

THE CIVIL RIGHTS ERA: A LOOK BACK BY THOSE WHO LIVED AND LITIGATED THROUGH IT

PROF. WERMIEL: It is my pleasure, before we start the next panel, to welcome the Dean of the Washington College of Law, Claudio Grossman, who was at another wonderful event the law school was doing yesterday at the Library of Congress on the important issue of voting rights and the ability of people to vote around the world. Democracy and voting was an essential attribute of it.

So, he couldn't be with us here yesterday, but is delighted to be with us today.

Let me welcome Dean Claudio Grossman.

(Applause)

DEAN GROSSMAN: Thank you, Steve. I wanted to be here and welcome everyone to the luncheon that's taking place during the Conference on the Quest for Equal Educational Opportunity. Many of the speakers and the key leaders participating in the conference really have created an extraordinary and a unique opportunity to enhance our understanding as to how we can better achieve the goal of educational opportunity for all, irrespective of race and personal economic status.

I want to also thank Steve for taking the initiative of organizing this conference. . . . The conference is taking place, as Steve was saying, in the middle our Founders' Celebration. The school hosts around forty events addressing key issues of our time during our Founders' Celebration. The theme of our Founders' Celebration this year, "Justice For All," could not be more important for this conference. We all know that to achieve justice for all, education plays undoubtedly a crucial role.

Now, during this couple of months we will have around forty conferences, attracting around 5,000 judges, academics, lawyers, and the public in general. These conferences reflect the continuous beliefs of this institution in the mission of its founding mothers, Ellen

Spencer Mussey and Emma Gillett, who in 1896 created the Washington College of Law when women were not allowed access to legal education.

[For our Founding mothers, rejecting gender discrimination and providing access to the liberating power of legal education] was crucial. Their beliefs continue to inspire us. Building on their message that knowledge of the law was essential to achieve gender equality, our school, while continuing to address issues of gender, has broadened its mission. We now also cover race, economic and social status, peace and security, and all relevant issues of our time—promoting the powerful idea that law and legal institutions are a fundamental vehicle to examine them and contribute to a solution that is just.

Let me finalize my remarks, stressing the importance of the issues [of] this conference, from a different perspective. In our own educational experience, we have seen the importance of diversity. We live in a world that speaks different languages and has different cultures and religions. We don't know how you can educate anyone if you do not anticipate our world in the classroom and in the corridors of the law school. From that perspective, . . . you cannot be educated well unless there is education for everyone.

In that spirit, which is the spirit of our founding mothers, I want to welcome you to this conference and express the hope that we will continue along this road of strengthening our legal system. . . .

Thank you again for your presence here.

(Applause)

PROF. WERMIEL: Thank you, Dean Grossman.

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The panel that we're going to do now is intended deliberately to be something different and intended very much, I hope, to be inspiring, particularly to the law students in the room.

This is not intended to be a doctrinal panel. It's intended to be a reminiscences panel. I said to our speakers today that contrary to the usual warning when you are going to a conference—moderators and organizers will say, "Well, don't just come to this conference and tell war stories. You know, we want some substance and some doctrine."

I said exactly the opposite for this panel. I said I want you to come to this conference and tell war stories. There is so much history in this room—and that's not an inappropriate comment on the age of the panelists.

(Laughter)

PROF. WERMIEL: There is so much history in this room that it would be a shame to end the day without hearing some of it and feeling some of it from people that lived through the civil rights era, from people that lived through *Brown* and what it tried to accomplish. So, that's what we hope to do for a few minutes now.

Let me just remark briefly that in a 1994 book called *Crusaders in the Courts*,¹ the former NAACP Legal Defense Fund counsel and protégé of Thurgood Marshall, Jack Greenberg, talked about the young women and men who, as lawyers, fought for the civil rights of blacks and of all Americans. It was, he said, their "qualities of courage, character, selflessness and dedication that originally drove these young people to enlist their precious time and talent in the service of others. . . ."²

Some of those young crusaders, as I have already suggested, have aged a little bit, but we thought it would be worthwhile trying, for a short time, to depart from the last discussion and to learn from their experience.

The reason is that, as Jack Greenberg also suggested in *Crusaders in the Courts*, the generation that we are about to talk to right now on this panel "fought and won the last civil rights revolution," but there is now a need for a "new cadre [who] will be among those fighting the battles to follow; the battles for equality in fact, not merely equality in law."³ So, we hope that this will in part inspire you to be that new cadre.

I'm just going to do very brief introductions because I hope that we will learn more about our three guests as part of this discussion.

Before I introduce them, let me finally just say that it is a little bit intimidating, but also awe-inspiring to have this conversation in the presence of Mrs. Thurgood Marshall who obviously lived through every minute of what we are about to discuss right now.⁴

Joining me on the panel are Judge Nathaniel Jones, who left the U.S. Court of Appeals for the Sixth Circuit last year to go back into

1. JACK GREENBURG, *CRUSADERS IN THE COURTS: HOW A DEDICATED BAND OF LAWYERS FOUGHT FOR THE CIVIL RIGHTS REVOLUTION* (1994).

2. *Id.* at 522.

3. *Id.*

4. The life work and legacy of Thurgood Marshall has been celebrated in a great many books and journals, including: MARK TUSHNET, *MAKING CIVIL RIGHTS LAW: THURGOOD MARSHALL AND THE SUPREME COURT, 1936-1961* (1994); RANDALL W. BLAND, *PRIVATE PRESSURE ON PUBLIC LAW: THE LEGAL CAREER OF JUSTICE THURGOOD MARSHALL 1934-1991* (2d ed. 1993); CARL T. ROWAN, *DREAM MAKERS, DREAM BREAKERS: THE WORLD OF JUSTICE THURGOOD MARSHALL* (1993); MICHAEL D. DAVIS & HUNTER CLARK, *THURGOOD MARSHALL: WARRIOR AT THE BAR, REBEL ON THE BENCH* (1992); ROGER GOLDMAN & DAVID GALLEN, *THURGOOD MARSHALL: JUSTICE FOR ALL* (1992).

private practice, has a long history as a civil rights lawyer, and in particular spent a decade as the General Counsel of the NAACP. We have heard him eloquently talk about the *Milliken v. Bradley*⁵ case and hopefully we'll hear about some of his other experiences as well.

The Honorable Damon Keith, a Judge of the U.S. Court of Appeals for the Sixth Circuit. He has been a judge since 1967, was on the U.S. District Court in Michigan from 1967 to 1978, and then joined the Sixth Circuit and has been there since and also has a long background of civil rights experience in Detroit and beyond prior to his tenure on the court.

Finally, William Taylor, who began his civil rights experience working for Thurgood Marshall at the NAACP in 1954 and, just to mention a couple of his accomplishments, also spent a long period as General Counsel and then Staff Director of the U.S. Civil Rights Commission back when it was unambiguous that the U.S. Civil Rights Commission did care about civil rights and also has done extensive work for the Leadership Conference on Civil Rights and many other causes and organizations too numerous to even try to list.

I hope that we are just going to turn this into a dialogue, but let me start with a question to Judge Keith and see if you could try to think back to what you might describe as your first civil rights experience.

JUDGE KEITH: Well, Steve, you may not want to call this one an old man's panel, but we have many years between the three of us as friends and as litigators and as lawyers who have been involved in the struggle.

Last night, I touched on my experience as a lawyer and I'd like again just for a few minutes, with your permission, to seek to say what developed my theory of using the law as an instrument of social change. I indicated it was Howard University where this happened.

But I returned from World War II as a young man having served in World War II in Germany, in France, in England, to save democracy. I came back to this country once the war ended and saw German soldiers riding in the front of the buses and going into restaurants as I drove, as I was on buses in Virginia and around through the south.

I was very much concerned about what this meant to me as a young man and what I was fighting for as a soldier in World War II. My outfit was an all-black outfit in Germany and in France and in England. The lieutenants were white. The captain was white. All of the orders that came down from the officers were white. This was

5. 418 U.S. 717 (1974) (holding that federal courts may not order a multidistrict remedy for *de jure* segregation occurring within a single school district).

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very demeaning as well as frustrating to me as a young black man who had finished college and who was fighting for democracy.

When I came back from World War II, I was deeply concerned about what I could do as a man to help resolve some of these problems of democracy or the lack of it that I saw. I was encouraged by the then-President of the West Virginia State College, John W. Davis,⁶ to attend Howard University Law School. He said, "Damon, the frustrations that you are talking about are frustrations that blacks are going through all over this country and there are a group of black lawyers at Howard University Law School led by Charlie Houston and Thurgood Marshall and Bill Hastie and others who are devising a legal theory that will help make equal justice under law a reality." I went to Howard University Law School.

People ask me now, "What shaped your life in terms of your interpretation of the law?"

I always say, "Howard."

I liked the moot court we had last night here. I said how fortunate you students were to hear this debate as it relates to *Brown* and hopefully out of this group of young men and women a seed has been planted that will help to make democracy in this country work.

So, I had the privilege of studying under these giants at Howard Law School who were courageous, totally committed, didn't have any money, but knew that the Constitution of the United States must work and should work.

We used to sit as you sat last night and watch these brilliant law professors and scholars have moot court on cases that they would argue a month or two later before the United States Supreme Court. You can imagine how, as a student, we felt when Thurgood and Charlie Houston and Bill Hastie and those guys would say to us, "Now this case is going to be argued before the United States Supreme Court next month, we want your class to come down and hear this."

So, it instilled upon me, or in me, a total commitment, an unrelenting commitment to work to make equal justice under law a reality.

That's why in response to Professor Bell last night I said that I could speak for Thurgood and Bill Hastie and all those great giants that we should not give up on integration. They gave too much to

6. For insight into the career and leadership of John Warren Davis, see WILLIAM H. HARBAUGH, *LAWYER'S LAWYER: THE LIFE OF JOHN W. DAVIS* (1973). See also Sydnor Thompson, *John W. Davis and His Role in the Public School Segregation Cases—A Personal Memoir*, 52 WASH. & LEE L. REV. 1679 (detailing Davis's involvement in national civil rights activities).

fight for it. We cannot live separately. If we were to go down that road, it would be doing a disservice to all these men and women who fought to make democracy work.

Now, Steve, I just wanted to give that as a background. I don't know if I can get into something later, but I wanted to at least give the audience an idea of how I felt and my legal philosophy, as I interpret the Constitution of the United States.

PROF. WERMIEL: Thank you. Why don't we ask you the same question as to what is your first civil rights experience as a lawyer or earlier.

JUDGE JONES: Well, I appreciate this opportunity. I am on this panel with my mentor, Damon Keith, my colleague on the court and with Bill Taylor who has been my intellectual generator. Bill has been the person that we all turn to for intellectual stimulation. His mind is so fertile.

One of the few times at this stage of my life, I can say that I'm the baby of the group. So much of what I do now finds me so much older than my law clerks and my colleagues on the court and the people with whom I associate, I welcome this chance to be with my elders today.

(Laughter)

JUDGE KEITH: In response to that, Steve, I would like to say "the baby" is relative. When you say you are the youngest of the group and the group is all over seventy, you know what that means.

(Laughter)

JUDGE JONES: You see now why Judge Keith and I, who regard ourselves as brothers—and we are brothers and have been for years—how we have sustained it over the years. We are very close and we love each other as is true of Bill Taylor.

My early experience, I was thinking about that when you put the question to Judge Keith, I think it goes back to when I was a kid. My mother was a member of the ladies auxiliary of the segregated YMCA in my hometown. On Sunday afternoons the YMCA would sponsor—that branch of the Y—would sponsor a series of forum meetings. They would bring in nationally known speakers to address these issues. My mother would take me with her. I was eight or nine years old. I'd sit on the front row. That's when I heard Mordecai Johnson, who was President of Howard, and Walter White, and Dr. Benjamin Mayes—these giants.⁷

7. For a discussion of the lives of some of these civil rights activists, see LAWRENCE CARTER, *WALKING INTEGRITY: BENJAMIN ELIJAH MAYS, MENTOR TO MARTIN LUTHER KING, JR.* (1998). See also RICHARD I. MCKINNEY, *MORDECAI, THE MAN AND HIS*

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This was during a period when segregation was in vogue, when segregation was the law of the land. There was a means by which black people could get their batteries charged; that their faith could be sustained that there was a better day coming, that the system could be changed.

One of the persons there who was a participant, who was usually a presiding officer, was a black lawyer at Youngstown, Ohio by the name of J. Maynard Dickerson. He took a liking to me. He took me under his wing. So, through the years I became very close to him. When I was ten, eleven or twelve years old, I would hang out at his office, I would hang out at his home. He was President of the Ohio State Conference of NAACP Branches. He would convene meetings of lawyers who would discuss the various civil rights issues and cases that were about to be brought, or were being brought, in the State of Ohio.

The great thing I can remember just as though it happened yesterday—the buzz that went on whenever Thurgood Marshall was coming to town. You'd hear them on the phone. The lawyers around there in Youngstown, Ohio would say, "Thurgood's coming in. Thurgood's coming. Thurgood's coming in." That was exciting. Then when he would come for the meetings, I would be there. It was usually in somebody's home. He would come on a Friday evening. I was a kid. I was ten, eleven, or twelve years old. I just sat around.

Thurgood Marshall was a big teaser, as Mrs. Marshall would be first to admit. He was full of jokes. I don't care how serious the issue was, he could put a slant on it. He could make the whole thing look ridiculous. So, I grew up realizing how ridiculous segregation was, how ridiculous discrimination was.

I learned from those encounters. I learned from Thurgood Marshall, from Maynard Dickerson, and from the men with whom they were associated as a kid, "Do not let the system define you. Do not let people's perception of you by virtue of being of color be determinative. Define yourself. Respect yourself. Have self-esteem."

So, I grew up thinking that. I was really in my teens when I found myself challenging, along with others, practices of my hometown. They kept us out of bowling alleys, kept us out of skating rinks, and would have us go to the upstairs portion of the theaters. At fifteen and sixteen, I was involved in efforts challenging those practices.

So, that's my first recollection of being actively involved in trying to change the system. So, I cite that to indicate that the reach of Justice

Marshall and Charles Houston, who himself went around the country and organized cadres of lawyers, as Genna Rae McNeil pointed out so beautifully in her book on Charles Houston.⁸ He went around the country and he sensitized lawyers to be real soldiers and be real advocates. They reached Ohio and it was Maynard Dickerson, my mentor, who was caught up in that. Through him, I met Thurgood Marshall and through him, I met others.

So those are my early recollections of my being drawn into this whole struggle and I've been in it ever since.

PROF. WERMIEL: Bill, was going to the Legal Defense Fund your first experience or was there something earlier than that?

MR. TAYLOR: Well, I am inspired by my friends and colleagues. By the way, it's a great treat to be with them, with Nathaniel Jones and to be with Cissy Marshall. I congratulate you, Steve, on putting this together. I hope it's making real some of the history.

I'm impelled by what Damon and Nate said to go back a little further. In my own case, I grew up in Brooklyn in the thirties, forties, where I never saw a black face. I lived in an Italian-Jewish neighborhood and also encountered some of the anti-Semitism that was going on during that period, so I was a little bit sensitized to the question of discrimination.

Like the child of many immigrants in New York, I was terribly interested in sports. I was the fifteen-year-old sports editor of my high school newspaper in 1947 when Jackie Robinson broke into the major leagues.⁹ I won't go into the details. I wrote to him and asked for an interview. I got to see him, although I never really got my interview.

But as an avid Brooklyn Dodgers fan, I followed Robinson and followed the torment that he went through during his first year when he was not accepted by many of his teammates, when he was in constant fear of violence by fans, when people like Ben Chapman on the Philadelphia Phillies yelled racial insults at him all the time.¹⁰

I came, I think, to understand a little bit about racial discrimination that I had not understood from reading any books.

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

9. Jackie Robinson was the first African American to play major league baseball in the twentieth century. For a complete biography on his life, see ARNOLD RAMPERSAD, *JACKIE ROBINSON: A BIOGRAPHY* (1997).

10. The Philadelphia Phillies manager, Ben Chapman—a former Yankee and former Dodger—taunted Jackie Robinson in the dugout. For more information on these events, see ROGER KAHN, *THE ERA* 47 (1993).

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Anyway, I graduated law school in 1954 and I knew at that time that I wanted to use my legal degree for public interest purposes, but I really hadn't formulated anything specific yet. I thought I was going to be drafted. Well, it turned out I wasn't drafted for a while, so I wound up having to look for a job.

I was having dinner last night with a first-year student who was very interesting and I said at the end of the evening, good luck to her. She said to me very seriously that she thought if she worked hard enough and if her abilities were good she wouldn't need a lot of luck. I would suggest you do need some luck.

My wife was a third-year student at Columbia Law School at the time and one day Jack Greenberg came up to the school to talk about the *Brown* case which had been decided in May. She went up to him at the end and said, "You don't by any chance have any jobs at the Legal Defense Fund?"

He said, "Well, I think we have an intern job there." So I went tearing up there the next day and I got the job as the intern. It was, as some of you middle-aged people will remember—

JUDGE KEITH: Define middle age.

(Laughter)

MR. TAYLOR: It was a Prince Hall Mason fellowship that was sponsored by John Wesley Dobbs—who was a businessman in Atlanta and the father of the opera singer, Mattiwilda Dobbs, who was a great singer at the Metropolitan, one of the pioneers. So, I got that job. It was a one-year job, but I was lucky enough to stay for four. I think it was primarily because I loved Thurgood's sense of humor and laughed at everything he said—and he liked mine, too.

But the people in the office at the time were Thurgood Marshall; his deputy was Robert L. Carter, who subsequently became a judge of the Southern District of New York; Constance Baker Motley who subsequently became a federal judge on the same court; Jack Greenberg, who went on to a career at Columbia College and Columbia Law School; Elwood Chisolm, who was a Professor at the Howard University Law School; June Shagaloff, who was the Education Director; and myself.¹¹

Sissy told me last night that she was being asked by the Smithsonian for artifacts of that period and she said, "We don't have any artifacts." One artifact may have been the scruffy little office we worked in. Nobody would have believed, certainly not today, that that was where

11. For a thorough account of all those involved in the NAACP campaign, see RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY* (1975).

all these constitutional lawyers worked. I did bring with me, if anyone wants to look at it later, the original brief in *Brown v. Board of Education*.

But anyway, that's where we worked. The thing that made it possible was these cooperating lawyers around the country. You didn't ask me about that, but they were a wonderful group of people who often braved physical danger to carry out their work. It's too bad that we don't have a book just like Jack Bass's book about the federal judges who were so courageous,¹² about those lawyers. Wiley Branton used to tell their stories but he never wrote them down. Then there was also Thurgood's brain trust, which I'd love to talk about also when we get a little further down the line.

But lest you think this was an omnipotent group of people, one thing I will tell you is that I'd been there, I don't know, six months or eight months or so, and we had an office clerk named Ronnie. Ronnie was only eighteen years old, but he looked older. He looked like he was twenty-one. One day, in full sight of most of these lawyers, the New York City Police Department came to the door. I don't think Thurgood was in town. But in sight of everybody else, they arrested Ronnie. He was out of the door before any of us had recovered ourselves. Well, we then scrambled to get word to him that we were ready to represent him, whatever the case was.

Word didn't come back from his family. We found out that he had received some gifts from a woman and she claimed he hadn't returned them when their relationship terminated and she pressed criminal charges against him. Within a day or two, [the charges were dismissed and] it was all taken care of.

By the time Ronnie got back to the office we were a little bit peeved. We said, "Ronnie, we were ready to help you. Why didn't you call on us?" He had ultimately called on legal aid. He said, "I didn't want no civil rights lawyer. I just wanted to get out of jail."

(Laughter)

PROF. WERMIEL: Judge Keith, you said you had some other things you wanted to add.

JUDGE KEITH: Well, I would like to say this, Steve, it was a badge of honor when Bill and Nate and I came along to be active in terms of making equal justice under law a reality. If you will note the judges that were appointed—President Lyndon Johnson appointed Justice Thurgood Marshall and President Kennedy and President Carter and President Clinton—they actually looked for young males and females

12. JACK BASS, UNLIKELY HEROES (1981).

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of all religions and ethnicities who had been involved in trying to make the Declaration of Independence and the Constitution of the United States a reality.

Compare that to today—Bill or Nate and I and others who had been involved in the struggle would be called activists today and we wouldn't even be considered for a judgeship in this administration. It shows you the change of times or the tone of activity and the emphasis that is now being placed on what the qualifications are to become a federal judge.

I think that is something that these young lawyers here this afternoon and professors have to involve themselves in. The Federalist Society throughout this country, and I don't know if it's active very much here or not, Steve. It probably is.

PROF. WERMIEL: We have a chapter.

JUDGE KEITH: It goes out of its way, and you know, this is a free country, to say that we are moving too fast and we live in a colorblind society. We know that that's not true. We know that we do not live in a colorblind society.

What we should be concerned about is living in a color-conscious society. Judge Jones was just telling me about the fact that once he was on a panel dealing with the selection of a bankruptcy judge. The citizens' panel brought in the list of so many names and there wasn't a black person on the list.

Judge Jones said, "Hold it. This is not diversity. Why don't you have a black name on this?" They sent it back and Judge Jones said to Bill and to me that a black woman got on the list and she was eventually selected. That's being color conscious.

You young brilliant law students will have to be concerned about diversity and to see that people of all religions and ethnicities are represented at the table. You can do it within the law and you should do it within the law.

PROF. WERMIEL: I have questions for everybody and we are going to sort of jump around here a little bit in the time we have left.

Judge Jones, let's turn back to you. What were you doing when you were called to come be General Counsel of the NAACP?

JUDGE JONES: That was an interesting phase of my life. I had been Assistant United States Attorney for the Northern District of Ohio, having been appointed by Robert Kennedy. That was part of the commitment that the Kennedy Administration made, that it was going to diversify the Justice Department and I was an Assistant in Cleveland.

I left there to serve as Deputy General Counsel of the Kerner Commission.¹³ That was a commission that studied causes of the urban riots in the sixties. I just returned to the law practice in my hometown of Youngstown when I got a call from Roy Wilkins, one of my heroes, who was Executive Director of the NAACP, to come and talk with him.¹⁴ I thought he was going to offer me a job on his staff as an assistant or a director of some department or another. My framework to go was going to be a free trip to New York. I was going to have a little fun, stay overnight, see a play. During the interview I'd say at some point, "Thank you, but no thank you."

But I went in to sit with Mr. Wilkins and I was sitting beside him at his desk. I could not believe that this is a man who had been my hero, along with the others I had mentioned. We were talking and in his soft tone he was just talking about the association.

He said, "Young man, what I would like to do," he said, "I have observed you. I noticed your work with the Kerner Commission" and Mr. Wilkins is a member of the Kerner Commission. He said, "You are a son of the NAACP. You are a product of this organization. I'd like to offer you the position of our general counsel and ask you to come with us."

I'm thinking, "Oh my God." He said, "Don't decide today. You know, that's the job, the position that Thurgood Marshall held."

(Laughter)

JUDGE JONES: He said, "You know the great work of the legal department and Thurgood Marshall and we would really like for you to join us." He said, "I know it's a major decision that calls for you to uproot your family and move to New York" and so forth and so on. "But we would really like to have you."

He said, "Take your time. Here's my number" and he gave me a special phone number. "Call me if you have any questions." So, we talked a little further. He said, "You know, there will be a chance to travel. We have 1700 branches around the country. We are called upon for a variety of issues from people in these branches. You will be the legal advisor to the national board. You will be my legal advisor. You will advise the department heads. You will be in charge

13. NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (1968). President Lyndon B. Johnson created the Commission, otherwise known as the Kerner Commission, by Executive Order No. 11365 on July 29, 1967.

14. Roy Wilkins was an influential member of the NAACP and a civil rights advocate affiliated with Martin Luther King, Jr. For a complete biography, see ROY WILKINS & TOM MATHEWS, *STANDING FAST: THE AUTOBIOGRAPHY OF ROY WILKINS* (1982).

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of all the litigation.” But then he said, “But you take your time. Then maybe you would like to see our office.”

So, he took me on a little tour of the national office and he was introducing me to people. While I was there he said, “I want you to meet my young friend from Ohio.”

I said, “How do you do, how do you do.” I went all through the office. I left, took my bag, went out on the street, hailed a cab, went to the airport and went back home.

I said to my wife, “We’ve got a problem.” She said, “What’s the problem?” I said, “Mr. Wilkins offered me the job as General Counsel of the NAACP.” She said, “You didn’t take it, did you?” I said, “No, but it’s a tough decision.” So, I wrestled with it for a while and then I had an occasion to go to Cleveland and try a case in Cleveland. I asked to speak to a federal judge there who’s a friend of mine. I went into see him. I said, “I’d like to get your thinking.” I said, “I have a problem.”

He said, “What’s your problem?” I said, “I was in New York a few days ago and Mr. Wilkins offered me the job as General Counsel of NAACP.”

He said, “What’s your problem?” I said, “I don’t know what to do.” He said, “What’s your problem?” I said, “Well, you know, the law practice is going well. I’m making some money for the first time in my life. It’s fun.”

He said, “I don’t understand. How many General Counsels has the NAACP had?”

I said, “Well, I don’t know.” I said, “There was Houston and there was a volunteer lawyer before him named Margold.” I said, “There was Houston, there was Marshall, there was Carter.” I said, “There have been three.”

He said, “You would be the fourth General Counsel of the NAACP?”

I said, “Yeah.” He said, “How long ago was the organization founded?” I said, “It was founded in 1909.” He said, “What’s your problem? Do you realize that that’s a calling? To be asked to serve as the chief legal officer of an organization of that type is a calling. You don’t say no to a call. I don’t care how much money you are making.”

He said, “If you say no, you will forever wonder if you did the right thing and if you take it and don’t like it you can always walk away from it.”

So, the following day I called Mr. Wilkins and I told him I would accept it. I asked when I'd start and he said, "Well, whenever you want to."

So, that's how I got to the NAACP. I never had a moment's regret. It was transforming in terms of my career, my life, and my destiny.

So, I'm grateful to my good friend, Judge Frank Battisti who brought me back to some very fundamental first principles about how you decide what to do. When he reminded me, this was a white judge saying to a black man, to be asked to become General Counsel of the oldest and the largest and the most significant civil rights organization in the country was a call that sobered me up and that's what led me to become General Counsel.

PROF. WERMIEL: Bill, as we turn back to you, I think you have something you want to say, but let me also ask you a question, if you don't mind.

One of the things that I have been talking to my Constitutional Law class about, and I think other professors as well have been doing this, is the period after *Brown*, not just the implementation of *Brown*, but the use of *Brown* as the basis for desegregating parks and transportation facilities and theaters and so on.

Were you involved in the strategy and the thinking about that at the NAACP in those years immediately after *Brown* and could you shed a little light on those discussions and decision-making involved?

MR. TAYLOR: It would be too much to say I was involved in the formulation of the strategy. But I was involved in the execution of the strategy. I wrote briefs in cases involving transportation and public beaches and public golf courses.

The most challenging case that I remember was one called *Charlotte Park and Recreation Commission v. Barringer*,¹⁵ where I had the great privilege of working with Spottswood Robinson, who had been chief lawyer in the Virginia case and who went on, as many of you know, to be Dean of Howard Law School and also the Chief Judge of the Court of Appeals here in the District.¹⁶

15. *Charlotte Park & Recreation Comm'n v. Barringer*, 88 S.E.2d 114 (N.C. 1955).

16. Spottswood Robinson III (1916-1998) graduated from Howard University Law School in 1939. Over the following twenty-five years, he served as a faculty member and Dean at Howard, in private practice in Richmond, and as counsel to the National Association for the Advancement of Colored People ("NAACP"). He became a federal district court judge in the District of Columbia in 1964 and a judge on the U.S. Court of Appeals for the District of Columbia in 1966. For a biography, see Federal Judicial Center, *Judges of the United States Courts: Robinson, Spottswood William III*, available at <http://air.fjc.gov/servlet/uGetInfo?jid=1031> (last visited July 28, 2003).

Spot was just a meticulous thinker in civil rights. *Charlotte Park* was a case that involved a man who had left—a rich person, a white person in Charlotte who had, on his death, left a plot of land for a park in the City of Charlotte, but stipulated that should the park ever be open to black people, it would revert to his estate.¹⁷

I like to talk about winners, but that was the one case where I went to school with Spottswood Robinson on arguing the case and trying to make it appear as much like *Shelley v. Kraemer*¹⁸ as possible. We did not succeed in that case.¹⁹

But there were a succession of victories and even though the Supreme Court had made education seem like it was special in *Brown v. Board of Education*, without any sociological evidence about golf courses or beaches or anything else, the court struck down these cases in a series of decisions.²⁰

PROF. WERMIEL: The striking down of many of them was just by summary—did that surprise you back then? Do you remember?

MR. TAYLOR: Well, it's all very interesting because the other thing that happened during that period and that started about the same time was massive resistance because Eisenhower didn't support the decision, the Congress didn't support the decision.²¹

There was the southern manifesto. While this was happening we were also embattled with massive resistance and a series of anti-NAACP measures that had to be defended in the courts, which I also worked on. You know, lawyers being charged in the NAACP with soliciting litigation, running and capping, all those good terms, barratry, champerty, and the tax records [of the NAACP] being sought.

The interesting thing was I was a novice at all of this, but I think, and Dick Kluger's book²² says this as well, that Thurgood and Bob Carter and others had such faith in the law that they thought that winning *Brown* would bring all of these changes. It was only through

17. *Charlotte Park*, 88 S.E.2d at 117.

18. 334 U.S. 1 (1948) (holding that judicial enforcement of racial covenants constitutes state action).

19. *Charlotte Park*, 88 S.E.2d at 125 (asserting that a failure to affirm a racially restrictive reverter clause would deny defendant his rights under the Takings Clause).

20. See, e.g., *New Orleans City Park Improvement Ass'n v. Detiege*, 358 U.S. 54 (1958) (desegregating public parks); *Holmes v. Atlanta*, 350 U.S. 879 (1955) (desegregating public golf courses); *Mayor of Baltimore v. Dawson*, 350 U.S. 877 (1955) (desegregating public beach and bath houses).

21. For a complete discussion of congressional efforts to curb the Supreme Court, see C. HERMAN PRITCHETT, *CONGRESS VERSUS THE SUPREME COURT, 1957-1960* (1961).

22. KLUGER, *supra* note 11.

hard experience that [we all learned] what a struggle it would be to get the law enforced.

Can I go on and say some other things?

PROF. WERMIEL: Yes. We're running out of time, but I think we could extend for maybe five or ten more minutes.

MR. TAYLOR: Okay. Well, I wanted to pick up on a theme that Nate and some others, I think Damon did as well. We didn't make much money, but we sure had a lot of fun. Let me just read you a little portion about Thurgood's kitchen cabinet.

PROF. WERMIEL: What are you reading from?

MR. TAYLOR: I'm reading from Richard Kluger's book *Simple Justice*,²³ which is a great book. I would have to say everybody should read it. If you are reading one book, you should read that book.

It says, "He," Thurgood, "had another knack of incalculable value: he kept everybody feeling he or she was contributing and he reduced friction to a minimum among men who were in no way his intellectual inferiors.

"There was [Bob] Carter, careful and conscientious and efficient, keeping a thousand loose ends from getting knotted. There was [William] Coleman, a superb technician bringing his clinical intellect to bear on the language of the brief. There was Spottswood Robinson, habitually cautionary, battling fatigue and the loud, bold policy-forging of Bob Ming. Recalls one regular at NAACP councils: 'Ming might say, "They *got* to listen to us" and Spot would say, "No, they *don't* got to listen to us. . . ."' For all the dogmatism of his style, Ming's mind was supple and his position on the cases fluid, and Marshall knew how to get the most out of him. . . ."²⁴

He knew how to get the most out of everybody. These were wildly disorganized sessions. I often wondered what was going on, but when they were over Thurgood had picked out the three or four points that were most important to him in preparing for an argument.

"Marshall knew how to get the most out of him—and when to stop taking. Others added vital ingredients. [Jim] Nabrit supplied 'a kind of drive and poetry' to the sessions, remarks another insider."²⁵ [I remember that] he always told Thurgood at the end of the sessions, "Remember, you have to wrap yourself in the flag when you go before the Supreme Court before the argument is over."

23. *Id.*

24. *Id.* at 642.

25. *Id.*

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“And a pair of youngish Columbia professors, Jack Weinstein and Charles L. Black, Jr., brought, besides their insights, first-rate writing skills to the home stretch drive.

What struck Weinstein and Black was Marshall’s great gift for keeping his crew feeling good. ‘I never had so much fun in my life as during those sessions,’ remarks Black.”²⁶

JUDGE JONES: We talked about what happened before we became judges and what our experience has been, but I think it might be helpful to understand what happens once you become a judge. When Judge Keith was appointed U.S. District Judge for the Eastern District of Michigan and heard many cases that are of historic note, but I think, Judge Keith, would you mind sharing your experiences when you were deciding and trying the Pontiac School case,²⁷ what you underwent, you and your family?

I think it’s important for us to understand that side of it because you have not talked much about it.

JUDGE KEITH: Well, thank you, Nate. The Pontiac School was a case that was instituted by the Pontiac NAACP. It dealt with, for the first time, *de facto* segregation.

In the Sixth Circuit, the *Deal* case was a case that was decided by the Sixth Circuit as it related to black schools and black teachers in schools of whites, like that.²⁸

So, Judge John Peck who wrote the opinion in the *Deal* case said that the schools in Cincinnati are segregated generally, but it’s through no fault of the school system.²⁹ There was no legislative action and no school activity.

So, for the first time I was faced with a case where the Pontiac school system was segregated and the NAACP lawyers brought up facts and had people testify that the school board, as well as the superintendent of schools in Pontiac, was actually involved in gerrymandering the school system.³⁰ When blacks would move into a certain area, then they would redraw the lines and they did this.

So, I had the opportunity for the first northern school cases, Judge Jones knows, to make this distinction, noting that I knew the Sixth

26. *Id.*

27. *Davis v. Sch. Dist.*, 309 F. Supp. 734 (E.D. Mich. 1970).

28. *See Deal v. Cincinnati Bd. of Educ.*, 419 F.2d 1387, 1391 (6th Cir. 1969) (holding that the Constitution did not impose an affirmative duty to bus white and black children to achieve racial balance in the Cincinnati schools).

29. 244 F. Supp. 572, 579 (S.D. Ohio 1965) (holding that the evidence failed to show that black students were deprived of their rights under either the Constitution or applicable civil rights laws).

30. *Davis*, 309 F. Supp. at 739.

Circuit was bound by the *Deal* case, that was the law of our circuit. But factually we had this case in Pontiac where the school board, the superintendent of schools were actively involved in perpetuating racial segregation, not only of the schools but of the staff.³¹

So, after about two months of hearing this case, I found, for the first time in a northern case, that Pontiac was guilty of *de facto* segregation and that the school board and the superintendent of schools were actively involved in that.³²

After that decision it was hectic. The Ku Klux Klan in Pontiac dynamited about ten or fifteen buses up there in Pontiac. The Ku Klux Klan had stated that they were going to kill me, so I was under marshal supervision.³³

Irene McCabe led an opposition to busing and they had a walk all the way to Washington on this. It was a hotbed of racism. But the Court of Appeals affirmed and the Supreme Court denied cert.³⁴ So that case stood up.

But Judge Jones, I think, out of all of this I was taught at Howard by these great men—Thurgood, Spottswood, and Charlie Houston—that you must have courage. If I can leave anything with you youngsters it is that you should be able to leave the comfort zone. Man will never discover new oceans unless he has the courage to lose sight of the shore.

You young brilliant minds have to, one, have courage of your convictions and number two, stand up for what you believe in because there's going to be turbulence.

I had around-the-clock protection around my house. I didn't let my wife, Rachel, and the children know about it. But she eventually found out. She saw the cars circling the house all the time.

But I think the courage is something that I want to—and to be innovative. I would like to say this in terms of one more act, and I don't want it to be self-serving, but it goes along the line that Judge Jones and Bill Taylor are talking about.

I had the case dealing with the Fourth Amendment where President Nixon and John Mitchell were wiretapping without prior judicial approval.³⁵ I drew that case. The theory of the defendants in

31. *Id.* at 741-42.

32. *Id.* at 744.

33. See Blanche Bong Cook, *A Paradigm for Equality: The Honorable Damon J. Keith*, 47 WAYNE L. REV. 1161, 1197 (2002) (discussing the events surrounding the Pontiac school case).

34. *Davis v. Sch. Dist.*, 443 F.2d 573 (6th Cir. 1971), *cert. denied*, 404 U.S. 913 (1971).

35. *United States v. Sinclair*, 321 F. Supp. 1074 (E.D. Mich. 1971).

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that case was that the government had been wiretapping without having gotten a warrant.³⁶

The defense of the government was that under the guise of national security they wouldn't need a warrant; they could unilaterally determine what was in the interest of national security.³⁷ I said, "Hold it, you can't." You have to go to a magistrate and show probable cause and if the magistrate says he should issue the warrant, he should do it.

They said, "No, we don't have to do it." Ironically, as I was hearing the case we had a judges' meeting the first Monday at the District Court every month. I was going over this. It was a lot of newspaper thing.

The judges of my court said, "Now, Damon, you know that you are wrong on this. If the Attorney General and the President of the United States can't determine what's in the best interests of national security, how in the hell can you as a little federal district judge make that determination?"

I said, "Well, but they have to abide by the law. They have to go to a magistrate and show probable cause." So, I made this decision and President Nixon and John Mitchell went to the Court of Appeals and the Court of Appeals affirmed me two-to-one.³⁸ Judge Edwards wrote the opinion with Chief Judge Harry Phillips concurring.

Then the government mandamused me to the United States Supreme Court. They were so sure of their victory and that's why they call it the Keith case. So, they went to the Supreme Court and the Supreme Court unanimously affirmed my position.³⁹ It broke Watergate wide open. That was the Keith case.

When I went back to the judges' meeting, the New York Times had a big story. The judges in my court said, "Well, Damon, we knew you were right all along."

(Applause)

PROF. WERMIEL: I'm going to take two more minutes here and ask for one more story because it's a wonderful story that I think Bill Taylor wants to tell about Judge Jones. Then I think we'll have to take a little break before the next panel.

MR. TAYLOR: Well, you asked Judge Jones how he became NAACP counsel, but I think there's also an interesting story about

36. *Id.* at 1076.

37. *Id.*

38. *United States v. United States Dist. Court for E. Dist. of Mich.*, 444 F.2d 651 (6th Cir. 1971).

39. *United States v. United States Dist. Court for E. Dist. of Mich.*, 407 U.S. 297 (1972).

how he became a judge of the Sixth Circuit which also illustrates—somebody said to me, “We need a strategy.” Well my strategy proposal of the day, [which I put forth half-seriously] is the strategic use of anniversaries.

In 1979 Nate Jones was the dynamic General Counsel of the NAACP. It was during the Carter Administration and he was much talked about as a candidate for the Sixth Circuit. But things got complicated and drawn out. The two Senators were not seeing eye-to-eye, not about Nate, but about judicial appointments in general, Metzenbaum and Glenn.

Then, of course, the NAACP had opposed the nomination of Griffin Bell to be Attorney General in the Carter Administration, so Nate may not have been the most popular person on Griffin Bell’s list. But a few of us in the Leadership Conference thought this would be an important thing to do. Carter had committed himself to a twenty-fifth anniversary celebration of *Brown v. Board of Education* at the White House.

He did some good things in civil rights, but he didn’t have a whole lot to announce. So, we pushed very hard that he would get noticed and make history if he would use that occasion to appoint Judge Jones. Sure enough, he did. So, it’s a nice story with a happy ending.

I have one more story on my strategic use of anniversaries and that is that one of the cases I have had in more recent years is the St. Louis school desegregation case,⁴⁰ where we eventually did get metropolitan school desegregation. But in the eighties when I took on the case our chief opponent was John Ashcroft who was then the Attorney General of the State of Missouri and who judges threatened with contempt regularly for his defiance of the law. They didn’t actually enforce it.

He was followed by a fellow by the name of Jay Nixon who took mostly the same position on things and indeed [Nixon wanted to end the case] and in the State’s response he said he wanted to bring 13,000 black students back from desegregated suburban schools where they were doing well. He promised them brand new schools in the central city, brand new segregated schools.

I was quoted as saying that he was worse than the people in the fifties who were promising brand new schools because their students had never had the experience of going to desegregated schools.

Anyway, in September 1997, President Bill Clinton went down to Little Rock to celebrate the 40th anniversary of *Cooper v. Aaron* case⁴¹

40. See *Liddell by Liddell v. Bd. of Educ.*, 126 F.3d 1049, 1057 (8th Cir. 1997) (refusing to allow the state to suspend its program to desegregate its schools).

41. 358 U.S. 1 (1958) (denying the request of the Little Rock School Board to

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and he made a wonderful speech, in which said that the alternative to integration is disintegration.⁴²

Jay Nixon had announced he was running for the Senate from the State of Missouri. The next day it was announced almost in the same edition of the newspaper where Clinton's speech was being reported that Clinton was going to go to St. Louis to support the candidacy of Jay Nixon, the out-and-out segregationist.

So, I called up Congressman Bill Clay who was a staunch, long-time Congressman, and I said, "Bill, did you see this? Can this be allowed to happen?"

He said, "No. You write me the strongest letter that you can muster and I will sign my name to it and send it to the President." Those of you who know Bill Clay know that he didn't [like to mince words]—so that's what happened. [I wrote a long letter to Clay] saying, "Don't go to Missouri to support this segregationist." Then that started a whole drumbeat of letters to the White House from the NAACP, from black elected officials, from everyone.

Clinton delayed his trip and ultimately Jay Nixon relaxed his opposition to continuing this program—which allowed it to be continued for at least a ten-year period with 13,000 kids going to desegregated schools and \$50 million which Jay Nixon helped us get appropriated by the State legislature going into the city schools.

So, my strategy is the strategic use of anniversaries.

I just want to second what Damon Keith said about what are the attributes that you need.

There is one other thing law students need. You are, by nature, an aggressive and assertive breed. So, don't think you have to stay within the confines of what people say is the career path that you ought to follow. Follow your star. Do the things that you want to do and your ability will carry you through.

PROF. WERMIEL: I think we have to break. We are overtime. I want to thank the panel for this wonderful presentation.

(Applause)

* * *

stay an integration plan).

42. For more information on President Clinton's speech, see Noel E. Oman, *Clinton: Progress But Also Perils*, ARK. DEMOCRAT-GAZETTE, Sept. 26, 1997, available at <http://www.ardemgaz.com/prev/central/a1bill26.html>; David Pitts, *Reaction to Clinton Race Speech Favorable*, U.S. INFO. AGENCY, Sept. 26, 1997, available at <http://usinfo.state.gov/usa/blackhis/speech.htm>.