



Marching Toward Justice

The History of the 14th Amendment to the U.S. Constitution

Thurgood Marshall and Autherine Lucy • AP/Wide World

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
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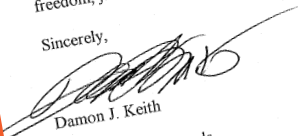
Dear Visitor,

Welcome to "Marching Toward Justice," the inaugural exhibit of the Damon J. Keith Law Collection of African American Legal History. This exhibit presents, through more than one hundred images, an important chapter in our nation's history. Although the exhibit calls upon you to journey through the horrific experiences of the Middle Passage in the Trans-Atlantic slave trade and to ponder the harsh realities of the enslavement of persons of African descent, its central focus is the courageous struggle of persons of African descent and their allies who, for several centuries, fought to achieve justice in this land.

"Marching Toward Justice" particularly tells the story of those who committed themselves to the creation and enforcement of the Fourteenth Amendment. Ratified in 1868, the Fourteenth Amendment created a new inclusive citizenry by requiring that states provide "equal protection of the laws." Originally intended for the protection of newly-emancipated Blacks following the abolition of slavery in 1865, the Fourteenth Amendment's meaning has evolved with our changing society. Countless Americans -- women of every ethnicity, Americans with disabilities, Latinos, Native Americans, Asian Americans, and European-Americans as well as African Americans -- have successfully cited its protections in their struggles against oppression, discrimination, and exclusion from the rights and privileges of citizenship. Its central principle -- justice without discrimination -- remains universally applicable to all.

It is my privilege and pleasure to join the board and staff of the Keith Collection in continuing to reach out to citizens across the nation through this exhibit. I invite you to "march towards justice" so that we all may learn more about the influence of African American lawyers and other concerned citizens on our nation's efforts to realize its ideals. Thank you for taking the time to make this journey. Only through proper study and recognition of our history can we make the promise of freedom, justice, and equality a reality.

Sincerely,



Damon J. Keith

U.S. Court of Appeals
for the Sixth Circuit

Introduction

“Marching Toward Justice – The History of the 14th Amendment to the U.S. Constitution” is the inaugural exhibition of the Damon J. Keith Law Collection of African American Legal History. It brings to life stories about how persons of African descent in North America and their advocates have struggled for justice. “Marching Toward Justice” begins in 1619, with the arrival of captive Africans in English colonial America, and ends in 1957, with the admittance of nine African American students to Central High in Little Rock, Arkansas. “Marching Toward Justice” offers you the opportunity to share the centuries-long struggle for justice. The shared experiences of African roots, the middle passage, servitude, slavery, racism, and resistance forged a new African American people.

This exhibition focuses on the ***Fourteenth Amendment to the United States Constitution*** and the struggle to make America a true democracy. The Fourteenth Amendment was added to the Constitution in 1868, but it was not enforced *for* African Americans until

the late twentieth century. The Fourteenth Amendment established the definition of citizenship for all Americans, white and black. It prohibits states from interfering with federally-guaranteed rights of all Americans. The Fourteen Amendment *ultimately* became *the* weapon of choice for African Americans and their allies in their struggle to attack the legal foundation of institutionalized racism and the concept of “separate but equal.”



1619 to 1860

The Birth of Freedom and the Birth of Slavery in North America

The journey into slavery began centuries ago with kidnapping and a long, terrifying march that ended with death or chains and confinement in the hulls of European ships. Slavery had existed in Africa for centuries among different ethnic groups. Captives taken in war, debtors, and persons convicted of certain crimes, such as murder, could lose their liberty. But these people still had some rights, and most could expect to receive their freedom at some point in their lives. The European and American traders joined hands with their African counterparts to conduct a different kind of slave trade, one which had no relationship to traditional slavery within Africa. Africans who exchanged prisoners for Western goods could not have envisioned the chattel slavery in the Americas to which Africans were condemned.

Between the sixteenth and the nineteenth centuries, an estimated 50,000 voyages were made in the transatlantic slave trade. (Scholars know from documentary sources that more than 27,000 trips were made). Captives were taken to special holding posts on the west coast of Africa for shipment. They were imprisoned in the dungeons of slavers' forts sometimes called "castles." Some fell ill; others died. Women and girls were raped. Then they were herded into vessels waiting to take them across the Atlantic. In the ships' hulls they were tightly packed and chained together for the "middle passage." The trip across the ocean lasted from four weeks to three months. Women, men, boys and girls were subjected to disease, dehydration,

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regular abuse, and death. Some jumped overboard, denying white slavers any ultimate authority over their lives.

Yet many Africans managed to survive the dehumanization and oppression of the middle passage. At least twelve million enslaved Africans resisted, surviving to live their lives in the Americas. About 500,000 of these Africans were brought into English North America. As best they could, within the context of slavery, they took charge of their own lives. They refused to let slavery define them. Some Africans volunteered to fight in the War for American Independence in the hope of finding freedom in the new United States. Some manumissions and gradual emancipation in the Northern states followed the war.

In 1787, however, the Constitution incorporated slavery into the fabric of the new United States. Federal laws were passed that protected slave owners' property rights, requiring that fugitive slaves be



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returned. At the same time, slave owners benefitted by calculating each slave as three-fifths of a person to determine their representation in Congress. Blacks – whether enslaved or free – were oppressed by law in so many ways that Mary Frances Berry documented centuries of “constitutional racism” in *Black Resistance/White Law*.

At this time some whites also began to speak against slavery as a moral problem. Quakers and other prominent persons – among them Anthony Benezet, Thomas Paine, and Benjamin Franklin – publicly opposed slavery. The American Anti-Slavery Society disseminated widely the image of a shackled African with the caption “Am I not a Man and a Brother?”

Slave resistance took the form of work slow-downs or running away, in addition to alleged conspiracies and rebellions (such as Gabriel Prosser’s of 1800, Denmark Vesey’s of 1822, and Nat Turner’s of 1831). Some of those who escaped, such as Frederick Douglass and Harriet Tubman, became outspoken abolitionists. Others served as “conductors” on the routes of the “Underground Railroad.” Thousands ran away each year, seeking freedom.

Those who remained enslaved were neither mindless nor totally submissive. They created lives for themselves. They had deep relationships and significant kinship ties. They chose partners and formed family units. They learned to read, write and do mathematical calculations. They worshipped and expressed their faith and hope in stories and sermons. Through music, such as spirituals and jubilee songs, as well as dance, poetry and oral literature, slaves gave life to a new culture. Spirituals served both to express their beliefs and to communicate (through coded language) information about escapes. All of this formed a culture of resistance.

Some African Americans expressed themselves in books. Ben-

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jamin Banneker, who taught himself mathematics and astronomy, published a calendar with astronomical data and useful facts. He became widely known both for this almanac and for drawing the plans for the District of Columbia. Phillis Wheatley, who learned to read before she was freed, became the first author of African descent to be published in the Americas. She began publishing poetry at age fourteen and by twenty had become a celebrity in the colonies and England, following the 1773 publication of *Poems on Various Subjects, Religious and Moral*. Richard Allen organized a free African society and church, eventually founding the African Methodist Episcopal denomination.

During the 1850s, the economics and politics of slavery led to violent conflicts. Black (and white) opponents of slavery in the North and the South appealed to the founding ideals of the nation. African American attorney Robert Morris, representing Sarah Roberts, argued against the race-based exclusion of Sarah from a neighborhood school in Boston, only to have separation of the races upheld by the court in *Roberts vs. City of Boston*. In *Dred Scott v. Sandford*, Scott sought to determine the legal status of a slave who traveled to and resided in a free state or territory. In 1857 the Supreme Court refused to hear Scott's argument. The Court told Scott that ***there were no rights held by a Negro any white person was obligated to respect.***

Nevertheless, demands for freedom, justice, and recognition of slaves' common humanity continued to be raised. On the eve of the Civil War, slaves had grown to a population of four million. Free Blacks numbered in the thousands. All Blacks were on the bottom of the nation's social order, but no one was without a story of transcendence. By faith or force of will, often both, each had survived and each had endured.

1861-1900

A Break with the Past and New Beginnings

With the Emancipation Proclamation of 1863, Abraham Lincoln declared that slaves within the Confederacy were free. The Proclamation was embraced by the slaves as a sign that it was time to seize their own freedom. Slaves in large numbers left plantations and came to the aid of the Union. African Americans from the North who had been active in the Abolitionist Movement not only volunteered for service in the Union ranks, but also aided runaways, many of whom in turn joined the Union Army. Others, especially newly freed women and children, enjoyed the assistance of free Blacks and white northerners, who provided food, clothing, shelter, economic aid and education.

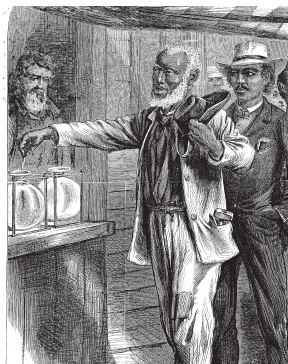
During Reconstruction (1865-1877), white lawmakers and citizens focused on the needs of four million emancipated men, women and children. The Freedmen's Bureau was limited in the aid it could provide and the issues it could address. African Americans had priorities that the nation and its white majority did not share. Many searched for loved ones to reunite their families. Couples sought to be married in the eyes of the law. African Americans established voluntary associations and churches of their own in the South, including African Methodist Episcopal (AME), AME Zion, and Black Baptist churches. In collaboration with white teachers, missionaries, philanthropists and northern Blacks' associations, African Americans built schools and supported the education of free persons. They participated in the economy as paid laborers.

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Many former slaves viewed General Sherman's Military Order Number Fifteen as the government's way of making reparations for years of slavery. They were disappointed when neither plots of forty acres nor mules were given to the millions of former slaves. Although radical Republican Thaddeus Stevens introduced a bill into Congress for distribution of confiscated lands to the newly freed, the former slaves received no compensation for centuries of slavery. But the Radical Republicans did secure passage and ratification of crucial amendments to the Constitution. With the ratification of the Thirteenth Amendment to the Constitution in 1865, slavery was abolished. In 1868, the Fourteenth Amendment extended citizenship rights on a non-racial basis. Key provisions defined citizenship and established the state's obligations to provide both due process and equal protection of the laws. Despite strong opposition, the Fifteenth Amendment's ratification in 1870 prohibited race-based interference with the voting rights of African American men.

These Amendments did not stem the tide of racism and violence. Blacks daily faced harsh economic conditions, intimidation, threats, and organized white-supremacist violence, like that of the Ku Klux Klan, as well as random racist acts. Although this campaign of terror stifled rights or placed them in great danger. African Americans were elected to local, state, and federal offices.

After Reconstruction, however, efforts to restore white domination grew into a widespread disfranchisement movement. With this movement southern whites diminished the significance of Blacks' vote in the South. To discourage any chal-



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lenges to white supremacy, African Americans were increasingly demeaned, exploited, abused, segregated and lynched. **At least 1,846 Blacks were lynched between 1882 and 1901.** The African-American journalist Ida B. Wells' *Red Record* did much to reveal the economic and political motives of whites, who lynched men and women of color under the pretense of protecting white womanhood or whites' rights.

In this period, "Social Darwinism" and "scientific racism" provided an excuse for subjugating people of color, especially those of African descent. "Social Darwinism" tried to apply Charles Darwin's theory of evolution to differences between people. It served primarily as a way to demean Blacks. "Scientific racism" relied on false studies to prove a biological "Negro inferiority." Not until the late twentieth century did social scientists prove race was not a biological category, but was in fact a social-cultural category.

At the end of the nineteenth century, however, physical appearance or African American parentage were enough to make a person a second-class citizen. In 1896 Homer Plessy, an African American of light complexion, tested Louisiana's statute establishing segregated public transportation. The majority in the U.S. Supreme Court



affirmed the constitutionality of "separate but equal" in *Plessy v. Ferguson*. This decision undermined Constitutional provisions for protection of African Americans' rights. In his *Plessy* dissent, Justice Harlan called for a "color-blind" Constitution in legal matters, even while affirming white superiority.

1901-1957

The Civil Rights Struggle – Making the 14th Amendment a Reality

At the beginning of the twentieth century Blacks continued to be denied full rights of citizenship. As the number of African American voters diminished, they could no longer return African Americans to state assemblies and the halls of Congress. After George White of North Carolina concluded his final term in the House of Representatives in 1901, there were no more African American representatives in Congress until the election of Chicago's Oscar DePriest in 1928.

“Jim Crow” laws (named after a pre-Civil War minstrel show character) spread throughout the South, requiring separation of “coloreds” and whites in public transportation, hospitals, schools, restaurants, and restrooms. African Americans became accustomed to backdoor take-out windows at restaurants where “coloreds” were not permitted to sit down and dine. Most assumed that their loved ones would be buried in a segregated cemetery. In southern courtrooms, spectators were separated by color, and Black witnesses were even given different Bibles on which to swear. In some workplaces, Black employees were not allowed to look out of the same windows as their white counterparts.

African Americans survived. They celebrated emancipation and, in the face of vicious racism, tried to define freedom on their own terms. They emphasized building community, land ownership, the Black press, and especially education. Some African Americans believed that their future lay in learning new skills, in practical edu-

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cation and economic self-help. This point of view was expressed by Booker T. Washington, who founded Tuskegee Institute. Others were determined to access the full range of higher education. This was the point of view expressed by W.E.B. DuBois, a Fisk University graduate and Harvard Ph.D. Most African Americans saw education as a pathway to inclusion, greater freedom, and upward mobility. They supported not only public grade schools, but also schools, colleges and universities such as Atlanta Baptist Female Seminary (later Spelman College), Benedict, Hampton, Howard, Lincoln of Pennsylvania (the first historically Black college in the United States, founded in 1854), Saint Augustine, Shaw and Wilberforce, in addition to Fisk and Tuskegee.

Race-based laws and violence kept most Blacks from owning their own land and making money. Far too many worked as sharecroppers or tenants. In an effort to find their promised freedom, many southern Blacks migrated to the North in the early twentieth century. They were often disappointed to discover that their lives were still affected by racism when they sought jobs, housing, and education.



In the face of oppression, African Americans focused on both self-help (promoted by Booker T. Washington) and protest (promoted by W.E.B. DuBois, Ida B. Wells and others). Wells not only attacked lynching, she militantly advocated for women's right to vote. In 1905 African Americans formed the Niagara movement to protest their lack of rights. The movement's leader, W.E.B. DuBois, eloquently explained the movement's position: "We claim for ourselves every single right that belongs to a

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freeborn American, political, civil, and social; and until we get these rights we will never cease to protest and assail the ears of America.”

When some African American protesters were invited to join Mary White Ovington and other whites of the Progressive Movement in an attack on racial injustices, a biracial National Association for the Advancement of Colored People (NAACP) was born. DuBois, a scholar-activist, served as the hard-hitting editor of the NAACP’s official publication, *Crisis*. In it he declared to the world that the NAACP stood for “the rights of men [and women] irrespective of color or race, for the highest ideals of American democracy, and reasonable, but earnest attempts to gain these rights and realize these ideals.”

At the same time, however, race relations in general worsened.



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President Woodrow Wilson segregated the federal government and armed services, even as he waged a war to “save the world for democracy.” The “Red Summer” of 1919, with its racially-motivated riots against Blacks throughout the United States, proved that no African American – whether a civilian or military – was exempt from mob violence. Anti-lynching bills were introduced into Congress and, on occasion, Blacks were able to defend their communities, but racism ran rampant. During the 1920s segregation became deeply entrenched in the South, and discrimination became harder to challenge in the North. The Great Depression, beginning in 1929, made racial violence even worse.

The 1931 Alabama case of the “Scottsboro Boys” was in many ways a turning point for African Americans and sympathetic whites. Legal arguments, marches, and protest literature in defense of the young men accused of raping a white woman nurtured Black militancy as



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nothing before had done. The NAACP's slow response to the judicial railroading of the "Scottsboro Boys" led to unfavorable comparisons with racially-integrated radical groups, such as the International Labor Defense (ILD). Numerous Black women, including Mary McLeod Bethune and Roberta Hastie, organized protests and pushed the NAACP to take more effective action against racial injustice.

African Americans and white radicals had grave concerns about the future of race relations, even while President Franklin Roosevelt implemented his "New Deal" policies. The ILD agitated for radical changes to the economy and for mass protest. The NAACP supported court actions on behalf of African Americans. Using dues, contributions, and a large grant from a white philanthropist, the NAACP launched a special legal campaign for racial equality in education. Charles Hamilton Houston, a Harvard-trained African American attorney and Howard University's Law School dean, became the NAACP's first Special Counsel. Houston, who had attended the segregated public schools of Washington, DC and served in the segregated army during World War I, made no secret of his opposition to oppression and his view that discrimination in education was designed to promote white supremacy. He said that the purpose of any practice or policy of racial inequality was, by design and not accident, to "keep Blacks on the bottom."



A brilliant strategist and litigator, Houston, relying on the Fourteenth Amendment, developed and started a legal assault on racial discrimination in education. He took into account entrenched racism, white supremacy, the

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Supreme Court's deference to legal precedent, its policy of judicial self-restraint, and the need for Black community initiative. In 1936 Houston invited Thurgood Marshall, Houston's former Howard Law School student, to join the staff of the NAACP's Special Counsel. With a legal committee and courageous African American attorneys (including William Hastie, Z. Alexander Looby, Alexander Tureau, Oliver Hill, George E. C. Hayes, Leon Ransom, and Sidney Redmond, III, James Nabrit, Spottswood Robinson and Constance Baker Motley in later years), the NAACP's Legal Defense and Educational Fund (LDF) carefully prosecuted test cases to prepare a direct assault on racial segregation in education.

Houston and Marshall began, however, with inequalities in law school education. They sued the graduate school of the University of Missouri in *Gaines ex rel. University of Missouri* to chisel away at the foundation of the "separate but equal" doctrine. When Houston returned to private practice, he worked to address racially unfair labor practices. He argued that equal employment opportunities should be given to Blacks through the Fair Employment Practice Committee, established by Franklin Delano Roosevelt in his Executive Order 8802 (1942). Marshall succeeded Houston as the NAACP's chief counsel in the continuing campaign to eliminate segregation in education.



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After World War II ended in 1945, African Americans protested their treatment as second-class citizens, the prevailing racism, and the lack of democracy. These protests were too persistent and too loud to be ignored. Under President Harry S Truman the armed forces were desegregated (in 1948 by Executive Order 9981), and a biracial committee prepared a report on civil rights, "To Secure These Rights." In that report, the President's Committee on Civil Rights challenged the nation to use the government's resources to secure equal protection of the law and the citizenship rights guaranteed by the Fourteenth Amendment. Meanwhile, lawyers continued to pressure states to deliver on the promises of the Fourteenth Amendment. Following Houston's strategy, the LDF won a 1948 victory in the case of Ada Lois Sipuel against the University of Oklahoma. This created another precedent that contributed to the overturning of *Plessy v. Ferguson*.

Responding to communities' calls for help, the LDF's staff and the NAACP's local attorneys challenged racial inequality in teachers' salaries and publicly-supported grade schools. Thurgood Marshall and Robert Carter determined that the 1950 Supreme Court rulings of *Sweatt v. Painter* and *McLaurin v. Board of Regents of Oklahoma* had weakened *Plessy v. Ferguson* enough to launch a direct attack on racial segregation in education. Lawyers were inspired by outspoken children like Barbara Rose Johns of Virginia, whose courage in organizing a student demonstration astonished even the adults. Houston died in 1950, before seeing the results of his years of labor.

Parents, children, and community leaders in Delaware, Kansas, South Carolina, Virginia, and the District of Columbia refused to accept racial inequality in public education. Directing a team of NAACP and LDF lawyers, Thurgood Marshall successfully led the assault on segregated public education. As chief counsel for *Brown*

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v. *Board of Education of Topeka* – the title case for the consolidated state cases of Kansas, Delaware, South Carolina and Virginia – he argued that racial segregation in public schools violated the states’ constitutional duty of equal protection. James Nabrit and George E.C. Hayes represented the children of Washington, DC in *Bolling v. Sharpe*, which also directly challenged segregation, although on different constitutional grounds. The collaborative struggle of African American parents, children, lawyers, and their allies culminated in the unanimous ruling that overturned the “separate but equal” doctrine of *Plessy v. Ferguson*. On May 17, 1954, Chief Justice Warren announced for the Court:

“We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place . . . [W]e hold that the plaintiffs . . . are . . . deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.”

Brown I – “the ’54 decision” – signaled a change in what would be considered constitutional and legally enforceable by courts of law. Desegregation, however, was slowed by the Court’s ruling in **Brown II** (1955), that desegregation could proceed with “all deliberate speed.” It also met with massive resistance from many whites. White clashed with the forces of change and integration throughout the nation. In 1956 Autherine Lucy sought admission to the University of Alabama. The reaction of Tuscaloosa residents and university students was so severe that the University’s Board of Regents expelled Lucy within a month. She openly criticized the University, but the expulsion stood.

In 1957, Governor Faubus and enraged citizens challenged the authority of President Dwight Eisenhower when nine African American students attempted to enroll in the Little Rock, Arkansas, Central High School. Eisenhower federalized the National Guard and

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ordered elements of the 101st Airborne Division to Little Rock to enforce desegregation in compliance with federal law. **This marked the first time since Reconstruction that federal troops had been sent into the South to protect the rights of African Americans.** During the 1957-58 school year, troops patrolled the grounds, a regular presence at Central. In 1958, the only senior of the “Little Rock Nine,” Ernest Green, graduated. Other young people were encouraged and emboldened by the youth and adults of Alabama and Arkansas. By 1960, in Durham and Greensboro, North Carolina, and Nashville, Tennessee, sit-ins began a new phase of the movement for civil and human rights.

Although this exhibition ends with the emergence of a multi-racial Civil Rights Movement led by African Americans, the struggle continued with a new generation of militant protesters. Even after the Civil Rights/Black Power mass movement waned during the 1970s, what had been accomplished to put the Fourteenth Amendment into effect extended that Amendment’s protections far beyond those whose plight had inspired it.

The Fourteenth Amendment has been applied to many segments of American society including:

Native Americans –

***Morrison v. Garraghty*, 239 F.3d 648 (2001);**

Japanese –

***Takahashi v. Fish & Game Com.*, 334 U.S. 410;**

***Oyama v. California*, 332 U.S. 633 (1948);**

Indeed the 14th Amendment protects us all:

***Shelly v. Kraemer*, 334 U.S. 1 (1948).**

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For further information on the Collection or the “Marching Toward Justice” exhibit or contributions contact Lawrence C. Mann, Professor and Director, M. Chiquita McKenzie, Associate Director, Wayne State University, The Damon J. Keith Law Collection of African American Legal History, 471 W. Palmer, Detroit, Michigan 48202.

For Further Reading

- Berry, Mary. *Black Resistance/White Law*
- Blassingame, John. *The Slave Community*
- DuBois., W.E.B. *Black Reconstruction*
- Foner, Eric. *Reconstruction*
- Franklin, John Hope. *From Slavery To Freedom. Emancipation Proclamation, 1963. Reconstruction After the Civil War*
- African Americans and the Living Constitution*, edited by John Hope Franklin and Genna Rae McNeil
- Franklin, V.P. *Black Self-Determination*
- Hildebrand, Reginald. *The Times Were Strange and Stirring*
- Hine, D.C., Terborg-Penn, R. & Barkley-Brown, Eds. *Black Women in America*
- Kluger, Richard. *Simple Justice*
- McNeil, Genna Rae. *Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights*
- Patterson, James. *Brown v. Board of Education*
- Robinson, Randall. *The Debt*
- Schomburg Center for Research in Black Culture. “Lest We Forget.” *African American Desk Reference*

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Williams, Juan. *Thurgood Marshall*

Zinn, Howard. *A People's History of the United States* (revised edition)

For Further Action or Contributions:

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The Children's Defense Fund
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Washington, D.C. 20001

The Equal Justice Initiative
643 South Perry
Montgomery, AL 36104

The NAACP Legal Defense Fund, Inc.
99 Hudson Street
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The Tom Joyner Foundation*
P.O. Box 630495, Irving, TX 75063
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NOTES

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“First Vote”. Image courtesy of HarpWeek, LLC. (p.7)

“Everything Points to a Democratic Victory this Fall”, October 31,
1874. Image courtesy of HarpWeek, LLC. (p.8)

“Portrait of Ida B. Wells”. Photographs and Prints Division,
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(p.10)

“A Man was Lynched Yesterday”. United States Library of
Congress. (p.11)

Mary McLeod Bethune with poster, “Help Stop Murder”. Moorland
Spingarn Research Center, Howard University. (p.12)

Charles Hamilton Houston. Moorland Springarm Research
Center, Howard University. (p.13)

Mary McLeod Bethune and Mrs. H. Hastie protesting. Moorland
Spingarn Research Center, Howard University. (p.14)

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