



Case Western Reserve Law Review

Volume 58 | Issue 2

2007

Class of 2007 Commencement Address: Lawyers - The Guardians of Truth and Justice

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Recommended Citation

Herbert E. Phipps, *Class of 2007 Commencement Address: Lawyers - The Guardians of Truth and Justice*, 58 Case W. Res. L. Rev. 483 (2007)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol58/iss2/8>

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CLASS OF 2007 COMMENCEMENT ADDRESS

LAWYERS—THE GUARDIANS OF TRUTH AND JUSTICE*

The Honorable Herbert E. Phipps[†]

Members of the Class of 2007, congratulations on your achievements that have earned you this occasion. You are entering one of the greatest professions, and today I will tell you why I believe that law is a great profession.

George Sharswood, a nineteenth century authority on legal ethics, said: “[N]o [person] can ever be a truly great lawyer, who is not in every sense of the word, a good [person]. A lawyer, without the most sterling integrity, may shine for a while . . . ; but his light will soon go out. . . .”¹ A lawyer is more than a person who has earned a law degree and passed a bar examination. I also believe that a truly great lawyer is one who pursues a legal career with a deep commitment to truth and justice.

That you have chosen to become lawyers is important, but not as important as the kind of lawyers you choose to become. Your perception of the scope of a lawyer’s duty to truth and justice, to a great extent, will determine the lawyers you become.

Each of our lives is unique, and each of us could tell of a different journey that led to the study of law. In a sense, injustice is what drove me into the legal profession, and injustice is what determined the

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¹ GEORGE SHARSWOOD, AN ESSAY ON PROFESSIONAL ETHICS 168 (5th ed., Fred B. Rothman & Co. 1993) (1896).

lawyer I chose to become. I think that you will understand better what I say if first I describe my early years and the atmosphere in which I entered the practice of law.

I grew up in Baker County, deep in Southwest Georgia. My early years were spent on a farm owned by one of my great-grandfathers. Baker County was so rigidly segregated that I was in the fifth grade before I discovered that White children also went to school. In the early 1940's, around the time of my birth, Baker County could have been the poster child for racial injustice in America.

You may have studied the case of *Screws v. United States*.² That case involved the lynching of Robert Hall, a Black man, by Baker County Sheriff Claude Screws and other law enforcement officers after they arrested him. "[T]here [was] evidence to the effect that the alleged warrant of arrest was prepared by the sheriff and was a spurious afterthought."³ The appalling conduct underlying *Screws* was common. The federal prosecution for such conduct was uncommon. The defendants were convicted, but the Supreme Court reversed because the jury had not been instructed that it could convict only if it found that Screws and the others had acted willfully.⁴ On retrial, the defendants were acquitted because the jury did not find that the lynching was willful. As was customary, there was no state prosecution. And later, the voters elevated Screws to the State Senate.⁵

Racially motivated violence and mistreatment were open and notorious. That terrifying conduct was aggravated for Black people because there was nowhere to turn for protection or relief—certainly not law enforcement—Screws and his accomplices were not the only rogue cops—and not the courts. Those with authority to provide protection and relief were part of the problem. Robert Hall and his family were good friends of my family, and I witnessed my own father being threatened and harassed by the sheriff. No Black child reached adulthood without being touched by this wickedness.

In my early teens, I began attending court to watch trials in Southwest Georgia. Often the criminal defendant and I were the only Black persons in the courtroom. Sometimes, I was asked in a hostile tone: "Why are you here? What is your interest in this?" Except for the late C. B. King, a 1953 graduate of this law school, who was the

² 325 U.S. 91 (1945).

³ *Screws v. United States*, 140 F.2d 662 (5th Cir. 1944), *rev'd on other grounds*, 325 U.S. 91.

⁴ *Screws*, 325 U.S. 91.

⁵ See Frederick M. Lawrence, *Civil Rights and Criminal Wrongs: The Mens Rea of Federal Civil Rights Crimes*, 67 TUL. L. REV. 2113, 2174 & n.281 (1993); *id.* at 2186 n.329.

first and then only Black lawyer in South Georgia, there were no Black lawyers. There were no Black judges, no Black jurors, no Black court officials, and no Black law enforcement officers. I saw a justice system in which Black parties and witnesses were victims of racial slurs and mistreatment by lawyers, judges and others. I never saw a White lawyer or judge do anything to stop the racial abuse. When C. B. King was in court, he fought alone against such depravity.

I often visited C. B. King's law office to talk with him about his law practice and the mistreatment of Black people. One afternoon in the early 1960's, he invited me to accompany him and William Kunstler to court where they represented dozens of civil rights protestors who had been arrested for marching against segregation in a small South Georgia town. The protest had infuriated White residents, and the courtroom was packed with spectators.

After hearing evidence and arguments, the judge summoned King and Kunstler to his chambers. I boldly followed them. In chambers, the judge told King and Kunstler that their position was legally correct and that the charges should be dismissed. "But," he said, "I am not going to dismiss the charges or set bail because I have to live in this little town." This judge did not have the professional or personal courage to do what was right by Black citizens because doing so would have angered White citizens.

I saw that those with power to remedy injustice and unequal treatment usually were lawyers and judges. I could see also that a legal education provided a tool that could be used to uphold justice or to inflict and perpetuate injustice.

C. B. King was a truly great lawyer, and I was inspired by his courageous struggles for racial justice.⁶ I decided to obtain a legal education and use it in the effort to end the oppressive system under which we lived. I came here to law school because this is where C. B. King had received his legal education. He had come here because, when he was ready for law school, Georgia was not ready for him. Until the 1960's, Georgia denied members of our race admission to its law schools. I thought that the kind of lawyer he was—one who pursued his legal career with a deep commitment to truth and justice—could be ascribed, at least in part, to where he had earned his law degree—Western Reserve University.⁷

⁶ On November 8, 2002, a ceremony was held in Albany, Georgia to dedicate a newly constructed federal courthouse as the "C. B. King United States Courthouse." C. B. King valiantly fought racism and other forms of injustice in the federal and state courts during the 34 years of his law practice.

⁷ Now Case Western Reserve University.

After earning my law degree, I returned to Georgia to join C. B. King's law practice in 1971. I found that during the several years between that shameful conference in the judge's chambers and my return, conditions, attitudes and practices had changed, but only slightly. We had an exciting and rewarding practice primarily representing Black people in every kind of civil rights case the law allowed, including jury and employment discrimination, school desegregation, voting rights, police brutality and public accommodations. At that time, in a justice system reeking of racial hatred, practically any case involving a Black person was a civil rights case—even a traffic ticket.

C. B. King was the most eloquent and courageous lawyer I have ever seen. Nothing was too controversial for him. He never backed down. He was fearless, even when we were threatened. One day after a court appearance in Americus, Georgia, C. B. returned to his car to find that acid had been poured on the driver's seat. After that, often someone watched our car while we were in court. And on many occasions, Black citizens provided protective escorts out of town for us after court appearances. C. B. would say to me, "Always know more than one way out of town."

Many of you listening to me describe what it was like in Southwest Georgia when I was growing up and when I was a young lawyer may be saying to yourselves: "It must have been something to stand up as a lawyer and fight for justice when right and wrong were so clear. But that is a bygone day." I must disabuse you. Equal justice for all remains a promise not kept. Days of injustice that cry out for courageous lawyers await you.

Segregation was the cover for other evils. It persisted in this country because of myths and fictions. Millions of otherwise decent people uttered words like: "Segregation isn't so bad. That's how Blacks want it, too. Black people here aren't complaining; it's just outside agitators. We shouldn't have laws to make discrimination illegal; that's a matter of personal and private choice."

When those myths and fictions about segregation were disproved, lawyers were in the vanguard, shining the light of truth across the landscape of ignorance and denial. Otherwise decent people, who had been part of the problem, changed only after they were finally forced to see the truth.

Certainly, much has changed since the 1940's and 1950's when I was growing up, but what has not changed is human nature. Aristotle said that, at his best, man is the noblest of all animals; separated from

law and justice, he is the worst.⁸ Vigilant lawyers are essential to a just society. Whether you pursue your legal career in a solo practice representing individuals and small businesses or in a large law firm representing giant corporations and governmental entities, an essential component of your practice must be an attitude of truth and justice, which defines who you are, how you practice law, and what you will not tolerate in others.

There is still prejudice and discrimination in our nation. People are still mistreated, not only on the basis of race, but also because of gender, religion, sexual orientation, ethnicity, disability and other attributes. There is still a gap between the theory and the practice of equality. Today's wrongdoing often is more subtle than that inflicted in the past. But for the victims, there is little comfort in the assertion that today's treatment is better than yesterday's. And none of us should be appeased by that assertion.

In your legal career, often you will find that justice in the most fundamental sense is being denied, yet many who have the power to do the right thing will hardly notice they are doing wrong. They will be too comfortable with whichever myths or fictions serve their purposes.

You will see injustice on the smallest scale—as individuals deal with one another, and on the greatest scale—as nations invade others on fabricated claims and companies and governments ignore the harm they cause the environment for the sake of profit and power. You as lawyers are guardians of two sacred keys—truth and justice. This is a heavy responsibility.

You will confirm your oath each time you openly confront injustice, rather than censor your thoughts and behavior. A truly great lawyer does not witness injustice and do nothing. It has always been easy to excuse silence and indifference by blaming wrongdoing on “a few bad apples.” The Ku Klux Klan and the perpetrators in *Screws*⁹ were just “a few bad apples.” But, by remaining silent, the “good apples” sanctioned their horrible conduct and thus became part of the problem, too.

Obviously, one person cannot right every wrong. But do not underestimate what one committed person can do. Never fail to impress upon your clients the importance of doing right. If a client rejects your advice and insists upon a corrupt or prejudiced course of action, have the courage to say, “I can no longer represent you.” It has

⁸ See Aristotle, *Politics*, in 2 THE COMPLETE WORKS OF ARISTOTLE 1988 (Jonathan Barnes ed., Princeton Univ. Press 1984).

⁹ *Screws*, 325 U.S. 91.

been said, "We owe our clients our utmost zeal, energy, time and talent. We do not owe them our reputations."¹⁰ You may earn and lose more than one fortune, but a good reputation, once lost, may never be regained.

Your commitment to truth and justice may cost you money. But it will be a sound investment, not only in the future of our nation, but in your own professional and personal futures. I can tell you one thing with certainty, you will never be thoroughly satisfied in your life if money is the most important thing you seek. If you indeed only make a great deal of money by the time you are 50 or 60, you will be left wondering what you spent your life doing and wishing you could do it over.

A courageous lawyer will irritate people and may be maligned and misunderstood. Nevertheless, stand your ground. Do not be intimidated or discouraged. Lawyers must be competent, honest and courageous; it is not essential for lawyers to be popular. Some of the best lawyers that I have known were sometimes disliked because they had the courage to do what was right when others were doing the opposite. Have the courage to do the right thing while the whole world is watching. Have the character to do the right thing when no one is watching.

Your opponents will vigorously criticize and challenge your work and your integrity. Therefore, your work must be superior and your own record pristine. A lawyer compromised and discredited by substandard professional or personal conduct cannot be an effective advocate. As we represented unpopular people, in unpopular causes, C. B. King always insisted that we maintain the highest standards. In memory of C. B. King, I pass to you the advice he gave to me: "Always be on your best professional and personal behavior because you cannot fight and beg at the same time."

Many other outstanding Case Western Reserve University Law School graduates have served in the vanguard for equal justice. They include Fred Gray of Alabama and some who are here today. David Walbert is one who graduated in the class after mine. I know Dave well because he moved to Georgia after law school, and we litigated several civil rights cases together.

By the time Dave graduated in 1972, he had already committed to upholding truth and justice. A few years later, Dave defended a Black Atlanta city councilman against federal corruption charges. Before the trial, the prosecutor filed bogus criminal contempt charges against Dave and his partners to intimidate Dave into coaxing his client to

¹⁰ Lance E. Caughfield, *Credibility*, 27 LITIG. 27, 31 (2001).

plead guilty. But Dave was not intimidated; he knew that he and his partners had done nothing wrong. His client was acquitted. Dave and his partners were fully vindicated as well.

Since then, Dave has appeared before the United States Supreme Court more times than any other lawyer in Georgia, and each case involved the most basic rights of a free people. He is renowned in our profession. And while Dave has been well compensated for his work, he would be the first to say that doing well financially was never his primary goal. Neither Dave's fame nor his fortune is the accomplishment of which he is most proud; Dave is most proud that, throughout his 35 years of practice, he steadfastly demonstrated his professional and personal commitment to truth and justice.

In 1964, Dr. Benjamin E. Mays, then President of Morehouse College, charged our graduating class with these words. "[In the years to come], . . . you will make my spirit glad if you are known in life by the quality of your work and the integrity of your character, rather than the quantity of your possessions. . . . I hope the people say in discussing you that you are both competent and honest.

". . . I do not know what happiness is and I do not think that it is important that you be happy. But it is important that you find your work and do it as if you were sent into the world at this precise moment in history to do your job. If happiness can be achieved, it will be found in a job well done and in giving and not in receiving."¹¹

Members of the Class of 2007, the world will change in many ways during your careers, some foreseeable and some not. You are well prepared to be in the vanguard of those changes. Days of injustice that cry out for courageous lawyers are still with us. They await you, and your work is eagerly anticipated. I encourage each of you to be in the vanguard every day as an advocate for truth and justice for all.

¹¹ President's Charge of Benjamin E. Mays (1894–1984) to Morehouse College Class of 1964 (June 2, 1964) in *THE MOREHOUSE COLLEGE BULLETIN* (July 1964).

