

Changing of the Guard: The Living Legacy of Four Leading Civil Rights Activists

By Stephanie Goldberg

Perhaps civil rights leaders are born rather than made. Just ask Elaine Jones, Judith Lichtman, Antonia Hernandez, and Ruth Harlow why they went to law school; all will reply without hesitation that they wanted to fight for social change.

After earning a law degree, each of these women went on to head a public interest group that changed the legal landscape. And now they're making changes in their own lives. During the past year and a half, each left her job, sensing that it was time to let others take charge of the never-ending battle for equality.

The youngest of the group, Harlow, 43, resigned in May 2003 as legal director of Lambda Legal to become of counsel to the New York office of White & Case as a litigator. Her 18-year civil rights career includes overseeing 80 to 100 "impact cases"—from challenges to the U.S. Army's "don't ask, don't tell" policy and the Boy Scouts of America's decision to ban gay scoutmasters to Colorado's Amendment 2, which prohibited gay rights ordinances.

In December 2003, Hernandez resigned after nearly two decades as president of the Mexican American Legal Defense and Educational Fund (MALDEF) to become a power player in the world of grant funding. As a civil rights activist, the 56-year-old UCLA graduate oversaw groundbreaking work in the area of educational access and immigrants' rights. Today, she heads the Los Angeles based California Community Foundation, which has more than \$600 million in assets.

Jones, 60, retired in 2004 after serving as president and director counsel of the NAACP Legal Defense and Educational Fund (LDF). Now active as a speaker on the college circuit, Jones helped broaden LDF's reach into environmental justice and health care reform and was instrumental in helping pass much of the civil rights legislation of the 1980s and 1990s.

Lichtman, 63, also retired in 2004 after heading the National Partnership for Women and Families. Lichtman, who now does fundraising for the Partnership, is credited as a motivating force for the authors of the Family and Medical Leave Act.

What unites these four women—besides common values and leadership skills—are an unflagging sense of optimism and the ability to map out strategies to achieve seemingly impossible goals incrementally. "It's hard to get the legal system to take a really big leap in the development of case law," Harlow explains. "We are most likely to find progress if we can take smaller steps to push the law forward."

Ruth Harlow: Gay and Lesbian Rights Advocate

Ruth Harlow's vision of the law crystallized in 1986, the year she graduated from Yale Law School. It was the year that *Bowers v. Hardwick* was decided, upholding the right of Georgia police to arrest a gay couple for having consensual sex in their home.

She says that decision told her "that gay men and women weren't seen as having equal rights or even the ability to argue for them." She would spend the next 16 years—first at the ACLU's Gay and Lesbian Rights Project and then at Lambda "chipping away at the premises" of the *Bowers* case, which ultimately led to her becoming the lead attorney in *Lawrence v. Texas*, the 2003 U.S. Supreme Court case that effectively overruled *Bowers*. Harlow also is credited with overturning sodomy laws in Montana, Arkansas, and Kentucky.

There were other high-profile cases representing attempts to educate the public and "make gay people's lives more real to others." Harlow drafted the amicus brief submitted by the American Bar Association in *Romer v. Evans*, in which the U.S. Supreme Court invalidated Colorado's amendment to limit gay rights. It was a watershed decision that "opened judges' minds to our rightful invocation of all the legal protections that non-gay people take for granted," Harlow wrote in 1997.

Harlow joined Lambda in 1996 to assume the newly created position of managing attorney. The job offered greater responsibility and "a more senior role in the movement" than did her job at ACLU, she

says. Lambda, managed by Executive Director Kevin Cathcart, operates with a budget of \$8 million from its headquarters in New York and four regional offices.

In November 2000, Harlow was promoted to legal director of Lambda. By that time, the organizational goals of taking a sodomy case to the high court and challenging a state's ban on marriage were well defined, she says, adding that it was her job to implement them.

Lawrence v. Texas gave her that opportunity. The case began in 1998, when two men were taken from their home and arrested for sodomy after a neighbor phoned in a bogus assault report. The Texas courts upheld their conviction, but, in a 6–3 decision, the U.S. Supreme Court established the right of gays and lesbians to privacy. “The state cannot demean their existence or control their destiny by making their private sexual conduct a crime,” Justice Anthony Kennedy wrote.

More recently, Harlow helped plan the challenge to New Jersey's ban on gay marriage, a case that could be as pivotal as the one in Massachusetts. But the case will wend its way through the courts without her. “I wasn't burned out so much as I was in need of a new challenge,” she explains. “I really felt I had given all I could to the gay rights movement.” Today, she's enjoying life as a corporate lawyer, finding it “a welcome change to represent clients, as opposed to having a social movement on my shoulders.”

Succeeding Harlow at Lambda was Gary Buseck, former executive director of Gay & Lesbian Advocates & Defenders (GLAD), a Boston public interest law firm. Buseck recently returned to GLAD as its legal director. Jon W. Davidson, former senior counsel for Lambda's Los Angeles office, is the current legal director at Lambda.

Antonia Hernandez: MALDEF Agent of Change

With equal parts of moxie and modesty, Antonia Hernandez came to the Washington, D.C., office of the Mexican American Legal Defense and Educational Fund (MALDEF) in 1981. Within four years, the Mexican-born UCLA graduate was promoted to the top spot, where she would one day manage a \$6.5 million budget and a 75-person staff operating out of seven offices.

Even though she's moved on, MALDEF is still close to Hernandez's heart. “I helped build an institution,” she reports. “I see myself as an agent of change to improve American society and promote justice and equality. MALDEF was a beautiful vehicle for me to do that at the macro level.”

Hernandez says she's proudest of three accomplishments during her years at MALDEF: increasing the political participation of Latinos; overturning a California referendum that would have denied medical services and education to undocumented aliens; and making headway in the debate to equalize educational funding in depressed areas.

MALDEF's political access program has fought vigorously against Latino vote dilution, whether by gerrymandering, restrictive voting practices, or undercounting of Hispanics in the census. The group's lawsuits were instrumental in creating the New Mexican district that sent now Governor Bill Richardson to Congress in 1985. MALDEF efforts also brought about the creation of Chicago's first predominantly Hispanic congressional district, electing Luis Gutierrez to the House of Representatives.

Whether MALDEF continues to enjoy similar successes very much depends on the reauthorization of the Voting Rights Act, which is set to expire in 2007. Hernandez is concerned that support for the Act will be difficult to muster. “It took a lot of creativity and a large coalition to extend the Act for 25 years in 1982. A lot of the players involved in the renewal have left. We have a Justice Department that takes a different perspective in monitoring the Voting Rights Act.”

Like the struggle for voting rights, the battle to prevent narrowing the rights of aliens is one that MALDEF fights repeatedly, according to Hernandez. In 1995, MALDEF sued the state of California to prevent it from implementing Proposition 187, a referendum that limited public services for aliens, by arguing that it usurped the federal government's power to regulate immigration. The case was settled, but Hernandez notes that she's “not sure that we could have won had it gone all the way to the Supreme Court.”

Following the 9/11 attacks, the issue is once again in play. In the 2004 election, Arizona passed Proposition 200, which requires voters to submit proof of citizenship when they register and prevents undocumented immigrants from receiving certain welfare benefits. MALDEF sued immediately for an injunction, which was granted and later lifted. Hernandez predicts that such measures will create “a caste system.”

She's similarly dismayed that “support for public education has been eroding in this country,” necessitating litigation to ensure equitable funding of poor school districts. A landmark case during her MALDEF tenure was *Edgewood Independent School District v. Kirby*, which used provisions of the Texas

constitution to challenge the funding of local schools on the basis of property taxes. In 1989, a unanimous Texas Supreme Court held that the practice was inherently unequal and ordered the legislature to come up with a new system to equalize funding. But the battle is far from over. A Texas court recently ruled that the current system is still inadequate and gave the legislature a deadline of October 2005 to fix the problem.

Fortunately, Hernandez says, her new job allows her to address the same issues that she deeply cares about—housing, health, education, the arts—but at the local level. Last year, the California Community Foundation gave \$50 million in grants to Los Angeles County groups.

Why did Hernandez leave MALDEF? “As a leader, I felt I had a responsibility to move aside for younger leaders,” she says. “That’s how an organization is invigorated and grows.” Her successor at MALDEF is Ann Marie Tallman, a former senior vice president of mortgage lender Fannie Mae.

Editor’s Note: Antonia Hernandez is a 1997 recipient of the Commission on Women’s Margaret Brent Women Lawyers of Achievement Award.

Elaine Jones: Civil Rights Defender

Elaine Jones, the first woman to head the NAACP Legal Defense and Educational Fund (LDF), says that she wanted to go into civil rights law since she was 8 years old. “I was born in the Jim Crow South,” says Jones, a graduate of Howard University and the University of Virginia Law School. “It was all around me—the buses, the streetcars, the water fountains. It was repulsive. And I looked around and wondered how I could make a difference.”

She came to LDF shortly after law school and remained there in various capacities for 32 years. She took two years off to serve as special assistant to William Coleman, secretary of transportation in the Ford Administration.

Her first job at LDF was litigating death penalty cases throughout the South. “Black men were being given the death penalty for ridiculous crimes like burglary,” she says, recalling the days of entering courthouses surrounded by white-robed members of the Ku Klux Klan. In 1972, she became counsel of record in *Furman v. Georgia*, which invalidated the death penalty and emptied the death rows of 37 states. She went on to tackle employment discrimination cases and, in 1977, was named legislative advocate in LDF’s Washington, D.C., office.

“I really learned the ways of Congress,” she says of her work to pass the Civil Rights Act of 1991, the Voting Rights Act Amendments of 1982, the Fair Housing Act of 1988, and other legislation. In 1993, she returned to the New York office to work as director-counsel. “It’s a completely different job. You do strategic thinking as well as hiring the staff and finding the money to pay them.” Deciding which programs to fund, with the wealth of choices available, was one of the most difficult parts of the job, she notes.

A recent focus of LDF has been selective prosecutions in the war on drugs. LDF lawyers secured a \$5 million settlement in 2003 against Tulia, Texas, police, who had roused half the black males in town in one drug raid. Following the litigation, 38 convictions were thrown out.

Voting rights is also a top priority, says Jones, who spent much of 2004 overseeing voter registration. Following the 2000 election, LDF sued in Florida and obtained a settlement that required the state to identify who had been mistakenly declared ineligible and to commit resources to fairer election administration.

“Things come in waves. It’s never been an even keel,” says Jones, reminded of her favorite Swahili saying: “Life has meaning only in the struggle. Triumph and defeats are up to the gods.”

That philosophy enabled her to take setbacks in stride and shake off an attempt by right-wing conservatives to discredit her shortly before she retired. A memo from two staff members in Senator Ted Kennedy’s office surfaced, claiming that Jones had contacted the office and urged them to delay confirming Julia Smith Gibbons to the U.S. Court of Appeals for the Sixth Circuit because she was likely to vote against a pending civil rights case. Jones denied any impropriety. A conservative group, the Center for Individual Rights, filed a complaint against Jones with the Virginia bar, but it was promptly dismissed.

“When you’re in the limelight trying to do something, you’re always going to be ridiculed and criticized,” Jones says. “It’s the price of leadership.” She says the brouhaha had nothing to do with her decision to step down. “It had been 32 years of traveling 150,000 miles a year. When you’ve given it your all and enjoyed doing it, it’s time to make room for somebody else.” Jones’s successor is Theodore Shaw, who worked with her as associate director-counsel at LDF.

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Judith Lichtman: Strategic Fighter for Women and Families

Like Jones, Judy Lichtman came of age in the civil rights movement of the 1960s. She was headed for a career in academia when a University of Wisconsin teaching assistant, Shirley Abrahamson, now chief justice of the Wisconsin Supreme Court, urged her to go to law school because it was "a license for activism," Lichtman recalls.

She remembers the hazing rituals attached to being one of only a handful of women enrolled at the University of Wisconsin School of Law. She was called on only once in her criminal law class. It was a tradition to ask a woman to define rape, and it was understood that the student was expected to answer, "Rape is penetration, no matter how deep." Lichtman recited the mantra, thinking nothing of it at the time. It took a series of litigation victories by now U.S. Supreme Court Justice Ruth Bader Ginsburg to open her eyes to fighting gender bias. "One can't overstate her impact," Lichtman says. "She created a vision of what was possible."

In 1974, Lichtman became the first paid staff member of the Washington, D.C., Jewish Community Center's Women's Legal Defense Fund, now known as the National Partnership for Women and Families. "The earliest founders wanted to use legal strategies to fight gender bias. Our mission is still the same, but the strategy and tactics have changed as circumstances have warranted." A top priority is still pay equity. When Lichtman started her job, women were earning 59 cents for every dollar men earned. Now that figure is up to 76 cents, but Lichtman isn't ready to declare victory, noting that minority women's wages are nowhere as high as those of Caucasian women. "We've come very far but still have very far to go," she emphasizes.

A milestone in that struggle is the Family and Medical Leave Act (FMLA), a crowning achievement for Lichtman, who chaired the coalition that worked to pass it. Since its enactment, nearly 50 million men and women have used it, secure in the knowledge that they can take time off from their jobs for family medical emergencies and not be fired. Lichtman contends the law is not in jeopardy of being narrowed or repealed, but she wants to see it expanded so that the leave workers take under the FMLA will be paid, not unpaid. "We've been working very hard to get wage replacement into the hands of working families," says Lichtman, noting that California is the first state to pass a comprehensive family leave law.

The Partnership also worked tirelessly to pass the Pregnancy Discrimination Act in 1978 and has focused on overhauling the child support payment system, raising awareness of genetic discrimination, and weighing in on judicial selection. "My biggest fear," Lichtman says, "is that we will be confronted by a Supreme Court that no longer safeguards the basic constitutional protections for women."

This will be a challenge confronted by her successor, Debra Ness, who assisted Lichtman as executive vice president of the Partnership. "I step down with a full heart and a wonderful feeling that I have left a legacy in place," Lichtman says.

She observes that being an agent for social change is a job for optimists. "You've got to believe you can make a difference," adding that, nevertheless, you resign yourself to fighting the same battles and securing past victories. "There are hills and valleys, but overall, we're much better off."

Stephanie Goldberg is a legal affairs journalist based in Chicago and is a former member of the Perspectives editorial board. Her work has appeared in the New York Times, BusinessWeek, the Chicago Tribune, and many legal publications.