rights laws or African-Americans have yet to be realized. So, I believe we are running away from quotas and affirmative action and colorblind laws. I'm in favor of everybody being protected, but you have a group that has been treated differently than any other group in America. So you need to take that into account in promulgating new measures."

William Kunstler, then special counsel to Martin Luther King Jr., now in private practice in New York City:

"I'm in a bit of a quandary on this, because my views have changed so much since I was in Birmingham. My perception today is that minorities, and blacks in particular, get almost nothing from civil rights legislation. At best it's a sop; at worst it's hypocrisy. The only way they will get anything is by going into the streets. I was once convinced that everything could be done by legislation, litigation and perhaps a little education. But as time has passed I've come to see that the civil rights laws have not ended white racism, and that's the central problem."

—David B. Oppenheimer

The marchers had the right to appeal the injunction, but they chose to ignore it, the Court observed. The legal consequence was that their attempt at trial to claim that the parade ordinance was unconstitutional was barred by the collateral bar rule. The Court made no mention that a number of states, including California, had abandoned the rule as unnecessarily chilling of free speech rights.

The convictions of King and the other ministers were affirmed, and they were ordered to return to Birmingham to serve their sentences.

The Walker decision appears in most law school casebooks for courses on remedies and many casebooks for courses on constitutional law and civil procedure. Of the 15 casebooks in which the decision is presented for study, none mentions the "Letter From Birmingham Jail," only one refers to the 1964 Civil Rights Act, and fewer than half even identify King as a defendant in the case.

Just as the Supreme Court left King and the Birmingham story out of the case, those of us who teach and practice law have left him out of the casebooks. King has become invisible; his message from the Birmingham jail has been silenced. The Birmingham story and the passage of the Civil Rights Act is 30 years old; it is time to tell the story.