

**YALE LAW SCHOOL
COMMENCEMENT REMARKS**

Stephen B. Bright
Yale Law School
May 23, 2016

First, I want to express my deepest and most heartfelt appreciation to the class of 2016 for the honor of this opportunity to make a few remarks as we celebrate all that you have accomplished here. It has been an honor and a privilege to teach many of you during the last three years, to get to know many more of you, and to work closely with some of you on matters of life and death both here at the law school and at our office in Atlanta. I have enormous respect and affection for so many of you and am overwhelmed that you would ask me to speak here today.

Second, congratulations to you, your families, partners, teachers and friends – everyone – who have supported you throughout your lives and at different times in your lives. I hope you have a wonderful, celebratory day that is joyful in all regards, and that it launches you into a meaningful and rewarding life in the law.

You have been awarded your degrees at a time of great polarization in our politics, unconscionable inequality in the wealth of people in our society, an enormous and growing gap in access to justice for the poor, and a continuing failure to end racism in our society and racial discrimination in the courts.

Responding to these problems is the collective responsibility of all of us as members of a society committed to the rule of law and the principles of the Constitution, including equal justice under law. It is particularly the responsibility of lawyers, no matter what they do. Lawyers have a monopoly on the provision of legal services and with that monopoly comes the responsibility to insure that the legal system works for everyone.

The lives of many people depends on it – whether they will be treated fairly, whether they will be safe, whether they will have hope and opportunity, and whether broken people will be made whole again. And the credibility and legitimacy of the legal system depends on it.

I.

But as we know, lawyers and the legal system are increasingly beyond the reach of some of those hurting the most and with the most compelling legal needs –

those facing eviction from their homes, the victims of domestic violence, the parent about to lose a child in a court proceeding, veterans suffering from trauma and worse and encountering all kinds of legal problems, and those with mental disorders and intellectual limitations who have been abandoned on the streets or dumped into prisons and jails.

Lawyers are beyond the reach of most of those facing deportation – including children, unaccompanied by any adult – to a place where they may face grave danger, even death.

You know what a difference a lawyer makes because so many of you have made a difference in these or other areas.

Four women – including three graduating today – the children and grandchildren of immigrants and refugees – have started the Asylum Seeker Advocacy Project. They have already helped stop the deportation of hundreds of Central American refugees. Many of you have been involved as volunteers. They will continue to represent individuals seeking to be freed from detention centers and to win asylum to stay in the United States. And others in this class who will have the financial means to do so will generously support their ability to carry on this work.

There are innocent people in prison who need legal assistance as we learned from a memorable evening at the start of the spring term when we heard from Anthony Ray Hinton – a man who spent 30 years on death row for a crime he did not commit. He is one of 156 people sentenced to death later found to be innocent and among 1800 convicted and given other sentences who have been exonerated. One of our graduates and one of my co-teachers in the capital punishment clinic, Sia Sanneh, was one of the lawyers who brought about his release.

Sia has also won the release of people all over the country sentenced to life imprisonment without any possibility of parole as children after the Supreme Court held they were entitled to consideration for release. Some were as young as 13 when courts gave up on them and sentenced them to spend the rest of their lives in prison with no hope of ever being released. Some were in their 60s when released. One of Sia's clients was Josh Carter, who was 66 when he was released. He spent 49 years at Angola, Louisiana's notorious prison plantation. Nonetheless, he made the most of it. He learned trades. Even when he went blind due to untreated cataracts, he worked in the prison laundry.

But lawyers and access to the courts is beyond the reach of other children sentenced to life imprisonment, other people like Mr. Hinton who were wrongfully convicted, and others serving what everyone agrees are excessive sentences. The President is pardoning some of those people, but many need lawyers to apply for pardons. And most need support and assistance – legal assistance – when released.

African American children are expelled from schools at rates many times their representation in the student population, but seldom have lawyers to challenge their expulsions. Frequently, they are also prosecuted in juvenile courts and sent to juvenile prisons, greatly diminishing, and often eliminating, their best hope for a good future, obtaining an education.

We are abandoning our children to fend for themselves in a complex and hostile legal system that sends them to prisons where they may be subject to degradation and abuse. Many are prosecuted in the adult courts on the theory advanced in the 1990s that they are “super predators.” But they are neither “super predators” or beyond redemption.

Most of us know a young man, arrested at age 16 for carjacking, who was held for eight years in adult prisons, including Virginia’s infamous Red Onion State Prison, a “supermax.” Prison officials said was built for the “worst of the worst” – for inmates supposedly “so dangerous that it’s better to forget about rehabilitation and simply warehouse them.”¹ That was Dwayne Betts. He wrote about his treatment in the *Yale Law Journal*:

They tossed me in a cell with a door so thick that no sound escaped. I was sixteen years old. Each morning they took my mattress from me so that I could not sleep during the day. How do I explain this? Each day, I lost a little bit of what made me want to be free. . . . Those were the longest days of my sentence. One afternoon, in a fit of panic, I slammed my right fist against the wall. . . . I thought about suicide. I almost disappeared.²

And yet Dwayne survived the ritual degradation of prison. He started a book club for African American youth called YoungMenRead, wrote books and poetry,

¹ Craig Timberg, [At Va.’s Toughest Prison, Tight Controls](#), WASH. POST (Apr. 18, 1999) at C1.

² Reginald Dwayne Betts, [Only Once I Thought About Suicide](#), 125 Yale L.J. F. 222 (2016).

graduated from the University of Maryland, got married, is now bringing up two boys and, just a few minutes ago, walked across this stage with those boys – a graduate of Yale Law School.

His experience reminds us that even those who have broken the law need representation that treats them as individuals – that examines who they are and precisely what they did, and assesses what they can become; that recognizes that they are much more than the worst thing that they did in their lives; and that they are not defined exclusively by one terrible mistake.

Not everyone has Dwayne's extraordinary gifts of intellect and resilience. As he described in his article, many did not survive the brutal prison experience. And that is all the more reason to follow his example in working with children. We must never give up on our children. The child that some lawyer represents and keeps in school today may someday graduate and make immense contributions to her community.

II.

All of us as members of society and as part of the legal profession must confront the continuing influence of race in the legal system and the exclusion of people of color from decision-making positions within it. There is, as there should be, great attention to law enforcement practices as a result many recent killings of unarmed black people by police. It is a very long list that includes 17-year old Laquan McDonald, shot 16 times by a Chicago police officer just six seconds after the officer arrived at the scene; 12-year old Tamir Rice, shot to death within two seconds of officers arriving at the park where he was playing; Eric Garner, killed in a choke hold for selling loose cigarettes on Staten Island; and, sadly and tragically, many more.

There must also be greater attention to what happens to people in the court system after arrest. Those arrested are subject to one discretionary decision after another – whether they will be released on bail, what charges will be brought, whether a competent lawyer will be appointed, what plea bargain will be offered, whether people of one race or gender will be excluded in striking the jury, and what sentence will be imposed.

These decisions are often influenced by race. In many courts – white people make these decisions in a system that is dealing largely – and in some cases, almost exclusively – with people of color. Ninety-five percent of the nation's 2,400 elected state and local prosecutors are white. Seventy-nine percent are white men. And about eighty-six percent of judges on state trial and appellate courts are white.

People of color are routinely excluded from participation as jurors because they are struck by the parties in jury selection. In the case of Timothy Foster, that some of you have worked on, the prosecutor struck all four blacks and urged the all-white jury to impose the death penalty to “deter people in the projects.” Timothy Foster and his family lived in the projects which were 90 percent African American.

It is a matter of the greatest urgency that we make the courts look like the people who come before them, and that juries are representative of their communities.

III.

One reason lawyers and justice are beyond the reach of so many is that throughout our history, the majority of attorneys have been white, male and reasonably well off. Those most desperately in need of legal services are predominantly racial minorities, who are poor or working class people. Those who have the legal skills aren't near them, don't know them, can't identify with them, and therefore, do not prioritize helping them.

Regardless of what you do in your careers, I urge you to be engaged with these people and these issues. I encourage you to spend time in proximity to the injustices, the suffering. From time to time, get in the trenches, represent clients – no matter how great a departure that may be from what you do the rest of the time.

No matter how powerful and prosperous you become, spend some time in the jails, prisons, housing projects, homeless shelters and other places where you will find the weak and injured. Spend time in the courtrooms – from the lowest municipal and administrative courts to the highest state felony courts. What you will see in some of those courts will bear no resemblance to anything you learned in law school.

The courts that most people have contact with – the municipal courts – are not about justice, but as the Department of Justice found with regard to Ferguson, Missouri, revenue collection. They are “cash cows” that process people like fast food restaurants with scant attention to them as individuals. They fill our debtors' prisons with people too poor to pay their fines.

The great privilege of being a lawyer is that you can offer a helping hand and lift people up in ways large and small. You can provide a voice for those whose lives hang in the balance but speak in voices too faint to be heard. Last Friday, my colleagues at the Southern Center secured the release of Kiana Adams, who has a high risk pregnancy, is eight months pregnant and due to give birth at any time. She had been sleeping on the floor of the Muscogee County Jail in Columbus, GA. A

judge sent her there because of her inability to pay fines and fees in connection with traffic tickets after she lost her job at Wal-Mart. In that case, two lives hung in the balance.

Of course you will not be successful in every case and for every client. But you can always encourage and lift up people. Listening and counseling always helps those in distress. But listening and counseling by a lawyer really helps people with legal problems – even if it turns out that is all you can do. You can bear witness to injustices in hope it will eventually bring them to an end.

IV.

Two weeks ago, the world lost a great visionary lawyer, Michael Ratner, who spent much of his life with the Center for Constitutional Rights. In his remarkable life he held the U.S. government accountable when it went to war illegally, tortured its citizens, withheld information from the public, limited the rights of a free press, and in countless other contexts.

It was observed that Michael Ratner's special gift was his ability to turn an urgent problem into a meaningful, hard-hitting lawsuit. He took on the prison at Guantánamo twice. In one case, he and Harold Koh and the human rights clinic here represented Haitian Refugees with HIV. When people were sent to Guantánamo after 9/11, he knew it was an attempt to place them beyond the reach of the law, the courts, the media, and lawyers. And he challenged those detentions. He prevailed in both cases.

After the second, Prof. David Cole asked him what he thought his chances were when he filed the suit. Michael Ratner answered: "None whatsoever. We filed 100 percent on principle."

Remember that – 100 percent on principle.

The lesson there – take risks. I encourage you to use your knowledge and privilege to take risks for those for whom playing it safe was never an option. Your greatest accomplishment may be the result of the greatest risk you take.

Harold Koh recalled being aghast in their case when the U.S. government filed a Rule 11 motion against them. Michael reassured him that the other side always filed Rule 11 motions in his cases. It was a badge of pride.

And the lesson there: do not be deterred by the threats of the powerful.

Seema Ahmad, who worked with Guantánamo clients and their families, said she learned from Ratner “that one of the most spiritually fulfilling experiences is to stand with someone that has no one and to see them as human and to learn their story.”

It’s about the clients. At the end of the day, it is about the clients – the people confined in Guantánamo, the people facing deportation, the people on death rows and in prisons like Anthony Ray Hinton, the woman with a problem pregnancy on the floor of a jail cell, and countless others for whom equal justice under law is a “promise to the ear to be broken to the hope, a teasing illusion like a generous bequest in a pauper’s will.”³

V.

Less than 50 years after the end of the Civil War, two extraordinary black men, Noah Parden and Styles Hutchins, had established a law practice in segregated Chattanooga. They were called upon in 1906 by the father of a black man, Ed Johnson, who had been convicted of the rape of a white women and sentenced to death. He was almost certainly innocent. Ed Johnson's father asked Noah Parden to take the case and try to save his son’s life.

Parden conferred with Hutchens, his partner, who said, “of those to whom much is given, much is expected.”⁴ They took the case.

Almost immediately, their homes and law office were attacked.

Noah Parden took the train to Washington DC and presented a petition for a stay to the first Justice Harlan, who stayed the execution.

That night Ed Johnson was lynched. A mob broke into the jail and took him to the bridge in the middle of town over the Tennessee River. As they put the noose around his neck, Ed Johnson said, “God bless you all. I am innocent.” He was hoisted up and his body was riddled with bullets.

Days later, the home of a black minister who had preached a sermon against lynching was burned. The office and homes of Parden and Hutchens were attacked.

³ *Edwards v. California*, 314 U.S. 160, 186 (1941) (Jackson, J., concurring).

⁴ Mark Curriden & Leroy Phillips, *CONTEMPT OF COURT: THE TURN-OF-THE-CENTURY LYNCHING THAT LAUNCHED A HUNDRED YEARS OF FEDERALISM* 107 (1999). The book is the source for this summary of the case. It provides an excellent account of the case.

Within two weeks, Noah Parden and Styles Hutchens left Chattanooga and never came back.

What has always struck me is that when they were deciding whether to take the case, they had to know, that if they accepted the case, things would never be the same again. Everything they had worked for and built would be at stake. They might even be lynched.

But it wasn't a tough call for Styles Hutchins.

“Of those to whom much is given, much is expected.”

Styles Hutchins recognized the privilege of practicing law and he understood that the rights of Ed Johnson meant nothing without a lawyer.

We are not asked today to make decision that hard, but we are equally aware of the needs of so many.

No matter what you do, spent time at homeless shelters, stay in touch with legal services offices, public defenders and public interest projects to see what the needs are, and remember Styles Hutchins: Of those to whom much is given, much is expected.

Good luck and Godspeed.