

## **Judge Thelton Eugene Henderson and Judge Jon Streeter**

Thelton Eugene Henderson tells his friend and colleague Jon Streeter about his journey from South Central, Los Angeles to Berkeley Law, and his work as a federal judge.

**Judge Henderson:** I was a poor kid that grew up in South Central L.A., sometimes lived in Watts, which is an all-black community. And I played football in high school and coming off the field one day, one of our counselors, Isaac McClellan, met me and said, "Have you ever thought about going to college?" And I can't honestly say I had thought about going to college. I had hoped maybe I'd play football someplace, if someone gave me a scholarship.

But Mr. McClellan had looked at a test that they gave every L.A. graduate, or maybe it was statewide, I don't know, called the Iowa test. And I had done well on that test—It's just a test one day they gave all of us—and he said showed college potential. And I very often refer to my career as being comparable to Forrest Gump. Sort of a plain guy going along, and a lot of things happen to him and a lot of exciting things with no fault of his own. And it was like that. McClellan coming out of the blue, the luck on that was that he was a Cal graduate and this wonderful man actually got me the application, helped me fill it out. My mother cleaned houses—we didn't have much money. He paid the application fee, and I ended up at Cal.

And again, another stroke of luck. I was about to graduate from Boalt Hall. They've changed the name to Berkeley School of Law, but we old grads still often call it Boalt Hall. You didn't get interviewed by the big law firms if you were black. And so my big decision was, am I going to go down to L.A. where I grew up, or am I going to stay up in Berkeley where I came to really like it? I hadn't decided yet, but wherever I was going to go, I was gonna do as other black lawyers did, find a successful black lawyer, make a deal with him to get some space in his office. He'll give you a few cases that were sometimes dogs, weren't worth much, but you'd start working on those and build up your own practice.

That's what I was expecting to do when out of the blue, John Doar, who worked for Robert Kennedy in the Justice Department, and he was second in command of the civil rights division, who Bobby Kennedy had going around to government offices asking, "How many blacks do you have working for you?" Kennedy wanted to diversify the offices. And one day one asked John Doar, "How many blacks do you have working for you?" Meaning in the civil rights division. And, there had never been a black working out in the field. So my great Forrest Gump luck again, was that he was a Cal graduate. So he called Dean Prosser, and said, "Do you have any blacks graduating?" Two of us were graduating, and I was lucky that Dean Prosser recommended me. So that changed the whole direction of my legal career.

**Judge Streeter:** Now this was a pretty important and intense time in the civil rights era, wasn't it?

**Judge Henderson:** Absolutely. By now we're at 1962, Martin Luther King is just getting going on his civil rights movement.

**Judge Streeter:** You're a new lawyer out of Berkeley Law. You find yourself at the Department of Justice in Washington, D.C., working for Bobby Kennedy.

**Judge Henderson:** Working for Bobby Kennedy.

**Judge Streeter:** Tell us about your job.

**Judge Henderson:** Well, the civil rights division was new in 1962—it had just formed within the Justice Department in '57. So it was, what, five years old. And there were only 37 attorneys. Now there are hundreds of attorneys in the civil rights division. There were 37 attorneys and the Kennedys thought the best way to use this limited resource was to work on voting rights, to get blacks the vote in the southern states. The ideal was to get them the vote and then they would vote the segregationists and the Jim Crow laws out. And that was the best way to change segregation in the South.

And we were divided into three different states: Louisiana, Alabama and Mississippi. I was assigned to Louisiana, which turned out to be the state I was born in. And we were filing voting rights cases methodically—a very hard-working team under John Doar, who was a brilliant lawyer. Now, they didn't send me out in the field to those states right away because they were kind of worried about how dangerous was it for me, a black, going out purporting to have some authority and being able to look into things and strutting around a big shot. They saw it from Washington. But I finally started going out. Nothing really bad happened. There were a couple of incidents. But that's what I was doing until Dr. King was starting his march in Birmingham. So they sent me to Birmingham because I was the only one available. And they found out that I could relate to Dr. King and Andy Young and James Bevel and all of the people in the civil rights movement following Dr. King.

**Judge Streeter:** You actually met and had interactions with Martin Luther King?

**Judge Henderson:** Oh, yeah, regularly. In fact, pretty soon when they saw that that was an effective thing—that we could relate and I could translate what he was doing to Bobby Kennedy and that I could translate what Bobby Kennedy was doing to him and sort of be a go between. I'm just out of law school. I had this wonderful job of following the civil rights movement around. And so when Medgar Evers got active and hitting the newspapers, the front page of The Times in Jackson, Mississippi, there I was. I had just left town the day before he was assassinated. So I found myself right in the middle of everything that was happening in civil rights.

**Judge Streeter:** Yeah.

**Judge Henderson:** Fantastic job.

**Judge Streeter:** There are civil rights related cases that come to mind and thinking about some of your highest profile cases where you actually made rulings that are much remembered. The Prop 209 case comes to mind. It's a California constitutional amendment.

**Judge Henderson:** Correct. That found that, state institutions could not make decisions based on race. It essentially was a, what we sometimes call reverse discrimination. That making exceptions, giving favoritism or affirmative action to race, was illegal under this constitutional amendment. And I found that to be unconstitutional. And that one surprised me. I cited a Supreme Court case that I thought using a legal term was on all fours, meaning—

**Judge Streeter:** Right.

**Judge Henderson:** It just met all the elements of Prop 209. And what I thought was going to happen, was that I might be eventually reversed, but I wouldn't be reversed by the Supreme Court. But the Supreme Court would change the law. They would say, just like they did Plessy vs. Ferguson, said this is no longer law, Brown vs. Board, it would be one of those kinds of decisions. But I did get reversed on that. Most of these cases were covered pretty thoroughly in the paper. But this one got more. I got more hate mail. I got a lot more threats to my welfare, such that the U.S. Marshal, for about seven or eight months placed two deputies outside my home every evening at sundown until the next day, until they thought that the threats had subsided. So this was a pretty big case and a memorable and emotional case for me.

**Judge Streeter:** Yeah, one you don't forget. And the courage you showed is something that those who are behind those awards that you got haven't forgotten either.

**Judge Henderson:** When I retired, because of Judge Alsup's seniority, he had first picks at my chambers and he took them. And I left him a couple of things as he was from Mississippi. And I had a flyer that I had collected when I was in Selma, Alabama, that I picked up doing some investigation on voting rights. This was in a white dentist's office. And the flyer says, "Ask yourself this important question. What have I done to maintain segregation?" And I thought that was a reminder of Jim Crow.

**Judge Streeter:** Right.

**Judge Henderson:** So I had that framed and kept in my office. And I left it with Judge Alsup, who became a good friend over the years on the bench. And he has it in his office now.

**Judge Streeter:** Well, you've left so many things with many of us over the years. So, thank you.

**Judge Henderson:** Thank you.