

Pennsylvanians for Modern Courts 30th Anniversary Gala
Philadelphia College of Physicians
Keynote Address

Timothy K. Lewis
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It's an honor to be here for the 30th anniversary of PMC.

As Maida noted recently, it's taken three decades of hard work and coalition-building to arrive at the precipice of a merit selection system for appellate judges and justices. Many of you – my friends Paul Titus, Lynn Marks, Ben Picker; and of course, Phyllis Beck; and too many others for me to mention – have led the way. There's much more work to be done, but we're getting closer.

Stephen Hawking's greatest concern as he approached the end of his life was how divided we've become. But his final message was one of *hope*. Hope. "How do we shape the future?" he asked in the final chapter of his last book. "By remembering to look up at the stars, and not down at our feet," he answered.

I've thought about that a lot in the past 24 hours.

Over three years ago, I had the honor of delivering the Higginbotham Lecture to the Philadelphia Bar. We were, at that time, enduring national racial strife in the wake of shootings by the police and shootings of the police. I spoke about our national character and our struggle to find it and further it in difficult times.

A few things have happened since then. They have contributed to an urgent concern that we are witnessing the decline of the greatest democracy ever known. That might be a vivid reflection of truth. But I believe *this* moment is a gift. Because I believe that if we act now, this moment will be remembered as yet another symbol of our aspirations as a society, as a people – as "We, the People."

And so – and I want to be very clear about this – I don't address you tonight as a liberal, a moderate, or a conservative. I don't speak to you as a democrat, a republican, or an independent. All of that's behind me now, just like the speech I had planned to give until the events of yesterday.

I'm not going to address you as a former judge who appreciates the importance of merit selection, or as a lawyer, although I understand the weight of my former office and the privilege of serving in this profession.

What has happened this year, and what happened yesterday and today, echo both a distant past and a more recent one, if 50 years can be called "recent".

And so tonight, I'm going to draw on that history and speak to you simply as a fellow citizen and a proud American who believes in his country, who believes in you, and who believes in the

values that will restore our nation to its mission of achieving its founding ideals. I'm going to tell you the truth, as I see it – some of it painful.

And I'm going to speak to you as someone who will *always* look up to the stars, and who will never look down at my feet.

When we seek to improve our institutions, we do so to enhance our most fundamental ideals. That's at the very core of PMC's mission. That's what we're here to celebrate tonight.

And so I'd like to talk to you about freedom and equality, and how our choices, as individuals, as a community and as a country, determine the health of our democracy. We are a Commonwealth, and our common *faith* has brought this organization to the brink of its most significant achievement. That faith is still our country's greatest asset as we confront the many challenges we face today.

If you care about our nation's welfare, the past few years have been awfully frightening. If you care about a balanced judiciary, the past few months have been awfully painful. And if you care about our treatment of one another, yesterday was an inevitable crescendo.

Democracy is the closest reflection of humanity any form of government can achieve, because ideally in a democracy, the character of a nation reflects the character of its people. But that includes both the good features of human nature, and the bad.

We have to build that character with effort and with artistry, and with redemptive assistance from each other. We have to do so with intense self-discipline and devotion to our cause, because it's easy to falter. And if the current state of our democracy is a barometer of our character, we're in trouble.

We are in a place of suffering right now. We just endured one of the saddest episodes in the history of the United States Senate. Years ago, Stephen Carter of Yale Law School said the judicial confirmation process had devolved to the intellectual equivalent of a barroom brawl. We've descended even further. The country is further torn because of it, and even Justices on the Supreme Court are openly sharing concerns about how that institution will be perceived going forward.

I can't speak to trickle-down economics, but trickle-down racism has become a dangerous social reality.

It goes on and on, and it doesn't even scratch the surface.

We are divided. We are adrift. But we've been here before. And we have an opportunity, right now, to learn from this and to seize this moment and take action. We won't come out of this moment healed. We're never fully healed. We *will* come out of it different, as we hurl ourselves deeper and more gratefully – more gratefully and more purposefully – into the art of living.

In the distant past, 2500 years ago, Aeschylus, the father of Greek tragedy, wrote about this. "He who learns must suffer, and even in our sleep, pain that cannot forget falls drop by drop upon the

heart until, in our own despair, and against our will, comes wisdom to us through the awful grace of God.”

In the more recent past, 50 years ago, as darkness took hold on the evening of April 4th, 1968, Bobby Kennedy revived that message as he stepped in front of a microphone in a black neighborhood in Indianapolis. He turned to a city official and asked, “Do they know about Martin Luther King?” And then he began to speak. “I have some very sad news for you . . . Martin Luther King was shot and was killed tonight in Memphis.” Over the audible gasps, and in the pain of that moment, he invoked Aeschylus, and then he spoke of his own loss, his own suffering. He placed it in solidarity with the suffering of a nation. That is leadership.

That night, amid one of the most chaotic years in American history, the rest of the country burned. There were riots in over 100 cities. But there would be no rioting in Indianapolis.

Why?

Dr. King’s death, Kennedy told the crowd, left the community with a choice. Today, we face the same choice: “We can move in the direction of division as a country, in greater polarization”, he said, “Or we can make an effort, as Martin Luther King did, to understand, to comprehend, and to replace the violence and bloodshed that has spread across our land with compassion, and love.”

“What we need in the United States,” he continued, “is not division; what we need in the United States is not hatred; what we need in the United States is not violence and lawlessness; what we need is love, and wisdom, and compassion toward one another, and a feeling of justice toward those who still suffer within our country, whether they be white or whether they be black.”

People in the audience later said a sense of grace washed over the crowd, and their pain was channeled in a more productive direction. The political writer Joe Klein described Kennedy’s words as “a sublime example of the substance and music of politics in its grandest form, for its highest purpose – to heal, to educate, to lead.”

We have lost that. And today, 50 years later, we are living a Greek tragedy. We are engulfed in division and polarization. With rare exception, our elected officials do not seek to heal or to educate or to lead.

Attacking women for protesting too loudly is not leadership. Attacking black athletes for protesting too quietly is not leadership. Comparing anti-Nazi protesters to Nazi’s is not leadership. Demonizing anyone who disagrees with you is not leadership. Asking black people to “honor us” with your vote while praising Robert E. Lee as a great man is not leadership.

That’s not rational. None of this is. But that’s where we are.

Sometimes, we have to walk through chaos to get to clarity. The question is whether we choose to follow the light that might lead us out of the darkness. And it’s a very personal choice. That’s the key. It’s personal. This is personal. We choose who we are as individuals and, by extension, as a nation. We choose to do what we can to improve ourselves and our community and our country. And we choose how to do that.

I chose to focus on the courts. I believed that if we wanted the judiciary to remain a fully functioning branch of government, it had to be protected from outside because ethical rules prevent courts and individual judges from protecting themselves, and both were under assault.

The one thing Brett Kavanaugh and I agree on is that our nation's judiciary is the crown jewel in our democracy. It's where our greatest flaws are exposed. It's more than just a check on the other branches of government. It's where the legacies of our freedom fighters are reposed, from Charles Hamilton Houston and Thurgood Marshall; to ordinary citizens like Mildred and Richard Loving, and Norma McCarvey, known to most of you as "Jane Roe".

This is the institution in which we place our *deepest* confidence through a solemn pact that, whether we agree or disagree, we will abide its effort to define justice. But it's a delicate balance. It's a precarious balance. And today, its independence is up for grabs. In order to preserve it, we have to focus on our own values.

My mentor, Wendell Freeland, loved the law. He loved our courts and our Constitution. He was fond of saying, "It was the law that enslaved us, and it was the law that made us free." But courts can't free our minds and our hearts from what truly enslaves us all. That's a matter of our character and our enlightenment.

I don't care what side of the political spectrum you're on or how you believe we ought to move forward: freedom is a choice. As James Baldwin wrote, "Freedom is not something that anybody can be given; freedom is something people take." And I've seen enough to know that how we choose to live today, at this moment in our history, will determine how free we will be.

Each of us makes choices every day that impact that determination. It might be a small act of courage. It might be a meaningful display of compassion. It might just be an honest effort to understand someone we disagree with. Maida wrote about this recently in describing PMC's willingness to *calmly* engage different perspectives on a merit selection system.

When we do these things, we're refusing to be trapped by our fears or our limitations or our self-interest. We may fail, but when we exercise our freedom for something larger than ourselves, we are advancing a cause, individually and as a nation, even in our darkest moments. It is, as George Eliot put it, "the rapturous consciousness of life beyond self."

As Lincoln knew; as Dr. King knew; as Mandela knew; as Bobby Kennedy knew; and as we must remind ourselves and each other, the strength that allows us to navigate the darkness is love. The weakness that keeps us there is fear. With due respect to my mentor, it isn't just the law: it is fear that enslaves us, and it is love that makes us free. And our understanding of that simple construct is directly proportional to our capacity to save ourselves and our democracy.

And so, we choose equality. We choose diversity and civility and reform. They're not given to us by governments or courts. They can open doors of opportunity to help us achieve them, but we have to choose not to fear any of these.

Today, we have to boldly reflect what Viktor Frankl came to see as a prisoner at Auschwitz and later referred to as "the last of human freedoms – to choose one's attitude in any given set of circumstances; to choose one's own way."

Viktor Frankl was acquainted with the night. He had seen what human beings were capable of. He knew the dark side of human nature. But he was enlightened by it. He learned what those who have visited what David Brooks calls “the basement of their souls” also come to learn: that it can bring them closer to the truth, and to gratitude; just as Lincoln, who, as Brooks notes, suffered mightily, “emerged grateful that Providence had allowed him to be a small instrument in a transcendent task: preserving the Union”.

Dr. Frankl left Auschwitz convinced there were only two races of people, and they weren't defined by skin color or ethnicity or nationality: decent people, and unprincipled people. He believed we had the capacity to be either in any given situation. That's our choice; it's society's choice. And the dichotomy is starkly on display today.

Last month, a dear friend of mine, a 91 year-old survivor of Bergen-Belsen concentration camp, asked me, “How did we get to where we are today in this country? How did this country careen from electing a dignified statesman who embodied civility, to a coward and a liar who disgraces his office every day?”

I answered him with one word: “race”. But I would have been more accurate had I said “fear” because racism is really borne of fear.

Despite all his accomplishments and qualifications, Barack Obama's election was viewed as a danger by a significant segment of this country because of what he represented: multi-culturalism and change; pluralism and equality. Even though these are our foundational aspirations, they still threaten an entrenched power structure. They challenge a social order that pre-dates our founding. And their inevitability and truth, personified in Obama, required an answer.

This country responded by electing someone with an almost unlimited ability to ignore his own ignorance; a person whose entire campaign was built on an appeal to the darkest elements of our character and our society. Some see his election as a blatant and unapologetic call for a return to a white supremacist, male-dominated, homophobic, misogynistic order. I am far more optimistic: I view it as the last gasp of a dying breed.

We tacked in this direction not because of love of country or respect for our founding principles. We did so because of a fear of the “other.” Some of us are afraid to live up to our ideals because we're afraid of the truth. We're afraid of what true equality looks like if it's a different culture or color or gender or social status from our own. We're afraid it might deprive us of some perceived birthright, or of some amorphous entitlement.

This, of course, is delusional. Equality isn't black or white. Equality isn't any color. It isn't any gender or sexual orientation or disability. Equality is just decency and tolerance and civility and acceptance without seeing any of those things. True equality isn't threatening. It welcomes differences. It embraces the “other”. It extends a hand to the dispossessed who seek refuge in a free country. It finds a way to accommodate that historic cultural imperative. And it embraces different ideologies so long as they're *also* trying to improve the human condition without harming anyone, and by telling the truth as they see it.

Equality and reform are intertwined. They've always been. That's how we grow. Reform isn't threatening when it reflects truth. It simply provides us a vision of our potential if we choose to embrace it. And that vision is what allows us to move forward despite our fear. This is the progressive reform that has over the centuries advanced our wisdom and our humanity.

We caught a poignant glimpse of our potential in four separate events that unfolded at the same time very recently.

On August 31st, under the Capitol Rotunda lay the body of an authentic American hero, and a conservative Republican, John McCain. As his ceremony began, I observed its quiet dignity. It was solemn, and it was formal. It was entirely befitting his long and distinguished service to his country.

As representatives of each branch of the military stood guard over his flag-draped casket, a lone naval officer, with white gloves and those distinctive cleats on his heels that echoed throughout the chamber, slowly, majestically placed a wreath off to the side. I wept as I watched this. I did not agree with John McCain. But I thought very highly of him. He was a war hero. He was a freedom fighter. He was a flawed but honest man; an independent voice who stood for integrity in public service, and he deserved our admiration and respect.

But I was especially moved by a service unfolding at the very same moment in Hanoi, where North Vietnamese soldiers and veterans had gathered at the lake where he was shot down in 1967. Here were his captors paying tribute to their former enemy; a man they had held in brutal captivity for six years, but who later had found the compassion to reach back to them, and to help reunite their nation with the world.

As these events were taking place, yet another service was beginning in Detroit, and it was not quiet. It was anything but solemn. It was Aretha Franklin's "Home Goin'" ceremony, and it was late, it was loud, and it was long.

There, in front of the pulpit, lay the Queen of Soul who, always an incomparable diva, was decked out in her third change of clothes since her death two weeks earlier. Dozens of pink Cadillacs lined the streets outside. When Bill and Hillary Clinton arrived to a raucous standing ovation, they took their seats next to Al Sharpton, Jesse Jackson and Minister Farrakhan – a president and secretary of state; a couple of Methodist and Baptist civil rights leaders; and the head of the Nation of Islam.

But what struck me was that at that very moment, still another ceremony was happening at Buckingham Palace. The Welsh Guards, in their bright red tunics and bearskin hats, broke into an impromptu version of "Respect" to honor Aretha during the Changing of the Guard, a song that happened to have been recorded the very same year John McCain was shot down.

I was captivated by this. All of this happened in that moment for two people whose lives changed in 1967, and whose journeys couldn't have been more different on the surface yet more fundamentally American: one, the product of an esteemed military family steeped in generations of service; the other the product of a nationally respected black church family steeped in a different kind of equally important service.

I was moved because I *know* that *this* is who we are at our best, not because of their talent, which was God's gift to them; but because of what the meaning of their lives tells us about our potential, which was their gift to us. They represent a microcosm of our *true* culture, our *true* identity, and our true destiny.

We have to honor the meaning of their lives. We have to honor the meaning of *all* lives, *especially* in this moment. This is our mandate as citizens. It is the responsibility of each generation of Americans to refine the values of the Declaration and the meaning of the Constitution.

Michael Schwerner, Andrew Goodman and James Chaney knew this. Yes, Schwerner, Goodman and Chaney knew this. They were 20, 21 and 24 when they gave their lives in the cause of freedom and equality as they sought to register voters in Philadelphia, Mississippi. They knew this in 1964. And today, in these perilous times, we must know this, too.

I believe we honor all of these legacies by never, ever succumbing to the fear-mongering and lies and the hateful rhetoric served-up in a vile effort to divide us.

I believe we honor them by defending and preserving the integrity of our democratic institutions, particularly the courts we petition to vindicate the very rights they died for.

And I believe we honor them by being here tonight.

This is an important event, and we observe a significant milestone. I'm truly honored to be a part of it. But whatever you contributed to be here tonight, which I know is deeply appreciated, we need to do more. This organization needs your support, but we need each other if we truly want to seize this moment to advance the institutions we revere.

We must use our voices. We must demand accountability and decency – and civility – of ourselves and our elected officials. It doesn't matter if you work in an office on Market Street or at a charity assisting the poor, or both. It doesn't matter if you're at the top of the income scale or the bottom. As Paul Allen wrote before he died, "our net worth is not defined by dollars, but rather by how well we serve others."

The question is whether you are willing to engage, with joy and compassion and courage. Are you willing to write, speak out, volunteer, contribute more, perform some service that will have an impact on the world, run for office, support efforts to reform our criminal justice system, and most important of all, vote.

Vote. Nothing is more important than your vote.

When a presidential candidate attacks the fitness of a federal judge to preside over a matter because of his heritage, or, as president, demonizes a circuit court because he disagrees with its decision, he is engaging in dangerous abuses of power. The only thing that sustains the independence of the judiciary is public confidence in the people who serve. When that is systematically eroded because a president repeatedly calls into question the validity of judicial decisions, he threatens our most sacred investment in our constitutional democracy. Remember that when you vote.

When senators confirm judges or justices who are demonstrably biased or insufficiently vetted – or of questionable character – and have abdicated their advice and consent responsibility in exchange for political control over a co-equal branch of government, remember that when you vote.

When any political party turns institutional tradition and precedent on their heads by refusing to grant a hearing to a highly qualified judge nominated by the duly elected president, remember that when you vote. And if a party that replaces them retaliates by engaging in the same behavior just because they can, remember that the next time you vote. Wrong is wrong, no matter what side you're on.

When an Attorney General of the United States abruptly dismisses a highly respected Immigration Judge right here in Philadelphia, Judge Morely, and then hand-selects a replacement to do his political bidding, that is a grotesque abuse of authority that tramples all over the independence of the judiciary. Don't forget that when you vote.

And when state legislators refuse to follow the mandate of the Pennsylvania Supreme Court after it found that this Commonwealth was exceptionally gerrymandered by design, and instead threaten to impeach the justices who issued it, they have violated their sworn duty to uphold the law. This is an arrogant abuse of power, and it speaks directly to the urgent need for the type of reform PMC has so long been committed to advancing, and you should remember that when you vote.

It's been written that "we walk a narrow bridge between the Scylla of tyranny, on one side, and the Charybdis of anarchy, on the other, and the law is the inadequate handrail that keeps us from falling." And so it is.

Those of us who are committed to this mission have a lot of work to do. But if your passion for justice continues to burn, we will get there, together, and our cause will be advanced that much further. Remember that a robust and independent judiciary will prevail only as long as we fight to preserve it. Remember those who gave their lives to preserve our democracy.

And remember that November 6th is also Michael Schwerner's 79th birthday. He would probably be casting his own ballot had he not gone to Mississippi in the summer of 1964 and died so that you could cast yours.

But most important, remember that we are still engaged in the "unfinished work" Lincoln referred to at our nation's darkest hour.

50 years ago last week, after Dr. King and Bobby Kennedy had been assassinated; after the riots; after the convention in Chicago; and as war raged in Vietnam, Tommie Smith and John Carlos stood on the Olympic podium in Mexico City after they had medaled in the 200 meters. As the national anthem was played, they raised their black-gloved, clenched fists and bowed their heads in a silent protest of the violence and social inequality that defined us in 1968.

I was just a boy – a 13 year old freshman at an all-male boarding school. I was the only black student in my class. Soon after they were expelled from the Olympics and sent home, I hung a huge poster of Tommie Smith and John Carlos, fists raised, in my dorm room.

It was winter in America in 1968, literally and figuratively. We were divided. And I had to pay a price for hanging that poster. I had to fight, and I did. But I kept it there all year because it sustained me; and because in that place, in that climate, in that moment – I would not be intimidated; I would not be deterred; I would not lose hope; and I would not be moved. I would not be moved.

I think that small protest 50 years ago sustains me to this day. I long ago put away my posters and my fists. But in the decades since, my choice to find ways to advance justice and freedom and equality has never changed. I would not be moved, and I will not be moved.

It's winter in America again. And today, I simply ask that we remember Robert Kennedy's message. I simply ask that we choose to make this our finest hour by answering the call to restore our democracy. And I simply say that if we do these things, then in the words of the old African American spiritual, "*we shall not be moved.*" We shall not be moved.

In the face of voter suppression and other efforts to thwart democracy, we shall *not* be moved.

In confronting the language of division and hatred, we shall *not* be moved.

Despite *any* attempt to intimidate the inevitable reform that will help us further our destiny, we shall *not* be moved.

In the absence of moral leadership or *any* leadership; in the midst of this chaos as we struggle to find our way to clarity, *we shall not be moved!*

We shall not be moved from our devotion to *this* cause, in *this* moment, to save *these* noble ideals. Just like a tree, planted by the water, we shall *not* be moved.

Keep believing in yourselves and each other, and in the promise of this great nation. Make that choice. Never give up. Never, ever give up. Let's bring each other a higher love; a fearless love. And let's find the courage to embrace the hope that the present has brought us. Embrace hope. Look up to the stars and not down at your feet. And keep reaching. Keep fighting.

Thank you, and God bless you.