



Baccalaureate Address
June 2021

On Justice

The entrance to the Mercer County Criminal Courthouse in Trenton, NJ is soberly framed in black granite with large columns supporting a steel canopy that vaguely conjures the scales of justice, presumably to convey a message of permanence and unflinching adherence to the rule of law.

A couple of years ago, I received a green Juror Summons postcard that instructed me to report to the courthouse for jury duty in late June. I dutifully showed up with 100 or so other potential jurors, to be questioned and cross-examined by the judge, prosecutor, and defense attorney to see who would be among the twelve people empaneled to actually serve. Our Sixth and Seventh Amendments at work: the right to a speedy and public trial by a jury of our peers.

After a 2-hour wait, things suddenly picked up, and we were corralled in smaller groups to meet with a judge to explain why we were there and how the process worked.

The upbeat, lively tone of our judge seemed out of place in the grim surroundings, but when he emphasized that serving as an impartial juror “to hear the evidence, determine the facts, and render a verdict” was not only an honor, but a duty, I felt an unexpected tinge of civic pride. I found myself thinking that, even in this small, hard luck city, idealistic individuals in our criminal justice system were working to uphold, or perhaps cling to, some of our founding constitutional ideals.

When I reported to courtroom 3B for jury selection, we learned that the case involved sex trafficking of a 14 year-old minor. Whispered predictions from court personnel suggested that this one was complicated, and could play out over much of the summer – and I felt my civic pride deflate slightly at the prospect of spending the better part of a summer in a hot courtroom listening to a decidedly sad and tragic human narrative.

As jury selection began, we were able to hear the interviews and the basis for excluding or accepting potential jurors. At one point, the judge questioned a young man, clearly very eager to serve. The judge asked him if he would believe the testimony of a police officer over that of an ordinary citizen. “Absolutely, Your Honor, you bet I would!” thinking the answer obvious. The judge immediately excused him.

The empaneling process was slow and careful, and as I was one of the last in line to be interviewed, I imagined that they would have their 12 long before they got to me. But as folks were excused for various reasons, the odds changed. Late in the afternoon with only two of us

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left and 11 of the 12 seats filled, I was called to be questioned. None of the disqualifying factors seemed to apply to me, such as a connection to the accused or the plaintiff, or knowing anyone who had been victim of a similar crime, but then the prosecutor picked up on my occupation. “What does a head of school do?” She asked.

I responded, “To be honest, my job consists of tending to the safety and wellbeing of 800 adolescents.” The judge pushed this a little further to say, “Do you think you would have difficulty being impartial?” I answered that I would do my best to be fair, “But if you are asking me how I feel about a child victim of prostitution, no, I am not neutral on that -- my entire career has been spent trying to keep children safe.”

The defense attorney’s eyebrows went up, and she whispered something to the judge, who promptly said, “you are excused and may leave the courtroom.”

As I left, I mused about what I had just experienced. I could not help but be impressed by certain elements – people took their jobs seriously and were clearly focused on civic duty and constitutional rights. Even the emphasis on impartiality – the testimony of an officer of the law, for example, was not supposed to carry more weight than that of an average citizen.

But this was all quite theoretical, more of an academic exercise for me. I of course was a spectator, peering into that world from a rather comfortable perch, with absolutely nothing at stake, not relying on all the pieces to line up neatly and fairly for me. I had briefly experienced **the idea** of justice in our system, not the reality. And while the right to be represented by an attorney and the right to a speedy and public trial by jury are powerful concepts, the reality of how this system actually serves people, as we know, can be quite different.

Those of you who were here for your Second Form year will recall that our summer reading that year was Just Mercy by Bryan Stevenson. His decades of work running the Equal Justice initiative have exposed patterns of dramatic injustice, false imprisonment, and profoundly disproportionate sentencing – and, led to many individuals regaining their rightful freedom, though sometimes after decades of soul-crushing incarceration.

He brings to light stories of almost incomprehensible cruelty in a nation where “cruel and unusual punishment” has been unconstitutional since our founding. We read of individuals like Ian Manuel, tried as an adult at age 13 and imprisoned for life without parole, and who spent 18 years in uninterrupted solitary confinement, writing poetry to hang on to a shred of his humanity.

And then of course there was the story of Anthony Ray Hinton, who spoke so powerfully in School Meeting. Hinton spent 30 years of his life on death row for murders he did not commit before being exonerated and released. The prosecutor at his trial “...said he could tell Hinton was guilty and ‘evil’ solely from his appearance.”¹ Some of you will recall Mr. Hinton telling us,

¹ <https://ejj.org/cases/anthony-ray-hinton/>

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with extraordinary grace, that he refused to spend his remaining years of life consumed by hatred and anger and preferred to devote himself to helping others in similar situations.

These are not individuals peering in from a safe perch – they are victims of almost unfathomable heartlessness and indifference involved in case after case that Stevenson profiles.

I continued to reflect on this profound disconnect between the ideals of our justice system and the actual experience of many Americans, particularly Black Americans, as I listened, not long ago, to a podcast called Serial by Sarah Koenig. In this series of episodes, she exposes the failures of our criminal justice system, not simply by referencing the absurdity of certain cases, but she also captures the pervasive disfunction and the mundane, almost casual randomness of the factors that lead to verdicts and sentencing.

She focuses on Cleveland, a fairly typical, mid-sized, midwestern city, neither wealthy nor grindingly poor, fairly representative of urban environments across the country. And she starts with some of the basics: “In a courthouse where the majority of the defendants is black, out of the 34 felony judges, 32 are white,”² and a number of the elected judges, in almost dynastic fashion, are sons of judges who held the same position in the same county previously.

She profiles one judge who has been reelected continuously since 1992 with no sign of a challenger.

This judge routinely flouts the Constitution, like when he threatens one defendant that if he has another child out of wedlock, he’ll consider it a violation of his parole and put him back in prison.

He casually engages in an overtly biased line of questioning to a Black defendant that has nothing to do with the crime he has allegedly committed:

“Is your father in the picture?... Does [he] have a criminal record? ... You don't know him ... He sort of deserted you and the family, yeah? Are your brothers and sisters full brothers and sisters, or stepsisters?”³

One of his go-to lines with a Black defendant regarding a Black victim is: “His black life didn't matter to you, did it?”⁴

All of this is going on quite publicly in front of prosecutors, public defenders, reporters, and the general public. **He’s been re-elected six times.** Just one example of one judge – but you realize that this very typical system in a very typical city is rife with this kind of casual disregard for justice and fairness.

² <https://serialpodcast.org/season-three/2/transcript>

³ <https://serialpodcast.org/season-three/2/transcript>

⁴ <https://serialpodcast.org/season-three/2/transcript>

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Then there is the simple truth that we do not have the courtroom capacity to accommodate the sheer number criminal defendants awaiting trial – and therefore the system places enormous pressure on prosecutors to avoid a trial, and they in turn place enormous, coercive pressure on defendants to cop a plea – regardless of their guilt or innocence – just to avoid months if not years waiting for a trial with an uncertain outcome. **So, my experience with the careful selection of jurors and the attempts to ensure impartiality in a courtroom? Let's just say that 96 percent of the convictions in the Cleveland Justice Center never get to trial – they are all from plea bargaining.**

Koenig then takes us into a number of outrageous cases, such as the case of Erimius Spencer, who by the way, happens to be Black:

- Two police officers on routine security patrol approach Spencer in the hallway of his own apartment building in Euclid Ohio, a town on the edge of Cleveland.
- They ask for, and he produces, identification.
- They ask him if they can search him for a weapon – and he readily agrees to it.

No weapon is found, but they find a very small amount of marijuana in his pocket, and immediately begin to arrest him.

In most of Ohio, the amount of marijuana in his possession would not even be an arrestable crime – but because of an unusual local ordinance in Euclid where Spencer resides, it happens to be more serious.

Koenig points out that the tightening of the drug law in Euclid coincided precisely with the growth of the city's Black population over 20 years ago, and was enacted by the white leadership: With a community that is now 60% African American, she says, "...six out of nine members [of city council] are white. Mayor is white. Police chief is white. City prosecutor is white. City law director is white. City judge is white. And it's got the harshest weed law in the county, just saying."⁵

Getting back to Spencer, when he pauses and asks what he is being arrested for, he is kicked in the testicles, thrown to the ground, kicked in the face hard enough to badly fracture his orbital bone around the eye, and tased 7 times, enough so that there were electrical burns left on the carpet, all while he is trying to put his arms behind his back so that he can be handcuffed.

When he emerges from the hospital, he finds that he has been charged with four crimes: "drug abuse, resisting arrest, theft, and criminal damaging."

⁵ <https://serialpodcast.org/season-three/3/transcript>

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- The theft is because the officers claimed he tried to take their taser, apparently while he was pinned to the ground, right arm held behind his back and left arm pinned beneath his own body.
- And the 'criminal damaging' charge was because one of the officers apparently had a pair of eye glasses broken in the scuffle.

As Koenig points out, this is not a high-profile case on the Cleveland landscape – this is not the tragic case of Tamir Rice, shot by a White officer at age 12, that got national attention. This is not the Sergeant Michael Brelo case, where Cleveland police officers fired 137 shots into the car of a homeless couple, and where Brelo, who fired 49 of those shots, some while standing on the hood of the car, was acquitted.

No, this is a much more routine, much more typical occurrence that doesn't make for a headline. But there is awareness of such cases, and they do have their own, significant impact. Koenig cites a study done in Milwaukee after a case of excessive force against a Black man: "...for a year afterwards, there were 22,000 fewer 911 calls in Milwaukee, and that residents in black neighborhoods especially were far less likely to report crime. And at the same time that people were reporting fewer crimes, murders in Milwaukee rose by 32 percent."⁶

And as for Spencer? In an ideal world, with no prior criminal record, clear evidence of excess use of force, and a flimsy pretext for a search, one might think that the charges would not stick; that he might have an opportunity to file a civil suit against the officers and at least press for monetary damages. But the system in place is predisposed against such an outcome. Precisely because of the brutal circumstances, the City of Euclid understands it is vulnerable to a civil suit and financial liability, the officers lie under oath about the circumstances, the false basis for the charges is thereby reinforced, and his hopes of mounting a civil challenge against the officers evaporate.

So where does this disconnect between the ideals of our system, the idea of having your day in court with a competent attorney before an impartial jury, and the actual lived experience in that system leave us? Do we give up? Do we give in to cynicism, or worse, indifference? I hope not.

Two of my children have worked for years in New York City for the Doe Fund, which is a network of homeless shelters serving primarily men recently released from prison. The idea is to help these individuals put their lives back together and to recover a degree of dignity – they leave the program when they have some form of degree or certification, such as a high school diploma or professional driver's license, a job, a place to live, and a set of life skills to help them navigate on the outside.

⁶ <https://serialpodcast.org/season-three/3/transcript>

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It's worthy endeavor, and there are a number of models of programs like this around the country that do similarly good work. But as committed as my children are to the people they serve, even they would readily admit – **it's a bit late**. Helping someone rebuild a life at age 45, in so many cases, **means we missed opportunities decades earlier**, especially in cases of individuals who never should have been in prison in the first place.

In direct response to mandatory sentencing and so called “three strikes” legislation in the 1980s and 1990s, prison populations exploded, in many cases with non-violent drug offenders and petty repeat offenders. To accommodate this, there was huge investment in the construction of prison facilities, and of course, this resulting mass incarceration triggers huge additional human costs in terms of the breakup of families and the resulting retrenched cycles of poverty. According to Bryan Stevenson, **“Between 1990 and 2005 a new prison opened in the U.S. every ten days.”**⁷ As Stevenson points out, instead of investing such enormous capital in prisons, what if the money were directed to mental health programs, drug treatment and rehab, job training, and community colleges?

And of course, the investment in people needs to start even earlier.

Many of you are aware of and perhaps have volunteered at Christina Seix Academy – I happen to serve on the Board. It is a school in Trenton that was created and funded by a former Lawrenceville parent and trustee, Christina Seix. She was a first-generation college graduate who grew up in a single-parent household, and she had a vision for a school that would serve students, like herself, from single-parent households in significantly under-served communities. The campus has well-appointed buildings, well-manicured green spaces, a security fence around the perimeter, and it sits across the street from a state penitentiary, a not-so-subtle reminder of the school-to-prison pipeline that exists for many young folks in tough sections of Trenton.

One of the things I love about the school is the residential set up – boarding for these children starts in the 4th grade. The dormitories are built around a kitchen and hearth area when you first enter. Parents are invited every evening to have dinner with their children, help with homework, and generally participate in evening life on campus.

There are also basic medical and legal services provided for families. For a family of financial means: a trip to the doctor or a traffic violation is an inconvenience. For a family of more limited means, those can represent major, destabilizing challenges, especially if you lack medical insurance and fall sick, or are unable to pay a traffic fine, for example.

They just produced their first 8th grade class, and their graduates are going to schools such as Lawrenceville, Princeton Day School, Stuart, Hun, Peddie, Blair, and Episcopal High School.

⁷ Just Mercy: p. 260

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It is, however, an expensive model. The school is endowed and the investment in each child is considerable. Their remarkable Head of School, Rob Connor, laments that it is so costly, and says he wishes he could have a broader impact beyond their 250 students. My response back to him is, “Rob, your job is to show, as you are doing, that this works, that investing in young people early on makes a difference.” The money is there – we spend billions of dollars every year on our prison system. Easier said than done to redirect it – but it’s there.

According to the Equal Justice Initiative, we spend over \$180 billion dollars when you consider, on top of what it takes to run the prisons, additional “...policing and court costs, and costs paid by families to support incarcerated loved ones.”⁸

We spend less than a fifth of that, about 18% of that, on subsidized early child care and early childhood education.⁹

Simply put, it is hard to argue that the money is not there, and it is even harder to argue that early investment in children doesn’t pay off enormous dividends in human happiness and productive lives. It is simply a matter of our priorities.

And we know exactly where the underserved neighborhoods are that deserve our attention first, that deserve hope -- **not more prisons**. In my fall Convocation remarks, I referenced a practice dating back to the 1930s where the federal government “red-lined” Black and immigrant neighborhoods as risky investments, thereby depriving them of federally backed mortgages and other credits. Recent studies show that these very same neighborhoods, which produce a certain portion of our prison populations, remain blighted and poverty stricken today as a result.

Hope, not prisons, now that would be justice.

As I draw this to a close, let me bring this around to you. It is every generation’s responsibility to face, and take responsibility for, profoundly important questions such as these – and your turn is at hand.

Echoing my remarks to the Cum Laude inductees the other evening, you leave here with great talents and disciplined habits of mind that you have developed over time and that will serve you well. You all have various combinations of:

- persuasive writing,
- effective public speaking,
- the knack for seeing nuance in a poem or interpreting patterns in scientific data.

But you also leave here, challenged by our Mission Statement, “to lead a life of integrity and high purpose,” in other words, to live a principled life, a just life, and one that focuses on something far loftier than your own self-interest. **And we see this in you already.**

⁸ <https://eji.org/news/mass-incarceration-costs-182-billion-annually/>

⁹ <https://www.epi.org/publication/whos-paying-now-costs-of-the-current-ece-system/>

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If we have learned nothing in the past 15 months as a School, we have learned that we can respond to crisis, we can demonstrate resilience and innovation, and if we maintain our hope and optimism, and if we are willing to work at it, **we can think big and get things done**. After all, we responded to a global pandemic – with masks, PCR tests, Zoom classes and hybrid teaching, and a huge dose of gritty determination, **and we got it done**.

We responded to an historic racial reckoning, that occurred both at the national level and right here on this campus. We have a great deal more work to do, but while we were handling a pandemic, we launched a comprehensive DEI strategic planning process that many of you were a part of.

The plan will be released to the entire community later this month, but the important thing is that we did not wait to unveil the document to launch many of the critically important initiatives that we knew from the start needed to happen and that are now incorporated into the plan. We moved ahead right away with

- administrative restructuring,
- faculty and staff workshops and student leadership training in implicit bias,
- a more complete strategy for recruitment and retention of faculty of color,
- and the just recently announced, Hutchins Center for Race and Social Justice at Lawrenceville – we are doing a search for the new executive director as we speak.

So as I say, we have learned this year just how much we can accomplish, when we put our minds to it, and when we believe in the cause.

The challenge, as you leave here, as you grapple with the kind of society you want to be a part of and take responsibility for -- the challenge -- is to not lose sight of the power of our ideals, while still seeing clearly the profound imperfections and injustices in our system that need to be better.

While my somewhat idealized glimpse of our judicial system in the Mercer County Criminal Courthouse in Trenton may fall far short of actual reality, our ideals are not the problem, it is our very imperfect implementation of those ideals.

And old inertias and impediments can be overcome – systems can be dismantled, processes can be improved. In direct defiance of generations of judicial bias, Derek Chauvin was convicted by our system of the killing of George Floyd – it is one case, but an enormously important one. And if we maintain hope and optimism, maybe a bit of faith too, and if we are willing to work at it,

- neighborhoods can be uplifted,
- schools, health care, and social programs can receive the investment they deserve,
- sentencing laws can be changed,

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- and scourges like mass incarceration can be reversed – if we can believe both in our ideals and still recognize the need for positive change.

And as I say, that would be justice.