

1 NEW YORK STATE BAR ASSOCIATION

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3 Remembering

4 BROWN v. BOARD OF EDUCATION

5 and Related Litigation:

6

7 A Tribute to the New York Attorneys

8 Who made Legal History

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10 Wednesday, May 25, 2005

11 6:30 p.m.

12 New York Hilton Hotel

13 Avenue of the Americas

14 New York, New York

15

16 Hosted by:

17 KENNETH G. STANDARD

18 President

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20 NEW YORK STATE BAR ASSOCIATION

21

22 And

23

24 MINORITY BAR ASSOCIATION PARTNERS

1 Featured Speakers

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3 KENNETH G. STANDARD

4 President New York State Bar Association

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6 ROBERT J. GREY, JR.

7 President American Bar Association

8

9 HON. GEORGE BUNDY SMITH

10 Associate Judge NYS Court of Appeals

11

12 Oral Histories and Reminiscences:

13

14 JULIUS L. CHAMBERS, ESQ.

15 EDWARD R. DUDLEY, JR., ESQ.

16 PROFESSOR JACK GREENBERG

17 JEFF L. GREENUP, ESQ.

18 CONRAD K. HARPER, ESQ.

19 HON. NATHANIEL R. JONES

20 MRS. THURGOOD MARSHALL

21 HON. CONSTANCE BAKER MOTLEY

22 HON. LOUIS H. POLLAK

23 HON. JAWN A. SANDIFER

24 HON. JACK. B. WEINSTEIN

1 PRESIDENT STANDARD: Thank
2 you all for coming tonight.

3 I am sure everybody here
4 remembers that last week was the 51st
5 anniversary of the Brown v. Board of
6 Education decision. A decision that
7 changed the lives for all time, I
8 hope, of all Americans and served as
9 an inspiration to people all around
10 the world, as well as to all of us.
11 Because it was an occasion that
12 reminded us, demonstrated to everyone
13 that our Constitution really did have
14 meaning. The words did not apply only
15 to a portion of our nation, but they
16 applied to the entire nation. One
17 thing we ought to remember most is
18 that when any group is oppressed even
19 the oppressors suffer, are diminished
20 by their acts of oppression.

21 In Brown v. Board of
22 Education we saw the culmination of
23 one step of a long journey. And that
24 culmination came about because of the

1 courage, the commitment, dedication,
2 the inspiration and intelligence of
3 many people of different races coming
4 together in the name of the cause of
5 justice.

6 I said it was a culmination
7 of one step. There are still many
8 steps ahead of us. We need to ensure
9 that justice does not perish from the
10 land. We see that with the attacks on
11 our judiciary that are occurring on
12 almost a daily basis. All of us who
13 are interested in the survival of our
14 system of democracy, which is built
15 upon three separate but equal branches
16 of government, need to stand up and be
17 counted and encourage others to stand
18 up and be counted to assure that our
19 judiciary does remain independent.

20 We have Robert Grey here,
21 and we have Judith Kaye with us also
22 tonight. The reason I mention that is
23 one of Robert Grey's commitments
24 during his year as President of the

1 American Bar Association has been to
2 strengthen and safeguard the jury
3 system. Judith Kaye is the chair of
4 that committee. We can not have a
5 safe and effective jury system if we
6 do not have an independent and strong
7 judiciary. One cannot exist without
8 the other. So we must stand up for
9 the independence of the judiciary.
10 That is one step.

11 Another step that we have
12 yet to take is in the area of
13 educational achievement. While Brown
14 ended segregation in the public
15 schools, it did not end the difference
16 in achievement of minority youths as
17 compared with white youths in this
18 country. I came here today from a
19 committee meeting, a New York State
20 Bar Association committee, whose
21 position is to try to identify some,
22 at least, if not all of the causes of
23 this gap in the educational
24 achievements of minority children as

1 opposed to other children in this
2 country. We have lawyers from around
3 the state, a diverse group of lawyers
4 who are working to try to find a
5 solution to this problem. Because our
6 society cannot exist without justice,
7 and it cannot exist without an
8 educated work force that includes
9 children of all ages.

10 So there is a lot of work
11 still for us to do, but at the same
12 time we want to celebrate what has
13 already been achieved and honor those
14 who have helped us to achieve so much.
15 That is the reason we are here
16 tonight.

17 With the indispensable
18 partnership of George Bundy Smith and
19 the indispensable partnership of 17
20 minority bar associations, the
21 majority of them from within New York
22 State but some who are not New York
23 State Bar Associations, such as the
24 Association of the Corporate Council

1 of Women of Color and Region 2 of the
2 National Bar Association and other
3 groups that are not limited to New
4 York State, who have worked with us to
5 put on this event tonight and to allow
6 us to get this oral history and have
7 it recorded so that we never forget
8 what has been achieved and we never
9 forget where we have come from.

10 I first became aware of the
11 NAACP and the Legal Defense Fund as a
12 very young person. In fact, when I
13 would hear my sister, Muriel, who had
14 worked for the NAACP for many years,
15 talk about the Inc. Fund I was so
16 young, I wondered why these
17 organizations needed a separate fund
18 of money for ink. Ink of course
19 referred to the Legal Defense and
20 Education Department. We have here
21 lawyers who either were employed by
22 the Inc. Fund or who volunteered to
23 work alongside the full-time employees
24 of the Inc. Fund in the cause of

1 justice, and we are going to hear from
2 each of them tonight. We also have
3 here with us tonight Mrs. Thurgood
4 Marshall, who has been a friend of
5 mine since I was a very young fellow
6 and she was a young woman, a little
7 bit older than I. I always remember
8 Mrs. Marshall's kindness to me as I
9 was growing up. I'm delighted she is
10 here tonight with us, along with her
11 son and her granddaughter.

12 I also want to recognize the
13 fact that we have four judges from our
14 Court of Appeals here tonight.
15 Obviously, George Bundy Smith up here
16 to my right; Chief Judge Judith Kaye,
17 Judge Carmen Beauchamp Ciparick and
18 Judge Robert Smith. We also have our
19 Bronx County District Attorney, Robert
20 Johnson, with us tonight. And Robert
21 Johnson is not interested simply in
22 putting people away; he's interested
23 in justice, and he is working with us
24 on that committee that I told you

1 about, which is seeking to help to
2 address the inequities in our
3 education system.

4 We also have many other
5 judges of the Supreme Court and other
6 courts here with us tonight. We have
7 many of our leaders with us here
8 tonight and many elected officials
9 here with us tonight. I don't want to
10 take the time to introduce them all,
11 though I am really delighted they are
12 here, because I want to spend the time
13 hearing from our speakers tonight.

14 Our first speaker is another
15 good friend of mine. His name is
16 Robert J. Grey, Jr. And you all know
17 him as a President of the American Bar
18 Association. And we are still in that
19 era where we have to say he is the
20 second president of color of the
21 American Bar Association. But I hope
22 in the not-too-distant future that we
23 won't have to keep track like that.

24 But Robert Grey and I during

1 the past several years have been
2 together on a number of programs, and
3 he is a delightful person, a very
4 energetic person, a great speaker, and
5 it's wonderful to be around him, and
6 it's wonderful to have him here with
7 us tonight. Please join me in
8 greeting him.

9

10 (Applause).

11

12 PRESIDENT GREY: Ken, thank
13 you very much for inviting me and for
14 your very gracious introduction, as
15 you do for so many people, in such an
16 eloquent way.

17 I've got to tell you ladies
18 and gentlemen, I have traveled around
19 the country, and indeed have been
20 given the benefit of traveling around
21 the world. There are bar presidents
22 and there are bar presidents. New
23 York has the best. You should be
24 proud, as I am, of Ken Standard, the

1 President of the New York State Bar
2 Association.

3

4 (Applause.)

5

6 It's remarkable, so they
7 told me, that I should be the second
8 in succession of color to be President
9 of the American Bar Association.

10 Robert, they said, it wasn't too long
11 ago, you know, that one might not even
12 be a member of the American Bar
13 Association if one were colored. In
14 fact, there were some applications
15 received by the American Bar
16 Association in the middle part of the
17 last Century, and those applications
18 were from lawyers of color. But they
19 sort of slipped under the radar and
20 were given admission and membership,
21 to the chagrin of those who were
22 supposed to be reviewing those
23 applications. And so they were
24 advised that they would be unable to

1 accept membership from those
2 individuals, and they were refunded
3 their membership fee.

4 Here we are, today. Here we
5 are at the Brown v. Board of Education
6 in making a statement about what we
7 have decided, what we have decided
8 America will be like. And it is an
9 important statement that we did that
10 as a unified population of whites, of
11 Jews, of Asians, Hispanics,
12 African-Americans and whites, that we
13 as a people want America to reflect
14 the great ideals that have been set
15 out in its Declaration of Independence
16 and its Constitution. And you know
17 what, it is all based in foundation
18 upon a justice system that we have
19 gone to time and time again to find
20 the right reason for this country to
21 support its population, its citizens.

22 Ken mentioned the attacks on
23 the judiciary. We have seen some
24 regression in the way we look at civil

1 rights. But you know what, the
2 justice system in America is the
3 mighty oak. And people hack at it
4 because they get no pleasure and no
5 points out of trying to chop down a
6 weak tree. You get points if it's a
7 huge tree, if it's a mighty tree. And
8 when I go to commencement exercises
9 and when I talk to bar associations,
10 it is my responsibility to remind
11 everyone that it is our duty to make
12 sure that the oak of justice remains
13 firm, remains strong, and that we can
14 hack at it all we want to, but it will
15 remain the backbone of this country so
16 that everyone will appreciate a long
17 and prosperous life with fair and
18 equitable laws and an independent
19 judiciary and the opportunity for an
20 education so that they might advance
21 themselves and achieve their highest
22 potential. That is our responsibility
23 as lawyers and as judges, and we can
24 take the criticism, because we are

1 going to be there to defend our
2 justice system.

3 There is another important
4 point, and it relates to how we are
5 viewed. The responses that I have
6 gotten have been American lawyers and
7 American judges, American law
8 professors keep doing what you're
9 doing. You provide us with
10 encouragement; you provide us with a
11 road map to achieving a democracy in
12 our society. We have looked to you to
13 help us understand how to deal with
14 the challenges and the obstacles and
15 the ways in which a society should
16 evolve pursuant to the rule of law.
17 If I leave nothing else here with you,
18 as we listen to those who have created
19 this mighty oak of justice tonight, it
20 is this: The American justice system
21 is the beacon of hope for this world.
22 And others look to it as the guiding
23 light to the path of justice. You
24 honor it by letting me be here today.

1 You honor me by letting me share the
2 dais with this most distinguished
3 panel of justices and lawyers this
4 country has produced.

5 Thank you very much.

6

7 (Applause.)

8

9 PRESIDENT STANDARD: Thank
10 you, Robert.

11 As you can see from the
12 brevity of Robert's comments, we are
13 trying to keep the focus on panelists
14 and save as much time as possible for
15 them to speak. Many of these
16 panelists are almost like family to
17 me, because most of them worked with
18 my sister for many years, and I had
19 met many of them as a young person in
20 my growing up years. And particularly
21 Judge Sandifer, whom I first met, not
22 quite when I was as young as when I
23 met other people, like maybe Mrs.
24 Motley and Mrs. Marshall, but I met

1 Judge Sandifer about 41 years ago,
2 when I was just starting to try cases
3 in New York. He was one of the few
4 minority judges in all of New York
5 City. He had been recently elected to
6 the Civil Court, and whenever I was in
7 Manhattan trying cases in Manhattan or
8 going for conferences, I'd always find
9 time to stop in and see Judge
10 Sandifer. It was on one of my first
11 visits to Judge Sandifer that I met
12 our next speaker, George Bundy Smith.
13 Because George Bundy Smith was Judge
14 Sandifer's first law clerk. So I met
15 him 41 years ago also. So we stayed
16 in touch. As I said, without his
17 efforts we would never have been able
18 to achieve what we have achieved
19 tonight in honoring all of these
20 people.

21 I would next like to
22 introduce George Bundy Smith to you.

23

24 (Applause.)

1

2 JUDGE SMITH: Thank you very
3 much, Ken.

4 I'm very honored to be here
5 and to moderate this panel of
6 excellent, excellent lawyers and
7 judges. We owe so much to them.

8 I, like a number of them,
9 grew up in a segregated south. And I
10 was very disturbed about segregation
11 in our homeland. And when I was a
12 student at Yale Law School, I was
13 fortunate enough to see and meet
14 Thurgood Marshall, who came there one
15 day to visit.

16 One day in 1961 I was
17 sitting at my desk in the law school,
18 minding my own business, when the
19 phone rang and Reverend William Sloane
20 Coffin, Jr. called. That morning, and
21 it was Sunday, there had been
22 photographs in the New York Times of
23 two buses that had gone into the south
24 with white and black persons on board.

1 The bus had been attacked; the people
2 on the bus had been attacked. So to
3 make a long story short, inside of a
4 week, I found myself on a plane down
5 to Atlanta and in a bus to Montgomery,
6 Alabama. When we got to Montgomery,
7 we met a mob, but fortunately,
8 President Kennedy had called out the
9 National Guard, so we were able to
10 leave the bus station. We spent the
11 evening there in Montgomery, had
12 dinner with Martin Luther King, Jr.
13 and discussed our next plans. And our
14 next plans were to go into Jackson,
15 Mississippi the next morning.

16 So eleven of us the next
17 morning went to the bus station in
18 Montgomery, Alabama. We sat down to
19 have a cup of coffee, and before I had
20 a chance to take a sip, I had a tap on
21 my shoulder, and the sheriff said
22 you're under arrest. And so they
23 carted us off, the whites to the white
24 jail, the blacks to the black jail.

1 And it was to be four years before the
2 Legal Defense Fund under Jack
3 Greenberg and Louis Pollak, who was my
4 law professor at Yale, it was to be
5 four years before a case called
6 *Abernathy v. Alabama* in the Supreme
7 Court I was able to become a free man.
8 So I am very grateful to the Legal
9 Defense Fund and to those who worked
10 there.

11 After law school, I worked
12 for a couple of years there, met most
13 of the people who are being honored
14 tonight, shared an office with Frank
15 Heffron, who had graduated from
16 Columbia in 1962, and met a number of
17 people.

18 The format tonight is for me
19 to ask a few questions of our
20 panelists. We could spend hours with
21 any one of those persons, and we would
22 hear extraordinary stories. But that
23 is not our purpose. We just want to
24 get a flavoring of the civil rights

1 movement. So I will ask each of you
2 to keep your comments brief, and
3 hopefully we can get in everyone.

4 I would also like to take
5 this opportunity to thank my
6 colleagues for being here, Chief Judge
7 Judith Kaye, Judge Carmen Beauchamp
8 Ciparick, Judge Robert Smith. We have
9 a fine Court that sits in Albany,
10 seven judges on that court, four women
11 and three men.

12 So without further ado, I'm
13 going to call first on Conrad Harper,
14 who knows and has studied a little bit
15 about Charles Houston, and I'll turn
16 the microphone over to Conrad. The
17 bios are in the program, so we won't
18 waste time with them. But every one
19 of the persons on this stage is a
20 giant in his and her own right.

21 Conrad.

22 MR. HARPER: Thank you,
23 George.

24 (Applause.)

1
2 MR. HARPER: Let me say
3 briefly, we are all heirs of Charles
4 Hamilton Houston. He was born in 1895
5 in Washington D.C.; he died there 55
6 years later, in 1950. He grew up in
7 segregated Washington. Went to public
8 school there. Went to Amherst College
9 in which he graduated Phi Beta Kappa
10 and valedictorian. He then was in
11 France during the first World War, and
12 onto Harvard Law School, where in his
13 third year he was the first black ever
14 elected to membership on the Harvard
15 Law Review. After that he took a
16 traveling fellowship and earned a
17 doctorate at the University of Madrid.
18 He returned to Washington and went to
19 work with his father, who had a small
20 law office there. And he is chiefly
21 known to fame these days for two
22 things that never relate in his
23 reputation. The first has to do with
24 Howard Law School, the second has to

1 do with the Constitution of the United
2 States.

3 With respect to the Howard
4 law school, in 1929 Houston was asked
5 to become Vice Dean, that is to be the
6 chief administrative officer of
7 Howard. He served in that role for
8 five years. But in those five years
9 he made Howard Law School, which had
10 been an unaccredited night school,
11 into a fully accredited day law
12 school. Many of the students he
13 trained turned out to be field
14 marshals of the coming civil rights
15 revolution. Chief among them, of
16 course, was Thurgood Marshall, who was
17 in the class of 1933. After
18 Marshall's graduation, he went to
19 Baltimore to practice for a while and
20 ultimately came to work with Houston.

21 Meanwhile, though, the
22 trajectory of Houston's life was to
23 enter that Constitutional plain I
24 mentioned a few minutes ago. By the

1 1930s he already argued a few cases
2 before the Supreme Court. He was
3 asked in the fall of 1934 to be the
4 first paid lawyer of the NAACP, and he
5 agreed to do so. And at that same
6 time, October 26, 1934 to be exact, he
7 wrote a memorandum outlining what he
8 thought needed to be done by way of a
9 legal campaign. The NAACP had money,
10 so it thought, in the Garland Fund, of
11 \$100,000. At least that was the
12 initial amount appropriated in the
13 early 1930s, but thanks to the
14 depression, that \$100,000 had shrunk
15 to \$10,000. On that amount Charles
16 Hamilton Houston overturned the beast
17 of segregation in our country.

18 On July 1, 1935 he became
19 the special counsel to NAACP. He only
20 had that role for three years, and
21 therefore, he was in the sense of a
22 cooperating lawyer first of NAACP and
23 then of Inc. Fund founded in 1940.
24 But he was the chief architect of the

1 strategy that ultimately led to the
2 overthrow of racial segregation by
3 legal means in this country. And when
4 we think about the cases he won, the
5 Gaines case, Constable case, Hurd v.
6 Hodge. And we know his influence on
7 those who came after Thurgood
8 Marshall. Of course paramount among
9 them, we realize that in Houston we
10 had the hero that the race needed and
11 the country needed.

12 Thank you, Charles Houston
13 JUDGE SMITH: Among the
14 cases that was a forerunner to Brown
15 was called Henderson v. United States.
16 A person had taken a train ride, and
17 he wanted to eat, like everybody else.
18 And so they said, okay, you could eat,
19 but since you are black, we are going
20 to put a little curtain there, so you
21 can't be seen by the white persons on
22 the train. One of the persons
23 involved in that case was John
24 Sandifer. The case went to the United

1 States Supreme Court. That court said
2 this was a violation of the Interstate
3 Commerce Act.

4 Judge Sandifer, how did you
5 become involved in that Henderson?

6 JUDGE SANDIFER: Well, Ralph
7 Lawson was my colleague from
8 Washington, D.C. Elmer Henderson was
9 of a brother of ours, and Elmer
10 Henderson was an employee of the
11 United States Government at the time.
12 But before I reach the facts in this
13 case and the argument, I want to tell
14 you a little about what the situation
15 was with respect to the Southern
16 Railroad at that time. You must
17 remember, this is back in the '50s.
18 And the major mode of transportation
19 at that time, for blacks especially,
20 was to ride on the railroads.

21 The Southern Railroad had a
22 car that was directly behind the
23 engine, and that was the Jim Crow car
24 for blacks at that time. It was that

1 car that was hitched behind the
2 engine. And blacks in the coaches had
3 to have their sandwiches and whatever
4 in the black coach, because they had
5 no way of eating at that particular
6 time.

7 Now Henderson, who was
8 black, was riding in the pullman car,
9 and he attempted to enter the dining
10 room to have his meal. And he was
11 denied; he was ordered to go behind a
12 curtain. And he refused. So Belford
13 Lawson and I brought this lawsuit
14 before the United States Supreme Court
15 at that time.

16 Now, the Henderson case came
17 before the Supreme Court along with
18 Sweatt and McLaurin. Those three
19 cases we had hoped would achieve the
20 results that Brown finally achieved.
21 In the Sweatt case, Sweatt applied for
22 admission to University of Texas, and
23 was denied admission. McLaurin, who
24 had been admitted to the University of

1 Oklahoma, was admitted to the
2 university, but he was separated from
3 his peers in the classroom.

4 In the Henderson case, we
5 argued that Henderson had been denied
6 his equal rights as a passenger. And
7 the Court decided all three of these
8 cases, and we expected and hoped that
9 these three cases would have the
10 result that we got from Brown. But
11 that did not happen. We won all three
12 of those cases, but the Court did not
13 reach the question of separate but
14 equal, which was a disappointment.
15 But we think that these three cases
16 did lay the foundation for the Brown
17 decision.

18 Now, Kenneth, when you took
19 the oath back at the time that you
20 took the oath, you said this, and this
21 is what I really wanted to focus your
22 attention to at this time. That on
23 the stand Brown was a milestone, but
24 having attended for several years a

1 black segregation in the schools in
2 Brooklyn, I wondered how much impact
3 the Brown decision really had. In
4 fact, in terms of education, Brown is
5 arguably a disappointment to date. We
6 need only to look to the performance
7 of schools in New York.

8 I served as legal redress
9 chairman for the NAACP in New York for
10 20 years, and that is a term that you
11 haven't heard much talk about. I
12 tried to get Thurgood's attention for
13 many years that we were going to have
14 to deal with a different type of
15 segregation in the northern states and
16 the State of New York from the jury
17 segregation. It was my feeling that
18 the target in the south was much
19 clearer than de facto, because the
20 statutes in the south were in fact
21 clear: That you were segregated. But
22 de facto is a much more sophisticated
23 form of segregation and
24 discrimination.

1 I can't think of any better
2 example of de facto segregation, which
3 is what I really want to address for
4 the time that's allotted to me.

5 JUDGE SMITH: Judge, we are
6 going to come back to de facto
7 segregation, so I think hold those
8 comments for just a few minutes, and
9 we will come back.

10 MR. HARPER: I'd be very
11 glad to.

12 JUDGE SMITH: I am going to
13 ask Jack Greenberg to tell us about
14 the Delaware case, one of five cases
15 in Brown. And I'm also going to ask
16 him to comment on the Solicitor
17 General's role in the Brown decision.

18 PROFESSOR GREENBERG: Okay,
19 Judge Smith. First, I would like to
20 say there is mention that we're kind
21 of family up here, and I think we're
22 more family than most people
23 recognize. Because John Sandifer was
24 the Judge who married Debbie and me.

1

2

(Applause.)

3

4

Delaware was one of the five

5

cases in what's known as Brown v.

6

Board of Education. Actually four

7

cases were Brown, and then there was a

8

case from the District of Columbia

9

called Bolling v. Sharpe. Delaware I

10

think is popularly viewed as a

11

northern state, but indeed had been a

12

slave-holding state and was as bad as

13

any southern state when it came to

14

black education. In fact, below the

15

city of Wilmington, which was way up

16

in the northern part of the state,

17

there was no high school for blacks.

18

And a black kid living in the southern

19

part of the state would have to travel

20

to Wilmington to go to high school

21

which was logistically almost

22

impossible. So generations of black

23

kids in Delaware who lived below

24

Wilmington actually had no high school

1 education whatsoever.

2 The Delaware case was very
3 much like the South Carolina, Virginia
4 and Kansas case. The cases from the
5 states and the evidence put on in
6 those cases was about the same, and
7 demonstrated the black schools were
8 inferior in every measurable way:
9 teachers, books, library, budget,
10 playground space, curriculum, so forth
11 and so on. We also put on evidence of
12 the educational and psychological
13 consequences of segregation. And
14 Delaware was like the other states in
15 that too, we had Kenneth Clark, the
16 pioneering psychologist who examined
17 kids in the case to show the effects
18 of segregation upon them. Unlike the
19 other cases, we had a psychoanalyst,
20 Dr. Frederick Worth, who ran the
21 clinic at the church in Harlem. And
22 the Judge in the Delaware case found
23 that segregation does interfere with
24 children's ability to learn, just as

1 the judge in the Kansas case found.
2 And those findings were cited in the
3 Supreme Court of the United States as
4 grounds for the decision that the
5 Court ultimately made on Brown.

6 Delaware was different from
7 the other states in that we won the
8 Delaware case. We had to wonder
9 whether the state of Delaware was
10 going to appeal to the Supreme Court
11 of the United States. We hoped that
12 it would for two reasons. One reason
13 was that if this was a case that was
14 won in the Supreme Court, it would
15 have an example of success before it,
16 which could encourage it to go along
17 and make the decision that had been
18 made in Brown. And the second was a
19 narrow egotistical one; we wanted to
20 be able to argue the Delaware case in
21 the Supreme Court. The Attorney
22 General of Delaware satisfied our
23 expectations or our hopes, and he
24 appealed, and the Court heard the case

1 as one of the five cases before it and
2 held that segregation was
3 unconstitutional.

4 Now, I have to say that
5 while I think we lawyers did a
6 splendid job and Thurgood did a great
7 job as the leader of the group, lots
8 of other factors played a part in the
9 case. There were demographics, a lot
10 of the black population had moved from
11 the south to the north and had
12 political power they hadn't had
13 before. Truman's Commission on Civil
14 Rights called for antisegregation.
15 There was the cold war. And the
16 Secretary of State had written to the
17 Supreme Court saying that the fact
18 that we segregated in the United
19 States was harming the United States
20 in its foreign policy. And other
21 extrinsic factors played a part too.

22 Now, Judge Smith has asked
23 me to say something about the
24 Solicitor General. Despite all the

1 legal arguments that we had, which
2 were based on the precedents of the
3 Sweatt and McLaurin cases and the
4 evidence in the cases of the social
5 psychologist and others who testified
6 to support the Court's finding that
7 segregation harmed children and their
8 education, and other factors, there
9 were some judges on the Court who were
10 hesitant to hold segregation
11 unconstitutional, even though they
12 would be willing to vote that way,
13 because they feared the reaction in
14 the south would be explosive. As
15 indeed it did turn out to be. They
16 were teetering on the verge of
17 dissenting. Earl Warren believed, I
18 think correctly, that dissenting
19 opinion in the case would be very
20 harmful for the country and for the
21 cause of equality, because the
22 southern racists could then gather
23 around the banner of segregation of
24 the dissenting opinion, just like

1 opponents of segregation gathered
2 around Justice Harlan's Plessy v.
3 Ferguson. So he came up with a
4 solution, which originally was
5 suggested by the Solicitor General,
6 that they separate the decision of the
7 principle from the implementation.
8 And the principle was that segregation
9 was unconstitutional and intolerable
10 in this country, and all the judges
11 could agree upon that, but at that
12 point they would not have to face up
13 to what to do about it. Then they sat
14 down for reargument the next year in
15 what became known as Brown II, and
16 this year is the 50th anniversary of
17 Brown II, the second Brown decision,
18 is what to do about it. They handed
19 down a decision which in many respects
20 everyone in this room would agree
21 with. You must make a prompt and
22 reasonable start. You can only take
23 time to make administrative changes
24 like reassign students, reassign

1 teachers, change some regulation. You
2 may not delay integration because of
3 hostility to it. But then you proceed
4 to what was called all deliberate
5 speed, and that was not defined. All
6 deliberate speed is an oxymoron.
7 Deliberate means slow, and speed means
8 fast, so you can take it to mean
9 whatever you'd like. And many
10 southerners took that as a signal they
11 could go as slowly as they needed.
12 Whether all deliberate speed was
13 responsible for the slow pace of
14 desegregation is still being debated
15 today. I think that essentially it
16 was not. I think the slow pace of
17 desegregation was caused by massive
18 resistance, 101 senators denouncing
19 the Supreme Court, declarations of
20 interposition and nullification
21 adopted by the southern states. Like
22 the declaration they adopted in the
23 Civil War, by southern legislation
24 threatening and in fact closing

1 schools if blacks were admitted to
2 schools with whites. By attacks upon
3 the NAACP and the NAACP Legal Defense
4 Fund, trying to put us out of
5 business. By efforts to disbar
6 lawyers who handled civil rights
7 cases. By violence against plaintiffs
8 in cases, people assignment laws.
9 They put all sorts of obstacles in the
10 way of desegregation.

11 So even the Supreme Court
12 said do it immediately, you still
13 would have had those obstacles. It
14 might have been in a few places
15 schools would have been integrated,
16 and that would have been good. It
17 might have been that the country would
18 have an unequivocal denunciation of
19 segregation without the moderating
20 qualifications of all deliberate
21 speed. But in practical outcome, I
22 think it would have been approximately
23 the same. The country wasn't ready.

24 Two years ago I went to

1 eastern Europe to consult on the
2 integration of Roma/Gypsy children
3 into the public schools there. They
4 were segregated as blacks had been in
5 the south before 1954. But then, at
6 least the European countries that
7 wanted admission to the European Union
8 issued something called the Race
9 Relations Directive, Race Equality
10 Directive saying: We won't admit you
11 unless you integrate your schools and
12 take in Roma/Gypsies. They then
13 proceeded to integrate their schools,
14 and they are in the process of doing
15 that now.

16 Brown could not have the
17 effect of the Race Equality Directive
18 because of Senator Stennis and Bow and
19 Russell and the whole southern
20 democratic establishment at that time,
21 which was opposed to any form of
22 racial equality. And so Brown had to
23 do the work of what the Race Equality
24 Directive did in Europe. At that time

1 I've likened it to an ice breaker,
2 making it impossible for progress to
3 take place. So while Brown was a
4 decision that was a prerequisite to
5 having any integration in all sectors
6 of society in the United States at
7 that time, it made possible the kinds
8 of changes that the political
9 imperative of the Race Equality
10 Directive had in Europe at that time.

11 So Brown was more than a
12 school integration decision. It was a
13 decision that broke up the whole
14 rotten racist political system that
15 governed this country from 1954 for
16 several generations thereafter.

17

18 (Applause.)

19

20 JUDGE SMITH: Thank you.

21 Judge Motley, you were
22 involved both in Brown and Board of
23 Education and particularly involved
24 with the case of James Meredith

1 entering the University of
2 Mississippi. Would you tell us about
3 both of those briefly please, your
4 role in Brown and your role in the
5 James Meredith case. I know that that
6 can take an afternoon or an evening,
7 but we have a short amount of time,
8 so.

9 JUDGE MOTLEY: Well,
10 unfortunately I'm at the stage where I
11 have to write it down, otherwise I
12 have memory problems. So I only have
13 a couple of pages here. I'll read
14 quickly through them.

15 I want to thank New York
16 State Bar Association for paying
17 tribute to Brown v. Board of
18 Education, a great landmark in the
19 jurisprudence of this country.

20 As many people recognize,
21 Brown was a milestone that struggled
22 with civil rights and equal
23 opportunity. But it's also important
24 to note that Brown was just one part

1 of a much larger strategy to end
2 segregation. It was preceded by a
3 number of cases that step by step set
4 a context for Brown and for the
5 Supreme Court to rule as it did on May
6 17th, 1954.

7 In 1947 a black woman, who
8 sought and was denied admission at the
9 University of Oklahoma law school on
10 the basis of her race brought a suit
11 against the school. Oklahoma, like
12 other southern states, had not set up
13 a separate law school for blacks.
14 Sipuel v. Board of Regents of the
15 University of Oklahoma reached the
16 Supreme Court in 1948. Just three
17 days after hearing oral argument, the
18 Supreme Court rendered its decision.
19 Holding that, in conformity with the
20 14th Amendment, the state must provide
21 equal protection within its own
22 borders, and that Miss Sipuel was
23 entitled to a legal education provided
24 by a state institution. The Court

1 further held that the state was
2 required to provide such an education
3 as soon as it could for applicants of
4 any of the group. In *McLaurin v.*
5 *Oklahoma State*, the Supreme Court held
6 that once blacks were admitted to a
7 previously all-white university, the
8 school could not segregate black
9 students in that institution by
10 forcing them to sit in separate areas
11 of the library or in the classrooms.

12 Sweatt v. Painter, a case
13 brought against the University of
14 Texas Law School, provided the first
15 opportunity to compare a law school
16 established by the state for whites
17 with a supposedly similar facility for
18 blacks. The University of Texas Law
19 School had denied Sweatt entering, on
20 the ground that he could attend a
21 recently created law school, which at
22 the time it opened had no full-time
23 faculty and no library. In that case,
24 the Supreme Court for the first time

1 ordered a white university to admit a
2 black student. Although the Court
3 refused to review Plessy v. Ferguson,
4 a dark stain on the record, it
5 nevertheless found that the two
6 schools were not equal.

7 All of these cases and the
8 victories it achieved set the stage
9 for the ultimate success of Brown.
10 Every case that we brought was
11 pursuant to a predetermined strategy
12 to end segregation. As we now all
13 know, the stroke to end segregation
14 did not end with Brown. It took many
15 years and many more cases to enforce
16 Brown and integrate previously
17 segregated schools.

18 Today, class more than race
19 is a determinate of the quality of
20 education that children receive. That
21 is the challenge for the next
22 generation of lawyers to address. The
23 rise of minorities in the legal
24 profession, one of the 20th Century's

1 triumphs over ignorance and bias has
2 made us ready as a nation to face this
3 and many of the challenges in the 21st
4 Century, and many other challenges.

5

6 (Applause.)

7

8 JUDGE SMITH: Thank you.

9 Next, I'm going to ask

10 Julius Chambers to speak about the
11 Charlotte case and bussing in schools,
12 as well as tell us something about his
13 stewardship of the Inc. Fund.

14 MR. CHAMBERS: Thank you,
15 Judge.

16 I, like others who preceded
17 me, want to thank the bar and the
18 conglomerate of the minority bars that
19 have sponsored this event for
20 tonight's event. I also want to thank
21 the Legal Defense Fund for the work
22 that it has done in order to help with
23 the efforts in desegregation. I
24 mention that because the

1 Charlotte-Mecklenburg school case
2 would not have happened but for the
3 support that we received from the
4 NAACP Legal Defense Fund.

5 We had been trying for years
6 after Brown to get the U.S. Supreme
7 Court to address the question of the
8 extent to which school districts had
9 to go in order to eliminate racial
10 segregation. We had a number of
11 districts that had moved to
12 desegregate the schools. And I had
13 run up and down the highway for over
14 ten years with what we called Freedom
15 of Choice Funds, where black parents
16 were required to request transfer to a
17 white school. And we had an ideal
18 situation in Charlotte and
19 Mecklenburg, which is a district with
20 the city and county combined, to ask
21 the Court to address a plan that would
22 eliminate segregation in each of the
23 schools in the system. Fortunately,
24 the District Court Judge with whom we

1 were dealing ordered that kind of
2 relief. And it was perhaps the first
3 time that the Court had directed the
4 consolidation of school districts and
5 busing of students and other steps,
6 that were to some people bizarre, in
7 order to effect some racial mixing of
8 students in each of the schools in the
9 system.

10 We had some concern whether
11 the U.S. Supreme Court would approve
12 that kind of relief. But as the case
13 got to the U.S. Supreme Court, we
14 became more convinced that that was
15 the type the Court really would
16 require, and the Court did in fact
17 affirm the District Court's decision.
18 It was to me a signal victory, because
19 we had effected desegregation in each
20 of the schools in the system, and we
21 had placed the burden of desegregation
22 on the school board.

23 Since that case, I have had
24 some concerns about where we are and

1 the possible futility of a lot of the
2 efforts that we had undertaken. I
3 believe firmly that it's important the
4 schools be desegregate and that black
5 and white children and all children
6 attend school and learn together. I
7 think it's absolutely essential for
8 this country. I have, however, had a
9 number of debates where blacks and
10 other minorities have questioned
11 whether integration is really that
12 important. And they get support from
13 people like the present
14 Administration. We have seen since
15 Mr. Bush's administration and even
16 before a retreat from where we had
17 gone with desegregation of schools. I
18 have watched in Charlotte-Mecklenburg
19 schools resegregate based on decisions
20 of the U.S. Supreme Court that had
21 required integration
22 of-Charlotte-Mecklenburg.

23 We just had a decision
24 yesterday from a State Court Judge in

1 North Carolina who held that
2 Charlotte-Mecklenburg schools were
3 really discriminating and
4 disadvantaging black students solely
5 because of their race. We have
6 students in every one of the high
7 schools in Charlotte-Mecklenburg,
8 black students, minority students who
9 are falling below grade level. The
10 judge found that that was because of
11 the way the school district
12 administered the schools, allocated
13 resources and treated the students.

14 Prior to that decision, a
15 fellow District Court Judge had ruled
16 that Charlotte had achieved a racially
17 integrated system, and the a circuit
18 Court of Appeals had affirmed that
19 decision.

20 We now have this situation.
21 We desegregated Charlotte-Mecklenburg
22 schools, and they say we have reached
23 a unitary status. Schools are now
24 resegregating, and many of them have

1 resegregated, and minority students
2 are really being disadvantaged, and
3 everybody knows it. You ask, what can
4 you do under these circumstances to
5 provide relief for the minority
6 children who clearly are being
7 deprived of an equal educational
8 opportunity. Charlotte-Mecklenburg is
9 typical of what is happening in many
10 school districts around the country.

11 I believe that while much of
12 what we celebrate today is
13 appropriately celebrated, that it
14 should be a lesson for all of us in
15 2005 that we have just begun the
16 fight, and there is much for all of us
17 to do. We need more Thurgood
18 Marshalls, more Constance Motleys,
19 more Jack Greenbergs, more George
20 Smiths, and yes, more Julius Chambers.

21

22 (Appause.)

23

24 JUDGE SMITH: Nathaniel

1 Jones, I'm going to ask you to discuss
2 segregation in the northern schools,
3 and if you know particularly the
4 situation in Detroit.

5 JUDGE JONES: Thank you.

6 And good evening. This is an
7 opportunity I relish because I think
8 that it affords an opportunity for us
9 to be focused on a very significant
10 issue that too many Americans have
11 pushed to the side and have not
12 accepted as a crucial consideration.

13 When I became general
14 counsel of the NAACP in the late '60s,
15 I was confronted with demands from
16 around the country for some help,
17 particularly those in the north who
18 were saying that they were not
19 educating the children, they were
20 becoming racially segregated. They
21 were inferior both in quality and in a
22 material sense.

23 The problem we had was this
24 fiction of the de jure de facto. The

1 cases that had been litigated in the
2 north prior to that time had been
3 dismissed and left unsuccessful,
4 primarily because the courts have held
5 that Brown applied to states and to
6 school districts that were segregated
7 by virtue of statutes and
8 constitutional provisions. In the
9 northern states, the segregation that
10 existed it was claimed was denying.
11 It was the result of happenstance. It
12 was the result of housing patterns.
13 It just happened that way, and there
14 is no state action involved there,
15 because it was not de jure, and the
16 14th Amendment could not be utilized
17 as an instrument for remedy.

18 I was confronted by some
19 officers of our Detroit branch in
20 August of 1970 who were very upset
21 because the Detroit school board, a
22 majority of the board, had adopted a
23 voluntary plan of desegregation, very
24 modest. They had hired a new

1 superintendent from the Ford
2 Foundation and came up with a program
3 to very gingerly tackle this issue of
4 racial isolation in the Detroit
5 schools. And under the plan adopted
6 by the board, there would have been
7 about 2500 students reassigned. And
8 for the first time 20 white students
9 would be assigned into schools that
10 were identified to be black. In the
11 firestorm, the state legislature got
12 into the act and passed a law called
13 Act 48, that forbade the Detroit
14 school board from implementing their
15 plan. They declared that all of the
16 attendance lines and the assignment
17 patterns that had existed prior to
18 this plan adopted by the Detroit Board
19 would be reinstated.

20 Now the officials of the
21 branch came to me and asked if we
22 could provide some guidance and some
23 help. Well, it struck me as being
24 just another form of nullification

1 into a position that we had seen in
2 Little Rock and we saw in Alabama. It
3 was a matter of state interposing its
4 power to nullify a positive
5 affirmative step taken by a local body
6 attempting to comply with the mandate
7 of Brown.

8 So we filed a lawsuit,
9 attempting to challenge and testing
10 the statute that the state of Michigan
11 had enacted, and also seeking to
12 enjoin the state from interfering with
13 the practices of the local board.
14 When we filed the suit, we encountered
15 a very hostile judge who said to us
16 that he had been a judge for some
17 period of time and an Attorney General
18 in Michigan, and no way in the world
19 would we be able to prove the claims
20 we set out in our complaint. Namely,
21 that the State of Michigan and the
22 Detroit School Board historically over
23 time had discriminated against black
24 children. He said the people of

1 Michigan are too good for that, and
2 you'll never convince me of this.

3 We had engaged in
4 considerable discovery. We thought we
5 could win the case, but he denied our
6 temporary restraining order and set
7 the matter down for a hearing on
8 preliminary injunction. We
9 immediately appealed to the Sixth
10 Circuit Court of Appeals. We called
11 the Chief Judge, who is from
12 Tennessee, Harry Philips; he scheduled
13 an emergency hearing. We made our
14 argument that this was a case of
15 nullification, and that that act was
16 unconstitutional. The panel for the
17 Sixth Circuit agreed and struck the
18 act as unconstitutional, but they
19 would not give us any further relief,
20 and remanded the case for trial. We
21 then went to trial, and the trial
22 lasted some five months. The evidence
23 was overwhelming. What we had to do
24 to prove that this de facto argument

1 was a myth was to dig into the history
2 of the school district, the
3 construction policies that were
4 pursued by Detroit over time, the
5 housing practices that existed in
6 Detroit, the interaction between state
7 and the city, the way they operated in
8 lockstep. How the federal
9 government's housing practices, FHA
10 with its policies of not ensuring
11 loans for houses to be purchased in
12 neighborhoods that would become
13 integrated, all of these things and a
14 lot more. The assignment practices,
15 the optional tenant zones, where they
16 allowed students once a school became
17 integrated to have a number of
18 minority students. They'd allow the
19 white students to transfer out into
20 schools that were more white. All of
21 these policies were a matter of
22 record, and the judge halfway through
23 the trial decided that we were making
24 our case, and he held for us in a very

1 strong opinion. He then went on to
2 note that the segregation in Detroit
3 was so pervasive that he doubted that
4 a remedy limited to Detroit would hold
5 for any period of time. He said since
6 the state of Michigan had been a joint
7 tort-feasor, had been a wrongdoer
8 along with Detroit, and it was the
9 state of Michigan that drew the
10 boundary lines, the school district
11 lines, that it could not use the
12 School District of Detroit alone as a
13 remedy. Therefore, he ordered the
14 state to participate in the remedy,
15 which meant that there would be some
16 assignments. He directed a plan be
17 prepared that would see some of the
18 students of Detroit reassigned into
19 some of the suburban schools, and some
20 of the suburban children would be
21 assigned into the Detroit schools.
22 And in many cases that could be done
23 and would involve less transportation
24 than if the students in Detroit were

1 assigned cross town.

2 The Sixth Circuit Court of
3 Appeals took the matter up by panel.
4 The panel affirmed the district judge.
5 Then when they moved for an en banc
6 consideration, the full Sixth Circuit
7 Court of Appeals affirmed on a 6 to 3
8 vote; they affirmed the district
9 judge. And then the suburbs and the
10 Detroit School Board took the appeal
11 to the U.S. Supreme Court. We finally
12 had a good chance in the U.S. Supreme
13 Court, because if we looked at the
14 track record of the different justices
15 we felt we could probably get maybe a
16 6 to 3 win, and at least a 5:4. We
17 got a 5:4, but it was the other way
18 around.

19 On the morning that the
20 Chief Justice read his opinion, I was
21 in the courtroom of the Supreme Court.
22 I thought he must have been reading
23 from another record. The way the
24 Court took that record and twisted it

1 and distorted it was just
2 mind-boggling. Then when the other
3 Justices read their dissenting
4 opinions, you realized that there had
5 been a real struggle within the Court.
6 Justice Marshall read his dissenting
7 opinion, and his words were prophetic.
8 He said in that opinion: The majority
9 may feel and Americans may feel that
10 it's wise and to the good to leave our
11 schools and our city divided, as they
12 are now, black and white, and to
13 refuse to apply the mandate of Brown
14 and the subsequent holdings that we've
15 heard discussed tonight to
16 Charlotte-Mecklenburg case, where the
17 Supreme Court had established
18 parameters for remedy, which the
19 Supreme Court rejected or ignored, and
20 what the district judge did, he relied
21 upon what the Supreme Court said in
22 Charlotte and what they had said in
23 the southern case in terms of remedy.
24 But the Supreme Court said those cases

1 do not apply because we had not
2 established that the suburbs had been
3 involved in creating the segregation
4 within Detroit. Totally overlooking
5 the fact that the state of Michigan is
6 the real operator of education. And
7 therefore, with the state of Michigan
8 involved, these school district lines
9 that separated city from suburb didn't
10 really matter. And so by five to four
11 they reversed on the metropolitan
12 relief.

13 Let me just say this, that
14 the manner of northern school
15 desegregation had the Supreme Court
16 step into the plate, and inconsistent
17 with what it had said in other cases,
18 could have changed the landscape of
19 America. And that's why Justice
20 Marshall's dissent was prophetic. He
21 predicted what we are now seeing
22 today, because the Court refused to
23 apply or allow the courts to use their
24 remedial power in the face of

1 constitutional violations that it had
2 ordered the southern districts to
3 apply.

4 So we are faced now with a
5 number of strategies trying to correct
6 this horrible situation we find in
7 northern schools. We have this
8 education reform movement, charter
9 schools, vouchers. The national
10 administration is pushing vouchers,
11 the argument against desegregation,
12 and the case is being litigation.

13 They required students to leave the
14 neighborhood. Students can best learn
15 if they go to the neighborhood school,
16 that was the argument.

17 But what do we have with the
18 charters, with the vouchers? They are
19 giving kids vouchers; they must pay
20 for the transportation. In Cleveland,
21 for instance, there is a charter
22 program and a voucher program in which
23 students are transported to schools
24 out in the suburbs by taxi cab, and

1 the fare is paid by the School
2 District of Cleveland, taking money
3 away from the School District of
4 Cleveland to support the reform
5 movement, which is siphoning off a
6 handful of minority children and
7 warehousing the rest of them inside
8 the schools in the city.

9 So this is the challenge we
10 have. And as Julius Chambers said and
11 as Judge Motley said, we are facing a
12 time when we need some good thinking,
13 some good lawyering, along the lines
14 of what we saw when we built up to the
15 Brown decision. Thank you.

16

17 (Applause.)

18

19 JUDGE SMITH: All right,
20 thank you.

21 We have a time limit in this
22 format, and we have about fifteen
23 minutes left. But I want to hear from
24 Jeff Greenup, to speak for just a

1 minute. Jeff Greenup grew up in
2 Louisiana. One of the cases that he
3 handled involved a youngster who
4 reacted strongly when the N word was
5 hurled at her at school. Can you tell
6 us what happened in that case, Jeff
7 Greenup.

8 MR. GREENUP: Thank you,
9 Judge.

10 It is my distinct privilege
11 and honor to be here amongst these
12 legal giants. I've followed Justice
13 Motley around for years. And every
14 day I'd look up in my office and see
15 her picture there, and reminisce about
16 the many great moments I had when I
17 listened to her. And of course, lots
18 of times I get engaged in
19 conversations, and it's all about the
20 south. So someone asked me one day,
21 what about the north? And I asked
22 her, what do you mean? You know, up
23 south north. Well, I've had some
24 experiences that may give some

1 credence to that expression.

2 I was living in Westchester
3 County, Hastings on the Hudson. I was
4 there, of course, I had had a
5 disagreement with the wife. She
6 wanted to send our children to private
7 school, and I took the position that,
8 well, we were not going to be living
9 in a private world, I would rather
10 spend the money and buy a house where
11 there are some good public schools.
12 So we looked around, and we thought
13 the public schools in
14 Hastings-on-Hudson were good, and
15 that's where we ended up with the
16 kids. And of course, word got around
17 that I was affiliated with NAACP, and
18 there was some totally white public
19 schools in parts of Westchester County
20 where I lived.

21 Now, the particular instance
22 that Judge Smith just mentioned, there
23 was a young black female student who
24 had just made her sixteenth birthday,

1 and she was trying to follow the
2 teachings that her mother taught her.
3 Of course, they were students of Dr.
4 Martin Luther King: Don't fight back.
5 Turn the other cheek. So one day she
6 reached a breaking point when one of
7 her classmates, who happened to be a
8 white male, used the N word. And I
9 don't think I'm permitted to use it in
10 polite company like this, but he
11 called her a nigger and spat on her.
12 So she slapped him, and found herself
13 suspended and being prosecuted for
14 assault.

15 Now, in the midst of the
16 trial, her aunt, who was her guardian,
17 became concerned because the courtroom
18 was full of people every day, but the
19 only two people that looked like them
20 in the courtroom was the aunt and her
21 niece. So she went to the NAACP in
22 White Plains, New York, and asked for
23 some help. Somehow the word got to
24 now Judge Jawn Sandifer, who for years

1 was the Chairperson of the State
2 Redress Committee, and Jawn had a
3 habit when a nasty situation came up
4 of saying get me Jeff. So I found
5 myself in the courtroom being shoved
6 around by the judge, literally.
7 Because we were in the midst of the
8 trial, and here I was trying to
9 intervene. So I called on the Defense
10 Fund, and I got one of the lawyers
11 there. And I don't know if he
12 remembers it or not, but his name
13 happened to be Harper, and I told him
14 what a problem I was having. He said,
15 well, go back in the courtroom and
16 talk to the judge about the fact she's
17 entitled to a lawyer of her own
18 choosing, and make sure she says she
19 chose you.

20 So I went back in the
21 courtroom, and to make a long story
22 short, the judge declared a mistrial,
23 after he made the record about her
24 having a constitutional right to a

1 lawyer of her own choice, and I took
2 over the case. I was on trial for two
3 weeks, and of course, eventually the
4 charges were dismissed. She was
5 acquitted. And that youngster and her
6 aunt, she went back to school, finally
7 she got transferred to another school,
8 graduated and went to college in North
9 Carolina and became a teacher. But I
10 have on my wall a plaque, and the
11 plaque reads: I don't remember the
12 exact quote, that's my fee. So she
13 said, we don't have any money, but
14 Nanna and I just want to thank you for
15 what you did for us. I said, well,
16 thank the NAACP. She says, you have
17 NAACP applications? I said well,
18 aren't you already a member? She
19 said, I'm not aware of it. Of course,
20 I had learned something from an
21 experienced Judge Robert Callahan,
22 when he was a lawyer, and got in
23 trouble when the question was raised
24 whether or not his clients actually

1 retained him. So I said to Nanna and
2 to the young lady, of course you're
3 members of the NAACP. I signed an app
4 before I got involved.

5

6 (Applause.)

7

8 NAACP had authorized me to call this
9 an NAACP case. So whatever you do,
10 don't forget you are members of the
11 NAACP, and you are were a member when
12 I tried this case. She is now a
13 teacher somewhere in Florida, and she
14 kept in touch with me for years, until
15 her aunt passed. But that's just a
16 sampling of what could happen up south
17 north.

18

19 (Applause.)

20

21 JUDGE SMITH: Thank you.

22 I feel under the gun, but I
23 have got to call on the person who
24 taught me Constitutional Law, Judge

1 Pollak. When I was in law school, as
2 I said, I was arrested in Alabama, and
3 the reason I'm standing here today is
4 partially because of Judge Pollak.

5 Judge Pollak.

6

7 (Applause.)

8

9 JUDGE POLLAK: Judge Smith,
10 you can't imagine how privileged I
11 feel to be participating at your
12 request on this extraordinary panel,
13 and being here with so many people
14 that I've had the great good fortune
15 of working with over so many years,
16 especially when I think back to the
17 early years leading up to Brown. Mrs.
18 Marshall here, her son John, Connie
19 Motley, Jack Greenberg. Incredible.
20 If only Thurgood could be with us
21 today.

22 I won't talk about Brown.
23 Enough has been said already by Jack
24 and Connie and others, and what was

1 said about the sequelae. But I do
2 want to say a few words about the
3 wonderful case that involves George
4 Bundy Smith and Ralph Abernathy and
5 YFT Walker and other Freedom Riders in
6 the spring of '61.

7 As George has told us, the
8 Freedom Ride that he was a member of
9 began at the instance of the Yale
10 Chaplain William Sloane Coffin, great
11 figure of the civil rights movement
12 and good friend of Dr. King's. He
13 organized a small group of colleagues
14 at Yale and Wesleyan, faculty members
15 in religion, and they were white
16 males. And to integrate that group
17 the chaplain called George Smith,
18 first year law student, as George has
19 described. And George is too modest
20 to say what happened next. He went to
21 see the Dean, Eugene Rostow,
22 extraordinary figure, as some of you
23 will remember. And he went to the
24 Dean and said the chaplain has asked

1 if I could go on this Freedom Ride,
2 but exams are coming up next week. Is
3 there something that could be done,
4 could I delay those? The Dean said of
5 course, we'll delay the exams should
6 you come back. But I would urge
7 you -- and you can confirm or deny --
8 Rostow said, I would urge you, George,
9 to take some of your case books along
10 with you, so you'll be prepared for
11 the exam when you get back.

12 The plan was they were to
13 fly to Atlanta, as George has
14 described, and there they were joined
15 I think by three divinity students who
16 were black, and they proceeded by bus
17 to Montgomery. There, as George has
18 described, they were arrested. But
19 it's important to recall that the
20 Freedom Ride almost didn't come off at
21 its inception. The day before the
22 group was to leave, the chaplain
23 called, Bill Coffin got a phone call
24 from a very senior figure in the

1 Department of Justice. The department
2 was aware of Bill's plans; the
3 department was calling the chaplain to
4 say please don't go. There has been
5 violence, we are afraid that your trip
6 may exacerbate the violence. It is
7 going to be risky, and we can't
8 guaranty to protect you. And chaplain
9 said in effect, why don't you call
10 this off. And Bill Coffin went to see
11 Gene Rostow, Dean of the Law School,
12 told him about this call and sought
13 the Dean's advice. What Rostow said
14 was: Bill, never forget what happened
15 at Gettysburg. The great error that
16 General Meade made was that after
17 defeating General Lee's army, he
18 didn't follow Lee across the Potomac.
19 And so Bill and the other Freedom
20 Riders went forward.

21 The trial, as Jack will
22 remember, Jack Greenberg and I
23 represented the Freedom Riders in the
24 Montgomery County courthouse.

1 Obviously, Jack was an accomplished,
2 extraordinary, experienced lawyer.
3 Pollak knew nothing about what
4 happened in a trial court. What did I
5 know about a trial court? Jack gave
6 me instructions of what one did in a
7 trial court. The instruction that he
8 gave me was at the first recess find
9 the men's room. And that was all I
10 was told. And I followed that
11 instruction, and of course went down
12 the hall, a fairly new courthouse.
13 There was a door that says colored.
14 And I mean, in that context the one
15 thing I wasn't going to do was to
16 comply with Alabama's segregation
17 rule. So I marched in where it said
18 colored, but I neglected to read the
19 entire sign. It said colored women.

20 (Laughter.)

21 So we had accomplished quite
22 a lot on the way to desegregation.

23 The trial lasted a day, and
24 surprise, all of our defendants were

1 convicted of disorderly conduct and
2 sentenced rather promptly to fines and
3 brief jail terms. And then there was
4 a period in which papers were being
5 prepared to take an appeal. All late
6 afternoon and during that interval
7 Jack handled all that. I mean that
8 was like, you know, lawyer stuff.
9 During this idle time the judge was
10 sitting up in the front of the
11 courtroom, and I saw him beckon to me,
12 and so I went up. Jack hadn't told
13 me, but I got the idea that if a judge
14 points to you and indicated to come
15 up, you go. We had been told about
16 the judge. Everybody was very proud
17 of the judge, because he had gone to
18 the Harvard Law School. The judge sat
19 there, and he wrote something on a
20 yellow pad. And he was just sitting
21 there, having conducted the trial,
22 found the defendants all guilty and
23 then sentenced them. He wrote
24 something on a yellow pad, and then he

1 handed the pad to me; he turned it
2 around and handed it to me. He said,
3 Mr. Pollak, is this what this case is
4 all about? And I read what he had
5 written, and what he had written was:
6 When in Rome, do as the Romans do.
7 And I said, Judge, I guess it's a
8 question of how large Rome is.

9

10 (Applause.)

11

12 And that was the end of our
13 conversation. Half a century later,
14 we in America and throughout the
15 world, our obligation is to see to it
16 that Rome is as wide as our country.
17 That there are no disrespects of
18 anyone in our community, whether it is
19 on race, gender or sexual orientation,
20 disability, age, class or citizenship.

21 We have our work cut out for
22 us here in the U.S., and of course,
23 it's not just the lawyers' job. It's
24 every American's job. But lawyers

1 have a special responsibility, and
2 they have to do their job, and judges
3 have to stay independent and do their
4 job.

5

6 (Applause.)

7

8 JUDGE SMITH: We are out of
9 time. But I just want to take a
10 couple of minutes and indicate that
11 among the participants is Edward
12 Dudley Jr. Could you raise your hand.

13

14 (Applause).

15

16 JUDGE SMITH: I once law
17 clerked with Dudley Senior, who died
18 in the last few months and who was the
19 first African-American to be an
20 ambassador. He was the ambassador to
21 Liberia, and he was a man who urged
22 the State Department to send
23 African-Americans anywhere in the
24 world, not just to Africa. And for

1 that, we owe him a great thanks.

2

3 (Applause.)

4

5 We also have Mrs. Thurgood
6 Marshall here. And I just want to ask
7 her how Judge Marshall felt about
8 Brown in his later years, and how did
9 he feel about serving on the Supreme
10 Court of the United States?

11 MRS. MARSHALL: Justice
12 Marshall always said that all he could
13 do was the best he could do with what
14 he had. And in serving as a Justice
15 of the Supreme Court, he tried to do
16 his best. In the latter years, his
17 first question to an incoming law
18 clerk or one of the men who applied
19 for the job, he would say, I hope you
20 enjoy writing dissenting opinions

21

22 (Laughter.)

23

24 JUDGE SMITH: Judge

1 Weinstein, I'm going to ask you what
2 you think about Brown today and where
3 do you think the civil rights movement
4 is headed?

5 JUDGE WEINSTEIN: Well, with
6 time so short, perhaps I ought to save
7 my stories for the 100th Anniversary,
8 which will I hope in our case be
9 celebrated in heaven, with Thurgood
10 Marshall participating.

11 But I've had these cases on
12 my docket for the last forty years,
13 and the struggle continues and will
14 continue. Things are getting better,
15 not worse. And if all of us continue
16 to devote ourselves in the law, they
17 will continue to get better.

18 Thank you for your help.

19

20 (Applause).

21

22 JUDGE SMITH: Thank you.

23 You will see in your program

24 that there are several attorneys who

1 are not here on stage. Norman Amaker,
2 unfortunately passed away in 2000. I
3 don't think that Professor Leroy Clark
4 is here. James Nabrit is ill and
5 could not make the journey. But
6 Michael Meltsner was here, and Frank
7 Heffron is here. I'll just ask Frank
8 Heffron to stand. We started out
9 together at the Legal Defense Fund.

10 I still have a whole list of
11 questions, but if I start down that
12 road, I'm sure we will be kicked out.
13 I think I'll quit while I'm ahead.
14 And I'm going to turn it back over to
15 Ken Standard.

16 I would like to thank
17 everyone for being here. As you can
18 see, we've come a long way, but we've
19 got a long, long, long way still to
20 travel. Thank you to everyone who has
21 helped us reach this milestone, and
22 please keep traveling with us.

23 (Standing ovation.)

24 PRESIDENT STANDARD: A

1 couple of closing comments. I want to
2 thank our Robert Grey in particular
3 for coming. This is the second time
4 this month he has come at my request
5 to be with us here in New York State,
6 and that is just an indication of the
7 respect that he has for the New York
8 Bar. And I just want to let him know
9 that we have great respect for him and
10 all that he has accomplished.

11 I also want to tell you a
12 funny little story. Robert is a
13 native of Richmond. I happen to have
14 a friend, a white friend, who is about
15 80 and who also is a native of
16 Richmond. We've all heard stories
17 about mammies and people having black
18 mammies. This friend of mine had in
19 fact a black mammy, and he was very
20 close to her. He was closer to her,
21 from what he tells me, than to his own
22 parents. He tells the story about
23 being downtown with his black mammy
24 and going into a public facility, and

1 there were two water fountains. One
2 water fountain said white and the
3 other water fountain said colored.
4 And he could read. He ran over to
5 drink from the colored water fountain,
6 and his mammy pulled him back and
7 said, no, no, no, no, Mr. Alfred, you
8 may not drink there. That's not for
9 you. And he said, but I want to drink
10 from there, and he started crying
11 because he wanted to drink. She said
12 why do you want to drink it? Because
13 it's colored water. I want to drink
14 colored water.

15 Robert, did you ever try the
16 colored water?

17 PRESIDENT GREY: I had a lot
18 of it.

19 PRESIDENT STANDARD: Two
20 other things. I guess I just want to
21 make an observation that Bruce Green,
22 one of the members of our State Bar
23 House of Delegates and a former law
24 clerk to Justice Marshall is here with

1 us tonight.

2

3 (Applause.)

4

5 And I also want to mention
6 that today is the 30th anniversary of
7 Judge George Bundy Smith assuming the
8 bench. George.

9

10 (Applause.)

11

12 I want to thank all of you
13 for coming out tonight, joining with
14 the State Bar Association and its 17
15 Minority Bar Partners. This is part
16 of our effort to increase the
17 diversity of our profession, to
18 increase the diversity of our Bar
19 Association. These are sorely needed.
20 We have a minority population in New
21 York State and in this country of
22 approximately 30 percent. Our
23 minority representation in the bar,
24 however, is far below that. Total

1 minority population of the Bar is less
2 than ten percent. We have got to do
3 something about that gap, which is
4 related to the educational achievement
5 gap. And I hope you will all join
6 with us in the Bar in seeking to
7 address that gap and to reduce it so
8 that we have equal opportunity
9 throughout America in every walk of
10 life and in every profession and in
11 every occupation.

12 Once again, thank you for
13 joining us tonight.

14

15 (Appause.)

16

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