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Civil Rights: Our Legacy and Our Responsibility

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CIVIL RIGHTS: OUR LEGACY AND OUR RESPONSIBILITY

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First of all, I want to thank you, the Class of '87, for inviting me to be the speaker on the occasion of your graduation from law school. I understand that it is a signal honor to have been invited to speak.

Like all the 1987 graduates, I know you are concerned about your future. Your are wondering whether there are too many lawyers in the country, whether you will land a job practicing law, whether you will be successful, whether you can make a contribution to the development of our society, whether you will become a famous lawyer.

When I graduated from Columbia University Law School forty-one years ago, you would not have been able to find a single person willing to bet you twenty-five cents that there was a successful legal career ahead for me — and I would have been one of those persons. Not only were there very few women lawyers in the country at that time but successful women lawyers were virtually nonexistent. White males who occupied the seats of power and esteem were our role models. There were probably fewer than 1000 black lawyers in the country.

Nevertheless, there was something which propelled the few women and blacks of that day who braved the rigors of law school to seek out law as a profession. Perhaps it was a feeling that all of America was still a frontier in which upward mobility was the rule, not the exception. Perhaps we knew from reading history that a frontier society was a place where one with training and skills could make a significant contribution to the advancement of mankind.

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Because the Second World War had just ended in 1945, the graduating Class of 1946, of which I was a member, was also bewildered and confused as everyone else was about the nation's future. Frankly, I cannot say that I was thrilled and happy to be going forth into a world hostile to women in the professions and still segregated as to blacks. Moreover, all we could hear was that there were far too many lawyers and that most of us would not find jobs.

But what both the optimists and the doomsayers could not foresee in 1946 was that post-war America would be convulsed by social revolutions which would carry women and minorities into the mainstream of American life.

Although none of us can foresee the future any more than we could forty years ago, if the past is prologue, then I would venture to say that forty years from now the legal profession, once completely dominated by men, will be dominated by women and those known as members of minority groups today will constitute the nation's majority.

For your generation, the social revolutions yet to come may make those of the past seem like minor turbulence Whatever the future may bring, my experiences in life tell me that the education and training you have received here at the University of North Dakota Law School will serve you well on the new horizon of what is still a frontier society. Two hundred years is not a long time when we consider the history of the nations of this world. Although we are a young nation, since World War II we have assumed a leadership role which has given us awesome responsibilities. The rest of the world in many places has sought to imitate us, at least with respect to our governmental structure and our commitment to democracy. But even more places in the world are watching us closely to see whether our bold new social experiment with the concept of equality will succeed.

Most places in the world do not even pretend to believe that all men are created equal. South Africa, a nation that looks like a carbon copy of the United States, is a prime example of what a first world country can become operating under the concept of inequality in the second half of the twentieth century. The white minority which remains in power in South Africa does so through the use of armed forces and violence as that nation slips to third world status. But I wonder what South Africa thought of us the other day when the Supreme Court, in a five-to-four decision, upheld as constitutional the application of the Georgia death penalty statute in the face of evidence that "murder defendants in

Georgia with white victims are more than four times as likely to receive the death sentence as are defendants with black victims."[1]

If you want to know how far we have come in our struggle to overcome racism and how far we have to go to overcome this vestige of racism evident in the Georgia case, read Justice Brennan's dissenting opinion in that case.[2] If you are one of those who believes that sexism, religion, racism, and ethnicity are no longer problems for us, ask yourselves whether an Italian can be elected president or whether a black or a Jew or a woman can be so elected. Then ask yourselves whether our problems in this regard can hinder our world leadership role.

If you have not read the Declaration of Independence, the Articles of Confederation, the Constitution, and Lincoln's address at Gettysburg recently, you really ought to do so — especially since we are approaching the 200th anniversary of the Constitution on September seventeenth of this year. The rereading and study should not only prepare you as lawyers for that anniversary in a truly meaningful way but should give you the proper historical and constitutional perspective on the legal developments of our time relating to the issue of equality. Moreover, I believe, as some historians have suggested, that these four documents, when read together, embody the social and political theory of this nation. I would simply add to this my belief that these four documents also

1. McCleskey v. Kemp, 107 S.Ct. 1756, 1764 (1987). McCleskey, a black man was involved in a furniture store robbery in Georgia with three other accomplices. *Id.* at 1762. During the course of the robbery a white police officer was shot twice and subsequently died. *Id.* One of the two bullets that struck the officer was fired from a gun which matched the description of the firearm carried by McCleskey. *Id.* After being convicted of armed robbery and murder and subsequently sentenced to death, McCleskey filed a petition for a writ of habeus corpus and claimed that Georgia's capital sentencing process was administered in a racially discriminatory manner. *Id.* at 1763. To support the claim, evidence of a statistical study was introduced. *Id.* The study examined over 2,000 Georgia murder cases that had occurred in the 1970s. *Id.* The numbers indicated that:

> [D]efendants charged with killing white persons received the death penalty in 11% of the cases, but defendants charged with killing blacks received the death penalty in only 1% of the cases. The raw numbers also indicate a reverse racial disparity according to the race of the defendants: 4% of the black defendants received the death penalty, as opposed to 7% of the white defendants.

Id.

The United States Supreme Court determined that the statistics were insufficient to support on inference that any of the decisionmakers in McCleskey's case acted with a discriminatory purpose in sentencing him to death. *Id.* at 1769. McCleskey had offered no evidence to prove that the decisionmakers in his case acted with a discriminatory purpose or that racial considerations played a part in his sentencing. *Id.* at 1766-67. Finally, the court stated that the state's "fundamental role of discretion" in our criminal justice system, as it pertains to capital-punishment, must be respected. *Id.* at 1777.

2. *Id.* at 1781-94 (Brennan, J., dissenting). Brennan determined that the statistical study, which documented the risk that McCleskey's sentence was influenced by race, was convincing. *Id.* at 1785-86. Moreover, Brennan stated that this risk of racial prejudice was the type of risk that our United States Constitution has consistently condemned. *Id.* at 1786; *see* U.S. CONST. amend. VIII (cruel and unusual punishment). For the text of the eighth amendment, see *infra* note 3.

explain why we have become a nation of litigators rather than a nation of warriors. Since the Constitution as now amended, and the other documents, define our goals as a nation and our rights as individuals, it is to these manuscripts to which we must look for an explanation of why we are what we are. Is there even now another nation which promised so much by the way of freedom to so many?

Immediately after the Constitution was ratified in 1789, it was amended in response to widespread demand by the people residing in the several states that individual rights and liberties not be infringed by the new national government. The first ten amendments to the Constitution were proposed by the Congress just about six months after ratification. These amendments obviously changed the character of the Constitution from one concerned solely with governmental structure to one concerned also with individual rights and liberties.[3]

The framers of the Constitution, many of whom had been framers of the Declaration of Independence in 1776 and the Articles

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3. U.S. CONST. amends. I-X. The first ten amendments to the United States Constitution provide:

> Amendment I
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> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
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> Amendment II
>
> A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.
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> Amendment III
>
> No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.
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> Amendment IV
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> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
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> Amendment V
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> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.
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> Amendment VI
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> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

of Confederation in 1777, understood that they were about the business of composing a charter which would govern, in perpetuity, the new nation which had just been formed by the thirteen sovereign states in America. They were also well aware that a revolution had just taken place, at the core of which was the issue of individual liberties. The Bill of Rights was thus essential to the formation of a people united under one national government.

It is critical to an understanding of our history and the litigation battles of the last three decades, to take note of the fact that, despite the framers' best efforts and the added Bill of Rights, the new nation divided seventy-two years later, after years of agitation, over the greatest human rights issue of all time — the right of one human being to be free from subjugation by another human being. The issue was so divisive that the southern states seceded from the Union in 1861 and formed the Confederate States of America. War broke out between the two factions. Out of the ruins of that Civil War, which ended in 1864, a new unity was to arise — a nation in which both slavery and involuntary servitude were outlawed by the national charter,[4] thus creating a nation more in tune with the lofty ideal, expressed in the Declaration of Independence, that all men are created equal. This newly reunited nation has already survived one hundred and twenty-three years.

At Gettysburg, it was Lincoln who reminded the divided nation that its birth dates from the Declaration of Independence. He noted it was not until 1776, and not 1620, that our forefathers brought forth on this continent a new nation dedicated to the

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Amendment VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Id.

4. *See* U.S. CONST. amend. XIII. The thirteenth amendment to the United States Constitution provides, in relevant part: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." *Id.*

proposition, as he called it, that all men are created equal.[5] Lincoln was a lawyer. He said then, what is equally true today, that the question is whether any government so dedicated and so conceived could long endure.[6] He was talking about a country which in its Declaration of Independence promised equality to everyone regardless of his occupation or station in life, regardless of his race, creed, color, or sex. Without such a promise, this, manifestly, would have been a different country.

Women's rights advocates and their lawyers sought to link up with the antislavery forces and to capitalize on the momentum for equal rights which that movement had generated prior to the Civil War, but as we all know, equal rights for women was an idea whose time had not yet come.

Starving immigrants who began to arrive from Ireland in the 1850s, along with other immigrants, began to feel the sting of rejection. They, too, agitated for equal treatment. They formed the first legal aid societies. As the census of 1850 in the town of Chester, Connecticut (where I also live) reveals, if you were white, you were listed as such, but if you were white and Irish, the latter fact was noted in parenthesis. So too, as Jews, Poles, Italians, Germans, and others arrived, they were among the social and political outcasts. By 1850, most Mayflower descendants had forgotten that their forefathers were immigrants.

In order to rejoin the Union after their defeat on the battlefield, each of the seceding states was required to ratify the

5. *See* ABRAHAM LINCOLN 1809-1865 126 (I. Elliot ed. 1970). President Abraham Lincoln delivered the Gettysburg Address on November 19, 1863. *Id.* The Gettysburg Address provides:

> Four score and seven years ago our fathers brought forth on this continent, a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal.
>
> Now we are engaged in a great civil war; testing whether that nation, or any nation so conceived and so dedicated, can long endure. We are met on a great battlefield of that war. We have come to dedicate a portion of that field, as a final resting place for those who here gave their lives that that nation might live. It is altogether fitting and proper that we should do this.
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> But, in a larger sense, we can not dedicate — we can not consecrate — we can not hallow — this ground. The brave men, living and dead, who struggled here have consecrated it, far above our poor power to add or detract. The world will little note, nor long remember what we say here, but it can never forget what they did here. It is for us the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us — that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion — that we here highly resolve that this nation, under God, shall have a new birth of freedom — and that government of the people, by the people, for the people, shall not perish from the earth.

Id.

6. *Id.*

fourteenth amendment.[7] This important addition to the Constitution accomplished many objectives. Slavery and involuntary servitude had been proscribed by the thirteenth amendment to the Constitution,[8] but the citizenship status of the former slaves was in doubt. The citizenship status of many immigrants was also in doubt. Moreover, as the Articles of Confederation made clear in 1777, slaves, paupers, vagabonds, and fugitives from justice were not considered members of the body of citizens to whom the new confederacy or the individual states owed any obligation.[9] The Articles of Confederation expressly

7. *See* U.S. CONST. amend. XIV. The fourteenth amendment to the United States Constitution provides:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
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> Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.
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> Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.
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> Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for service in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.
>
> Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Id.

8. *See* U.S. CONST. amend. XIII. For the text of the thirteenth amendment, see *supra* note 4.

9. *See* 1 CONSTITUTIONAL DOCUMENTS AND RECORDS 1776-1787, 86-94 (M. Jensen ed. 1976) (Articles of Confederation). Article four of the Articles of Confederation provides, in relevant part:

> The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states, paupers, vagabonds and fugitives from Justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy

stated that slaves, paupers, and vagabonds were not entitled to the privileges and immunities of free citizens of the various states.[10] This expression was in line with the long prevailing view in the colonies that poor people were not the concern of documents dealing with individual rights and liberties. As the early town minutes of the town of Saybrook, Connecticut disclose, for example, poor people were not admitted to residence in that town in early colonial times. And initially those who became poor were sold to other townspeople on a one-on-one basis. Later the practice was to auction off the poor to the lowest bidder who was paid by the town to feed the poor. Poor houses came much later in our history when the town treasuries became rich enough to build such monuments of man's inhumanity to man.

The fourteenth amendment, which made equality a part of the Constitution, thus brought into the family of this nation not only former slaves but poor whites as well.[11] Women, however, remained second-class citizens in the eyes of the law.

Although the fourteenth amendment also provided for reduction of the basis of representation of a state in the Congress by reducing the whole number of males counted in proportion to the number of males denied the right to vote,[12] the right of black males to vote was considered so essential to the preservation of the former slaves' new status as free persons that Congress promptly proposed and the states promptly ratified the fifteenth amendment to the Constitution.[13] We have forgotten that there was litigation over the rights of blacks to vote long before the school desegregation controversy. We have also apparently forgotten that women did not win the right to vote until the ratification of the nineteenth amendment in the early part of this century, or more to the point, only sixty-seven years ago.[14] Or even more to the point, one year before I was born.

> therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restriction shall not extend so far as to prevent the removal of property imported into any state, to any other state of which the Owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any state, on the property of the united states, or either of them.

Id. at 87.

10. *Id.*

11. *See* U.S. CONST. amend. XIV. For the text of the fourteenth amendment, see *supra* note 7.

12. *Id.*

13. *See* U.S. CONST. amend. XV. The fifteenth amendment to the United States Constitution provides, in relevant part: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." *Id.*

14. *See* U.S. CONST. amend. XIX. The nineteenth amendment to the United States Constitution provides, in relevant part: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex." *Id.*

Each of the post-Civil War amendments granted to Congress the power to enforce it by appropriate legislation.[15] During the period from 1866 to 1875, Congress undertook the monumental task of drafting and enacting appropriate legislation. Moreover, federal troops remained stationed throughout the South to enforce the rights of the former slaves. During Reconstruction, Congress attempted to write laws which would secure to the former slaves every right which free white citizens were thought to enjoy. Except for the Civil Rights Act of 1875, which sought, unsuccessfully, to guarantee access to privately-owned places of public accommodation such as theaters and hotels, most of this legislation survived the scrutiny of the federal courts.[16] But a more serious setback for the 4,000,000 newly freed slaves occurred when, pursuant to the Hayes-Tilden compromise of 1876, federal troops were withdrawn from the South.[17] This led to outright violence against the newly emancipated slaves, to the total disenfranchisement of blacks in most of the South, and to their segregation within or total exclusion from all public facilities and services. Segregation was upheld as to such public facilities by the United States Supreme Court in 1896.[18] The nation thereupon abandoned the promise of equality which it had made to blacks after the Civil War, and blacks were made to suffer decades of subjugation and humiliation. We were soon to learn that constitutional amendments and congressional enactments, standing alone, were not enough to secure anyone's freedom. Such freedom had to come through political action and litigation.

After World War II, a handful of black lawyers, with the help of white allies at the bar, and the backing of the National Association for the Advancement of Colored People (NAACP), embarked upon a program of litigation to secure those rights which

15. *See* U.S. CONST. amends. XIII- XXVI.

16. *See* Civil Rights Cases, 109 U.S. 3, 23-25 (1883) (United States Supreme Court determined that private discriminatory acts, short of slavery, were not prohibited by Congressional legislation under either the thirteenth or fourteenth amendment).

17. *See generally* HAYES, THE DIARY OF A PRESIDENT (T. Williams ed. 1964). In the 1876 Presidential campaign, the Democratic nominee was Samuel J. Tilden, and the Republican nominee was Rutherford B. Hayes. *Id.* at xix. When the votes were counted, Tilden led in popular vote and also appeared to have an electoral majority. *Id.* at xx. However, it was soon disclosed that three southern states had sent in double returns. *Id.* As a result, both parties claimed victory. *Id.* In January, Congress (with a Republican majority in the Senate and a Democratic majority in the House) met to resolve the crisis. *Id.* An electoral commission was established to determine who was President. *Id.* at xxi. The commission's decision bestowed the presidency on Hayes. *Id.* However, both houses of Congress still had to ratify the results. *Id.* The requisite support was found in the southern Democrats who were willing to back Hayes for the right price. *Id.* at xxi-xxii. Among the concessions sought and granted to those Democrats included the withdrawal of federal troops from the South. *Id.* at xxii.

18. *See* Plessy v. Ferguson, 163 U.S. 537, 542-43, 548, 552 (1896) (separate but equal public accommodations for the white and black races did not violate the United States Constitition).

the Constitution and the laws enacted by the Reconstruction Congress had guaranteed. These lawyers dismantled the legal framework which the South had created after 1876 to re-enslave its black citizens. These legal battles of the past three or four decades are now a part of the history of this nation, but it should be noted that a large part of the litigation tidal wave of the past several decades which has engulfed the federal courts was nothing short of historic and constitutional rectification.

It was the intention of the Congress in 1868, reiterated in 1964, that federal district courts have original jurisdiction of civil rights cases. The Congress understood in 1868 and again in 1964 that its hands would be tied politically from time to time, while federal judges, as the framers intended, do not stand election. Thus, one hundred years after the outbreak of the Civil War, the federal courts became the new battleground for the resolution of our own national human rights issues.

The Congress rightly perceived in the period of 1964-68 that the Reconstruction Congress' legislative design would have to be updated and strengthened if we were to move the twentieth century battle for equal rights from the streets to the courthouses, as the abolitionists intended. The original Constitution did not deal with human rights; the amendments to the Constitution do deal with these rights.[19] They are as much a part of the Constitution as the original Constitution which tells federal judges that they must hear admiralty cases, contract cases, patent cases, bankruptcy cases, and diversity cases.[20] Mounting federal court caseloads could obviously be reduced by constitutional amendments paring our jurisdiction, but the recent drives in Congress toward this end have been misdirected. The interests of this nation would best be served — not by depriving federal courts of jurisdiction to hear the constitutional claims of blacks, women, and other minorities, but by relieving them of diversity cases which are devoid of such claims.

The most recent momentum for equality in the American community which was generated by the civil rights movement of the 1950s and 1960s was the catalyst again for the women's equality movement of the 1970s, just as it had been 100 years before. Title VII of the Civil Rights Act of 1964 has been to the women's rights movement what the equal protection clause of the fourteenth amendment has been to the civil rights movement — the basis for

19. *See, e.g., supra* notes 3 (Bill of Rights), 4 (13th amendment), 7 (14th amendment), 13 (15th amendment) & 14 (19th amendment).

20. *See* U.S. CONST. art. III (judicial power of the United States).

litigation when other avenues of redress are closed.[21] The success of the civil rights movement in using lawyers to effect social change gave the legal profession a great boost in this century and made public interest litigation a leading sector of the profession.

The burden on the federal courts as to these human rights issues has been heavy in the past three decades, but the price has been right. As a result of the cases which have been brought to enforce the civil rights of black Americans, we can see that a once politically powerless minority group is at present, not so powerless. We have already begun to see evidence that the battle for equal rights is shifting from the courthouse to the state house where the lawyers are again on center stage. And since women are more numerous than blacks, have the right to vote, and now constitute the majority group in the population and a major segment of the labor force, their opportunity to move the battle to the Congress and the state houses seems clear. It was plainly the lack of political power which drove blacks, other minorities, and women to the courthouse in the first place. I would expect that by the end of this century, the political power structure of this country will have changed to such a degree that litigation as a strategy for gaining equal rights shall have passed into history.

In the four decades which have passed since I graduated from Columbia Law School, the legal profession, like many other major American institutions, has been buffeted by the winds of change. It is, simply stated, not the same profession it was forty years ago. Like the American society, itself, it is now an open profession. Men and women of all races and ethnic origins, reflecting the great diversity of this nation, are now a part of our revitalized and greatly expanded profession.

The nature and scope of legal issues has also expanded in the past four decades. In many instances, the legal issues at center stage today would have been, in 1946, beyond the recognition of anyone who was a practicing lawyer at that time.

Unlike 1946, today, both state and federal courts throughout the nation are inundated by what can only be described as a relentlessly rising tide of litigation, civil and criminal. As a result of these systemic changes, which have engulfed the legal establishment in the past four decades, the greatest challenge to the profession is now how best to train young Americans eager to become lawyers. This law school from which you are graduating today is an attempt to meet the challenge.

21. *See* 42 U.S. C. §§ 2000e to 2000e-17 (1982) (title VII of the Civil Rights Act of 1964 — equal employment opportunity).

When I accepted a job, a few months before graduation, with the NAACP Legal Defense and Educational Fund (Legal Defense Fund), I joined a fledgling public interest law firm which shortly thereafter embarked upon a legal program which truly changed the course of American history. As a result of the legal program which was inaugurated by the Legal Defense Fund in 1946, with a suit against the University of Texas for admission of the first black to its law school, the entire legal framework which supported segregation in this nation was declared unconstitutional.

When I joined the Legal Defense Fund, Thurgood Marshall was the chief counsel. I was the law clerk and two other lawyers constituted the entire staff. When I left the Legal Defense Fund twenty years later in February 1965, having joined the staff in October 1945 while still a senior in law school, the national office of the Legal Defense Fund had twenty-five lawyers. Thurgood Marshall was then the Solicitor General of the United States and on his way to becoming the first black man to sit on the Supreme Court. The Legal Defense Fund is now a major American legal institution. Its staff members have argued more cases before the United States Supreme Court than, perhaps, any other private law firm in the country.

The *Brown* decision was the catalyst which changed our society from a closed society to an open society and created the momentum for other minority groups to establish public interest law firms to secure their rights.[22] It also provided the impetus for the women's rights movement of the 1970s, the poor people's movement and a host of other public interest law firms, including prisoners' rights, consumer rights, and environmental law.

In my view, one of the most historically significant changes which has taken place in the profession has been the emergence of the public interest law firm. Notwithstanding predictions to the contrary, I believe the public interest firms are here to stay and that their areas of concern will broaden to include, for example, assistance to minority group and women candidates seeking public offices and expanded business opportunities.

I feel very hopeful about the future of our profession. I think that lawyers, generally, are going to continue to be members of the leadership class. This has been the traditional status of lawyers in our society and I see very little prospect of change in the future. I think, for example, that all of these young women who are now in

22. *See* Brown v. Board of Educ., 347 U.S. 483 (1954) (segregation of white and black children in public schools solely on basis of race violates equal protection clause of the fourteenth amendment).

law school will add new luster to the legal profession and that young black lawyers will add vital new strength to the black communities around the nation.

The problems which black Americans now face do not include strictly legal barriers to full participation in the American community. The formal legal barriers have long since been removed by civil rights litigation. Most of the problems blacks now face require political solutions. The most pressing need among blacks is, therefore, the need for greater political power. And how is that to be achieved? The answer is obvious. And if a black candidate running for office is the secret to getting blacks to the polls and involved in the political process, then that is what must be done.

Lawyers have not only been leaders in community affairs, but as we all know, a legal education has led many with such backgrounds into city halls, state legislatures, into the halls of Congress, as well as into careers in business and diplomacy. I do not think it requires much imagination to conclude that in the next decade or so we will see black governors in southern states. We will see women and minorities as the majority in many state legislatures. We will see an increase in black representation in the Congress. And we will see a woman and then a black as president of these United States.

The problem with our profession is that we have always had too many lawyers ready to go to Wall Street and earn big money whereas the corps of lawyers ready, willing, and able to work for the public interest has always been small.

On September 17, 1987 we shall celebrate the 200th anniversary of the Constitution and in 1989 its ratification by the people of the United States who did so in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessing of liberty for themselves and their posterity.

We should not be dismayed by the litigation tide which currently engulfs us, especially in the area of civil rights. It has its roots in our unique history as the first nation in the world to promise equality to all. We are still, in the history of the world, a new nation struggling with this brazen ideal. I say let's "brazen it out." To brazen means to tough it out. The twenty-first century is upon us. Let's enter it "toughed out" on the subject of equality.