Reading Race in Fisher v. Carrousel Motor Hotel

Fisher v. Carrousel Motor Hotel, SCOTX, 1967

In our recent Cooley Law School Orientation (2021), our torts professors glossed over the obvious Civil Rights issues in this case; they implied that the procedural issues and final holding and disposition did not matter, as this is only a case about 'Offensive Contact Battery' as it is subtitled in the Torts casebook by Prosser. But it does matter.

Indeed, everything about this case hinges on race. And not to teach it as such and against the context and backdrop of race is yet another missed opportunity to have that most important, albeit AWOL, discourse about American binary racism.

Simply put, this battery case would not have happened if Fisher were white. The waiter or employee at the Carrousel Motor Hotel ripped the serving plate out of Fisher's hands exactly and only because of Fisher's race. We know this patently because of his statement about 'no Negroes in club'; so, to teach this case as an example of battery (only), while an interesting academic exercise, does it a disservice in that it is a case prescriptively about systemic racism in the hotel + restaurant industry in 1960's Texas.

So, what happened: Fisher, an African-American engineer and mathematician at NASA went to a conference of like professionals at the Carrousel Motor Hotel in the Houston area of Texas sometime in the mid-1960's; upon waiting in line for the buffet luncheon, a rude, insolent, angry, and offensive employee of Carrousel Motor Hotel abruptly ripped Fisher's plate from him and exclaimed a racial epithet, and said that the establishment did not serve [Negros].

How in anyway is this not a Civil Rights case? The Civil Rights Act had been passed in 1964; and the Voting Rights Act passed in 1965. Justice Thurgood Marshall would be on the SCOTUS in October 1967; and MLK would be assassinated in April 1968; schools and neighborhoods were still not fully integrated anywhere in the U.S. at this time, regardless of Civil Rights laws; the Detroit and Newark riots would take place in summer 1967; and the 'Kerner Report' would come out in 1968, as a result of 'national unrest,' and the traumatic murder of Dr. King.

According to Jelani Cobb, "The proximity of the two events – the [Kerner] report's release and Martin Luther King's death – allowed for people to, over time, conflate

them. It is not uncommon for people to believe that the Kerner Commission explained the unrest of *the entire sixties* rather than the first installment of them."[1]

What happened to Fisher also calls to mind writer James Baldwin, whose similar restaurant experience in New Jersey, as told in *Notes of a Native Son* (1955), ends not in litigation but in reprisal. Baldwin describes what happened one evening after he and a close friend went to the movies in Trenton, NJ; they decided to get something to eat at the ironically named 'American Diner,' but were refused service: "We don't serve Negroes here."[2] Baldwin's situation escalated to near one-man riot chaos, as he does not back down from this racial rebuff, but instead persists, demanding to be served "a hamburger and a cup of coffee." He goes to a second restaurant on same street, receiving the same results: no service based on race. But this time, he snaps and surely commits both assault and battery, if we want to go back to the lens of the law and not merely literary exegesis. Baldwin writes that he picked up "a mug of water" and hurled it at the white female waitress, whose face he describes as a trope for all white faces that were "crushing" him. As he throws the mug of water, she ducks[3], and the object instead smashes against a mirror over the back counter.

Baldwin admits his intent; he sorely intended to hit her with "all [his] fury" to cause injury and harm. He even describes a kind of violent fantasy that temporarily subsumes his thoughts and actions. He knows with substantial certainty that his actions may cause harm; he acts in blinding anger, and intends to offend where he was himself offended. But as soon as the mug makes contact with the mirror, he snaps back from these understandable but disordered thoughts, only to realize his actions' consequences. He runs for the door, and barely escapes an impromptu restaurant mob.

Wait, you may be thinking. *This was New Jersey? I thought things like this only happened in the South, or in Texas.* Sadly, segregation in all its manifestations, as rigorous and structural as actual so-called 'Jim Crow Laws' in the South, and as tacit as so-called non-statute 'color lines' and lunch counter 'house rules' in the North – these were in play and largely enforceable by *de facto* legal, cultural, white supremacy all over the country in the 1950's and 1960's (and in all the time before that, in ever more severe iterations, back to 1619).

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[1] Jelani Cobb, "Introduction," *The Essential Kerner Commission Report*, W.W. Norton, 2021, p. x.

[2] James Baldwin, N*otes of a Native Son* (1955), excerpt from *The Norton Anthology of African American Literature,* 3rd Ed., Vol. II, Henry Louis Gates, Jr., editor, 2014, pp. 404-05.

[3] This action alludes to the I de S et ux. v. W de S case of 1348 heard at the Assizes, in which Mrs. M. de S. is assaulted by W. de S, but his hatchet blows miss her, and hit the door instead.

Back to Fisher. This was the lay of the land in the 1960's, even after the two landmark Civil Rights and Voting Rights acts. And we can see it, i.e. structural racism, in effect in the trial court and its ruling: while the jury awards $900 in damages to Plaintiff Fisher, and thus finds in his favor, the trial court judge inexplicably 'sets aside' this jury verdict and remedy, and instead unilaterally rules in favor of the Defendant, Carrousel Motor Hotel, Inc. This judge/bench ruling was then affirmed by the Texas Court of Appeals.

Let's pause here and think about the impact of these procedural moves. How, even though the original trial court jury voted in favor of Fisher and awarded him both actual and punitive damages, a trial court judge could just veto that lawful outcome. And act essentially outside procedural confines of law; i.e. 'extra-judicially'; what basis did the judge have to simply set aside the jury's work? And upon what reasoning of law did the higher Court of Appeals have to affirm the trial judge's apocryphal action?

Although this may be painful for some to read or hear, the answer is very simple: structural racism. The trial judge may have felt emboldened by his relative position of power to deny Plaintiff Fisher, a highly educated black man with some level of professional prestige, his duly won relief in the trial court, as a reaction to the general mid-1960's Civil Rights environment. In other words, this could have been a 're-activist' judge, attempting to strike a blow for the 'whites only' status quo; the Appellate Court could have used the same intrinsic motivation for their affirmation, under the cloak of the murkiness of what constitutes an offensive contact battery, and/or technical rules about corporate liability: i.e. can a corporation or company be responsible or liable for an individual employee's actions?

But, the good news is that it the SCOTX said no, "We have no difficulty in holding that the intentional grabbing of plaintiff's plate constituted a battery"[4] and that the act was an "offensive invasion" regardless of actual, or not, physical contact with plaintiff's person. The SCOTX goes even further, to describe what happened to Fisher as an affront to "personal dignity" as Fisher was "highly embarrassed and hurt [in front of his NASA colleagues]"[5]; thus, they fully reverse both the trial court and court of appeals, reinstating the jury's award of $900 in damages with interest, and court costs.

This case is more than an example of the legal limits and definitions of battery; it's a sociological demonstration of the extant legal system of the mid-1960's, and the steps that one plaintiff had to take to get the justice owed him.

[4] Prosser, Torts casebook, p. 41.
[5] Ibid.