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COMMENCEMENT ADDRESS, PROFESSOR
DREW S. DAYS, III

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COMMENCEMENT ADDRESS

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**YALE LAW SCHOOL
NEW HAVEN, CONNECTICUT
MAY 23, 2011**

COMMENCEMENT ADDRESS

Commencement speakers find almost irresistible the opportunity to offer oracular advice to graduating classes about how they ought to prepare themselves to meet the professional and personal challenges in the world awaiting them outside of the protective walls of the academy. I have certainly yielded on more than one occasion to that temptation. Today, however, my basic message is that no matter how much you may plan your careers after law school, fate often takes twists and turns that you may find hard to imagine as you sit here surrounded by your graduating classmates, family and friends on this momentous occasion. In that respect, allow me to offer up my own experiences in this regard – not as a model, to be sure, but rather as an object lesson, to move from the abstract to the concrete for your consideration.

When I entered Yale Law School in September, 1963, I had thought that I might seek to join the Justice Department of John F Kennedy after graduation. Of course, by November, Kennedy was dead and, with his death, many of my like-minded fellow students and I felt a sense of disorientation with respect to our career plans. Nevertheless, I took a range of courses with particular focus on individual rights taught by Professors Alexander Bickel, Thomas Emerson and Boris Bittker, among others.

During the summer between my second and third years at the Law School, I served as an intern in the office of C.B. King, a courageous lawyer in Albany, Georgia, under the auspices of a national student organization called the Law Students Civil Rights Research Council. During the academic year, law students at Yale and other law schools worked on various projects to assist Southern lawyers challenging the still-rampant acts of violence against civil rights workers and deeply

entrenched institutions of racial segregation. After that summer, I determined that I, too, wanted to become a civil rights lawyer.

Back at the Law School for my third year, it was my dream to work for the NAACP Legal Defense Fund (or LDF) – Thurgood Marshall’s organization. I found, however, that only lawyers with at least two years’ experience were being considered for positions there. Once again I was forced to contemplate my life after law school. My faculty advisor, the noted First Amendment scholar, Professor Emerson, called me to his office one day to suggest that I contact a small, union-side Chicago firm about a job. This came somewhat as a surprise to me in view of the fact that I had expressed clearly to him my firm plan to pursue a career in civil rights. I asked him why the firm might be of interest to me, to which he responded that it had ten lawyers and four partners: one black, one Jew, one WASP and one woman. He was right. I did find it interesting, contacted the firm, and was ultimately hired. It seemed

to be a good match. By early summer of 1966, I was firmly settled in Chicago and soon became a member of the Illinois Bar.

Competing with my thoughts about my legal career and new firm responsibilities, however, were ones of a romantic character. A young woman, Ann Langdon, whom I had been dating during Law School, had coincidentally moved to Chicago for the summer to visit her mother. At the end of the summer, she would be entering Peace Corps training for a two-year stint in Brazil.

Well, I had terribly mixed emotions about our impending separation, given what I had no doubt was going to be a career in Chicago that promised both fame and fortune. We had many intense conversations over the summer about the future of our relationship. She insisted that our love was strong enough to survive a two-year separation whereas I continued to be skeptical. Drawing deeply from a college philosophy course, I responded, "As Heraclitus said, 'You can't step in the same river

twice.'" She looked at me in complete bemusement, smiled and said, "Why don't you come into the Peace Corps with me?" It dawned on me that what Ann had just said was not simply a suggestion that I join her in the Peace Corps, but was also a marriage proposal since only married couples could be certain they would be assigned to the same continent, much less the same country or site. So I said, "Yes." I applied immediately, getting recommendations within a day from professors at the Law School, such as Lou Pollack, and was accepted.

After our reassignment by the Peace Corps to Honduras, Ann and I headed off to three months in a Peace Corps training camp in Puerto Rico. There I was, a newly-minted member of the Illinois Bar, learning all about raising hogs, attending Spanish language classes five hours a day, as well as instruction on cooperative development strategies.

Both of us, once in Honduras, were assigned to a small, dusty town located mid-way between the Caribbean and Pacific, and given the responsibility for organizing local cooperatives – Ann, a credit union and I, an agricultural cooperative. After two years of hard work, we were both successful. But imagine me, if you will, in jeans, a cowboy hat and boots, riding up into the surrounding hills on a borrowed mule to convince farmers of the benefits they could reap from working together through a cooperative: I was not quite the Marlboro Man, but not too shabby either, if I say so myself.

After two years away, we returned to New York City where, to my great surprise and delight I got the job I had wanted in the first place: becoming a staff attorney at LDF. I handled school desegregation litigation in the South, as well as suits on behalf of victims of police brutality and employment discrimination nationwide.

One Sunday evening in late November, 1976, I was in my office working on a post-trial brief when the phone rang. The caller identified himself as an aide to Griffin Bell, President Carter's Attorney General-Designate and a former judge on the U.S. Court of Appeals for the Fifth Circuit before whom I had argued a number of school desegregation cases. The aide said that he was calling on behalf of Judge Bell to find out whether I would be interested in discussing with him a "high-level" position in the Justice Department. Quite frankly, I found it hard to take the call seriously. I had been litigating Florida school desegregation cases for several years and had found Judge Bell not always in agreement with my position on those cases. While I viewed Judge Bell as a fair-minded and candid judge who never "hid the ball" during oral argument, letting lawyers know clearly what was on his mind, I had no reason to believe that my appearances before him would have led to the call I had just received.

In any event, I told, Ann, and only her, that I was going to follow up on the call to see where it might lead. Two days later, I flew to Atlanta and met with Judge Bell for a 45-minute cordial and substantive conversation. It was probably the most relaxed interview I had ever had up to that point in my life because, frankly, I thought there was nothing at stake. It was only toward the end of the meeting that he said he had enjoyed our meeting, and asked me to go home and put down in no more than three type-written pages the key points that I had made to him about my becoming the U.S. Assistant Attorney General for Civil Rights, if I were appointed. He wanted “to show them to the President.” By April of 1977, I was comfortably settled into my office in the Justice Department, overseeing 400 lawyers and support staff, and responsible for both civil and criminal litigation nationwide.

After four exciting and challenging years, I began to think seriously about “life after the Justice Department.” Thanks to two years at Temple University Law

School as a “test drive” at teaching law and to my frequent conversations with Dean Harry Wellington, I decided that law teaching offered the most appealing next career move. By May of 1980, I had firmly committed myself to joining the Yale Law Faculty.

Once at Yale, I began teaching a range of courses in the fields of Federal Procedure and Individual Rights from January, 1980 to the early spring of 1993 when I got another call, this time to meet with the White House Counsel about my interest also in a “high position” in the Justice Department. The position in question was that of Solicitor General of the United States, as you know, the Federal Government’s lawyer before the Supreme Court. After several weeks of thorough background checks and meetings with White House Counsel’s Office lawyers and with Attorney General Janet Reno, I found myself on my way to an interview with President

Clinton. Needless to say, this time I was in a state of “high anxiety” as I contemplated this encounter.

The President invited me into the Oval Office. I had tried to anticipate every possible question that he might ask having to do with law, life, people we knew in common, and the future of the universe. It turned out, however, not to be an interrogation, but rather for about fifteen or twenty minutes more like a friendly chat. Then he looked at me and asked pointedly: “What is the relationship between the Solicitor General and the President?” This sounded like a trick question posed by a Yale Law School alumnus, a former law professor, a former state Attorney General and former Governor. Taking a deep breath, I said, “Mr. President you are in the Constitution and the Solicitor General is not.” He seemed to like my answer greatly and the rest of my path to assuming office was clear and unproblematic. Only my older daughter appeared to be unimpressed by my new, high station in life: when I

returned from a ceremony at the Justice Department announcing my appointment, I walked from the airport terminal to my waiting family. It was then that I saw a bright red sign in the passenger's window of our car that said, "No Soliciting."

So, here I am, back at the Law School since 1996, granted the pleasure of having you and prior classes as students and – as I mark my own professional Right of Passage – graced with the great honor of offering sincerest wishes to all of you as you pursue lives with distinction in the law or other fields of human endeavor. And after 44 years of marriage, two daughters, and two granddaughters, Ann and I are still trying to comprehend the fateful nature of our Chicago exchange!