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Reflections on Fifty Years of Progress in Civil Rights, Liberties, and Participation

Walter F. Mondale

Foreword

Reflections on Fifty Years of Progress in Civil Rights, Liberties, and Participation

Walter F. Mondale†

I am honored to be asked to represent the members of Volume 39 of the *Minnesota Law Review* (1954–55) in writing a brief foreword to Volume 89 (2004–05). I speak for my generation of Minnesota graduates when I say that it is very gratifying to know that the University of Minnesota Law School continues to be in the top ranks of our nation's law schools, and that the *Minnesota Law Review* remains among the best in the nation. I am also very pleased that the magnificent new law school building and library reflect the national prominence of the Law School.

I would like to share with you my reflections on the sweeping changes in the law that have reshaped our nation over the last fifty years. In the years before I entered law school, many people saw the law as a hindrance to civil rights. Time and again, the Supreme Court turned away efforts to use the law on behalf of progressive change. But during my years at the Law School, that began to change in dramatic and rapid fashion. As I reflect on the years since I graduated from law school, I am struck by the fact that my career has spanned the time when the law went from being an obstacle to change to being an engine for change.

You might find it hard to imagine today, but when I was in law school few African Americans could vote in the South. At the time, the Jim Crow system of segregation was an obstacle so deeply ingrained that it seemed insurmountable. The mere act of publicly advocating civil rights for African Americans

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could jeopardize your life and livelihood in the deep South. Even in the North, the notion of civil rights for African Americans was not universally accepted. It took bold leadership to change hearts and minds in this country. Here in Minnesota, we were very fortunate to have Hubert Humphrey as an inspiring leader in the battle for civil rights, first as mayor of Minneapolis and later as our U.S. senator. Long before the cause of civil rights became fashionable, Humphrey waged a lonely battle on behalf of all the disadvantaged members of our society. Humphrey inspired Minnesotans and millions of other Americans across the North to see civil rights as a national issue, not simply a southern issue.

This realization came home to all of us during my law school days. As my classmates and I were writing for Volume 39 of the *Minnesota Law Review*, the Warren Court decided the famous case of *Brown v. Board of Education*.[1] As we all know, the *Brown* decision overturned *Plessy v. Ferguson*,[2] finding that *Plessy*'s doctrine of "separate but equal" was inherently discriminatory.[3] The *Brown* decision energized the civil rights movement, marking one of the major turning points in our history. To be sure, Jim Crow segregation would not go without a fight, but the *Brown* decision represented an important catalytic step in a long battle that continues to the present day.

Six months after I graduated from law school and more than a year after the *Brown* decision, the Montgomery bus boycott began. Martin Luther King, Jr., a little-known black minister from Atlanta, Georgia, led that boycott. Though King was not a lawyer, he understood that the law could function as an instrument of progressive change. King's insight proved prophetic; in the decade that followed, the balance of power in Congress shifted dramatically, clearing the way for sweeping change. A year before I entered the U.S. Senate, Congress passed the Civil Rights Act of 1964, which banned segregation in public facilities.[4] During my first year in Washington, Congress passed the Voting Rights Act of 1965, which, across the

1. 347 U.S. 483 (1954).

2. 163 U.S. 537 (1896), *overruled by Brown*, 347 U.S. 483 (1954).

3. *Brown*, 347 U.S. at 493–96; *see also Plessy*, 163 U.S. at 550–52 (upholding legislation requiring separate but equal accommodations for whites and blacks).

4. *See* Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. §§ 2000a–2000e (2000)).

nation, mandated the one-person-one-vote rule.[5] A new generation of African American lawyers emerged, including Thurgood Marshall, who argued the *Brown* case on behalf of the NAACP and later became the first African American member of the Supreme Court. Thanks to the brave efforts of people like Humphrey, King, and Marshall, as well as to the efforts of countless ordinary Americans who participated in the boycotts, marches, and sit-ins, the horizons of America's legal system expanded to include all of our citizens.

This story of judicial and legislative success, however, should not lead to complacency today. Racism still exists in our society. Although it is banned in government and other public facilities, de facto segregation remains, most notably in our neighborhoods. Even in Minnesota, a state that has been on the cutting edge of progressive change for so many years, the sad fact of the matter is that children of color are still more likely to live in poverty than most white children,[6] and there are wide racial disparities in educational outcomes.[7] As the last half-century has shown, changing the law does not necessarily change hearts and realities. We still have a long road to travel before we achieve an America that truly realizes the promise of *Brown* and the Civil Rights Acts.

Nevertheless, we have made tremendous headway. We are a more open and more inclusive nation today than we were fifty years ago. Here in Minnesota, thirteen African American judges sit on the state's courts,[8] including Associate Justice Alan Page of the Minnesota Supreme Court. Also, Judge Michael J. Davis sits on the U.S. District Court for the District of Minnesota. Although African Americans make up a small percentage of attorneys nationwide, the number of African American associates and partners is slowly rising.[9]

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5. *See* Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 42 U.S.C. §§ 1971, 1973–1973p (2000)).

6. CHILDREN'S DEFENSE FUND, MINNESOTA KIDS: A CLOSER LOOK 2004 DATA BOOK 6–7 (2004), *available at* http://www.cdf-mn.org/PDF/KidsCount Data_04/Databook_2004.pdf (last visited Sept. 9, 2004).

7. *See* Samuel L. Myers, Jr. et al., *The Effect of School Poverty on Racial Gaps in Test Scores: The Case of the Minnesota Basic Standards Tests*, J. NEGRO EDUC., Winter 2004, at 80, 86–94.

8. STANDING COMM. ON MINORITIES IN THE JUDICIARY, AM. BAR ASSOC., DIRECTORY OF MINORITY JUDGES OF THE UNITED STATES 80–81 (3d ed. 2001).

9. *See* NAT'L LAW JOURNAL, ANNUAL FIRM SURVEYS (2000–03) (unpublished data, on file with the Minnesota Law Review); *see also* ELIZABETH CHAMBLISS, AM. BAR ASSOC., MILES TO GO 2000: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION 6–11 (2000) (noting, however, that significant obsta-

Social change has occurred even more dramatically in the expansion of professional opportunities for women in the last half century. The University of Minnesota Law School provides an excellent example. When my law school class assembled in old Fraser Hall in the fall of 1953, our class of 200 students included only two females. The prejudice against women extended to the professional world. The firm where I began my brief career in private practice was considered unique in Minnesota because it had a woman partner. She often asked me, a young associate, to see clients on her behalf because they refused to work directly with a woman lawyer. Things are very different today. One of my classmates, the late Mary Jeanne Coyne, became a highly respected associate justice of the Minnesota Supreme Court, the first woman justice in Minnesota's history. Today, the chief justice of the Minnesota Supreme Court is Kathleen Blatz.[10] Judge Diana Murphy serves on the U.S. Court of Appeals for the Eight Circuit, while Judges Joan Ericksen and Ann Montgomery serve on the U.S. District Court for the District of Minnesota.[11] According to the latest enrollment figures, the student body of the University of Minnesota Law School is 45% women and 17% minorities.[12] We still have a long way to go, but we are headed in the right direction.

The change in the racial and gender demographics of university life is not limited to the classroom; it now extends to the playing fields as well. When I was at the University, there was no Title IX. Men once dominated college sports, but that is no longer true. This past winter, the University of Minnesota women's basketball team thrilled every Minnesotan as they nearly won the national championship. For old grandfathers like me, it is a pleasure to watch our granddaughters excel at soccer, hockey, and any other sport they choose to play. The sky is the limit for my granddaughters and their generation. This change is both revolutionary and inspiring. One of our top priorities in the twenty-first century should be building on our strong history of progress in civil rights for all of our citizens.

The preservation of our civil liberties will be another major

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cles for minorities exist at all levels of the legal profession, particularly in the areas of associate attrition and partner business generation).

10. LEADERSHIP DIRECTORIES, INC., JUDICIAL YELLOW BOOK 745 (Spring 2004).

11. *Id.* at 51, 293.

12. LAW SCH. ADMISSION COUNCIL & AM. BAR ASSOC., OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS 434 (2005).

challenge in the century ahead. After World War II, most Americans believed that we would spend the rest of our lives in peace. But, sadly, that has not turned out to be the case. The Cold War with the Soviet Union began in the late 1940s and lasted more than forty years. During that time, we fought two bloody wars in Asia, the Korean War in the 1950s and the Vietnam War in the 1960s and 1970s. One of the great ironies of the modern era is that American troops have been put in harm's way more often in the years following the conclusion of the Cold War than during its long, forty-year span. First came the Persian Gulf War in 1991, and then the interventions in Somalia in 1993, Bosnia in 1995, and Kosovo in 1999. Now, we are engaged in a brutally violent conflict in Iraq. Instead of a lifetime of peace, our generation has lived continually amidst anxiety about our security in our troubled world.

I think that one of the great lessons of the last half-century is the need to always protect and preserve our civil liberties. When our nation is at war, this lesson becomes even more important. Every war creates fear at home, and, if we allow it to, that fear can slowly erode and undermine our constitutional rights. My law school class witnessed the danger of losing our constitutional rights first hand. We suffered through the Joe McCarthy era, when the U.S. senator from neighboring Wisconsin drove national hysteria over the alleged widespread presence of communist spies among us.

One of the most frightening aspects of that era was the fact that many people lost faith in our constitutional system of justice. People viewed Soviet communism and Soviet sympathizers within our own nation as a force so formidable that our laws could not protect us against them. They made decisions based on fears, not justice. They feared that justice would make us weak and believed that only extralegal police powers would protect us. McCarthyism fostered—and exploited—the belief that we needed to take emergency measures to protect ourselves from American enemies within our midst. The very essence of McCarthyism was to shake our faith in democracy and civil liberties. It was a very frightening time indeed.

Of course, we eventually found out that our system of government was more than a match for Soviet communism. When the Soviet empire finally collapsed in 1989, it was exposed as one of the colossal failures in history. In retrospect, the hysteria that McCarthyism created during the 1950s appears foolish and misguided. That became clear even at the time, thanks

in large part to the fact that we kept true to our democratic traditions. In 1955, the U.S. Senate took the remarkable step of censuring McCarthy for his reckless allegations. A sense of confidence in our constitutional system reasserted itself, and cooler heads prevailed.

We should not become overconfident that threats to our constitutional system reside only in the distant past. As recent events have shown, we are still vulnerable to the kind of hysteria that blows threats out of proportion and undermines faith in the effectiveness of our constitutional democracy. We do live in a dangerous age. September 11 taught us that in tragic fashion. The dangers of terrorism are now tangible to us in a way that they were not before September 11, and we have all had to cope with the idea of living with terrorism indefinitely. However, we cannot lose faith in the rule of law and in the civil liberties upon which our democracy was founded. Just as in the McCarthy period, there are people who now claim that our legal system lacks the effectiveness necessary to protect us from terrorism. They claim that only by sacrificing some of our cherished civil liberties can we be safe from our enemies. To gain security, we must give up some of our liberty, or so they claim.

In my opinion, the liberty/security dichotomy is a false choice. The events of the past fifty years reveal that it is precisely our system of justice that most strengthens us against extremists who seek to spread their fundamentalist beliefs through the contravention of justice and human decency. During the past century, we have defeated Nazi Germany, Imperial Japan, Mussolini's Italy, and Soviet Russia. If our system of democracy and civil liberties was strong enough to weather the dark times of Hitler and Tojo, Khruschev and Brezhnev, then surely it is strong enough to defeat Osama bin Laden and prevail over terrorism. We do not need to sacrifice our civil liberties to win the war on terror. By preserving our liberties in the face of danger, we remain a country worth defending. Indeed, our civil liberties should be one of the great unifying themes in the war against terrorism. It is what makes America so special. We have an open society, one in which citizens are free to criticize the government without fear of persecution.

It is reassuring to me that the federal courts seem to understand this fact. As the Supreme Court observed in the recent Guantanamo Bay case,[13] even in wartime there are limits

13. Rasul v. Bush, 124 S.Ct. 2686 (2004).

to the executive branch's powers. The White House is but one branch of our federal government. Even in wartime, a system of checks and balances must be preserved; the executive, legislative, and judicial branches have equally important roles to play, regardless of whether we are at peace or at war. Our constitutional system of government depends on the rule of law. For it to prevail, we must always keep faith in our open system of government. It has served us well for over 200 years, and it will continue to serve us well for generations to come.

Indeed, one of the great advantages of our open system of government is that it permits the public to hold our elected officials accountable for the decisions they make. That is why I think campaign finance reform is necessary. Like the battle for civil rights, campaign finance reform has been a long time in the making. While serving on the Volume 39 *Law Review* board, I wrote a Note about campaign finance reform.[14] In it, I addressed the increasing corruption of America's campaign finance system, arguing that only full and immediate disclosure of campaign contributions would diminish the risk of political corruption.[15] But now, fifty years later, it is clear to me that I did not go far enough. Although full public disclosure is important, we need to take more sweeping steps to preserve the integrity of our democratic process. The Bipartisan Campaign Reform Act, popularly known as the "McCain-Feingold bill,"[16] is a step in the right direction. The McCain-Feingold bill seeks to end the so-called "soft money" loophole, which has been used to evade federal limits on campaign contributions to candidates. But we still have a long way to go. As the most recent campaign season made painfully clear, new forms of uncapped political money contributions have emerged and are now being used to funnel vast sums of private money into federal campaigns, albeit within a web of complex rules. Perhaps one of the current *Law Review* editors will take up this cause over the course of her career.

One of the missions of the *Minnesota Law Review* is to promote debate and discussion on the pressing legal issues of

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14. Note, *Minnesota Corrupt Practices Act: A Critique of the Fixed Campaign Expenditure Limitations*, 40 MINN. L. REV. 156 (1956).

15. *See id.* at 166–67 (criticizing any legislation which "prevent[s] voters from knowing how much a candidate has spent and from whom he has accepted financial support").

16. Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (2002) (amending Federal Election Campaign Act of 1971).

our day. Whether it be civil rights, civil liberties, or campaign finance, the issues facing the editors of Volume 89 are not fundamentally different from the issues that faced those of us who worked on Volume 39. I am extremely pleased—and proud—to see that the current editors remain as engaged with the pressing topics facing the legal community as we were a half-century ago.

In conclusion, I am sure I speak for all of my fellow members of Volume 39 when I say we loved our Minnesota Law School, we believe we had a great faculty and we greatly enjoyed our time on the *Minnesota Law Review*, even though we sense that Volume 39 is cited less and less by competent authorities. (Surely an oversight.) We all carry great memories and will for as long as we are around. We are proud to have graduated from the University of Minnesota Law School, and we continue to admire the ongoing and impressive achievements of our great law school.