

Introductory Remarks

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INTRODUCTORY REMARKS

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Despite debates about judicial activism and judicial restraint, courts do not initiate cases. In relation to the active litigants and the lawyers who bring cases on behalf of litigants, judges are passive in the litigation process. Judge Cardozo observed in *The Nature of the Judicial Process* that judges were not “knight[s]-errant” wandering the countryside seeking virtuous opportunities and persons in distress.¹ In the vernacular, his comment reminds us that courts need a shove from the lawyers acting on behalf of their clients to launch the great journeys of challenge that lead to improvement on issues of the day. Lawyers and courts thrive in that symbiotic relationship, and for the most part, courts have served our nation very well.

With the benefit of historical hindsight, we celebrate the magnificent vision, wisdom, and perseverance of attorneys like Thurgood Marshall and his associates who shaped the advocacy and set the stage for that unanimous victory in the Supreme Court fifty years ago.² For those who are unhappy with the pace of progress after *Brown*, we need only dwell for a moment on the calamity if the case had gone otherwise and the Court had dug in its heels on *Plessy* under *stare decisis*.³ In my view, we have a glass at least half full and getting fuller all the time. *Plessy* was not a glass half empty, but rather a severely broken glass. Fortunately we can never go back—and will not go back—across the separate but equal divide. However, we have miles to go on the journey to achieve the dream and promise of *Brown*.

I am so pleased that Professor Weinberg and many others have gathered us together to hold this commemorative program at St. John’s. It is designed not only to celebrate and illuminate but also to stimulate critical thought and to further the progress

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¹ BENJAMIN CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 141 (Yale Univ. Press 1991).

² See generally *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

³ See generally *Plessy v. Ferguson*, 163 U.S. 537 (1896), *overruled by Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

of *Brown*. We are one of many law schools holding a program that critically examines *Brown*. Some have questioned "Why have another one?" The answer is that there cannot be too many of such events and celebrations; indeed, they should be universal and continuous. Celebrating *Brown* is the key to furthering diversity in education, for that will keep our personal and national consciousness and determination focused on overcoming the struggle against discrimination, advancing the march to greater equality in education, and improving the economic well-being of the people of this nation. These programs are not one-day snapshots. If that were the case, they would be ephemeral and frankly insulting to the work and memory of Thurgood Marshall and the product of the Supreme Court of the United States.

The efforts of those involved in the litigation and examination of *Brown* need follow-up and follow-through because the analysis of the struggle for equal rights is a lifelong pursuit—a pursuit transforming minds and hearts and educating people to the value of individuals. That is a marathon life event and then some. Indeed fifty years is almost a double marathon in the mathematical measurements of history on issues of this magnitude. However, because we are imperfect human beings who use imperfect institutions and because there are so many cultural and fiscal limitations, we must be realists.

Although we celebrate our individuality and diversity, we must never lessen the determination to overcome inequality—to level the playing field of educational opportunity and to bind ourselves together as one. The insidious phrase and doctrine of separate but equal must remain banished from our jurisprudence and our sensibilities. It was rightly discarded on the other side of this nation's journey—at the base camp of the soul-cleansing rise to an Everest that we call *Brown*. Let us make sure that we do our part to continue the improvement.

Thank you to all the panelists and all those in attendance for contributing your talent, experience, and insight. We pledge to do our part, to stay the course, and to continue the journey with you.