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by Mark V. Tushnet

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BOOK BRIEFS

The NAACP's Legal Strategy Against Segregated Education, 1925-1950. By Mark V. Tushnet. Chapel Hill, North Carolina: The University of North Carolina Press. 1987. Pp. VIII, 222. \$9.95 (paperback).

Mark Tushnet gives an enlightening analysis of the evolution of the NAACP's legal campaign against segregated schools in his book, *The NAACP's Legal Strategy against Segregated Education, 1925-1950*. Tushnet's narrative takes the reader behind the scenes of the campaign, examining the various organizational and political decisions which were made, as well as portraying the key actors who made the decisions. His narrative focuses on teacher salary equalization cases, professional school admission cases and cases involving the desegregation of elementary and secondary schools.

Tushnet's underlying premise is that public interest litigation is a social process which is highlighted by three basic stages. In the first stage, a group of people realize that they share a common problem and that the problem can be addressed through the legal system. The second stage involves the interaction between the lawyers and their clients. At this stage, the grievance may be reshaped to conform with the chosen legal strategy. The final stage incorporates the court's decisions and their implementation and/or enforcement. Tushnet's point, which facilitates an overall view of the campaign, was that "the social process of litigation begins well before a lawsuit is filed and ends well after a judgment is entered."¹

Tushnet effectively demonstrates throughout the book why such an in-depth study of the NAACP'S campaign is so important. He reveals not only historical information but also a point of view different from the status quo. An example is Tushnet's discussion of a widely held misconception regarding the campaign. He felt that it was misleading to characterize the litigation campaign as the execution of a previously developed plan.² Society's view, as expressed by scholars who had written on the topic, was that the litigation campaign against segregated education resulted from a predetermined plan, executed step-by-step. Obviously, there was an over-arching intention to destroy the constitutional support of segregation; but, the belief in the existence of a deliberate "plan", to the degree suggested by some scholars³, is a little far-fetched.

By incorporating the history of the NAACP in his narrative, Tushnet shows that the NAACP was actively pursuing many activities. School desegregation was just one aspect of the fight for the advancement of Black people. According to Tushnet, school desegregation became an increasingly attractive target due to accumulating precedents dealing with schools. The reason for the accumulation was that the NAACP had been litigating school cases for

1. M. TUSHNET, *THE NAACP'S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION, 1925-1950* xiv (1987).

2. *Id.* at 144.

3. One such scholar describes the campaign as originating in "a strategic plan for cumulative litigation efforts aimed at achieving specified social objectives." *Id.* at 144 (quoting Rabin, *Lawyers for Social Change: Perspective on Public Interest Law*, 28 *STAN. L. REV.* 207, 216 (1970)).

nonstrategic reasons.⁴

Illustrations of the absence of a strict litigation "plan" are found throughout the book. An excellent example is the discussion of salary equalization suits in chapter six. At issue were teachers' salary schedules, which blatantly showed that Black teachers were paid less than white teachers in comparable positions. The use of these schedules was quite prevalent. Numerous successful attacks on these types of schedules took place in the early 1940s. However, a few persistent school boards, to avoid charges of blatant racism, ostensibly created "merit rating" systems. This increased the pressure on the NAACP's lawyers because they were no longer dealing with blatant evidence of racism. As a result, a new plan of attack had to be developed; otherwise, the goal of salary equalization would never have been achieved.

In the concluding chapter, Tushnet discusses his theoretical analysis of the legal campaign against segregated schools. While concluding that a general view of public interest litigation can be beneficial, Tushnet raised two issues which appear to be representative of issues affecting public interest law in general. The first was the issue of legal ethics. The second issue was concerned with the NAACP's litigation effort and its basis in the Black community.

In addressing the ethics issue, Tushnet asked: "[T]o what extent are litigation campaigns independent of the wishes of a defined group of clients?"⁵ This question was broken down further in terms of the client/lawyer interaction which took place throughout the campaign. His discussion of the ethics issue is interesting but the reader may lose the "big-picture" due to detailed examination of tangential issues. However, Tushnet does improve the situation by summarizing the discussion.

Tushnet also concludes that the legal effort was affected by external and internal influences. Tushnet's interpretation of the litigation events takes into account internal as well as external aspects of the litigation campaign, with major emphasis on the internal elements. He categorizes the various influences and obstacles throughout the book, so the discussion of this topic in the concluding chapter is straightforward and easy to follow.

One of the internal aspects, which adds a great deal to the impact of the analysis, is the detail of organizational politics. The two men whose personal political skills⁶ played a major role in the success of the campaign were Charles Hamilton Houston and his protégé Thurgood Marshall. Tushnet gives them significant credit for good reason. Their efforts were discussed in great detail but it only added to the flavor of the narration; in no way did it detract from the analysis.

One of the most fascinating aspects of the litigation campaign was the choice of the mode of attack and its alteration in response to economic, social and political conditions. This is an issue of ethics because of the lawyer's influence in identifying the grievance and the remedy to be sought. Originally,

4. M. TUSHNET, *supra* note 1, at 145 (1987).

5. *Id.* at 146.

6. "The aspect of political skill that should be emphasized here is the ability to persuade people whose views conflict that their mutual interests will be better served by accommodating, suppressing, or avoiding the conflicts than by persisting in them." *Id.* at 20.

the conflict was based on choosing between litigation and other methods of addressing the problem.

Another major conflict was whether to make an indirect versus a direct attack on segregation. The decision to start with an indirect attack, focusing on equalizing the separate educational facilities, was looked upon as being the most favorable option. It was favored because the states had a choice of either improving the Black separate schools to bring them to the level of the white schools or merging the school systems to satisfy the equalization requirement.⁷ The subsequent change to a direct attack was a logical response to political and socio-economic conditions.

Tushnet touched upon additional procedural topics which may be of special interest to law students and the legal community. The inclusion of the decision-making process regarding the appropriate remedy and forum really illustrates how procedural decisions can play an important role in the outcome of a case. According to Tushnet, the decisions "were made in light of both legal analysis and staff needs."⁸

Tushnet's book provides an important historical view of the NAACP and the litigation campaign. One also learns the implications of the NAACP's litigation activities for the theory and practice of public interest law. These are significant accomplishments for one book. I highly recommend this book to everyone. The narrative portion of the book is well-written and very easy to read. It is quite entertaining due to the perception that one is getting the "inside" story. The indepth theoretical discussion in the last chapter, while helpful, is difficult reading at times.

Public interest law is a subject which needs to be addressed. Tushnet does an exquisite job. Tushnet's book could quite easily be incorporated into a course on public interest law. He includes both a very good bibliography and index in his book. All things considered, this book should have a beneficial impact on the Black community.

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7. *Id.* at 105.

8. *Id.* at 49.