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ANTHONY P. GRIFFIN

Since joining the bar, Anthony Griffin has earned national respect for consistently standing by his principles and defending controversial clients. A 1978 graduate of the University of Houston Law Center, Griffin entered private practice with a zeal for vindicating civil rights.

Even before admission to the bar, Griffin involved himself in civil rights litigation. One of his first clients was his mother, whom he represented in an equal pay for equal work case.<sup>1</sup> He began the administrative processing on this first civil rights case during his third year of law school, received his license to practice on May 15, 1978, and filed the complaint the following September. The court rendered a victorious verdict on his birthday.

Another early client was Anthony Leroy Pierce, a death penalty defendant. Griffin was still a law student studying for the bar during Pierce's initial trial, but served as investigator and third chair.<sup>2</sup> After Pierce was convicted and sentenced to death, Griffin maintained his contact with his client, litigating as lead counsel during Pierce's subsequent appeals.<sup>3</sup> To Griffin, his representation of Pierce illustrates the long-term costs and emotional investments of his public interest practice.

In *Jones v. Western Geophysical Co. of America*<sup>4</sup> Griffin developed a unique legal argument. In this race discrimination case, the defendant employer argued that its replacement of one black employee with a new black employee did not violate Title VII or 42 U.S.C. § 1981. For the plaintiffs, Griffin argued that replacing one black employee with another did not prove that the company was not liable for race discrimination. Rather, it showed that the company could manipulate a pool of lower income people to find employees willing to work under racially hostile conditions. *Jones* is personally satisfying to Griffin because he succeeded in helping the Court of Appeals to recognize an alternative and progressive definition of "racism."<sup>5</sup>

In 1984 Griffin successfully defended a Galveston shopkeeper's First Amendment right to distribute the names and home telephone numbers of Galveston public officials.<sup>6</sup> The fliers encouraged tourists and shoppers to con-

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<sup>1</sup> Hill v. J.C. Penny, Inc., 688 F.2d 370 (5th Cir. 1982).

<sup>2</sup> Pierce v. State, 604 S.W.2d 185 (Tex. Crim. App. 1980).

<sup>3</sup> Pierce appealed his sentence and won a reversal. Pierce v. State, 604 S.W.2d 185 (Tex. Crim. App. 1980). On remand he was again convicted of capital murder and sentenced to death. On his second appeal to the Court of Criminal Appeals he won a second reversal. Pierce v. State, 696 S.W.2d 899 (Tex. Crim. App. 1985). On remand he was again convicted and sentenced to death. On his third appeal to the Court of Criminal Appeals his sentence was affirmed. Pierce v. State, 777 S.W.2d 399 (Tex. Crim. App. 1989), cert. denied, 496 U.S. 912 (1990).

<sup>4</sup> 29 Fair Empl. Prac. Cas. (BNA) 914 (S.D. Tex. 1980); 669 F.2d 280 (5th Cir. 1982).

<sup>5</sup> Letter from Anthony P. Griffin to Sharon M. P. Nicholls, Topics Editor, B.U. PUB. INT. L.J. (Apr. 4, 1994) (on file with the *Boston University Public Interest Law Journal*) [hereinafter April 4, 1994 Letter].

<sup>6</sup> Mabe v. Galveston, 687 S.W.2d 769 (Tex. App. 1 Dist. 1985) (dismissed July 10,

tact the officials about installing public toilets around the city.<sup>7</sup> This case is significant to Griffin because it reminds him that in public interest litigation the fight is often long-term and challenges practitioners' patience and perseverance. He notes that because money, power, and time often work against the public interest attorney, practitioners must establish methods, procedures, and modes of survival to avoid pitfalls.

Griffin's activism extends beyond the courtroom to local government, where he has served as Chairman of the Galveston Housing Authority. Griffin argued that Galveston did not have comparable alternative housing to which the primarily black residents could re-locate.<sup>8</sup> By rendering a tie-breaking vote, Griffin helped defeat a proposal to sell a public housing project to an influential Galveston developer in 1982.

Many believe that Griffin's involvement in Galveston's political and legal arenas explains the decision of the State Bar of Texas to file disbarment proceedings against him in 1985.<sup>9</sup> Griffin attributes this proceeding to politics and notes that a year before the disbarment petition was filed, a former Galveston mayor warned him that future attempts to silence Griffin's office would be in the form of disbarment or grievance proceedings.<sup>10</sup> During the next five years, Griffin's practice was dramatically altered as he battled the charges. The case was eventually dismissed in 1990 for want of prosecution. Today, Griffin views the matter as part and parcel of practicing public interest law.

In 1993, the local controversy surrounding Griffin's career in Galveston expanded to the national arena. As an African American, Griffin received national attention when he agreed to represent Michael Lowe, the Grand Dragon of the Texas Knights of the Ku Klux Klan.<sup>11</sup> Lowe had approached the ACLU for legal help in battling the Texas Human Rights Commission's request that the Klan disclose its membership lists.<sup>12</sup> Griffin was General Counsel to the Texas Civil Liberties Union.

Ironically, the case is similar to *NAACP v. Alabama*<sup>13</sup> in which the U.S. Supreme Court held that the NAACP's First Amendment right to associational privacy overrode the state's interest in obtaining the NAACP's membership lists. In spite of this factual similarity, Griffin has come under heavy attack by organizations and individuals who feel that the Klan does not

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1985).

<sup>7</sup> Tom Curtis, *The Man Who Courted Trouble in Galveston*, DALLAS TIMES HERALD, Apr. 5, 1986, at 37A.

<sup>8</sup> *Id.*

<sup>9</sup> State Bar of Texas v. Anthony Griffin, No. 85-CV-0359 (10th Dist. Ct. Galveston County filed 1985).

<sup>10</sup> April 4, 1994 Letter, *supra* note 5.

<sup>11</sup> See Sue Anne Pressley, *Klan Leader and NAACP Council Make an Odd Couple of Civil Rights*, WASH. POST, Sept. 29, 1993, at A3; Sam Howe Verhovek, *A Klansman's Black Lawyer, and a Principle*, N.Y. TIMES, Sept. 10, 1993, at B9.

<sup>12</sup> Verhovek, *supra* note 11, at B9.

<sup>13</sup> 357 U.S. 449 (1958).

deserve the protections guaranteed by the First Amendment because the organization espouses hate. Griffin, however, has stood firmly by the principle that courts must interpret it to reach all groups, including the Klan, if the Amendment is to provide meaningful protection to people of color and other minority groups.<sup>14</sup> Discussing his decision to represent the Klan, Griffin reflects:

The ACLU guy who called me had no idea I was black, but to me it didn't matter. This was a clear First Amendment violation. Because it was the Klan I would be defending, I thought about it, but came to the conclusion that the Bill of Rights applies to everyone, even the people of groups you dislike or oppose . . . . I know it plays mind games with many people to think that the general counsel of the NAACP could represent the Ku Klux Klan. But we can never take the position that the Constitution does not apply to our enemies.<sup>15</sup>

Unfortunately the NAACP did not see things the same way. In October 1993, a reporter informed Griffin that the Texas branch of the NAACP had fired Griffin from his position as general counsel for a conflict of interest arising from the Lowe representation.<sup>16</sup>

Griffin's ability to withstand the pressures generated by his practice is rooted in his childhood vision of his role in society. He first became interested in practicing public interest law in junior high school because he viewed law ideally as a method of aiding others. He observes,

I grew up in the type of environment where the choices were clear. You either accepted society's imposed plight or you fought it. I chose to fight the assumption that I wasn't as good, as smart, or couldn't do it. I have always viewed the fight as a collective fight, that is, the fight is individual in nature but one must always think and work for the societal collective as a whole. I think that belief is a shared commonality of public interest lawyers.<sup>17</sup>

Commenting on the tumultuous nature of his career, Griffin explains that sometimes those who elect to become involved in public interest litigation become the object of scorn themselves. Griffin accepts this cost because he recognizes that he has the ability to use the law as a vehicle to achieve positive change for the collective whole. In his practice, he strives to meet the obligations which he believes public interest attorneys have: to ensure that all segments of society receive equality in the eyes of the law.

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<sup>14</sup> See Anthony P. Griffin, *The First Amendment and the Art of Story-Telling* (in *Speaking of Race, of Sex*, Henry Louis Gates, New York Univ. Press 1994); *Thought Doctoring: A Dangerous Concept*, 56 Tex. Bar J. 1152 (Dec. 1993); Anthony P. Griffin, *Defending the Klan Controversial Lawyer Explains He's a Constitutional Fool*, USA TODAY, Oct. 27, 1993, at 13A.

<sup>15</sup> Mark Curriden, *Civil Rights v. Civil Liberties*, A.B.A. J., Dec. 1993, at 21.

<sup>16</sup> *Civil Liberties and the Klan*, WASH. POST, Oct. 6, 1993, at A18.

<sup>17</sup> April 4, 1994 Letter, *supra* note 5.

Although his representation of the Klan has received more national attention than his other cases, Griffin believes that the non-publicized, seemingly mundane cases remain important in his career and in public interest law generally.<sup>18</sup> Cases with individual plaintiffs, as opposed to class actions, may have long-reaching effects on the policies that shape law and society. Griffin notes that all aspects of a public interest lawyer's work are important, regardless of whether the attorney receives praise, criticism, or goes unnoticed.

Griffin has been fortunate enough to bring to his work this idealism of youth. When graduating from law school, he visited a former English professor at the University of Houston, Shirley Zivley. She tempered his idealism with dashes of reality by explaining that all the good intentions in the world meant nothing if he were broke. Griffin understood and has attempted to apply Zivley's wisdom by remaining independent, and recognizing the long-term nature of the fight and the need to survive financially in order to practice.

Griffin has seen the public interest practice change dramatically since he began practice in 1978 and notes that public interest lawyers have a difficult job in today's profession. He worries that new practitioners, with a stated interest and desire to engage in public interest litigation, will not be able to withstand the financial cost of doing so. Technology has made information more available, but has also increased the gap between those established in the practice of law and those desiring to enter the practice. Monthly overhead was less than three thousand dollars seventeen years ago; it now hovers between sixty to one hundred thousand dollars. Faxes, high speed copiers, scanners, cellular telephones, dictation equipment, interfacing computers, taxes, paper, paper, and more paper, insurance, insurance, and more insurance, all add to the cost of conducting a business - the public interest practice is no different. Furthermore, attorneys must consider how race, politics, sex and social policy considerations, speech, silence, and control may affect their ability to practice.

These obstacles exist in any contemporary legal practice, but are particularly challenging to public interest lawyers who are not fully supported by the judiciary, state bar associations, media, or other segments of society. Moreover, public interest lawyers must keep in mind their long-range goals and predict strategies to overcome the inevitable moments in their careers when

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<sup>18</sup> Griffin has tried over 300 jury trials with an 85% success rate. *See, e.g., Burns v. Texas City Ref. Co.*, 890 F.2d 747 (5th Cir. 1989) (the "impossible plaintiff's case" to Griffin, where the jury had to weigh the words of the defendant company executives against that of the plaintiff janitors that the executives' testimony was false); *Wilson v. Galveston County*, 713 S.W.2d 98 (Tex. 1986) (Griffin sent shock waves through the Bar when he agreed to represent a county tax assessor in a suit to enjoin the County from removing him from appraising property); *Holbrook v. Guynes*, 827 S.W.2d 487 (Tex. App. 1st Dist. 1992), *aff'd sub nom., Guynes v. Galveston County*, 861 S.W.2d 861 (Tex. 1993) (county may constitutionally employ staff attorneys to advise and represent it in civil matters); *Southwestern Bell Tel. Co. v. Delaney*, 762 S.W.2d 772 (Tex. Ct. App. 1988), *rev'd*, 809 S.W.2d 493 (Tex. 1991) (telephone company not liable for negligent omission of customer's directory advertising).

funds, energy, and morale run low. Public interest attorneys have the additional burden of educating others about the necessity of their work in addition to meeting the challenges inherent in legal practice itself. Griffin cautions lawyers to enter public interest practice with a firm understanding of these realities.

In spite of the obstacles, public interest law remains an important area in which to practice. Griffin notes that public interest law is somewhat difficult to define, but as he eloquently describes:

It is fighting over rules and procedures with respect to how and in what manner we resolve societal disputes. It is the proper application (use and misuse) of guiding constitutional principles. It is about change. It is about assuring that rule of due process under law means just that (and not "process that is due"). Public interest law is about challenging the assumption, posing the question, and daring not to remain silent. And finally, it is about viewing law as a collective whole (sort of like holistic medicine) and recognizing that we, as lawyers, have an ethical and moral obligation to make the grandiose themes, found in the federal and state constitutions, our professional ethical tenets in the federal and state statutes, work. Sometimes this means that you are attacked; sometimes this means that you are praised; sometimes no one notices. Whether others clap, boo, jeer, smile or curse, it shouldn't matter in that public interest law encompasses the range of emotions found in the human experience.<sup>19</sup>

Throughout the controversy surrounding his practice of late, Griffin remains steadfast in his commitment to public interest law. Commenting on what he most enjoys about public interest practice, Griffin notes:

The range of emotion from anger to happiness surrounding the effect of litigation in the area. The results of the litigation can both sadden and thrill you. It can be a burden in one sense, and a virtue in another. This is so even in the context of the individual plaintiff, without the involvement of a class, in that the policy consideration will affect others.<sup>20</sup>

Griffin reminisces that as a child, he learned that he had a choice of either accepting society's ills or confronting them. He chose to battle the assumption that he could not make a difference. Today the ripples from his work have positively effected the relationships between different groups of people.

Griffin was formerly General Counsel to the Texas Civil Liberties Union, and General Counsel to the Texas Chapter of the NAACP. He currently has his own law practice where he concentrates on civil rights, constitutional, and criminal litigation. In addition to his practice, Griffin teaches Trial Advocacy at the University of Houston Law Center where he is an Adjunct Professor. He also belongs to the National Organization for Women, the Texas Trial Lawyers Association, the National Bar Association, and the Thomas Dent Society.

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<sup>19</sup> April 4, 1994 Letter, *supra* note 5.

<sup>20</sup> *Id.*

In 1993 the Thomas Jefferson Center for the Protection of Free Expression awarded Griffin its William J. Brennan, Jr. Award which honors individuals and organizations whose work preserves the ideals of free expression that Justice Brennan helped to develop. Griffin was also honored with the State of Illinois American Civil Liberties Union's Harry Klaven Award (1993), the Galveston Chapter NAACP Peace and Role Model Award (1991), Black Heritage Committee "Citizen of the Year," Compton Memorial Award for Merititious Jurisprudence, and the Harmony Lodge's Freedom Award (1976).

*Delida Costin*