

5-1978

## The Old Order Changeth

Theodore A. Smedley

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vlr>



Part of the [Civil Rights and Discrimination Commons](#)

---

### Recommended Citation

Theodore A. Smedley, *The Old Order Changeth*, 31 *Vanderbilt Law Review* 779 (1978)  
Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol31/iss4/3>

This Article is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in *Vanderbilt Law Review* by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact [mark.j.williams@vanderbilt.edu](mailto:mark.j.williams@vanderbilt.edu).

# “The Old Order Changeth”

Theodore A. Smedley\*

With the publication of this Symposium in the *Vanderbilt Law Review*, the Vanderbilt Law School continues the tradition, which began with the initial publication of the *Race Relations Law Reporter* in 1956, of reporting and commenting upon current legal developments and issues in the areas of civil rights and race relations. When the first issue of the *Reporter* was released in February of that year, Professor John W. Wade, then Dean of the Vanderbilt Law School, announced its purpose in these words:

The Vanderbilt University School of Law is undertaking the publication of the *Race Relations Law Reporter* in the belief that constructive developments in this field, as in others, should be based on accurate and complete information regarding authoritative legal materials. Regardless of differences in points of view there is widespread recognition among lawyers, educators and others of the need for a systematic compilation of primary materials in this rapidly developing field of law. The *Race Relations Law Reporter* is undertaking to provide these materials on a professional basis. It proposes to be objective and impartial in all respects.

Through this publication the Vanderbilt University School of Law will endeavor to report the materials in all fields where the issue of race or color is presented as having legal consequence.<sup>1</sup>

More than 19,000 pages later, in February, 1968, I wrote by way of a farewell to our subscribers in the final issue of the *Reporter*:

Through the dozen intervening years, we have attempted to carry out these aims faithfully in rapidly changing times, despite the increasing tensions which developed in the controversies over desegregation, despite the ever-broadening legal area involving race relations matters, and despite the greatly expanded bulk and variety of relevant materials coming from courts, legislatures and administrative agencies. . . .

.....  
We believe that during the past twelve years the *Reporter* has been of substantial value to many people involved in or concerned about civil rights matters—to lawyers, judges, legislators, administrators, educators, news-dissemination agencies, public school officials, and members of the general public. We trust that the existing issues of the *Reporter* will continue to be of service in the future to those who pursue their current studies and activities in the area of race relations, and to scholars of coming generations who will find in these twelve volumes a comprehensive library of the legal developments occurring in this area during a period of significant social revolution in this nation.<sup>2</sup>

Publication of the *Reporter* was discontinued in 1968 because

---

\* Professor of Law, Vanderbilt University. B.A., Illinois College, 1935; J.D., Northwestern University, 1938.

1. Wade, *By Way of Introduction*, 1 RACE REL. L. REP. 1 (1956).

2. Smedley, *By Way of Conclusion*, 12 *id.* at 1747-48 (1967).

the Ford Foundation, which had generously provided funds to support the project from the beginning, determined that it should make no exception to its general policy against supporting any single program for an indefinite period of years. One year later, however, in recognition of the continuing need for a reliable source of information concerning legal developments in the race relations field, the Ford Foundation made a further grant to enable the Vanderbilt Law School to publish a more limited report, the *Race Relations Law Survey*. The *Survey* was published from May 1969 through March 1972.

The great majority of the materials printed in the *Reporter* consisted of the full texts of court opinions, statutes, administrative agency rulings, and attorney general opinions dealing in some way with race relations. In addition, both publications contained brief summaries setting forth the essence of these decisions, enactments, and opinions. Especially in the earlier issues of the *Reporter*, and scattered throughout later issues of both publications, articles appeared dealing with significant legal problems in the civil rights field. Included among these articles were such titles as *Separate-But-Equal: A Study of the Career of a Constitutional Concept*,<sup>3</sup> *Interposition vs. Judicial Power: A Study of Ultimate Authority in Constitutional Questions*,<sup>4</sup> *State Action: A Study of Requirements Under the Fourteenth Amendment*,<sup>5</sup> *The Exhaustion of Administrative Remedies*,<sup>6</sup> and *Enforcement of Court Orders: Federal Contempt Proceedings and Prevention of Obstruction*.<sup>7</sup> These titles reveal only a small portion of the broad and important range of materials contained in the *Reporter* and the *Survey*.

Since the purpose of the *Reporter* was to provide a source of accurate and up-to-date information in a rapidly developing and highly controversial area of law, the subscription price was kept at a nominal sum—two dollars per year at the start and only five dollars per year for the later volumes. These rates surely made the *Reporter* one of the best book bargains of our times—unless, of course, one considers the *Survey*, which was distributed without charge. The *Reporter's* circulation numbered about 1700, while the *Survey* went to about 2500 readers. More important, the *Reporter* and the *Survey*, as specialized publications, reached many persons to whom the information was of vital importance and who otherwise

---

3. 1 *id.* at 283 (1956).

4. *Id.* at 465.

5. *Id.* at 613.

6. 2 *id.* at 561 (1957).

7. *Id.* at 1051.

would have been unable to obtain the materials. Among those who expressed their appreciation for the assistance provided by both publications were a large number of prominent officials in the administrative and judicial branches of the federal and state governments, as well as many obscure civil rights lawyers who were fighting the legal battles in the front-line trenches.

Of course, not all of the reactions were favorable. During the year in which the first volume of the *Reporter* was published, the Vanderbilt Law School admitted its first two black students. This coincidence promptly gave rise to the report that the Ford Foundation's promise to grant financing for the *Reporter* had been used to bribe Vanderbilt to become the first private university law school in the South to desegregate its student body. In addition, one southern politician, when solicited to subscribe to the *Reporter*, declared that he did not need such a publication to tell him what the law was in the race relations field, because he merely had to inquire into what the NAACP wanted in order to determine what the law would be in a particular area. Most of the comments received from readers, however, were strongly commendatory; and the several faculty members and law students who labored at the ever-demanding and sometimes tedious job of collecting materials, writing summaries, editing copy, and reading proof were sustained by the conviction that the product was both highly valuable and duly appreciated.

The publication of this Symposium in 1978 marks the tenth anniversary of the final publication of the *Race Relations Law Reporter*. The timing of the Symposium is particularly appropriate for another reason as well. In 1968, the National Advisory Commission on Civil Disorder, commonly known as the Kerner Commission, issued a report that had been requested by President Lyndon B. Johnson in July 1967. The Commission, which was to investigate the underlying causes of the riots that plagued America's larger cities during the 1960's, offered the pessimistic conclusion that "Our Nation is moving toward two societies, one black, one white—separate and unequal."<sup>8</sup> In the face of this bleak prediction, the Commission issued a voluminous set of recommendations concerning what should be done in America in the following years to relieve the tensions between the races. In February 1978, ten years after the release of the Kerner report, the *New York Times*, in a four-part study,<sup>9</sup> described the condition of the American black community

---

8. UNITED STATES NATIONAL ADVISORY COMMISSION ON CIVIL DISORDER, REPORT 1 (1968).

9. N.Y. Times, Feb. 26, 1978, § 1, at 1, col. 1; *id.*, Feb. 27, 1978, § A, at 1, col. 4; *id.*, Feb. 28, 1978, at 1, col. 1; *id.*, Mar. 1, 1978, § A, at 1, col. 1.

with regard to the findings of the Kerner Commission. The *New York Times* study revealed that although the gap between white and black America has been narrowed in several categories, in other respects it remains quite large.<sup>10</sup> In fact, the very condition that the Kerner Commission forecasted—the polarization of the races—is still a fact of life in America's larger cities.<sup>11</sup> Moreover, the study uncovered another trend as disturbing as that outlined in the 1968 report. The study concluded that within black America itself, "[o]ne group is rapidly acquiring more education, better jobs and higher income; another remains mired in poverty, an unyielding 'underclass' with few qualifications and little motivation."<sup>12</sup> Thus, although progress has been realized since the release of the Kerner report a decade ago, the fears expressed in the report have not abated substantially, and genuine problems continue to exist—problems similar to those addressed in the pages of the *Race Relations Law Reporter* and *Survey* and discussed in this Symposium.

The *New York Times* study indicates that the subjects of civil rights and race relations continue to be important and evolving areas of the law. As this Symposium demonstrates, because the nature of the basic legal problems and questions has changed since 1968, the need for thoughtful legal writing in the area remains. In reviewing my work in the area of race relations law, my only regret is that the *Reporter* could not have been continued for an additional five or six years and thus have extended over the full period during which the basic legal foundations were laid for the eventual attainment of civil rights and equal opportunity for all citizens of this nation, regardless of their race, color, religion, or national origin. Regrettably, these precious rights and opportunities have not yet been fully achieved, but a sound basis on which they may be won by orderly legal process has been established. This legal basis, the grounds for which are revealed in the cases, opinions, and articles contained in the pages of the *Reporter* and the *Survey*, will be of great importance as problems of implementation, administration, and financing replace the problems of formulating legal principles that were addressed during the heyday of the *Reporter* and the *Survey*. I am especially happy to have played a part in producing these two publications, both of which contributed to the substantial progress that has been made toward reaching the ultimate goal of securing the complete enjoyment of civil rights for all citizens.

---

10. *Id.*, Feb. 28, 1978, at 22, col. 1.

11. *Id.*, Mar. 1, 1978, § A, at 1, col. 1.

12. *Id.*, Feb. 28, 1978, at 22, col. 1.