

Commencement Address 79th Commencement  
East Carolina University

Dec. 5, 1987 - Tinsley E. Yarbrough, PhD  
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The University and the Constitution:

Intertwining Values

For you who are completing this lengthy obstacle course we call higher education, having one of your academic tormentors deliver your commencement address may border on cruel and unusual punishment. And on leaving here today, you may want to contact an attorney. For me, however, this opportunity is a special privilege. Teachers have no production or sales records they can display as symbols of their success. Rarely do they amass great wealth, and never from their chosen profession. Instead, our success is derived primarily from whatever small part we play in your success. For that reason, I'm especially proud to be a participant in today's celebration of your achievements.

I came to East Carolina from my native and beloved Alabama twenty years ago this fall. It seems only yesterday, but it was a pretty long time ago. How long was impressed upon me by one of my freshman students at the beginning of this semester. She came by my office and told me what all professors dread to hear--that her father had been one of my students. I could sense what she was no doubt thinking, and parents in the audience today probably can, too. She was thinking, "Dad is so old, and this old codger taught my Dad. I wonder whether the poor old soul can make it through the semester." Aged and infirm though I am, I'll try to limp through what I promise will be brief remarks.

1987 is not only a special year for you, your parents, spouses, and friends. It's also the 200th anniversary of the drafting of our Constitution. In my judgment, the values the Constitution reflects and those a university should embody and impart to her students are quite similar. And I'd like to talk with you a few minutes this morning about those values.

Surveys indicate that Americans know precious little about their Constitution. In fact, earlier this semester a distinguished visiting historian devoted an entire campus address to that theme. Among other evidence, he cited a poll commissioned by the Hearst Corporation and conducted in October of 1986. Of the 1004 citizens survey in the Hearst poll, 64 percent thought that the Constitution established English as our "official" language, 45 percent thought its text included the phrase "From each according to his ability, to each according to his need"--a basic tenet of Karl Marx, the founder of modern Communism--, only a third knew the approximate number of constitutional amendments which have been added to the document since its adoption, fewer than a third could identify Roe v. Wade--the Supreme Court's controversial abortion decision--as an abortion case, and only 43 percent knew that William H. Rehnquist is Chief Justice of the Court principally responsible for construing the Constitution. To make matters worse, when the Hearst Corporation published the results of the poll, a preface to the report, signed by the corporation's distinguished president, included Thomas Jefferson among the venerable statesmen who drafted the Constitution at Philadelphia, when in fact Mr. Jefferson was in Europe at the time.

As an academic, I am naturally alarmed at such statistics, but only mildly so. To me, it is far less important that people absorb such details than that they understand, accept, and appreciate the basic values the Constitution reflects--including tolerance of a broad freedom for people to espouse views many of us despise, a strong commitment to due process of law, and a firm belief in the value and dignity of all people. It is also critically important in this Bicentennial year that people realize that a Constitution, like a university diploma, is only a scrap of paper, that its value as "living law" depends on the willingness of people to defend the principles it reflects against the popular passions and prejudices of the moment.

Examples abound in history of the men and women who have been willing to exalt constitutional principle over expediency. With your indulgence, however, I wish to draw several examples from my native Alabama and the struggle for racial justice in that cradle of Deep South tradition. With one exception, all are men I have been privileged to know and for whose courage I have the deepest respect.

In the 1930's, Alabama was the site of the infamous Scottsboro trials, in which poor young blacks were repeatedly convicted and sentenced to death by all-white juries on trumped-up charges that they had raped two white prostitutes. The case attracted world-wide attention. On two occasions, the United States Supreme Court reversed the defendants' convictions on constitutional grounds. After the first trial, moreover, nationally prominent attorneys entered the case as counsel for the defense. In my judgment, though, the most courageous figure in the entire affair was the obscure Alabama circuit judge who presided over the defendants' second trial. James J. Horton was no flaming liberal. He was a segregationist; he was a planter with large land holdings. He was, in short, the stereotype of the traditional gentry southerner.

But Judge Horton was also committed to due process. And when one of the physicians who had examined the alleged victims told Judge Horton privately that, in his judgment, the women were lying, yet refused to jeopardize his newly established medical practice by testifying in the defendants' behalf, Judge Horton did the only honorable thing--he reversed the jury's guilty verdict. Alabama politicians, family, and friends warned him he was committing political suicide. And they were right. Before, Judge Horton had been a popular judge; political insiders were predicting he soon would be Alabama's governor. But now that promising political career came to an abrupt end. At the next election, Alabama's voters turned him out of office.

He was never again to hold political office. But Judge Horton had stood up for a basic constitutional principle.

Twenty years later, when the United States Supreme Court was preparing to declare segregated public schools unconstitutional, another Alabamian, Hugo Lafayette Black, was sitting on the Court. As an Alabama politician, Black had been a member of the Ku Klux Klan. As a Birmingham attorney, he had not been above appeals to racial and religious prejudice to win a case. As a Supreme Court Justice, however, he had developed a record of commitment to civil rights.

While the segregation cases were pending before the high Court, Justice Black's son Hugo, Jr., a popular young Birmingham attorney, phoned his father to say that friends were urging him to run for Congress as his father had years before. Instead of being elated, as his son assumed he would be, Justice Black somberly asked Hugo, Jr., to fly to Washington as soon as possible. There, he swore his son to secrecy, then told him he planned to vote to declare segregation unconstitutional. That vote, he realized, would have a disastrous effect on his son's political future, but he felt he had no choice. "You understand, Son," he told Hugo, Jr., "I've got to do it even though it's going to mess up your plans." Hugo, Jr., assured his father that he did understand, then returned to Alabama to tell his friends that he was "not ready" to run for elected office. After Justice Black and others on the Supreme Court voted to overturn school segregation, Hugo, Jr.'s political plans were not only destroyed; his Birmingham law practice collapsed and he was obliged to establish a practice in another state. For years, moreover, Justice Black was condemned as a traitor to his people. But Justice Black had stood up for a basic constitutional principle.

The year after the Supreme Court's Brown decision outlawing segregation in the public schools, Dr. Martin Luther King and other civil rights leaders petitioned three other Alabama judges to declare segregation on Montgomery,

Alabama's buses unconstitutional. All three judges were Alabama natives; the ancestors of all had served in the Confederate army. But two members of the panel--Richard Rives and Frank M. Johnson, Jr.--agreed with Dr. King and his followers. Under the Constitution, they declared, there was to be only one class of citizens, and segregation in transportation was no more acceptable than segregation of the public schools.

The bus decision made Judge Rives and Judge Johnson instant pariahs in their native state. Alabama politicians vehemently attacked them and urged their fellow citizens to ostracize them and their families. They were bombarded with hate mail and vicious phone calls. Judge Johnson's mother's home was bombed. Vandals poured red paint on the gravestone of the son whose memory Judge Rives revered. Parishoners at the church Judge Rives had faithfully attended for many years refused to sit near him. As Judge Johnson handed down additional civil rights decisions, it became necessary for a dusk-to-dawn guard to be placed on his home. The guard would remain there for eighteen years. During most of that period, an armed marshal was almost constantly at his side. But Judge Johnson and Judge Rives had stood up for a basic constitutional principle.

Now, listening to these accounts I realize you may be thinking, "The devil with principle; I think I prefer to pursue the safe and comfortable and popular course." So let me quickly add that each of these men is now increasingly revered by Alabamians of both races, while those politicians who took the low road in that state's fight for racial justice, who appealed to hatred and fear, rather than to the basic decency of their fellow citizens, now increasingly evoke only an embarrassed silence.

It is my hope that you, too, will carry with you from your years at East Carolina University a respect for the basic values our Constitution reflects--for toleration, fair play, and a belief in the value and dignity of all people--and that you will also carry with you from this place the

commitment to principle which must burn in at least some of us if those values are to be maintained as "living law." If you do, then we have truly succeeded as a university. If you don't, we may not have failed you. But we've certainly fallen short of what should be our goal.

As we are completing this lengthy obstacle course we call education, having one of your academic tormentors deliver your commencement address may border on cruel and unusual punishment. However, as you know, you are not, and you never will be, a student. You are a graduate. You are a professional. Instead, your success is derived primarily from whatever small part we play in your success. For that reason, I'm especially proud to be a participant in today's celebration of your achievements.

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