

COMMENCEMENT ADDRESS

BY

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TO

THE 2014 GRADUATING CLASS
OF
THE UNIVERSITY OF PITTSBURGH SCHOOL OF LAW

PITTSBURGH, PA
FRIDAY, MAY 9, 2014
3:00 P.M.

It is a source of great pride for me to join you in observing the grand finale of your formal legal education. From here on, experience will be your most reliable teacher, and a demanding one at that.

I want to extend my warmest congratulations to all of you graduating today. You are, of course, the principals in this exercise, but here also are the amici curiae – your spouses, families and loved ones who have supported your dedication and hard work toward attaining this law degree. For them a rousing cheer is certainly in order.

Hodding Carter, former spokesman for President Jimmy Carter's state department, unburdened himself some years ago on the subject of commencement addresses. He noted that:

"If the speakers are even moderately self aware, they know they are irrelevant and are therefore blessedly brief. If they are so fatuous as to believe that the students assembled hang in fascinated rapture upon their every word, they will be unbearably long."

Somewhere between these two extremes must lie a happy medium. And I am bold enough to try to strike it this afternoon . . . indeed, I am here and I have no choice.

Let me begin with some bits of reminiscence.

It was during my three years at this fine law school that I first developed my respect for the Rule of Law and my fascination for the courtroom experience which were to form such an important part of my later life. We were then, in the 1950s of course, located in the Cathedral of Learning and, come spring, there were frequent class defections across the street to then adjacent

Forbes Field to watch our beloved Pittsburgh Pirates, then as now struggling to keep out of last place.

A lot has transpired since those days. A magnificent new building. The recruitment of a first class Dean and additional front rank faculty. Rising rankings from U.S. News and World Report. Greater diversity among both students and teachers. An ambitious agenda in the utilization of technology. And, perhaps most impressive, a much higher level of alumni support. I am truly proud, as I expect you will be, to be a graduate of this Law School.

As always, substantial challenges await your generation – in large part deriving from the unfinished agenda of those of us who have preceded you. As you embark on your legal careers, you enter very exciting and very demanding times. Times of anticipated success and accomplishment, to be sure, but also times of rapid, kaleidoscopic change in our social, political and economic landscape – all of which makes it difficult to know today, where you may end up tomorrow.

That may be disconcerting to many of you. And, unfortunately, I can offer little useful advice on setting a career path and sticking to it. In fact, I may be one of the worst people to talk to on the subject in that, since my own law school graduation, my career, as you have heard, has been somewhat akin to that of an itinerant peddler.

So if you were hoping to hear a commencement speaker who could give you firm and unwavering advice on a game plan for your future . . . you're listening to the wrong guy.

On the other hand, for those of you who might otherwise be troubled by uncertainty, I hope my experience can serve as some consolation and help you to understand that any lack of

clarity you may be experiencing now stems from the wealth, not the paucity, of opportunities that your legal education offers you.

Given the existence of such uncertainty, however, and perhaps particularly because of it, I think it is important to identify some of the specific challenges I see to law and lawyers in today's world.

I.

Overall, the challenges you will face as practicing lawyers today are formidable. Historically, lawyers have not fared well, in either the literary or the popular sense. Shakespeare's admonition in Henry VI, Part II, to "kill all the lawyers" is not taken literally these days. But it does cause mild murmurs of near approval when coupled with observations that many of our problems seem to come from having "too many lawyers and not enough good ones" – present company, I am sure, excepted!

As lawyers, we must realize that we each have a vital stake in the integrity of our legal system and must conduct ourselves accordingly in the practice of law. Our aspirations must always be to achieve excellence in our professional endeavors, and this demands great care and precision . . . far more tedium than theatrics.

When I was an active trial lawyer, I became acutely sensitive to the image the public received of our profession from television and the movies – not media of great subtlety!

Contrary to the images conveyed by dramatic fare, for example, most effective litigation in this nation today is carried out not through courtroom histrionics, but by legal craftsmen who –

like all other good lawyers – carefully prepare and try their cases so as to extend the frontiers of the law on behalf of their clients and the public.

My greatest satisfactions as a prosecutor came, in fact, not from the frequent conviction and jailing of racketeers and corrupt public officials through courtroom legerdemain, but from fashioning legal arguments such as those which extended the application of environmental laws against industrial polluters of local rivers. Or later, as Attorney General, in extending the reach of law enforcement to deal effectively with violent hate crimes carried out against ethnic, racial and religious minorities and contributing to the enactment of the Americans with Disabilities Act, designed to help move 54 million citizens with disabilities closer to the mainstream of American life.

I hope that as lawyers you will similarly seek to extend the law for the public good – whether you serve as prosecutors or defense counsel, as tax lawyers or civil rights advocates, or in whatever practice you choose. You, and the nation, will be the beneficiaries of such a commitment.

II.

But what about challenges to you as individuals?

I see them as complex and demanding but, ultimately, of great promise. First, I would strongly suggest that you give over some part of your quest for individual self-fulfillment – for financial security, professional distinction, for prominence in whatever type of practice you choose – toward furthering those sound values than can enrich the lives of others about you.

Life is not just about getting and keeping in either the material or the personal sense. There is much more. To the extent that you commit yourself to giving to others of your talents, your resources, your care and compassion, then to just such an extent, I suggest, will you grow in your own sense of self-esteem and inner peace.

Some of you, I expect, will find careers in public service, as I have. A future governor, senator or president may be among you. But holding high political office is not the only – nor necessarily the most important – constructive form of citizen involvement. Indeed, more meaningful governance often takes place on the local school board or town council than in the rarefied atmosphere of Harrisburg or Washington, D.C.

And, as many of you already know from personal experience, our tradition of volunteer activity still constitutes one of the unique strengths of this nation. Our community volunteers make a special contribution, in ways unknown and alien to most of the world, toward the welfare of those who are the most vulnerable in our society.

III.

Let me also share with you some of the concerns that I have today about the law itself -- my "short list" of misgivings about our system of justice in America.

First, I must take note of the tensions which inevitably arise during times of war and national emergency to test the limits of our government's allegiance to preserving the civil rights and civil liberties of all our citizens. During times such as these, when our nation is threatened by terrorists who have no respect for the lives of innocent citizens, let alone for their own lives, it is natural for law enforcement and intelligence agencies to push the envelope when it comes to

attempting to thwart these subversive activities. Indeed, it has been so since our nation's beginning. This makes it all the more important that we maintain the carefully constructed balance established by our constitution between individual rights and national security. I have no fear that we will relinquish this truly unique characteristic of our free society so long as we adhere to the Rule of Law and so long as our courts sit in final judgment on such questions.

Second, I suggest it is long since past the time that we should remove the selection of Pennsylvania judges from the partisan political process. To require judicial candidates to solicit massive contributions to fund clever television slogans and sound bites is not only demeaning to them, but to our legal process as well. Substituting a merit selection system of appointment for the current random electoral process would be a great step forward for our state, one of the few which still elects all its judges in partisan contests.

Third, we must continue to work to ensure adequate competent counsel, in both criminal and civil proceedings, for all Americans, regardless of their ability to pay, if we are to truly guarantee equal justice under the law. Years ago, Judge Learned Hand admonished that, "Thou shalt not ration justice," but that is precisely what we do when we deny out citizenry adequate lawyering in the adjudication of their rights. Moreover, honoring the right to counsel makes good economic sense as well, particularly in criminal cases. Shortcomings in this endeavor truly evidence a "pay me now or pay me later" characteristic when convictions are reversed on appeal and costly new trials awarded because of inadequate representation in the first place.

Finally, we need to put in order legal systems that provide pathways, not barriers, to justice.

On the criminal side, this means a review of the nearly 4,500 separate offenses now on the federal books. For example, to reconcile the fully 78 different terms in Title 18 alone that are used to describe the mental state necessary for criminal culpability.

In truth, we need a new Criminal Code to replace the current hodge-podge collection of federal offenses, many of which could be more efficiently handled at the state or local level or through regulatory or administrative channels. This undertaking should be a priority for all of us interested in a smoothly functioning system of justice for all.

You, I am sure, have your own "laundry list" of appropriate reforms; some, no doubt, vastly different from mine. And we must all be mindful of the admonition of the late Arthur Vanderbilt, Chief Justice of the New Jersey Supreme Court, that "legal reform is not a sport for the short-winded." But it is important that we frame these issues and pursue these goals, as lawyers, utilizing the special insights we gain through our day-to-day practices.

From this day forward you will all make your own contributions --as lawyers and as caring citizens -- and they will demand your very best. Moreover, as advisors and counselors to other individuals and institutions, you will frequently have a role to play as the "conscience" of your clients. And this will also require that you apply your own sound values and standards to the resolution of their problems.

But, for all these challenges you have been well prepared. You have acquired a unique set of intellectual tools for the practice of law. You may now enter upon a professional career that can bring future pride to you, your family, your professors and your community.

Members of the class of 2014:

We salute you, and we wish you well. In welcoming you to this honorable profession, I am driven to repeat that oft-quoted, if somewhat hackneyed, observation of Harrison Tweed, one-time President of the Association of Bar of the City of New York, who said long ago:

"I have a high opinion of lawyers. With all their faults, they stack up well against those in every other occupation or profession. They are better to work with or play with or fight with or drink with than most other varieties of mankind."

May it ever be so!