

Keynote Address by Mr. Bryan Stevenson

Bryan Stevenson

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KEYNOTE ADDRESS BY MR. BRYAN STEVENSON*

MS. LYON: Okay. Before I introduce our next speaker, who is our keynote address, and just amazing, I would first like to thank our provost today for lunch who is a board member and whom I have taken constant advantage of. And if we could just give a round of applause to Leonard Goodman for helping us.

(Applause)

MS. LYON: It's my great pleasure to introduce to you someone who I am proud to say is a friend of mine and a colleague. Most of you probably know who Bryan Stevenson is. He's been on every television program and his picture [has been] on the front pages of the *Washington Times*, *Washington Post*, one of those. He is a very, very well-known death penalty defense lawyer and advocate for equal justice. He's an incredible speaker, and he's head of the Equal Justice Initiative in Alabama. Some people sometimes say that they think that I show some courage in doing capital cases. Well, it's hard not to do them in Chicago, but in Alabama it's a totally different story. It's just a totally different story. And it takes an enormous amount of courage just to get up every day and do this work. But what probably some of you don't know about Bryan, but that I do, is that Bryan is a music fanatic like me. He actually is a talented jazz pianist himself, and he nearly got himself shot by some police officers in Montgomery because of a tape I sent him. Let me explain. We have this thing where we sort of exchange music every so often, and I had sent him a tape or a CD, I don't remember which, which contained, believe it or not, Doris Day's "Que Sera" done by Sly and the Family Stone. You may say, "What on earth is that and why does it exist?" And it was because at the time that it was released, there was a rumor that Sly was having an affair with Doris Day, which is pretty funny all by itself. But, in fact, he was just getting high with her son. So, I sent this tape to Bryan along with the story, and it's a great song. You can almost smell the marijuana coming out of the studio when you hear it but, you know, it's a great song. And he was listening to it, and, you know, if you've ever had this happen, when you're driving your car, and there's some really good music on, and you get to where you're going,

* This is an edited transcript of the presentation given by Mr. Bryan Stevenson, Keynote Speaker at the Race to Execution Symposium at DePaul University College of Law on October 24, 2003.

and you have to park your car, and you just don't want to get out 'til the song is over. And I'm afraid this occasioned some interest from some of Montgomery's finest officers. Fortunately, he did not run and they did not shoot him, and he continues to be a thorn in their sides because he actually thinks there's this thing called equal justice. Would you please help me welcome Bryan Stevenson?

(Applause)

MR. STEVENSON: Thank you. It's a real honor to be here. I'm delighted that one of my favorite people on this planet, Andrea Lyon, has created time and space for a conference dedicated to the issue of racial bias in the administration of the death penalty or all of the problems that race consciousness and racial bias in our society [have] created. Far too little time has been spent trying to think about these issues, to trying to understand these issues, to try[ing] to make sense of the way in which a society committed to equal justice goes about combating some of these problems. And I just know that this conference is . . . very much needed, long overdue and I'm really, really thrilled that Andrea and the folks here at DePaul have taken on this task. It's also great to be in a room with so many people I admire, who've done some terrific work. It's always dangerous when we start calling names but, you know, there's just some incredible people in Chicago this weekend who've done enormous work around issues of race and administration of equal justice.

When I think about these issues, I think a lot about identity. And while I'm not someone who engages in identity politics as such, I do think the kind of identity we create for ourselves as law students, as law teachers, as lawyers, as activists, as advocates, is key to our ability to effectively say things that make a difference. And you can sometimes say something sensible, you can sometimes do something sensible, but if you haven't supported what you say, what you do, with a kind of witness, with a kind of structure, with a kind of integrity that allows what you say and do to be meaningful, a lot of times it doesn't have significance. And so one of the things that I think is important when we begin thinking about issues of racial bias in the administration of the death penalty is to become a community that can actually say something that people might, to do something that people might recognize. My grandmother was this incredible person who taught me the meaning of identity and saying something. She taught us to believe that we could actually say things that might make a difference. And she was this incredibly powerful figure in our family. She was the daughter of slaves. Her parents were born into slavery in Virginia in the 1840s. She was born in the 1880s. And the experience of slavery

very much shaped the way she was raised and looked at the world. She had ten children. My mother was the youngest of her ten kids, and she was just this incredibly loving, incredibly kind, incredibly strong, incredibly warm human being, and you always wanted to spend time with her. And when I was a little boy, we would go and spend time at her house, and there was always lots of kids, cousins that were competing for her time and competing for her attention. And I remember when I was about six or seven years of age and I was staying with her, I woke up one morning and a bunch of my cousins were sitting in the living room and my grandmother was looking at me, and finally, she came up and she walked across the room, and she grabbed me by the hand and she said, "Come on Bryan, you and I are going to have a talk. It's just going to be me and you." And I got really excited 'cause she pulled me out of this roomful of kids. And she took me out back and she said, "Bryan, I want you to know I've been watching you. I'm going to tell you something, but I don't want you to tell anybody else." I said, "Yes, mama." She said, "I've been watching you and I think you're special. I think you can do anything you want to do." And I just looked up at her. It was just so kind of incredible to hear her say these things to me. Then she said, "But I want you to promise me three things." I said, "Yes, mama, I'll promise you anything." She said, "The first thing I want you to promise me is that you'll always love your mother." She said, "No matter what happens, no matter how you feel, no matter what goes on, I want you to promise me right now you'll always love her until the day you die." I said, "Yes, mama, I'll do that." "The second thing," she said, "I want you to promise me is that you'll always do the right thing even when the right thing is the hard thing." I said, "Yes, mama, I'll do that." And then she said, "The third thing I want you to promise me is that you'll never drink alcohol." I was six or seven so I said, "Yes, mama, I'll never do that."

(Laughter)

MR. STEVENSON: I have a brother who's a year older than me and a sister a year younger than me, and when I was about fifteen or sixteen, I was at home and my brother came home and gave me a six-pack of beer and grabbed me, and he grabbed my sister, and went out back and he opened up his beer can and he took a sip and he gave some to my sister and she took a sip, and then they gave it to me. And I was hesitating. I said, "Oh, I don't think I want to do this." And they said, "No, we've had some, you have some." My brother said, "You know, you always do what I do. You always do what your sister does. I had some beer, she had some beer, you have some beer." I

said, "No, I don't really feel good about this." And then my brother looked at me real strange and real hard, and he said, "I hope you're not still hung up on that conversation mama had with you."

(Laughter)

MR. STEVENSON: I said, "What are you talking about?" He said, "Oh, mama's been going bringing kids out back," and so I was completely devastated. But I'm going to admit something to you, probably more than I should. In a week, two weeks, I will be forty-four-years old, and I can tell you that my forty-fourth birthday will come, and I have never had a drop of alcohol. I don't say that because I think there's anything virtuous about not drinking alcohol. I say that because there was, for me, something profound about that experience. Silly it seems, but it was something very meaningful for me, and it created an identity that silly, foolishly, perhaps, I held onto. And I say that because I believe to really deal with issues like race and the death penalty, we have to create identities that allow us to say things that people truly hear, truly understand. And to say them, we have to kind of think about these issues and position ourselves in places and in ways that perhaps we don't always succeed in doing.

There have been four experiences when I look over African-American history in the United States that have shaped the condition, the circumstance, the experience of black people in this country. The first experience was obviously the tragedy, the horrors of slavery. And slavery shaped the African-American experience in the United States in a very profound way. We're still dealing with that legacy. The second experience was the reign of terror that took place after Reconstruction. And it's very offensive to people of color when in the last two years Americans had to deal with terrorism in a new and different way, when we hear people on the television programs talking about [how] Americans have never had to deal with terrorism before. But I live in a place where, for generations, people of color have had to deal with the risk, a very real risk of lethal violence, of terror, of being burned out of their homes, of being assaulted by hate groups, [of] being confronted and overwhelmed by police officers, and this risk and this fear of terror, legally tolerated terror, very much shaped the way communities emerged, very much shaped the way communities evolved. And it's simply not true that Americans in the United States have never dealt with the real and imminent threat of violence from people who are trying to cause them to fear in [order] to change their lives. It was part of the landscape for many African Americans at the end of Reconstruction and throughout. The third experience, the third era, was the era of Jim Crow, racial apartheid in the United

States. Living in a society committed to the equal justice of law when the laws themselves were unequal and unjust, and having that tolerated and having that accepted for decades was a very, very shattering experience, and many of us are still trying to make peace with that, trying to recover from that.

So those three things are generally thought of as being things of the past. The fourth thing is something that we're in the midst of right now. I think it's equally vexing. I think it's equally devastating, and I think it's equally threatening, at least to people of color, and it's what we refer to as mass incarceration. And it's the use of the prison system, the criminal justice system, to destroy lives, to take away hope, to create fractured communities. In 1972, there were 200,000 people in jails and prisons in the United States. Today there are over two million. One out of three African-American men between the ages of eighteen and thirty is in jail, prison, or on probation or parole. In urban communities where you have racial segregation, you can go into areas where half of the African-American males are in jail or prison. That has profound consequences for what it means to create family, for what it means to create structure, for what it means to create relationships. I go into communities where young kids tell me at the age of eight and nine that they don't believe they're going to live past the age of eighteen. They say that because that's what they see. That's what they experience. They see their older brothers and friends going to prison and dying from drugs or gang warfare or effectively dying by being in prison for the rest of their lives. And it creates this despair. And the collateral consequences of mass incarceration are having devastating effects on poor and minority communities, devastating effects. In my state of Alabama, we actually disenfranchise people with criminal convictions. And right now, about thirty-one percent of the black male population of Alabama has permanently lost their right to vote. We spent a summer in intense activism around this issue and, but for some recent reforms, the projection was that in five years time, you could actually get a higher level of disenfranchisement among black voters in the State of Alabama than existed at the time of the Voting Rights Act in the 1950s. And yet, in the face of this, there has been this silence, this debilitating silence. It's as if no one was really saying anything, certainly not saying anything that people heard. Well, in the context of this kind of injustice, unfairness, struggle, there is the death penalty. Moving through the criminal justice system, this engine that carries with it the best aspirations of the fairness of the system because we're imposing a sentence that demands the most justice, demands the most reliability, demands the most attention. And

yet even here, we've seen this problem of race consciousness, race bias. You know what's interesting when you look at the legal history surrounding race and the death penalty, in 1972 when the Supreme Court decided *Furman v. Georgia*,¹ much of the motivation behind that litigation was the legacy of racial violence. Between 1930 and 1972, eighty-seven percent of the people who had been executed for the crime of rape were black men who had been convicted of raping white women. The documented histories demonstrate that all of the people who had been executed for the crime of rape were people who had been executed for offenses involving women who were white. And so, even before the much respected and much valued Baldus study, there were these profound disparities based on race of the victim and race of the offender. It led some of the Justices to complain about the courts and the administration of capital punishment.

In 1976 when orders went back to the Court in the *Gregg v. Georgia*² case to challenge the modern death penalty, race was once again a theme in the advocacy. Lawyers said in 1976, after states had passed new death penalty statutes, "Look, these statutes are not going to deal with the problem of racial bias in the administration of the death penalty. We're going to have the same disparities based on the race of the victim. We're going to have the same disparities based on race of the offender. Death belt states, southern states, are going to be pushing this trend [in which] your race matters in terms of who gets the death penalty." But the Court, four years after *Furman*, was in a slightly different mood, the Court [said], "No." "Without evidence of bias, we're not prepared to presume that these modern death penalty statutes are going to operate unfairly. So until you come back to us with evidence of bias, we're going to allow these death statutes to remain." That gave rise to the *McCleskey* case in 1987.³ David Baldus, who is here, went to Georgia, and with his team, did some amazing research about Georgia's death penalty, and they were able to establish some very powerful findings about the influence of race and race bias in the administration of the death penalty. Those findings were conclusive about the role of race. Race was the greatest predictor of who got the death penalty in virtually every homicide category. You were eleven times more likely to get the death penalty if the victim was white than if the victim was black. You were twenty-two times more likely to get the death penalty if the defendant was black and the victim was white when looking at the raw data. And no matter how the State of Geor-

1. 408 U.S. 238 (1972).

2. 428 U.S. 153 (1976).

3. *McCleskey v. Kemp*, 481 U.S. 279 (1987).

gia tried to explain away these race effects, race still loomed largest as the variable that mattered when it came to imposing the death penalty. Now, the amazing thing about the *McCleskey* decision is that when it got to the United States Supreme Court, the Court didn't question the evidence. [It] didn't say we don't believe you. They didn't say we don't accept this. They accepted that evidence but nonetheless held in this very disturbing five-four decision that Georgia's death penalty was constitutional.

When I give speeches about justice and fairness, I frequently talk about *McCleskey* because I have not yet recovered from reading that decision. I haven't recovered. I'll be perfectly honest. You do a lot of difficult things when you represent people on death row that can make you really fall down, really fall down. I've talked in the past about when we first started our project in Alabama about how we didn't have lawyers for people and we didn't have resources for people. And we had somebody who was thirty days away from an execution. Just after we opened our project, Andrea and I both directed resource centers in the early nineties and late eighties, and we got these centers off the ground. And we started one in Alabama. This man called me and said, "I'm scheduled to be executed in thirty days, and I don't have a lawyer. Please take my case." I tried to explain to him. And I said, "I'm sorry, but I don't have books yet. I don't have statutes. I don't have staff yet. And I can't take in a case 'cause we haven't done anything to position ourselves yet to take cases." And there was just dead silence on the other end of the phone, and he hung up and he felt bad and I felt bad. Didn't sleep much. Came back the next day, and he called me again and he said, "Mr. Stevenson, I'm begging you, please take my case." He said, "You don't have to tell me we can win. You don't have to tell me we'll get a stay, but tell me you'll take my case because I don't think I can make it these next twenty-nine days if there's no hope at all." Well, when he put it like that, it became impossible to say no. And I said yes. And we tried very hard to get a stay of execution, but it was too late. The time for filing appeals had run. The opportunity to develop evidence had long passed. And on the night of his execution, the court called and I got that dreadful notice from the Supreme Court denying our last stay motion. I got in my car and drove down to Alabama State Prison to be with this man, and it was surreal, completely overwhelming. Those last fifteen minutes after talking and praying, crying. And he was telling me about his dad, and I talk often about this because I haven't really made sense of it yet. But he kept telling me about how all day long people were saying, "What can I do to help you?" He said in the

morning, "Guards came to me and said, 'what do you want for breakfast?' At midday, they came to me and said, 'What do you want for lunch?' In the evening, they came to me and said, 'What do you want for dinner?'" And he said, "All day long, Bryan, people have been saying, 'What can I do to help you? Do you want stamps to mail your last letters? Do you need access to the phone to call your friends and family? Do you want water? Do you want coffee?'" And I never will forget him saying in those last few minutes, he said, "Bryan, more people have said what can I do to help you in the last fourteen hours than in my life, than they ever did for the first nineteen years of [my] life." And with those questions that were resonating in my mind, this man was pulled away, strapped . . . down in that electric chair, and executed. As difficult as that was, it really didn't surpass the difficulty of reading, however, this decision of *McCleskey* because in *McCleskey* there was this concession to bias.

The first thing the Court said was, if we deal with disparities based on race, and we constitutionalize a relief based on those findings of disparate sentencing, it will be just a matter of time before lawyers start complaining about disparities in sentencing for other kinds of criminal offenses.⁴ You hear about those clever people at Michigan and DePaul and Northeastern, and all those other law schools, they'll come back and they'll point out disparities in sentencing for drug offenses, for property crimes, for other kinds of felony offenses, for misdemeanors. It's a problem that we simply cannot allow this Court to engage in. It's too big for us. Well, Justice [William J.] Brennan, in his dissent, ridiculed the Court's analysis as a "fear of too much justice" and in so many ways, he was exactly right.⁵ But I have to tell you that it was the second thing the Court said that broke my heart, that did something to me that I'm still trying to recover from. The second thing the Court said was, a certain amount of bias, a certain quantum of discrimination, if you will, is, in the court's opinion, inevitable;⁶ and they used that word to characterize the things that were going on. And so we are gathered in this room talking about race and the death penalty while the United States Supreme Court has already said it's pointless for you to be here. These problems are inevitable. And it is in that context that we have to begin thinking about the identity we need to take. Because I believe it is an identity that not only has to say what must be said to make these issues sensible and intelligible, but it's also an identity that has to be willing to confront deci-

4. *Id.* at 314-19.

5. *Id.* at 312.

6. *Id.* at 339.

sionmakers, policymakers, judges, sometimes lawyers who believe and accept that racially-biased administration of the death penalty is something that we're supposed to just get used to.

When I talk about *McCleskey*, I often talk about *Brown v. Board of Education*⁷ because I'm a product of *Brown*. I grew up in a community where black children could not go to public schools.⁸ I remember when lawyers came into our community and opened up the public schools and, but for their vision, but for their activism, I wouldn't be talking to you today. And in a lot of ways, the Court could have done in 1954 what the Court did in 1987. [It] could have said, when education and integration was before it . . . "The problem is too big for us. We don't have the resources to insist that communities integrate their schools. There'll be a lot of conflict if we do that. And there'll be a lot of resistance. It's too big." The Court didn't say that. [The Court] said it was unconstitutional. And it's unconstitutional now because [the Court] made it not inevitable.

Tragically, the world that we are organized and talking about today is a world that has been profoundly undermined, aggravated by what the United States Supreme Court did in 1987, and I still believe that *McCleskey*, in 1987—*McCleskey v. Kemp* is the *Plessy v. Ferguson* in our generation.⁹ It is the *Dred Scott* decision of our generation.¹⁰ And maybe in a few decades people will recognize the idiocy, the apostasy, the hopelessness of the United States Supreme Court accepting the inevitability of race bias. But that's not *this* time until we begin to say and do. But why do I frame this issue in those terms? I frame it in those terms because there are a lot of people who want to deal with the problems of racial bias in the administration of the criminal justice system by simply saying legal things in court. And in my experience, saying legal things in court is dramatically insufficient. We have to say something much bolder, much louder, much clearer if we're going to make any progress with these issues. I see racial bias being tolerated all the time in court. I work in a jurisdiction [in which] there is just incredible tolerance of insidious and overt race bias. We're doing an appeal that involves an African-American defendant who is mentally ill. He actually escaped from a mental institution in California. And at his trial, his lawyers presented evidence about his mental illness at the penalty phase of the trial, and this prosecuting attorney gave his closing argument to an all-white [jury], and during

7. *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

8. 347 U.S. 483 (1954).

9. *Plessy v. Ferguson*, 163 U.S. 537 (1896).

10. *Scott v. Sandford*, 60 U.S. 537 (1856).

his argument, he told the jury that they should disregard all of the evidence of mental illness, that that was nothing but “niggeritis” that the defendant had, and as a consequence, it should be given no credit by this jury. There was no objection to what the lawyer said. The judge didn’t say anything, the defense attorney didn’t say anything. The jury went out, came back with a death verdict in seven minutes, and this man remains on death row. I mean the appellate court that reviewed that issue has found the comments inappropriate and improper but not reversible error. In 2000, the United States Supreme Court was actually presented with a case out of Texas, *Saldano*, in which a defendant had been tried in a proceeding [when] the state’s expert had testified that, on the future dangerousness consideration that juries are obligated to take into account in Texas, they should consider the fact that this Hispanic defendant—who was actually Argentinian—would be more likely a threat in principle because black and brown people are more dangerous. And again that testimony was not corrected or confronted. And that case was affirmed by the Texas Court of Criminal Appeals, and the U.S. Supreme Court, the Texas [Solicitor] General who was running for governor decided that he maybe should confess that there’s an error when a jury relies on that kind of racism. And the Supreme Court vacated the conviction based on that confession of error by the Texas [Solicitor] General.¹¹ The case went back to the Texas Court of Criminal Appeals¹² and what does the Texas Court of Criminal Appeals do?¹³ They said that the Texas [Solicitor] General did not have legal standing to confess error for the State of Texas.¹⁴ And it was interesting because it’s almost as if this Supreme Court case gets no attention. And so the case was sent back to the trial court.¹⁵ The death sentence was reinstated, and Saldano remains on Texas’s death row today. This tolerance, this silence. In Florida years ago, we had a case [in which] a trial judge had actually used racial slurs during the course of the trial, and at the end of the guilt phase of the trial, the judge was anxious to get to the point [at which] he pronounced sentence. And the defendant had his parents in the courtroom and they were leaving, and the judge was impatient, and he looked at the DA and said, look, there goes quote, “The nigger mom and nigger dad now. Don’t let them leave. We want to get this case over with.” Commotion [was] made about what the

11. *Id.*

12. *Saldano v. Texas*, No. 72,256, available at http://www.cca.courts.state.tx.us/opinions/72556a.htm#N_1_ (last visited May 20, 2004).

13. *Saldano v. State*, 70 S.W.3d 873 (Tex. Crim. App. 2002).

14. *Id.*

15. *Id.*

judge said. The case proceeded and, not surprisingly, this man was sentenced to death. On appeal, the issue was presented to the Florida Supreme Court. [It] reversed his conviction on grounds having nothing to do with these racial remarks but nonetheless addressed the race issue which was prominent in the briefs that were filed before the court. And in a footnote, the court noted what the judge said. There was no dispute about the words the judge had used. The court then, in a one-sentence analysis, opined that state court judges, quote “should avoid the appearance of impropriety”, end quote, end of discussion, end of analysis. Now, the irony, of course, is that if that judge had been a newscaster or a sports commentator, he would have lost his job. But in a trial system, in a judicial system, in a court system [in which] the Supreme Court has already said, “Race bias is inevitable,” that judge remains on the bench today. And not surprisingly, Mr. Peak, who was the defendant in that case, was acquitted at his new trial before a different judge.

Well, I could tell stories all day long. Most of you are in this room because you’ve seen the influence, the evidence of race consciousness in the administration of the death penalty. That’s not really why I’ve come. I’ve come because I believe that it is time for us to say things, to do things. It is no longer acceptable to tolerate what we all experience on a day-to-day basis. Now, there are some things I think we can think about as we begin thinking about what we want to say, what we want to do. One of the things I think we have to think about is the way we say—the way we position ourselves. And one of the things I find most critical in any effort of activism and advocacy reform is that we’ve got to be hopeful about what we can do. I’ve been discouraged so often when I talk with lawyers who tell me, yes, they acknowledge all these problems, yes, it’s bad, yes, it’s bad, but quote, “there’s nothing we can do about it.” And that mantra becomes a defense to all of the conduct, all of the activism, all of the struggle, all of the pain that awaits those who pick up this challenge. But it is an unacceptable defense. Vaclav Havel, the great Czech writer, talks about what it takes to create justice, and Havel says that we’ve got to have hope. We’ve got to have this hope or we’re never going to get any place that’s going to make a difference. And Havel says it’s not the kind of hope that is simply a preference for optimis[m] over pessimism. It’s not some pie in the sky notion that everything’s going to work out in the end. Havel says the kind of hope we need is an orientation of the spirit, a willingness to position ourselves sometimes in hopeless places and be a witness.

I've represented innocent people. I did a case in south Alabama years ago; . . . we had a man who was on death row for six years for a crime he didn't commit. It was a very debilitating experience in representing this man. There were threats, there were ugly, ugly problems. We got bomb threats doing the work. We got all kinds of resistance. The community was deeply discouraged, but we ultimately prevailed in showing that this man was innocent. And when he was released, there was this sense of empowerment in that community, and there was this hope. And we got him together with some other folks, and this has happened in Chicago a few times as well, and when I'm with these clients, I understand so much about the power of hope. The power of hope. When I look at some of my clients who have endured these injustices, when I work with some communities that have endured these injustices, I really begin to understand what Martin Luther King meant when he said that the moral arc of the universe is long but it bends toward justice. Now, I understand what Jesus meant when he said that "the first shall be last and the last shall be first." I understand what Dostoevsky meant when he said "truth crushed to earth shall rise again." These condemned, rejected people who hope day after day, week after week, month after month for people like you to come to their aid, to help them fight this battle, represent the kind of hope that we need because, in the absence of hope, there will be injustice. I guarantee it. In the absence of struggle there will be injustice.

Now, what do we have to do? Well, a few ideas. One of the things we have to do is change the decisionmakers. Change not only the thinking of the decisionmakers but change the decisionmakers. Too many of the people who decide the issues that affect questions like race and the death penalty have no personal experience, no personal knowledge, no personal relationship with these vexing problems. There are too few people of color in the judge role. There are too few people of color in the policymaker role. There are too few people of color in the jury role. There are even too few people of color in the defense attorney's role. Now, as a consequence, there is this absence of connection. I see it all the time. In my state of Alabama, we've got nineteen appellate court judges, five on the Court of Criminal Appeals, five on the Alabama Civil Appeals [Court], nine on the Alabama Supreme Court. None of them are black, not one. We have 134 trial court judges, six of whom are black. We have fifty-two elected district attorneys across the state, none of whom are black. And yet sixty-five percent of the people coming through our court system going to prison are African American. Eighty-three percent of the peo-

ple on our death row are sentenced for crimes involving victims who are white. And it's become important that we deal honestly with this issue. In the jury context, there's often a lot of effort, a lot of conversation, and we've been talking about increasing the representation of people of color for some decades. In 1986, the Court in, *Batson v. Kentucky*, held that you could no longer use discretionary jury strikes in a racially-biased manner.¹⁶ This helped in some places, but it did not solve the problem. We see cases even today coming out of counties that are forty to forty-five percent African American, but there are no people of color on the jury. And oftentimes when jurors do get on the jury, the same dynamics of racial bias play out. I was in Oklahoma this summer trying to get a clemency for an African American whose jury had eleven whites and one African American. This African-American woman earnestly believed that death was not the appropriate punishment. And so for seven hours, she was subjected to racial threats and taunts by other jurors. She was referred to as nigger woman. They drew pictures, demeaning pictures. One of the jurors admitted association with a hate group that would victimize her if she did not consent. And after eight hours with tears running down her face, she came into court and affirmed this verdict of death. We presented that to the Clemency Board the day before the man was scheduled to be executed as direct evidence that ought to cause any society committed to equal justice to at least stay the execution. But that man was executed in June. This tolerance goes on. And we've got to begin with ways to think about how we can change the decisionmakers. We've been doing a lot of work in our jurisdiction around challenging prosecutors who continue to exclude people of color from jury service, and not challenging them just in the context of criminal litigation, but challenging them outside of that. Counties should know, electorates should know when a district attorney is excluding someone on the basis of race. It is overt, it is conscious, illegal racial bias, the kind that some people claim doesn't exist anymore. And yet, in case after case, in county after county, in state after state, we can point to players who repeatedly engage in that conduct [and] who nonetheless get rewarded all the time. We have started filing civil suits on behalf of excluded people, African Americans, poor people who are not in the jury pool. There was an interesting case not too long ago involving a woman who was the first African American to register to vote in Elmore County, Alabama—Henrietta Hunt. In 1957, she actually passed a poll test to be allowed to register to vote.

16. *Batson v. Kentucky*, 476 U.S. 79 (1986).

She had actually gotten the questions from ministers who kept taking the test repeatedly, who had memorized the questions. Half the test was in Latin. She went to a library, researched the questions, came up with the answers. Passed the poll test in 1957. Now, the poll test taker was so shocked that she just allowed her to register to vote. She didn't know what else to do. And so Ms. Hunt has been on the voters' polls in Elmore County, Alabama since 1957 and has never been called to serve on a jury. Why? Because she's not on the jury list. Well, she was our named plaintiff in a civil action we filed on behalf of one third of the black residents of that county who are under-represented in that pool. And it was energizing and empowering to have community meetings with people of color [who] would come and get together and talk about the need to confront these problems. It was the kind of litigation that was a little bit outside of our traditional role in the defense function but critical if we're going to create an identity that allows us to deal with this problem of under-representation.

Not only do we have to change the decisionmakers, we have to change the decisionmakers who affect who these decisionmakers are. And I sometimes get in trouble when I start talking about this, and I'm not here to give a political speech, but we cannot assume that we can have national leadership hostile to these issues, support that leadership, and then expect a problem that we are dealing with at this level is going to go away. In 2000, [Attorney General] Janet Reno and the Clinton Administration . . . engaged in a study about racial bias in the federal death penalty. Their data had caused them enough concern that they were declaring a moratorium on executions, on federal executions because of this evidence of race bias. In less than six months, [Attorney General] John Ashcroft and the current Administration not only lifted the moratorium but expressed very explicitly that they were unconcerned about race bias in the administration of the federal death penalty. It simply was not an issue. Well, if we're going to create the kind of identity that's going to deal with these issues honestly and effectively, we've got to understand that that is a problem, a serious problem. And we have to see it as the kind of problem that it represents.

Second thing I think we have to do is engage communities in a very different way. There's an amazing story that W.E.B. DuBois wrote at the beginning of the twentieth century. It's called "The Coming of John." It's one of the chapters in a brilliant book called *The Souls of Black Folk*. And in this story, DuBois tells this interesting story about a young black man who is supported by the community and is sent to

a black school several hundred miles away. And the community invests all of their hope in this young man, and they know that with an education he'll be able to come back and help them achieve. And he goes to this school and when he first gets to this school, he's just not interested in studying. He just has a lot of fun. He doesn't take the studies seriously, and one of his schoolmasters says, "We're going to send you back home if you don't do better." And he goes home for a break, and the community comes up to him and they keep saying, "How's it going, John. How's it going?" And they're so hopeful that he's almost convicted by their willingness to invest in him. And so he goes back to the school and becomes an A student, and he graduates and matriculates, and he becomes very refined and very astute and very educated. And he goes back to his community and he goes to the white leaders, and he said, "I want to build a school for black children." And he builds this school and he starts doing wondrous things with these kids. But he also starts telling them that they are somebody, that they are not subordinate to the white people in that community, that their lives have meaning and value, that they're as good as anybody else, and that creates conflict and tension. And as the story gets to the end, the judge who runs this community and other white decisionmakers decide it's time to shut down this school because John, the teacher, is teaching heresy. And so the school is shut down. There's a sort of side story that DuBois develops [in which] there's another man named John, the judge's son who is white, and this man comes back home and he's been rejected from the school he's gone to and he's just sort of acting out and he's very aggressive with the young women. And he sees this sister of John, a young black woman, and he makes a play toward her and he kind of grabs her tightly and tries to kiss her. And John walks upon them while this is going on and he loses his control. He's just had his school shut down. He's come back and all of his dreams have been crushed. And while he loses his control, he sees his sister in the arms of this man, being molested, he picks up an ax and he strikes the man in the head and kills him. Well, the story ends with John running away being pursued by a posse. And in a lot of ways, that story is a metaphor for what happens in the criminal justice system today. So many people lose hope. So many people who have great ambitions have those ambitions crushed. And when they're crushed and when they're destroyed, we don't deal with the context, and because we don't deal with the context, there's just all this unmitigated anger and then anger will justify virtually anything.

Well, in order for us to deal with that, we've got to understand that anger. We've got to understand that context, and we cannot understand it until we begin to think very broadly about these issues, very broadly about these issues. And there are some wonderful people to help us do that, but we've got to engage them. We've got to interact with them. We've got to accept them. We've got to bring them in if we're going to really make progress on this issue.

The last thing I think we have to do is to understand what it means to do the difficult. And I think that's the biggest challenge sometimes. The attorneys in this room who have handled these cases know what it means to actually stand up and have a client's life in your hands. It's a very overwhelming experience. It could make you cry at night. It could make you weak. It could make you so fearful and so worried. It's an overwhelming responsibility. And yet we do it because we think that there is something that can be done. I grew up in a household that was very musical. As Andrea mentioned, I have a lot of interest in music, and my mother was a church musician. She played the organ for this Baptist church and their choir was this incredible institution, and they would open their mouths and you would hear such power and such music and such rhythm and such spirit, and the choir became very popular and they would travel all over the place. And people from everywhere would go to this church to hear the choir sing. It was just this glorious place on Sunday mornings. It was a very energizing place. And as everyone started coming to this church, they had kids from the community that would come. There was a deaf school in the area that would send its kids over. And they finally had a sign language interpreter that would interpret some of the sermons to these kids and give them Sunday school lessons. And I went back after I'd been gone for a while, and when I was there, I was talking to my mother, and she said, "Well, we now have a choir of deaf children." I thought she was just joking. I was—I was sitting in this audience and really—sorry—when these deaf children began to sing. Now, to hear them, the whole church had to make a lot of noise. They started a rhythm and with the rhythm the whole church began to rock. And the kids didn't say anything. They didn't open their mouths until they could feel the rhythm of the church. And when these kids got up, everybody stood up. They began clapping, they began pounding their feet, and the organist was playing, the bass player was playing, the drummer was playing, and the whole church was rocking. And when they felt the rhythm of this community, they began to sing. And when they sang, everybody else sang, and it was glorious. And if you've never seen young deaf children, disempowered, orphaned, marginal-

ized singing with joy, then you've missed something special. I tell you about those kids because I believe we've got to be like those kids. People don't understand what we say about these issues. People don't get what we mean about the significance of these issues. But if we create enough rhythm, if we create enough movement, if we make things move just a little bit, maybe we can get things to rock. And when they rock, maybe people can feel some of this, and maybe through it we can say something that actually changes the way people think. I've seen it happen. I've seen it happen. I gave a speech not too long ago in a black belt county, and after the speech, this older man in a wheelchair came up to me. And I'd finished the speech, and it was one I had given several times before, and he came up to me and he had a young man who was pushing him in his wheelchair, and he came up to me. He said, "Young man, do you know what you're doing?" And I thought he was going to chastise me. He was an older black man and I just didn't know what he meant. [I] said, "I'm not sure, sir. What am I doing?" He said, "I know exactly what you're doing. Do you know what you're doing?" I said, "No, sir, I guess I'm not sure [what] I am doing." He said, "Well, I'll tell you what you're doing. You're beating the drum for justice. Do you understand that?" I said, "Yes, sir, I think I do." And then this older man leaned forward in his wheelchair. He said, "I want you to look at this scar. See this scar? I got this scar in Green County, Alabama in 1961 when we started registering black people to vote." Then he turned his head, and he said, "Look at this scar. You see, I got this scar in 1963 in Birmingham when we were marching for the right to vote." He said, "Do you know what those scars are for me?" I said, "No, sir." He said, "Those scars are badges of honor. They mean that I have beat the drum for justice just like you've done today." There are a lot of things I could say to you about these problems. There are a lot of things I could say to you about these issues. But what I really want to say to you is that we've got to beat the drum for justice. There is simply no way to confront the legacy of racial apartheid, to deal with the lingering aspects of slavery—the terrorism that, if confronted, will create an environment, will raise consciousness, both unconscious and conscious, [of the legacy that] continues to undermine the aspirations of so many—until we beat the drum for justice. But will we beat it? I believe, like that church, institutions shake, people hear things that they won't hear otherwise, and we begin to take a small step toward the kind of justice that makes a difference. It's difficult. I understand that. We have difficult days. I've got to go back to Alabama and all kinds of craziness. Andrea knows about this. Randy Stone about this.

Sheri knows about this. Sam knows about this. Dave knows about this. There are a lot of you in this room who know about that. It's difficult. I was going into court not too long ago. We had filed these motions challenging all of this misconduct. We filed motions of prosecutorial misconduct, judicial misconduct, police misconduct. There was no conduct in this caption. It was all misconduct.

(Laughter)

MR. STEVENSON: And I was sitting in the car knowing I was going to have to go in there and argue these motions. It was a very tiring day. I was there by myself, didn't know what I was going to say. I was sitting in the car. I was just kind of trying to get my strength together, and I sat there and finally, I opened the door and I walked up the steps of the courthouse. And as I walked inside, there was an older black man, a janitor who saw me come inside. He came up to me and he said, "Who are you?" I said, "I'm a lawyer. I'm going to argue motions today." He said, "You're a lawyer?" I said, "Yes, sir, I am." At this point, the man hugged me. He said, "I'm so glad you're here. I'm so proud of you." I don't ever get treated that way when I go to court.

(Laughter)

MR. STEVENSON: He said, "I'm going to tell my wife I met you." It was wonderful. I went in court and we started arguing these motions. Very contentious. You know, the State kept bringing in people. Police came in. Seemed like uniformed officers were piling in, and assistant prosecutors, clerks, everybody was piling in there and everybody was hostile to me. And I was arguing my misconduct motions and the judge was hollering and the DA was hollering, and I was hollering back. It was a very contentious, tense environment. And out of the corner of my eye, I saw that older black man, that janitor, pacing outside a window in the door. He kept pacing back and forth, back and forth. And finally, after I'd seen him pace for what seemed like a long time, he opened the door, walked inside the courtroom, and sat down behind me. About ten minutes later, the judge wanted to take a break, and during the break there was a deputy sheriff who was offended that the janitor had come into the courtroom during court proceedings. And this deputy jumped up and he ran across the courtroom and he went up to that older black man, that janitor, and he said, "Jimmy, what are you doing in this courtroom?" And this older black man looked up and he looked at me and he looked at the deputy, and he said, "I came into this courtroom to tell this young man, 'Keep your eyes on the prize, hold on.'" So that's why I've come to Chicago, to tell those of you who want to engage in this fight to

deal with race bias, who want to beat the drum for justice, who want to say things for people to hear, who want to make the walls rock. I've come to tell you to keep your eyes on the prize, hold on. Thanks very much.

(Applause)

