

“MAKING REAL THE PROMISES OF OUR DEMOCRACY”
Remarks of Janai Nelson
Martin Luther King Jr. Birthday Celebration
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Bloomington, Indiana

It’s clear that Bloomington takes very seriously the idea that MLK Day is “a day on—not a day off.” For over two decades, you’ve held this ceremony as a way of symbolizing your commitment to the principles for which Dr. King lived and died. And for many years, many of you impressively have spent this day in service, sharing your time and talents helping those in need and improving your community, just as Dr. King so often exhorted us to do.

It is so important that we make Martin Luther King Day a living holiday—a day not only to commemorate where we’ve been in the past, but also to reflect upon where we are headed in the present.

When Dr. King delivered his iconic address at the March on Washington for Jobs and Freedom, 100 years after Abraham Lincoln signed the Emancipation Proclamation, our nation was at a pivotal moment.

The months leading up to the March were filled with unrest across the country. Just two months earlier that summer, civil rights activist Medgar Evers was assassinated outside his home in Jackson, Mississippi and Governor George Wallace literally stood in the doorway to federal authorities as they tried to allow Black students to enter to the University of Alabama. Uprisings and rebellions engulfed cities across the nation.

And as he painted an aspirational vision for this country using that powerful refrain, “I Have A Dream”, Dr. King had another searing but much less sanguine message. He said of that moment “This is no time to engage in the luxury of

cooling off or to take the tranquilizing drug of gradualism. Now is the time to make real the promises of democracy.” He wanted to remind America of the fierce urgency of rooting out racial injustice. That left unaddressed or left to inertia, racism would destroy the foundations of our democracy. In fact, he said “[i]t would be fatal for the nation to overlook the urgency of the moment.”

We are facing a similar urgency today. We are, yet again, at a pivotal moment in our young nation’s history. In 2019, as we enter what many consider the 400th year since the early arrival of enslaved Africans on these shores, we are witnessing a release and resurgence of open racial hostility and division that we have not seen in decades. Incivility and flagrant disregard of custom, norms and the rule of law have infected our democratic structures and our social sensibilities. And, to be honest, this country has been caught flat-footed. Too many Americans mistakenly thought or were irresponsibly taught that Dr. King had fully delivered us evil.

It has now been a half century since Dr. King’s life was cut short by an assassin’s bullet. And with each passing year, it becomes just a little easier to turn Dr. King, who would have turned 90 this year, into a marble man—to cast him as an uncontroversial figure who spread a feel-good message of social harmony.

The tendency to mythologize Dr. King is probably natural—as it would be for any person with such transformative power. But we must try and resist it. As I see it, we risk missing three critical lessons when we ignore the complexity of Dr. King’s message. When we gloss over his command “to make real the promises of our democracy.”

The first lesson is that Dr. King’s achievements and the achievements of the civil rights movement are not necessarily permanent or irreversible. Americans of all walks of life now revere Dr. King—or at least a simplified idea of him as a great healer and conciliator. We celebrate this holiday; we’ve erected a monument to him on the National Mall where he can be universally admired. We sometimes take all these things as proof of how far we’ve come. We allow ourselves to believe that a country that heaps such honors on a Black leader, that elected a Black president, that now has the distinction of having three Black women presidential nominees of a major party in the past 50 years—Shirley Chisholm ’72, Carol Mosley Braun ‘04 and, as of this morning, Senator Kamala Harris ‘19—that such a country could never again let prejudice and racism dominate our politics, our policies or our past-times.

But look at what’s happened in the last few years. Encouraged by a president who regularly demonizes immigrants and people of color, racism and bigotry have crept back into the open. The F.B.I. reported last year that hate crimes increased 17% from 2016 to 2017, marking the third consecutive year of rising numbers.¹

Over 7,000 hate crimes were reported in 2017, and of those, three out of five were motivated by race and ethnicity.² We’ve seen white supremacists march through the streets of Charlottesville, Virginia, chanting “You will not replace us.”

We’ve seen an elderly African American couple gunned down in a grocery store in Kentucky following their assailant’s failed attempt to enter a Black church. And, we bore witness to the shocking massacre of 11 Jewish celebrants at a bris in the Tree of Life synagogue in Pittsburgh, Pennsylvania.

¹ <https://www.nytimes.com/2018/11/13/us/hate-crimes-fbi-2017.html>

² Id.

These are heinous crimes—and they are on the rise. But I’d be remiss if I suggested that the vitriol we see is expressed only through the wanton violence of individuals with hate in their hearts. The racism and xenophobia we see is mirrored by (or perhaps, mirroring) state action. They are reflected in the separation of children and families at our borders and the brutal mistreatment of asylum seekers and those searching for a better life in this country. They are reflected in the increasingly brazen tactics to deny African Americans and other communities the right to vote like the creation of a so-called “Election Integrity” commission and the proliferation of strict voter ID laws. They are reflected in the effort to add a citizenship question to the Census short form for the first time in 70 years which would drive countless people of color into the shadows, distorting the national tally needed to fairly and equitably allocate federal resources and political representation. They are reflected in the willingness to bring our federal government to a screeching halt in what is now the longest government shutdown in the history of this nation, holding 800,000 federal workers as ransom for a feckless wall that is more a symbol of hubris and hate than a solution for better, stronger immigration practices.

It’s hard to interpret these occurrences as anything other than a renewed assault on the idea that America can be a high-functioning multiracial democracy. And it’s hard not to recognize that our country is slowly walking back many of the hard-won civil rights protections that we thought were sacrosanct. So we must appreciate that no gain is permanent with the vigilance it takes to make it so.

The second lesson to learn from the temptation to ossify a vision of Dr. King’s legacy through rose-colored glasses is closely related to the first. It is the mistaken belief that Dr. King’s work was complete. Under his leadership and following the landmark victory legal victory of *Brown v. Board of Education* in

1954, the civil rights movement brought an end to Jim Crow, secured the right to vote, provided protections against housing discrimination, and finally forced the United States to recognize African Americans as fully entitled to equal protection of the laws, just like any other citizens.

These were indeed significant achievements, ones that literally transformed the face of our nation. But for Dr. King, they were just the beginning. After he won the fight for voting rights, he focused on subtler, more difficult issues—issues we still grapple with today. He tried to draw the nation’s attention to racial injustice in northern cities. He railed against our indifference to poverty, which he described as a national shame. And he spoke out against the Vietnam War as an immoral waste of resources and lives.

He was bitterly criticized for all three of these efforts, and at the end of his life, he was disheartened by what he perceived as his failure to make much progress on broader questions of injustice. Despite all he had accomplished, he died knowing that the real work of the civil rights movement had just begun.

The sad truth is that in the half century since Dr. King’s death, we have not sufficiently advanced his unfinished vision of a more just society. Legalized segregation is long gone, but *de facto* segregation persists throughout the nation.

In 2016, the median Black household earned 61% of the income the median white household earned in a year.³ Black Americans are incarcerated at more than five times the rate of white Americans.⁴ Communities of color are still disproportionately targeted by law enforcement, undermining public safety and

³ <https://www.epi.org/publication/racial-inequalities-in-wages-income-and-wealth-show-that-mlks-work-remains-unfinished>

⁴ <https://www.naacp.org/criminal-justice-fact-sheet/>

fueling suspicion and resentment. In cities and towns across the country, too many are still struggling to make ends meet and to make a living wage. All these trends continue to tug at the fabric of our nation, and, as Dr. King warned, we ignore them at our peril.

It's no secret that a large part of that threat comes from the current administration—an administration that has shown contempt for the rule of law, regularly attacked judges that challenge its policies, and changed the focus of the Department of Justice from civil rights enforcement to executive power expansion.

Fortunately, the administration has not acted unopposed. Despite the president's frequent attacks—and despite his nomination of many unqualified and ultra-partisan judges—the judiciary has retained its independence. The Justice Department has so far protected the special counsel's investigation from White House interference—although the coming weeks will be most telling.

And groups like the NAACP Legal Defense Fund, where I have the honor to serve as Associate Director-Counsel, have steadfastly challenged the administration's most egregious assaults on civil rights.

I could go on at length about this administration. The harm it has done is real, and the danger it poses continues.

But, again, it would be a mistake to attribute all the challenges facing our democracy to this administration. In many ways, the moment in which we find ourselves is a symptom, not a cause, of issues that we have never fully resolved: issues of who gets to be an American citizen, and what rights that citizenship confers. These past few years have been a necessary reminder that the civil rights movement was not a self-contained moment with definitive results. It is an ongoing

struggle over the meaning of our democracy—a struggle it is now our responsibility to carry forward.

Allow me to bring this a little closer to home. From the notoriety of having had the largest KKK operation in the history of this country to the 1968 killing of Carol Jenkins-Davis by a member of the KKK to the 2016 killing of Samuel Hardrix by a self-professed white supremacist to the 2018 harassment of a family with a Black child in Greentown, Indiana knows the cost and corrosion of hate up close. Indiana, like this country, still has a long way to go. As one of only five states in the country without a hate crime law, Indiana can make the promise of our democracy real by passing that legislation now. By sending a clarion message that crime committed on the basis race, religion, color, sex, gender identity, disability, national origin, ancestry and sexual orientation will not be tolerated in this great state.

And the Legal Defense Fund knows what it means to be in the trenches in Indiana. Indeed, our history of civil rights work in this state is quite rich. For example, in the early 80s, we represented Richard Hatcher, the then-mayor of Gary, Indiana, and Gary's minority residents, in a case called *Hatcher v. Methodist Hospital* where we challenged the hospital's use of federal funds to build a satellite unit in an all-white suburb of Gary.

That satellite unit would have siphoned doctors, nurses, other medical personnel, money and equipment from the inner-city hospital. In a court-approved settlement, the hospital agreed to reverse discriminatory health-care policies, including a commitment to spend \$20 million toward that effort, to integrate the staff, and create more equal access to healthcare.

In 2008, we settled a lawsuit, *Herring v. Marion County Election Board*, to protect the voting rights of housing foreclosure victims in the presidential elections. The case was filed on behalf of an African-American family that fell behind on their home payments and faced the threat of foreclosure in the two years prior to the election, as well as the Greater Indianapolis Branch of the NAACP, which supported families facing foreclosure. We settled *that* case with an agreement that foreclosure challenges were not a permissible basis for contesting a voter's eligibility under Indiana law.

We were also involved in a desegregation case in Fort Wayne and in over half a dozen cases to improve prison conditions in Indiana, as well as election protection and voter education efforts in Gary and Melville.

I say all this to say that our investment in this state is longstanding. Indeed, our investment in this country is long and deep and personal. In addition to landmark cases ending segregation in public schools, restrictive covenants, literacy tests for voting, and other tools of discrimination, LDF was privileged to represent Dr. King—to visit him in jail, to counsel him and other activists as they prepared for the Selma voting rights march in 1965 and the Poor People's March in 1968, including helping to secure the Selma march permit which helped lead to the passage of the Voting Rights Act of 1965.

And our work is far from over. Next year, LDF will turn 80 years old. That is 80 years of toiling to truly make America great by making real the promises of our democracy. That endeavor requires selfless, uncompensated, hard, tedious but richly rewarding, Yeoman's work. The work of civil rights, the work of social justice, the work of racial equality is the most patriotic work any person or groups of persons in this country can perform. And, as Dr. King understood, it is also never-ending.

Third and, finally, by mythologizing Dr. King, we tend to think of him as superhuman, as a larger than life heroic figure who singlehandedly changed the course of history in America.

And of course, he *was* a *remarkable* leader—one of the most courageous, strategic, brilliant, and eloquent individuals to have inhabited this Earth.

But we miss the lesson that his real accomplishment was not what he did by himself. It was what he inspired others to do. He awakened countless ordinary Americans to the power of citizenship. That's something we've lost sight of: that at its core, the civil rights movement was not a magical or mythical event.

It was a group of American citizens using their basic rights of speech, assembly, and voting to right a centuries-long history of wrong. It was a group of American citizens using constitutional means to achieve democratic and humanistic ends.

If we are to truly appreciate Dr. King's message, then we must recover our understanding of the civil rights movement as a people's movement, as a democratic movement, as a human rights movement. And it is especially important that we do so now, at this perilous moment for American democracy.

We stand at a critical juncture in our history. In many ways, our democracy faces greater threats than at any point in the last half century.

I have to say, that for all the challenges we face, I am optimistic that across the country, Americans are re-awakening to that responsibility, just as they awakened to it during the civil rights movement.

Consider voting rights. In 2013, in one of its most consequential decisions in modern time, the Supreme Court struck down the heart of the Voting Rights Act.

For those of us who work in civil rights, this was an enormous setback. But I think for many ordinary citizens, it was difficult to grasp just how serious the decision was.

But, now that the Justice Department has retreated from voting rights suits, it's become easier for states to engage in voter suppression. And in last year's midterm elections, we saw several states work to reduce the political power of Americans of color in especially egregious ways.

In Georgia, the Republican candidate for governor, Brian Kemp, was also the Georgia Secretary of State, which allowed him oversight of the state's elections. In that position he put a hold on more than 50,000 voter registration applications, seventy percent of them belonging to Black voters in the first election in our country in which a Black woman was the gubernatorial candidate of a major political party. Despite—or perhaps because of—this breathtaking abuse of power, Kemp was elected governor.

In North Dakota, the Supreme Court at the last minute allowed the state to implement a new law requiring voters to present identification with residential addresses on them. But many of the state's Native American residents don't have a residential address, in part, because they are overrepresented in the state's homeless population, and because many reservations do not use physical addresses. Countless Native Americans had to scramble to try to obtain acceptable ID in the days before the election.

These blatant power grabs attracted national headlines, and, as a result, I think we saw more and more Americans grasp the seriousness of the threat to voting rights. We saw Georgians spending their weekends protesting the governor's discriminatory actions, and we saw North Dakotans working tirelessly

to help their fellow citizens get the ID they needed. Most importantly, we saw Americans turn out to vote in numbers not seen in a midterm in more than 50 years.⁵

They didn't let long lines or complicated laws stop them. They didn't let insults or intimidation stop them. They voted—and, as a result, earlier this month, the most racially diverse Congress in U.S. history took office, along with a historic number of women, and several other firsts, including the first Native American and Muslim congresswomen.

Already, this new group of representatives, along with longtime allies in Congress, is taking steps to strengthen our democracy. At LDF, we're gratified to see that some representatives have introduced new legislation to restore the Voting Rights Act to its full power, and we urge all our legislators to set aside party politics in favor of every American's most fundamental right.

And, we are seeing more and more Americans get involved in local affairs beyond the ballot box, whether it's people joining protests, signing petitions, volunteering on campaigns, or even running for office.

These are all very encouraging signs. They are reasons that I am personally optimistic about our future. When we get involved, we begin to realize our power as citizens. We begin to realize that in a democracy, we don't have to wait for a charismatic leader like Dr. King to inspire us to act. We begin to realize that we don't have to accept the status quo, and that together, we can try to change it.

⁵<https://www.npr.org/2018/10/18/658255884/voter-turnout-could-hit-50-year-record-for-midterm-elections>

Our success is not guaranteed, of course. The only thing certain about democracy is that, if we don't get involved, if we don't assert our power as citizens, then nothing will change.

And when we act, the key is to recognize that our crabbed vision of equality left us vulnerable to history repeating itself. We now have the opportunity to be more aggressive, more expansive, more imaginative in our vision to make the promise of democracy real.

Those in power are not going to restore the Voting Rights Act and expand opportunities to vote by adopting measures like automatic voter registration or expanded early voting because they suddenly realize it's the right thing to do. They will restore and enhance the Voting Rights Act because the people have made clear that that is what we demand.

Our criminal legal system isn't going to become more humane and equitable and rehabilitative through hope alone. It will improve only if we make clear to those we've elected that we want to reimagine a form of public safety in which it *must* be those things.

We aren't going to end income inequality, or ensure access to affordable housing, or heal our planet, by simply *wishing* for those things to happen. We must try and make them happen—through voting, yes, but also through organizing, agitating, acting. That is the promise of our democracy: that if we, the people, are determined enough and united enough, we can create a more perfect union to hand to the next generation.

That work is hard; that work is frustrating; that work is slow. But history shows us what that work can accomplish, if we choose to do our share of it. We can either snatch our democracy from the jaws of regression and do the hard work

of repairing our democracy's frailties and rebuilding it with principles that fortify civility, equality, dignity, humanity—or we can cede everything that Dr. King and others have worked for to those forces that never believed in the promise of our democracy. In the words of the Legal Defense Fund's founder Thurgood Marshall, "Where you see wrong or inequality or injustice, speak out, because this is your country. This is your democracy. Make it. Protect it. Pass it on."

I want to thank all of you again for allowing me to be a part of your celebration. Thank you for working to keep the legacy of Dr. King alive. And never forget your power as citizens—that power is real, it is unalienable, and it is as desperately needed in our nation today as ever.