

**NATIONAL EQUAL JUSTICE AWARD DINNER**  
**PRESENTING THE**  
**THURGOOD MARSHALL LIFETIME ACHIEVEMENT AWARD**  
**REMARKS BY WILLIAM T. COLEMAN, JR.**  
**NOVEMBER 20, 1997<sup>1</sup>**

With all due respect to Vernon E. Jordan, Jr. and  
Congressman Charles Rangel, two loyal Democrats here tonight, President  
John F. Kennedy was wrong when he said: "Life is unfair." Sidney Poitier  
got to play Justice Thurgood Marshall in *Simple Justice*. But tonight I  
receive the Thurgood Marshall Lifetime Achievement Award and I receive  
it with so many dear friends present.

Mark Twain, a prolific writer, was also a prolific reader. In  
his home, books were on the floor, in the windows, on stairways, on beds,  
indeed spread all over. When asked why he didn't have more book cases  
and book shelves, Twain replied: "It is easy to borrow books, but  
impossible to borrow book cases and book shelves." But, friends and  
supporters here tonight have often let me borrow items and thoughts

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<sup>1</sup>Senior Partner, O'Melveny & Myers, Secretary of Transportation in  
the Ford Administration (1975-1977); Chairman, NAACP Legal and  
Educational Fund, Inc., made an Officer of the French Legion of Honor by  
President Giscard d'Estaing and given the Presidential Medal of Freedom  
by President Bill Clinton.

comparable to their book cases and book shelves, protected me, gave me substance, never demanding anything in return.

We praise deceased famous men, not to place verbal flowers on their graves. Ecclesiasticus reminds us: we praise them as they have given us an inheritance.

Tonight we commune with Justice Thurgood Marshall to enlighten our understanding of the significance of life, to refine our faculties as assayers of values, to fortify our will in pursuing worthy ends where success is measured not by the coin of the realm, but by a nation's grateful respect, appreciation and indebtedness for a job superbly done.

The qualities of his mind, the rare ability of analysis which permitted an application of old concepts, and concepts having nothing to do with race, to frightfully new conditions, summon us to a better appreciation of the good life and a steadier devotion to it.

An observant historian should recognize that much of today's constitutional structure that makes possible today one nation with equal justice for each is due in great part to two Justices -- each had the last name of Marshall.

Chief Justice John Marshall, the fourth Chief Justice of the United States, used vague concepts embodied in the Commerce Clause and

certain structural nuances to sustain judicial review of executive and legislative actions and establish supremacy of the federal government. We thus became one nation -- a federal nation, but with the federal government usually supreme. John Marshall's Constitution enabled us to tame a continent, survive a civil war, supplant Great Britain as the world leader, and twice ensure the survival of freedom through wars in Europe and the Far East.

Race, however, represented the one issue that the nation's Constitutional structure, including the Supreme Court and the political process, could not resolve; it eventually prompted a Civil War. The Hayes-Tilden Compromise and an 1896-1938 wayward Supreme Court wrongly and unfairly ended Reconstruction before it could eliminate the effects of discriminatory racial laws, slavery, and public attitudes that were (and still often are even today) significantly influenced by those ancient racial laws (even though now repealed) and traditions based thereon or influenced thereby. Thus, the nation's high-sounding phrases about individual dignity and liberty rang hollow.

One hundred years after John Marshall's death, Thurgood Marshall, the 96th Justice of the Supreme Court of the United States, began his unsurpassed contribution to law by making the Constitution serve

the nation's modern needs. As a private lawyer, a Circuit Judge, a Solicitor General and then as a Justice on the Supreme Court, he reinvigorated the Civil War Amendments and the Bill of Rights and transformed them into bulwarks against unfairness, indecency, and incivility on the part of government. He expanded the 1964 Civil Rights Act so that it imposed some restrictions on even private racial and sexual discrimination when done by private corporations and private universities and colleges and so that it protected Whites as well as Blacks and all women. His efforts helped this country begin to accept, as an integral part of society, two groups excluded from the Constitutional Convention -- African Americans and all women. The constitutional transformation Marshall helped engineer has made the sentiments expressed in the Declaration of Independence an achievable goal by the end of the next generation -- if today's Court stops its recent tendency, usually by a bare majority of only one, to become wayward again. Marshall's transformation has made it possible -- if this nation really works at it -- for 250,000,000 people of diverse background, race, sex and religion truly to form one nation before the end of the first quarter of the twenty-first century.

To those of us here tonight, fortunate enough to sit at his feet, argue with him, write paragraphs which he would usually rewrite, and

otherwise engaged in what good young lawyers do when the senior is a superb lawyer, Thurgood Marshall taught us many things. Four of Marshall's principles were to him, and still are to us, fundamental:

**The United States will not live up to the Declaration of Independence until we have a truly integrated society.**

**Second, the transition must be accomplished peacefully by the intelligent use of the law in the courts and other appeals to reason and moral fairness.**

**Third, increasingly most Americans want a color blind society, but until that day is reached, even though there has been truly significant progress since 1938, thanks to many in this room tonight, we have to put our minds, hearts, souls and efforts into developing processes which eradicate the residual effects of legalized slavery and legalized racial segregation, and thus permit every American to achieve his or her full potential regardless of race, sex, or creed.**

**Finally, and this must be repeated constantly to the young, there must always be an appreciation of, and love for America. It is the only society in recorded history where -- to rewrite slightly what Justice Frankfurter said in dissent in *Board of Education v. Barnette* "the most vilified and persecuted minority in this country's history" will achieve its**

full right and participation not by the bullet, the sword or even the use of the ballot, but because American citizens have a moral compass which ultimately will lead them to do the right thing. It is that cherished American feeling which as Justice Frankfurter said in *Railway Mail Association v. Corsi* that even in private matters "forbids indulgence in racial or religious prejudices to another's hurt."

Many have used misleading adjectives in describing the life of Justice Marshall. I offer you five correct ones: daring, romantic, a commanding presence, sophisticated and lucky.<sup>2</sup>

"DARING" because in a nation in 1940-1955 with increasing pressure towards conformity he dared to challenge intolerance and prejudice and racial segregation even when supposedly patriotic persons and the voice of the multitude as well as all branches of government, state and federal, and often even the upper classes of our society, approved of the then status quo, to wit: racial segregation.

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<sup>2</sup>Justice Felix Frankfurter used four of the five adjectives to describe another legal giant, Chief Judge Learned Hand who, like Justice Marshall, graced the United States Court of Appeals for the Second Circuit. See Frankfurter, Of Law and Life and Other Things That Matter, pp. 134-5 (1965).

**"ROMANTIC"** because the window of his mind searched for and found favorable winds. He pursued the Holy Grail of fairness even when others repeatedly announced preference for another love, the status quo of over 106 years, to wit: racial segregation.

**"A COMMANDING PRESENCE"**. We watched him often in a room of brilliant lawyers, including law professors from our leading law schools, many of whom now grace our federal bench, our great law firms, or key positions in the nation's major companies, outline the basic issues which needed to be covered in a brief, listen to him ask the right questions and at the end of the discussion become the intellectual leader of those whom he had assembled to advise him. At the end, all would uniformly and willingly turn to Marshall and say, "Thurgood, what do you think are the better arguments?"

**"SOPHISTICATED"** in that he never confused the familiar, or old legal precedents with the necessary; he questioned his own basic premises even while acting upon them until he got better ones.

Finally, **"LUCKY"**. Look at some of the persons in this room -- Chief Judge Constance Motley, Judge Louis Pollak, Judge Bob Carter, think of people like Paul Freund, Dean Ervin Griswold, Judge Jack Weinstein and others that Thurgood collected around him. Lucky, also, in

having attained that which makes all the rest of life bearable, a happy marriage to a wonderful woman.

Lucky even in failure. The Kennedys wanted to appoint him to the Fourth Circuit or the District of Columbia Circuit or to the District Court in Maryland. In each case, they were afraid to put the name before the Senate as Senator Eastland would kill it. Instead, a year later he got appointed to the Second Circuit. I'm pretty sure Chief Judge Jim Oakes, and Chief Judge Bill Feinberg, here tonight, will agree that any lawyer would love to have such a "booby" prize. Thereafter, the Solicitor General of the United States and then Associate Justice of the Supreme Court.

Sir Isaiah Berlin was that Britisher who wrote brilliant dispatches from America about Churchill's leadership during the second World War. In 1943, Berlin's dispatches came to Churchill's attention. Churchill asked his staff to invite Berlin to lunch. The conversation at 10 Downing Street took an awkward turn when Churchill asked his guest: "Berlin, what do you think is the most important piece you've done lately?" His guest replied, "White Christmas." The invitation had been missent -- to Irving, not Isaiah Berlin.

So, to the two Vernons, [Vernon E. Jordan, Jr., Senior Partner, Akin, Gump, Strauss, Hauer & Feld; Vernon R. Loucks, Jr.,



Chairman and Chief Executive Officer of Baxter International, Inc.] and Mrs. Marshall, give me a few more minutes so that I can talk about the Legal Defense Fund, otherwise our guests may think your staff invited the wrong Coleman.

An important issue with LDF today is the validity and efficiency of Affirmative Action. Of course, in our schools, in our churches and at the LDF, we emphasize that parental involvement and hard work are essential as education is essential. Many minority families realize that at least a 10% extra effort over what other Americans usually do is required to achieve success. But we strongly believe that Affirmative Action still is an essential tool to end the residual effect of over 244 years of legalized slavery and 106 years of legalized racial segregation. To borrow from a metaphor of Justice Holmes: "When you get the dragon out of his cave onto the plain and into the daylight, you can count his teeth and claws and see just what is his strength. But to get him out is only the first step. The next is either to kill him or to tame him and make him a useful animal."<sup>3</sup>

In 1954, Thurgood Marshall naively thought that once the Supreme Court knocked down segregation, Blacks, after a short period of

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<sup>3</sup>The Path of the Law in Collected Legal Papers, 167, 187 (1920).

Southern government discontentment, would participate freely, and as meaningfully in the American dream the same as everyone else. As stated previously, Thurgood was a romantic. It didn't work that way. Even after the passage of 1964 Civil Rights laws, and the 1991 Civil Rights Statute, no one in this room can say that minorities have the same chances for ultimate success, or get there, even if fully qualified, as easily as most other qualified Americans do. Thus, something else must be put into the process from birth to at least the first real success. I give a few examples.

For 106 years a police force was all White even though the city's population was at least 30% minority. The city certainly is justified in using new vacancies to alter that current racial make up. And, if the requirement to be a Sergeant was the candidate had to have 15 years of previous service on the force, certainly for Blacks something other than strictly seniority must be used.

Next, if a city recognizes that due to living patterns and the unequal distribution of poverty the schools in minority communities are not as well kept, indeed dilapidated, poorly staffed, it doesn't take a rocket scientist to recognize that many of such children even though of comparable natural ability, will not do as well on tests to get into colleges as many who live on Park Avenue.

Thus, the universities have to be able to put other items in the admission system so that its student body will be more reflective of the nation. After all, a crucial mission of the Colleges and Universities is to train the next generation of leaders in all walks of American life. We are learning, for example, that LSAT scores will predict those who clearly would fail at the great law schools like Columbia, Yale, Stanford, N.Y.U., Virginia [and you can add your own] and Harvard, but once the test taker achieves the zone above the minimum cut off, predictability falls by the wayside. Future success is not based upon how high the LSAT score is.

Many in this room managing major companies, law firms, and governmental bodies recognize the need for diversity and, thus, to take artificial barriers out of the process have used imaginative tools to bring its work force in line with the multi-racial make up of this nation.<sup>4</sup>

Justice Ginsburg offers a fascinating observation as to why White women have often progressed faster than Black women and men even after the enactment and enforcement of laws which made racial and

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<sup>4</sup>In walking around the room tonight, during dinner, I was thrilled to meet Black men and women, Black and White, who were Managing Directors or Vice Presidents at many of the investment houses or commercial banks, in this City of New York or were lawyers in some of this nation's major law firms in the City of New York or other great cities in this nation.

sexual discrimination illegal. She said: "Women have not been impeded to the extent ghettoized minorities have been by lingering effects of involuntary segregation in housing and community life. Most non-minority females encounter no formidable risk of death at an early age. Women are found as frequently as men in almost every neighborhood and economic class."<sup>5</sup> In addition, the same artificial barriers do not exist between women and men as between many Whites and Blacks. For women have brothers, uncles, fathers and often spouses. Most Blacks on the other hand still live in racially restricted neighborhoods, go to predominantly Black schools from K to K-12, and even if they work in an integrated environment, have a social life usually restricted to their own race.

A non-racial analogy in the international trade field is apt.

John Newhouse in *Europe Adrift* states: "They (the East Europeans) must acquire unrestricted access to the markets of western Europe, meaning not just a formal removal of tariff barriers *but, also, the dissolution of hidden barriers and other contrivances*. Enlarging the EU will extend their hope and confidence. Not enlarging it could push some of these societies to regain their pride by rekindling nationalism." (Italics supplied.)

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<sup>5</sup>Ruth Bader Ginsburg, Sex Equality and the Constitution: The State of the Art, 14 Women's Rts. L. Rep. 361 (1992).

Let me conclude with two breaths of fresh air:

A recent piece in The New York Times bears the heading "European Union Court Upholds Affirmative Action for Women."

Next, even though a certain religious group has every historical reason to find quotas abominable, leaders thereof recognized that Affirmative Action debate is not about quotas.

The other day the American Jewish Committee in a letter signed by Bob Rifkind of Cravath, Swaine & Moore stated: "The American Jewish Committee wishes to reaffirm its position that the time has not yet come for this nation to abandon Affirmative Action. To the contrary, we strongly believe that appropriate Affirmative Action programs are still required if we hope to realize the promise of America for all our citizens. The attempt to deal with Affirmative Action on an indiscriminate, all-or-nothing basis will not serve any constructive purpose. Rather, careful attention must be given to distinguishing those programs that have worked and should be sustained from those programs that have not and need to be revised and replaced."

I urge our friends and supporters by ideas, criticisms and comments to help LDF work its way through this very difficult issue.

By now you must realize that I accept this cherished Thurgood Marshall Award with profound gratitude. I am, of course, humbled by the fact that the Award bears the name of one whom I have so greatly admired for half a century -- and for whom, as a young lawyer, I had the inestimable privilege of serving as a spear-bearer in the worthy campaigns of yesteryear.

Thurgood Marshall was a lawyer who rightfully by skill, knowledge, commitment, devotion and respect for the law, dominated every courtroom he entered. He was a pioneering and distinguished judge of our highest court. He took the flawed Constitution of the United States and refashioned it into the charter of freedom that it was meant to be. He was one of the great Americans of our era.

Yet even as I say this, I know that somewhere the Justice is saying "Come on Bill. Knock it off." The Justice was not much given to turning flesh-and-blood people -- including himself -- into icons. (Mrs Marshall and his two sons were, of course, exceptions).

But there is another, and more important, reason why Thurgood Marshall would have felt a modicum of embarrassment about having his name applied to an award, or, as has also happened, to a law school, or to a large government building. He knew the importance of the

work to which he devoted his life. But Thurgood Marshall always felt -- and rightly so -- that he was entitled to only a portion of the credit which tends to get heaped on him alone. Thurgood Marshall felt that he and William H. Hastie were comrades-in-arms in a battle launched by the lawyer who was mentor to them both, Charles Hamilton Houston. I find it of special pride that Bill Hastie and Charles Houston were both graduates of the Harvard Law School, both Editors of the *Harvard Law Review*, and both students of Professor Felix Frankfurter whose pride and love for them remained always deeply in Justice Felix Frankfurter's heart, mind and soul.

What was it that Judge Hastie said of Dean Houston?

"He was the architect and dominant force of the legal program of [the NAACP LDF]. He guided us through the legal wilderness of second-class citizenship. He was truly the Moses of that journey."

And what was it that Justice Marshall said of Judge Hastie?

"He wrote the book."

And so I accept this award not in the name of Thurgood Marshall alone, but in the name of the three mythical law partners, -- Houston, Hastie & Marshall -- because I think that's what Justice Marshall would have preferred. And I accept it in the names of these three

recognizing that we who are here owe it to them -- just as we owe it to our country, our families and generations still unborn -- to soldier on seeking that Holy Grail, an America the beautiful which is truly a wholly integrated society in which every American achieves his or her potential regardless of race, creed or color. As Lincoln said:

"It is for us the living . . . to be here dedicated to the unfinished work which they who fought here have thus far so nobly advanced."