

---

**Civil Rights**

# Why?

## Why do this work at all

by Vic Glasberg

My initial response to the request to write an article on civil rights litigation for the VTLA was to decline. I have limited interest in others' war stories, and no reason to believe that others would be interested in mine. I have little patience for theoretical analysis, which in my view as an unrepentant Marxist routinely constitutes a veneer obfuscating harsh truths about our society and legal system. I deem the Warren Court and what it represents to be an historical aberration, and routinely find the jurisprudence of the Supreme Court on issues of political and social moment to be a blight, not a beacon. And then there's the Fourth Circuit. But I appear there, so it behooves me to write of other things. And all of this is without reference to Mark Twain's observation that he would rather keep his mouth closed and appear to be a fool, than open it and remove all doubt. Or, as we say in my family, "if you have something to say, don't."

However, friendship triumphed, and when Steve Bricker asked me to write something regarding civil rights litigation for the VTLA journal — and even offered, as a *quid pro quo*, identification of a local counsel so I would not have to travel to Norfolk on a pending case — I agreed. But with conditions. Believing (as I do) that I have nothing significant to say on doctrinal issues regarding civil rights litigation, I would not write a theoretical piece (I recall saying "no citations"). I would write, instead, something that I was uniquely qualified to write: why I do what I do, what problems I face, what I get out of it, and why I recommend it to others. Now that you're forewarned, you can skip to the next article if you wish. I won't take it amiss.

I've been practicing civil rights law, mostly in federal court in Alexandria, for more than 30 years. It's no piece of cake, and not the best road to fame and fortune, at least in this jurisdiction. If I may steal the quip of a friend of mine who has since stopped practicing law, I would be pleased to be guaranteed the income of a first year associate in a major DC firm. But the money is the least of it (no pun intended).

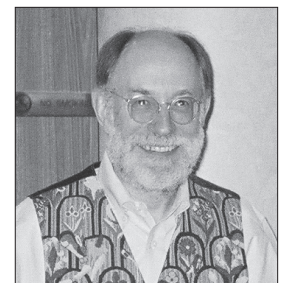
Wasn't it the second *Lethal Weapon* movie where just before being shot by Danny Glover, a racist South African diplomat – this was in the era of apartheid – holds out his papers and smugly shouts “diplomatic immunity?” That's because he hadn't heard of “qualified immunity” – an abomination of a judicial doctrine if there ever was one, invented and developed by “activist judges.” As a result of this doctrine, I, like many of my colleagues, have routinely gotten slammed on righteous cases by unsympathetic judges and also by judges who might be sympathetic but who are constrained by their appellate marching orders. Then there are the judges who “find” facts sufficient to deny or reduce a fee award on cases where the plaintiff prevailed. And there are the judges whose policies (e.g., one hour of deposition time per \$10,000 at issue) or pronouncements in court (e.g., civil rights lawyers are “in it to send their kids to Harvard”) are demeaning to my clients or myself and my colleagues, and with whom I have gotten myself in trouble by calling them on these statements and policies. And then there's Justice Scalia waxing eloquent (in *Buckhannon Bd. & Care Home, Inc. v. W. Va.*, 532 U.S. 598 (2001)) on the pre-eminent need to ... safeguard civil rights defendants from being victimized by law “exacting the payment of attorney's fees to the extortionist.” So much for the vaunted “private attorneys general” who, like Mao's 1000 flowers, briefly bloomed. Justice Scalia works, you will recall, in a building inscribed with the motto “Equal Justice Under Law.”

And yet, I would not do anything else, at least as a lawyer. Professional athletes get paid for playing a game. That is a great gig. But I make a living (when I make a living) helping the screwees of the world get what is rightfully theirs from the screwers, public and private. Is that great or what? This is not simply or necessarily a matter of transferring money from defendant's pocket to plaintiff's pocket (thought hopefully it is that too, and that is all it typically ever is in defense counsel's view). It is ultimately a political and moral matter: what you have done is wrong and we will not let you get away with it without a fight. This is good work. I can't imagine better in the law, except perhaps

working for legal services, which is its own kind of civil rights work, protecting the right not to be oppressed because one is poor.

Criminal defense lawyers experience a similar feeling, I think, when defending constitutional principles against the outrageous unfairnesses of our prosecutorial systems. It's enough to make you root for the criminals. But the down side for the criminal defense lawyers is their clients, who probably did it, or close to it. The civil rights plaintiff's lawyer can have all sorts of client problems, but not believing in the merits of the client's case is not typically one of them. So you can do battle with the dark side in the belief that you are actually on the side of justice, mom and apple pie. (There is an exception of sorts in certain free speech or due process cases, where your client is a creep whose speech or action is disfavored. These cases are relatively rare, however, and it is worth taking some hits to defend the constitutional principles at issue.)

Litigation tends to make professional virtues out of what are normally considered personal vices: adversarial behavior; scheming (read: tactical thinking); obfuscation (read: making discovery); posturing (read: presenting a strong face); polarization – the list goes on. This gets wearing and is probably bad for the soul, and surely accounts for much of the substantial drop-out rate in our line of work. When you add aggressive opposing counsel and a largely unsympathetic judiciary, one has to ask whether there are not better ways to make a living. What makes it worthwhile, apart from the invariable pleasant surprises among opposing counsel and on the bench, is the peace of mind that comes with what one is doing. Filing fee: \$350. Service of subpoena: \$75. Representing the victim against the victimizer: priceless.



*Vic Glasberg has been practicing civil rights law in Alexandria since 1976.*