

Vanderbilt Law School Commencement Address: Classes of 2018  
May 11, 2018  
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To the class of 2018: for three years, I have called on you and called on you and called on you, as have my colleagues sitting now before you.

Today, you have honored me beyond measure by calling on me to mark this occasion.

To put into language the emotions and the meaning of these few, last precious minutes we have together before you walk across the stage and leave Vanderbilt. Forever leaving behind law school, four years of college, thirteen years or more of primary and secondary education, all with the support and expectations of your families and loved ones who sit behind you. In about ten minutes, all of that education is over. Done.

Let us reflect a bit, on our time together.

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For three years, we have drilled you and quizzed you on the Erie doctrine, contingent remaindermen, poison pills, dormant commerce clauses, command responsibility, embedded federal questions, mens rea, interjurisdictional preclusion, Seminole Rock deference, and so very, very, much more.

It is exhausting to contemplate, and impossible to explain to your non-lawyer family and friends, but you did it. We have demanded precision with your language, logic in your reasoning, research and precedent to back your legal arguments. And you have risen to that challenge as well. The LL.M. students endured only one year, but they did it in a foreign language!

With those skills in hand, we are sending you out into the legal profession. It is, indeed a profession—we lawyers are glued together by more than a collective desire for wealth and influence. Although there is no shame in either. But we have more. We have a shared craft, like artists or artisans, meaning that there is value, there can even be beauty, in arguments that lose, briefs that don't convince. Take the time to build the profession: sentence by sentence, Westlaw search by Westlaw search. You know exactly what I mean: double-checking that citation, re-writing a paragraph to be the best that paragraph could ever possibly be. You build

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your career, but also the profession, in this way. And there is a deep-seated pride and satisfaction in that way of working that no one, no one, can take away from you.

I offer, for your consideration, a slightly edited description of professions by the 19<sup>th</sup> century British social critic John Ruskin, who said that the duty of true professionals is on due occasion, to die for their calling. The Soldier, rather than leave her post in battle. The Physician, rather than leave his post in plague. The Pastor, rather than teach Falsehood.

**The lawyer, rather than countenance Injustice.”**

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For three years, and for seventeen before that, your formal education has meant that you shared the classroom with people who do not share your politics, who are pursuing a different vision of the good life. And yet we are now all bound together in a profession, and in another way as well.

In your three years here, we have seen the growth of the black lives matter movement, the beginning of the #me too, #time’s up, the Parklane shooting and sadly many others. President Trump was elected during your time in law school, the European Union is battered, in retreat, there is a world-wide rise in populism, global arguments about migration, and the post-world war II international legal order is crumbling as I speak.

2016 was really the first true, post-Cold-War election. And President Trump is absolutely, fundamentally right to question whether our mid-twentieth century structures serve us well today. Time will tell if this moment of upheaval is transformative in some fundamental way.

But in this time of chaos and uncertainty, it bears remembering that if we are to survive and thrive as a society, it will be because of our belief in the promise of law, the ability of legal institutions to process and mediate our deep and fundamental differences.

Law is tricky that way. Law can oppress. International law helped create morally abhorrent colonial systems of power and exploitation; law was the institutional face of slavery and Jim Crow; law can be on the wrong side of everything and anything, as history so vividly illustrates. So we must tear down and rip apart the laws and even the institutions that don’t serve us and our values. Dismantle them amid deep divisions about what should be kept intact and what discarded.

But in a deeper sense, law is the solution: our commitment to fair judging, our respect for supreme court justices who don’t share our politics, our commitment to our Constitution, to our very democracy which came even before the Constitution. That belief and faith in the promise of law is like a sacred trust. No. it IS a sacred trust. And you are now its keeper. That, too, binds us together.

The sacred trust runs deeper than a commitment to civility; for we cannot pretend that our differences are shallow. They are profound and growing. Our commitment to civility is important – and I personally place tremendous value on civility -- but profound change is almost always in part uncivil and unsettling with winners and losers. Those of us who defend norms of behavior and civility are in some way defending the status quo, often believing or hoping that much more is settled and decided than is actually settled and decided.

So even when we are not civil, cannot be civil, we must nonetheless keep our collective faith in the promise of law and in our Constitution. As President Lincoln said, “The mystic chords of memory” “will yet swell the chorus of the Union, when again touched, as surely they will be, by the better angels of our nature.”

To swell the chorus of the Union is a task for all. But the Union is bound together by the Constitution and the legal institutions it put in place. To swell the chorus of the Union through the mystic chords of memory, is, in that sense is the particular obligation of lawyers.

Learned Hand once wrote that “Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it.” How true that is. But liberty cannot thrive in our hearts alone, it must live as well in our courts and our laws, or it means little.

The great Constitution we have, our democracy, our legal system is unique in the annals of history. But it was not created, was not defended, and will not be sustained without effort and courage and commitment and sacrifice.

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And for the three years, and for seventeen before that, and now back even further, we in law school, along with your kindergarten teacher and your parents – they may have done this better than us; I hope they did.

We have also tried to teach you something else: to honor and value those closest to you. I was once deliberating whether to attend a funeral, and Professor George said to me: go. go to funerals. You will never regret that decision. She was right. And more broadly, you will not regret kindness and decency to those closest to you. For most of us, our personal, familial, and moral failings are the ones that truly haunt us.

May the better angels of your nature flourish at home.

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So yes, class of 2018, you already see what I have done with this, but I will use the remaining sixty seconds to just spell it out.

You gave me the last word and of course I am using it to call upon you.

I am calling on you for professional leadership, for community and global leadership, and for moral leadership.

Some of you are already planning your political careers or you are on your way to the corner office. Kudos and all the power to you.

Some of you don't have a job or you don't have the job that you want. Some of you think you are too quiet and introverted to lead. But leadership takes many forms, and emerges most forcefully under adverse conditions. If you aspire to lead, you will find the opportunities to do so, in the legal profession, in your community, in the world, and at home.

With tremendous optimism, pride, and great confidence, we are calling on you to do just that.

Thank you.