

An Actor's Tribute to Thurgood Marshall

Good evening. You all look very familiar and maybe I do too. It's nice to be among so many friends.

There's no such thing as omniscience and eternity for legal scholars and court justices, despite the fact that I fall into both categories, and I understand that President Barack Obama keeps a portrait of me in his office, or perhaps he kept one when he was the junior Senator from Illinois. Is it a flattering portrait? Should a public figure be flattered? Can a portrait comment on the viewer?

Having retired from the bench in 1991, I see to my amazement that Justice Clarence Thomas now occupies the so-called Thurgood Marshall seat on the Supreme Court. This entire evening could turn into a rant about that fact but I promise not to indulge myself. You know, ladies and gentlemen, I am thrilled beyond words that an African American finally – *finally* - was elected to occupy the White House but I am stunned about my successor to the Supreme Court. That is to say I understand the pragmatic politics and incredible narrative of Barack Obama rise to our nation's highest elected office; however I am thunderstruck by the arrogant, self-hating, paradoxical politics of Clarence Thomas. Without exaggeration, Thomas is ultraconservative and benefited immeasurably by affirmative action. In 1993 I benefited by affirmative action and went to Heaven – through the back door.

If you think that quotation is borrowed from Mark Twain, you're dead wrong.

Let's all be honest tonight. I was a smoker and I enjoyed liquor with colleagues. I told bawdy jokes. I loved teasing my friends and my family loved teasing me. I did not mind staying up very late at night. In fact, I was a night owl. I learned as much in the streets of America as I did in classrooms at law school. I never shied away from a moral fight. Sometimes I showed great flashes of anger, my friends. ***I ain't no saint, and I don't go no halo.*** You know what I'm saying?

(Enjoying laughing at his private joke)

And I did call Elena Kagan – who had clerked for me – ***shorty***. She's got quite a mouth to match her brain. Let me tell you . . .

Okay, so I was born in Baltimore July 2, 1908, the great-grandson of a slave. My birth name was Thoroughgood, but I compressed it to Thurgood in second grade because I couldn't stand misspelling it. My father, William Marshall was a railroad porter and he pushed me to love the Constitution of the United States. Ironically, I was once punished in grade school for misbehaving and had to write copies of the Constitution on the blackboard. The Constitution entered my bloodstream.

Of course, my lovely wife Cecilia and our two dear sons Thurgood Marshall, Jr. and John Marshall know everything I say tonight is quite true and I thank you for not judging me too harshly.

I graduated from Baltimore's Frederick Douglass High School in 1925 and Pennsylvania's Lincoln University in 1930. I wanted to apply to my hometown law school University of Maryland School of Law, but the dean told me the color of my skin would block my admission. When I was a civil rights litigator, I sued the goddamn school for this policy and won. I ended up studying at Howard University School of Law.

Among my many fellow classmates at Lincoln was the renowned poet, Langston Hughes:

***Hold fast to dreams,
for if dreams die,
life is a broken winged bird
that cannot fly.***

One of the greatest people I've ever known. He knew everything. He'd been around the world twice before he was 21 on tramp steamers. He was self studied. Langston was a great guy. I liked him a lot. ***Hell, He never wrote about me.*** He just loved poetry. And to tell the truth, I don' care about no poetry.

At Howard University Law School in 1930 I came under the tutelage of the Harvard-educated dean of the law school, Charles Hamilton Houston. Charlie had to be the most brilliant star in the sky. He went to Amherst, Harvard Law School and he did an extra year in order to get an SJD degree and he came back to Washington to be vice dean of the Howard Law School. Charlie ran the school along with the secretary, Ollie Cooper who was also black. It was a night school and really ***low caliber***. In less than five years, Charlie brought it up to full accreditation. That's kickass incredible.

There's the famous story that's told to all Harvard students and he told it to us 'day one' in class,
``Each one of you look to the man on your right and then look to the man on your left, and realize that two of you won't be here next year."

The other thing Charlie would say is, ``I get no damn joy out of punching out and failing an average student, but the greatest joy to me is to flunk a Phi Beta Kappa. I love to flunk the hot shots out." And so he really made you study your ass off.

Charlie taught us with emphasis on the Constitution. And you had to be twice as good as the best white lawyer because you wouldn't get a friggin' break once the game begins. The secret was hard work and digging out all the facts and the greatest dimension of law.

Harvard was training people to join big Wall Street firms and cashing in big time. Howard was teaching lawyers to go out into the streets and into the courts. Charlie's phrase was "Social Engineer". To be a part of the community. And have the ***moral*** lawyer to take over the leadership in the community. Then you had people like Clarence Darrow who told us the importance of sociology and other studies rather than law - which he considered to be unimportant. As witness one time, he was trying a case in North Carolina. A Negro beating

up a white man. And his whole argument to the jury was (**he had never touched the facts of the case**), that this was a waste of time for him to argue this to an all white Southern prejudiced jury; that no way in the world they could give this Negro a chance. And he argued and guilt-tripped them for three hours; and the jury went out and came back and proved to him that they weren't prejudiced. And they turned the man loose.

But I emphasize that our studies and work were aimed at the community. The other thing that Charlie beat into our heads "You know when a doctor makes a mistake, he buries his mistake. When a lawyer makes a mistake, he makes it in front of God and everybody else."

When you get in the courtroom you can't say please Mr. Court have mercy on me because I am a Negro

There are people that tell us today, and there are movements that tell us, tell black folk, "Take it easy man. You made it. No more to worry about. Everything is easy." Again, I remind you about what Charlie Houston said, "You have got to be better, young man. You better move better." Charlie didn't disappear. We had a shared destiny.

I couldn't afford to live in Washington so I had to commute from Baltimore, which meant every day walking in uncomfortable shoes to the station and walking another mile or so to the law school, which wasn't a picnic.

After Howard, I opened a small practice in Baltimore. From outside the office looked like a joke. I took any kind of cases. And the only thing you get at that age is **nothing**. When I graduated, Dean Pound of Harvard offered me a scholarship at Harvard to get an SJD in constitutional law. And the scholarship would pay living family expenses, and I turned it down because I wanted to get in on the fight. So to show you how **smart** I was, in my first year I lost \$3,500.

In 1936, I moved to New York to work at the NAACP. This heroic civil rights group had a full-time legal office, which was run by my old dean, Charlie. I encountered many outstanding figures. At one time (W.E.B.) Du Bois' office was right next to mine. His room was fenced in with books Du Bois was a great guy but he had a flat rate for everything. Use his name, be present, it'll cost you big money. Be on the platform, it'll cost you **more** money. Write a speech, it'll cost a whole hell of a lot per word. Believe me, he made **good money**.

One of my NAACP duties was to travel to courtrooms in the Deep South to represent black clients who were often the victims of racist police and judges. But this work also brought me face-to-face with rabid, bitter segregationists. How else do you describe the face of evil?

In the late '30s, changing trains I decided that if I got hungry enough I'd go to a white restaurant and put my civil rights in my pocket and go to the back door of the kitchen and see if I could buy a sandwich. And while I was kibitzing myself to do that, this ugly white guy came up beside me in plain clothes, with a great big pistol on his hip, and said, "Nigger

boy, what the hell are you doing here?" And I said well I'm waiting. And he said, "What did you say?" I said, "Sir, I'm waiting for the train to Louisiana."

And he said, "Well, there's only one last train at four o'clock and you'd better be on it because the sun is never going down on a live nigger in this town."

I wasn't hungry anymore because it dawned on me he could just blow my damn head off and he wouldn't even have to go to court. You don't forget incidents like that.

After one case in Tennessee, I was nearly lynched for my work, defending Lloyd Kennedy and William Pillow after a horrible race riot in Columbia, Tennessee and they were accused of shooting a cop.

That's when the police tried to kill me. They followed us out of town. I was driving the car and three or four cars pulled us over, police and state troopers, and said they had a search warrant. It was a dry county and they were going to search the car.

They said they looked in there and they couldn't find any liquor in the car so one of them said, do you permit us to search your person? We all said, "Hell, no, we don't give you no permission to search us."

We drove off and they pulled us over again. It was NAACP attorney Alexander Looby's car. I said, "Looby you'd better drive because you've got a Tennessee license, I don't." So Looby was driving and they pulled us over and said to Looby, "You weren't driving this car were you?" Looby said, "I'm not going to answer that."

This cop came back and said to me, "weren't you driving?" And wanted to see my license. Then he said, "You're under arrest."

"I said for what?"

He said, 'drunken driving'.

I said "drunken driving? I haven't had a drink in a couple of days. *You're drunk.*"

So they put me in a police car and went back to Columbia. We didn't know until afterwards that's where the goddamn mob was waiting. Well Looby wouldn't leave. He kept right on the tail of the police car .

Got back to town. They parked on this busy street, pointed up to the second floor, judges and the police, said "see that officer we'll be over there in a minute".

I said, "I'll go where you go. You ain't gonna shoot me in the back, we'll go together." So we went together to the justice of the peace who was a very short man . . .

(Gesture – hand to hip to show a dwarf's height)

. . . maybe 60-something with white hair. He said "what's up?" And they said we got this Nigger for drunk driving. And he says to me, "boy, you wanna take my test? I never had a drink in my life and I can smell a drink a mile off. **You want to take a chance?**"

I said, "Well sure I'll take a chance."

He said blow your breath on me. I blew it so hard he almost rocked over.

"That man hasn't had a drink in 24 hours", he said, "What the fuck are you talking about?"

I turned around to look and they were gone.

I ran down to Mink's Slide and they said, "You'd better get out of here because they're going to come down and kill us." So I went down to Looby's car and, with another car in tow, we went right straight down the road. And sure enough the crazy mob was charging. And incidentally, when they found out I wasn't the second car they stopped, they beat that driver bad enough that he was in the hospital for a week.

Afterwards I went to Nashville. I called the Attorney General Tom Clark to tell him about it. Tom said, "Well were you drunk?" I said "no, but five minutes after I finish talking to you . . . ***I'll catch up.***"

There were so many cases where black defendants appealed to my office for help that I had to set a very high standard. One case in Florida during the 1950s nailed my attention.

Walter Lee Irvin in upper Florida who was charged with raping a woman. Sheriff Willis McCall did everything including shooting Irvin. When I went down for the trial, a white man met me in the hallway and it was real tense, state troopers and everything. And he showed me his credentials from the governor's staff, he was the governor's adviser, he said, I'm here at the wish of the governor and everything I say is blessed by the governor. And I said, who, Willis McCall?

He said the judge and the governor have been on the telephone and if Irvin will plead guilty, Florida will give him a life sentence and the judge will be sure he won't get the death penalty. I said, well, I can't decide that, Irvin will have to decide it. So I went to Irvin and I said,

"Look, your mother and uncle are here. The judge sure as hell will give you the death penalty, so it's up to you."

So he talked to his mother and uncle and came back to say,

"Well I guess this is the only way out."

And I said, "It's up to you."

"Well, what do I have to do?"

"Nothing, just stand up and when they say are you guilty or not guilty, you say: ***I'm guilty.***"

He said, "What does that mean?"

"That you raped that woman."

He said, "That I raped that whore? Jesus, I didn't and I'm not going to say so!"

Now I know damn well that man was innocent.

So, to make a long story short, while court was going on, I looked at the whole jury face to face - all white, of course - and everyone had a Shriner pin on him. Well, Judge Futch . . .

- that's right Judge Futch F.. U..T..C..H -

. . . and I had been off the record discussing Masonic business with my 33rd degree ring and Futch only had a 32nd degree ring, I told him he was in the wrong bunch. And I went up while the jury was out and I said, Judge Futch, I'm quite serious about this, I'm going to

make 'em lose. Every one of those jurors has got a Shriners' pin, did you notice that? He said, sure, I noticed it. And I said, did you also notice that the state's attorney - three different times gave the Masonic distress signal to that jury? He said, yeah, as a matter of fact, it was four. I said, well, I'm going to make an objection. He said, "I wouldn't do it" And I said, "Why the hell not?" He said, "There's nothing too racial about that, and he does it **ALL** the time whether you're white, black or green. **He gives the distress signal all the time.**"

So a white man was there and he came up and he said, "How long is the jury going to be out?"

And I said, "Damned if I know"

He said, "I can tell."

I said "How?"

He said, "You see that man over there just lit up a cigar? When he's finished that cigar, the jury will come back"

"What the hell you talking about?"

He said, "Those jurors are cigar smokers and they're not going to waste that cigar.

So after they'd decide the case, they're going to finish the cigar before they come in."

He stamped out his cigar. In comes the jury.

We could bring in three verdicts: guilty, not guilty or guilty with mercy.

"Now, when the jury gives its verdict, I don't want a man to move in this room until the sheriff takes the defendant out. What happens if he's found not guilty?"

And the verdict?

Guilty.

Later we got it commuted it to life.

Irvin's mother had me awake all night, every night. She had the most impressive face I've ever seen, high cheekbones and these piercing eyes. She told me not once, but four times, "**Don't you let my son die.**"

I'm going to be stuck with that for life.

Without a doubt, my role in Brown v. Board of Education is the capstone of my life and I had the momentum of Charlie Houston and other stirring leaders as my spiritual brethren. Believe me, I was not flying solo. 1954 changed the course of American society irrevocably. And I know many people wanted to kill me for the Brown victory. Jim Crow laws were vanquished. Almost twenty years earlier at the state level, we were able to force the University Of Maryland Law School to admit Donald Murray despite his race in Pearson v. Murray. Donald Murray's triumph helped paved the legal arguments subsequently made when I appeared before the Supreme Court. If I may, here was the highlight of my closing argument which finally demolished segregation in America.

May it please the Court . . .

The children in these cases are guaranteed by the states some twelve years of education in varying degrees, and this idea, if I understand it, to leave it to the states until they work it

out—and I think that is a most ingenious argument—you leave it to the states, they say; and then they say that the states haven't done anything about it in a hundred years, so for that reason this Court doesn't touch it.

The argument of judicial restraint has no application in this case. There is a relationship between Federal and State, but there is no corollary or relationship as to the Fourteenth Amendment.

The duty of following the Fourteenth Amendment is placed upon the states. The duty of enforcing the Fourteenth Amendment is placed upon this Court. We hereby charge them with making the same argument that was made before the Civil War, the same argument that was during the period between ratification of the Fourteenth Amendment and the ***Plessy v. Ferguson*** case.

It is our position that whether or not you base this case solely on the intent of Congress or whether you base it on the logical extension of the doctrine as set forth in the ***McLaurin*** case, on either basis the same conclusion is required, which is that this Court makes it clear to all of these states that in administering their governmental functions, at least those that are vital not to the life of the state alone, not to the country alone, but vital to the world in general, that little pet feelings of race, little pet feelings of custom—I got the feeling on hearing the discussion yesterday that when you put a white child in a school with a whole lot of colored children, the child would fall apart or something. Everybody knows that is not true.

Those same kids in Virginia and South Carolina—and I have seen them do it—they play in the streets together, they play on their farms together, they go down the road together, they separate to go to school, they come out of school and play ball together. They have to be separated in school.

There is some magic to it. You can have them voting together, you can have them not restricted because of law in the houses they live in. You can have them going to the same state university and the same college, but if they go to elementary and high school, the world will fall apart. And it is the exact same argument that has been made to this Court over and over again, and we submit that when they charge us with making a legislative argument, it is in truth they who are making the legislative argument. They can't take race out of this case. From the day this case was filed until this moment, nobody has in any form or fashion, despite the fact I made it clear in the opening argument that I as relying on it, done anything to distinguish this statute from the Black Codes, which they must admit, because nobody can dispute, say anything anybody wants to say, one way or the other, the Fourteenth Amendment was intended to deprive the states of power to enforce Black Codes or anything else like it.

We charge that they are Black Codes. They obviously are Black Codes if you read them. They haven't denied that they are Black Codes, so if the Court wants to very narrowly decide this case, they can decide it on that point. So whichever way it is done, the only way this Court can decide this case in opposition to our position, is that there must be some reason which gives the state the right to make a classification that they can make in regard to nothing else in regard to Negroes, and we submit the only way to arrive at this decision is to find that for some reason Negroes are inferior to all other human beings.

Nobody will stand in the Court and urge that, and in order to arrive at the decision that they want us to arrive at, there would have to be some recognition of a reason why of all of the multitudinous groups of people in this country you have to single out Negroes and give them this separate treatment. It can't be because of slavery in the past, because there are very few groups in this country that haven't had slavery some place back in the history of their groups. It can't be color because there are Negroes as white as the drifted snow, with blue eyes, and they are just as segregated as the colored man. The only thing can be an inherent determination that the people who were formerly in slavery, regardless of anything else, shall be kept as near that stage as is possible. And now is the time, we submit, that this Court should make it clear that that is not what our Constitution stands for.

Enforcing the unanimous decision posed quite an obstacle for the country and for the Eisenhower Administration. But there was no turning back since American history had caught up finally with the very notion of civic rights for children, for adults, for Negroes and for all creeds.

I could mention a few choice things tonight about President John Kennedy and the Kennedy dynasty, but certainly it was another Democratic President who had figured more powerfully into my career after the Brown decision.

President Lyndon Johnson – a man as huge and opinionated as Texas itself - changed my life in ways comparable to Dean Charlie Houston. I knew Lyndon Johnson when he was a congressman, and I became interested in Johnson when he ran for the Senate early 1940s. I was in Texas working on the primary cases, and all of our NAACP Texas people enthusiastically behind him.

In the 1941 runoff, the labor support dwindled but black support stuck with Johnson. Yet when he became a senator, he was not among the liberals. Still, the NAACP was favorably inclined toward Mr. Johnson in those days

Well, they knew him. The black folks down there, they know each other pretty well. They were a pretty hard bunch. Walter White, the head of the NAACP, did meet with him and said that Johnson was all right.

Then after 1948—after Johnson became a senator--Well, Walter White, who handled the legislative matters in Congress, got very angry with Lyndon. Walter White chalked it up to his admiration for Sam Rayburn. He thought Rayburn was calling the turn. Now whether that's true or not I don't know.

Roy Wilkins took over then. Roy felt that Lyndon Johnson was the type of man in the Senate who could get things done. And that was right.

The general opinion among civil rights leaders of the '57 bill, hell, the bill wasn't doing any good. It was just barely progress because it had been a friggin' hundred years or so since we'd had one. The smallest slice was good rather than the loaf of bread. But it was understandable because it was a strictly political move. We'd been fighting since 1909 for something.

We fought to the bitter end. Yet as you look back, it was great progress to get them to move at all. Whether we could have gotten more or not- I don't know. Nobody will know except--well, Lyndon Johnson. You see, as I looked at him as a senator and leader, they always said he was a great compromiser, but I've always thought that he had the damn compromise in his pocket. He just waited for the right time to take it out.

Johnson had already figured out what was going to happen. He always won. Well, that all changed when he became President. When Johnson ended up on the Presidential ticket led by Kennedy, it was great surprise! Everyone knew Kennedy and Johnson were odd bedfellows. And some of civil rights leaders were pissed. I was not. I've a funny feeling of giving the people a chance. I told folks I thought there was no problem.

Because in my book Texas is not South; it's Southwest, and his voting record wasn't that bad."

But other people in NAACP hit the ceiling.

Mr. Roy Wilkins? He bounced off the ceiling. But Roy endorsed the ticket.

At that stage they were all talking to the Kennedys. Once I talked to Bobby Kennedy--that's all--just once. I had a very unsatisfactory conference with Bobby about the civil rights movement. Shortly after the Kennedys took over--about the first of the year, I guess. Bobby spent all this time telling us what we should do. But I told him that so far as I was concerned we had been in the civil rights business since 1909, and he'd been in the President business a year. Bobby was pissed. He got over it.

You see, the intensity of the civil rights movement caught the Kennedy team by surprise. I had a conference with President Kennedy about three months before he announced his candidacy, about just what was cooking. I didn't pull any punches with Jack Kennedy. We spent about two hours together. I don't think the President realized the urgency.

Apparently, the action in the South--Dr. King's activities and others--pushed the Kennedy Administration. Then in that first year President Kennedy appointed me to the Circuit Judgeship.

And Congress held my appointment up for ***eleven months***. Incredible.

I didn't see Lyndon Johnson in those days until he called about the Solicitor Generalship in '65

Johnson called around July and I was up in the judges' dining room. My bailiff tapped me on the shoulder.

"The President wants to speak to you. He's on the phone!"

"The President of what?"

"The President of the United States!"

We chatted for three minutes, and he said, "I want you to be my Solicitor General."

"Well, Mr. President, I'll have to think this over."

He said, "Well, go ahead, but don't tell a goddamn living soul."

"I assume that means nobody but my wife?"

"Yes, nobody. – **And take all the time you want.**"

I talked to my wife because this was a sweet lifetime job to trade in for a job at the beckoning of one big Texan.

The next day the Johnson was on the phone.

"Well, Mr. President, you said I had all the time I needed."

He said, "**Hell, You had it.**"

"Okay."

I went down the next morning, and Johnson said, "You don't have to tell me a damn thing. I can see everything including what you've got in your bank account. I'm still asking you to make the goddamn sacrifice."

I went with the offer,

Why me? Of all people? I was clueless.

The President said he wanted Thurgood Marshall because he thought I could handle it. He wanted young people of both races inside the Supreme Court Room, and somebody will say, "Who's that Negro up there with that swallow tail coat on arguing," and somebody will respond, "He's the damn Solicitor General of the United States and the country's going to hell in a hand basket."

President Johnson reiterated, "Thurgood, this has nothing to do with any Supreme Court appointment. I want that distinctly understood. There's no *quid pro quo* here at all. You do your damn job. If you don't do it, you go out on your damn ass."

Johnson intended to be the Twentieth Century's Abraham Lincoln. If he had had four more years, he just about would have done it. He rebelled at the discrimination against women. He said he wanted to leave the presidency in a position that there was no government job with a blasted race tag on it.

Hell, the next President to come from Texas was George W. Bush. And that Texas President kept reading "My Pet Goat" to children of 9/11.

Everybody fighting in the civil rights movement has always been inclined to take a breather. We found out you can't take a breather. If you do, that other guy will run you over. Let me tell you about my appointment to the Supreme Court.

I was sitting in my office, Ramsey Clark called my secretary and said, "Is the Judge in? Tell him I'm on my way." He was in that same hall on the fifth floor. Clark shut the door and said,

"The boss wants to see you."

"About what?"

"I don't know. And we're going to sneak you into the White House unseen"

I went up there and waited. Marvin Watson, on staff, stepped out and said, "Come on."

I went into the Oval Office and chatted with the President.

"You know something, Thurgood, I'm going to put you on the Supreme Court."

I was quiet because I thought he was going to say something historic. He said nothing.

Christ, I was going to be the first black man on the court.

"Well, thank you, sir."

So we went to the press immediately and he announced it. We came back in the Oval Office.

"Now, Mr. President, if it's all right with you I'd like to call my wife. It would be better than for her to hear it on the radio."

"You mean you haven't called Cissy yet?"

"No, how could I? I've been talking to you non-stop."

So we got her on the phone and I told her to sit down.

Cissy said, "Well, I'm standing." I said, "Well, sit down."

She sat down and the President said, "Cissy--Lyndon Johnson."

She said, "Yes, Mr. President."

"I've just put your husband on the Supreme Court."

She said, "I'm sure glad I'm sitting down."

President Johnson asked me what he thought a Supreme Court Justice ought to be.

This had to be a damn trick question, but I didn't care one bit.

"Yes, his own man, and nothing less." I told him that.

He said, "Like what?"

I said, "Just like the steel decision. When President Truman's, closest friend, Justice Tom C. Clark, not only voted against him but wrote the opinion against him."

Johnson said, "You mean you'd do that **to me?**"

I said, "**Exactly.**"

He said, "Well, that's the kind of fool I'm looking for."

The President said he would get my nomination through Congress quicker than before. I

remember the day that it cleared the Senate.

He phoned saying, "Well, you made it."

I said, "Yes, sir. Thank you again,"

He said, "You know, you sure got me into a lot of trouble."

I said, "Who got who into it? You did it, I didn't do it. I didn't do it."

He just laughed his head off.

But to this day I still don't see how the hell he got it through Congress.

Lyndon Johnson, with respect to minorities, civil rights, society's well being, the inherent dignity of the individual human being, I don't believe there has ever been a President equal to Lyndon Johnson--bar none! And I know my saying such rattles a lot of folks on the left.

Lincoln, as great as he was, had a lot of politics involved with what he was doing. That's the difference when you talk to Johnson man-to-man. Johnson's talking from his heart. When he does things, it doesn't seem so, but when you actually talked to him, the basic instincts to do good came out. He was just frustrated at times. And the voluminous shadow and stain of the Vietnam War clouded everything under his fine name.

The court I joined will always be called "Warren Court." Earl Warren was one of the greatest people who ever lived, and I think history will record that he was probably the greatest Chief Justice. He had the opportunity and grasped it. Warren's power of persuasion was great. If you look at Chief Justice Warren's book, he states, "Those who won our independence believed that the greatest menace to freedom is an inert people. That, public discussion is a political duty. That this should be a fundamental principle of the American government. They eschewed silence coerced by law."

And then again Earl Warren states,

"No., the democratic way of life is not easy. It conveys great privileges with constant vigilance needed to preserve them. This vigilance must be maintained by those responsible for the government. And in our country those responsible are, we the people, no one else. Responsible citizenship is therefore the ... anchor of our republic. With it we can withstand the storm. Without it, we are helplessly at sea."

Certainly, Warren had a strong intellectual force behind him. And he dug deep. He took home that briefcase. I think within each epoch, the Chief Justice does have great effect on the Court. That goes all the way back to John Marshall in the early 1800s. And I share no known genealogy with Mr. John Marshall.

I have to laugh when in the 1995, Chief Justice William Rehnquist unveiled a judicial gown of his own design, bearing a pair of gold stripes on each sleeve. His inspiration? The robes worn by the Lord Chancellor in a production of Gilbert & Sullivan's operetta "Iolanthe." You know, there has to be a fine line when court starts turning into big brassy **musical** theatre.

Anyway, I greatly miss Chief Justice Earl Warren, but I'm delighted that one of the six colleges on this campus is named in his honor.

Often when I was invited to give keynote addresses I began with a few anecdotes which I guess I'll repeat this evening. I usually begin a keynote with this disclaimer:

I do not have a written speech.

I've gotten away from written speeches since I heard about that legislator who had a speech committee in his office...and they would write up these speeches for him. He

wouldn't even look at them before he delivered them. He just read them off. And this day he said, "Look! Next Monday night I am speaking for Senator Johnson; and I want a speech, twenty minutes long on American energy." And they said complained about the turnaround time. And he said, "Just go do it, damn you." And so they did. They gave him the speech and he went there. When he was called on to speak, he opened up his speech, and on the first page he went on telling anecdotes like this. Except mine is true. Then he went on talking in stupid general terms about the energy problem. Then he said, 'I have an airtight program for taking care of the entire energy program. Set up in five phases, all five of which, I shall set forth before you tonight.' And he turned over the page and to his utter surprise, he saw "Now, you asshole, you are on your own."

I am not too much in the line of podium notes either. But I've got a cute Las Vegas story I love to tell.

This guy went out from California to Las Vegas and at a very low rent casino he lost his money. All of it including his fare home. So he was commiserating with himself; and he had to go to the toilet. And it was a pay toilet.

He didn't have a quarter. So he was in pretty bad shape. Just then a gentleman came by and he told the gentleman his problem ... The guy said, "I will give you a quarter." He took the quarter, stepped forward, and just as he was about to put the quarter in the slot to open the door, the door had been left open for somebody. So he put the quarter in his pocket. He went on in; and when he finished, he went upstairs. A quarter wasn't going to get him back to Los Angeles. So he put the quarter in the slot machine. And it wouldn't be any story if he didn't hit the damn jackpot. Then he hit the bigger jackpot, and he went to the crap table; he went to roulette. He ended up with about fifteen thousand. I kid you not.

He went back to L.A. to invest in the right stock. And in pretty short order, about ten years, he became the second wealthiest man in the state. And on television, they asked him about it; and he said he would like to tell his story. And he told the story.

"I am so indebted to that benefactor of mine. That man who made all of this possible. And if he comes forth and proves it; that he was the man. I will give him half of my wealth in cash."

So a man came forth.... They had all the elaborate ... private detective investigation; and sure enough, "That was the man." ...The guy said, "Well look. Are you sure you are the one I am looking for?" He said, "Why certainly."

"Who the hell are you?"

"I'm the guy that gave you that quarter."

"Shit, I'm not looking for him. I am looking for the man who left the bathroom door opened."

In order to find out where we stand, and to be in a room like this, and on a campus, I force myself to go all the way back . . . to Baltimore and Washington.

And you know, I used to be blown away by people who would say that, "The poorest Negro kid in the South was better off than the kid in South Africa." Hell! We are not in South Africa. We are here. "You ought to go around the country and show yourself to black folk;

and give them inspiration." "For what? These black kids are not fools. They know to tell them there is a possibility that someday you'll have a chance to be the o-n-l-y Negro on the Supreme Court. Or perhaps occupy the White House. And maybe President Obama said in one interview or two that the country is now post-racial. What the hell does that exactly mean?

There are three women on the Supreme Court today. In my day there were no women.

Is America is post-racial?

What do you think?

Maybe it's a slogan for a bumper sticker.

But that's not enough because we have got to look to the future.

They are still laying traps for people of color.

I've said this in 1990 and I'll say now - posthumously.

Believe it or not, **somebody just found out** the Klan is still around.

I could have told them that. The Ku Klux Klan never died.

They just stopped wearing the sheets, because the sheets cost too much.

We have them in every phase of American life. And as we dedicate this courtroom, as we launch Wiley on his road, we just have to continue that basic theory of practice; and not just theory. With these clinics that have been set up, you note we can give the poor people in the ghettos for peanuts better legal protection than the millionaires get. If, we could just get them to bring their legal problems to the lawyer, before they sign them. That's how to stay out of trouble. And that can be done with good law clinics for the people without privilege.

Do you understand?

Be aware of that myth, which everything is going to be all right. Don't give in. I add that, because it seems to me, that what we need to do today is to refocus. Back in the 30's and 40's, we could go no place but to court. We knew then, the court was not the final solution. Many of us knew the final solution would have to be politics, if for no other reason, politics is cheaper than lawsuits. So now we have both. We have our legal arm, and we have our political arm. Got to use them both. And don't listen to this crap that it can be solved by either or - that it has already been solved. Take it from me, it has not been solved.

It is beyond question...

...Benjamin Franklin had it in mind when he said;

"A republic if you can keep it."

To me, that means much. It's not a republic if we keep it. With me, "It's a democracy, if we can keep it. And in order to keep it, you can't stand still.

When Ronald Reagan won the White House in 1980, the mood in America and on the high Court turned conservative. Reagan, in my mind, was always a B movie actor first. But he touched a big chord in his eight years. Nixon-appointed Chief Justice Warren Burger

stepped up his public statements supporting the rights of crime victims. With this new "get-tough-on-crime" motif, I felt that the limited protection of criminal rights would be lost. Breaking ranks with my Brethren, I spoke out in this highly publicized 1981 speech before the Second Circuit Judicial Conference.

"The Sword and The Robe."

The task of interpretation is the cornerstone of the judicial process. As we undertake it, we must strive for neutrality. None of us is perfect, and I recognize that neutrality is more ideal than real. Each of us brings along to the judicial role certain preconceived biases. It is, I suppose, impossible to make a decision totally uninfluenced by them. But we as judges must try to do so to the extent we possibly can.

This ideal of neutrality is particularly hard to maintain in times such as these, when our society faces major unsolved problems. Indeed, we judges are frequently criticized these days for our neutrality. For example, it is argued by some members of our society that the judiciary has not taken an active enough role in combating crime. It is urged that we as judges, should take sides that we should stand shoulder to shoulder with the police and prosecutors. Convictions should be easier, appellate review more rapid and resort to habeas corpus – what the founders of this republic called the Great Writ – drastically curtailed. All of this frightens me, because when I was in law school, I was taught not that judges were there to see the defendant convicted and punished in every case but that they were there to see justice done in every case. I was raised in the days when the prevailing maxim was: "It is better that a thousand guilty people go free than that one innocent person suffer unjustly."

Well, that's just what I was taught, and maybe I was taught wrong. But the suggestion that we as judges take sides frightens me for another, more fundamental reason as well. As I have said, judges are required in our system to be as neutral as they possibly can, to stand above the political questions in which the other branches of government are necessarily entangled. The Constitution established a legislative branch to make the laws and an executive branch to enforce them. Both branches are elected and are designed to respond to ever-changing public concern, and problems.

The framers of the Constitution recognized that responsiveness to the will of the majority may, if unchecked, become a tyranny of the majority. They therefore created a third branch – the judiciary – to check the actions of the legislature and the executive. In order to fulfill this function, the judiciary was intentionally isolated from the political process and purposely spared the task of dealing with changing public concerns and problems. Article III judges are guaranteed life tenure. Similarly, their compensation cannot be decreased during their term in office – a provision, as we have recently seen, that certainly has its tangible benefits. Finally, the constitutional task we are assigned as judges is a very narrow one. We cannot make the laws, and it is not our duty to see that they are enforced. We merely interpret them through the painstaking process of adjudicating actual "cases or controversies" that come before us.

We have seen what happens when the courts have permitted themselves to be moved by prevailing political pressures and have deferred to the mob rather than interpret the Constitution. Dred Scott, Plessy, Korematsu, and the trial proceedings in Moore v. Dempsey, come readily to mind as unfortunate examples. They are decisions of which the entire judicial community, even after all these years, should be ashamed. There have also been times when the courts have stood proudly as a bulwark against what was politically expedient but also unconstitutional. One need only recall the school desegregation cases to understand why this ability to stand above the fray is so important.

We must never forget that the only real source of power that we as judges can tap is the respect of the people. We will command that respect only as long as we strive for neutrality. If we are perceived as campaigning for particular policies, as joining with other branches of government in resolving questions not committed to us by the Constitution, we may gain some public acclaim in the short run. In the long run, however, we will cease to be perceived as neutral arbiters, and we will lose that public respect so vital to our function.

I do not suggest that we as judges should not be concerned about the problem of crime. Every thinking American is worried about it. And just about all of us have lurking somewhere in the back of our minds what we consider the ideal solution.

But when we accepted the judicial mantle, we yielded our right to advocate publicly our favored solutions for society's problems. The tools for solving these problems are in the hands of the other branches of government because that is where the Constitution has placed them. That is also where we should leave them. I therefore urge that you politely disregard any suggestion that you give up the robe for the sword.

So this college at UCSD, Thurgood Marshall College, has often been in the forefront. The college has been the bellwether. When it was birthed as Third College and it was a very rocky birth. When it was named Marshall College in '93 the road was not smooth and simple. The college has been the fulcrum of pressure and **Welcome the pressure, I say.**

By my own count, I have just spoken under ten thousand words. I feel like I know you better. I am tired now, but I feel gratification since so many young people are here tonight. Many of you are Thurgood Marshall College students and our connection tonight is not arbitrary. To you I extend a very warm embrace. Thurgood Marshall College is not a law school although some people from afar think it is. Because it sounds like a damn law school. Thurgood Marshall College is not a black college although some people from afar think it is. Thurgood Marshall College is not some ultra-radical school, although some people brand it so. But Thurgood Marshall College is an activist school twinning the notion of scholar and citizen. This notion I also heartily embrace. Happy 40th Anniversary.

Thank you kindly. I bid you one and all a good night.