

REMARKS AT YALE LAW SCHOOL COMMENCEMENT

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MADAME DEAN; MEMBERS OF THE FACULTY; DISTINGUISHED GUESTS; FAMILIES AND FRIENDS OF THE GRADUATES; MEMBERS OF THE YALE LAW SCHOOL CLASS OF 2018:

IT IS A GREAT HONOR AND AN ENORMOUS PLEASURE TO HAVE BEEN ASKED TO ADDRESS THE GRADUATING CLASS. I WILL CONFESS THAT THE INVITATION CAME AS A SURPRISE. MANY OF YOU SITTING HERE TODAY I RECOGNIZE FROM MY EVIDENCE COURSE THIS TERM. I CAN ONLY ASSUME THAT THE BALLOTING TOOK PLACE BEFORE YOU HAD A PEEK AT THE FINAL EXAMINATION.

THIS IS AN IMPORTANT DAY IN YOUR LIVES. BY VIRTUE OF

RECEIVING YOUR YALE LAW SCHOOL DEGREES, YOU WILL BE CERTIFIED AS HAVING COMPLETED 83 CREDITS OF INSTRUCTION — MAKING YOU NOW FULLY QUALIFIED TO TAKE THE BAR REVIEW COURSE AND LEARN SOME ACTUAL LAW.

AS MANY OF YOU KNOW, SOME TIME AGO I SERVED AS A LAW CLERK FOR JUSTICE THURGOOD MARSHALL OF THE UNITED STATES SUPREME COURT. THAT WAS ONE OF HIS PET PEEVES: THAT YALE STUDENTS DIDN'T KNOW A WHOLE LOT OF LAW. BUT HE PUT UP WITH US ANYWAY.

AS IT HAPPENS, YOUR GRADUATION YEAR COINCIDES WITH THE 50TH ANNIVERSARY OF JUSTICE MARSHALL'S FIRST TERM ON THE SUPREME COURT. I MENTION THIS BECAUSE MARSHALL, IN ADDITION TO BEING A BRILLIANT JURIST, WAS ONE OF THE GREATEST AND WISEST HUMAN BEINGS IT HAS EVER BEEN MY PRIVILEGE TO KNOW. HE WAS ALSO A SPLENDID RACONTEUR, WHO

LOVED TO DISPENSE WISDOM BY SPINNING A TALE.

IT OCCURRED TO ME, IN LIGHT OF THIS ANNIVERSARY, THAT NO WISE WORDS I MIGHT COME UP WITH COULD COMPARE WITH JUSTICE MARSHALL'S. SO ON THIS YOUR GRADUATION DAY, IT IS MY PRIVILEGE TO IMPART TO YOU SOME OF MARSHALL'S WISDOM, BY SHARING THREE SHORT STORIES, EACH OF WHICH I HEARD MANY TIMES OVER THE DECADE OR SO OF OUR ACQUAINTANCE.

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THE FIRST STORY CONCERNS A LAWSUIT THAT AROSE DURING JUSTICE MARSHALL'S TIME AS A JUDGE ON THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT. THE PLAINTIFF WAS WELL KNOWN IN NEW YORK'S FEDERAL COURTS, BECAUSE SHE FILED COMPLAINTS REGULARLY – THE SORT OF COMPLAINTS THAT ALLEGE THAT THE GOVERNMENT HAS INSTALLED ELECTRODES IN HER BRAIN TO STEAL HER IDEAS FOR TELEVISION SHOWS – THINGS LIKE THAT.

SHE CLEARLY WASN'T WELL, AND OF COURSE HER LAWSUITS WERE REGULARLY THROWN OUT. SHE WOULD APPEAL, AND HER APPEALS WOULD BE DISMISSED WITHOUT ANY HEARING. THOSE OF YOU WHO HAVE WORKED IN THE JUDICIAL SYSTEM KNOW THAT THERE IS, SADLY, REALLY NO OTHER WAY TO HANDLE LITIGANTS IN THE THROES OF DELUSION.

EXCEPT, APPARENTLY, THERE IS.

AT THIS TIME THE CHIEF JUDGE OF THE SECOND CIRCUIT WAS EDWARD LUMBARD, AND AS JUSTICE MARSHALL TOLD THE STORY, LUMBARD, WITHOUT A WORD TO ANYONE ELSE, PUT THE WOMAN'S APPEAL ON THE CALENDAR FOR ARGUMENT. NOTHING LIKE THIS HAD HAPPENED BEFORE. NOBODY COULD FIGURE OUT WHAT WAS GOING ON.

ON THE DAY SET FOR ORAL ARGUMENT, THE UNITED STATES ATTORNEY SENT ALONG THE MOST JUNIOR JUNIOR ASSISTANT

WITH INSTRUCTIONS TO SAY TEN WORDS — TEN VERY PRECISE WORDS, AND NO MORE.

THE CLERK CALLED THE CASE. THE PLAINTIFF, REPRESENTING HERSELF, STEPPED TO THE LECTERN. SHE RAMBLED FOR HER ALLOTTED FIFTEEN MINUTES, THEN RETURNED TO HER SEAT.

JUDGE LUMBARD, WHO WAS PRESIDING, TURNED TO THE MOST JUNIOR JUNIOR ASSISTANT UNITED STATES ATTORNEY AND INVITED HIM TO RESPOND.

THE MOST JUNIOR JUNIOR ASSISTANT STEPPED TO THE LECTERN. WITH GREAT CONFIDENCE HE RECITED THE TEN WORDS HE HAD BEEN INSTRUCTED TO SAY:

“MAY IT PLEASE THE COURT, WE REST ON OUR BRIEF.”

AND WITH THAT, THE MOST JUNIOR JUNIOR ASSISTANT SAT DOWN.

JUDGE LUMBARD GLOWERED. HE STOOD UP. HE WAS NOT AN

ESPECIALLY LARGE MAN, BUT WHEN HE GLARED DOWN AT THE MOST JUNIOR JUNIOR ASSISTANT FROM THE RAISED DAIS, HE SEEMED TEN FEET TALL. HIS VOICE THUNDERED:

“DO YOU MEAN TO SAY THAT THIS WOMAN, IN THE EXERCISE OF HER FUNDAMENTAL CONSTITUTIONAL RIGHT TO PETITION HER GOVERNMENT FOR THE REDRESS OF GRIEVANCES, COMES INTO THIS COURTROOM TO ARGUE HER CASE, AND THE GOVERNMENT WILL NOT EVEN DO HER THE DIGNITY OF A RESPONSE? GET UP HERE AND ARGUE, SIR!”

AND SO THE MOST JUNIOR JUNIOR ASSISTANT RETURNED TO THE LECTERN AND BEGAN, NERVOUSLY, TO REPEAT THE ARGUMENTS SET FORTH IN THE GOVERNMENT’S BRIEF. AFTER A FEW MINUTES, JUDGE LUMBARD TOLD THE YOUNG MAN THAT HE COULD SIT.

A COUPLE OF WEEKS LATER, THE COURT DISMISSED THE APPEAL WITHOUT COMMENT, LEAVING MYSTERIOUS THE REASON IT

HAD BEEN PLACED ON THE CALENDAR IN THE FIRST PLACE. BUT THAT WASN'T THE END OF THE STORY. HERE'S THE KICKER:

THE WOMAN NEVER FILED ANOTHER LAWSUIT.

SHE WAS SATISFIED. SHE'D HAD HER DAY IN COURT. SHE'D SEEN THE CHIEF JUDGE OF THE COURT OF APPEALS YELL AT THE GOVERNMENT'S LAWYER ON HER BEHALF. SHE FELT VINDICATED.

YOU MIGHT SAY: OH, WELL, IT WAS ALL JUST SYMBOLIC. AFTER ALL, SHE LOST THE CASE.

THAT OBJECTION MISSES THE POINT JUSTICE MARSHALL WAS TRYING TO MAKE. THIS ISN'T SIMPLY A STORY ABOUT ACCESS TO THE COURTS. IT'S A STORY ABOUT THE IMPORTANCE, IN A DEMOCRACY, OF LISTENING. IN PARTICULAR, THOSE WHO GOVERN OR SEEK TO GOVERN MUST ALWAYS BE PREPARED TO LISTEN, EVEN TO THE VIEWS OF THOSE SO DIFFERENT THAT THEIR IDEAS SEEM CRAZY.

SURE, THE CHANCES ARE THAT THEIR VIEWS WILL WIND UP BEING DISMISSED. BUT WE SHOULD LISTEN ANYWAY. PART OF THE REASON IS DEMOCRATIC DUTY. ANOTHER REASON – ONE THAT JUSTICE MARSHALL NEVER LET US FORGET – IS THAT EVERY NOW AND THEN, WE WHO ARE SO CONFIDENT WILL TURN OUT TO BE WRONG AND THE PERSON WE THINK IS CRAZY WILL TURN OUT TO BE RIGHT.

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THE SECOND STORY I'M GOING TO TELL IS, I SHOULD WARN YOU, A LITTLE BIT OFFENSIVE – BUT PLEASE BEAR IN MIND THAT THURGOOD MARSHALL FOUGHT MANY OF HIS BATTLES DURING AN OFFENSIVE ERA.

WHEN WE THINK ABOUT MARSHALL, WE TEND TO REMEMBER BEST HIS ROLE AS A SUPREME COURT JUSTICE. BUT IT WOULD BE A TERRIBLE THING TO REDUCE A COMPLEX HUMAN BEING TO A SERIES

OF VOTES. SO LET'S NOT FORGET HIS YEARS AT THE NAACP, TIRELESSLY CRISSCROSSING THE COUNTRY TO LITIGATE CASES, FOR LITTLE OR NO PAY, AND OFTEN AT CONSIDERABLE RISK TO HIS LIFE.

THE JUSTICE LOVED TO TELL TALES ABOUT THOSE DAYS. A LOT OF THE STORIES INVOLVED WHAT HE CALLED "PLAYING CARDS AND DRINKING WHISKEY." AND WHO WERE HIS CARD-PLAYING WHISKEY-DRINKING PARTNERS? SOME OF THE MOST NOTORIOUS SEGREGATIONISTS OF THE AGE. MARSHALL WOULD SIT WITH THEM IN BACK ROOMS ALL OVER THE SOUTH, DOING DEALS.

MARSHALL PARTICULARLY LIKED TO TELL THE STORY OF PLAYING CARDS ONE NIGHT WITH A NOTORIOUS AND HARD-DRINKING SEGREGATIONIST GOVERNOR. MARSHALL POINTED OUT TO THE GOVERNOR THAT THERE WERE NO BLACK NURSES AT ANY OF THE STATE HOSPITALS – INCLUDING THE COLORED HOSPITAL. THE NAACP COULD LITIGATE OR PROTEST; OR THE TWO MEN COULD

MAKE A DEAL.

THE GOVERNOR THOUGHT IT OVER. "OKAY," HE SAID. "I'LL FIX IT. YOU WON'T LIKE HOW I FIX IT, BUT I'LL FIX IT."

A FEW DAYS LATER, THE TRUSTEES OF THE STATE HOSPITAL SYSTEM MET. THE GOVERNOR, AN EX-OFFICIO MEMBER, RARELY ATTENDED THE SESSIONS. BUT THIS TIME HE WENT. AND THE WAY JUSTICE MARSHALL TOLD THE STORY, THE GOVERNOR STOOD BEFORE THE TRUSTEES AND SAID SOMETHING LIKE THIS: "I WAS VISITING THE HOSPITAL THE OTHER DAY. I WENT DOWN TO THE COLORED WARD, AND THERE I SAW THE FLOWER OF SOUTHERN WOMANHOOD TENDING TO EVERY NEED OF COLORED MEN – "

AT THAT POINT THE GOVERNOR WAS INTERRUPTED BY AN UPROAR. THAT VERY DAY, THE TRUSTEES VOTED UNANIMOUSLY TO HIRE THE FIRST BLACK NURSES IN THE STATE'S HISTORY. THE GOVERNOR CALLED MARSHALL ON THE PHONE AND SAID, "SEE? I

TOLD YOU, YOU WOULDN'T LIKE HOW I'D FIX IT."

AS I SAID: OFFENSIVE. AND PROBABLY MARSHALL DIDN'T MUCH CARE FOR THE METHOD. BUT HIS GOAL WAS TO DO SOME BUSINESS AND GET THINGS DONE. "YOU COULD DO BUSINESS WITH HIM" – THAT WAS THE HIGHEST PRAISE HE COULD BESTOW.

SITTING IN THOSE SMOKE-FILLED BACK ROOMS, HE DID BUSINESS WITH PEOPLE WHOSE NAMES WOULD STUN YOU. DECADES LATER, WHEN I INTERVIEWED JUSTICE MARSHALL FOR HIS ORAL HISTORY, HE REMEMBERED MANY OF THE INFAMOUS SEGREGATIONISTS OF THE AGE WITH RESPECT, AND EVEN A KIND OF DISTANT AFFECTION.

I ONCE ASKED HIM WHAT HE THOUGHT OF JOHN W. DAVIS, THE LAWYER WHO ARGUED FOR THE OTHER SIDE IN BROWN V. BOARD OF EDUCATION. DAVIS, A FORMER DEMOCRATIC PRESIDENTIAL NOMINEE, GAVE HIS NAME TO THE PRESTIGIOUS WALL

STREET LAW FIRM OF DAVIS, POLK & WARDWELL, WHERE I
IMAGINE THAT SOME OF YOU WILL SOON BE WORKING.

DAVIS WAS ALSO AN OLD-SCHOOL WEST VIRGINIA GENTLEMAN
— AND A DYED-IN-THE-WOOL SEGREGATIONIST. WHEN I ASKED
MARSHALL ABOUT HIM, I WAS 26 YEARS OLD, AND A RECENT YLS
GRADUATE, AND THEREFORE, BY DEFINITION, I KNEW EVERYTHING
THERE WAS TO BE KNOWN. I WAS CERTAIN THAT THE JUSTICE
WOULD HEAP HELLFIRE AND DAMNATION UPON DAVIS'S HEAD.

I WAS MISTAKEN.

"JOHN W. DAVIS?" SAID MARSHALL WITH A SMILE. "A GOOD
MAN. A GREAT MAN, WHO JUST HAPPENED TO BELIEVE IN THAT
SEGREGATION."

MARSHALL WASN'T BEING FACETIOUS. THIS WAS WHO HE
WAS: A PERSON WHO COULD REACH ACROSS THAT DEEP DIVIDE
OVER THE MOST IMPORTANT ISSUE IN 20TH CENTURY AMERICA AND

FIND THE COMMON HUMANITY IN THOSE ON THE OTHER SIDE. TO THURGOOD MARSHALL, THOSE ON THE OTHER SIDE WEREN'T EVIL; THEY WEREN'T MONSTERS; THEY WERE SIMPLY MISGUIDED.

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THE FINAL STORY I'M GOING TO TELL WAS ONE OF JUSTICE MARSHALL'S FAVORITES. I HAVE TO WARN YOU IN ADVANCE, IT'S A LITTLE BIT EARTHY. (ALTHOUGH NOT NEARLY AS EARTHY AS SOME OF HIS TALES.)

THE HERO OF OUR STORY IS AN UNNAMED MAN WHO WENT TO LAS VEGAS FOR A GAMBLING WEEKEND. AND, AS JUSTICE MARSHALL USED TO SAY, IT WOULDN'T BE A GOOD STORY UNLESS HE LOST ALL HIS MONEY. SO HE DID.

AND WHEN YOU LOSE ALL YOUR MONEY – MARSHALL USED TO SAY – TWO THINGS HAPPEN. YOU GET HUNGRY; AND YOU NEED TO USE THE REST ROOM.

SO OUR HERO, HAVING LOST ALL HIS MONEY, WENT INTO THE REST ROOM, ONLY TO DISCOVER THAT YOU HAD TO PAY TO USE THE STALLS. TWENTY-FIVE CENTS. AND HE DIDN'T HAVE A DIME TO HIS NAME.

FORTUNATELY, AT THAT MOMENT, A STRANGER HAPPENED IN, SAW OUR HERO'S DILEMMA, AND GAVE HIM A QUARTER. OUR HERO WAS ABOUT TO PAY HIS TWENTY-FIVE CENTS TO OPEN A STALL WHEN HE NOTICED THAT ONE OF THE DOORS HAD BEEN LEFT OPEN. HE COULD ENTER FOR FREE. AND SO HE DID.

WHEN OUR HERO EMERGED FROM THE RESTROOM, HE WAS STANDING ON THE CASINO FLOOR, HOLDING A QUARTER. AND IT WOULDN'T BE A GOOD STORY IF HE DIDN'T PUT THE QUARTER IN THE SLOT MACHINE.

SO HE DID.

AND IT WOULDN'T BE A GOOD STORY UNLESS HE HIT THE

JACKPOT.

SO HE DID.

HE KEPT STUFFING QUARTERS INTO THE SLOT MACHINE, AND HE KEPT ON WINNING. HE PLAYED ROULETTE, HE PLAYED BLACKJACK. AND IT WOULDN'T BE A GOOD STORY IF HE DIDN'T HAVE THE MOST AMAZING TWO DAYS ANYONE HAD EVER HAD AT THAT CASINO.

SO HE DID. WHEN OUR HERO QUIT FORTY-EIGHT HOURS LATER, HE HAD A NET WORTH IN THE MID-SEVEN FIGURES.

AND HE SWORE OFF GAMBLING FOR LIFE.

HE INVESTED THE MONEY WITH A BRILLIANT BROKER WHO SEEMED ABLE TO SEE THE FUTURE, BECAUSE OUR HERO'S FORTUNE JUST MULTIPLIED AND MULTIPLIED. THIRTY YEARS AFTER THAT NIGHT AT THE CASINO, HE WAS WORTH OVER A BILLION DOLLARS.

AT THAT POINT, OUR HERO CALLED THE PRESS TOGETHER. HE

TOLD THEM ABOUT THAT NIGHT IN LAS VEGAS, AND HE MADE A PUBLIC PROMISE THAT IF HIS BENEFACTOR CAME FORWARD, HE'D GET HALF OF EVERYTHING OUR HERO OWNED.

NATURALLY THE PRESS WENT WILD. CLAIMANTS TURNED UP BY THE THOUSANDS. OUR HERO HIRED A TOP FIRM OF PRIVATE DETECTIVES TO SCREEN THEM. AFTER A FEW MONTHS, THE HEAD OF THE AGENCY CALLED HIM UP. "WE'VE FOUND THE MAN," HE SAID.

"ARE YOU SURE?" OUR HERO ASKED.

"WE'RE SURE. WE'VE CHECKED OUT EVERY DETAIL OF HIS STORY, AND HE'S PASSED A LIE DETECTOR TEST."

"BRING HIM RIGHT OVER."

SO THE HEAD OF THE DETECTIVE AGENCY BROUGHT THE MAN TO OUR HERO'S OFFICE. OUR HERO CAME OUT FROM BEHIND HIS BIG DESK AND LOOKED THE MAN UP AND DOWN.

"SO YOU'RE MY BENEFACTOR?"

"YES, SIR."

"YOU KNOW, YOU DO LOOK FAMILIAR. REMIND ME. WHAT DID YOU DO FOR ME EXACTLY?"

"I HANDED YOU THAT QUARTER IN THE REST ROOM."

OUR HERO SHOOK HIS HEAD. "YOU'RE NOT MY BENEFACTOR," HE SNAPPED. "IF I'D USED THAT QUARTER THE WAY YOU INTENDED ME TO USE IT, I'D BE JUST AS POOR TODAY AS I WAS THAT NIGHT. MY BENEFACTOR IS THE MAN WHO LEFT THAT DOOR OPEN!"

YOU KNOW, ALL OF US, WHATEVER WE'VE ACCOMPLISHED, HAVE HAD DOORS OPENED FOR US. MANY OF THOSE WHO FOUGHT TO OPEN THE DOORS TO, SAY, PLACES LIKE YALE LAW SCHOOL ARE NO LONGER WITH US. BUT MANY OF THE PEOPLE WHO OPENED DOORS FOR THOSE OF YOU WHO ARE GRADUATING TODAY ARE PRESENT AT THIS VERY CEREMONY, FAMILIES AND FRIENDS WHO HAVE TRAVELED HERE TO HELP CELEBRATE THIS OCCASION.

PLEASE RISE AND THANK THEM.

AND, REMEMBER, IT'S NOT JUST A MATTER OF HONORING THOSE WHO HELD OPEN DOORS FOR US. WE MUST NEVER FORGET OUR OWN DUTY TO OPEN DOORS FOR OTHERS ... A PROCESS THAT, AS JUSTICE MARSHALL WOULD HAVE BEEN THE FIRST TO REMIND US, WILL OFTEN INVOLVE SACRIFICE.

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WELL, YOU'RE ALL ABOUT TO STEP THROUGH A VERY BIG DOOR. AND AS I LOOK OUT AT THIS SEA OF FACES, I DON'T SEE THE STUDENTS WHO WERE NERVOUS AND TONGUE-TIED THE FIRST TIME THEY WERE COLD-CALLED IN MEAN OLD CARTER'S CONTRACTS SECTION. I DON'T SEE THE STUDENTS WHO, HAT-IN-HAND, CAME TO MEAN OLD CARTER'S OFFICE, TREMBLING AS THEY BEGGED FOR EXTENSIONS ON THEIR SUPERVISED ANALYTIC PAPERS.

NO. WHAT I SEE IS THE FUTURE. I SEE A GROUP OF SMART,

DISCIPLINED, WONDERFULLY DIVERSE YOUNG PEOPLE – PEOPLE WHO, IN A COUPLE OF DECADES, WILL BE LEADING THIS COUNTRY; AND LEADING THE WORLD.

BEFORE YOU KNOW IT, YOU WILL BE OCCUPYING POSITIONS OF GENUINE AUTHORITY, ABLE TO CHANGE PEOPLE’S LIVES WITH THE FLICK OF A PEN. (EXCUSE ME, THE TAP ON A SCREEN.) MY HOPE AND PRAYER FOR YOU IS THAT YOU WILL BE GUIDED BY THE WISDOM OF JUSTICE THURGOOD MARSHALL:

FIRST, THAT YOU’LL LISTEN RESPECTFULLY TO THOSE WHOSE LIVES AND VALUES ARE VERY DIFFERENT FROM YOURS – EVEN WHEN THEIR IDEAS SEEM CRAZY;

SECOND, THAT ACROSS THE RANGE OF ISSUES THAT DIVIDE US, YOU’LL SEE THE HUMANITY IN YOUR OPPONENTS, AND DO YOUR BEST TO EMBRACE THEM IN ALL THEIR COMPLEXITY.

AND THIRD, THAT YOU’LL NEVER FORGET THOSE WHO OPENED

DOORS FOR YOU, AND NEVER STOP OPENING DOORS FOR OTHERS.

MY GENERATION HASN'T SET THE BEST EXAMPLE OF THESE ATTITUDES. BUT YOUR GENERATION HAS MANY ADVANTAGES OVER MINE. YOU HAVE FAR FEWER HANGUPS AND PREJUDICES THAN WE DID. YOU ARE TOUGH AND SMART BUT YOU ARE ALSO LOVING AND KIND. YOU FILL US ALL WITH HOPE.

ALREADY DURING YOUR TIME AT THE STERLING LAW BUILDINGS, YOU HAVE MADE ALL OF US ON THIS PLATFORM SO VERY, VERY PROUD. WE HAVE NO DOUBT THAT YOU WILL CONTINUE TO DO SO.

THANK YOU ALL, AND MAY GOD RICHLY BLESS EACH AND EVERY ONE OF YOU.