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COMMENCEMENT ADDRESS DELIVERED TO LOYOLA LAW SCHOOL CLASS OF 1986

Justice William J. Brennan, Jr.

It's a pleasure to meet with the family and friends of the Class of 1986. I also warmly congratulate the graduates on their achievement of reaching this day. I shall also respect their hope that these remarks will be short, brief and wholly empty of platitudes—you have had your fill of advice and counsel and need none from me.

I don't think you feel much differently than I did 55 years ago when I sat where you now sit. What was on my mind was where I was going to get a job and, when I did find one, whether I could handle it. If the commencement speaker addressed that problem and suggested answers, I was prepared to listen to him all afternoon. Otherwise, forget it—the sooner he stopped, the better.

Last year Dean Vorenberg of Harvard grasped the nettle and—pithily—gave this encouraging and sound advice to the graduating class:

“It has been suggested that too many talented people are going into law. I disagree. If clients are to trust attorneys with their most important affairs, they are entitled to the services of lawyers of outstanding ability and with the finest training. I believe that for the tasks that need to be done society needs all the intellectual ability, compassion, moral sense, and skills that this class possesses.

“These tasks include dealing with the difficulties faced by less privileged members of society seeking housing, welfare benefits, health care, and protection against discrimination, as well as the complex problems of the corporate world. And they include acting as protectors of human rights around the world, often in countries where the law itself is used to stifle these rights, as well as advising clients in trade and investment abroad.

“No lawyers starting their careers are more in control of their futures than you are. There is no universal ‘right’ way to lead a life in the profession. Whether your work is in government, private practice, international human rights, legal services, public interest, or elsewhere, you have an obligation to use the special opportunities you have had for the benefit of others. How you meet that obligation will depend on your own inclinations, imagination, and energy. There are many ways of working on the side of the angels. I hope you will have the self-confidence and the

honesty to recognize that the kind of life you lead in the law will be what you make of it. Your future was not foreordained at the Law School and depends less on chance than on your own decisions.”

Let me—briefly, I promise you—embellish upon Dean Vorenberg’s comment. I begin with the observation—a truism since de Tocqueville wrote so discerningly of American society in the Nineteenth Century—that lawyers occupy a strategic role in the ordering of our society. Why is this? It is not, I think, merely that the law trains one in habits of analysis which can be applied fruitfully throughout the range of social problems, or that tradition has inclined to the law individuals disposed to follow also a career in politics or public service—though these are doubtless important factors. Equally significant is the fact that governmental action that in other societies is exclusively the purview of administrators or legislators is, in America, subject also to judicial or quasi-judicial scrutiny. We have been a legalistic society from the beginning. Lawyers were conspicuous in the vanguard of the revolutionary movement and in the drafting of the Constitution, and ever since the diversity of our people, combined with their ingrained sense of justice and moral duty, has caused the society to frame urgent social, economic and political questions in legal terms—to place great problems of social order in the hands of lawyers for their definition, and in the hands of judges for their ultimate resolution.

Today, the lawyer is still the indispensable middleman of our social progress. To him men turn for advice and assistance in their private affairs, for representation in the courts and agencies of government and for leadership in public life. In truth, I think the lawyer’s role is more important today than ever. The complexities of modern society are not confined to the technological and scientific spheres; they infect all phases of social organization. The intricacy and pervasiveness of the webbing of statutes, regulations and common law rules in this country which surrounds every contemporary social endeavor of consequence give lawyers a peculiar advantage in coming to grips with our social problems. They alone—or so it sometimes seems—are equipped to penetrate directly and incisively to the core of a problem through the cloud of statute, rules, regulations and rulings which invariably obscure it to the lay eye; I need but remind you of the high complexity of, for example, the federal civil rights, urban renewal, poverty and social security statutes.

In threading this maze, the lawyer has inherent advantages not merely of specialized training and experience, but of detachment. He is not involved as principal in the problems that he is asked to mediate and advise on, but as an agent, and as such can afford, emotionally and intel-

lectually, to take a broader long-term view of his clients' needs—whether the client be a private corporation, an individual or a government agency—than can the client him- or herself.

For all these reasons, it seems to me unquestionable that the lawyer in America is uniquely situated to play a creative role in American social progress. Indeed, I would make bold to suggest that the success with which he responds to the challenges of what is plainly a new era of crisis and of promise in the life of our Nation may prove decisive in determining the outcome of the social experiments on which we are embarked.

I would remind that in past periods of acute national need the response of the profession has fallen disappointingly short. Thus did Mr. Justice Stone (as he then was) on a similar occasion in 1934 return—in the words of his biographer—“[a]n unvarnished indictment of lawyers' neglect of public duties.”¹ “Steadily” Justice Stone said, “the best skill and capacity of the profession has been drawn into the exacting and highly specialized service of business and finance” with the consequence that “[a]t its worst it has made the learned profession of an earlier day the obsequious servant of business, and tainted it with the morals and manners of the market place in its most anti-social manifestations.”² The lesson which Mr. Justice Stone rightly, I think, drew was that a more affirmative, responsible and progressive attitude on the part of the profession as a whole might have averted the crisis which evoked those measures.

The lesson remains timely, although the critical problems today are quite different. The focus has shifted from the abuses of concentrated economic power and the vagaries of cycles of boom and bust. Society's overriding concern today is with providing freedom and equality of rights and opportunities in a realistic and not merely formal sense, to all the people of this Nation: justice, equal and practical, to the poor, to the members of minority groups, to the criminally accused, to the displaced persons of the technological revolution, to alienated youth, to the urban masses, to the unrepresented consumers—to all, in short, who do not partake of the abundance of American life. To be sure, it is our very success in overriding the cruder privations and injustices of an earlier day—massive unemployment, rural backwardness, institutional segregation, overt police brutality—that has brought to the fore the current problems. But that they were formerly obscured by even greater wrongs does not make the remaining issues of injustice and inequality trivial or

1. A. MASON, HARLAN FISKE STONE: PILLAR OF THE LAW 377 (1968).

2. Stone, *The Public Influence of the Bar*, 48 HARV. L. REV. 1, 7 (1934).

tractable. Who will deny that despite the great progress we have made in recent decades toward universal equality, freedom and prosperity, the goal is far from won and ugly inequities continue to mar the national promise? Much, surely, remains to be done. Lawyers obviously cannot do it all, but their potential contribution is great.

Let us have no illusions that the task will be an easy one. The social and legal problems of disadvantaged and outcast groups and individuals are novel and complex for the practicing bar, not least because they involve precisely those in our society who traditionally have *not* been the clients of the legal profession as such. Moreover, the legal aid and representation that are required transcends that constitutionality mandated for the indigent in the criminal and juvenile courts, which has the most traditional sort of legal coloration rooted as it is in rights guaranteed by the Federal Constitution. Assurance of equal rights and opportunities to all will require new techniques and involve, for many successful practitioners, new areas of private law, such as consumer protection, landlord-tenant relations and general welfare law including public assistance, housing, education and training programs, child welfare services and unemployment insurance. Many of these problems will not yield to the traditional methods of solution through counseling, negotiation, or judicial or administrative proceedings. Their solution will demand the formulation of public policy in every area of life where lawyers apply their abilities, in all branches of government, with the responsibility at each level to see at the very least that all classes of men and women are effectively represented by lawyer-spokesmen.

"What we need," Dean Griswold has said, "are not narrow-minded, single-track poverty lawyers." "A fine corporate lawyer," he added, "has the background and breadth of understanding to recognize the scope of the poverty problem."³ I agree that the challenge will not be well met by the development of narrow-minded, single-track poverty lawyers. Even less, however, will it be met by the development—perhaps I should say, the continued development—of narrow-minded, single-track corporation lawyers. Fine corporation lawyers of breadth and background will not emerge in a system that erects steel bulkheads between private and public practice, and even if they do, their value to the public sector will be academic unless they can be involved concretely in its problems and struggles. Poverty lawyers and corporation lawyers will both remain unduly narrow-minded and single-track so long as career

3. 7 Harv. L. Rec. 7 (Mar. 23, 1967).

patterns in our profession make it very difficult to switch from one track to the other.

I reject the easy solution which concentrates on the public-service opportunities open to practicing lawyers on the traditional type of spare-time basis. Poverty and civil rights law, and most other important forms of public service, are as specialized and demanding as private practice, so that what Justice Stone described as "those occasional and brief intervals when the busy lawyer secures some respite from the pressing demands of clients to participate in the festivities of bar association meetings"⁴ are wholly inadequate to bridge the gap. What we primarily need, rather, are more and better ways to combine, with a legal career, consecutive periods of full-time service of private and public service.

As for the problem of devising more and better ways for lawyers to serve the public interest even while they remain fully engaged in private practice, I start from the premise that the occasional dabbings of the busy private practitioner are inadequate. Nor is it enough for a law firm to take the position that its partners and associates are perfectly free to spend as much as they like of their spare time—that is, time beyond what they ordinarily devote to the firm's business—on projects devoted to the public interest. Such inadequacy in public service exists even if it is made clear—and I fear it often is not—that the lawyer may use firm facilities such as day-time stenographic help and duplicating equipment for these projects so long as he still puts in his accustomed number of billable hours on firm business. The rub is that in the real world the busy lawyer does not have those extra hours left over after completion of firm business; or, if he does, either he is then too tired to devote them to a separate project, or he finds it difficult to find a project that can be satisfactorily pursued in the random extra hours he has available, usually in the evening. It is almost impossible to meet clients, conduct litigation, telephone public offices, and so forth, in the evening.

It is preeminently true, with respect to spare-time public-service work by practicing lawyers, that if such work is to have any significant existence at all, the firm must not only tolerate it but affirmatively encourage it. Some large firms have in recent years inaugurated such a policy of encouragement with respect to associates desiring to spend several weeks working for one of the civil rights organizations in the Deep South. The firms have allowed extra weeks of vacation for this purpose, or have otherwise made concessions without which, however public-spir-

4. Stone, *supra* note 2, at 11.

ited the associates might have been and however tolerant the firm, the probability is that nothing would have happened.

Apart from the various techniques that might help to construct bridges between private practice and the public sector of the profession, it is obvious that bridges are of no use unless traffic flows over them. In the final analysis the obligation rests on the individual lawyer, whatever may currently be his position within the profession, whether he is in a large or small firm or is an individual practitioner, to devote himself, however it may be possible, to some project involving the public interest. Every lawyer should have at any given time, I think, at least one public-service project to which he is in some manner actively devoting his professional ability.

Above all, remember that the liberties and rights that make the United States the envy of the world are your particular responsibility to safeguard and protect.

And the lawyer's task will be the more difficult if he loses sight of the great struggle which may go on obscured by the excitement of convulsive change. Reluctant though we as a people have been to see it, ours may not really be an age of science, as so many think, or of technology or atomic energy, but rather an age threatened to be dominated by politics, and all too often selfish power politics. Stated bluntly, too many of the profession, in the pursuit of treasure, either forget or consciously ignore that, in the face of political pressures both at home and abroad, the retention and development of our freedom continues to be the supreme problem of our times.

That is why the primary mission of the profession must be to preserve individual freedom—freedom of thought and action—to the fullest extent possible. Over the centuries our freedom is largely to be traced to lawyers at the bar, lawyers on the bench, and lawyers in the legislature. The modernization of the law, its adaptation to the need of our times must be thought through in terms of freedom if we are to get the greatest good out of the potentialities of every individual. It is only within recent years that we have had occasion to think of freedom outside the context of peace. Now we have to consider freedom in terms of cold war, preparation for actual war, war itself, recovery from war and the emergencies attendant on war, and in a world which daily witnesses miracles of science undreamed of a quarter of a century ago. Even the Constitution must be restudied in terms of these basic realities, with which we apparently have to live for years to come. The preservation of freedom is very obviously, I repeat, the central problem of our law today and around it

the separate study of individual subjects in the law must necessarily revolve.

So young men and women—on the threshold of becoming lawyers—never lose consciousness of the sacred aspects of your profession. You will not be working with implements of the mechanic, the formulas of the scientists nor the tools of the artist. You will be working for the protection and assertion of the God-given and constitutionally guaranteed, inherent rights of “life, liberty and the pursuit of happiness” of human beings. You will be dealing with the vital affairs that affect the whole pattern of human relationships under a government that derives its “just powers from the consent of the governed.”

You will assume your rightful place in the matter of service to the individual, among the men of the church and the physicians, who will be concerned with the individual’s spiritual welfare and physical well-being. You will be concerned with the things that may be as important to a person as either—a person’s life, liberty, rights, estate and beneficiaries. To this important task you can do no less, in good conscience, but to pledge your time, your talents and your honor.

With that I close. I envy the golden opportunities that lie ahead for each of you in our exciting and challenging profession. I join enthusiastically with your dear ones and this distinguished school in wishing you happiness and success.

