

## **DRUM MAJORS FOR JUSTICE**

### **Yale Law School Commencement Address**

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It is a great honor and privilege for me to stand here to offer a few words to the class of 1994 in our final time together here before you and Dean Calabresi leave this great law school for new challenges.

In the last two years, I have come to know and appreciate many members of this class more than I can say. You have inspired and energized me. From the often hopeless work that I do in the South, you have given me great hope for the future.

To you, your parents and your loved ones who have worked so hard for so many years to make this day possible -- congratulations. This is your day. Richly deserved. I hope you live and enjoy it to the fullest.

It is a privilege to speak at the final graduation to be presided over by Guido Calabresi, who leaves after nine years of leadership as Dean. Guido has been recognized and honored for so many of his accomplishments as Dean, but what has stood out in my experience here has been his availability to the students and to the law school community, and his extraordinary love for this law school and those who are a part of this community.

At institutions far smaller and far less important than this one, one never sees the guy at the top. But not here. We have seen Guido everywhere, taking an interest in every student, and every poster that the students have put up on the wall. He has not only made this great law school greater in so many ways, but his enthusiasm, warmth, and interest in all of you, has made this a wonderful experience for all of us who have had the privilege of being a part of this community.

To those in the class of 1994:

Today you receive your degrees. Those of you who enter the legal profession and those journalists who will report to the American people about our legal system, have the opportunity to become what Martin Luther King, Jr., in one of his many great sermons, called "drum majors for justice."

Not all lawyers are drum majors for justice -- most are not.

But your from this law school gives you a magnificent opportunity -- and some would even

say, given the great legacy of those who have graduated from this school, the responsibility -- to be drum majors for justice.

Dr. King described the drum major for justice as one who speaks the truth -- no matter how unwelcome it may be and not matter how uncomfortable it may make the listener -- and as one who gives his or her life to serving others: to feeding the hungry, clothing the naked, and -- particularly important for lawyers -- to visiting those who are in prison, and to loving and serving humanity.

On many occasions, I have seen how this service that Dr. King described may be performed in a life in the law.

As a law school student and in my first job out of law school, I was inspired by a man named John Rosenberg, who served with Professors Burke Marshall and Owen Fiss in the Justice Department. After a distinguished career there, he left to be the director of a small legal services program -- made up of only four lawyers -- in a small, desolate, isolated place, Prestonsburg, Kentucky, in the coal fields of Appalachia.

John has been there almost 25 years. He has built the program into a great force for justice for poor people in Appalachia.

Beyond that, John and Jean Rosenberg have made immense contributions to the entire community they have made home -- to its schools, its health care system, and many other aspects of life -- while raising two wonderful children.

John not only taught me how to practice law; he taught me what a difference one could make with sustained commitment to serving those in need.

A few years later, I sought to follow John's example by moving to the South in hope of doing what little I could to provide a small measure of justice for those who face the executioner.

There, I met a person who had graduated from this law school in 1981, Robert McGlasson. He had clerked for one of the truly great judges in American history, Elbert Tuttle, of the U.S. Court of Appeals for the Eleventh Circuit, whose immense contributions to the efforts to achieve racial equality in our society is celebrated in the book "Unlikely Heroes."

Today, so many of our judges are "unlikely" but not heroes.

After clerking, Robert went to a law firm in Atlanta.

I met him one evening at a soup kitchen, the Open Door. Robert was there because he cared deeply about the homeless. He helped prepared the meals and provide clothing and shoes and a hot shower for those who lived on the streets.

I was there for the same reason that the homeless were there -- to get a free meal and a new pair of shoes.

After dinner, Robert and I had a long talk, similar to many I have had with members of this class in the last two years.

He was recalling why he went to law school. And -- despite the considerable work he was doing with the homeless and a pro bono case on behalf of someone who had been falsely imprisoned in the Atlanta jail -- he felt that he was not fulfilling those goals and dreams at the law firm.

We discussed it long into the night. I told him that if he would like to try something different, he could come work at our office at a salary of \$12,000 a year.

The next day, Robert told me he was coming. He was one of the first to benefit from this law school's loan forgiveness program. That was in 1983. For the last eleven years, he has been an outstanding lawyer for those facing execution, while continuing his work with the homeless.

A few years later, a Yale Law student, Ruth Friedman, spent the summer with us. Upon graduation the next year, she joined our Center. By then we were paying \$16,000 a year. She has been with us for over five years, using her immense talents on behalf of those in Alabama and Georgia who were subject to the legal lynchings that are called capital trials in those states.

And I have had the pleasure of seeing many others from this law school and others take a similar path and make tremendous differences for those most in need of the protection of the law.

The protection that the law offers was often expressed by Judge J. Skelly Wright, who summed up the life he lived in the law by quoting a passage by Justice Hugo Black in *Chambers v. Florida*:

"Under our constitutional system, courts stand against any winds that blow as havens for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are non-conforming victims of prejudice and public excitement."

Of course, the major bulwark against the winds of prejudice and the passions of the moment is the Bill of Rights.

Justice Thurgood Marshall described the Bill of Rights as a our society's "insulation from our baser selves." He said, we "recognize [our] inherent weaknesses and seek to compensate for them by means of a constitution."

Unfortunately, the insulation that Justice Marshall described is wearing thin. Today, those who claim to be our leaders, dismiss the provisions of the Bill of Rights as mere technicalities.

Even worse, in the crime debate in our nation today, the Bill of Rights is seen as part of the

problem of crime in our society. We are afraid of the constitutional rights we should treasure.

The challenge that still remains for you today -- no matter how you spend your life in the law -- is to make this dream of Judge Wright and Justice Marshall a reality.

President Kennedy used to quote Robert Frost: "And I have promises to keep, and miles to go before I sleep." There are many promises that our nation has made about justice for the poor, minorities, the unpopular and the despised. On many occasions, we have not kept them. Now you undertake a great journey. Perhaps you can see that we keep them.

Our society has not kept its promises to its children, despite the admonitions of my predecessor as Skelly Wright Fellow, Marion Wright Edelman.

Our children are denied an adequate education, hope and opportunity. We, as a society, compensate our lawyers better than our teachers and day-care workers. This is a grievous mistake, but we can help change it.

Today, the states and the federal government have a compact with every poor child born in American. We are willing to spend \$15,000 to \$30,000 a year on each child.

All he or she must do is commit an armed robbery, or kidnapping, a murder or some other crime.

We cannot shore up our schools, our Head Start programs, our after-school programs, but we can provide each child a maximum security prison cell.

Today, the rights of children and others most in need of the protections of the Constitution are routinely denied or ignored.

Our society has forgotten -- or perhaps never learned -- what Attorney General Robert Kennedy said at the University of Georgia in 1961: "If one person's rights are denied, the rights of all are endangered."

Our disregard of the rights of the poor, minorities, the despised is creating an even greater inequality between rich and poor. It is undermining the legitimacy and the respect due the legal system.

For example, the present administration in Washington argues that those in housing projects have no right to privacy -- that they must trade privacy for safety. But no one suggests that those in affluent neighborhoods should give up their right to privacy.

Those who ride Greyhound Buses may be searched; but seldom do police search everyone who is transported by air.

The civil and criminal courts of this land remain the institutions least affected by America's civil rights movement.

Only in the court system, may a public official have a policy -- as stated by the district attorney of Jackson, Mississippi -- of "getting rid of" as many black citizens as possible in picking a jury. And have it upheld by the courts of the United States in the case of Leo Edwards, an African American sentenced to death by an all-white jury selected as a result of that policy, and later executed.

Only judges may use racial slurs and receive an admonition to avoid "the appearance of impropriety," in the future, as occurred in a capital case in Florida. A sportscaster would lose his job for using such a slur, but not a judge.

When courts ignore racial discrimination that is apparent to everyone else they lose any entitlement to respect or legitimacy.

Congress is poised to enact a new crime bill that will imprison more and increase to over 50 the number of crimes punishable by death.

But Congress has done nothing about the rank racial discrimination in the infliction of the death penalty, not only by the states, but even by the federal government.

Under the death penalty law passed in 1988, the federal government has sought the death penalty 37 times. All but four of the accused were African American or Hispanic. Attorney General Janet Reno has approved ten capital prosecutions, all against African Americans.

Many poor people -- from those facing execution to those fleeing the murderous tyranny in Haiti -- are unable to avail themselves of the protection of the Bill of Rights because there is simply no lawyer available or the courts do not want to be bothered.

There are seventy-two people languishing on Texas' death row who do not have a lawyer -- even though they have legal avenues of review of their cases open to them.

Think of it! Those men, women and children cannot even confer with a lawyer to find out the status of the cases in which they were condemned to die.

How can a system that claims to be one of justice allow such a thing?

How can the judiciary and the legal profession look the other way as poor people facing the death penalty are given incompetent, uncaring, court-appointed lawyers -- and then told later that any violation of the Bill of Rights will not be reviewed by the courts because the lawyer they were stuck with waived it?

How can our system allow the death penalty to be imposed not for committing the worst crime, but for the misfortune of being assigned the worst lawyer?

And year after year, many others with urgent legal needs in both civil and criminal matters have no access to an attorney at all.

John Curtin, the former president of the American Bar Association, said at the ABA meeting two years ago that the poor get assistance with regard to only 15 percent of their legal problems.

The profession you are entering has been very successful in providing justice to some -- the wealthy corporations and individuals who can afford it -- and in enriching lawyers in the process. But we must acknowledge that it has failed to provide competent legal assistance to those most desperately in need of it.

Many in the legal profession and in our society are indifferent to the plight of those about whom Skelly Wright and Thurgood Marshall were so concerned. And many who are aware of the racism, the injustices, the lack of legal assistance for the poor choose to remain silent or do nothing.

Elie Weisel, when he accepted the Nobel Peace Prize in 1986, reminded us that indifference and silence are the most insidious dangers of all.

He said we must never be silent "whenever and wherever human beings endure suffering and humiliation. We must always take sides. Neutrality helps the oppressor, never the victim. Silence encourages the tormentor, never the tormented." "Action is the only remedy to indifference."

Those in the class of 1994 have not been indifferent. You have taken sides. You have taken action.

You joined with Harold Koh in coming to the defense of those fleeing Haiti. You challenged racist policies and practices and human rights violations by our government.

As a result of hard work by students in our outstanding legal services clinic, there will be a day care center for teen age mothers at a high school here in New Haven.

That day care center responds directly to the concerns of Marion Wright Edelman about two sets of children. It provides the mothers an opportunity to complete their educations and it provides care and nurturance for their small children.

Other students in the HIV clinic have responded to the many urgent legal needs of those who are HIV positive.

As a result of the Greenhaven Project and the prison clinic, many of those at that prison have new hope and new friends.

And students in the disability, poverty, landlord-tenant, housing and community development and immigration clinics have responded to those in need of legal assistance.

And of course, I am particularly grateful and pleased by the enormous contribution that students in this law school have made to improving the quality of legal representation in capital cases.

And there are many other examples.

You have ministered to the poor. You have already been drum majors for justice.

And now come even greater opportunities and challenges.

You have the opportunity -- whatever you do -- to take on the challenges I have described and many others that are equally important.

I realize not everyone will take this route. But it is important to be vigilant against indifference. It is so easy to forget those who are not so fortunate as to have the gifts of intellect, creativity, productive parents, and wonderful friends and loved ones that you have.

Many were not born so well endowed with either brain power or opportunity.

It is also easy to lose perspective. Remember that it is no sacrifice to receive the same income as that received by teachers, farmers, workers on the assembly line and other good, decent working men and women who raise families and contribute to their communities.

To the contrary, it is a great privilege to devote one's life to things that are important and about which you care passionately.

Robert Kennedy warned: "It is simple to follow the easy and familiar path of personal ambition and private gain. It is more comfortable to sit content in the easy approval of friends and of neighbors than to risk the friction [of] controversy . . . And it is far easier to accept and to stand on the past, than to fight for the answers of the future."

The legal profession offers opportunity to do something heroic, to serve others, to make a difference, to be a drum major for justice. But it also offers many outs. It offers far more opportunities for selfishness and complacency.

Elie Weisel said in 1986: "Our lives no longer belong to us alone; they belong to all those who need us desperately."

So this is one more time to recall why you came here three years ago -- what your goals were

and to consider how they have evolved during these three years and why -- and what you can do to fulfill them. But it need not be the last time you think about those things.

You depart this law school community to mount a wider stage, with much greater responsibility, in a much harder world than we have known here at Yale Law School, with greater challenges, temptations, and opportunities.

Dr. King ended his drum major sermon with what became his epitaph and I think it will someday be the epitaph of the class of 1994:

"I just want to be there in love and justice and in truth and in commitment to others, so that we can make of this old world a new world."

Good luck and Godspeed. I'll see you in the courts.