REMARKS TO THE NATIONAL BLACK LAW STUDENTS ASSOCIATION

The Honorable Alvin W. Thompson
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THE HONORABLE
ALVIN W. THOMPSON**

It is both a pleasure and an honor for me to have this opportunity to address you today as part of your 28th Annual Regional Convention. Thank you for inviting me. I find the theme of your convention, “100 Years After Plessy: No Longer Separate But Still Unequal,” to be a thought-provoking one, and I have enjoyed the process of mulling over the multitude of specific areas that could be addressed in relation to such a theme. However, I have decided that there are really two things that I would like to talk about, given the fact that I am addressing a group composed of African-American law students during the 100th anniversary year of the Supreme Court’s decision in Plessy v. Ferguson.¹

First, I want to look back. Then, I want to look forward. In looking back, I hope to help create a proper perspective with which to look at some of the developments in the last 100 years, including current events. Looking forward, and doing so with the expectation and knowledge that you, as highly educated and well-trained men and women, will be significant contributors to our society, I will be

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¹ 163 U.S. 537 (1896).
so presumptuous as to share with you some personal observations I hope will help equip you to be more effective in helping this nation achieve its ideal of equality, liberty, and justice for all. These observations will be based on my views on the historical events I will now touch on.

I. LOOKING BACK

Why look back? For me, looking back helps create perspective. Perspective is a valuable tool for helping one better understand current events and place them in context. It is obvious that I cannot cover in depth today even one important historical event affecting African-Americans over the past 100 years. Thus, it is my aim to simply comment on some aspects of a few events for the purpose of illustrating how far we, as a society, have come and how far we still have to go.

I am going to refer to three points in time—the first being the year 1896. I believe the opinion in *Plessy*\(^2\) gives us a fairly good picture of the state of affairs in this country at that time. The great principles that have inspired and been the basis for advances this country has made are articulated in the majority opinion, but there is also present in the majority opinion a simple inability to apply those principles properly, due, I believe, to a rather complex inability to get beyond the firmly embedded norms of the day. The Court said:

> The object of the [14th] amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and has been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which have been held to be a valid exercise of the legislative power even by courts of States where the political rights of the colored race have been longest and most earnestly enforced.

\(^2\) *Id.*
One of the earliest of these cases is that of Roberts v. City of Boston,\(^3\) in which the Supreme Judicial Court of Massachusetts held that the general school committee of Boston had power to make provision for the instruction of colored children in separate schools established exclusively for them, and to prohibit their attendance upon the other schools.\(^4\)

Later in the majority opinion, in reply to an argument by the plaintiff that the legal theory that would permit a state legislature to require railways to provide separate accommodations for the two races would also permit the state legislature to require separate cars for people whose hair is of a certain color or who are aliens or who belong to certain nationalities, the Court stated: "The reply to all this is that every exercise of the police power must be reasonable, and extend only to such laws as are enacted in good faith for the promotion for the public good, and not for the annoyance or oppression of a particular class."\(^5\)

Finally, the majority opinion cites with approval Yick Wo v. Hopkins,\(^6\) noting that the Supreme Court struck down in that case a San Francisco ordinance that regulated the carrying on of public laundries within the city limits because it was "a covert attempt on the part of the municipality to make an arbitrary and unjust discrimination against the Chinese race."\(^7\)

I hope you took note of the fact that in Plessy, the Supreme Court did not invent the concept of separate but equal. Others, including citizens of at least one of the states that was at the forefront of the abolitionist movement, had already implemented that concept. Please note also that we have in the majority opinion not only an articulation of the constitutional precept of equality before the law, but a reference to a clearly analogous case, the Yick Wo case, in which that principle was properly applied\(^8\)—plus the Plessy court's own admonition that the law should not be used to oppress or annoy a particular class or be used in a covert attempt to discriminate against a particular race.\(^9\)

How then can one reach the result reached by the Court in Plessy? One can reach that result only by accepting the prevailing

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4. Plessy, 163 U.S. at 544 (citation omitted).
5. Id. at 550.
6. 118 U.S. 356 (1886).
8. Yick Wo, 118 U.S. at 373-74.
norms of the day, i.e., that it was the very nature of things that distinctions based on color could never be abolished and that social equality could never be achieved. Thus, as the Court found, laws such as those at issue in Plessy did not necessarily imply the inferiority of one race to the other—there was no need to draw such an inference, because such inferiority was already commonly accepted wisdom.

I would be remiss if I did not commend for your reading Justice John Marshall Harlan’s dissent in the Plessy case, in which he notes that “the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the Dred Scott case.” Given my limited time today, I will touch on only one aspect of Justice Harlan’s dissent. After acknowledging the majority’s unstated view that the white race deems itself to be the dominant race in this country, and that it will continue to be so for all time, he adds: “[I]f it remains true to its great heritage and holds fast to the principles of constitutional liberty.”

But in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful.

Thus, in the world of 1896, the immutable inferiority of people of color was a given, and the only issue was whether that inferiority made it impossible for the Constitution to be color blind once one got beyond issues relating to political rights. Given such a situation, it is difficult to see how this country in 1896 could have met the challenge of affording all its citizens equal protection under the laws.

I now want to “fast forward” to the Civil Rights Movement of the 1950s and ‘60s. In so doing, I am all too conscious of the fact that I am neglecting to comment on many events and individuals that provide a valuable perspective on the past, such as the black calvary on San Juan Hill and the troops involved in the 1906 inci-

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10. Id. at 559 (Harlan, J., dissenting) (referring to Dred Scott v. Sanford, 60 U.S. (19 How.) 393 (1856)).
11. Id.
12. Id.
13. Id.
dent in Brownsville, Texas; Booker T. Washington and W.E.B. Du Bois; James Weldon Johnson and the Harlem Renaissance; and the African-American troops who fought and died in both world wars and in Korea, helping secure a freedom whose fruits they were often denied.

However, I want to talk about an aspect of the Civil Rights Movement of the 1950s and ‘60s that I find particularly striking, and that is the fact that we, as a nation, could not come to a consensus that change in the area of race relations was not only long overdue but desperately needed—if for no other reason than the fact that people were giving their lives, here at home, in the cause of freedom, such a short time after so many Americans had given their lives abroad in the same cause. The majority of those listed on the Civil Rights Memorial,14 constructed by the Southern Poverty Law Center, are African-Americans, but as a group they represent a cross section of America—average Americans not different in any material way from the people in this room:

- They include blacks and whites. For example, Lamar Smith, a black Mississippi veteran of World War II, who was murdered on August 13, 1955 in Brookhaven, Mississippi, for organizing black voters, and William Moore, a white mail carrier originally from Binghamton, New York, who was slain on April 23, 1963 in Attalla, Alabama, while engaging in a one-man march against segregation.

- They include Christians and Jews. For example, James Chaney and Mickey Schwerner, civil rights workers who were abducted and slain on June 21, 1964 by Klan members in Philadelphia, Mississippi.

- They include Northerners and Southerners. For example, Jonathan Daniels, a seminary student from Keene, New Hampshire, who was killed by a deputy sheriff on August 20, 1965 in Hayneville, Alabama, after having been jailed for participating in a protest march, and Samuel Younge, Jr., a student civil rights activist from a prominent black middle-class Tuskegee family who was killed on January 3, 1966 in Tuskegee, Alabama, in a dispute over a whites-only restroom.

- They include men and women. For example, Vernon Dahmer, a wealthy black businessman and community leader in Hattiesburg, Mississippi, who was killed in a Klan bombing in Hattiesburg, Mississippi, on January 10, 1966 in retaliation for his work

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in support of voting rights and Viola Gregg Liuzzo, a thirty-nine year-old mother of five from Michigan, who was killed on March 25, 1965 by Klan members while transporting civil rights marchers in her car on Selma Highway in Alabama.

- They include older adults and children. For example, Ben Chester White, a sixty-seven year-old caretaker on a plantation in Natchez, Mississippi, who was killed on June 10, 1966 by members of the “White Knights,” who had decided to kill a black man—any black man and Denise McNair, a twelve year-old school girl killed on September 15, 1963 in the bombing of the 16th Street Baptist Church in Birmingham, Alabama.

It is obvious that these people, and others like them, made a great sacrifice in the context of the Civil Rights Movement. But I suggest that for most of them it would be appropriate to step back and look at them in a broader context—a more accurate perspective—and that it would also be appropriate to look at all of those who worked in the Civil Rights Movement in this broader context. I suggest that they are most appropriately viewed as American patriots who gave their lives in the cause of justice, equality and freedom—for the principles of equal protection and liberty contemplated by our Constitution. I therefore suggest that theirs was not just a contribution to the Civil Rights Movement and to African-Americans, but a contribution to all Americans. Let me tell you why I believe this is so.

I believe it is a very natural human trait to fall into a pattern for handling a particular type of situation (one might call it a methodology), and to then use that methodology when forced to confront a new and different situation. Witness how, in the Civil Rights Movement, lawlessness in dealing with black southerners translated, all too easily, into lawlessness in dealing with white northerners. So it seems to me that to the extent that we allow any group in our society to be treated as less than equal, a very real danger exists that other groups will also be marginalized by people who have become comfortable with the idea that not all of us are equal.

I believe the converse is also true. It seems to me that the struggle for equal rights that took place during the Civil Rights Movement focused this country’s attention on the ideal of liberty and justice for all, and that in turn, this mind-set helped create the environment in which we, as a nation, began to make meaningful progress toward the goal of equal treatment for women. I believe this development, in turn, has inspired those who have sought to
eliminate discrimination on the basis of other characteristics, for example, physical disabilities and sexual orientation. Thus, I believe that any time a group that has been marginalized succeeds to some degree in removing barriers to equality, not only do we as a nation come closer to achieving our goals of liberty and justice for all, but some other group begins to think, "if they can do it, so can we," and is stimulated to act.

Thus, I see the legacy of these individuals who lost their lives, as well as the legacy of those who survived the perils of being involved in the Civil Rights Movement, as being a gift to the nation as a whole, not just to those who were the most obvious beneficiaries of the Civil Rights Movement.

The third point in time I want to focus on in helping create a perspective is here and now. These are interesting times. One could use current events to argue any number of positions about the extent to which we as a nation have been successful in creating an environment in which invidious discrimination is a thing of the past. On one hand, you can look at the substantial support for a presidential run by General Colin Powell and other areas where African-Americans have made significant gains. On the other hand, you could look at the January 29, 1996 Hartford Courant, which commented on racist attacks by students at the Berlin High School on the only African-American teacher at that school—and one could consider that this type of incident does not appear to be an isolated one.

Not too long ago, however, I read the Summary Report of the National Conference Survey on Inter-Group Relations, which I thought contained some remarkable findings as to the current state of race relations in this country, and, thus, points toward some of the major challenges we as a nation must meet. The authors of the report thought that much of the report was "disquieting." America was revealed to be "a divided nation."

In general terms, the report found that America’s people of color are united by a collective sense of discrimination, but that

17. Id. at 1.
18. Id.
whites believe equal opportunities abound.\textsuperscript{19} The report also found that "prejudice knows no color."\textsuperscript{20} It documented "for the first time the extent to which America's largest and/or fastest growing minority groups harbor strong negative prejudices towards each other."\textsuperscript{21} The report stated:

Indeed, despite their shared sense of victimization by whites, the truth is that minorities are more likely than whites to agree to negative stereotypes about other minority groups. It appears as if the more diversity and burgeoning minority groups there are present in American society, the more prejudices we must overcome.\textsuperscript{22}

The study concluded, however, that "whatever negative perceptions groups have about each other, many of the prerequisites of tolerance and inter-group cooperation are present in today's America: respect for the differences among us and a commitment to increased understanding of those differences."\textsuperscript{23} There also appeared to be substantial agreement on at least one highly pragmatic reason to work together toward a fairer society—enlightened self-interest. An overwhelming \ldots majority of Americans agree that "If America wants to be competitive in the world, it is in our self-interest to educate and give job training to racial minorities." Very high majorities of 94\% of African Americans, 92\% of Asian Americans, 92\% of Latino Americans, and 84\% of whites stand together on this point.\textsuperscript{24}

Although not what we want it to be, the National Conference's study reflects a materially different state of affairs than existed 100, or even thirty years ago.

\section*{II. Looking Forward}

Based on the particular events or situations I have discussed, and also looking forward, I have several personal observations that I would like to make, related to things I hope you will do, in the hope that they give you some ideas or insights that prove useful to you at some point.

\begin{thebibliography}{9}
\bibitem{19} Id. at 4.
\bibitem{20} Id. at 5.
\bibitem{21} Id.
\bibitem{22} Id.
\bibitem{23} Id. at 9.
\bibitem{24} Id.
\end{thebibliography}
Observation Number One

African-Americans must stand in opposition to all forms of prejudice, not just racial prejudice or prejudice against African-Americans. Not only is it the right thing to do, but I note (for the benefit of any who prefer an analysis based on enlightened self-interest) that it is almost certain (at least if one accepts my theory on patterns of human behavior) that to the extent any prejudice exists in this country in the future, racial prejudice against African-Americans will exist. For whenever we allow any group in our society to be denied respect or freedom, the seeds are sown for other groups to receive the same or similar treatment. In addition, you may very well find that something you help achieve in terms of elimination of prejudice against some other group turns out to be the catalyst for a great step forward for African-Americans.

Observation Number Two

African-Americans, having learned (or lived through) the lessons of our history, should have a strong commitment to the idea of a diverse and pluralistic society where everyone is evaluated based on who they are and what they do, not based on how they look or some similar attribute. We should have a commitment to reaching out to include "outsiders," whether or not those outsiders happen to be African-Americans, as well as a heightened sensitivity to the need to promote ways of doing things in our society that make it possible for a diverse group of people to be successful.

Observation Number Three

One must be keenly aware that African-American women are required to deal not only with the challenges confronting them because of their race, but also with those confronting them because of their gender. Thus, as long as women have not achieved equality in our nation, a significant portion of the African-American population will have failed to do so, notwithstanding the fact that they too have made contributions in the struggle for equality.

Observation Number Four

One should have lofty goals but realistic expectations and be persistent. The problems we must overcome to achieve equality are deeply embedded in our society. If there was an easy or a simple solution, it would have been implemented by now. So you should not expect your efforts to result in immediate or spectacular suc-
cess. On the other hand, the seemingly intractable nature of the problems we face must not lead you to allow yourself to become satisfied with anything less than full equality. When things go badly and frustration comes, try not to dwell on the fact that you have encountered problems. Rather, try to focus your energy on finding solutions.

Observation Number Five

The law plays an important, yet limited role in the struggle for equality. Laws set forth the standards of our society. Sometimes those standards reflect lofty goals and aspirations, sometimes not—as in the case of Plessy25 and the statute at issue there. Statutes and court decisions can provide a rallying point to those who seek to create a more just society or they can provide comfort for those who want to maintain the status quo or turn back the hands of time. Sometimes changes in society must occur, so that lawmakers and courts are dealing with different factual predicates based on their experiences in life, if they are to see the need for changes in the law or change their understanding of constitutional principles.

Moreover, there are limits to those principles. The Constitution does not mandate equality as such; it guarantees liberty, due process and equal protection of the laws. Thus, there is much to be done outside the realm of the law if African-Americans are to reach the goal of equality.

Observation Number Six

Because this is a nation of laws, you will be (and, in fact, already are) in a position of privilege—a position where you will have a greater than average ability to help advance the cause of equality, liberty and equal protection. You will be asked to make sacrifices but, most likely, not sacrifices of the magnitude made by some in earlier generations. When it seems too hard or too inconvenient to make the sacrifices asked of you, remember the sacrifices of your predecessors and reflect on where you would be now had they not made sacrifices in their time for the cause of freedom.

Observation Number Seven

I believe knowledge of history is important—not just the history of African-Americans, but the history of all groups that have

been subjected to prejudice and history in general. There are lessons to be learned from history. There is also an understanding to be gained as to the things that motivate or shape the outlook of people who are different from you but with whom you must deal. In addition, history should help one place one's own situation in a proper perspective, and neither minimize nor overstate the nature of the challenges one faces.

Moreover, a knowledge of history puts one in the position to teach that history to others. I believe that we have quite a void in this country in terms of knowledge of African-American history. I also believe that anyone who learns about the many contributions by African-Americans to this country, and anyone who really understands Booker T. Washington, W.E.B. Du Bois and Marcus Garvey, or Martin Luther King, Malcolm X and Eldridge Cleaver, would have a difficult time holding onto stereotypes, not just with respect to African-Americans, but with respect to any group of people.

*Observation Number Eight*

One should develop the habit of critically evaluating traditional ways of thinking about things before accepting them. What I hope I illustrated by pointing out that those who made sacrifices during the Civil Rights Movement were "American patriots" who made a contribution to all Americans is that we too often compartmentalize people, situations and/or events, and as a consequence, fail to fully appreciate their significance. By critically evaluating traditional ways of thinking about the African-American experience, I believe we will develop new perspectives that can help explain how things that, at first blush, may seem relevant only to the African-American experience, are things that involve the interests of society as a whole, and accordingly, are of greater value to society as a whole.

*Observation Number Nine*

As you embark on legal careers, it will become very easy for some of you to lose touch with the less affluent members of our society and to develop a lack of understanding of their concerns and needs. I urge you to take steps to make sure that this does not happen to you. If you take such steps, I can assure you that your life will be richer for it, and you will be a more effective agent for change leading to equality in our society—for I believe you will
have a better understanding of the import of Justice Harlan’s words when he wrote that in the view of the Constitution the “humblest [citizen] is the peer of the most powerful.”

Observation Number Ten

One should always be on the lookout for evidence of any bias or prejudice one may have. I believe that almost all of us hold some type of bias. I think it is helpful to try to understand how one comes to have these ideas, and once one develops an understanding of how the human mind falls into such patterns of thought, use that understanding as a tool in dealing with others whose biases you are trying to eliminate. I believe it also helps one to bring to a discussion of another’s flaws the proper degree of humility about one’s own flaws.

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I look at what I see before us as we strive to create a society where there is liberty and justice for all and where there is equal protection under the laws, and I see quite a challenge. We have come quite a way, and we have quite a way to go. However, I find inspiration in the words of James Baldwin. In The Fire Next Time, he noted that it is proper to ask us to try to achieve even the impossible because “one is, after all, emboldened by the spectacle of human history in general, and American Negro history in particular, for it testifies to nothing less than the perpetual achievement of the impossible.” I concur.

Thank you for your attention.

26. Id. at 559.
28. Id. at 140.