The Color Of Law: Ernie Goodman, Detroit, And The Struggle For Labor And Civil Rights

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The Color of Law depicts the life and career of Ernie Goodman, a lawyer and social justice advocate who played a central part in the ongoing fight for justice and equality in the United States. Through the lens of Goodman's varied legal practice and his pivotal role in the social justice movement, The Color of Law portrays key moments in American politics and history. The book describes the evolution of the left-wing progressive movement in the United States from the sit-down strikes and labor militancy of the 1930s, to the early strands of the civil rights movement in the 1940s, to the Red Scare era of the 1950s, and finally through the civil rights struggle and black power movement of the 1960s and 1970s. In describing a lawyer who transcended the conventional attorney-client relationship, The Color of Law shows the unique and instrumental role lawyers can play in fighting injustice and imparts both practical and ideological advice to the "movement" lawyers of today.

The son of immigrant parents, Goodman grew up in Detroit's Jewish ghetto and obtained a law degree in order to pursue the quintessential American dream. He first attended the Detroit College of Law, described by the authors as a "bar exam mill lodged in a converted downtown garage," but graduated from the Detroit City Law School, the forerunner to Wayne State School of Law. The Color of Law describes Goodman's shift leftward in his early career as he came to recognize the inherent contradictions in the American values of equal opportunity and due process juxtaposed with social and racial discrimination against immigrants and blacks.

Upon graduation, Goodman hung out a shingle with some friends and sought a lucrative commercial law practice. However, a year after his graduation, the stock market crashed and the Great Depression gripped the nation. Unemployment in Detroit soared to 50 percent, and unlike today,
there was no social or economic safety net; unemployment insurance, Medicaid, Social Security and food stamps did not exist yet. And as the authors point out, Detroit was a racially divided city in which white-only churches, hotels, restaurants and social clubs were the norm. Cross burnings and massive Ku Klux Klan rallies were commonplace. In a 2008 interview, Goodman explained that he began to hate the law. He hated representing companies that were collecting debt from poor people and despained that he was not representing human beings.

By 1935 Goodman could no longer sustain a commercial practice. It was then that he met a lawyer seeking election to Detroit’s Records Court, who profoundly influenced Goodman’s professional and political development. Maurice Sugar, a prominent labor and civil rights lawyer, became Goodman’s close friend and mentor. Goodman would later join Sugar’s law firm, one of the country’s foremost legal practices in labor and civil rights law. Sugar was already the lead attorney for the United Auto Workers, the union that was organizing the workers of Ford, General Motors and Chrysler throughout the country. Sugar introduced Goodman to the struggle to organize unions at a time when workers were sitting down in auto factories throughout the country to win collective bargaining rights, as Goodman begun asking how he could use the law to “not simply assist a client and secure an income, but also join with others to bring about social change.”

The political and social upheaval of the 1930s and the New Deal, the struggle to organize unions, the campaign to expose right wing terror organizations, and the mobilization against worldwide fascism shaped Goodman’s fundamental beliefs, leading him to take on a central role in advancing the cause and protecting the rights of organized labor, those Red Scare victims and civil rights supporters and activists. By the age of 65, Goodman had established enough financial stability that he could take cases of his choice and work without fee or salary. He choose some of the most difficult but important cases, representing members of the Black Panthers charged with conspiracy and murder for the killing of a Detroit policeman and playing a pivotal role in the trial of black inmates involved in the Attica Prison uprising.

*The Color of Law* vividly depicts powerful historical moments from the hearings of the House Un-American Activities Committee (HUAC) in the 1950s to the Freedom Summer of the 1960s when hundreds of lawyers from across the country lent their time and expertise to the representation of blacks fighting violent racial oppression in the South. The book effectively portrays these events from both inside and outside the courtroom. The authors trace the development of the social justice movement and the

2. *Id.* at 47.
establishment and evolution of the National Lawyers’ Guild as forces to protect and promote human rights and civil liberties. Under Goodman’s guidance and leadership, the Guild played a central role in American history at a time when fundamental rights were under direct attack. Readers also gain insight into Goodman’s exceptional skill as a courtroom lawyer, his dedication to detail, and his brilliant legal strategy, based on a comprehensive analysis and understanding of the political and legal climate and its influence on the perspective with which juries and judges approach cases. Goodman’s style also represents a unique form of lawyering—one in which the attorney identifies with and supports the cause of the individuals and organizations he represents. Goodman did not simply provide neutral legal representation, but thoughtfully and critically engaged his clients in conversations about the most effective legal strategies. Goodman also recognized that the legal system could be used, in the right circumstances, as a potent vehicle for progressive change and as a podium for political and social commentary.

In addition to setting the historical and political context within which Goodman functioned as an attorney representing progressive and often unpopular causes and clients, the authors describe, in riveting detail, the exquisitely difficult tactical decisions Goodman had to make at trial and the legal creativity that movement lawyers had to exercise to represent their clients. Although it ultimately proved unsuccessful, when called upon to represent Willie McGee after McGee had been sentenced to death for his conviction of raping a white woman in Mississippi, Goodman, together with Bella Abzug, developed a novel approach that has become commonplace in today’s jurisprudence. In 1951, Goodman and Abzug brought a civil lawsuit charging the State officials, who participated in McGee’s prosecution, with violations of their client’s civil rights.

Goodman made use of his legal ingenuity just one year after the McGee case, when he represented six members of Michigan’s Communist Party who had been indicted on charges of violating the Smith Act. At an earlier trial of the Communist Party’s national leaders, litigators used a strategy that Goodman rejected in the Michigan case. The Communist Party’s national leaders, representing themselves, presented a “political defense”—one that condemned capitalism—rather than asserting their First Amendment rights of speech and association and claiming that they were not guilty of plotting the violent overthrow of the government. Goodman, who was aware of the disastrous results of the previous trial strategy, insisted that in defending the six Michigan defendants they appeal to the jury’s faith in the Bill of Rights and argue that the prosecution could not meet its burden of proof. He also adamantly opposed having the defendants represent themselves.
More than twenty years later, Goodman, then 68 years old, was asked to defend Bernard Stroble, a.k.a. Shango Bahati Kakawana, one of the lead defendants in the trials arising from the Attica Prison uprising in New York. In contrast to the Michigan-Communists case, Goodman recognized the value of having Stroble represent himself. This reversal of position was based upon a careful assessment of trial strategy. Goodman concluded that, if Stroble was pro se, Stroble would be best able to demonstrate to a jury that he could not have committed the brutal inmate murder with which he was charged and that he would be more effective at cross-examining inmate witnesses called by the prosecution than Goodman.

The authors contrast Goodman’s courtroom style with that of William Kunstler, who also played a leading role in the defense of the Attica defendants. Although both he and Kunstler were “movement lawyers,” Goodman was not flamboyant in the courtroom. Nor was he confrontational with the judge. Instead, Goodman was more of a “lawyer’s lawyer,” meticulous in his preparation and attention to detail. Rather than engaging in grandstanding and courtroom theatrics, Goodman concentrated on brief writing, questioning prospective jurors, and shrewd cross-examination of prosecution witnesses. He also focused on the jurors and their backgrounds and developed techniques to ensure that they would connect to and see Stroble in a sympathetic light. Consequently, during the trial, Goodman made sure that jurors saw Stroble interacting with other members of the defense team and spectators from the community, to whom the jurors could relate. After the jury found Stroble not guilty, Goodman commented that it was this “set of behaviors within the courtroom not without that ‘sold’ the jury on Shango [Stroble] as a responsible participant in the Attica rebellion.”

Goodman often challenged oppressive statutes on constitutional grounds, such as his litigation against the Michigan Trucks Act that banned all Communists and their sympathizers from state employment or running for office. Yet, he also understood that the fight for social justice and racial equality could not be victorious through the legal system alone, but required close coordination with rank and file, grassroots organizations capable of generating social pressure. *The Color of Law* demonstrates the fundamental importance of staying true to one’s convictions and beliefs. Goodman was committed to upholding civil liberties for all people and did not waiver from this belief—even when HUAC announced it would investigative the Ku Klux Klan and other right-wing groups. Goodman urged the Lawyers Guild to oppose such proceedings with the same vigor they opposed the inquisition directed at leftists in the early 1950s.

3. *Id.* at 439.
The tensions between national security and civil liberties that permeate *The Color of Law* have resurfaced today as concerns about terrorism and illegal immigration, as was the case in the 1930s and 1950s, are being used to justify ignoring fundamental rights, including imprisonment without trial and deportation. In addition, the social and economic calamities of high unemployment, poverty and the repression of the rights of working people to organize and bargain collectively—most recently in the public sector—persist. *The Color of Law* illustrates ways in which the American legal and political system have been used in the past to deny people their basic rights and civil liberties and the critical role progressive lawyers have played in representing oppressed and stigmatized members of society.

*The Color of Law* offers meaningful lessons for lawyers looking to contribute to the social justice movement. Goodman recognized that the law is a critical tool in promoting a more fair, just and equitable society. He also understood that real change is not achieved through the judicial system alone. Victories in the courtroom are often linked to victories in the streets, at the picket lines, and through the ballot box. Goodman therefore played a critical role in the development and implementation of strategy and tactics both inside and outside the courtroom. Goodman’s story demonstrates that being an effective “lawyer for the people” is not necessarily about focusing one’s expertise in a specific legal field. Instead, advancing the rights of low-income workers and other disenfranchised people requires being creative, ready and willing to take on and respond to problems that arise—from the denial of civil rights to the abuse of the criminal justice system.

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James P. Kraft’s Vegas at Odds documents the rise of modern Las Vegas, focusing on the experiences of service workers whose labor helped fuel the city’s spectacular growth. Looking past the debauchery and neon glitz that dominate cultural imaginings of Las Vegas, Kraft finds that workers and labor unions actively (and often bitterly) contested the terms of their relationship with management, depicting a city that “was more battleground than playground” for much of its recent history.¹ Kraft’s curious and unfortunate choice of periodization (concluding with the unions’ nadir in 1985), however, leaves the reader with a distorted view of Las Vegas’ contemporary labor history.

Kraft’s story opens by tracing the extraordinary industrial development that accompanied corporate investment in the casino industry in the late 1960’s. The influx of capital transformed not only the physical geography of Las Vegas, Kraft argues, but also the lives of service workers, who witnessed “the informalities and human scale of traditional forms of business enterprise [give] way to large-scale rationalization and bureaucratization.”² As corporate ownership structures replaced small partnerships and proprietorships, relationships between casino management and labor unions, most significantly the Hotel Employees & Restaurant Employees (HERE), Local 226 (or the “Culinary Union”), became less amicable. This development, Kraft argues, helped unseat the relative peace that had prevailed in Las Vegas labor relations—mirroring a broader national breakdown of post-WWII “social accords”—and led to the casino industry’s first significant labor stoppages in the late 1960’s and early 1970’s.

These early, relatively mild disruptions paled in comparison to strikes in the coming years. In 1976, 13,000 casino workers struck fifteen resorts, effectively bringing Las Vegas to a halt for over two weeks. The 1976 labor stoppage was remarkable for its militancy: workers hurled rocks, bottles, and even a Molotov Cocktail; multiple bomb threats were made against struck casinos; and police arrested scores of picketers that rowdily

². Id. at 32.