



FLOOD TIDE

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Dean's Address

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Mr. President, Members of the Academy, Special Guests, and Ladies and Gentlemen. It is indeed a high honor to have the occasion and opportunity to address the International Academy of Trial Lawyers. In preparation for this talk, I made a few inquiries of former Presidents of the Academy and learned that Peter John recommended that I base the address on something for which the Dean has great passion. On considering this, I asked myself the question, "What can I tell this group about football or flying airplanes or speckled-trout fishing in Mobile Bay?" Bob Parks told me that this will be the hardest speech that I will ever make because the Fellows of the Academy have either "seen it all," "done it all," "heard it all," "experienced it all," and, if not, it is totally unimportant anyway. The former First Lady, Lyn Parks, suggested that I sprinkle the talk with what some of my young partners have referred to as "JT-isms." As all of you know, southerners speak in anecdotes when trying to make their point on any given subject. Laboring over a suitable and interesting topic for the Dean's address does make one feel like he has been "*rode hard and put up wet.*" It somewhat reminds me of the story of one of our local lawyers who was having a particularly difficult time getting a consistent story from a witness. I asked him what the problem was and he said, "Jim, he's running with the foxes and barking with the hounds" which of course means he is a little squirrely, and when you're looking at him, you need to "*watch him with both eyes.*" I was having a conversation with my brother, John, a country lawyer in south Alabama, as to whether a claims representative over in Montgomery would pay fair dollar in settlement and I got all the information I needed when he said: "*Jim, he is so tight he would not pay fifty cents to watch a snake ride a bicycle, but he is honest and if the man tells you a mosquito can pull a plow, I would get my camera ready.*" Down South we even have a list of rules called "The Rules of the South" - I'll share a few with you.

1. Pull your droopy pants up. You look like an idiot.
2. Turn your cap right, your head isn't crooked.
3. So you have an \$80,000 car. We're impressed.
We have \$250,000 cotton pickers which are driven only 3 weeks a year.

4. Yeah, we eat catfish and crawfish. If you really want sushi and caviar, it's available at the corner bait shop.

Growing up in south Alabama, we had a young friend named "Winnie" who would come up from Mobile to hunt and fish with my brother and me. Early on we decided that he probably wouldn't amount to much since he was not an expert woodsman or outdoorsman. In our small world, a person was measured by the way he handled a shotgun or paddled a boat, but, as it turned out, our young friend ended up doing reasonably well. Winnie went on to become a Pulitzer Prize finalist who wrote thirteen books including *Forrest Gump*. You will likely know him as Winston Groom. We often thought he may have gotten his inspiration for writing from our uncle, Fate Rogers, the local optometrist, who devised a wonderful medicinal potion, the labeling for which he so eloquently penned "Dr. Rogers Mineral Extract - good for what ails you, brightens your eyes, quickens your step, cleans your teeth and makes childbirth a pleasure." The sales were quite brisk until the Alabama Beverage Control Board determined that this miracle cure had a high alcoholic content.

Now on a more serious note I would like to divert your attention from the "fields of the south" to the "Plains of Philippi." In Shakespeare's play, *Julius Caesar*, you may recall that Marcus Brutus and Cassius were having a conversation as to where to enjoin the battle with Mark Antony and Octavius following the assassination of Julius Caesar. Cassius took the position that they should hold their ground and wait for the army of Mark Antony and Octavius to come to them. Brutus knew their army was gaining strength with the passage of time and therefore the battle should be fought on the Plains of Philippi. In support of his argument Brutus turned to Cassius and said:

There is a tide in the affairs of men which taken at the flood leads on to fortune. Omitted all the voyage of their life is bound in shallows and in miseries. On such a full sea we are now afloat and we must take the current when it serves or lose our ventures.

The Fellows of this great Academy have always sailed on the "flood tide" and have brought great honor and distinction, not only to themselves, but to the Academy, to their states, to

their country and to all who believe in justice and the rule of law.

TOM BURNETT

Six years ago on a beautiful September morning, still warm but with a tinge of fall in the air, I taxied out for takeoff at the Birmingham International Airport when the ground controller told me to shut down engines or taxi back to the ramp. I asked him the reason and he told me that there was a nationwide “hold gate.” I remarked to him that I had never heard of a nationwide “hold gate.” We often have delays because of air traffic at our destination, so I taxied back, shut down, and walked into the hangar. Upon glancing at the television, I saw a Boeing 767 crashing into the second tower of the World Trade Center.

It was not until a couple of weeks ago when my partner, Leon Ashford, and I had dinner with Deena Burnett in Little Rock, Arkansas, that we heard her account related to United Flight 93. It was 6:27 a.m. in San Ramon, California, where Tom and Deena lived with twin daughters, Halley and Madison, and their third child, Anna Clare. Tom called Deena on his cell phone. The following is the account of the events of that fateful morning which has been quoted in Deena Burnett’s book, *Fighting Back*:

6:27 a.m. Tom: “Hello.”

Deena: “Are you okay?”

Tom: “No I’m not. I’m on an airplane that’s been hijacked. They just knifed a guy.”

Deena: “A passenger?”

Tom: “Yes. Our airplane has been hijacked. It’s United 93 from Newark to San Francisco. We are in the air. One of them has a gun. They are telling us there is a bomb on board. Please call the authorities. I will hold while you call.”

Deena’s cell phone was in her car so they had to hang up while she called the authorities. She dialed 911, gave them all of the pertinent information, and she was immediately switched to the

FBI. She spoke to a Special Agent. She told him that her husband was on United Flight 93 from Newark to San Francisco. At 6:34 Tom called the second time.

6:34 a.m. Tom: "They are in the cockpit. The guy they knifed is dead."
Deena: "They are hijacking planes all up and down the east coast. They are taking them and hitting designated targets. They have already hit both towers of the World Trade Center."
Tom: "They are talking about crashing this plane." He paused, "Oh my gosh, it's a suicide mission." "How many planes are there?"
Deena: "They are not sure, at least three, maybe more."
Tom: "Do they know who is involved?"
Deena: "No."
Tom: "We are turning back toward New York. We are going back to the World Trade Center. No, wait! We are turning back the other way. We are going south."
"I've gotta go!" and he hung up.

Deena slumped down in Tom's easy chair and started crying. This was upsetting the children so they also started crying. At 6:45 a.m., 11 minutes later Tom called again.

6:45 a.m. Deena: "Are you okay?"
Tom: "No, I am not."
Deena: "They just hit the Pentagon."
Tom: "Okay, what else can you tell me?"
Deena: "They think five airplanes have been hijacked. One is still on the ground. They believe all of them are commercial planes."
Tom: "Do you know who is involved?"
Deena: "No."
Tom: "Did you call the authorities?"

Deena: “Yes, they didn’t know anything about your plane.”

Tom: “They are talking about crashing this plane into the ground. We have to do something. I am putting a plan together.”

Deena: “Who’s helping?”

Tom: “Different people. Several people. There’s a group of us. Don’t worry. I’ll call back.”

Nine minutes later at 6:54 a.m.

6:54 a.m. Tom: “Hi, anything new?”

Deena: “No.”

Tom: “Where are the kids?”

Deena: “They are fine. They are sitting at the table having breakfast. They are asking to talk to you.”

Tom: “Tell them I’ll talk to them later.”

Deena: “I called your parents.”

Tom: “How are they doing?”

Deena: “Fine. Your sister is with them.”

Tom: “Good. We are waiting until we are over a desolate area. We are going to take back the airplane.”

Deena pleaded with him.

Deena: “No, sit down, be quiet. Be still. Don’t draw attention to yourself.”

Tom: “Deena if they are going to crash this plane into the ground, we are going to have to do something.”

Denna: “What do you want me to do?”

Tom: “Pray, Deena. Just pray.”

Deena: “I am.”

Tom: “Don’t worry, I’ll be home for dinner. I may be late but I’ll be home.

Okay?” There was a long pause.

Deena: “I love you.”

Tom: “Don’t worry Deena. We are going to do something!”

This was the last call of Tom Burnett's life. We now know that they rushed the cockpit, and for the first time in history, passengers fought hijackers to take back an airplane. One of the terrorists was killed and Deena thinks that Tom killed him. Months later when she heard the cockpit voice recorder, Deena could clearly hear Tom say, "Into the cockpit, into the cockpit. I have been injured." They took a beverage cart, slammed it into the door repeatedly until they broke into the cockpit, and fought with the terrorists. There was a pilot on board the aircraft who was capable of flying the airplane, but the terrorists pointed the nose to the ground. The plane was approaching the speed of sound when it slammed into the countryside in Pennsylvania. We now know that the airplane was headed for the White House.

Tom Burnett was born in Bloomington, Minnesota. His father was a high school English teacher and his mother was a real estate agent. Tom gained his great love of books from his father and didn't like for his children to watch television. He grew up loving sports. He played hockey and football and was the quarterback on his state's high school championship football team his senior year and was recruited to play football at the United States Air Force Academy. He had a deep and abiding faith and was a natural born leader. Tom Burnett caught the high tide and through his actions, with the help of his fellow passengers, saved countless lives. ***"There is a tide in the affairs of men which taken at the flood leads on to fortune."***

In September of 2002, in honor of Tom's life and his courageous efforts aboard Flight 93, his family founded the Tom Burnett Family Foundation, which is dedicated to helping the young people of our nation to become good citizens and future leaders. The Foundation website had this to say about this extraordinary American :

"It has been said that those aboard Flight 93 were just ordinary people. There was nothing ordinary about Tom Burnett. He was, in short, exceptional."

"He had skills and maturity that far exceeded his 38 years."

"He was a man's man . . . in the strength of his character, in the courage of his convictions, in the depth of his love for his family,

in his modesty and reticence to self aggrandize . . . He was a natural leader of people and steadfast in the depth of his faith.”

“He had busts of Teddy Roosevelt, Thomas Jefferson, Abraham Lincoln and Winston Churchill in his office. When asked why he wanted them, he replied - ‘The lives they led and the decisions they made were uncommon. I see them and am reminded of the importance of doing what is right in the face of adversity.’ There is a tide in the affairs of men which taken at the flood leads onto fortune.” Tom Burnett, an American hero, sailed on the “flood tide.”

JOHN R. LEWIS

John R. Lewis was born in Alabama on February 21, 1940, in Pike County near the town of Troy which lies some 40 miles south of Montgomery. He was a black man born into a family of sharecroppers at a time when African Americans in the south were subjected to humiliating segregation. Imagine, if you will, a few years after the Great Depression. John Lewis’ father was living on the land of another, most likely in a house with no electricity, no indoor plumbing, and no running water. This was the beginning of the life of John R. Lewis. He went to segregated schools in Pike County, Alabama, and knew early on that his only escape from these dismal living conditions was through education. He left Alabama, attended college in Nashville, Tennessee, receiving a degree at Fisk University. John R. Lewis was on the cusp of the Civil Rights Movement in the South. On March 7, 1965, he and a group of some 575 people met in Selma, Alabama, to begin a march to Montgomery. This day would become known as “Bloody Sunday.” As these peaceful marchers were assembling and organizing to march, the Governor of Alabama, George Wallace, ordered the Alabama State Troopers to break up the demonstration at the Edmund Pettus Bridge. As the marchers stopped to pray, mounted troopers charged and beat them with night sticks. John Lewis received a skull fracture and barely escaped to cross the bridge back to a church in Selma. Though bludgeoned and bleeding, before he would agree to go to the hospital, he appeared before the television cameras to call upon President Johnson to intervene and take action in Alabama. Scenes of this violence were broadcast around the world and

within 48 hours, 80 cities across America had taken to the streets and marched in protest of the brutality suffered by John Lewis and the marchers on “Bloody Sunday.” All of this came to the attention of Dr. Martin Luther King, Jr. who was living in Atlanta. King had preached for years at the Dexter Avenue Baptist Church within a stone’s throw of Alabama’s State Capitol. Upon learning of the events, Dr. King came to Selma and joined with John Lewis and the other marchers. Two weeks later, on March 21, 1965, a march began that ended four days later on March 25th in Montgomery. John Lewis’ fearless efforts were not based upon whether a black person in Alabama should ride at the front of a bus, whether they could get a meal at a white restaurant, or whether they could have lodging at a motel. “Bloody Sunday” came about over none of those things. Instead, it was based upon what many take for granted – the right to vote. A week after “Bloody Sunday,” President Lyndon Johnson appeared before a session of Congress to demand passage of the Voting Rights Act. John R. Lewis, an African American, a sharecropper’s son, a native of Alabama, in the harshest years of the segregated south, sailed on the “flood tide” and brought a wave of change in securing the rights of all disenfranchised voters in America. Many of you may have heard of the Honorable John R. Lewis, U.S. Congressman for the 5th Congressional District in Georgia, who is commonly referred to as “The Conscience of the U.S. Congress.” ***“There is a tide in the affairs of men which taken at the flood leads on to fortune.”***

JAMES HOWARD “DUTCH” KINDLEBERGER

The year was 1895, some 8 years before the Wright Brothers flew the first motor powered aircraft at Kitty Hawk, North Carolina. Dutch Kindleberger was born of German immigrant parents in the small town of Wheeling, West Virginia. He dropped out of school in the tenth grade and went to work in the steel mills as a day laborer. In a short time, Dutch Kindleberger decided that the steel mills would not be his chosen vocation. He began taking correspondence courses to earn a high school diploma and later studied at the Carnegie Institute of Technology where he was trained in engineering. He went to work in the air-

craft industry with the Martin Company and later with Douglas Aircraft Company before he went on to North American Aviation.

Germany invaded Poland in 1939 and shortly thereafter London was under siege from German bombers who were trying to wipe the city off the face of the earth. The British put up a good fight in their attempts to defend England and especially London with their famous Supermarine Spitfire Aircraft. As valiant as they were in their efforts against the German Luftwaffe, the British knew that the number of Spitfires in their Air Force was limited, and they continued to lose aircraft to the German fighter pilots on a daily basis. During this time in history, the only American fighter aircraft being produced was the Curtis P-40 Warhawks that went back to the days of Claire Chennault and the Flying Tigers. The problem with getting P-40's was that the production lines at Curtis Aircraft were at maximum production. Sir Henry Self of Britain came to America to inquire as to whether North American Aviation would be willing to assist Curtis in the building of P-40 Warhawks. During the meeting, Dutch Kindleberger, who by now was President of North American Aviation, advised the British government that North American could build a better fighter aircraft of a completely new design and have it flying within 120 days. This was an astounding feat when considering the decades required in the development of most fighter aircraft. Nevertheless in 120 days the most famous fighter aircraft of World War II rolled off the assembly line at North American Aviation in Inglewood, California. Shortly thereafter on December 7, 1941, the United States was thrust into the war with the bombing at Pearl Harbor. The North American P-51 Mustangs were shipped by the thousands to the European war theater. Later, the Rolls Royce V-12 inline engine was mated to the Mustang and with this tremendous improvement the P-51 became the most lethal aerial weapon in World War II. It is really quite amazing that this 1940's design had the capability of climbing to an altitude of 40,000 feet at speeds exceeding 500 mph.

Later in the war, the Tuskegee Airmen made the P-51 even more famous and Chuck Yeager, the first man to break the speed of sound, became an ace with the 357th Fighter Group flying P-51 Mustangs. The number one ace in P-51 Mustangs in World

War II was George Preddy, who flew with the 352nd Fighter Group and was shot down on Christmas Day 1944 by American ground troops. They mistakenly thought his P-51 was an enemy aircraft.

North American Aviation went on to build over 15,000 P-51 Mustangs. Imagine the outcome of World War II in Europe if Dutch Kindelberger had told Sir Henry Self that North American Aviation would be happy to produce the Curtiss P-40 Warhawk which had half the capabilities of the P-51 Mustang. I venture to say that the culmination of World War II in Europe in May of 1945 may have had a significantly different ending but for the fact that Kindelberger and his team at North American “sailed on the flood tide.” “*There is a tide in the affairs of men which taken at the flood leads on to fortune.*”

JOHN GILLESPIE MAGEE, JR.

John Gillespie Magee, Jr., was born in Shanghai, China, in 1922. His father was American and his mother was British. During the dark days of the Battle of Britain, prior to the time the United States had entered into World War II, John Magee delayed his admission to Yale and, like hundreds of other Americans, crossed the border into Canada, joined the Royal Canadian Air Force, and trained to become a fighter pilot. Within the year he was sent to England and qualified to fly the Supermarine Spitfire. He often flew combat missions over England and France. On one such mission, while flying one of the new Spitfire 5's up to 30,000 feet, he was so inspired by the beauty of the flying conditions that upon landing he jotted down a poem on the back of the pages of a letter he was planning to mail to his parents. His poem “High Flight” has been revered and has inspired aviators for decades and was dedicated by President Reagan to the memory of the crew of the space shuttle Challenger, which crashed in 1986.

HIGH FLIGHT

*Oh, I have slipped the surly bonds of earth
And danced the skies on laughter-silvered wings;
Sunward I've climbed, and joined the tumbling mirth
Of sun-split clouds . . . and done a hundred things
You have not dreamed of . . . wheeled and soared and swung
High in the sunlit silence. Hov'ring there,
I've chased the shouting wind along, and flung
My eager craft through footless halls of air.
Up, up the long, delirious, burning blue
I've topped the windswept heights with easy grace
Where never lark, or even eagle flew.
And, while with silent, lifting mind I've trod
The high untrespassed sanctity of space
Put out my hand, and touched the face of God.*

A short three months after this poem was written, John Gillespie Magee, Jr., was killed. He was only 19 years of age, yet he left an everlasting testament to all aviators and especially to the fighter pilots who have so gallantly protected their nations in times of war. ***“There is a tide in the affairs of men which taken at the flood leads on to fortune . . .”***

Tom Burnett caught and sailed the “flood tide” of Flight 93. John R. Lewis sailed the “flood tide” of “Bloody Sunday” in Selma, Alabama. Dutch Kindleberger sailed the flood tide of World War II. John Gillespie Magee, Jr. sailed the flood tide of “High Flight.”

Every Fellow of this great International Academy has sailed the “flood tide” through the voyages of their lives in service to others, in the preservation of the Rule of Law, and for the betterment of this great profession, and I know you will continue to “sail on the flood tide.” **On such a full sea, we are now afloat and we must take the current when it serves . . .**

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