

CHARLES HAMILTON HOUSTON

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“The problem of the twenty-first century will be the problem of ignoring the history of color.”¹

Charles Hamilton Houston was one of the most important figures in the history of the United States. To the extent that any one person may be assigned responsibility for any one revolutionary public event, Charles Hamilton Houston was responsible for the most important judicial decision of the 20th century -- the decision in *Brown v. Board of Education*.² Moreover, in his direct actions and through those he influenced, Charles Hamilton Houston caused dramatic changes not only in constitutional interpretation but also in statutory exegesis and public policy with respect to education, housing, employment, voting, civil rights, and civil liberties. As if that were not enough for one man to accomplish in a brief life, he also made important contributions to international affairs and groundbreaking improvements in legal education.

You all may think I’m exaggerating. You’ll be particularly likely to think so if you’d never heard of Charles Hamilton Houston before last week. How many of you had not heard of him until you heard of this presentation?

Then you will (or won’t) be surprised to hear what was said by Thurgood Marshall, who described Houston as -- Thurgood Marshall said -- “my mentor”:

Charlie Houston . . . started all of this. . . . There is not a movement that I have come across in civil rights or civil liberties that Charlie Houston didn’t have a hand in back in those days when it was rough.³

If, after this presentation, you want to learn more about Charles Hamilton Houston, you

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¹Nathaniel R. Jones, *The Sisyphean Impact on Houstonian Jurisprudence*, 69 U. Cin. L. Rev. 435, 435 (2001).

²347 U.S. 483 (1954).

³Thurgood Marshall, *Remarks at the Second Circuit Judicial Conference [Pretrial Detention] (October 17, 1987) [hereinafter "Marshall, Remarks"]*, in *Thurgood Marshall: His Speeches, Writings, Arguments, Opinions, and Reminiscences* 206 (Mark V. Tushnet ed., 2001) [hereinafter "Marshall, Speeches"].

would do well to read the basic biography, *Groundwork*, by Dr. Genna Rae McNeil,⁴ or to consult any of the other works on the bibliography assembled by Miriam Murphy, the Assistant Director of our Library.⁵

I want to give you some idea of what Charles Hamilton Houston's short life was like and what he accomplished in the few years given him. I want you to understand how courageous and hardworking and disciplined and effective he was. But I also want you to hear and heed the lesson he teaches, the challenge, the mandate, he issues to all of us. So I'll describe his life and work, and then his challenge.

As you can see from the chronology I've given you,⁶ Charles Hamilton Houston was born in Washington, D.C., attended the segregated schools there, and then went to Amherst College, from which he graduated magna cum laude, having been elected to Phi Beta Kappa. He was valedictorian of his class.

He then went into officer training and served in the Army in France during World War I. After his discharge from the service, he went on to Harvard Law School. Houston was the first African-American to serve as an editor of the *Harvard Law Review* and earned, as Dean Roscoe Pound said, "about every honor that [was] possible for a law student."⁷

After earning his LL.B. -- what's now called a J.D. -- he continued at Harvard to secure the S.J.D.

From Harvard, he returned to Washington to join his father's law firm and the faculty at Howard Law School. He then became Vice Dean at Howard, leading it to accreditation by the American Bar Association and membership in the Association of American Law Schools and training an honor roll of distinguished attorneys, many of whom later became federal judges. He worked with the NAACP, becoming its first salaried special counsel in 1934, led the effort to develop strategies to overturn *Plessy v. Ferguson* and other embodiments of white supremacy, and himself argued eight cases in the U.S. Supreme Court (winning all but one). He died in 1950, at the age of 54.

That is the outline. Now I ask you to consider some of the details. First, remember the quote I read to you from Justice Marshall: "There is not a movement . . . in civil rights or civil

⁴Genna Rae McNeil, *Groundwork: Charles Hamilton Houston and The Struggle for Civil Rights* (1983) [hereinafter "McNeil, *Groundwork*"].

⁵Available at <http://www.iulaw.indy.indiana.edu/glj/houston.htm>.

⁶Available at <http://www.iulaw.indy.indiana.edu/glj/chh.htm>.

⁷Genna Rae McNeil, In *Tribute: Charles Hamilton Houston*, 111 *Harv. L. Rev.* 2167, 2169 (1998) (alteration in original) (letter of recommendation to Howard's Dean) [hereinafter "McNeil, In *Tribute*"].

liberties that Charlie Houston didn't have a hand in back in those days when it was rough." I want you to think about what Justice Marshall means when he says: "it was rough."

Imagine what it was like for Charlie Houston, at age 16, to go from the segregated public schools of Washington, D.C. to Amherst College in Massachusetts, where he was the only "Negro" in his class. At Amherst, his biographer tells us, "he had 'very few friends in town and rarely paid a social visit.'"⁸

When he enlisted in the army, he suffered the indignity of being isolated in segregated units. (The armed services weren't desegregated until Truman's presidency.)

At Harvard, too, he was socially isolated. "He was . . . one of a 'handful' of academically qualified African-Americans admitted to Harvard, a school that . . . 'tolerated' racial minorities 'as long as they remained inconspicuous.'"⁹

He wrote to his parents: "The editors on the Review didn't want me on this fall; now all is one grand harmony. But I still go on my way alone."¹⁰ In a sentiment some here will share, he said: "God help me against a false move."¹¹

No law club at Harvard would admit Houston -- or any other blacks -- or Jews. Houston participated in organizing a law club open to both excluded groups.¹²

When he returned to Washington and then went to New York, he constantly was subjected to the humiliations imposed on people of color. Chief Judge Collins Seitz of the Third Circuit has written:

⁸McNeil, *Groundwork*, supra note 4, at 31.

⁹McNeil, *In Tribute*, supra note 7, at 2167 (quoting Marcia G. Synnott, *The Half-Opened Door: Researching Admissions Discrimination at Harvard, Yale and Princeton*, 45 *Am. Archivist* 175, 176-77 (1982)).

¹⁰McNeil, *In Tribute*, supra note 7, at 2168.

¹¹McNeil, *Groundwork*, supra note 4, at 52.

¹²*Id.*

Mere words cannot fully describe racial conditions in the United States in the early part of the twentieth century. . . . [T]he corrosive effect of pervasive segregation on black Americans really can only be known by those who dealt with it at every turn in their daily lives. Whites cannot appreciate the humiliations which were a black's constant companion When he left the courtroom, he would be denied the simple right to sit down in a public restaurant [in Washington, D.C.] to eat his lunch.¹³

Constance Baker Motley, now a United States District Judge in New York, joined the NAACP Legal Defense Fund in 1945.¹⁴ In 1948, she went with Thurgood Marshall to Washington for the arguments in *Shelley v. Kraemer* and *Hurd v. Hodge*, two cases I'll discuss in a moment.¹⁵ Since the hotels were segregated, she recalled, "we stayed in a so-called Negro hotel, which was no more than a rooming house in a residential area of brownstones. We had to have our meals at the rooming house as well because white restaurants did not serve blacks [White] cabdrivers did not pick up blacks in 1947."¹⁶

Back in the nation's capital, Houston and other African American lawyers were unable to join the D.C. Bar Association or to use the association's law library, which was located in the federal courthouse!

Thurgood Marshall recalled that he and Houston "had to travel in the south in his car -- . . . there was no place to eat, no place to sleep. We slept in the car and we ate fruit."¹⁷

I emphasize these disgusting facts because I too often hear from students who are discouraged by today's injustices that "nothing's changed" in the past decades, that *Brown v. Board* and other cases striking down aspects of white supremacy made no difference.

Nothing could be further from the truth. There has been immense change, immense improvement, in the state of civil rights and civil liberties in the United States. Change has been too slow, and advances have been hindered by pernicious new doctrines, as I'll discuss, but it would be ignorant and shameful for us to pretend that the circumstances of today are the same as those under which the great heroes of the mid-twentieth century labored.

¹³Collins J. Seitz, *Surveying the Groundwork*, 83 Mich. L. Rev. 1046, 1047 (1985) (book review).

¹⁴Constance Baker Motley, *Equal Justice Under Law* 153 (1998).

¹⁵334 U.S. 1 (1948), 334 U.S. 24 (1948).

¹⁶Motley, *supra* note 14, at 68.

¹⁷Marshall, *Remarks*, *supra* note 3, at 206.

Charles Hamilton Houston's complete, wholehearted, wholeminded commitment was to battling injustice. His most famous statement, made to all his students, was: "a lawyer's either a social engineer or he's a parasite on society."¹⁸

Houston taught that a lawyer's duties as social engineer included:

(1) serving as 'the mouthpiece of the weak and a sentinel guarding against wrong'; (2) 'guiding antagonistic and group forces into channels where they will not clash'; (3) ensuring that the 'course of change is . . . orderly with a minimum of human loss and suffering'; and (4) recognizing that the 'written constitution and inertia against . . . amendment give the lawyer wide room for experimentation.'¹⁹

A social engineer, Houston said, was a highly skilled, perceptive, sensitive lawyer who understood the constitution of the United States and knew how to explore its uses in the solving of 'problems of . . . local communities' and in 'bettering conditions of the underprivileged citizens.'²⁰

Note well that while Houston was ardently committed to achieving justice for African-Americans, his commitment was not only to African-Americans. Houston determined that any "proposition . . . for public action should be interpreted not simply as a Negro proposition, but as a proposition affecting the majority of the people: all the poor people of this country, white and black alike."²¹

He was deeply committed to protecting civil liberties. In 1947, he opposed a proposal to outlaw the communist party. "Having strong convictions about civil liberties for all citizens, Houston had been pleased to be retained in the 'Hollywood contempt trial' of Dalton Trumbo, novelist, editor, and Hollywood director, in 1948."²²

He took courageous, controversial stands.

¹⁸McNeil, Groundwork, supra note 4, at 84.

¹⁹McNeil, In Tribute, supra note 7, at 2169-70.

²⁰McNeil, Groundwork, supra note 4, at 84.

²¹Id. at 135-6.

²²Id. at 204.

He also was very concerned with international matters. He was a member of the advisory board of the Council on Inter-American Relations and was involved with the American Continental Congress for World Peace. He was a constant critic of United States policies in Bolivia, Cuba, Mexico, and Panama.²³ He maintained “an active interest in African affairs;” among other things, he “challenged the National Education Association to include in its manual a discussion of the realities of African colonization.”²⁴

In his last illness, he made a tape recording for his son. He said: “it is necessary to establish the principle of the indivisibility of liberty so that the masses recognize that no matter where liberty is challenged, no matter where oppression lifts its head, it becomes the business of all the masses.”²⁵ In that tape he discussed the problems of Africa, Native Americans, Mexican Americans, and migrant workers.²⁶

Houston’s legal career encompassed four principal fields of activity: legal education, the development of legal strategy, and trial and appellate litigation.

As a legal educator, as in every aspect of his career, Houston insisted on excellence. He was committed to achieving justice. Thurgood Marshall recalls that when he was in law school, about 1932, the Attorney General set up an anti-crime conference, which refused to consider lynching. So Howard University Law School “set up a picket line, headed by our Dean, Charlie Houston”²⁷

²³Id. at 201.

²⁴Id.

²⁵Id. at 207.

²⁶Id. at 207-8.

²⁷The Reminiscences of Thurgood Marshall (Columbia Oral History Research Office 1977) [hereinafter “Marshall, Reminiscences”], in Marshall, Speeches, supra note 3, at 480.

At Howard, "Dean Houston was ferocious in his insistence that no one be a mediocre Howard Law graduate."²⁸ Spottswood Robinson, later a distinguished judge on the D.C. Circuit, recalled that Houston "rejected out of hand all complaints that work was too difficult or assignments too long."²⁹ "And he had no tolerance of carelessness, laziness, or lack of attention to detail."³⁰ William Hastie -- Houston's cousin, and the first African-American appointed to the federal bench -- had been on the faculty at Howard during Houston's tenure as vice-dean. Hastie said that "Charles Houston, the law teacher, was an unremitting task master."³¹

Houston was responsible for transforming Howard Law School into an accredited institution that enjoyed membership in the Association of American Law Schools. It was perhaps the first "public interest law school." It provided an excellent legal education to a generation of brilliant African-American lawyers, many of whom later became federal judges.

Perhaps Houston's most famous student and protégée was Thurgood Marshall, who had tried to attend the University of Maryland Law School in his home town of Baltimore. Marshall was excluded from the University of Maryland Law School because he was black, and therefore had to commute to Washington to attend Howard University Law School.

There's a life lesson here for all of us. The rejection by Maryland -- which seemed like a terrible blow at the time -- turned out to be a great blessing, for it sent Marshall to Howard, and therefore to Charles Hamilton Houston. For Marshall, as Mark Tushnet writes, "the Howard experience transformed his life."³²

As Justice Marshall himself said: "I don't know anything I did in the practice of law that wasn't the result of what Charlie Houston banged into my head."³³

²⁸McNeil, Groundwork, supra note 4, at 82.

²⁹Spottswood W. Robinson III, No Tea for the Feeble: Two Perspectives on Charles Hamilton Houston, 20 How. L. J. 1, 4 (1977).

³⁰McNeil, Groundwork, supra note 4, at 82.

³¹Robinson, supra note 29, at 4.

³²Mark V. Tushnet, Introduction to Marshall, Speeches [hereinafter "Tushnet, Introduction"], in Marshall, Speeches, supra note 3, at xviii.

³³Marshall, Reminiscences, supra note 27, at 417.

Among the many other distinguished lawyers who were his students and protégées are

- Spottswood W. Robinson III, of the District of Columbia Circuit,³⁴
- William B. Bryant, the first black chief judge of the District of Columbia District Court³⁵ (who graduated first in his class from Howard), and
- Oliver Hill.³⁶

As a legal strategist, Houston is credited with developing the plan that led to the astonishing ruling in *Brown v. Board of Education*.³⁷ As Judge Higginbotham wrote: without Houston, there would have been no *Brown v. Board of Education*.³⁸ It was Houston who put the focus on litigation involving access to graduate and professional schools; it was Houston who emphasized the importance of educating and organizing blacks all over the country to support the anti-segregation campaign.

Houston also was a brilliant trial lawyer, handling both civil and criminal cases, including cases involving the death penalty -- which, then as now, was liberally imposed on African-Americans.

³⁴Ken Gormley, *A Mentor's Legacy: Charles Hamilton Houston, Thurgood Marshall and the Civil Rights Movement*, 78 A.B.A.J., June 1992, 62, 63.

³⁵*Id.*

³⁶Oliver Hill was a civil rights leader, an attorney for the NAACP, and "the first Negro ever to serve on the city council of Richmond, capital of the old Confederacy." Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* 128 (1976).

³⁷Thurgood Marshall, *An Evaluation of Recent Efforts to Achieve Racial Integration in Education Through Resort to the Courts*, 21 J. of Negro Ed. (1952), in Marshall, *Speeches*, supra note 3, at 146.

³⁸A. Leon Higginbotham, Jr., *Reflections on the Impact of Charles Hamilton Houston - From a Unique Perspective*, 27 New Eng. L. Rev. 605, 608 (1993).

Donald Gaines Murray, an Amherst graduate, was denied admission to the University of Maryland Law School because he was black.³⁹ In a suit tried by Thurgood Marshall and Charles Hamilton Houston, Murray was admitted to the University of Maryland Law School in 1935.⁴⁰

Constance Baker Motley recalled: “in 1949, Thurgood decided that I should begin learning to try cases, so he sent me down to Baltimore to observe Charles Houston try a prototype, a suit against the University of Maryland School of Nursing . . . Houston allowed me to sit at counsel table.”⁴¹ Testifying to Houston's thorough trial preparation, she said that “he had each exhibit he intended to introduce marked and spread out on the table for easy citing and a loose-leaf notebook in which he had written every question he intended to ask the witnesses and his legal arguments.”⁴²

Unlike most outstanding trial lawyers, Houston also was a brilliant appellate advocate, distinguished not only in the courts of appeals but also in the unique arena of the United States Supreme Court.

Houston argued eight cases in the Supreme Court, all cases involving crucial and difficult issues of law. He won seven of them.⁴³

Justice Douglas called him one of the ten best lawyers he ever heard argue before the Supreme Court.⁴⁴

³⁹Gormley, *supra* note 34, at 64.

⁴⁰Tushnet, Introduction, *supra* note 32, at xix (“Counseled by Houston, Marshall won the first court decision requiring a previously segregated state university to admit African Americans.”).

⁴¹Motley, *supra* note 14, at 70.

⁴²*Id.* (Maryland had offered to pay for the complainant to attend an out of state nursing school. Houston lost this at case at trial but won in the Court of Appeals of Maryland).

⁴³Houston won: *Hurd v. Hodge*, 334 U.S. 24 (1948); *Tunstall v. Bhd. of Locomotive Firemen & Enginemen*, 323 U.S. 210 (1944); *Steele v. Louisville & Nashville R.R. Co.*, 323 U.S. 192 (1944); *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938); *Hale v. Kentucky*, 303 U.S. 613 (1938); *Hollins v. Oklahoma*, 295 U.S. 394 (1935); *Shelley v. Kraemer*, 334 U.S. 1 (1948). Houston lost: *Fisher v. United States*, 328 U.S. 463 (1946).

⁴⁴Gormley, *supra* note 34, at 65.

The first of his cases was *Hollins v. Oklahoma*, in which he established the principle that exclusion of blacks from a jury was grounds for overturning a conviction. He then argued *Missouri ex rel. Gaines v. Canada*, which forced the University of Missouri to provide its African American citizens with a law school education in Missouri, either by admitting them to the existing state law school or by creating a new law school for African Americans.⁴⁵

The next were *Steele v. Louisville & Nashville Railroad Company* and *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen*, involving the Railway Labor Act, which provided that when employees, by majority vote, selected a bargaining agent, that agent would be the exclusive bargaining agent for all employees. Houston sought to invalidate a union contract which discriminated against Negro firemen in favor of white firemen. To do so, he argued that the Railway Labor Act implied a duty to represent all employees fairly.

As William T. Coleman, Jr., later Secretary of Transportation of the United States, has written, this showed a particular aspect of the brilliance of Houston's legal work. Houston used the tools that would work. As Coleman says, Houston recognized "that to be a good civil rights lawyer one had to be not only an excellent common law lawyer but also one with the rare ability to parse the words of a statute to extract a meaning helpful to one's cause, and also had constantly to read and reread, analyze, and reanalyze, all the cases, not only those which dealt with race."⁴⁶ Thus, as Coleman explains, in *Steele v. Louisville & Nashville Railroad Company*, Houston talked not about race, but about an implied duty to represent all employees fairly.

Houston played a major role in securing the earthshaking 1948 Supreme Court rulings invalidating the enforcement of racially restrictive covenants in *Shelley v. Kraemer* and *Hurd v. Hodge*. Houston had been litigating cases against restrictive covenants in the District of Columbia, losing them at trial and in the D.C. Circuit -- though he did secure a dissenting opinion from Judge Henry W. Edgerton in the case of *Mays v. Burgess*, which the Supreme Court refused to review.⁴⁷ Houston then tried two more cases in the District Court in D.C., again took adverse rulings to the D.C. Circuit, and again secured a powerful dissent from Judge Edgerton. Houston then argued those cases -- under the caption, *Hurd v. Hodge* -- in the U.S. Supreme Court, winning a holding that the federal courts could not enforce the racially restrictive covenants.

⁴⁵Tushnet, Introduction, *supra* note 32, at xx-xxi.

⁴⁶William T. Coleman, Jr., In Tribute: Charles Hamilton Houston, 111 Harv. L. Rev. 2155, 2159 (1998).

⁴⁷147 F.2d 869 (D.C. Cir. 1945), cert. denied, 325 U.S. 868 (1945).

Houston's contributions to the demise of racial covenants were not limited to his own litigation. He was involved in convening meetings of other lawyers from throughout the country to coordinate a campaign against racial covenants, and was a leader in securing the work of social scientists and in publicizing the sociological, economic, and moral arguments against racial covenants.

This litigation record would be a great legacy for any person, but Houston's influence extended far beyond his own cases. As Coleman says, "a lawyer trained by Houston used *United States v. Classic* to get *Grovey v. Townsend* overruled in *Smith v. Allwright* (the case that slew the white primaries in the south). Moreover, they used *Southern Pacific Co. v. Arizona* and Section Two of the Interstate Commerce Act, neither of which was based upon race, to overrule the earlier cases permitting segregation in interstate travel."⁴⁸

Houston's biographer, Dr. Genna Rae McNeil, wrote, "Houston, although equipped for the pursuit of prominence, prosperity, and [material] success, chose -- as did his forebears -- protest, struggle, and sacrifice."⁴⁹ He would not have considered it sacrifice, however; he insisted that "the privilege of piloting the race in its persistent march toward full citizenship [was] its own compensation for any hardships the lawyer may have to undergo."⁵⁰ His choice brings to mind the words of another Harvard alumnus, [Dr.] W.E.B. du Bois, who presented this challenge to a June 1930 commencement audience at Howard University:

The truth is today, be good, be decent, be honorable and self-sacrificing and you will not always be happy. You will often be desperately unhappy . . . but with the death of your happiness may easily come increased . . . satisfaction and fulfillment for other people -- strangers, unborn babies, uncreated worlds. If this is not sufficient incentive, never try. . . .⁵¹

These aren't just fine-sounding exhortations from the past. They speak to responsibilities that we -- that you all -- have now, responsibilities that you should heed in planning your futures. As William Coleman said: "again there is a need for young lawyers to restudy the Houston approaches, to refine them in order to complete his battle to remove from the American scene the deleterious, debilitating, and the still unfair remaining effects of slavery -- racial segregation and race-based separateness of communities."⁵²

⁴⁸Coleman, *supra* note 46, at 2160.

⁴⁹McNeil, *Groundwork*, *supra* note 4, at 87.

⁵⁰*Id.*

⁵¹McNeil, *In Tribute*, *supra* note 7, at 2171.

⁵²Coleman, *supra* note 46, at 2161.

Judge Nathaniel R. Jones -- of the United States Court of Appeals for the Sixth Circuit -- wrote that what motivated Houston was that “his keen mind and profound sense of justice moved him to disagree with the way in which the Supreme Court was construing the United States Constitution.”⁵³ Houston knew, Judge Jones wrote, that if the Supreme Court’s jurisprudence “were not vigorously resisted, greater oppression would continue to be the lot of black people.”⁵⁴

The jurisprudence against which Houston fought was that of *Plessy v. Ferguson*.⁵⁵ *Plessy* and the separate-but-equal doctrine are gone, but, as Judge Jones points out, a majority of the current Supreme Court has adopted other principles that stand in the way of full equality for people of color in the United States.

When Charles Hamilton Houston was at Harvard, he learned what the law was: *Plessy v. Ferguson*. He knew it was wrong, and worked to change it.

Many of the legal rules you all are learning also are wrong -- and you should work to change them.

Judge Jones points in particular to cases like *Croson v. City of Richmond*,⁵⁶ *Adarand v. Peña*,⁵⁷ and *Shaw v. Reno*,⁵⁸ which hold that race-conscious remedies for discrimination must be subjected to strict scrutiny, and refuse to consider elimination of pervasive societal discrimination as a compelling purpose that justifies race-conscious remediation. As Judge Jones says, this jurisprudence “reveals a grievous misunderstanding of the nation’s racial history and of how courts reinforced stereotypes that fed discriminatory patterns of conduct. It is a premise that begs for challenge.”⁵⁹

⁵³Jones, *supra* note 1, at 435.

⁵⁴*Id.*

⁵⁵163 U.S. 537 (1896).

⁵⁶478 U.S. 1016 (1986).

⁵⁷515 U.S. 200 (1995).

⁵⁸509 U.S. 630 (1993).

⁵⁹Jones, *supra* note 1, at 437.

I would add to those other principles established by a majority -- usually a 5-4 majority -- of the current court that also beg for overruling. *Milliken v. Bradley*,⁶⁰ limiting remedies for school segregation to city schools, immunizing suburbs from involvement, makes a mockery of the principles of *Brown v. Board*. *Washington v. Davis*⁶¹ and *Arlington Heights v. Metropolitan Housing Development Corp.*,⁶² requiring proof of discriminatory intent to establish a violation of the Equal Protection Clause, and *Guardians' Association v. Civil Service Commission of New York City*,⁶³ requiring intention to establish a violation of Title VI, also cry out for correction. *Bowers v. Hardwick*⁶⁴ cannot stand. These are some of the challenges left to us.

Remember Charles Hamilton Houston's words: "A lawyer's either a social engineer or . . . a parasite on society."⁶⁵

⁶⁰433 U.S. 267 (1977).

⁶¹426 U.S. 229 (1976).

⁶²429 U.S. 252 (1977).

⁶³463 U.S. 582 (1983).

⁶⁴478 U.S. 186 (1986).

⁶⁵McNeil, *Groundwork*, supra note 4, at 84.