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Keynote Speech: A Letter from the Original Cause Lawyer

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KEYNOTE SPEECH: A LETTER FROM THE ORIGINAL CAUSE LAWYER

DEAN F. MICHAEL HIGGINBOTHAM*

Appreciation to the Law Review for sponsoring this wonderful event and to my former boss Dean Holmes for the invitation to speak to you today and also for the very, very kind and generous introduction.¹ He did leave off, of course, the most important similarity, and that is the shape of our bald heads. Am I right?

But of course, the biggest difference as well, is I never wear a bowtie. You will never, ever catch me in a bowtie, so similarities and differences; but I am delighted to be here. It is a wonderful, wonderful event. The University of La Verne College of Law is engaged in a great

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Dean Higginbotham is the author of the book *Race Law: Cases, Commentary, and Questions* (Durham: Carolina Academic Press, 2001). Now in its third edition, *Race Law* is widely used in colleges and law schools throughout the United States and in several foreign countries. His latest book, *Ghosts of Jim Crow: Ending Racism in Post-Racial America*, was published by NYU Press on March 18, 2013. He was recently selected one of the 100 most influential black attorneys in the United States by *On Being a Black Lawyer*. Professor Higginbotham received a B.A. magna cum laude from Brown University, a J.D. from Yale University, and a Master of Laws degree with honors from Cambridge University.

Dean Higginbotham has published numerous articles in journals including the *Yale Law and Policy Review*, the *Harvard Blackletter Law Journal*, the *New York University Law Review*, the *Columbia University International Law Journal*, the *University of Hawaii Law Review*, the *Howard University Law Journal*, and the *University of Illinois Law Review*. He has published numerous editorials in newspapers including the *New York Times*, the *Chronicle Review*, the *Boston Globe*, the *Baltimore Sun*, and the *Washington Afro-American*.

Before joining the University of Baltimore law faculty in 1988, Dean Higginbotham was a Law Clerk to United States Court of Appeals Judge Cecil Poole, an Associate with Davis, Polk & Wardwell, and a Lecturer in Law at the University of Pennsylvania. He often collaborated with his uncle, the late Judge A. Leon Higginbotham, Jr.

1. The author would also like to thank Matthew Osei-Bonsu, Kellye Beathea, Tiffany Branson, and Andrew Geraghty for research and editorial assistance and Shavaun O'Brien for secretarial support.

mission in the form of this symposium: cause lawyers and cause lawyering in the sixty years after *Brown v. Board of Education*.² This mission has brought us all together today, each of us dedicated to improving justice in America. We each come bringing our ideas with us — our vision for achieving such justice — and there were some great panels during this morning's session. Two great panels — immigration and voting rights — hot issues and wonderful ideas that were put forward by these panelists. And, of course, my compliments to the chef. I mean this food is pretty darn good. So thank you very much.

Let me just tell you about a week ago I was sitting at home. I had been trapped by the east coast version of the polar vortex — and you know we're getting the west coast version now out here; but the east coast is a whole lot different, and, quite frankly, a whole lot worse. You folks are very fortunate. We're talking 15 or 16 degree weather and precipitation, and so you know what that means. So I'm sitting in my home looking out the window on the Baltimore Harbor, and I see all of this snow coming in. Then I see some lightning, and then I hear some thunder, and it starts to really, really get nasty out there. So I said, "Well, this is a good day to sit inside and maybe put some thoughts down on the computer as to what I might say today." Then, all of a sudden, as I sit down at the computer a big lightning bolt strikes the computer, it lights up and it starts to type by itself. And what did I see on that screen? "Dear Mike: This is Thurgood Marshall³ reaching out to you from afar. Your Uncle Leon⁴ and I chat daily here in heaven about

2. 347 U.S. 483 (1954).

3. The first black to serve as an Associate Justice of the United States Supreme Court. For a detailed examination of Marshall's contributions, see JUAN WILLIAMS, *THURGOOD MARSHALL: AMERICAN REVOLUTIONARY* (1998).

4. Aloysius Leon Higginbotham, Jr. had a remarkable career. The unique spelling of his first name results from how his father's name is spelled on his birth certificate. He was born the only child of Aloysius Leon Higginbotham, Sr. and Emma Douglas Higginbotham in Trenton, New Jersey. He graduated from Ewing Park High School in Trenton at the age of sixteen, began his college education at Purdue University, and transferred to Antioch College in Ohio from which he graduated in 1949. He entered law school at Yale University at a time when there were only two other blacks in his class. Through tireless effort, he was able to graduate at the top of his class from Yale Law School in 1952 and was admitted to the Pennsylvania Bar in 1953. In the years following, he served as President of the Philadelphia branch of the NAACP, a commissioner of the Pennsylvania Human Relations Commission, and a special deputy attorney general. In 1962, after a successful private law practice, he was appointed by John F. Kennedy to the Federal Trade Commission. In 1964, President Lyndon B. Johnson appointed him a federal district court judge, and in 1977, President Jimmy Carter appointed him to the United States Court of Appeals for the Third Circuit. He served as chief judge of that court from 1989 to 1991 and as a senior judge from 1991 until his retirement in 1993. During his judicial service, Supreme Court Chief Justices Warren, Burger, and Rehnquist appointed him to a variety of

many things including, of course, legal developments in the United States. His career as a civil rights lawyer, barrier-breaking Presidential appointee, respected federal judge, and award-winning legal scholar, in many ways mirrored my own career. Since he joined me here in heaven, roughly sixteen years ago, we have had a number of important conversations focusing on the recent Supreme Court cases and decisions in *Shelby County* and in *Fisher*.⁵ Also, of course, our conversations have touched upon the pending Supreme Court case of *Schuette* dealing with the constitutionality of prohibiting affirmative action in Michigan by state referendum.⁶ The *Zimmerman* and *Dunn* verdicts that came down recently also have garnered our attention.⁷ After our last discussion, Leon encouraged me to reach out to you. It has been over 30 years since we last chatted. I remember speaking with you when you were a 1L at the Yale Law School and you had that ‘deer in the headlights’ look on your face as if you didn’t know anything — that you were a little child that was lost and couldn’t find his way home. I am delighted, however, to see that the lost look is gone.

judicial conference committees and other related responsibilities. He taught at the law schools of Harvard University, University of Michigan, New York University, University of Pennsylvania, Stanford University, and Yale University. By appointment of President Johnson, he served as vice-Chairman of the National Commission on the Causes and Prevention of Violence. In 1995, he was appointed by President William Jefferson Clinton to the United States Commission on Civil Rights. Also in 1995, he received the presidential Medal of Freedom, the nation’s highest civilian award.

5. In *Shelby County*, the Supreme Court held that section 4 of the Voting Rights Act is unconstitutional, because the constraints that the Act placed on specific states, while relevant in the 1960s and 1970s, are outdated by today’s standards. *Shelby County v. Holder*, 133 S. Ct. 2612 (2013). In *Fisher*, the Supreme Court ruled that while the Equal Protection Clause of the Fourteenth Amendment does allow for the consideration of race in undergraduate admissions, it is only permissible if the use of race is narrowly tailored. *Fisher v. Univ. of Tex.*, 133 S. Ct. 2411 (2013).

6. In *Schuette*, the United States Court of Appeals for the Sixth Circuit found that a Michigan amendment barring affirmative action at state universities and colleges was constitutional and did not violate the Equal Protection clause of the Fourteenth Amendment. *Coal. to Defend Affirmative Action v. Regents of Univ. of Mich.*, 701 F.3d 466 (6th Cir. 2012) *cert. granted*, 133 S. Ct. 1633, (2013).

7. On July 13, 2013, George Zimmerman was found not guilty of the murder of Trayvon Martin, even though he admitted to shooting the 17-year old boy. Lizette Alvarez & Cara Buckley, *Zimmerman is Acquitted in Trayvon Martin Killing*, N.Y. TIMES (July 13, 2013), http://www.nytimes.com/2013/07/14/us/george-zimmerman-verdict-trayvon-martin.html?pagewanted=all&_r=0. On February 13, 2014, Michael Dunn was found guilty of attempted second-degree murder for shooting into an SUV full of teens. 19-year old Jordan Davis was struck and killed by 3 of the 10 bullets Dunn fired, yet the presiding judge declared a mistrial over the remaining count. Lizette Alvarez, *Jury Reaches Partial Verdict in Florida Killing Over Loud Music*, N.Y. TIMES (Feb. 15, 2014), <http://www.nytimes.com/2014/02/16/us/florida-killing-over-loud-music.html>.

“I am also delighted that you have chosen to go into the area of cause lawyering.⁸ I worked on racial justice issues for most of my legal career, and my mentor, Charlie Houston, the architect of the strategy in *Brown v. Board of Education*⁹ said that a lawyer who is not also a social engineer is a parasite in our society.¹⁰ Charlie was right. Make no mistake Michael, there is no better feeling in this life than to know that you have helped to improve the lives of those around you. Nice to make some money, nice to have material things, but there is nothing better than knowing that you have helped the impoverished, that you have helped the hungry, that you have helped the politically powerless, and that you have helped the undereducated to gain at least a semblance of dignity. By the way, of course, it doesn’t hurt to get entry to where your Uncle Leon and I now reside.

“During my rather lengthy career, I wrote many letters to politicians, to high-level government officials, to civil rights leaders, and to ministers reflecting my unrelenting advocacy for our society’s most vulnerable. No letter, however, is more important than this one, for it is written to those who carry on my life’s work. Cause Lawyers are highly motivated because they are the ones who feel the hunger pains of children who have not eaten in days. Those who feel the wounds of refugees who have been tortured, those who feel the chills of the homeless who sleep out in the cold, and those who feel the degradation of gays and women, and immigrants and racial minorities who continue to be treated unequally in our society. To those working to reduce oppression, to those working in our society to create more justice, I applaud your commitment and I encourage you to continue your efforts.

“I was particularly heartened recently when this past summer the Supreme Court came down with a decision in *Windsor v. United States*,

8. “Cause lawyering” is a broad term indicating legal work done in the public interest field. See Laura Beth Nielsen & Catharine R. Albiston, *The Organization of Public Interest Practice: 1975–2004*, 84 N.C. L. REV. 1591, 1602–03 (2006) (explaining that their study does not include “cause lawyers,” who may include attorneys who perform pro bono work in the public interest field).

9. See, e.g., *NAACP History: Charles Hamilton Houston*, NAACP, <http://www.naacp.org/pages/naacp-history-charles-hamilton-houston> (last visited Apr. 23, 2014).

10. Charles Hamilton Houston was Justice Thurgood Marshall’s mentor. A graduate of Harvard Law, Houston was responsible for the accreditation of Howard University Law School. The exact words of Houston’s quote are, “A lawyer’s either a social engineer or he’s a parasite on society.” BUREAU OF INT’L INFO. PROGRAMS, FREE AT LAST: THE U.S. CIVIL RIGHTS MOVEMENT 26 (2008), available at <http://photos.state.gov/libraries/amgov/30145/publications-english/free-at-last.pdf>. For a detailed examination of Houston’s contributions, see JOSE ANDERSON, GENIUS FOR JUSTICE: CHARLES HAMILTON HOUSTON AND THE REFORM OF AMERICAN LAW (2014).

where the Defense of Marriage Act, which denied legally married, same-sex couples a multitude of federally protected responsibilities and privileges of marriage, was invalidated.¹¹ While this decision is a positive step, as an advocate, I would not rest until the Equal Protection Clause of the Fourteenth Amendment is construed to invalidate all laws that prevent equal treatment for gays who wish to be married.¹²

“I never liked the ‘don’t ask, don’t tell’ policy of the United States military.¹³ I am glad it is gone. The military thrived after racial desegregation and I am confident it will do the same as gays are fully and openly integrated throughout the ranks. To those working to reduce oppression, to those working in our society to create more justice, I applaud your commitment and I encourage you to continue your efforts.

“There are several cutting edge issues that face America today. Those issues — some of them were talked about this morning in terms of voting rights and immigration rights, a pathway to citizenship for those millions of immigrants in the United States illegally,¹⁴ the widening economic gap between rich and poor¹⁵ — are some of the critical issues facing America today that must be dealt with, and the Cause Lawyers must be at the center of that struggle. But that’s not really why I’m reaching out to you today, Mike. I’m writing you because I want to talk to you about the continuing struggle for racial equality; the struggle that I fought for during my entire legal career, even when I went on the bench. That’s what I want to talk to you about today. That’s what I want you to convey to those Cause Lawyers at the La Verne Law Symposium.

11. In *Windsor*, the United States Court of Appeals for the Second Circuit found that section 7 of the Defense of Marriage Act (DOMA), defining marriage as a union between one man and one woman, was unconstitutional because there was no legal rationale for such a definition. *Windsor v. United States*, 699 F.3d 169 (2d Cir. 2012). The Supreme Court affirmed this decision in 2013, holding that section 7 was unconstitutional as a violation of the Equal Protection clause of the Fifth Amendment. *United States v. Windsor*, 133 S. Ct. 2675 (2013).

12. To date, only 18 of the 50 states authorize same-sex marriage. *Marriage Center*, HUMAN RIGHTS CAMPAIGN, www.hrc.org/campaigns/marriage-center (last visited Apr. 16, 2014).

13. “Don’t Ask, Don’t Tell” (DADT) is a law and policy that has barred homosexual conduct in the Armed Forces. In 2010, DADT was repealed. *Don’t Ask, Don’t Tell*, U.S. ARMY, <http://www.army.mil/dadt/> (last visited Apr. 23, 2014).

14. There are thought to be over 11.5 million illegal immigrants in the United States. See Ginger Thompson & Sarah Cohen, *More Deportations Follow Minor Crimes, Records Show*, N.Y. TIMES (Apr. 6, 2014), <http://www.nytimes.com/2014/04/07/us/more-deportations-follow-minor-crimes-data-shows.html>.

15. President Barack H. Obama, Address Before a Joint Session of Congress on the State of the Union (Jan. 28, 2014) (noting that economic “[i]nequality has deepened”).

“America has been at this struggle for a long time. Fifty years ago President Lyndon Johnson, my contemporary, said, ‘Their cause must be our cause too. Because it is not just Negroes, but really it is all of us, who must overcome the crippling legacy of bigotry and injustice [in our society].’¹⁶ And then President Johnson concluded by adopting the language of the Civil Rights community, when he said, ‘And we shall overcome.’¹⁷ President Johnson was right. For, in many ways as a nation, we have overcome. We have ended slavery.¹⁸ We have ended Jim Crow segregation.¹⁹ We have passed anti-discrimination laws in housing,²⁰ public accommodations, and voting.²¹ We have implemented affirmative action in education and employment.²²

“Most recently, we have elected and re-elected our first Black President.²³ By the way Mike, I chuckled when opponents of Candidate Obama in 2008 erroneously referred to him as a Muslim.²⁴ It brought back memories of my confirmation when many opponents of mine, many Senators who were opposed to my confirmation, erroneously referred to me and characterized me as a Communist. But, I digress. These are monumental developments in the pursuit of racial equality but make no mistake — progress doesn’t mean ‘post racial.’ Progress doesn’t mean that race is no longer a significant factor in opportunities afforded in the United States or in the hardships that many individuals

16. President Lyndon B. Johnson’s Special Message to Congress: The American Promise, 1 PUB. PAPERS 281 (1966).

17. *Id.*

18. The Thirteenth Amendment, ratified December 6, 1965, states, “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” U.S. CONST. amend XIII.

19. *Brown v. Board of Education*, 347 U.S. 483 (1954). On May 17, 1954, the U.S. Supreme Court ruled unanimously (9–0) that racial segregation in public schools violated the Fourteenth Amendment to the Constitution, which prohibits the states from denying equal protection of the laws to any person within their jurisdictions. *Id.*

20. The Fair Housing Act, 42 U.S.C. § 3604 (2006).

21. Voting Rights Act of 1965, 42 U.S.C § 1971 (2006).

22. See Exec. Order No. 10925, 3 CFR § 448 (1961). Executive Order 10925, signed by President John F. Kennedy on March 6, 1961, required government contractors to “take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, or national origin.” *Id.* In the following years, colleges and universities started to adopt similar recruitment policies.

23. *President Barack Obama*, THE WHITE HOUSE, <http://www.whitehouse.gov/administration/president-obama> (last visited Apr. 23, 2014).

24. Michael Dimock, *Belief that Obama is Muslim, Durable, Bipartisan — but Most Likely to Sway Democratic Votes*, PEWRESEARCHCENTER (July 15, 2008), <http://www.pewresearch.org/2008/07/15/belief-that-obama-is-muslim-is-durable-bipartisan-but-most-likely-to-sway-democratic-votes/>.

endure. Let me give you an example of what I'm talking about, in terms of race still being a significant factor.

"There are alarmingly wide racial disparities in terms of the socio-economic index. Any category on that index whether it be unemployment levels, income levels, educational attainment, political representation, death rates, poverty rates, any classification you want to choose, you can put a blindfold on and throw a dart at the board — at the socio-economic status categories — and whatever you hit, there will be an alarmingly wide disparity. For unemployment, it's a 2-to-1 gap.²⁵ It's often said that when white folks catch a cold with respect to employment, minorities get pneumonia. That 2-to-1 gap would seem to affirm that notion. For wealth accumulation, it's a 20-to-1 gap.²⁶ It sounds almost unbelievable, but it is a 20-to-1 gap for wealth accumulation with respect to white families and with respect to minority families.²⁷ These disparities are severe and they are getting wider.

"There is a whole lot of debate today and discussion about the causes of these disparities. No one disputes that these disparities exist, but there is widespread debate about the cause. Conservative arguments tend to explain the root causes in terms of personal responsibility and tend to rely upon stereotypical notions of minority intellectual, moral, and cultural deficiencies, basically ignoring the misguided laws and legal decisions that not only created these gaps, but also continue to maintain them and help to enlarge them.

"Today's racial disparities are rooted in a longstanding paradigm dating back well before the creation of the Constitution in 1789. Discrimination and physical separation of blacks, legally and extra legally, has become not only enmeshed in our social fabric, but has prevented us from eliminating racial disparities. The paradigm is one of false beliefs of white superiority at one end, and black victimization at the other, created by racial hierarchy notions and sustained by physical isolation of the races. Each part of the paradigm is interdependent on the other, and to destroy it, each aspect needs to be eradicated. Addressing only one part of the paradigm will not solve the problem. The causes of disparities have to be dealt with in their totality in order for America to move toward true equality for all.

25. BUREAU OF LABOR STATISTICS, LABOR FORCE CHARACTERISTICS BY RACE AND ETHNICITY, 2012 (2013).

26. PEW RESEARCH CENTER, SOCIAL & DEMOGRAPHIC TRENDS, TWENTY-TO-ONE: WEALTH GAPS RISE TO RECORD HIGHS BETWEEN WHITES, BLACKS, HISPANIC (2011).

27. *Id.*

“Let me give you one example of a misguided legal decision. In fact, it was mentioned earlier in one of the panels. *Shelby County v. Holder*,²⁸ and that’s Attorney General Holder, and I hope that he is recovering well and swiftly from a little bit of a scare health wise yesterday. This decision came down in June, and it was a five to four decision by the Supreme Court, which examined the 1965 Voting Rights Act.²⁹ The Voting Rights Act is the most democratizing piece of legislation that has ever been passed in this country. Four years after its passage, over 800,000 new voters were registered.³⁰ Most of those newly registered were minority voters who had never been able to vote before, who had never been able to participate in the American Democracy which had falsely guaranteed to them — in 1868 in the Fourteenth Amendment and in 1870 in the Fifteenth Amendment — that right to so participate.³¹ In the *Shelby County* decision, the Supreme Court invalidated the formula coverage of the Voting Rights Act.³² The formula that says the Federal Government will be able to supervise the elections — state and local — where those districts have a history of race discrimination and racial exclusion of blacks participating in the political process.³³ As a result of that federal government supervision, these changes took place. These tremendous increases in political participation took place. Five Justices on the Supreme Court said things have changed, times have changed in America since 1965.³⁴ Candidly, the Supreme Court got it right when it said history did not stop in 1965. History did not stop in 1965, but they got it wrong when they said racism did stop. History didn’t stop in 1965, but neither did racism. Racism has continued even though we

28. *Shelby County v. Holder*, 133 S. Ct. 2612 (2013).

29. *Id.*

30. See Scott Gluck, *Congressional Reaction to Judicial Construction of Section 5 of the Voting Rights Act of 1965*, 29 COLUM. J.L. & SOC. PROBS. 337, 361 (1996) (providing a thorough description and analysis of the legislative history of the 1965 Act and the 1970 and 1975 extensions of the Voting Rights Act).

31. The Fourteenth Amendment to the Constitution was ratified on July 9, 1868, and granted citizenship to all persons born or naturalized in the United States, which included former slaves recently freed. U.S. CONST. amend XIV. In addition, it forbids states from denying any person life, liberty or property, without due process of law or to deny to any person within its jurisdiction the equal protection of the laws. *Id.* The Fifteenth Amendment, which was ratified in 1870, provides that the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude, and it gives Congress the power to enforce the Amendment by appropriate legislation. U.S. CONST. amend XV.

32. *Shelby County*, 133 S. Ct. at 2612.

33. *Id.* at 2621.

34. *Id.* at 2652.

have made tremendous progress. So the Supreme Court got it wrong in terms of racism stopping in 1965.

“Now, it seems to me that the Justices, the five Justices who seem to think that racism is gone, suffer from a rare disease. And I was on that Court, and I looked at a number of my colleagues, and I can tell you some of them suffered from that same disease. These five seem to still suffer from that disease. It is known as selective memory loss. That’s a disease you oftentimes see manifest itself when folks owe you money. Yeah, they borrow some money. They remember who won the 1903 World Series, right? They can’t remember that they borrowed money from you, and come payday they owe it to you.

“The majority on the Supreme Court seems not to be able to remember the literacy tests, the poll taxes, and the violence that occurred, the individuals that tried to help people to register to vote and were murdered for doing so. People like Viola Liuzzo,³⁵ Goodman, Chaney, and Schwerner,³⁶ Medgar Evers,³⁷ people that gave their lives for our democratic process so that others could participate. The Court seems to have forgotten that aspect. And more significantly once they forget, they are prevented from seeing the similarities that continue to exist. Similarities in terms of restrictions on same day registration and voting, on early voting, on three day voting, and on voter ID laws — very interesting discussions on the panel this morning. Those laws that exist today, those laws that were passed in a number of states right after *Shelby County* was announced.³⁸ I’m talking the next day or two days after the *Shelby County* decision. Certain states imposed additional

35. Viola Gregg Liuzzo traveled to Alabama in March 1965 to help the Southern Christian Leadership Conference, led by Rev. Martin Luther King Jr., with its efforts to register African-American voters in Selma. Not long after her arrival, Liuzzo was murdered by members of the Ku Klux Klan while driving a black man from Montgomery to Selma. See Margaret M. Russell, *Cleansing Moments and Retrospective Justice*, 101 MICH. L. REV. 1225, 1245–46 (2003).

36. James Chaney, Michael Schwerner, and Andrew Goodman were murdered by the Ku Klux Klan in 1964. They were young Congress of Racial Equality workers participating in the Mississippi Summer Project. The project’s goal was to usher in approximately 1,000 young volunteers, especially northern college students, all across the state during the summer of 1964 to register blacks to vote and work on other civil rights projects. See *id.* at 1226.

37. Evers was perhaps Mississippi’s most well known and respected civil rights leader during the civil rights era, and for that reason his assassination was a particularly infamous attack on the movement. *Id.*

38. At least eight states introduced bills to end Election Day or same-day voter registration, limit voter registration mobilization efforts, and reduce other registration opportunities in 2013. *Voting Laws Roundup*, BRENNAN CENTER FOR JUSTICE (Dec. 19, 2013), <http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup>.

restrictions on voting rights.³⁹ Those restrictions have the same sort of impact as literacy tests and poll taxes did during the Jim Crow era — devices that I tried to stop through litigation as an NAACP lawyer during the 1950s and early 1960s.

“So when you look at developments going on today in the voting rights area, not only are there tremendous similarities in terms of impact,⁴⁰ I also think it’s important to look at intent — to look at the intent of the legislators who are passing these new restrictive laws. It’s hard to determine intent,⁴¹ no question about that. Very difficult, but I suspect if Cause Lawyers dig deep enough, they may find some similarities of intent as well.⁴²

“Now, I always believe that criticizing the racial status quo is fair game. But I also believe that if you’re going to criticize, you had better be able to tell folks how to do it better. You had better be able to say how it should be done right, and so from my standpoint there are three things that need to happen in terms of destroying this racial paradigm that continues to exist — this racial paradigm that lasted through slavery and lasted through Jim Crow segregation, and these racial disparities that continue to plague our society today.

“One thing that we need to recognize is that there is still a problem. The eye cannot see what the mind does not comprehend. Secondly, once we recognize that there is a problem, we need to empower minorities politically, educationally, and economically. There is an American Jobs Act that President Obama and the Obama Administration have been supporting — an American Jobs Act, which will target areas of the country with high unemployment.⁴³ Not only in terms of job education and job training, but also of job creation in these areas.⁴⁴ This is significant. It will have a tremendous impact on reducing the disparities in the unemployment arena,⁴⁵ and this can be

39. *Id.*

40. See *Shelby County v. Holder*, 133 S. Ct. 2612, 2641–42 (2013) (Ginsburg, J., dissenting) (noting a number of attempted discriminatory voter reforms denied by the Department of Justice between 1990 and 2006).

41. See Robert C. Post & Reva B. Siegel, *Equal Protection by Law: Federal Antidiscrimination Legislation After Morrison and Kimel*, 110 YALE L.J. 441, 469 (2000) (“The doctrine of discriminatory purpose appears to set forth a clear liability rule, defining what does and does not violate the Equal Protection Clause. But this clarity dissipates on close inspection.”).

42. See *Shelby County*, 133 S. Ct. at 2641–42.

43. See American Jobs Act of 2011, S. 1549, 112th Cong. (1st Sess. 2011).

44. *Id.*

45. See Jasmine A. Williams, “Unemployed (and Black) Need Not Apply”: A Discussion of Unemployment Discrimination, Its Disparate Impact on the Black Community, and Proposed Legal Remedies, 56 HOW. L.J. 629, 636, 655–56 (2013) (noting

done legislatively in other areas such as education and politics that could also have the same impact in eliminating these disparities. Third and finally, I stood throughout my legal career as an integrationist.⁴⁶ I don't run away from that ever. We need to integrate our society more in terms of housing, in terms of schools. It's something that I fought for most of my life as a Cause Lawyer,⁴⁷ and as the Solicitor General,⁴⁸ and as a Supreme Court Justice.⁴⁹ It's something I stood for. I still believe in it, and think that certain things can be done in this society to facilitate integration.⁵⁰ And by the way, we need to eliminate racial profiling period⁵¹. End of discussion. It is un-American. It's ineffective, but more so it is un-American and it needs to end.

As I kept reading the text, Justice Marshall said, "Mike, your Uncle Leon has just reminded me this letter is way too long. We didn't mean to go this long. You know that when we get going, it's hard for us to stop sometimes, even up here. He did remind me though that we've got to go pick up Charlie Houston over at the Law Library and engage in our daily poker match, which I am glad to report that I have been successful over the last few matches. But I do want to leave you with one final thought." Just as I read that, lightning hit the computer again, and it flashed and went black. So unfortunately, folks, I can't share with you Justice Marshall's final thoughts.

that, because African-Americans experience higher rates of unemployment growth during recessions, the American Jobs Act, which would encourage employers to hire workers who have experienced long-term unemployment, would benefit the African-American community).

46. See *Sweatt v. Painter*, 339 U.S. 629 (1950) (holding that the separate black law school was not "substantially equal" to the law school of the University of Texas, thus making petitioner's rejection from the law school of the University of Texas unconstitutional); see also *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

47. After the Court announced its decision to integrate schools, the NAACP declared it would begin going after discrimination in housing and transportation. See WILLIAMS, *supra* note 3. Marshall himself agreed to represent the group that eventually began the famous Montgomery bus boycotts. *Id.*

48. Thurgood Marshall served as Solicitor General from August 24, 1965, until he became a Supreme Court Justice. As Solicitor General, he argued a number of cases before the Supreme Court, including *Katzenbach v. Morgan*, 384 U.S. 641 (1966), in which the Court ruled that New York's English-only restrictions on voting were illegal. The law had the effect of preventing American citizens born in Puerto Rico who spoke only Spanish from voting in local elections. See WILLIAMS, *supra* note 3, at 317.

49. See, e.g., *Bd. of Educ. of Okla. Pub. Sch., Indep. Sch. Dist. No. 89, Okla. Cnty., Okla. v. Dowell*, 498 U.S. 237, 251-68 (1991) (Marshall, J., dissenting) (dissenting, at length, from an order lifting a desegregation decree).

50. *Id.*

51. See *Batson v. Kentucky*, 476 U.S. 79, 104-05 (1986) (Marshall, J., concurring) (noting that the once-common practice of eliminating African-Americans from jury venires is the result of stereotyping and therefore violates Equal Protection).

But what I can do is share with you *my* final thoughts, and that is that this symposium is extremely important. Your attendance, I think, should be commended as Justice Marshall indicated in his letter. I want to share with you one final thought that I had, and that is a story I'd like to share about the individual who went down to the local river, and at that river he saw two fishermen fishing in the stream. As the first fisherman looked out into that river, he saw a baby drowning, floating and drowning in that river. The first fisherman dives in, swims as fast as he can, grabs the baby and safely returns the baby to shore. As he gets to the shore, he looks back out to see where he has been and what he has accomplished . . . and he sees two more babies struggling in that river. Immediately the second fisherman who witnessed the previous rescue and sees the two new struggling babies begins to sprint upstream as fast as he can. The first fisherman yells to him in dismay, "Where are you going? Aren't you going to stay here and help me rescue these two additional drowning babies?" The second fisherman, without breaking stride, says, "You dive in, and try to save those two drowning babies. I'm going upstream to stop the person that's throwing them in."

I share that with you because Cause Lawyers must be that second fisherman. They must be the fisherman that stops what is causing the inequities in our society today. Whether they be gender, whether they be immigrant's rights, whether they be voting rights, whether they be economic justice, or whether they be Uncle Leon's and Thurgood Marshall's quest for racial equality. The disparities that exist today are almost as wide as what Thurgood Marshall and other Cause Lawyers were dealing with during Jim Crow. They are alarmingly wide. There is tremendous progress that has been made, no question about that. Those in this room are an attestation to that fact. But these disparities are still out there and in our faces, and we *must* not accept them because today, as then, the goal must be the same for "this dream today embattled with its back against the wall to save the dream for one it must be saved for all."⁵²

Thank you.

52. LANGSTON HUGHES, COLLECTED POEMS BY LANGSTON HUGHES 542 (1994).