

TO ALL THE
LITTLE GIRLS
WATCHING RIGHT
NEVER DOUBT THAT
YOU ARE VALUABLE
& POWERFUL & DESERVE
OF EVERY CHANCE
IN THE WORLD

The PRESENCE
SEGREGATION
THE ABSENCE
DEMOCRACY
JIM CROW
MUST



CIVIL RIGHTS LAWYERS FROM THE 1960s HAVE
LESSONS FOR TODAY'S SOCIAL ACTIVISTS

RESISTANCE REDUX

BY VICTOR LI

When Stephen Bingham and Timothy Jenkins remember traveling to Mississippi in 1964 to take part in the Freedom Summer, with the stated goal of registering African-Americans to vote, they recall being exhilarated. It was an exciting time for the civil rights movement and the two—along with thousands of other volunteers from the NAACP, Southern Christian Leadership Conference, Congress of Racial Equality, Student Nonviolent Coordinating Committee and the rest of the rich alphabet soup that is part of historical lore—felt energized and inspired by the hurly-burly of protests, marches, demonstrations and organized political activities that made them feel as if they were helping to bring about important social change.

They also remembered being terrified. Jenkins, a student body president at Howard University who had been on the SNCC executive committee, was thankful that he arrived in Mississippi in one piece. The Pennsylvania native, who had almost grown up in the civil rights movement by volunteering for the NAACP during high school, was traveling with fellow SNCC activists Charles Sherrod, Charles McDew and J. Charles Jones (the “three Charleses”) when the car carrying them accidentally ran over a dog in Alabama.

2017 WOMEN'S MARCH
1963 CIVIL RIGHTS MARCH

"The person who owned the dog complained that we had killed her dog, and a tremendous crowd surrounded us and demanded we had to pay for the life of this dog," Jenkins says. "It was the first real confrontation I had in the South."

He believes the incident could have had a much more violent result had it not been for a bystander—a retired judge who came to their rescue. "He indicated that there was no way we could've avoided hitting it and it wasn't our fault," says Jenkins. "Then he hustled us into our car and we drove away."

Not all of their colleagues were as lucky, as Bingham recalls. The Yale University student had been training in Ohio in preparation for the Freedom Rides in Mississippi. He remembers three fellow volunteers—James Chaney, Andrew Goodman and Michael Schwerner—leaving for the Magnolia State a few days before he was to depart. They were killed near the town of Philadelphia, Mississippi, by members of the White Knights of the Ku Klux Klan. Known as the *Mississippi Burning* case, the murders sparked national outrage and triggered a massive federal investigation that resulted in several convictions in 1967, as well as a belated one in 2005 for accused mastermind Edgar Ray Killen.

"That killing was intended as a message to the rest of us," Bingham says. "They were telling us: 'Y'all better not come down here.'"

But Bingham, Jenkins and the

many others in their shoes weren't deterred. They were driven by a cause greater than any single one of them, and they were determined to bring about change through legal means.

Perhaps it was destiny, then, that Bingham and Jenkins would become lawyers. "I never went into law with the hope of making lots of money," Bingham says. "Instead, I began to see law as a tool for social change, and it was reinforced by the work that lawyers were doing concerning civil rights."

Jenkins agrees, saying the civil rights movement "made it clear that law was a place of great impact on what happens in society. ... It was an easy thing for me to decide to become a practitioner."

With political and social strife at the highest they've been in generations, several movement lawyers from the 1960s and '70s believe they can use their life experience to educate and inspire today's social activist lawyers and demonstrators.

'A SIGN OF THE TIMES'

After graduating from Yale Law School in 1964, Jenkins went about as far away from civil rights as a lawyer could.

In those days, Pennsylvania attorneys were required to do an apprenticeship, and his was at the Philadelphia firm of Norris, Green, Brown and Higginbotham. A former

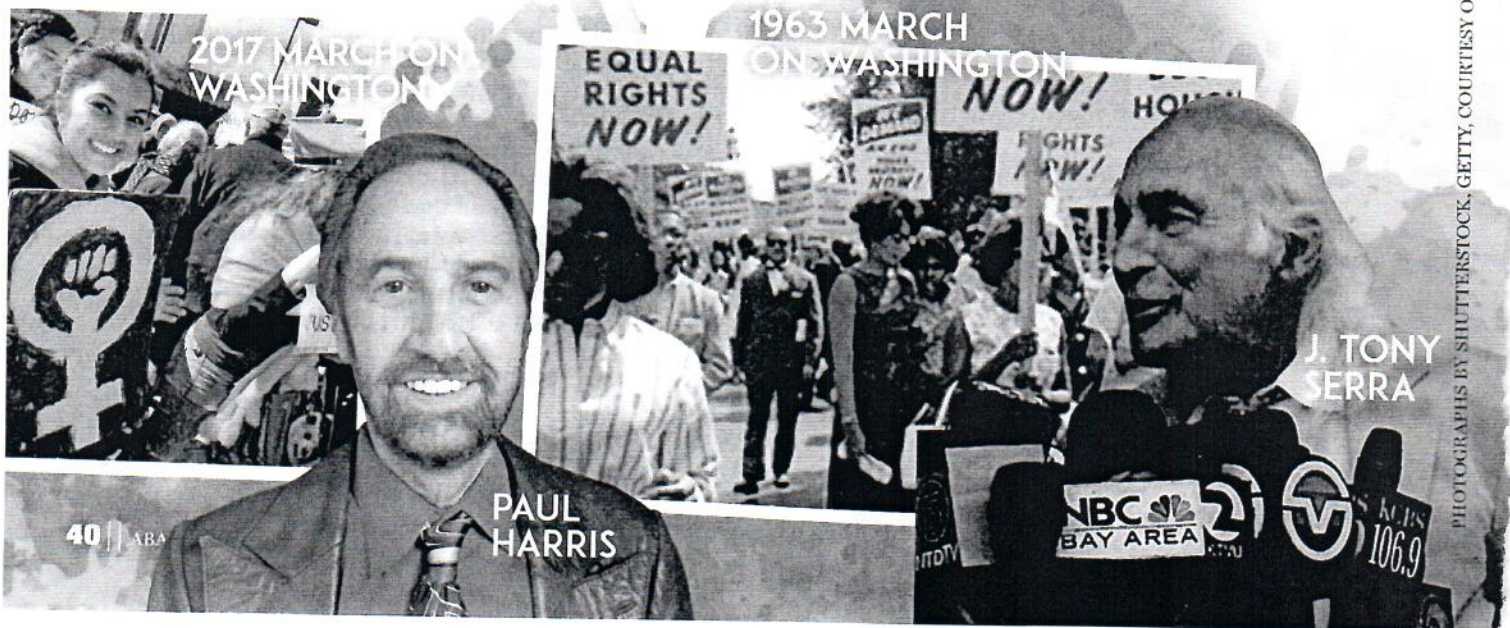
lawyer at the firm had joined the pharmaceutical company Smith, Kline and French Laboratories (now part of GlaxoSmithKline) and offered Jenkins a job. Newly wed and a father, Jenkins was looking for a steady income, so going to Smith Kline was a no-brainer. But it also affected his view of lawyers.

"It became clear to me that lawyers were not the movers and shakers I thought they were," Jenkins says. "Lawyers are, typically, brought in at the tail end to clean up the details after major decisions have already been made. It really diminished my enthusiasm."

Jenkins soon found himself gravitating back toward civil rights. Reflecting on his days with Norris Green, he realized that law could still be used as an instrument for shaping policy.

"Most of their practice was not focused on trying cases," he says. "Instead, it was more about helping institutional clients and shaping their policies." Jenkins took that model and used it to provide legal representation to organizations that had sprouted up in the civil rights era, including co-ops, housing and teachers' groups and other professional organizations.

"When I graduated from Yale, I was coming out at a time when the Black Power movement was unfolding," Jenkins says. "The black community was articulating its needs to have our own laborers, businesses, accountants, teachers



PHOTOGRAPHS BY SHUTTERSTOCK, GETTY, COURTESY OF PAUL HARRIS AND J. TONY SERRA

unions and so on. I also did a lot of work in the South for farmers who wanted to create their own land development enterprises."

Jenkins also helped found the National Conference of Black Lawyers in 1968. The organization's initial clients included the likes of Angela Davis, Assata Shakur, members of the Black Panthers and several inmates from the Attica prison riots. He says that, between his own cases and the ones he worked on for the NCBL, there were times when he'd have as many as 300 cases going at once.

"Many of the clients I represented were cause-oriented, not just commercial or civic organizations but activist organizations," Jenkins says. "I was never completely free of the activist orientation."

Likewise, Bingham drifted toward radical causes after graduating from the University of California at Berkeley School of Law in 1969. He was selected as a Reginald Heber Smith fellow, awarded to top law grads to allow them to perform public service on behalf of the poor. It also allowed him to get creative with the way he took on cases.

"We were allowed to experiment with new forms of representation and not be in a straitjacket with traditional public assistance work," Bingham says. Instead, he served as an in-house counsel with a tenants union in West Berkeley. "We were known as Tenants Organized for Radical Change

in Housing, or TORCH," he recalls with a chuckle. "I guess that was a sign of the times."

Bingham also joined the National Lawyers' Guild, where he found many kindred spirits. Through the guild, organized as a liberal alternative to the American Bar Association, one of Bingham's most important relationships was with fellow radical lawyer Paul Harris.

Their friendship came in handy when Bingham was accused of smuggling a pistol into San Quentin State Prison in 1971 to his client, Black Guerrilla Family founder George Jackson. In the ensuing melee, Jackson, two other inmates and three corrections officers were killed while six inmates escaped. Bingham was charged for his role in what became known as the San Quentin Six case and, fearing for his life, decided to flee the country. After over a decade on the lam, he turned himself in and, with Harris as his defense attorney, was acquitted in 1986.

IN HIS BLOOD

Unlike Bingham, being a radical was in Harris' blood. His uncle, Fred Fine, was a leading member of the Communist Party USA, while his father volunteered to fight in the Spanish Civil War against Francisco Franco and the Nationalist forces. Growing up during the McCarthy era, Harris was too young to understand what was going on, but he knew his family was suffering.

"My father was blacklisted out

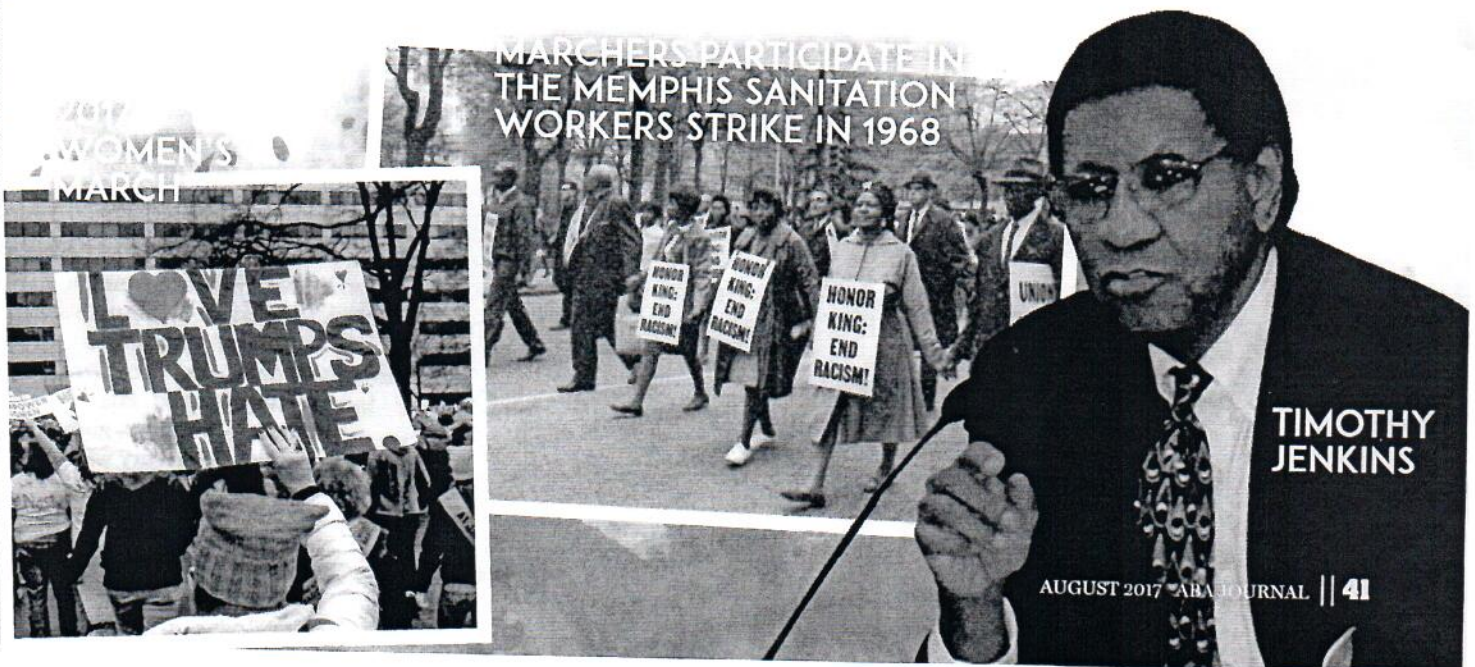
of the labor movement," Harris says. "My mom lost six jobs in seven weeks. My uncle was indicted under the Smith Act and went underground for four years. The FBI would show wanted posters of my uncle and [my mother would] get fired. It was horrible for my parents and grandparents."

Harris was never a Communist himself (though he says he joined some Marxist groups in college), but he was clearly influenced by party tenets. Nowhere was this more apparent than when he set up the San Francisco Community Law Collective in the Mission District immediately after graduating from Berkeley Law in 1969.

Describing it as "communist—with a lowercase c," Harris says the law collective was based on the idea that communities could have legal representatives similar to in-house counsel to serve them whenever legal issues came up. The radical twist was its compensation structure: All employees were paid equally, regardless of whether they held a JD.

"Our model was for a completely multiracial law office that would work hand in hand with community groups," says Harris. "We weren't really looking to do big political cases. We just wanted to empower people so that they could bring about long-term changes."

But the big political cases soon found their way to Harris' desk. Leonard McNeil, a collegiate All-American football player at



TIMOTHY JENKINS



STEPHEN
BINGHAM

California State University at Fresno, was drafted by the Philadelphia Eagles in 1968. His number also came up in a different, far more serious draft—the military one.

“He fled to Canada after getting a draft notice,” says Harris, who notes that McNeil had been active in civil rights demonstrations in college and claimed that the Eagles refused to sign him because they believed he was a Black Panther. “He came to me because we were known as experts in draft law—and because we were leftists.” Harris got the charges dropped, and McNeil went on to an active political career, including 12 years on the San Pablo city council and one term as mayor.

Harris had worked with the Black Panther Party and says he had respect for its members after seeing the positive things they had done in the community, including taking seniors to the bank to help them cash Social Security checks, setting up free breakfasts and developing programs to help people with sickle cell anemia.

Contact with the Panthers brought Harris into a case involving their minister of defense, Huey Newton. Newton, who had attended law school in San Francisco, was facing murder and assault charges and had decided to abscond to Cuba.

“I was asked to go to Cuba and meet with Huey and get him to come back and face the charges,” Harris says. “I told him that he’d probably win the murder case but lose the assault. Huey told me: ‘Paul, I love Cuba, but I’d rather spend the rest of my life in prison in my home country than live in exile.’”

Harris defended Newton on the assault charge and, contrary to his initial prognosis, got an acquittal. He did not take on the murder case, however. Instead, it was a fellow Berkeley Law alumnus who would handle it.

AGAINST THE GRAIN

That lawyer, J. Tony Serra, likes to call himself an “anti-lawyer lawyer.” Serra went to Stanford University for undergrad before graduating from Berkeley Law in 1961. Serra had dreams of being a big-time mob lawyer, but he was soon swayed by something else that was going on at the time: the Summer of Love.

Located about an hour from Boalt Hall, the Haight-Ashbury area became ground zero for the free love movement, and Serra was immediately hooked. His attraction to what was going on in Haight-Ashbury went beyond hippie culture. “Out



of it all came a fusing of Eastern ideology and Eastern religion with Western ideology," Serra says. "We were all working together."

Perhaps that's why he sounds as if he'd love to go back in time. Calling it the "golden age of law," Serra waxes nostalgic for those days.

"We always romanticize our youth," says Serra. "That's when we were strongest, most mentally able and most innocent. I was a radical lawyer in an era where I could win consistently, and the Constitution was respected and fulfilled to a degree that certainly was much more prominent than presently."

Nevertheless, he's tried hard to uphold the ideals that he stood for in the '60s, even as the decades have progressed. While on an LSD trip, he took a vow of poverty, and he still lives a frugal lifestyle. He tries to keep his fees as low as possible so that he can help as many poor clients as possible.

He says he typically charges \$25,000 for a death penalty case, knowing he could get nearly 10 times that working as a public defender. Even then, the money is enough to help defray the costs of other cases.

"You must strip yourself of impure motives if you want to be successful in any idealistic venture," Serra says. "If I'm thinking about money, then I can't defend my clients effectively." That extends to giving money to Uncle Sam: Serra is a well-known tax resister and even spent 10 months in federal prison in 2005 for evasion.

He has another reason for living a Spartan lifestyle. Decrying the materialism he sees from many in the profession, Serra believes it's hypocritical for lawyers to say they believe in a cause only to chase money. "They pretend they believe in a correlation between income inequality and racism, and then they go to expensive restaurants and go yachting on weekends," says Serra. "They want it both ways."

When Serra defended Newton on charges that he had shot a prostitute to death in 1974, it was Serra's first high-profile case. He remembers how Black Panthers stood in the courtroom, and in the halls outside of it, cheering him on as he made

his arguments in open court, calling out as if they were in church. He also formed an indelible bond with his clients, one that continued to influence him long after Newton was killed in 1989.

"Huey was one of the most magnificent people I've ever met," says Serra. "He taught me so much. For a short but intense period, we were like brothers."

Serra, who went on to represent other radical defendants, including members of both the Black Panthers and the White Panthers, as well as the Symbionese Liberation Army, says he's learned from all his clients.

"They were all brilliant people, very analytical and self-sacrificing," Serra says. "I got close to all of them—not just because I represented them in court and won, but because we became friends. Their ideologies framed my ideology."

Like other radical lawyers, Serra has found himself in the cross-hairs of law enforcement. In addition to his tax issues, Serra was accused of releasing the contact information of two police witnesses to the public in a criminal trial. He called on a fellow California radical to get the charges dismissed.

FOCUSED ON POT

That someone—who has devoted his life's work to pursuing legalization of marijuana—is Bruce Margolin. He claims pot is not really part of his lifestyle and stresses that he's not promoting marijuana use; he's promoting changing the law. The Los Angeles lawyer, who graduated from Southwestern Law School in 1966, says he's been driven by a very basic legal maxim that the punishment should fit the crime.

"Early in my career I got a case where there were 20 kids busted in a hippie house in California for pot possession," Margolin says. "I represented all of them. There was one guy who was going to be convicted and was going to go to jail, and I was shocked about that. I couldn't believe that's how the system worked. It seemed too harsh for me."

To Margolin, who grew up in a Marine family and was looking to rebel, marijuana was the ideal outlet.

He began to research marijuana and could find nothing that convinced him it was harmful or dangerous. So he decided to push for its legalization while setting up his practice to help marijuana defendants.

"I realized that I needed to change the law," says Margolin, who put ads in the newspaper to see who would join him in his cause. "One of the editors got ahold of me and started talking to me about my career. I mentioned that I had represented about 100 people on marijuana charges and only one went to jail. I soon became very well-known in the area of defending marijuana cases."

Margolin has been executive director of the LA chapter of the National Organization for the Reform of Marijuana Laws since 1973. He also ran on a marijuana-legalization platform during the 2003 California recall election that saw Arnold Schwarzenegger become governor. Margolin's lawyer advertising contains multiple references to marijuana: His phone number is 1-800-420-LAWS (420 is a slang term for marijuana). And his website bears the phrase "No one belongs in jail for marijuana."

"Maybe one day we'll find out something really harmful about marijuana and maybe then I'll feel bad about my work," says Margolin. "But it hasn't happened yet."

In 1970, Margolin ran for the California State Assembly and lost by 5 percentage points. After the campaign, he decided to put his legal career on hold to travel the world and, in his words, try to find the meaning of life. During his travels, he had befriended Richard Alpert, an academic who, along with his colleague Timothy Leary, had been fired from Harvard University after conducting controversial experiments with students involving LSD and other mind-altering substances.

"I went to India and took a meditation course," Margolin says. "When I went back to my hotel, Richard Alpert was there. He taught me that, if you have a boon or power, you should use it."

Margolin took that to mean that he should resume practicing law. That decision paid off for Alpert's

friend Leary. The professor had become even more notorious since his Harvard days, and at one point Leary was described as "the most dangerous man in America" by none other than President Richard M. Nixon. Leary had been on the lam for a couple of years after escaping from a minimum security prison while serving a 10-year sentence for marijuana possession. He was arrested in Kabul, Afghanistan, and extradited to the U.S., where he was locked up in Folsom State Prison next to Charles Manson for a time. Alpert then called Margolin and asked him to defend Leary.

"My job was to make people understand why he was in jail," Margolin says. "It was really just a marijuana possession case." Despite that, he came up with an intricate defense that included an LSD-induced flashback, as well as fears that Nixon and his administration would kill Leary. Leary was convicted, but he received a reduced sentence and was ultimately released from prison in 1976.

'CO-OPTED BY CAPITALISM'

These movement lawyers have seen plenty of changes over the last half-century. But 2016 was a reminder that their work isn't finished.

Margolin may have believed the hardest part of his lifelong struggle was over in November when California voters enacted Proposition 64 legalizing recreational marijuana. But on that same night, voters across the country elected Donald J. Trump to be president. Almost immediately after his victory, Trump nominated then-Alabama Sen. Jeff Sessions to be his attorney general. Sessions, a longtime opponent of marijuana who once said that "good people don't smoke marijuana," could make Margolin's life interesting over the next few years.

"He makes me sick to my stomach," says Margolin, who has defended Linda Lovelace, Christian Brando and members of Guns n' Roses in

marijuana-related cases. "I don't know what he's going to do."

Harris, though retired, is hoping to mold the next generation of movement lawyers through his Center for Guerrilla Law. The main idea behind the center is similar to the law collective he set up all those years ago, he says. "It goes back to representing community groups and being house counsel for those institutions. The law has this notion of objectivity, but it's not. The law serves the status quo in every country, but in the U.S. it also protects dissent, and that gives you breathing space as a lawyer."

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As dissent and organized protests become more commonplace in the Trump era, both Harris and Serra are heartened by what they see as a more active, committed, engaged and radical populace, even more than what they had seen in the '60s and '70s.

"We have a president who is seizing more and more executive power, and we are in the throes of a takeover and conversion to a totalitarian state," says Serra. "As a result, liberals and moderates are raging, and it's never been like that before."

Serra cites Black Lives Matter as an example of how angry and sustained today's dissidents are, saying: "Our

fury is greater today than it was back then. Back then, we wanted reform; now, I think we want to overturn the government."

While not all of these lawyers have subscribed to Serra's life of poverty, they do agree that money is perhaps the single biggest impediment for today's movement lawyers.

"The student loan issue is a problem now," Harris says. "It forces people to not be politically active because they have to worry about debt." He tells his cause-oriented students that they might have to take high-paying jobs at first to pay off their loans. "Watch your lifestyle," he warns. "It's very easy to get co-opted by capitalism."

Bingham agrees, saying that working at a big law firm can be advantageous for young lawyers because of the level of training. He also suggests that cause-oriented big-firm lawyers act as if they're living on a public interest salary. "It's hard to do this on your own, so I would tell students to find others and live together and pool their resources so they won't be tempted to use their money to buy nice cars or whatever," says Bingham. "For me, I liked living collectively. With rents going up, it's not a bad idea." Jenkins, meanwhile, encourages cause-oriented lawyers not to sweat the small stuff. He recommends that today's lawyers look beyond the typical approach of trying to solve one problem at a time and, instead, take the long view.

"Instead of using a whack-a-mole approach and trying cases in isolation and as they come up, lawyers should look for long-term solutions," Jenkins advises. "They should look for institutional solutions instead of individual solutions."

But the main thing today's lawyers have to remember, according to Serra, is that being a good lawyer trumps everything.

"You can't be a loose cannon or a big mouth without backing it up with case law, memos and arguments in court that are credible and persuasive," Serra says. "You've got to be good, man!" ■