

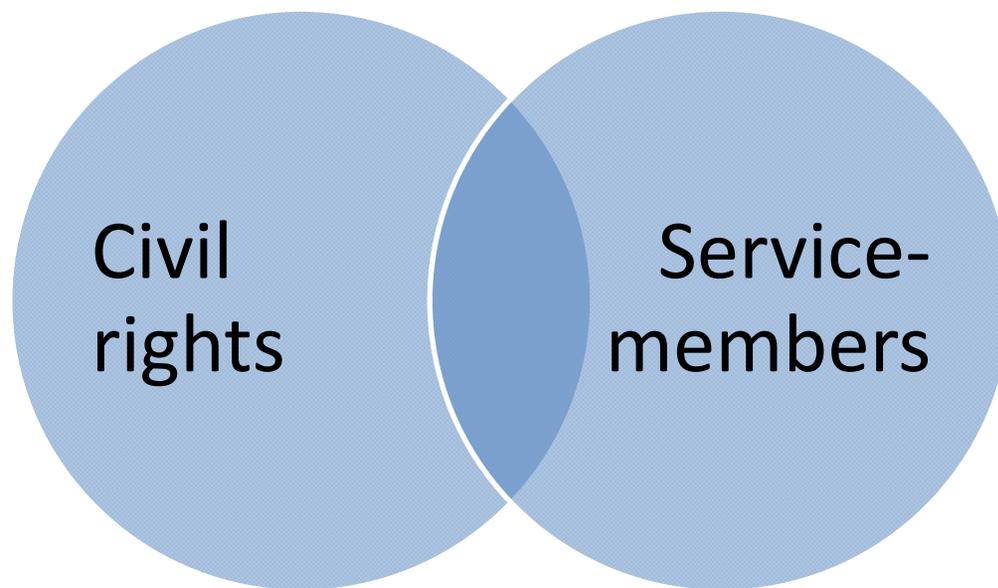
Litigation with the NAACP Legal Defense Fund

2016 Continuing Legal Education and Training Program
American University, Washington College of Law
March 2, 2016

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Roadmap

- Education
- Economic justice
- Voting rights
- Criminal justice



Education: *Brown v. Board*



Education: *Brown v. Board* (2/3)

- Does the segregation of children in public schools solely on the basis of race deprive the minority children of the equal protection of the laws guaranteed by the 14th Amendment?
- 9-0: Yes. Despite the equalization of the schools by "objective" factors, intangible issues foster and maintain inequality. Racial segregation in public education has a detrimental effect on minority children because it is interpreted as a sign of inferiority. The long-held doctrine that separate facilities were permissible provided they were equal was rejected. Separate but equal is inherently unequal in the context of public education. The unanimous opinion sounded the death-knell for all forms of state-maintained racial separation.



Education: *Brown v. Board* (3/3)

- Implementation and resistance
- Integration:
 - Schools
 - Workplace
 - Transportation
 - Housing



Education: Today

- Desegregation
 - 200 cases remain
- Diversity
 - Benefits for all students
 - Flip side of segregation



Education: *Grutter v. Bollinger*

- Does the University of Michigan Law School's use of racial preferences in student admissions violate the Equal Protection Clause of the Fourteenth Amendment or Title VI of the Civil Rights Act of 1964?
- No. In a 5-4 opinion delivered by Justice Sandra Day O'Connor, the Court held that the Equal Protection Clause does not prohibit the Law School's narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body. The Court reasoned that, because the Law School conducts highly individualized review of each applicant, no acceptance or rejection is based automatically on a variable such as race and that this process ensures that all factors that may contribute to diversity are meaningfully considered alongside race. Justice O'Connor wrote, "in the context of its individualized inquiry into the possible diversity contributions of all applicants, the Law School's race-conscious admissions program does not unduly harm nonminority applicants."



Education: Military Justice Connections

- Amicus brief:
 - Officer-enlisted relations
 - History: Vietnam and beyond
 - Morale, cohesion
- Jeffrey Toobin: This "may have been the most influential amicus brief in the history of the Supreme Court."



Signatories:

Lt. Gen. Julius W. Becton, Jr.
 Adm. Dennis Blair,
 Maj. Gen. Charles Bolden,
 Hon. James M. Cannon
 Lt. Gen. Daniel W. Christman
 Gen. Wesley K. Clark
 Sen. Max Cleland
 Adm. Archie Clemins
 Hon. William Cohen
 Adm. William J. Crowe
 Gen. Ronald R. Fogleman
 Lt. Gen. Howard d. Graves
 Gen. Joseph P. Hoar
 Sen. Robert J. Kerrey
 Adm. Charles R. Larson
 Sen. Carl Levin
 Hon. Robert "Bud" Mcfarlane
 Gen. Carl E. Mundy, Jr.
 Gen. Lloyd W. Newton Lt.
 Gen. Tad J. Oelstrom
 Hon. William J. Perry
 Adm. Joseph W. Prueher
 Sen. Jack Reed
 Hon. Joseph R. Reeder
 Gen. H. Norman Schwarzkopf
 Gen. John M.D. Shalikhvili
 Gen. Hugh Shelton
 Gen. Gordon R. Sullivan
 Gen. Anthony Zinni

Education: *Grutter* (2/2)

“These benefits are not theoretical but real high-ranking retired officers and civilian leaders of the United States military assert that, “[b]ased on [their] decades of experience,” a “highly qualified, racially diverse officer corps ... is essential to the military’s ability to fulfill its principle mission to provide national security.” The primary sources for the Nation’s officer corps are the service academies and the Reserve Officers Training Corps (ROTC), the latter comprising students already admitted to participating colleges and universities. At present, “the military cannot achieve an officer corps that is *both* highly qualified *and* racially diverse unless the service academies and the ROTC used limited race-conscious recruiting and admissions policies.” To fulfill its mission, the military “must be selective in admissions for training and education for the officer corps, *and* it must train and educate a highly qualified, racially diverse officer corps in a racially diverse setting.” (emphasis in original). We agree that “[i]t requires only a small step from this analysis to conclude that our country’s other most selective institutions must remain both diverse and selective.”

Education: *Fisher v. University of Texas*

- *Fisher I*
- Amicus briefs
- *Fisher II*: Still pending



Economic Justice: Historical Cases

- Desegregation of the workplace
 - Employment discrimination
 - Title VII
- Discrimination in provision of services



Economic Justice: *APSCU v. Duncan*

Types of colleges

For-profit colleges don't measure up to traditional four-year institutions.

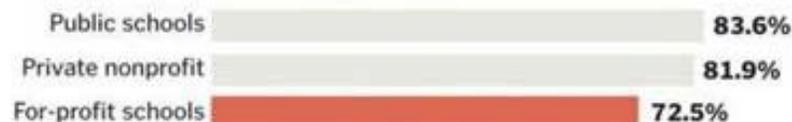
GRADUATION RATE

Freshmen entering school in 2006 who had graduated by 2012



EMPLOYMENT

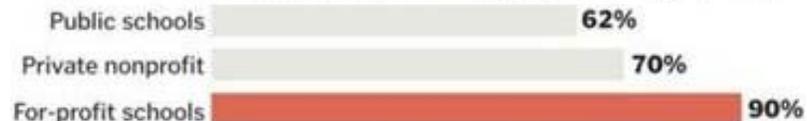
2008 graduates* who had a job in 2012



*Excluding those pursuing advanced degrees

DEBT

Percent of students who used loans to help pay for college (2013)



Average amount of debt (2007-08 school year)



Economic Justice: *Duncan* (2/2)



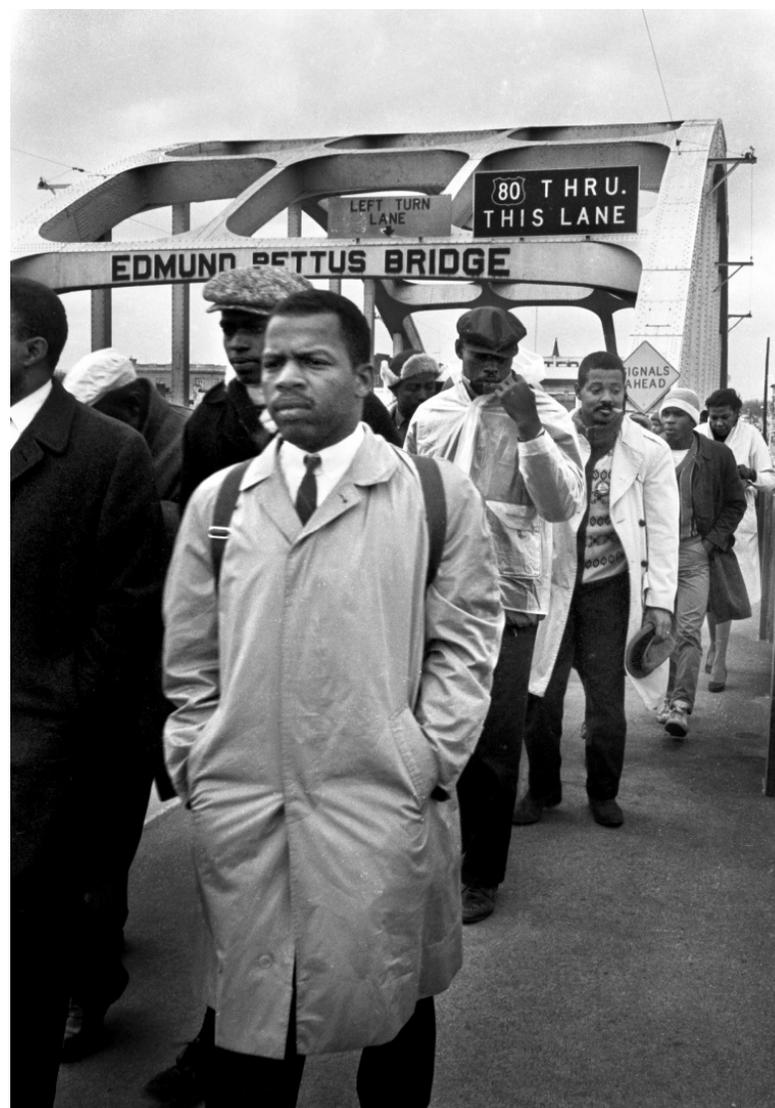
Economic Justice: Military Justice Connections



- USERRA litigation

Voting Rights: Historical Cases

- Ability to register
- All white primary
- Racial gerrymandering



Voting Rights: Today

- Voting Rights Act • One Person One Vote • Voter ID



Voting Rights: *Shelby County v. Holder*

- Does the renewal of Section 5 of the Voter Rights Act under the constraints of Section 4(b) exceed Congress' authority under the Fourteenth and Fifteenth Amendments, and therefore violate the Tenth Amendment and Article Four of the Constitution?
- Yes, Section 4 of the Voting Rights Act is unconstitutional. Chief Justice John G. Roberts, Jr. delivered the opinion of the 5-4 majority. The Court held that Section 4 of the Voting Rights Act imposes current burdens that are no longer responsive to the current conditions in the voting districts in question. Although the constraints this section places on specific states made sense in the 1960s and 1970s, they do not any longer and now represent an unconstitutional violation of the power to regulate elections that the Constitution reserves for the states. The Court also held that the formula for determining whether changes to a state's voting procedure should be federally reviewed is now outdated and does not reflect the changes that have occurred in the last 50 years in narrowing the voting turnout gap in the states in question.



Voting Rights: Military Justice Connections

- How do we make it easier, automatic?
- Where/how do we count people?



Voting Rights: Military Justice Connections (2/2)



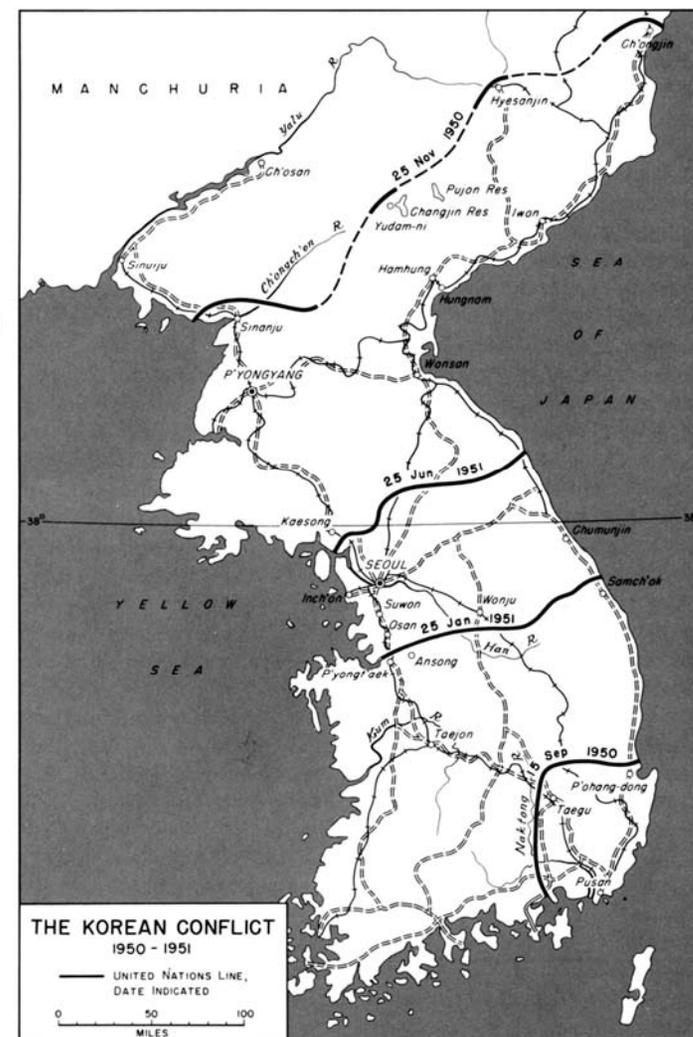
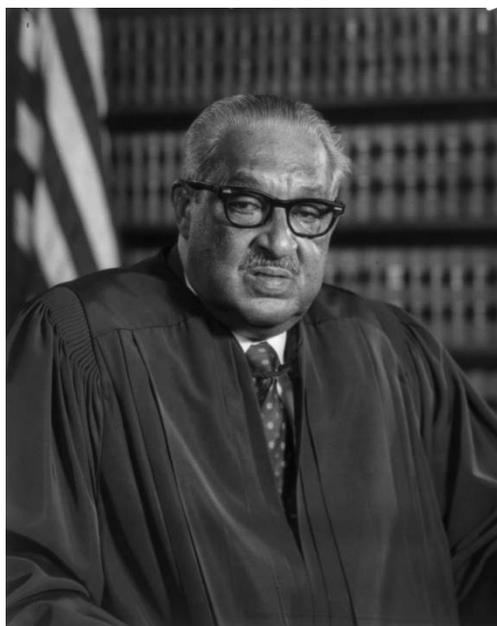
Criminal Justice: Past and Present

- *Batson v. Kentucky*
- *Pena-Rodriguez v. Colorado* (cert. pending)
- Other direct appeals



Criminal Justice: Military Justice Connections

- Before *Brown*: Korea
- 24th Infantry Regiment
- 1951: reports of unjust/harsh court-martials, sentences (death)



Military Justice Connections (2/3)

- Mr. Marshall's findings
- Hopelessness, low morale
- Recommends: ending segregation in Army; integration in Gen. MacArthur's headquarters
- Reduced sentences for 20/32 soldiers



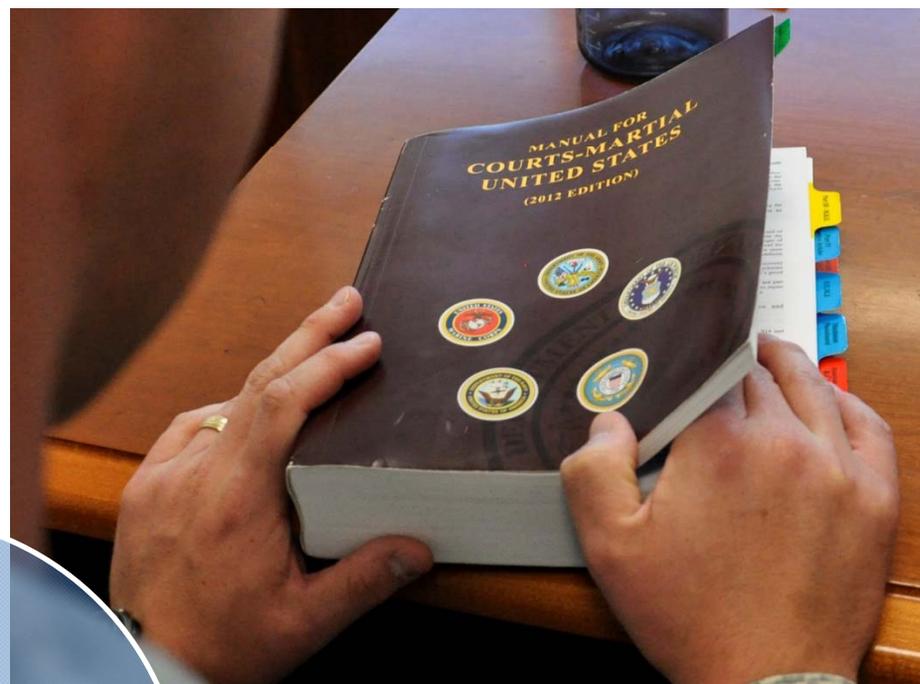
Criminal Justice: Reflection, Reform

- Broader conversation
 - Ferguson, Baltimore
 - Mass incarceration
- Right-left coalition



Conclusions and Questions

- UCMJ
- Legal assistance
- Labor law



Civil
rights

Service-
members