

Commencement Address 2004 Washburn University School of Law

Judge Paul L. Brady*

Good evening, President Farley, Dean Honabach, honored guests, faculty, graduates, students, and friends. It is a great privilege to be back at Washburn, and I deeply appreciate the honor conferred on me. I am truly humbled by this very special recognition.

I am also honored by you, Class of 2004, for inviting me to make a few remarks on this memorable occasion. Nearly fifty years ago, when I sat where you are sitting, I could not have imagined I would be standing here before you. I thank you.

This is your day, and you have earned it. We celebrate your achievement and rejoice in the promise for the future that your graduation represents.

It is significant that you begin your careers in the law at the time Washburn celebrates 100 years of excellence in legal education and at a time that marks the fiftieth anniversary of the United States Supreme Court decision in *Brown v. Board of Education of Topeka*.¹ The decision, which was a momentous event in the history of American law, remains an enduring symbol of equality and the law.

It is, therefore, fitting that at this time we reaffirm our commitment to equal justice under the law and reflect on the promise of the *Brown* decision, one of the most important rulings ever made by the Supreme Court.

Today, it is difficult to understand how life was for many of us fifty years ago. Furthermore, it is hard to imagine that in America, a Supreme Court decision allowing our children, black and white, to attend public school together on an equal basis should be so remarkable, have such a far-reaching effect, and also be so controversial.

Many years ago, the late Chief Justice Earl Warren, who, of course, wrote the decision, told me the decision probably spawned more litigation than any other Supreme Court decision in our history. I have no doubt Justice Warren was right. The decision has been highly scrutinized, has been the subject of considerable debate, and continues to generate much discussion.

I will not add to the commentary but will share with you some of my background and personal experiences in the context of *Brown*,

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1. 347 U.S. 483 (1954).

before and after the decision: a perspective of its impact on real people to achieve better lives, consistent with the promise of America. The artificial distinction between color and equality under the law has been contrary to the promise of America from the beginning. My own family background most clearly exemplifies this basic contradiction. I am the great-grandson of a white slave owner and the grandson of black slaves.

For me, personally, like America, the confusion and frustration with color has existed from the beginning. The official record of my birth identifies me as a white male. Years later, my application for a passport was summarily denied because of the discrepancy between my picture ID and birth certificate. I take some credit for helping the federal government change its identification policy.

During my early years, growing up in Michigan, I had no reason to believe I was any different from my many white friends because of my color. At home and in school, I learned the importance of being a good citizen, beginning with deep respect for the law. Patriotism was ingrained, and each school day began with the Pledge of Allegiance. I recall how proud I was to recite the cherished principles of the Declaration of Independence and the stirring words of the Gettysburg Address. We were taught to emulate our regional heroes like Henry Ford and Thomas Edison, because in America we could be all that we would want to be.

As I grew older, I learned more and more about an America different from the one I had been taught. By the time I reached high school, World War II was underway, and military service was a certainty. But, I also faced a dilemma. While I wanted to do my part, I was not willing to accept the humiliation and abuse heaped on black servicemen. They were housed in segregated areas, often isolated, and provided facilities inferior to their white counterparts. Their opportunities were limited, and even prisoners of war were granted privileges not accorded to our own men. Off base, prisoners could go places where a black serviceman's mere presence would result in immediate arrest. Such was the state of enforced segregation.

Shortly before I finished high school, the Navy announced it was abolishing its policy of segregated training and assignments. Upon graduation, I enlisted with the promise of attending a machinist school. Contrary to the new policy, I was denied machinist training and told the only school available to me was in the Steward's Branch. This is where black sailors were previously assigned to serve officers and maintain their living quarters. I, of course, refused.

Being the only black recruit in my company of 150 men in boot camp posed no particular problems, and I became a squad leader. At

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the end of our training, we earned a day off to visit historic Williamsburg, Virginia, which was nearby. We were excited about the prospect of enjoying a favorite meal and shopping for gifts and souvenirs. On the morning of the trip, I was called before an officer who informed me that “as a Negro” I could not be served in the shops and restaurants of Williamsburg. Needless to say, I did not go on the trip.

A short time later, I was assigned to a ship stationed at Norfolk, Virginia. On one occasion, after a visit to the segregated USO in town, I decided to take a streetcar downtown and remain aboard, assuring myself a seat on its return to the naval station. As we approached the downtown section, two police officers came aboard and asked me where I was going. After I explained what I planned to do, they said it would be all right this time if I did not get off, “as niggers are not allowed downtown after 10:00 p.m.”

In time, as I became more vocal about racial unfairness, in view of my background, I was unaware of my vulnerability and the price to be paid for such openness. Before my enlistment was over, I was convicted in a court-martial for an offense I did not commit. Still in my teens, I came to understand that so much I had learned about America simply did not apply to me.

Returning home, after being denied several attempts to advance myself, I decided on a new life in California. En route, I stopped here in Topeka to visit relatives. Knowing it was a low point in my life and believing no good would come from my move to California, my aunt and uncle began a strong campaign for me to move to Topeka and enroll in Washburn. My aunt proudly pointed out Washburn’s long history of admitting black students, and it was within walking distance of their home.

I never finished that trip to California, and years later my aunt remarked, “If Paul had gone to California, he might have gone the wrong way. This was the turning point.” I would add, and say like many others, that deciding to attend Washburn was one of the best decisions I ever made.

When I arrived in Topeka, my Aunt Lucinda Todd was engaged in a personal fight against discrimination in the public schools. When she realized her daughter, Nancy, had a talent for music, she inquired whether music instruction was provided in the schools. She was informed that such instruction was provided in the white schools, but not in the black schools because “colored folks” did not want music instruction for their children. She took her case to the school board and won. Nancy, of course, participated in the program and eventually earned a degree in music from the University of Kansas.

Following her personal victory, my aunt helped spearhead an attack against discriminatory policies throughout the Topeka school system. The school case began through the efforts of a small but determined group that met in my aunt's home. She and Nancy were the first to step forward as plaintiffs in the legal action that became the *Brown* case in Topeka.

In commemorating the thirty-fifth anniversary of *Brown*, an editorial in the *Topeka Capital-Journal* began, "At Lucinda Todd's dining room table, a strategic decision was made that literally rewrote a section of the United States Constitution."²

I sat in on most of those early meetings, and highly impressed with the dedication of the small group, I joined their cause. Being part of an effort to right a terrible wrong, I was inspired to become a lawyer. Lingering in my mind was the painful experience I had with the law less than three years before.

I was here in law school when the decision was handed down. It was a time of great joy and elation — a new day. The future appeared bright with the concept of equality as a self-evident truth written into law.

I joined with the NAACP and others in adopting the motto "free by '63." We sincerely believed that all vestiges of racial discrimination would be wiped out in America by the Centennial of the Emancipation Proclamation. We mistakenly assumed, however, that with the outlawing of legally enforced segregation of the races, respect for the rule of law, American values, and sense of fair play would prevail over the practice of racial discrimination.

In the aftermath of *Brown*, and in spite of bitter hostility and open defiance of the law in some parts of the country, the federal government made a serious effort to achieve racial equality. There was talk of a rebirth of America and a second Reconstruction. Civil rights legislation, Supreme Court decisions, and other measures were taken to ensure the equality of black citizens whose basic rights had been denied for generations.

With part of the focus on employment discrimination, the government's own policies were revealed. The Federal Power Commission, as well as many other regulatory agencies and some departments of government, had never employed any black attorneys, or black professionals for that matter. Thus, with my appointment as an attorney with the Federal Power Commission, I was a direct beneficiary of the government's commitment and was provided a chance to reap privileges and benefits previously reserved for white Americans. I remain

2. Editorial, *TOPEKA CAP.-J.*, May 17, 1989, at 4A.

grateful to all those who helped change America to make that opportunity possible. I am also grateful to Washburn, where I received the preparation that was so vital for the measure of success I have known.

Unfortunately, any semblance of a second Reconstruction soon began to fade. The government, including the Supreme Court, began to shift away from the promise of *Brown* and the lofty goal of full equality. By the 1980s, the government appeared to be in full retreat. The executive branch sought to overrule a Supreme Court decision denying tax exemptions to schools that discriminated on the basis of race. There was evidence that even the Justice Department itself moved to undermine civil rights laws. The Secretary of Education at the time stated, "The Justice Department was determined to weaken civil rights enforcement."³

Any failure to vigorously enforce laws finally assuring racial equality signaled a return to the traditional way of applying laws that effectively restricted the rights and privileges of black citizens: a perpetuation of the unreasonable notion that application of equal standards to persons in unequal positions somehow yields equal justice.

During this period, some forty years after my nonvisit to Williamsburg, Virginia, I returned to attend a judicial conference. Of course, I could now be served in the finest restaurants and shops. Reflecting on the vast changes in America and my own life, I realized, however, some things had remained the same. Just as I was the lone black sailor in boot camp and the only black attorney at the Federal Power Commission, I was the only black judge attending the conference in Williamsburg.

The distance and lack of understanding between black and white Americans prompted me at this point to begin writing *A Certain Blindness*.⁴ The title was taken from a lecture by William James entitled *A Certain Blindness in Human Beings*.⁵ Professor James spoke of the inability of some persons to consider the feelings, values, and worthiness of others. For my purposes, I showed that most Americans of various backgrounds have consistently failed to see African-Americans as they see themselves, but have been seen as somehow less worthy and not fully entitled to the promise of America.

The legal profession, of course, is not responsible for the basic injustice in our society. But we must have a social conscience in wielding the exclusive power we have over the lives of others. And, we are charged with the specific responsibility to promptly and effec-

3. *Exclusive Interview with Terrel Bell*, USA TODAY, Oct. 17, 1987.

4. PAUL L. BRADY, *A CERTAIN BLINDNESS: A BLACK FAMILY'S QUEST FOR THE PROMISE OF AMERICA* (1990).

5. A written copy of this lecture can be found at WILLIAM JAMES, *SELECTED PAPERS ON PHILOSOPHY 1* (1917).

tively implement the principle of equal justice under the law. Far too often over these past fifty years, our profession has stood aside from this responsibility and the rule of law has suffered.

In 1956, the year I finished law school, a law suit was filed in Baton Rouge, Louisiana, on the simple plea of black children to “enroll, enter, attend classes and receive instruction in public schools on a non-segregated and non-discriminatory basis.”⁶ A final decree in that case was entered last year.⁷

I urge you, Class of 2004, to take your professional oaths with the utmost seriousness and as officers of the court, to act courageously to advance the law and the cause of justice. In the words of Justice Cardozo: “not merely the justice that one receives when his rights are determined by the law as it is; what we are seeking is the justice to which the law in its making should conform.”⁸

You are exceptional people who have extraordinary talents and abilities. Use your education and talents to have an exceedingly meaningful life in the law, not only to realize your personal ambitions, but also to benefit others and contribute to a more fair and just society.

Washburn, as it celebrates 100 years of excellence in legal education, has done all it can to make you good lawyers, good professionals, and the type we can all be proud of. The rest is up to you. Thank you.

6. The original case was filed on February 29, 1956. *Davis v. East Baton Rouge Parish Sch. Bd.*, C.A. No. 1662 (M.D. La. 1956).

7. The parties reached a final settlement agreement on June 18, 2003. *Davis v. East Baton Rouge Parish Sch. Bd.*, C.A. No. 56-1662-D-M3 (M.D. La. June 18, 2003).

8. BENJAMIN N. CARDOZO, *THE GROWTH OF THE LAW* 87 (1924).