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DRUM MAJORS FOR JUSTICE—LEADING THE MARCH TOWARD SOCIAL JUSTICE

*Gary Williams**

Two months before his assassination, Dr. Martin Luther King delivered his preferred eulogy. His words, prophetic then, are inspiring now:

I ask myself, "What is it that I would want said?"
And I leave the word to you this morning.

....

I'd like somebody to mention that day that Martin Luther King, Jr., tried to give his life serving others

I'd like for somebody to say that day that Martin Luther King, Jr., tried to love somebody

....

I want you to be able to say that day that I did try to feed the hungry

And I want you to be able to say that day that I did try in my life to clothe those who were naked

I want you to say on that day that I did try in my life to visit those who were in prison

I want you to say that I tried to love and serve humanity

Yes, if you want to say that I was a drum major, say that I was a drum major for justice.¹

* Professor of Law, Loyola Law School of Los Angeles; B.A. Magna Cum Laude, University of California Los Angeles; J.D. Stanford Law School. Many thanks are in order. First, to James Gilliam who, inspired by Eva Jefferson Paterson, made the suggestion for creating this symposium. Second, to the authors, who have produced a magnificent summary of the challenges of and opportunities for social justice. Third, to Adam Gardner, whose patience, perseverance and perception made this concept a reality. And finally, to the staff of the *Loyola of Los Angeles Law Review*, whose hard work and

Thirty-four years later, the need for drum majors for social justice is extant. The problems Dr. King identified in 1968—hunger, poverty and incarceration—persist, and threaten to become even more daunting today. The gulf between rich and poor in this nation is widening at an accelerating rate.² Public education, once viewed as the great spanner that would bridge the gap between classes, has instead become an engine driving the growth of economic inequality. Witness California, where wealthy school districts shower their students with advanced placement classes, access to the internet, music classes and more, while poor school districts are unable to provide textbooks, credentialed teachers, or even functioning bathrooms for their students.³ Predictably, many of the students trapped in these inferior school systems grow up to become part of society's permanent underclass, with minimal job prospects and no hope for the future.

To bridge the social justice gap, America will need many drum majors for justice. Dr. King declared he wanted to be remembered for his desire to love and serve humanity. His goal must be pursued by many more Americans if today's social justice problems are to be solved. Thus the editors asked the participants in this symposium two questions. First, what are some of the pressing social justice issues facing America today? Second, if lawyers are to become drum majors for social justice, what role should law schools and law professors play in addressing these issues? The answers our

persistence have produced a Symposium that promises to resonate for many years in the future.

1. MARTIN LUTHER KING, JR., *The Drum Major Instinct*, in *A Knock at Midnight: Inspiration from the Great Sermons of Reverend Martin Luther King, Jr.* 165, 184–85 (Clayborne Carson & Peter Holloran eds., 1998), available at http://www.stanford.edu/group/King//publications/sermons/680204.000_Drum_Major_Instinct.html (2002).

Dr. King was assassinated on April 4, 1968.

2. Donald L. Barlett & James B. Steele, *Powerful Hands Guide Two-Class Society's Return*, MILWAUKEE J. SENTINEL, Sept. 30, 1996, at 1, available at 1996 WL 11,294,370; Gary Younge, *American Dream Tarnished by Widening Wealth Gap*, GUARDIAN (London), Jan. 24, 2003, at 17, available at 2003 WL 9,519,890.

3. Ed Mendel, *A World of Difference*, SAN DIEGO UNION-TRIB., Feb. 9, 2003, at A1, available at 2003 WL 6,565,236.

contributors have provided are challenging, enlightening, fascinating, and thought-provoking.

In *Gangs, Schools and Stereotypes*, Professors Linda Beres and Thomas Griffith debunk the commonly accepted assertion that youth gangs present a growing threat to schools. Using data from the United States Department of Justice, the Los Angeles and Chicago Police Departments, and other law enforcement sources, Beres and Griffith demonstrate that by virtually every objective measure, the gang problem in schools has been greatly exaggerated and that the presence of gangs in schools actually declined between 1995 and 1999.

Beres and Griffith note that the fallacious claim that there is a growing gang presence in schools has caused at least two pernicious results. First is the implementation of broad school measures that disproportionately punish youth of color. These measures include the banning of gang “colors” on school campuses and increasing campus security (including the use of drug sniffing dogs in classrooms and metal detectors at the entrances to campuses). The second result of the exaggerated gang threat is the reinforcement of racial stereotypes about gang membership. Beres and Griffith illustrate this racial stereotyping by showing how the perpetrators of the Columbine school shootings, who belonged to an all-white group that by all modern law enforcement standards fit the definition of a gang, were portrayed in the media as disaffected youth and outcasts. Beres and Griffith argue that lawyers, as drum majors for justice, must pursue the goal of correcting gang policies based on misinformation and racial stereotypes. Otherwise more misguided, discriminatory, and restrictive measures will be adopted on campuses across this nation, and more black and Latino youth will be wrongly tarred with the label “gang member.”

In *A New Perspective on the “War on Drugs”: Comparing the Consequences of Sentencing Policies in the United States and England*, MaryBeth Lipp addresses a criminal justice issue that cries out for drum majors with new ideas—reforming sentencing practices in the so-called war on drugs. Lipp compares the sentencing practices of the United States, based upon rigid mandatory minimum sentences, with those of England, which are based upon discretion for trial judges to set sentences up to a statutory ceiling, taking into account the severity of the offense and the character of the defendant.

Lipp finds that both countries' war on drugs has fueled increasing prison populations. Lipp's comparison uncovers another disturbing similarity—each nation's harshest sentences are imposed disproportionately upon people of color. Lipp argues that racial bias among judges is the most likely source of the English sentencing disparity, as they exercise their discretion based upon assumptions about people of color and the nature, severity and consequences of their drug usage. She argues that the sentencing disparities in the United States are caused by mandatory sentencing standards based upon faulty racial assumptions and stereotypes.

Lipp concludes that neither system holds a cure for the social injustices occasioned by the war on drugs. Because of the racial biases pervading both systems, Lipp suggests that a comprehensive reexamination is in order on both sides of the Atlantic. That reexamination should include a study of the effects (or lack thereof) of imprisonment on the level of use of illegal drugs, serious contemplation of the pernicious role that race has played in the prosecution of the war on drugs, and reconsideration of policies based upon rehabilitation and treatment as alternatives to imprisonment.

James Gilliam, Jr. identifies an issue that requires the immediate attention of drum majors for justice—the placement of youth in foster care homes or institutions that ignore, reject or mistreat them because of their sexual orientation or identification. In his article *Toward Providing a Welcoming Home for All: Enacting a New Approach to Address the Longstanding Problems Lesbian, Gay, Bisexual, and Transgender Youth Face in the Foster Care System*, Gilliam argues that the foster care system, which provides temporary care and housing for youth whose families are unable to care for them, is woefully unprepared to deal with adolescents who are lesbian, gay, bisexual, or transgender. Gilliam documents that these young people have, in some cases, been beaten by other foster children, taunted by foster parents, sexually assaulted by staff and forced to undergo “conversion therapy” designed to “teach” them that being lesbian, gay, bisexual, or transgender is deviant and repulsive.

Gilliam proposes that states enact laws, and foster care agencies adopt policies, giving preference to placing gay, lesbian, bisexual, or transgender youth in homes with gay, lesbian, bisexual, or

transgender foster parents. He argues that courts and foster care agencies, at minimum, should be required to place such youth with families that have affirmatively expressed or demonstrated their willingness and suitability to accept children with those identities, and he highlights two states that have made strides in this area. Gilliam contends that advocates for social justice might convince some courts to order the matching of lesbian, gay, bisexual, and transgender foster children with compatible families and agencies by relying upon the “the best interests of the child” standard used in child custody matters. While he acknowledges that pursuing this route will require an uphill struggle, Gilliam makes a compelling case that the statistics might convince sympathetic courts to rule that matching is in the best interests of the child because it holds the best promise for allowing gay, lesbian, bisexual, and transgender adolescents to develop into healthy, happy adults.

Professor Sande Buhai examines the state of protection of people with disabilities in her article *In the Meantime: State Protection of Disability Civil Rights*. Buhai demonstrates that today the United States Supreme Court has swung the pendulum very far towards constricting civil rights protections in general. Professor Buhai documents how this swing has characterized the High Court’s interpretation of the Americans with Disabilities Act (ADA), which was intended to protect people with disabilities from employment discrimination. For example, recent Supreme Court decisions have limited the definition of disabled to those who are substantially limited in activities that are of central importance to most people’s daily lives. The Supreme Court has also held that in determining whether people are disabled, courts should take into account mitigating measures—meaning people are not “disabled” if medication or other measures make it possible for them to function.

Buhai argues that lawyers and advocates for the rights of the disabled cannot afford to be disheartened by these developments on the federal level. Instead, she urges drum majors for justice for the disabled to look to the laws of the states, first to provide immediate and meaningful protection from discrimination, and second as the fora where they can continue to develop effective remedies for the workplace problems faced by the disabled. She documents the states’ treatment of the definition of “disability,” which in general is far more expansive and protective than the rulings of the United

States Supreme Court, and applauds the states' reluctance to embrace the mitigating measures doctrine. Buhai argues the efforts of the states to address workplace discrimination hold the promise of developing a solid national commitment to protecting the civil rights of persons with disabilities.

Given the continued existence of pressing social justice issues as personified in the articles of Beres, Griffith, Lipp, Gilliam, and Buhai, what role should law schools and law professors play in the struggle to address those issues? That question is explored by Professor John Calmore, Father Robert Scholla and Professor Erwin Chemerinsky.

In his article "*Chasing the Wind*": *Pursuing Social Justice, Overcoming Legal Mis-Education, and Engaging in Professional Re-Socialization*, Professor John Calmore speaks to the need to reconfigure legal education if law students are to become effective drum majors for justice. He observes that the current model of law school education insists on teaching students that the law is reason-based, abstract, and value-free. In this model, law professors strive to teach students how to "think like lawyers"—to become amoral technicians whose personal moral values are baggage or distractions that complicate the task of representing clients.

Calmore argues that for law schools to train law students to pursue social justice most effectively, they must encourage students to broaden their understanding of how the law works and how it can be used to affect positive social change. He notes that effective social justice lawyering occurs in three dimensions—rights-based advocacy, advocacy that seeks to influence social consciousness, and collaborative lawyering that challenges subordination at the community consciousness level. Calmore contends the narrow focus of current law school education, at most, trains law students to succeed in the first dimension. He envisions a law school education that trains law students to see beyond victories in court as the best way to nurture lawyers capable of working in the second and third dimensions. Calmore uses his experience teaching his Social Justice Lawyering class to suggest that law school education can do much more to sensitize law students to the needs of people who are marginalized, subordinated and underrepresented.

Father Robert Scholla addresses the special role Jesuit law schools should play in creating drum majors for justice in his article,

“*Fides Quaerens Iustitiam Socialem: A Jesuit Law School Perspective.*” His discussion exhibits a remarkable harmony of purpose with Calmore’s emphasis on restructuring legal education. Father Scholla outlines the Jesuits’ longstanding dedication to service, beginning with a description of the Thirty-Second General congregation document that articulates the goal of the Jesuits to promote justice and enter into solidarity with the voiceless and the oppressed. He explains that Jesuit theology strives for more active participation in the struggles of humanity and deeper exploration into the possibilities for social change. In the context of Jesuit education, that challenge invites students to seek fresh insights into self, society, and the world, in hopes of sparking within them a desire for personal and societal improvement.

Father Scholla notes that Jesuit education strives to move students beyond self-concern and self-interest, and to form the habit of acting for others. It is in this way that students are encouraged to convert to the love of God, and through that conversion, to labor for the demands of justice. Just as Calmore calls for law schools to train their students to collaborate with the subordinated communities they seek to serve, Father Scholla notes that the Jesuits have been called to experience the plight of the underrepresented. Father Scholla identifies several ways in which Jesuit law schools can advance the quest for social justice in harmony with Jesuit ideals. He writes that Jesuit law schools can encourage men and women aspiring in the legal profession to engage in an ongoing quest for social justice. Second, Jesuit law schools can strive to produce lawyers who are knowledgeable of the complex economic, sociopolitical and cultural conditions in their communities, and dedicated to serving the needs of the poor and the powerless. Third, Jesuit law schools can foster programs that encourage social transformation and address issues of civil rights and social justice.

To the extent Jesuit law schools incorporate these principles into their education and preparation of law students, they will respond to Calmore’s challenge, creating drum majors for justice who will readily listen to the clients they seek to represent. In short, the focus of Jesuit institutions carries the promise of training lawyers prepared to do social justice lawyering in the second and third dimensions. Father Scholla notes that the Jesuit approach to social justice requires dedicated people who will share in efforts to create institutions that

foster mutuality and reciprocal respect. That is a characteristic of third dimension lawyering as described by Calmore.

In the closing article of the symposium, Professor Erwin Chemerinsky, in *A Pro Bono Requirement for Faculty Members*, posits that law professors have a responsibility to serve as drum majors for justice. Over the past twenty years, a debate has simmered over proposals to make pro bono service mandatory for attorneys. Curiously, during that debate, one group of attorneys has eluded consideration—law professors. Professor Chemerinsky corrects that omission, and opens a new front in the discussion that likely will raise the temperature of the debate. Chemerinsky argues that law schools, and the entities that regulate them, ought to establish mandatory pro bono service requirements for law school faculty. He begins by noting that the American Bar Association and the American Association of Law Schools encourage law students to participate in pro bono activities while they are in school, and that some law schools, including Loyola Law School,⁴ have adopted minimum pro bono service requirements as a condition for graduation. Even without such a requirement, most law schools encourage their students to engage in public interest work while they are in school. Chemerinsky argues these law schools ought to lead by example and mandate that their law professors provide a minimum number of hours of uncompensated service to the community.

Drawing upon his own experience as a tireless pro bono litigator, Chemerinsky demonstrates that pro bono service enhances a law professor's ability to teach the law, and creates opportunities to involve law students in the practice of the law in the public interest. He identifies a variety of ways for law professors to satisfy a pro bono requirement, including direct provision of legal representation, law reform activity and public education. Professor Chemerinsky responds cogently and convincingly to many of the objections to his proposal. Most prominent is the contention that many law professors lack practical experience. Chemerinsky points out that encouraging, if not compelling, law professors to gain practical experience will

4. Loyola Law School requires its students to provide 40 hours of supervised uncompensated legally related public service as a condition of graduation. LOYOLA LAW SCHOOL, STUDENT HANDBOOK 2003-2004, at 2, available at <http://intranet.lls.edu/handbook-jd/jdhandbook.pdf>.

improve their teaching by showing them how theory intersects with practice.

If we are to make any progress toward solving the complex problems of the twenty-first century, we need academicians and advocates who see how the threads discussed in these articles interlink in the quilt of social justice. We also need intellectual, practical, and spiritual dialogues about the disconnect between law schools and the social context in which they function. Symposia such as this one are essential if law students, law professors, and practicing lawyers are to master the strategies for effective social change, and acquire the passion, courage, and stamina for a lifelong pursuit of social justice. By reading and acting upon such symposia, more lawyers and law professors will propose fresh ideas to combat the social ills of the United States, and become more effective drum majors for justice.

