Op-Ed: Sesquicentennial Celebration of Landmark 1868 Iowa Supreme Court Decision, Clark v. Board of Directors (of Muscatine School District)¹

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As Chief Justice Cady so eloquently explained in his State of the Judiciary Address, Clark v. Board is one of the most important rulings in the history of the Iowa Supreme Court. But the Chief Justice is perhaps too modest—the Clark ruling is one of the most important Court decisions in the history of American jurisprudence. The Court based its decision on Article I, §1, of the Iowa Constitution’s Bill of Rights, which the Court characterized as the “principle of equal rights to all, upon which our government is founded.” Clark was a courageous and visionary decision that articulated a powerful vision of an inclusive American society and provided a clear equality roadmap for the Nation to follow.

While one state (Kansas) eventually did follow Iowa’s lead, tragically all other state supreme courts followed the siren song of segregation, an approach ratified by the disastrous 1896 U.S. Supreme Court decision in Plessy v. Ferguson. Indeed, as Reconstruction ebbed the Iowa Supreme Court reaffirmed and extended the Clark holding in 1875, holding the Clark constitutional principle applied not only to overt racial discrimination but also to covert discrimination. Of course, the U.S. Supreme Court eventually got it right - the 1954 Brown v. Board decision is widely considered the greatest decision of the United States Supreme Court. But it came 86 years after the Iowa Supreme Court – virtually alone - led the way.

The Clark opinion correctly forecast that allowing racial segregation by the school board or other public bodies would not only “sanction a plain violation of the spirit of our laws” but also “would tend to perpetuate the national differences of our people and stimulate a constant strife, if not a war of the races.” In rejecting the school board’s “separate but equal” argument, the Court recognized the “policy of the government to organize into one harmonious people, with a common country and stimulate with the common purpose to perpetuate and spread our free institutions for the development, elevation and happiness of mankind.” (Emphasis in original.)

We are pleased to report the Clark decision continues to have great vitality and relevance today, not only in its rejection of segregation and race discrimination but also as the leading precedent for the Iowa Supreme Court’s 21st Century reinvigoration of independent constitutional analysis under the Iowa Constitution. Using independent constitutional analysis, the Iowa Supreme Court can construe provisions of the Iowa Constitution’s Bill of Rights to provide greater individual rights protection than the U.S. Supreme Court has afforded under the Federal Constitution. Most of the contemporary cases in which the Iowa Supreme Court has invoked this power have involved criminal

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law and procedure issues, but it was the marriage equality decision, *Varnum v. Brien*, that is best representative of the Court’s independent constitutional analysis. Again, the Court was in the vanguard of leadership on gay rights, with its 2009 decision preceding the U.S. Supreme Court’s recognition of gay marriage in 2015.

Both Law Schools in the State have close ties to the *Clark* decision. Drake University is proud that the author of the Court’s opinion, Justice Chester C. Cole, was the co-founder of the Drake Law School. Cole immigrated to Des Moines from Kentucky in 1857, and was recognized as an outstanding advocate as a lawyer. A supporter of Abraham Lincoln, he was appointed to the Iowa Supreme Court in 1864 and served until 1876, including service as its Chief Justice. Chief Justice Cole went on to teach at Drake for nearly a third of a century, including service as its Law Dean from 1892 to 1907.

Cole’s belief that legal education should represent a balance between theory and practice remains the distinctive hallmark of a Drake legal education. Cole was undoubtedly influential in Drake University’s commitment, at its founding, to diversity and inclusion. In 1881, Drake’s original charter provided that “all of the university’s departments shall be open to all without distinction of sex, religion or race.” The first African-American graduate of Drake Law, Albert Lincoln Bell, graduated in 1892, during Justice Cole’s tenure as Dean.

The brother of Susan Clark (the plaintiff in the *Clark* case), Alexander Clark, Jr., was the first African American graduate of the University of Iowa College of Law in 1879, and her father, Alexander Clark, Sr., at age 60, was the school’s second African American graduate. Iowa Public Television has created a wonderful documentary, *Alexander Clark: Lost in History*, that tells of Clark’s exceptional civil rights leadership, including a feature on the *Clark* case.

In Fall 2018, in collaboration with the Iowa Supreme Court, Drake University and its Law School will hold a series of interdisciplinary events and initiatives on the Drake campus—including a rededication of Chester Cole Hall—and at the Iowa Judicial Branch Building (Iowa Supreme Court) to celebrate the Sesquicentennial anniversary of the *Clark* decision. The events will be open to the public. The celebration will not only commemorate the *Clark* decision and the leadership of Chester Cole and Alexander Clark, but also explore the *Clark* decision’s continuing relevance to contemporary Iowa constitutional law and civil rights, especially 21st century challenges in the education and criminal justice spheres.