

DIVIDING HISTORY: *BROWN* AS CATALYST FOR CIVIL RIGHTS IN AMERICA

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Brown v. Board of Education,¹ in my view, split American history. I am certain for African Americans it did. It split American history into a kind of A.D. and B.C. Prior to *Brown*, either as a consequence of slavery or a consequence of segregation, African Americans were subordinated one way or another by law.

I thought one of the most eloquent statements that a president has made about race was the statement that George W. Bush made in Philadelphia last spring when he was attempting to quell the reaction to Trent Lott's statement at the retirement party for Strom Thurmond.² Now, some people might be surprised to hear that. But George W. Bush said that "[e]very day that our nation was segregated was a day our nation was unfaithful to our founding ideals."³

Well, I then went back and counted up the days. I will not bore you with it. But if you were to go back and do the math yourselves and go back to 1776 as a starting point, approximately seventy percent of our days, seven out of ten of our days, have been spent in either slavery or segregation. And if you reach back beyond the creation of the United States and into the collective memory of Americans, back to 1619 when black folks first arrived

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1. *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954), *supplemented*, 349 U.S. 294 (1955).

2. CNN, *Bush Calls Lott Comments "Offensive": GOP Leader Faces Pressure for Further Explanation*, <http://www.cnn.com/2002/ALLPOLITICS/12/12/lott.comment> (Dec. 13, 2002). Strom Thurmond's 1948 presidential campaign included opposition to integration as the centerpiece of its platform and subsequently carried four states, including Mississippi. *Id.* Former Senate Majority Leader Trent Lott, referring to the campaign, stated "[i]f the country had followed our lead, we wouldn't have had all these problems over all these years either." *Id.*

3. *Id.*

in Jamestown, we are talking about nine out of ten of our days. I think that is an important perspective to have because it puts into perspective this rush to bury race consciousness and abandon any thinking about race; to declare it somehow irrelevant to our present-day condition in spite of all of the inequality that we see around us on the basis of race.

Brown changed all that. And, as we have already heard, it set the stage for the civil rights movement. The civil rights movement began long before *Brown*, but after *Brown*, the Supreme Court ordered the desegregation of parks and swimming pools, public facilities, and beaches in a whole series of per curiam opinions.⁴ In fact, the Montgomery bus boycott ended after a year because the Supreme Court decision,⁵ in some respects, had to follow *Brown v. Board of Education*.

But we all know what happened after *Brown*. We know about the Southern Manifesto.⁶ And we know that during the seventeen years after *Brown*, with more than a generation of school children in public schools, little desegregation took place. I am not going to go through in great detail what you already know: the Little Rock school crisis;⁷ the *Griffin v. School Board of Prince Edward County*⁸ case in which the Supreme Court had to tell the Virginia school district to reopen because it had closed its doors rather than desegregate.⁹ The county subsidized white students to attend private schools.¹⁰ Black students received no education

4. See e.g. *Dawson v. Mayor & City Council of Balt. City*, 220 F.2d 386, 386–387 (4th Cir. 1955) (desegregating beaches and bathhouses), *aff'd*, 350 U.S. 877 (1955); *New Orleans City Park Improvement Assn. v. Detiege*, 252 F.2d 122, 123 (5th Cir. 1958) (desegregating golf courses and other facilities), *aff'd*, 358 U.S. 54 (1958).

5. *Gayle v. Browder*, 352 U.S. 903 (1956), *aff'g*, 142 F. Supp. 707, 711, 715, 717 (M.D. Ala. 1956) (setting forth the facts and circumstances of the Montgomery bus boycott and holding statutes and ordinances requiring the segregation of buses unconstitutional under the Fourteenth Amendment).

6. 102 Cong. Rec. 4459–4461 (1956); see Franklin & Moss, *supra* n. 4, at 513 (explaining that in 1956 over ninety Southern Congress members presented their “declaration of Constitutional Principles,” commonly known as “The Southern Manifesto”). The Southern Manifesto declared the Supreme Court’s decisions in the school desegregation cases as a “clear abuse of judicial power” and an “encroach[ment] upon the reserved rights of the States and the people.” 102 Cong. Rec. at 4459.

7. *Cooper v. Aaron*, 358 U.S. 1 (1958).

8. 377 U.S. 218 (1964).

9. *Id.* at 222–223, 234.

10. *Id.* at 222–223.

unless they were sent out of state or out of the jurisdiction by parents who made other arrangements for their education.¹¹

In 1968, the Supreme Court decided *Green v. County School Board of New Kent County*.¹² In that case, the Court laid out five areas that it would focus on in determining whether a school district had desegregated and had reached what the Court called a “unitary system.”¹³ A “unitary system” meant that the school district no longer operated a dual school system but was unitary and desegregated.¹⁴ It pointed to student desegregation, pointed to faculty, pointed to extra-curricular activities, and pointed to transportation and to facilities.¹⁵ But what the Court said in *Green* that was significant was that even voluntary measures, the majority-to-minority transfer provisions allowing black students to transfer to schools in which they would be a minority or white students to do the opposite, were not effective.¹⁶ Of course, white students did not transfer into formerly all-black schools¹⁷ and black students who transferred literally took their lives into their hands.¹⁸ So voluntary desegregation had not worked all that well.

Now, I am aware that some people have another critique. There is a book that was written a few years ago called *The Hollow Hope*,¹⁹ by Professor Gerald Rosenberg, from the University of Chicago. Rosenberg claimed that the desegregation that took place after *Brown* was not the consequence of the court orders won through litigation, but rather was a consequence of administrative processes that began after the 1964 Civil Rights Act was enacted.²⁰ Well, it seems to me that the administrative processes

11. *Id.* at 223.

12. 391 U.S. 430 (1968).

13. *Id.* at 441.

14. *Id.*

15. *Id.* at 435.

16. *Id.* at 441.

17. *Id.*

18. *Id.* at 440 n. 5 (noting that, in some areas of the South, black families with children attending previously all-white schools under choice programs were often targets of violence, threats, and economic reprisals by white persons).

19. Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring about Social Change?* (Benjamin I. Page ed., U. Chi. Press 1991).

20. *Id.* at 52 (concluding that the United States Supreme Court contributed “virtually nothing” to end the segregation of public schools in the decade after *Brown* and that desegregation “took off” after the passage of the 1964 Civil Rights Act and subsequent legislation (emphasis in original)).

played a role. But that is too short-sighted. It simply is not historically accurate.

In *Green*, the Court said something else significant. It said that the Virginia School District that once operated a racially dual system was to convert to a unitary system in which the effects of segregation were eliminated “root and branch.”²¹ I think at the time the Court decided *Green*, it had no notion of how deep the roots of segregation were or how broadly its branches had grown. So, three years later when it finally decided *Swann v. Charlotte-Mecklenburg Board of Education*,²² the case that sanctioned busing and unleashed another firestorm of controversy but finally ushered in desegregation in many school districts around the South in the 1970s, the Court talked about housing patterns and the relationship between school segregation and housing segregation.²³

School segregation causes housing segregation.²⁴ Housing segregation causes school segregation.²⁵ That seems self-evident. Many people have bought a house at one point or another. People think about the school system when they buy a house. I suspect that most people think about the race of the students enrolled in that school system and what the school looks like, because it has effects on housing values. If we had more time, we could talk about all of the other segregative actions that the government placed on the federal, state, and local levels over the decades that created the patterns of housing segregation that we see today.²⁶ Suffice it to say that housing segregation is not fortuitous in this country. Rather, it is the consequence of years and decades of decisions made on the federal, state, and local levels that have interacted with private action that produced the patterns we see today.²⁷

21. *Green*, 391 U.S. at 437–438.

22. 402 U.S. 1 (1971).

23. *Id.* at 20–21.

24. *Id.* at 21.

25. *Id.*

26. *Id.* at 7 (noting the findings of the district court that housing segregation in the Charlotte-Mecklenburg school system resulted in part from local, state, and federal action, in addition to school-board decisions).

27. See generally Douglas S. Massey & Nancy A. Denton, *American Apartheid* (Harv. U. Press 1993).

All of this is significant when we talk about school desegregation because it is still governmental action. In *Swann*, the Court specifically reserved the question of whether non-education officials' segregative actions that impact public schools could be the basis for a school desegregation order.²⁸ The Court never returned to that question.²⁹ I suspect it never will, particularly given that we are at the end of the era of court-ordered school desegregation.

I graduated from law school at a kind of midpoint when we talk about *Brown v. Board of Education*. When I graduated from law school in 1979, *Brown* seemed to me to be a long time ago. And yet the first thing I did out of law school was go to the Justice Department, where I litigated school desegregation cases. At that time, during the Carter Administration, the Justice Department was still trying to aggressively desegregate some school districts. I was not there that long before President Ronald Reagan was elected and all that changed. Therefore, it was not long after that I left the Justice Department and went to the Legal Defense Fund.

Looking back, though, now from the perspective of fifty years after *Brown*, when I graduated from law school, we were still right in the middle of the effort to desegregate schools. After *Swann*, there were desegregation orders, but there was still a lot of work to be done, not only in Southern school districts but also in Northern school districts. There was a backlash, and we were just about to come into the time, under the Reagan era, in which school districts that did desegregate now said they wanted to be declared unitary and released from jurisdiction. And the question was, "What now?"

"What now?" turns out to be that the Supreme Court adopted a scheme under which school districts that achieved one moment of desegregation could have a judicial snapshot taken, and the Court would grant judicial absolution.³⁰ And then, in theory, the

28. *Id.* at 23.

29. See generally *id.*; Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* 769–772 (rev. ed., Alfred A. Knopf 2004) (discussing the drastic decrease in desegregation enforcement since 1980 and the Rehnquist Court's "predisposition to put a lid on court-supervised desegregation plans").

30. *Bd. of Educ. of Okla. City Pub. Schs., Indep. Sch. Dist. No. 89 v. Dowell*, 498 U.S. 237, 248 (1991) (holding that court-ordered desegregation decrees are not intended to operate in perpetuity but for a reasonable time necessary to remedy the impact of past

connection between past segregative action and any remaining segregation that exists—that connection has been broken. The school district then is allowed to return to neighborhood schools. And, of course that means, more often than not, segregated schools. And it turned the desegregation process into basically a shell game for many school districts. Some school districts, including the Charlotte school district, tried to maintain desegregation even after unitary status, or put off unitary status because they wanted to maintain desegregation.³¹ The point is that we came to desegregation after *Brown* late—seventeen years after *Brown*. It then took about a decade to implement *Brown*. And then, after that, we began to return to segregated schools.

That is where we are today. In 2004, we honor *Brown* more in principle than we do in practice. All the celebrations, the conferences, the meetings, the self-congratulatory efforts of this spring and this year are, in some respects, appropriate; but, in a more profound sense, inappropriate. At the Legal Defense Fund, we are not celebrating *Brown*. That is not to say that there is nothing to celebrate. There is a great deal to celebrate. But we choose to use the word “commemoration” of *Brown* because it is more appropriate. We need to think about where we are and where we are going.

When I say there is a great deal to celebrate, let me return to *Brown* and what it did do. *Brown* broke the back of American apartheid. It ended governmentally sanctioned discrimination and segregation. And that is important and significant; that is its lasting effect. It did not end segregation and discrimination. That work remains before us.

Brown did not address the core issue historically in our country with respect to race, and that is a deep and abiding belief in white supremacy. I suspect that *Brown* could not have done that. Politically, it could not have done that. Even with the advantage of hindsight, what *Brown* did was in some respects extraordinary.

intentional discrimination).

31. *Martin v. Charlotte-Mecklenburg Bd. of Educ.*, 475 F. Supp. 1318, 1345 (W.D.N.C. 1979) (denying a request for an injunction prohibiting the Charlotte-Mecklenburg Board of Education from implementing a race-based pupil assignment plan to prevent resegregation of certain schools within the district). The *Martin* court found that the Charlotte-Mecklenburg Board of Education had a “demonstrated, independent commitment to the maintenance of a desegregated school system.” *Id.*

But white supremacy still, in my mind, remains a stain on our nation's collective conscience. Only we are much more sophisticated now about how to talk about it. We know it is politically incorrect. Those of us who do not believe in white supremacy still know that we have to struggle with its legacy. Because its legacy is so powerful in its reach into the present. It is so powerful. So *Brown* accomplished a great deal, but it did not accomplish enough.

Now, we heard about the context of *Brown*. We heard from Professor James Patterson about the significance of the post-World War II era and the fact that black soldiers, returning home from fighting a war against a form of racism in Europe, returned home to segregation here in the United States.³² We also heard about the Cold War and the post-Colonial era.³³ All that is correct and, although none of that appears in *Brown*, it certainly was the context. It is important to understand that. It cannot be overstated. I also want to underscore something that should not be lost. *Brown* was the consequence of an absolutely brilliant legal campaign that John Hope Franklin told us about in his remarks.³⁴ It was the most brilliant legal campaign in the history of this Nation. That legal campaign has to be understood in the broader historical context.

Now, let me tell you that for people in my generation, and I was born in the year of *Brown*, I do not have any memory of living in an America in which people were segregated by law, which the government sanctioned explicitly under the Constitution. I do have a memory of racial discrimination and inequality. But *Brown* was that breaking point with respect to governmentally sanctioned segregation and discrimination. *Brown* created a new paradigm. It is not a coincidence that many individuals with progressive leanings in my generation went into law. At least in the post-civil rights movement era, those people who believed in the work and who grew up with the background of the civil-rights movement wanted to do something with what they believed.

32. See James T. Patterson, *Brown v. Board of Education and the Civil Rights Movement*, 34 Stetson L. Rev. 413, 419–420 (2005) (discussing various forces stimulating the growth of the civil rights movement).

33. *Id.*

34. John Hope Franklin, *Behind the Brown Decision: A Conversation with John Hope Franklin*, 34 Stetson L. Rev. 423 (2005).

So, Thurgood Marshall, Charlie Houston, Bob Carter, Jack Greenberg, Constance Baker Motley, John Seigenthaler, and John Hope Franklin were my heroes as a young person. I knew about these individuals. What do you do with all of that, if you want to be part of that tradition, if you want to continue that work? Well, you go to law school and continue the work. *Brown* created this paradigm, that a person could bring about social change through litigation, through the law. But I think that is a seductive paradigm, and I found out after a quarter of a century as a civil rights lawyer that litigation can do that, but only in a very limited sense, only with the proper context. That is so because litigation for social change ultimately is done before people who are drawn from the ranks of the powerful. It is a challenge to the established order. It seeks to ask those who were put in power by the empowered, who come from the ranks of the empowered, to redistribute power—and that is counterintuitive.

Frederick Douglass was correct when he said, “Power concedes nothing without a demand. It never did and never will.”³⁵ And when lawyers think that they can lead social movements in their role as lawyers, I have come to believe that those movements are doomed to failure. It is not because lawyers cannot lead social movements. Mahatma Gandhi was a lawyer and led one of the greatest social movements in history. If you think about one of the greatest individuals of our time, Nelson Mandela, he was a lawyer. But neither Gandhi nor Mandela led their movements in their role as lawyers because litigation, at least as we know it, is slow. It is incremental. Again, it is asking the empowered to redistribute power. It runs against the conservative grain of the judicial system. And it can turn activists into bystanders. They watch for the courts to resolve issues in the absence of a political movement, a social movement, and that does not work.

The tensions within the civil rights movement in the 1960s, between the lawyers and the activists, were significant. Martin Luther King was telling Jack Greenberg that he was going to march against injunctions. And Jack Greenberg of the Legal Defense Fund said, “No. You can’t do that, or you shouldn’t do that.” And he said, “Well, it’s not your role to tell me what I shouldn’t

35. Kluger, *supra* n. 29, at 70.

do. It's your role to get me out of jail." Those were real tensions but ultimately healthy tensions, if we understand how these things work or should work. So the paradigm that *Brown* created is a seductive one. And I do not mean to suggest after twenty-five years as a civil-rights litigator that I conclude that the work that we do at the Legal Defense Fund is insignificant or that we should not continue doing it, because quite the opposite is true. But I think we should understand the seductive paradigm that *Brown* created. We should be conscious of the fact that, without a social movement and a political movement, litigation and social change is like a ship without water. It does not go anywhere.

Now, I think that as we look back in this fiftieth anniversary year, we have to recognize that we honor *Brown* in principle more than practice. And we have to recognize, as Professor Patterson has pointed out, that *Brown* has had a troubled legacy.³⁶ But that does not really mean a whole lot to me, to be honest. Because how could you expect anything else, given the history of race in this country? How could we expect anything else but a troubled legacy after *Brown*? *Brown* was not going to end the struggle against white supremacy or for racial equality or racial justice.

But we also should understand the significance of *Brown*. As I said, *Brown* broke the back of American apartheid. Before *Brown*, for African Americans and for people of color and many other people, the Constitution basically was dead. Meaningless. It did not mean a thing for black people, if you really think about it. *Brown* changed all that, and that was significant. It redefined our national principles in some respects, because in this country our highest expressions of law are expressions of what our values are, what we believe in, and what we do. And that would not have happened without the *Brown* campaign. While I agree with Professor Patterson about all the other factors that brought about change, I also say here that without the campaign led by Thurgood Marshall and his mentor, Charles Houston, and the lawyers at the Legal Defense Fund aided by the expert witnesses like John Hope Franklin and Kenneth Clark, *Brown* simply would not have happened. And, however history would have unfolded, it

36. Patterson, *supra* n. 32, at 413, 414; James T. Patterson, *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy* (Oxford U. Press 2001).

would not have happened when and in the way it did. And I think that is significant. We should not lose sight of that.

Brown was a magnificent moment. But, you know, it has its limitations. Because those who struggled against *Brown* were not going to go away. And they have not gone away. Today, in 2004, the struggle to implement *Brown* seems to be all but over. With all due respect, I disagree with Professor Patterson about the tenuous connection between *Brown* and the Michigan cases.³⁷ I was deeply involved in the Michigan cases in ways that I will not go into right now, both as counsel for students of color who were parties in the undergraduate case, and in other ways in the law school case, and because of my having taught at Michigan at the time that the plan that was under attack was adopted. In my view, there is a direct connection between *Brown* and the Michigan cases.

Certainly there is a conceptual connection between what is going on today and what was going on in 1954. And this is the thing that I want to make sure I articulate well. I always struggle because I do not know if people really understand. To the extent that the radical conservatives (I try to avoid calling them “the right,” because there is nothing “right” about what they are doing) have misappropriated the rhetoric and the language of the civil-rights movement and have taken color blindness and turned it into a Trojan horse to carry an old agenda. To the extent that they turn both history and facts on their head and claim that they are the intellectual descendants of Martin Luther King, Jr., Thurgood Marshall, and others, their ideology is at the core of what the Michigan cases were about.

They claimed to oppose affirmative action in the name of the principles that were established in *Brown v. Board of Education*. And, frankly, if they are successful, integration at the higher education level as well as in other aspects of American life, and even in elementary and secondary schools as a voluntary measure in

37. Patterson, *supra* n. 32, at 415 (discussing connections between the cases). The Michigan cases are *Grutter v. Bollinger*, 539 U.S. 306 (2003) (holding that the Equal Protection Clause is not violated when a school, seeking to further a compelling interest in diversity, applies a narrowly tailored use of race in admissions decisions), and *Gratz v. Bollinger*, 539 U.S. 244 (2003) (holding that the Equal Protection Clause is violated when a school uses race in its admissions policy and its use of race is not narrowly tailored to further a compelling interest in diversity).

this post-mandatory desegregation age, would be down the drain. They are using the same arguments that they made in the Michigan cases to attack voluntary integration at the elementary- and secondary-school levels. So even magnet-school programs, majority and minority transfer provisions—the most innocuous and ineffective aspects of desegregation plans in 1968—would now be illegal. Even *Swann*'s observation that one of the most important decisions school boards make is the location of new schools³⁸—they can make them in either segregative or desegregative ways—has been attacked as racially discriminatory because it is race conscious. Do you understand that Orwellian argument that our adversaries are making?

Brown and *Grutter* are tied together by the question of when and under what circumstances the government can consider race. Our adversaries are not going away, just as they did not go away after *Brown*. What they figured out is how to make their arguments in ways that insulate them from attack and being called what they are. In a post-*Grutter* environment, there are a range of issues involving all kinds of programs that are directed at continuing to remedy and address racial inequality in this country that we only began to address half-heartedly thirty years ago. Among these are scholarship programs, outreach programs, pipeline programs, mentorship programs, and other programs designed to continue that progress. They are in the crosshairs of the far right. In many respects, that is the work that we are doing today. As big as the Michigan cases were, there may be a bigger battle brewing. And to this audience I say, "Do not run." Do not cut and run from those programs and those efforts. You have to be careful and smart about how you structure them, and you should not set up targets that will easily attract litigation. At the same time, we *won* the Michigan cases. The radical conservatives are bringing post-Michigan challenges that I believe we can win also, if we fight.

I want to close by reflecting on some of the remarks that John Hope Franklin made about Thurgood Marshall late in his life.³⁹ Those who knew Thurgood Marshall at that point in his life knew that, in fact, he was depressed about the status of the state of

38. *Swann*, 420 U.S. at 20.

39. Franklin, *supra* n. 34, at 451–454.

race relations in the country, and in particular about the nature of the Supreme Court's consideration in race issues. Read his dissent in *Regents of the University of California v. Bakke*⁴⁰ and in the Supreme Court cases of the 1980s.⁴¹ His opinion, like the opinion of Justice William Brennan in *Bakke*,⁴² was powerful. While I celebrate the Michigan cases as great and important victories, we must put the Michigan cases in historical context. The Michigan cases simply affirmed *Bakke*.⁴³ *Grutter* took Justice Lewis F. Powell's opinion in *Bakke*,⁴⁴ which was not joined explicitly by any of the other Justices on the Court at that time,⁴⁵ and now there are five votes that adopted that opinion, basically.⁴⁶

But *Bakke* in itself was a loss for African Americans. And it was a loss because the Court was, in my view, intellectually dishonest in the way it interpreted the Fourteenth Amendment. It unmoored the Fourteenth Amendment from its history. The Court refused to acknowledge the fact that the Amendment was passed first to address the history of slavery and inequality visited upon African Americans. It refused to distinguish between race-conscious actions that were taken for the purposes of remedying discrimination and insidious race-conscious actions based upon white supremacy. That refusal or failure taints all of our consideration of race discrimination cases today.

40. 438 U.S. 265, 387–388 (1978) (Marshall, J., dissenting) (disagreeing with the Court's holding that a school's admissions policy was invalid because it excluded certain applicants based on race from a specified percentage of seats in the class). Justice Marshall discussed in great depth the effect of slavery and segregation on African Americans, and questioned a constitutional barrier on race-based admissions policies when the Constitution failed to prohibit "ingenious and pervasive forms of discrimination against the Negro." *Id.*

41. *E.g. Kadrmas v. Dickinson Pub. Schs.*, 487 U.S. 450, 466 (1988) (Marshall, J., dissenting) (stating that the Court is continuing to retreat from the guarantee of equal educational opportunity); *Gen. Bldg. Contractors Assn. v. Pa.*, 458 U.S. 375, 407 (1982) (Marshall, J., dissenting) (asserting that the Court was incorrect in holding that 42 U.S.C. § 1981 requires proof of intent to discriminate); *City of Memphis v. Greene*, 451 U.S. 100, 136 (1981) (Marshall, J., dissenting) (stating that, in effect, the Court's decision allows cities to carve out racial enclaves).

42. 438 U.S. at 324 (Brennan, White, Marshall & Blackmun, JJ., concurring in part and dissenting in part).

43. *Gratz*, 539 U.S. at 251.

44. *Bakke*, 438 U.S. at 269 (plurality).

45. *Id.* at 267.

46. *Gratz*, 539 U.S. at 247.

Thurgood Marshall knew that. He found it a cause for great distress and alarm. He was right about that. In the long struggle for racial justice, it is easy to become discouraged. There are lots of reasons to become discouraged. But I believe that Martin Luther King was right when he said, “[t]he arm of the moral universe is long, but it bends towards justice.”⁴⁷ There have been four director-counsels at the Legal Defense Fund: Thurgood Marshall who passed the torch on to Jack Greenberg, who passed it on to Julius Chambers, who passed it on to Elaine Jones. And on May 1, Elaine Jones will pass that torch to me. What I want to assure you of is that nobody could run harder and faster and farther than Thurgood Marshall did in his life. He will remain a hero for all time.

I have heard some law professors question Thurgood Marshall’s intellect, compared to other Justices. These intellectual ants will not leave a footprint in the sands of time. Yet they have the gall to criticize Thurgood Marshall’s stature and intellect when he fundamentally changed or helped to change this country. One of my favorite moments in political debates was the debate between Lloyd Bentsen and Dan Quayle when Dan Quayle tried to compare himself to John Kennedy. You remember the moment: Lloyd Bentsen said to Dan Quayle, “Senator, I served with Jack Kennedy. I knew Jack Kennedy. Jack Kennedy was a friend of mine. Senator, you’re no Jack Kennedy.”⁴⁸ That was a wonderful moment. I think about it in two contexts because conservatives in 2004 are claiming the mantle of *Brown*. They are claiming that the manifestation of *Brown* in 2004 is “No Child Left Behind.”⁴⁹ There are some good things in that law, and a lot of things that are not so good. At the Legal Defense Fund, we say that we know *Brown v. Board of Education*. We litigated *Brown v. Board of*

47. Paul Butler, *By Any Means Necessary: Using Violence and Subversion to Change Unjust Law*, 50 UCLA L. Rev. 721, 764 (2003) (quoting Martin Luther King, Jr., Address, *Our God is Marching On!*, (Montgomery, Ala., Mar. 25, 1965) in *The Eyes on the Prize: Civil Rights Reader* 224, 227 (Clayborne Carson et al. eds. 1991)).

48. The Vice Presidential debate between Senators Lloyd Bentsen and Dan Quayle took place on October 5, 1988, in Omaha, Nebraska. The History Channel, *Dan Quayle, Senator of Indiana; Lloyd Bentsen, Senator of Texas*, http://www.historychannel.com/speeches/archive/speech_222.html (accessed Sept. 10, 2004).

49. The Elementary and Secondary School Act, known as the No Child Left Behind Act, attempted to raise education standards and accountability. 20 U.S.C. §§ 6301–6304 (2000).

Education. Vouchers and “No Child Left Behind”—they are no *Brown*.

Similarly, I am also conscious of the fact that, as I prepare to take on the mantle of the leadership of the Legal Defense Fund, I am no Thurgood Marshall. What I can tell you is that, just as the baton was passed from Thurgood to Jack to Julius and to Elaine, I will take that baton and I will run as fast and as hard and as far as I can, and wear myself out to the point when I can run no further, and then pass it on to the next generation. The work of *Brown* continues. And I think that we have to use 2004, not as an opportunity to blindly celebrate the great accomplishments that we have seen in race relations in this country over the last fifty years, although we should do that; but as a challenge to complete the work or at least carry on the work that Thurgood Marshall and you, John Hope Franklin, and you, John Seigenthaler, have been carrying on for so long.

Thank you.