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## Introduction

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## INTRODUCTION

HONORABLE NATHANIEL R. JONES\*

George Santayana declared that those who fail to learn the lessons of history will be condemned to relive them. This truism was again proven in the violence and ugliness seen in the events surrounding the arrest of Rodney King in Los Angeles. Unfortunately, the Rodney King tragedy clearly illustrates that Americans have not learned some very important lessons.

A review of history is necessary to place contemporary events in a historical context. The parallels between the racial tensions of today and those of the past are worthy to note. During the Era of Reconstruction, with the adoption of the Thirteenth, Fourteenth and Fifteenth Amendments, Congress undertook a serious effort to remedy the effects of slavery; effects that demeaned not only the slaves and their descendants, but the nation as a whole. The Freedmen's Bureau was created to implement all remedial measures necessary to assist the freed black slaves in their adaptation to their newly found freedom. Due to the Bureau's activities and the protection afforded by the Civil Rights Act of 1866 as well as the Thirteenth, Fourteenth and Fifteenth Amendments, blacks began to assume, on an increasing scale, the attributes of United States citizenship.

After measurable gains were achieved, a "take back" occurred, culminating in the Supreme Court's pronouncement in *Plessy v. Ferguson* that the Fourteenth Amendment could abide racial discrimination against black Americans, thus validating the separate-but-equal doctrine. Justice John Marshall Harlan wrote a ringing dissent:

[I]n view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens.

Regrettably, Justice Harlan's words are inappropriately quoted today by those who argue against race-based solutions to remedy past discrimination. Had the Court's majority adopted Harlan's view in 1896, there would be no present need for remedies to eradicate the present day effects of the doctrine of separate-but-equal. The nation has not reactivated any of the racist laws that existed prior to *Brown v. Board of Education* in 1954, but the attitudes behind those laws are now gaining respectability anew. This is evidenced by what I call the "David Duke phenomenon." This phenomenon transcends David Duke, the individ-

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ual. It is, in my view, the driving force behind the motives of some of those who attack remedies designed to eliminate race discrimination.

To the victims of race discrimination, it does not matter whether words of hate come from the lips of Duke himself or from the coded phrases uttered by others. The message and the pain are the same. What is heard in the newspapers by African Americans, Hispanic Americans, Native Americans, women and other minorities is "turn back the clock." Demagogic appeals to the worst instincts in Americans seem to be the order of the day. Unbecomingly racially divisive codes abound. No wonder that some minorities act with seeming license to wreak harm upon others.

In 1968, the National Advisory Commission of Civil Disorders (the Kerner Commission), appointed by President Lyndon B. Johnson in the wake of a series of tragic urban riots in the mid-1960s (including Los Angeles, Detroit and Newark), addressed the underlying causes of those riots. The historic report that grew out of the Commission's work declared that each disturbance was precipitated by an encounter between the police and the minority community. Each catalytic event was followed by an insurrection that saw bottled-up frustration, unredressed grievances and unmet needs explode into mindless, senseless acts of destruction. The report specifically recognized that the situation was precipitated by a breakdown of the legal system.

Now, some twenty-four years later, in response to what is widely viewed as a miscarriage of justice, another series of social disruptions occurred. The violent seizure of Rodney King and the jury's exoneration of the police officers involved, led an overwhelming number of Americans to believe that our legal system failed miserably.

The Constitution's protections against "unreasonable seizure" and being "deprived of life and liberty without due process of law" extend to every American—no matter how ugly that person's conduct may have been. Nothing that preceded what we saw on the infamous video tape entitled the police officers to suspend Rodney King's constitutional rights and summarily administer corporal punishment.

Duly constituted authorities must respect individual rights. When authorities violate one's constitutional guarantees, the legal system must provide redress. When this system breaks down and no redress is afforded, the likely result is an unleashing of collective rage. Since that rage is incendiary in nature, it ignites the social dynamite stacked in the urban areas where racial minorities are warehoused. Simply put, this is what occurred in Los Angeles. It will be repeated elsewhere unless some fundamental problems in our society are addressed and solved.

In 1968, the Kerner Commission, in facing the issue of rage, race and social dynamite, found: "What white Americans have never fully understood—but what the Negro can never forget—is that white society is deeply implicated in the ghetto. White institutions created it, white institutions maintain it and white society condones it."

One of the final witnesses appearing before the Kerner Commission

was the distinguished social scientist, Dr. Kenneth B. Clark. In expressing his concern that the Commission's recommendations would be ignored, as previous warnings had been, Dr. Clark testified:

I read that report . . . of the 1919 riot in Chicago, and it is as if I were reading the report of the investigating committee on the Harlem riot of 1935, the report of the investigating committee on the Harlem riot of 1943, the report of the McCone Commission on the (1965) Watts riot. . . . [I]t is a kind of Alice in Wonderland with the same moving picture reshowed over and over again, the same analysis, the same recommendations, and the same inaction.

Unfortunately, too many Americans, including some duly constituted authorities, continue to ignore the Commission's findings and recommendations. This nation has endured more than a decade of rhetoric and demagoguery on the question of race and remedies for racial discrimination. Courts have been castigated and lawyers who have tried to deal with the problems have been targeted for derision by occupants of the highest offices of the land. Moreover, ideological litmus tests have been crafted to reduce the likelihood that persons who believe in protecting individual rights ascend to the federal bench. It now appears that the Department of Justice is about to move away from the policies of polarization and to again seriously enhance the system's respect for individual rights.

Moreover, the Kerner Report is not obsolete; it can help Americans understand how to ensure that the guarantees of equal justice under law are extended to Americans who many consider society's "unwashed."

This beloved nation remains sorely troubled. At the core of these troubles is the historical difficulty Americans have in dealing with the issue of race and the absolute need to end the divisions born of race. The Kerner Commission's challenge—yet to be meaningfully confronted, is set out in these words:

Discrimination and segregation have long permeated much of American life; now they threaten the future of every American. . . . The destruction and the bitterness of racial disorder, the harsh polemics of black revolt and white repression have been seen and heard before in this country. . . . It is time now to end the destruction and the violence, not only in the streets of the ghetto but in the lives of people.

Only by extending equality of opportunity and respecting the rule of law can we save ourselves and the soul of the nation. Law schools and lawyers must lead the way.

