All Deliberate Speed: Reflections on the First Half-Century of Brown vs. Board of Education

Montana Law Review

Volume 66
Issue 2 *Summer 2005*

Article 1

7-2005

All Deliberate Speed: Reflections on the First Half-Century of Brown vs. Board of Education

Charles J. Ogletree Jr.
Professor of Law, Harvard Law School

COMMENTARY

ALL DELIBERATE SPEED: REFLECTIONS ON THE FIRST HALF-CENTURY OF *BROWN VS. BOARD OF EDUCATION*[1]

Charles J. Ogletree, Jr.[2]

Just two years ago, in December 2002, I celebrated my fiftieth birthday. I was happy to be fifty, but was a little bit perplexed by the fact that I got in the mail a card saying: "Congratulations, you're now a member of the AARP." I did not know quite what to do. Upon reflection, it reminded me how much life has changed. Most younger people today have a very different sense of history than I do. When I talk about something like "coloreds only" water fountains, for example, it's hard for them to imagine that they existed. Many of you never lived in a time where African-Americans could not eat in a restaurant, could not sleep in a hotel, and did not have the basic right to vote. I would like to overcome this intergenerational

---

1. The article is an edited and expanded transcript of a lecture delivered on November 8, 2004 at the Honorable James R. Browning Distinguished Lecture in Law at the University of Montana School of Law. Footnotes have been provided for some of the cases and other materials discussed to assist the reader. In addition, a comprehensive discussion of the concepts in this article is provided in CHARLES J. OGLETREE, JR., ALL DELIBERATE SPEED: REFLECTIONS ON THE FIRST HALF-CENTURY OF *BROWN V. BOARD OF EDUCATION* (2004).

2. Jesse Climenko Professor of Law and Vice Dean of Clinical Programs, Harvard Law School.

knowledge gap.

The most important knowledge transfer regards the history of *Brown v. Board of Education*,[3] a case whose fiftieth anniversary we celebrated on May 17, 2004. We simply do not know a lot about the history of that case — including how it was almost not decided the way that it ultimately was decided — and yet it was so significant in changing the dynamics of race in America in the twenty-first century. I am a living testament to that change. I went to Stanford University and graduated in three years, Phi Beta Kappa; then to Harvard Law School, and was a member of the Civil Rights Civil Liberties Law Review; and I am now a tenured professor at Harvard. All those things are true, but they only exist because I stand on the shoulders of others who opened those doors. And I know there always have been people much more qualified than me, who look like me, who could have entered those exalted halls of academia as students or as faculty, but who were not allowed. I am the product of my environment and of the great people who went before me — most importantly, the people who fought for and litigated the *Brown* case.

The *Brown* case was the work — not exclusively, but substantially — of African-American lawyers, most of who attended Howard Law School, at what is called a historically black university. They were brilliant, concisive, thoughtful, creative lawyers, and were people who should have been going to Harvard, Yale, Montana, California, Illinois, and Michigan. But they were not, because the doors were not open there. It is not that they were not qualified, but that they were not allowed. And yet, they used every bit of their incredible talent to win the most important case on race ever decided by our Supreme Court. While you may have heard of some of those lawyers, there is one vital person who most of you do not know, because he was not there for the *Brown* argument. But he was the architect of the decision that changed America's thinking about race. His name is Charles Hamilton Houston.

Who is he? An African-American lawyer from Washington, D.C.; an honors graduate from Amherst College in Massachusetts; an esteemed graduate of Harvard Law School in the 1920s. He could not live in the same dorm and could not eat at the same table as the white students, but he was a brilliant law student at Harvard Law School — so brilliant that he was

3. 347 U.S. 483 (1954) [hereinafter "*Brown*" or "*Brown I*"].

the first African-American ever elected to the Harvard Law Review.[4]

He was the top student in his class. He was the first African-American to get an SJD, which is an advanced law degree, and yet he could not get a job at any prominent law firm anywhere in the country because of his skin color. But Charles Houston didn't get mad, he got even. He left Harvard and ultimately made it back to Washington, D.C., eventually to become the dean Howard Law School. He trained a generation of lawyers, like Thurgood Marshall and Oliver Hill, and all those who argued the *Brown* case in the 1950s.

He had a very simple philosophy, one that we cannot use as academics in the classroom, but one that I admire and respect. Think what would happen if in your first day of class, the professor told you this — and this is what he said to all of his law students: "A lawyer is either a social engineer or a parasite on society."[5] In other words, if the lawyer does not attempt to lift up those in need, he will operate as a disease on the very community he is trained to help. He proselytized those views with Thurgood Marshall and Oliver Hill and Spotswood Robinson, and so many others who became great lawyers and judges and who changed America in ways that we now admire tremendously.

He is the person who possessed the biggest visions of ending segregation. He started the groundwork well before there was a case. He did his homework. He did his investigation. He had his theory. He stuck with it over decades before the case was decided. As we read the case today, his name is not mentioned because regrettably, in 1950, long before the case was decided, he died. Some people say that he killed Jim Crow, but Jim Crow might have killed him. That is, he had every kind of affliction and disease as a young man, but he kept fighting, he kept going to court, he kept making arguments.

He was not there when this classic case was decided, but the victory was essentially his. As Thurgood Marshall knew, it is Houston's influence and mentoring that deserve the most credit for *Brown* despite the absence of his name on any court papers. Marshall would note that "[s]ome of us looked around, and those thirty lawyers, at least, we very carefully went from one to

4. *See generally* GENNA RAE MCNEIL, GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS (1983).

5. *Id.* at 218.

another and there were only two who hadn't been touched by Charlie Houston."[6] I write in full agreement with Marshall, who also said of Houston that "[w]hatever credit given him is not enough."[7]

But most people do not know much about the fruits of that work, or about the *Brown* case and, most particularly, how it almost did not happen. After the case was argued in 1952, an unexpected development occurred the following year, a development that changed the course of history.

The Chief Justice at that time was Fred Vinson, from the state of Kentucky, and although Justice Vinson had been involved in a variety of cases, he and four other justices were not quite sure, in the early 1950s, that they were prepared to issue an opinion overruling the 1896 *Plessy v. Ferguson*[8] decision that upheld "separate but equal" facilities for blacks and whites.[9] A majority of the justices did not quite seem ready for such a revolution.[10]

On September 8, 1953, however, Chief Justice Vinson died. On the Court at that time was another great Supreme Court Justice by the name of Felix Frankfurter. He was a Harvard Law School professor before joining the Court and a very smart man. Those who did not like him called Justice Frankfurter a legend in his own mind. But I think he was a true legend in terms of his many contributions to the Court. He was not a very religious man, but when he heard that his colleague Chief Justice Vinson had died on September 8, 1953, Justice Frankfurter had the following to say to his law clerk: "This is the first indication I have had that there is a God."[11] In 1953, just after *Brown* had been litigated, the impending decision clearly weighed heavily on the justices' minds.

With the death of Chief Justice Vinson came the appointment of Earl Warren, a very important decision for President Eisenhower. It was important because Warren was

---

6. Thurgood Marshall, *Tribute to Charles H. Houston*, AMHERST MAGAZINE (Spring 1978), *reprinted in* THURGOOD MARSHALL: HIS SPEECHES, WRITINGS, ARGUMENTS, AND REMINISCENCES 272 (Mark V. Tushnet ed., 2001).

7. JUAN WILLIAMS, THURGOOD MARSHALL: AMERICAN REVOLUTIONARY 184 (1998).

8. 163 U.S. 537 (1896).

9. *Id.* at 551–52.

10. For a discussion of the judges' hesitancy at the time, see MICHAEL J. KLARMAN, FROM JIM CROW TO CIVIL RIGHTS 292-320 (2004).

11. *See* OGLETREE, *supra* note 1, at 9 (citing MORTON J. HORWITZ, THE WARREN COURT AND THE PURSUIT OF JUSTICE (1998)).

unlike the other members of the Court. He was actually a politician. He had spent time in the World War. He had been the California Attorney General and then the state's governor. Many applauded President Eisenhower's selection of someone who could bring the Court together on a practical level as he did on *Brown*.

Earl Warren presided over the Supreme Court as Chief Justice when it decided *Gideon v. Wainwright*,[12] guaranteeing the right to counsel. He spearheaded the *Miranda*[13] revolution, which held that those who are stopped by the police and interrogated have the right to remain silent and to be given the proper warnings. He oversaw the ruling *Mapp v. Ohio*,[14] which created the "exclusionary rule" — that any evidence seized in violation of a suspect's constitutional rights cannot be admitted at trial. And, of course, he was responsible for the unanimous decision in *Brown*.[15]

I want to raise two points about that case that most people do not know. First, there was no single *Brown* case. There were five *Brown* cases, which again speaks to the brilliance of these lawyers. They filed a lawsuit in Clarendon County, South Carolina, because they could see the pervasive problem of segregation in public education there. But they also filed a lawsuit in Topeka, Kansas in the Midwest. Of course, they filed a lawsuit in Richmond, Virginia, given the backwards educational system and the deprivation of opportunity for black children in Virginia. But they also filed a lawsuit in Wilmington, Delaware in the Northeast, and in Washington, D.C.[16]

---

12. 372 U.S. 335 (1963).

13. *See* Miranda v. Arizona, 384 U.S. 436 (1966).

14. 367 U.S. 643 (1961).

15. Warren's heroism is not untainted, and some remember that he had a more complicated history. As Attorney General, he played an important role in the internment of over 100,000 Japanese-Americans. *See* Sumi Cho, *Redeeming Whiteness in the Shadow of Internment: Earl Warren,* Brown, *and a Theory of Racial Redemption*, 40 B.C. L. REV. 73, 118–19 (1998) (describing Warren's actions). They were not terrorists and they were not violating the law. In many respects, they were as patriotic or more patriotic than other citizens. But in the time of war, they agreed that it was time for them to go to internment camps. That is a blight on Warren's record, though he made clear before he passed away that it was one of the most shameful and regrettable actions he had ever participated in. *See* EARL WARREN, THE MEMOIRS OF EARL WARREN 149 (1977) (professing "deep regret" for his involvement with the internment). For some, his incredible reign as a Supreme Court Chief Justice seems to have erased the earlier, darker periods.

16. The other cases were titled *Briggs et al. v. Elliott et al.*; *Davis et al. v. County*

These lawyers were saying to the nation, "we are going to make sure that this problem of segregation is so inevitable that the Court will not be able to avoid it based on jurisdiction or based upon a case." They filed cases everywhere to make sure that the matter would eventually appear before the Court. And it happened — the Court took all five of those cases and decided all of them under the heading of *Brown v. Board of Education.*

The second and more pivotal point is that most people think of the May 17, 1954 decision as the *Brown* decision. And they should, because what it said is a powerful reminder of the problem we had in 1954. On that date, Chief Justice Warren wrote for the Court:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.
>
> We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.[17]

With that writing, the Supreme Court undid separate but equal education in America.

While most people know of that decision, they would be misguided to think of it as the only lasting legacy of *Brown.* Perhaps equally as important was the Supreme Court's *second Brown* decision, [18] which discussed the appropriate remedies for nationwide segregation. The opinion does not discuss much, but

---

School Board of Prince Edward County, Virginia, et al; *Gebhart et al. v. Belton et al.* (included in the *Brown* caption); and *Bolling v. Sharpe*, 347 U.S. 497 (1954).

17. *Brown I*, 347 U.S. at 493

18. Brown v. Bd. Of Educ., 349 U.S. 294 (1955) [hereinafter "*Brown II*].

is an example of the Court's moral ambivalence about its legal determination a year earlier. In the second decision, again unanimous and again written by Chief Justice Warren, the Court ordered lower federal courts to "enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases."[19] The lawyers, including Thurgood Marshall, Oliver Hill, Constance Baker Motley, Robert Carter, Spotswood Robinson, James Nabrit, Jack Greenberg, Jack Weinstein, Louis Pollack, Bill Coleman, Charles Black, and Bob Ming, were thrilled that they had won again. As they sat there celebrating, there was a young secretary who decided to do something peculiar. She went to a dictionary and looked up the word "deliberate." That word, she discovered, meant "slow."[20] The Supreme Court had just said, let us end racial segregation, but let us do so with all deliberate speed, which meant with no speed at all.

And that is the underlined irony, the underlined hypocrisy of *Brown*. Although there was a clear and decisive decision to move forward, it was mandated that the motion be a slow one. In a sense, and in the South in particular, this provided an out, an excuse, a way to resist the progress — and resist they did.

We forget that after *Brown*, Governor Orville Faubus from the State of Arkansas stood in the classroom door at Central High School and refused, despite the laws, to let black students enter that high school.[21] In fact, it took the sending of federal troops by President Eisenhower several years later to integrate a public high school in Little Rock, Arkansas.[22] Or just as reprehensibly, note the political career of Alabama Governor George Wallace. He was an unknown politician in many respects until he embraced the mantra of "segregation today, segregation tomorrow, and segregation forever."[23] His militant pro-segregation stance catapulted him to high places, including an ultimate candidacy for the United States president. Think, also, about the State of Virginia. Segregation was so pervasive in the State of Virginia that in some places, rather than allow black children and white children to attend the same public

19. *Brown II*, 349 U.S. at 301.

20. *See* OGLETREE, *supra* note 1, at 10.

21. *See* Cooper v. Aaron, 358 U.S. 1, 9 (1958).

22. *See* JAMES T. PATTERSON, BROWN V. BOARD OF EDUCATION: A CIVIL RIGHTS MILESTONE AND ITS TROUBLED LEGACY 111 (2001).

23. *See id.* at 94.

schools, they attempted to shut down the public education system.[24]

Think about what southern congressmen did after *Brown*. They issued the "Southern Manifesto," which was an agreement they all signed stating that they would resist integration by all lawful means.[25] Think about the rule of law and about the irony of governors, police officers, mayors and others who defied it and stood at the classroom door, who would not allow integration to go forward. None of them went to jail. And think of Dr. Martin Luther King, Jr., who in taking the moral position that segregation was unjust was sent over and over again to jail.

And there were many more that suffered. In 1955, a young teenager left Chicago, went down to Mississippi to visit his relatives, and he whistled at a white woman. His name was Emmett Till.[26] He was lynched in 1955 — not 1905, not 1925 — 1955. Think about the seamstress from Montgomery, Alabama who was a secretary for the NAACP. She said the *Brown* decision has been made, and she could now exercise her right to be treated the same — not just in the classroom, but on a bus. Rosa Parks sat on that bus in Montgomery and she was arrested for violating the local ordinance against blacks sitting in certain seats, even after *Brown*.

All that, so that I and others could do things like go to Stanford University, a personal experience that I'd like to now speak about. I had a wonderful time at Stanford. I met my wife there, we were married in 1975, and it was a remarkable time for us. But I made one crucial mistake after our graduation.

As we were leaving Stanford for Harvard Law School, she said, "Well, Charles, we're heading to a new place. Before we leave California and head to Massachusetts, why don't we get a map?" And I said, "A map? A map? We're going from Palo Alto, California to Cambridge, Massachusetts. We go outside, make a left turn, we go east. What's the problem?" It seemed obvious to me that there was not one. It was our first dispute as newlyweds.

So we started driving, and to add insult to injury, as we traveled these various days, we would be just seventy-five miles away from another border and she would say, "Charles, it's eight

---

24. *See* Davison M. Douglas, *The Rhetoric of Moderation: Desegregating the South During the Decade After* Brown, 89 NORTHWESTERN L. REV. 92, 113–14 (1994).

25. *See* PATTERSON, *supra* note 22, at 98.

26. *See id.* at 86–87.

o'clock, why don't we stop and get some dinner?" I would respond, "Well, we're just seventy-five miles away from another state. Why don't we wait until we get to the next state." We get to the next state and it is eleven o'clock. "Well, Charles, why don't we get a place to sleep?" And I: "We're only sixty-three miles away from a major city. Let's drive there, we'll be there by midnight." And we would get there and I would not be able to find a place to sleep. Every place was full. And of course, she was furious, and I tried to tell her, "Pam, it's because we're black. They don't want us here. It has nothing to do with my driving, it's racism. It's all over America." I tried that three nights in a row, but it just didn't work. The argument was not going to be successful, and I lost this battle every single day. And I know she was preparing the divorce papers only a few weeks into the marriage.

We eventually made it to Boston, and I was convinced that we were not going to need a map this last period of the time. We were on I-93, which leads right from Boston to Cambridge. We were about to get there, and, of course, I got lost. I drove off the highway and called our landlord to ask for directions. I did not know where I was, and he asked me to describe the location. "Well, I don't know," I said, "I know we're near Cambridge, we're very close. I see something. I see O'Reilly's Liquors, I see McIntosh Grocery." He said, "Get back in the car."

I had just driven into South Boston in the fall of 1975 in the middle of the bussing crisis, during a major battle about integration. Not in 1954 or 1960 or 1965 or 1968, but in 1975. Black children were being denied the right to attend public open schools in south Boston and in Charleston, right outside of Cambridge. The experience was a reminder to me — a reminder that the *Brown* challenge of 1954 was still with us in 1975 and beyond.

Where are we today? In spite of much acknowledged progress, the most alarming fact to note is that while the Supreme Court unanimously ended legal racial segregation in public education 50 years ago, America's public schools today are, in many respects, more segregated than they were fifty years ago. That is not an indictment of the Court — it is an indictment of us. We have allowed resegregation to occur. We also find that fifty years after *Brown*, in some places nearly fifty percent of African-American young people are not completing

high school,[27] or are completing it with no opportunity to meaningfully participate in our economy and our political system. In the 1950s, we had perhaps hundreds of thousands of people in prison. As we look at our system now, fifty years after *Brown*, we have over two million in prisons and jails at the state and federal level.[28] A majority of male prisoners are African-American[29] and many are there for nonviolent drug offenses, which informs a societal problem we have not yet addressed.

Our schools are also resegregated because many white families have left urban America rather than allow their children to attend school with blacks. The Supreme Court has placed roadblocks to interdistrict remedies to such white flight.[30] And the flight is not limited to whites; many people do not talk about black middle class flight, about families who left town in search of better education and ushered in an unforeseen consequence of *Brown* — a bifurcation of the black community. The decision, aided by affirmative action programs opened up a few opportunities for some, but not for many. That is where we are today.

Having made this indictment, I should report some good news — the Supreme Court's decision last year in *Grutter v. Bollinger*,[31] upholding affirmative action programs in higher education admissions, is a breath of fresh air that does provide some reason to think positively about the future. I hope you read it, because we should not rely on the Wall Street Journal or the New York Times to tell us what the decision says. For example, even those Justices less keen on affirmative action had important things to say. Interestingly, while Chief Justice Rehnquist dissented from the rationale supporting diversity in admissions in *Grutter*, he noted in its companion case, *Gratz v. Bollinger*, that "[t]he University [of Michigan] has considered African-Americans, Hispanics, and Native Americans to be 'underrepresented minorities,' and it is undisputed that the University admits 'virtually every qualified . . . applicant' from

27. *See* DROPOUTS IN AMERICA: CONFRONTING THE GRADUATION RATE CRISIS (Gary Orfield ed. 2004).

28. *See* Margo Schlanger, *Inmate Litigation*, 116 HARV. L. REV.1555, 1557 (2003).

29. *See* Paul Butler, *Affirmative Action and the Criminal* Law, 68 U. Colo. L. Rev. 841, 868 n.97 (1997) (noting there are more black than white men in prisons nationwide).

30. *See* Milliken v. Bradley, 418 U.S. 717 (1974) (preventing federal courts from using multidistrict remedies where the segregation was internal to a particular district).

31. *See* Grutter v. Bollinger, 539 U.S. 306 (2003).

these groups."[32] Now, what is the operative word there? It is "qualified." Chief Justice Rehnquist recognized that even with these affirmative action plans, all those admitted to Michigan are qualified to be there, even as he declined to uphold the affirmative action program. In analyzing the Michigan cases, that positive spin was lost.

In a separate opinion in those cases, Justice Ginsberg, who voted with the majority in *Grutter* to uphold diversity as an admissions goal, argued that there exists a bigger problem of racial opportunity that we are not even confronting today. It is not simply whether a few elite citizens attend universities and law schools and medical schools; rather, there is a bigger societal problem that we cannot ignore. There is an elephant in the room. As she noted in the *Gratz* case:

> In the wake "of a system of racial caste only recently ended," large disparities endure. Unemployment, poverty, and access to health care vary disproportionately by race. Neighborhoods and schools remain racially divided. African-American and Hispanic children are all too often educated in poverty-stricken and underperforming institutions. Adult African-Americans and Hispanics generally earn less than whites with equivalent levels of education. Equally credentialed job applicants receive different receptions depending on their race. Irrational prejudice is still encountered in real estate markets and consumer transactions. "Bias both conscious and unconscious, reflecting traditional and unexamined habits of thought, keeps up barriers that must come down if equal opportunity and nondiscrimination are ever genuinely to become this country's law and practice."[33]

She reminded us that even with this important decision last year, we have to continue the important fight of addressing the issues of disparity.

There is much that needs to be done, particularly in the area of education, and educational philosophy more generally. We need to talk about charter schools, about self-help programs, and about responsibility. We need to think about what our children are doing between the hours of three and six o'clock, after school gets out and when most problems occur. We need a longer school day with more sustained education. I believe in

---

32. Gratz v. Bollinger, 539 U.S. 244, 253-54 (2003) (omission in original).

33. *Gratz*, 244 U.S. at 299-301 (Ginsberg, J., dissenting) (internal citations omitted).

what I call a Saturday School Program. A Saturday School Program is not just for young people who are not being fully educated in their system, but is also for parents. We also need to stop *blaming* parents and instead empowering them. Many urban parents are being criticized because they cannot teach their children basic skills. But these parents went through the same failed public school system, and we should therefore not be surprised that they cannot serve as teachers.

Finally, we need to think about, as Congressman Jesse Jackson, Jr. has proposed, a constitutional amendment to make education a fundamental right.[34] It is not a fundamental right today,[35] and we have ignored it. It was not important fifty or sixty or seventy years ago. Today, it seems integral that every child have a right to a public, free and quality education. The right applies to every child, and it can create an American solution to an American problem that no one focuses on. It is not Republican, Democrat, or Independent. It becomes a central idea — espoused even by the current White House and its well-intentioned but poorly-executed No Child Left Behind program — that education is the foundation of our success and our survival.

I would like to close with some notes about Justice Marshall, the lead *Brown* litigator and a truly extraordinary man. While there are so many stories to tell about him, there are only two in particular that I want to mention demonstrating his vitality and commitment to a clearer view, a world view of justice and equality. Thurgood Marshall loved the law and deeply believed in it. In fact, he strongly disagreed with Martin Luther King, Jr. While he was quiet about it, he resented the fact that Dr. King was out in the streets using the political process rather than the court system to address some of the problems that needed to be addressed. He believed deeply that law was the way to change the system. Of course, it did not stop him from representing Dr. King several times in order to get him out of jail.[36]

Marshall told the story of the day the decision was issued. He was taking a taxi cab with an African-American driver in Washington. The driver said, "We got great news today."

---

34. *See* Peg Meier, *It's Up To You to Make King's Dream A Reality, Crowd is Told*, STAR TRIBUNE (Minneapolis), Jan. 16, 2001, at B3.

35. *See* San Antonio Independent Sch. Dist. v. Rodriguez, 411 U.S. 1, 35 (1973).

36. *See* OGLETREE, *supra* note 1, at 143 (noting Marshall's disapproval of and assistance to King).

Marshall responded, smirking, "Oh, yeah? What happened?" And the driver replied, "What happened? Supreme Court issued this great decision saying we're going to end segregation in America and Negroes are going to be treated fair like everybody else." And Marshall responded, "That's some great news. How did it happen?" The driver said, "Well, Dr. Martin Luther King went to court and he won this case." And here was Marshall in his greatest moment, hearing an uneducated black person reason the victor had to be King. Who else would have done it? Clearly, both Justice Marshall and Reverend King were both right. We need both the legal system and the political system to achieve true and sustained justice.

A few years ago before Justice Marshall passed away, he told me something equally as inspirational about his judicial philosophy. "I'm going to do what's right and wait for the law to catch up," he said. When I asked him if he was ever going to retire, he said he was going to serve a lifetime and that the only way he'd leave the Court would be if he were "108 and I'm shot by a jealous husband."

That did not happen. He did retire, but even in his retirement he left us with a message of resolve, a message to continue the fight and to not allow an election or a disappointment or a discouragement prompt us to forget about the struggle, time, and patience necessary to change America. Those words inspired me, and I will end with them, hoping they provide a sense of what we must do to take the legacy of *Brown* forward. He said:

> I wish I could say that racism and prejudice were only distant memories . . . and that liberty and equality were just around the bend. I wish I could say that America has come to appreciate diversity and to see and accept similarity.
>
> But as I look around, I see not a nation of unity but of division — Afro and white, indigenous and immigrant, rich and poor, educated and illiterate . . . . But there is a price to be paid for division and isolation . . . . We cannot play ostrich. Democracy cannot flourish amid fear. Liberty cannot bloom amid hate. Justice cannot take root amid rage . . . . We must go against the prevailing wind. We must dissent from the indifference. We must dissent from the apathy. We must dissent from the fear, the hatred and the mistrust. We must dissent from a government that has left its young without jobs, education, or hope. We must dissent from the poverty of vision and the absence of moral leadership. We must dissent because America can do better, because America

> has no choice but to do better . . . . Take a chance, won't you? Knock down the fences that divide. Tear apart the walls that imprison. Reach out; freedom lies just on the other side.[37]

I hope that each and every one of us will take that challenge and become part of the solution rather than part of the problem. We can knock down the fences that divide, we can tear apart the walls that imprison. We know that freedom is just on the other side for everyone in America. In taking up the challenge of *Brown*, we must make sure when *Brown III* is decided we are able to say: "Here is a decision practically reflecting our own views — that we can have one nation, indivisible, with liberty and justice for everyone."

That is what we can do, that is what we must do, that is what I implore our next generation to do for social integration.

37. CARL T. ROWAN, DREAM MAKERS, DREAM BREAKERS: THE WORLD OF JUSTICE THURGOOD MARSHALL 453-54 (1993) (certain omissions in original).