Civil Rights Lawyers and the Fight for Equality

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Introduction

In his wedding vows, Jim Obergefell said, "We met for the first time. My life didn't change. Your life didn't change. We met a second time. Still nothing changed. Then we met a third time, and everything changed." After twenty years of being together, he and his partner John Arthur decided to get married in 2013 (Cenziper & Obergefell, 2016). They had discussed marriage throughout the years, but they only wanted to do it if it meant something legally. This could only happen in a state like Washington, Maine, or Maryland, one of the states where gay marriage was legal. Because of Arthur's ALS, he had to be flown from the hospital to their wedding location, Maryland. They lived in Ohio at the time, a state which did not recognize same-sex unions. This meant that Obgerefell's name would not be listed on his husband's death certificate as the surviving spouse (Holland 2017). Obergefell did not want his marriage to be erased in the wake of his husband's death. He sued a week after their wedding in anticipation of this problem.

Obergefell's case was consolidated with cases that asked the same question in Michigan, Kentucky, and Tennessee (Obergefell v. Hodges 2015). The lawyers were arguing whether or not the Fourteenth Amendment, which establishs that all people deserve equal protection under the law, protected same-sex marriages and marriage licenses in the same way it protects opposite-sex marriages and marriage licenses. In 2015, the court held that there is no legal distinction between same-sex and opposite-sex marrigae. Obergefell's case started as a simple request to be recognized on his husband's death certificate and turned into arguably the most important Supreme Court decision for the LGBTQ+ movement.

When Gay & Lesbian Advocates & Defenders project director and civil rights lawyer Mary L. Bonauto, was asked in 1990 by a same-sex couple if she would provide legal assistance to help them get married, she declined. She did not think the "legal building blocks" were in place yet (de Vouge, 2015). Initially, this may seem unfair. It may seem like she should fight for their rights just because it is the right thing to do, but she actually made a well educated decision here. If she hadn't considered the foundation or lack thereof and argued this case in 1990, the court likely would have ruled against her. There were some states that considered same-sex couples as legal families, but there were no states where same-sex marriage had been legalized yet (A Timeline, 2019). If she had tried to set a federal precedent at that time, the court may have ruled that same-sex marriage is at best, a decision for the states to make or at worst, strictly unconstitutional. In 2003, she argued *Goodridge v. Department of Public Health*, which legalized same-sex marriage in Massachusetts. As more and more states began to legalize same-sex marriage, the building blocks fell into place, and eventually she became one of the lawyers who successfully argued *Obergefell v. Hodges* in 2015, twenty five years after she was first asked to argue a case for same-sex marriage. This timeline demonstrates how important it is for lawyers to evaluate the legal and societal progress that had been made when deciding whether to take a case or not.

When I was little, my favorite place to eat was Logan's Sub Shop in Rock Hill, South Carolina. It was owned by two friends of my parents, Cody and Andy. I knew that they were together just like my parents, but I did not understand why they introduced themselves as partners instead of husbands. I swam in their pool, so I knew they lived together in addition to owning a business together. When I was eight years old, I asked my parents why they were not

husbands, and they explained that because they were both men, it was illegal for them to get married, even though they wanted to. This did not make any sense to me, because they were so happy together. I could not understand how their relationship was any different from my parents' marriage.

As an eight year old, it was obviously wrong that Cody and Andy could not be married just because they were both men. As I grew up, I began to understand that this type of discrimination was an issue for not only same-sex couples, but transgender people, women, and racial minorities as well. As my awareness of the discrimination that minorities face in America grew, so did my outrage. When asked what I wanted to be when I grew up, I know I wanted to help others and right wrongs, but it was not clear how I could do that.

I want to help people like Cody and Andy fight the discrimination that they face. My mom has always told me the way to avoid repeating past mistakes is by studying the past. If I wanted to have any kind of impact on the current LGBTQ+ movement, I needed to study similar movements to replicate and further their successes. The two movements I was most familiar with were the civil and women's rights movements. While studying the legal successes of these movements, two lawyers stood out to me: Thurgood Marshall for the civil rights movement, and Ruth Bader Ginsburg for the women's rights movement. One also stood out as having a disastrous outcome. This case was argued by Albion Tourgeé. He was not only a lawyer, but an all-around activist who caused significant and positive change for society in a plethora of other ways. If he was such a successful and influential activist, how did he lose this crucial case, and what did Thurgood Marshall and Ruth Bader Ginsburg do differently? They strategically chose what cases to argue and when to change discriminatory laws in the most effective way. Without

their efforts, civil rights would not have advanced as quickly. I want to examine how their strategies can be applied to the LGBTQ+ fight for equality.

Biographies

Albion Tourgeé was born in 1838 in Williamsfield, Ohio (Karcher, 2018). His parents were farmers, and he grew up in Kingsville with his uncle. The town was known for being a center for liberty and equality (Zakim, 1981), which contributed to the change in Tourgeé's perspective. In college, he was active in Republican politics ,which, at the time, meant he believed in liberty, equality, and self-government (Chambres & Associates, 2017). He fought in the Union Army and received his degree as recognition for his service (Olsen). In the Battle of Bull Run, he became temporarily paralyzed and was fated to deal with back problems for the rest of his life. When the war ended, a doctor suggested he move somewhere with warmer weather, so he and his wife packed up and moved to Greensboro, North Carolina (American National Biography, 2000).

Albion Tourgeé was considered a radical Republican with extremely controversial views. Republicans, at the time, encouraged civil rights, and he was a very active contributor. At first, he was an editor of *The Union Register,* a Republican newspaper (American National Biography, 2000). He quickly became a Superior Court Judge and eventually served as a representative for the state's constitutional convention. He simplified codes and procedures, fought for penal reform, and black suffrage and equality under the law (Kickler 2016). Then, he moved to New York in hopes of advancing his career as a lawyer. While the record of his argued cases is not extensive, but there is a record of his failure in *Plessy v. Ferguson* in 1896, where he fought for

the law to recognize the negative effects of segregation. He also won a case that led to anti-lynching laws in Ohio in 1896 (Olsen).

As a judge, he led an investigation that led to 63 KKK members being arrested (Kurtis). As Republican influence decreased, he took a step back from law and wrote a novel, titled *A Fool's Errand.* This is an autobiographical novel about how Reconstruction in the South had failed, and the repercussions of that failure (Kickler, 2016). It became immensely popular and impacted people all over the country. He founded the National Citizens' Rights Association, which promoted equality for African Americans (Karcher). He then became U.S. counsel to Bordeaux, France, where he advised on how to improve race relations. While e hoped that African-American service in the Spanish-American War would integrate the army,it would not be integrated for years to come (Kickler, 2016).

Tourgeé clearly did a lot for civil rights, but was his work as a lawyer even close to as important as his other activist work? Part of a lawyer's job is to bring problematic laws to light in order to encourage legislative change. To prove that these issues need improvement, they have to come up with effective strategies. In *Practical Equality: Forging Justice in a Divided Nation*, Robert L. Tsai outlines a way to get justice when true equality is unrealistic for the time (2019). He calls it achieving equality by other means. He explains what happens when a tragic precedent is set, like *Plessy v. Ferguson*, where the entire civil rights movement faces a setback. Tsai makes it clear that practical equality is not just something that can be practiced by lawyers and judges; he sees it as "a global approach to handling grievances that is accessible to everyone, whatever your role is in these things." Lawyers, as well as everyday people, need be in this mindset for to evoke change in our nation.

When many Americans think of influential civil rights cases, *Brown v. Board* of Education may be the first to come to mind. This is the landmark case that ruled that racial segregation was inherently unconstitutional, argued by Thurgood Marshall. He was born in Baltimore, Maryland, on July 2, 1908, where he grew up in their segregated school system. His mother was a black teacher at a black school who was paid far less than her white counterparts (Williams, 2003). His father urged him to appreciate his country's Constitution and the rule of law (Thurgood Marshall College). He graduated from Lincoln University in 1926, then applied to law school at the University of Maryland, but was denied entry because of his race. He got his law degree Howard University, which is historically black. There he met his mentor, Charles Hamilton Houston, who would eventually help him successfully sue the University of Maryland for discrimination. Marshall also brought him into the National Association for the Advancement of Colored People (Williams, 2003).

The National Association for the Advancement of Colored People (NAACP) was founded in 1909 to obtain legal equality for African Americans. This consisted of lawyers, demonstrators and peaceful protestors (National Museum of American History). During Thurgood Marshall's time as an NAACP lawyer, he traveled the country looking for clients. He argued cases that took on the most intricate constitutional laws down to trials for common crimes. If he thought there was racial injustice involved, he helped anyone who needed it (Thurgood Marshall 2009). Marshall argued the most supreme court cases out of anyone in the country: thirtytwo. He was largely successful, winning twenty-nine of those cases (Fox 2006). His strategy was to be relentless and to never give up. This strategy advanced the laws in the country substantially.

It is important to acknowledge Marshall's accomplishments as a judge. After he was appointed to the U.S. Court of Appeals in 1961, he was appointed as the first black Solicitor General in 1965. Finally, he became the first black man to be appointed as a Supreme Court Justice in 1967. He was a Justice on the Supreme Court with mostly conservative justices (Today in History - October 2), but he stood strong on the issues he believed in. He always voted in support of racial issues including affirmative action, voted against the death sentence in every case, and opposed any laws that were trying to narrow women's rights to an abortion. He was a strong egalitarian, pushing for education, legal services, and access to courts for all people regardless of social or economic background. He was a libertarian his whole career; he opposed government regulations of private speech and sexual conduct (Thurgood Marshall, 2009).

While Marshall was a strong proponent of racial equality, Ruth Bader Ginsburg played a similar role in the women's rights movement. She was greatly inspired by her mother, Celia Bader. Bader sacrificed her education to pay for her brother's (Ruth Bader Ginsburg Biography, 2019). She died the day before Ginsburg's high school graduation after struggling with cancer through her daughter's high school years (Ruth Bader Ginsburg, 2009). Like Marshall, Ginsburg faced discrimination her whole life. She went to Cornell University, which at the time had quotas to keep the male to female ratio 4:1. This abundance of intelligent, eligible bachelors caused parents to send their daughters there. If they were unable to find a husband there, they wouldn't be able to find a husband anywhere (Cohen & West, 2018). Even though she was there primarily for her education, she actually found her husband, Martin D. Ginsburg, there. After they got married, they had a child together (Ruth Bader Ginsburg).

They were both accepted into Harvard Law, where she worked hard as a mother and as a law student. In her class of 500 people, she was one of only eight women. When she was a sophomore, she made the Harvard Law Review. Hardly any sophomores did this, *and* she was the first woman (Cohen & West, 2018). Then her husband got diagnosed with testicular cancer. While she was keeping up with her studies, she managed to help him keep up with his as well. When he graduated, he got a job in New York, so she transferred to Columbia Law (Ruth Bader Ginsburg, July 2019). There, she made the Law Review and graduated first in her class. Despite her achievements, she was unable to get a job as a lawyer because she was a woman. She clerked for U.S. District Judge Edmund L. Palmieri for a while, then taught at Rutgers University Law School. Eventually, she decided to become a law professor at Columbia Law and was the first woman to become a tenured professor (Ruth Bader Ginsburg). Ginsburg was then recruited by the American Civil Liberties Union to take a series of cases to the supreme court (Smentkowski & Houck, 2019). Her strategy was to take things step-by-step. Ginsburg had to convince nine male judges that gender discrimination exists and greatly harms society. To do this, she took cases where men had been discriminated against to convince them it exists, then cases where women had been discriminated against to prove the negative impact on society.

After these six landmark cases, Ginsburg was appointed to the U.S. Court of Appeals for the District of Columbia. She served here until she was appointed to the Supreme Court by Bill Clinton (Ruth Bader Ginsburg, 2009). She was approved by an overwhelming majority of the Senate Judiciary Committee, ninety-six to three. She is considered a member of the moderate-liberal bloc, favoring “caution, moderation and restraint” (Ruth Bader Ginsburg, 2019). More recently, she has become known as The Great Dissenter. She ended her dissent in

Bush v. Gore with "I dissent," instead of the usual ending: "respectively." This showed the country how passionate she was in her disagreement. She has voted for civil rights in several landmark cases, including *Obergefell v. Hodges*, which legalized gay marriage, and *King v. Burwell*, which upheld the Affordable Care Act (Ruth Bader Ginsburg, 2019). She has become a sort of pop culture icon for many young women, especially those in the law profession. There is memorabilia with her face and "Notorious RBG" plastered on the front. Ginsburg was pressured by Democrats to resign while Obama was president so he would be able to appoint the next Supreme Court Justice instead of risking the possibility of her stepping down during a Republican administration, but she declined to do so. She upholds her values and says she will step down when she can no longer give one hundred percent (Cohen & West, 2018).

Background

Albion Tourgeé and Thurgood Marshall were fighting for the same movement, but while Thurgood Marshall was so successful, Albion Tourgeé failed in *Plessy v. Ferguson*. This case began when Homer Plessy, who was only 1/8th black, decided to sit in a whites-only train car to try and test the act that separated blacks and whites in Louisiana (Plessy v. Ferguson). He was arrested for refusing to move. When Albion Tourgeé became his lawyer, they sued. They argued that this separation violated the thirteenth amendment, which abolished slavery, and the fourteenth amendment, which granted citizenship to all people born in or naturalized within the US (Duignan, 2019). So far, these are all logical steps that should have been taken in the hopes of changing a segregated travel law. Tourgeé contributed some very effective ideas to this case. He was the first to argue that our Constitution and our laws should be colorblind, which heavily influenced the memorable dissent of Justice John Marshall Harlan (Elliot, 2001). He directly

references this idea when he says “our Constitution is color-blind and neither knows nor tolerates classes among citizens” (Plessy v. Ferguson, 1896). Today, this idea of colorblindness under the law is widely accepted, but when Tourgeé proposed this idea, he was struck down.

Tourgeé was largely ahead of his time. He was arguing for true equality in its absolute purest form. Tourgeé’s egalitarian nature may have contributed to his failure in this case. He was unwilling to settle for just making progress; he wanted justice all at once (Elliot, 2001). This thought process is not a bad thing, but it just was not realistic for the time. As Mary L. Bonauto would say, “the building blocks” weren’t in place yet. Just before 1900, African Americans were still “at the mercy of slaveholders and their descendants and often-violent vigilantes” (Wilkerson 2016). Tourgeé’s opinion on justice was shared by very few people of his time, and even less white people. He was extremely ambitious, but his ambitions did not pay off in this case.

Tourgeé could have argued equality by other means (Tsai, 2019). Robert L. Tsai explains three strategies that potentially would have been more effective than Tourgeé’s strategy in this case. The first being that this segregated train car law impeded on laws that protected interstate commerce, the second that Tourgeé should’ve elaborated on the angle that these laws interfered with the right to travel, and the third that there was no proof whites and blacks needed to be separated. There was no proof that them being on the same cars would cause any problems (Tsai 2019). Tourgeé was fighting for what he believed was right, regardless of the discriminatory attitudes of the rest of the country. This made him an extremely effective novelist and activist, but an ineffective civil rights lawyer in his time. He likely placed a high value on morals, but used ineffective strategies in this case.

Thurgood Marshall, on the other hand, had the advantage of his time period. More people, both black and white, were already in support of integration. By the time he started arguing cases, the country was midway through the Great Migration. This lasted from 1916 to 1970, and is characterized by African American who lived in the South moving west and north as social and political refugees. This allowed African Americans more political participation and more acceptance by their white counterparts.

The first case Marshall took to the Supreme Court was *Adams v. United States* in 1943 (Thurgood Marshall: Cases Argued). There is not a lot of information on this case considering the background information, but Marshall was defending a black military officer who was accused of rape by a white woman. Likely because of the stigma of interracial relations, he was treated harshly and charged severely (Adams v United States); they were given the death sentence. It can be deduced that Marshall realized there were racial injustices in this case because he took it, but it can be assumed he realized he was not going to win the case if he argued on racial grounds. The case examined the jurisdictional grounds of the federal court. He was getting this man the justice he deserved without requiring a universal precedent to be set. Marshall examined the case and picked a strategy according to the likelihood he had of winning. This is what Tourgeé should have done, and it's exactly what Tsai proposed lawyers should do.

The next case he argued before the Supreme Court was *Smith v. Allwright* in 1944 (Thurgood Marshall: Cases Argued). Just a year after *Adams v. United States*, he quickly picked up the pace. He began to make his point to the court: discrimination is inherently unconstitutional. In Texas, black people were not allowed to vote in the primaries for the presidential elections, even though it had already been legally established that they have the right

to vote. Marshall argued that this practice violated the Fourteenth (U.S. Const. amend. XV) and Fifteenth Amendments (Landmark: Smith v. Allwright). The Fifteenth Amendment stated that no person should be discriminated against based on race (U.S. Const. amend. XV). Arguing that this law violated the Fourteenth *and* Fifteenth Amendments was a big step; he had to prove to the court that the law was racially biased and denying people of color equal protection. He won this case, setting a precedent that African Americans should be able to vote in primaries. This is where he started to use his strategy of overwhelming the court. It had only been a year since his last case, but he began showing the Supreme Court that African Americans are denied rights that are given to them by the Constitution because of these discriminatory laws.

In 1947, Marshall took on Joseph Patton as a client in *Patton v. Mississippi* (Thurgood Marshall: Cases Argued). Patton was living with his uncle and was heard by their neighbor verbally threatening him after he asked Patton to leave (Patton v. Mississippi, 1947). Before his trial, when the jurors were being selected, a process known as voir dire, Patton's defense counsel asked that two white jurors be excused because they knew the deceased's son. Their request was denied, and Patton's trial with an all-white jury began. This was despite the fact that there were qualified black men who had been called for jury duty that day. Patton was sentenced to the electric chair (Patton v. Mississippi 1947). Marshall recognized the validity of Patton's appeal. Marshall could have focused on the grounds that Patton's jurors had a personal connection to the case, but instead he realized that this case could be won on the grounds of racial inequality. This set the precedent that African Americans cannot be excluded from juries because of their race. *Smith v. Allwright* and *Patton v. Mississippi* deal with the political and legal rights of African Americans. Marshall chose this as his next move because the purpose of the Fourteenth

Amendment is to protect legal equality. This inherently includes things like juries and political power. By striking down laws that denied legal equality, he built a pathway to social equality, which was likely his goal from the beginning.

Marshall's most famous case is *Brown v. Board of Education of Topeka.* In this case, the plaintiff argued that "segregated public schools are not "equal" and cannot be made "equal," and that hence they are deprived of the equal protection of the laws" (Warren, 1953). When they reargued the case in 1953, they focused on the fourteenth amendment. Marshall argued that in every other aspect of life blacks and white coexisted. He contended that if these two races could play together, go to college together, and exist together in America, then they could go to elementary and middle school together. He proved to the court that the segregation laws were not backed up by any science or data and was no different from the black codes that were repealed in 1866 (Friedman 2003). This case was a huge win for Marshall. In his unanimous majority decision, U.S. Supreme Court Justice Earl Warren said that separation of children based on their race is inherently unequal. (Brown v. Board of Education, 1954). This was a case of social equality. The Fourteenth Amendment did not explicitly give these kinds of rights to African Americans, but because Marshall had set a precedent of legal and political equality, this case was successful. Marshall's strategy of overwhelming the Supreme Court with evidence that racial discrimination is real and horrible had succeeded. If this case had been taken to the Supreme Court before Marshall had taken those other cases, the outcome likely would not have been the same. His strategy changed the future of America.

Ruth Bader Ginsburg had a similar strategy to Thurgood Marshall, but hers was more compact. While Marshall argued thirty-two cases, Ginsburg only argued six (Ruth Bader

Ginsburg, Jan 2019). Her strategy was to go step-by-step. That meant she took cases that she was more likely to win and that she knew would set a precedent, though the outcome of the case may not directly reflect her end goal. The first case she took to the Supreme Court was about gender discrimination against a man (Blakemore, 2018). In *Frontiero v. Richardson*, which was argued in 1973, Air Force Lt. Sharon Frontiero wanted to get her husband dependent benefits, but she was told she would have to prove that he was financially dependant on her. While this had to be proven for dependent husbands, dependent wives were instantly granted these benefits. This seems to be discriminatory against women, but the men are the ones that face repercussions (Frontiero v. Richardson, 1973). Ginsburg took advantage of this, proving to the court that "sex classifications imply a judgment of inferiority" (Cohen & West, 2018). She realized that her goal was to convince nine male Justices that gender discrimination is a detriment to the people it affects. Her approach of taking cases that showed men who suffered from discriminatory laws encouraged the judges to feel empathy.

In 1975, Ginsburg argued *Weinberger v. Wiesenfeld*. When Stephen C. Wiesenfeld's wife died in childbirth, he applied for the survivor's benefit for him and his son. He was granted the money for his son but was denied money a woman would receive in the exact same situation as a surviving spouse (Weinberger v. Wiesenfeld, 1975). Here she used the same idea of taking a case of gender discrimination against a man. A notable part of her strategy was to have Wiesenfeld himself sitting at the table with her. This caused the justices to see him as a real person. Because he is a man, he was someone they could identify with (Cohen & West, 2018). With this strategy, she was able to convince all nine judges that this gender-based discrimination was illegal. She

had taken another step forward in this case. She began to make parallels between the men's situations and the discrimination against women.

The last case she argued before the Supreme Court was *Duren v. Missouri* in 1979. This case is similar to *Patton v. Mississippi*, argued by Thurgood Marshall. The main difference is that while Patton was a black man who was upset there were no other black men (Patton v. Mississippi, 1947), this case was a man upset that there were no women on his jury. Again, she presented a man who had been hurt by discriminatory laws. Although Duren lived in an area that was fifty-four percent female, only five out of the fifty-three people on the panel of potential jurors were female. None of them were picked for his trial. This was because of a law that let all women opt out of jury duty simply by checking a box on a form (Duren v. Missouri, 1979). She used the strategy of showing how sexist laws negatively affect men to successfully make change for women. Although all of these cases had male clients, Ginsburg proved that the laws were based on discrimination against women. They assumed the stereotype that women were always the dependent, care-giving homemakers. She proved that this was illegal by showing that these laws hurt men too. (Winterhalter, 2019). This was *her* strategy, and without it, equality for women could have been drastically delayed (Cohen & West, 2018).

Thurgood Marshall and Ruth Bader Ginsburg shared one main factor despite their differing strategies: precedent. It was the precedent of legal and political equality that allowed Marshall to successfully argue for social reform. Ruth Bader Ginsburg set the precedent that laws that treat men and women differently are inherently immoral and illegal. Albion Tourgeé's argument in *Plessy v. Ferguson* was missing the key secret ingredient of precedent. As a

stand-alone case, there was no way Tourgeé or any other lawyers could have won that case. If Tourgeé had recognized this and planned accordingly, he could have been successful.

Argument

Three LGBTQ+ cases are going to be argued before the Supreme Court in the near future; two have been consolidated because they both deal with gay men who were fired for their sexual orientations. These are *Altitude Express Inc. v. Zarda* (2019) and *Bostock v. Clayton County*, Georgia. There is a third case, *R.G. and G.R. Harris Funeral Homes v. Aimee Stephens (*2019), which involves a woman who was fired for being transgender. Two of the cases are being argued by the American Civil Liberties Union (LGBTQ Discrimination Cases), which means they have the benefit of collaboration.

Moving forward, the lawyers for these cases need to determine what their goal is. They have to decide if these cases are meant to set precedent or achieve their full equality goal. The first factor to examine when determining this is public opinion. The more popular the movement, the more likely the judges will be to find in favor of that movement (Voeten 2013). Seventy percent of Americans are in favor of LGBTQ+ discrimination in the workplace being made illegal while only 26% are against (Bellis, 2017), so the ACLU is already a step ahead of Albion Tourgeé, but public opinion is not the only factor in winning a case. The legal precedent must also be considered.

The Civil Rights Act 1964 made it illegal to discriminate against employees based on race, color, religion, sex and national origin (Protections Against Discrimination, 2019), granting equal protection in employment to women and African Americans at the same time. Thurgood Marshall argued his last case in 1961 (Thurgood Marshall: Cases Argued), while Ruth Bader

Ginsburg argued her first case in 1973. Employment protection for the civil rights movement was one of the final battles of that era, but one of the first for the women's rights movement. Because the LGBTQ+ community has already made so much progress before their battle against employment discrimination, these upcoming cases can be more closely related to civil rights cases.

The main goal of the civil rights movement for many years was the integration of the races (School Segregation and Integration). This can be compared to the LGBTQ+ community's goal of marriage equality. These were both paramount causes in their respective movements for many years, but they were never the only causes, nor were they the last. In 2015, the Supreme Court decided that gay marriage is legally equal to straight marriage in *Obergefell v. Hodges* (2015). This set a precedent that LGBTQ+ are legally equal to non-LBGTQ+ people in the same way that *Brown v. Board of Education* (1954) set a precedent that African Americans are legally equal to white people. The next step for both these movements would be to protect that already established legal equality.

The upcoming LGBTQ+ cases are all concerning employment. Should LGBTQ+ people be granted protection against discrimination in the workplace? This is a big question, and if the lawyers are not successful in their arguments, another tragic precedent like the one in *Plessy v Ferguson* could be set. Have the correct building blocks been put in place for the lawyers arguing in favor of the advancement of civil rights in these cases to argue for true equality? Thurgood Marshall paved the way for the Civil Rights Act 1964 which made racial discrimination illegal in the workplace. *Obergefell v. Hodges* has set the same precedent. Based on my research on the outcomes of previous cases and comparing them to the details of these

cases, I believe that there has been enough precedent set to win and change the landscape of LGBTQ+ law (Chamberlain 2013).

Action Plan

How can I contribute to the advancement of equality in the LGBTQ+ movement? One way would be take a monumental case to the Supreme Court, but that is several years away, after many more years of education. To contribute towards that eventual goal, I can intern in a law office. If I start to learn how a law office works and become familiar with their practices, I'll be a step closer to becoming a lawyer myself. Ideally, I would want to intern in a law office that deals with civil rights cases so I could better understand how civil rights law is different from other types of law. I asked the Career Coordinator, Ms. Lang, if she would be able to get me an internship in a law office, and she has connections in a number of law offices that she would be happy to set me up with, but when I asked her about civil rights opportunities, she didn't seem to have any options. I want to look around myself and see if I can find any internships that are closer to the type of law I have studied and researched this year.

I also want to write a letter to a local politician about LGBTQ+ issues, specifically about workplace discrimination. I would like to write to Ralph Norman, the representative for the 5th Congressional district of South Carolina, because he is the representative for my district. He is well known for being a Republican who supports President Donald Trump, being religious, and being conservative (Bycoffe, 2019). He supported Trump's decision to ban openly transgender people from the military. He is one of over 40 senators who have recently signed an amicus brief, a legal-document signed by an outside party that has an interest in the outcome of the case, that states LGBTQ+ people should not be considered a protected class. It would likely take more

than a letter from a high-schooler to completely change his mind, but my goal is for him to at least reconsider his opinion. He would likely be receptive to a clear, logical plan. I can either send him an email through his contact page on his website, send him a letter at his Washington D.C. office, or fax him a copy of my proposal (Contact). In this proposal, I want to explain how LGBTQ+ people in South Carolina are affected by discrimination and show him how their lives would be improved by laws protecting their rights in the workplace.

Conclusion

Albion Tourgeé was a successful activist and author who was very far ahead of his time. When he fought for what he knew was right by defending Homer Plessy in *Plessy v. Ferguson,* the court decided against him. This caused a tragic precedent that negatively impacted the country for years to come. Years later, Thurgood Marshall successfully argued that this decision should be overturned. He used his strategy of overwhelming the court with facts and evidence proving that discrimination was real, harmful, and that action could be taken to at least partially ameliorate the problem. In this way, he greatly impacted the future of our country. Ruth Bader Ginsburg had the disadvantage of public opinion in a similar way to Albion Tourgeé, but her step-by-step strategy of taking cases where men suffered as a result of discriminatory laws resulted in success. She proved that these laws, even though they hurt men, were based on stereotypes about women. These laws assumed women were dependent on their husbands and dedicated to raising children. By using this effective strategy, she changed the future of America.

Both Thurgood Marshall and Ruth Bader Ginsburg were able to evoke change in their respective movements. Without them or other lawyers like them, it does not matter how much public opinion changes because the racists, sexist, or otherwise discriminatory people can just

point to the horrible laws as proof for their disgusting beliefs. If lawyers did not bring the issues to the attention of the country, progress towards equality is far less likely. Current cases like *Altitude Express Inc. v. Zarda, Bostock v. Clayton County, Georgia, and R.G.* and *G.R. Harris Funeral Homes v. Aimee Stephens* aim to call to attention the discrimination the members of the LGBTQ+ community face in the workplace. By examining the failures of lawyers like Albion Tourgeé and the successes of the strategies used by Thurgood Marshall and Ruth Bader Ginsburg, the lawyers in these types of cases can develop their own strategies to most efficiently make progress on important issues that need to be rectified.

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