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When I heard that you had voted me the Hurlbut Award, I have to confess my first thought How will I litigate the recount? I had visions of students claiming that they had meant to vote for Professor Klarman, but the ballot had confused them. I could see students arguing that the “clear intent” of the voter standard gave too much discretion to Barbara and Carlos, and that really I had lost by 537 votes out of 180 cast! I foresaw students challenging their lifetime disenfranchisement for having taken food into one of the classrooms.

This is the last time you all will be together as a class. I remember the first time, in September 1999, as if it were yesterday. I spoke to you then too. I gave you a lot of advice that day -- read more poetry, become the hero of your own life, understand the difference between “disinterested” and “uninterested,” and when you come to a fork in the road, take it. I hope some of it has been helpful, particularly the part from Yogi Berra about the fork.

But when I spoke to you in 1999, I didn’t know you, and now I do. It turns out that the real prize isn’t the opportunity to speak at your graduation. The real prize has been working with you over the past three years. As Yogi said on another occasion, I want to thank all of you for making this day necessary.

Earlier this month, we saw a terrific final round in the moot court competition. Congratulations to Randy and Rachel and Julian and Dan for the arguments and Kaycie and Jessica for their work behind the scenes. As many of you know, the case concerned California’s three-strikes law. I’ve been the beneficiary of a wonderful recidivism here at the law school. Delia Ibarra wrote me an email last year where she called herself a “repeat offender” because she’d taken three classes from me. So thanks to the roughly three dozen of you in the three-strikes crowd.

Several of you never said a word in class -- or only spoke the day I cold called you in Civil Procedure. Perhaps you thought I didn’t notice you there, semester after semester, year after year. Just like some of you thought I didn’t see you playing free cell. But I did. Having to write all those letters last year apologizing for not being able to give you better grades in Civil Rights Litigation convinced me we needed the 3.4 mean. The *amazing* essays some of you wrote in the mandatory 3K minicourse on the Making of the President -- and the 3.9 and 4.0 shadow grades you pulled in what several of you called Second-Year Oprah -- restored my faith, sort of, in the 3K option. I apologize to the many of you who have approached me over the past 2 years to say that I gave you your lowest grade in law school (and maybe your lowest grade since that bad conduct mark in kindergarten). It was *my* fault, I’m sure.

As for those of you who *did* talk in class, I want to thank you even more. As you know, one thing that makes Stanford really special is the quality of your classmates. If you took Regulation of Politics this past semester, you may remember our discussion of the paradoxical status of the guaranty clause. Suppose Congress actually used it. Wouldn’t the Supreme Court

have to decide what is a “republican form of government” to determine whether Congress acted within its power? Where did that question come from? So thanks, Nora and Cari and the two Aimees. Those of you who took Civil Rights Litigation this spring will remember our discussion of the bind courts face in articulating standards under the Eighth Amendment for prisoners’ claims to medical treatment. Much of how I now think about this issue is informed by things your classmates brought up last year. Thanks especially to Chloe. One of the best days of my teaching career happened this spring, when I tried to figure out the appealability of qualified immunity decisions in a state officer’s favor. I spent hours with the treatises and on-line, and spoke to Janet Alexander and experts across the country. It was what makes teaching, and teaching here at Stanford, so exciting. So thanks, Ozge, for asking a question I’m still trying to answer.

I could multiply examples of what you’ve taught me all morning--Keith’s biting critique of the sleeping lawyers cases, Eric’s five-axis matrix for thinking about what counts as pro bono, Alex’s paper on the original meaning of section 5, Josh’s commerce clause essay, Kareem’s dissertation, Julian’s reminders that the standard of review is always an issue.

Some of what you taught me, you picked up before you came to law school. So I want to thank your parents and grandparents, your relatives, your friends, your spouses and partners, and your teachers, from kindergarten on. And I’d like to thank my parents today, too. They couldn’t be here today because they’re welcoming a new knee into the family.

A lot of what you taught me, though, you picked up here at Stanford. So I want to thank my colleagues, especially Bob Weisberg, who taught Crim Adjud with me, and the staff, especially Paul and Erika, for all the things they helped you to learn that you then shared with me and with each other.

Finally, although no one mentions the secret con law study group, I can’t say goodbye to the Class of 2002 without doing so. Like the Holy Roman Empire, which was neither holy nor Roman nor an empire, the group wasn’t at all secret, wasn’t only about constitutional law, and was nothing like a study group. Over the past five semesters, we read about 75 Supreme Court decisions. Those discussions helped me to see interesting connections among different areas of the law. They’ve already changed the direction and style of my scholarship. Especially as the last of the other original members head off to judicial clerkships, I think of Chaucer’s description of the clerk in the *Canterbury Tales* – “gladly wolde he lerne and gladly teche” – and I feel glad to have learned and taught with such extraordinary students. So thanks to David and John and Kevin -- who were there all five semesters. And thanks, Jasmine, for explaining the boa and cigarette holder.

But I don’t want to thank the Class of 2002 only for helping me to learn more law. I’ve discussed the Triangle Shirtwaist Fire trial in civil procedure and professional responsibility for many years. Still, when Fred brought me Robert Pinsky’s poem, “The Shirt,” it changed my sense of the case. I’m grateful to the many of you who wrote me condolence notes when Louise (my cat) died and congratulations notes when I got the Hurlbut. Thanks to Kaycie for not making fun of me when I couldn’t answer the clue she found staggeringly easy on Wheel of Fortune. (For those of you who are wondering, the clue was ____ R A N ____, and it’s someplace on a map.) Thanks to Kiko and Albert and Jen and Justo for showing that law students can have other terrific talents too. Thanks to Karen and Christian for the Law Review lecture series and to Hillary and Sharon for an amazing Shaking the Foundations.

And those foundations *need* to be shaken. Special thanks to all of you whose clinical

work, pro bono activities, externships, and summer jobs have helped to make the world a better place. And to Grady for working to improve L-RAP so more of you can do public service when you leave here.

I can hardly imagine Stanford without you, but you are about to leave. Which brings to my mind another famous leave taking -- the last lines of Milton's *Paradise Lost*:

The world was all before them, where to choose
Their place of rest, and Providence their guide:
They, hand in hand, with wandering steps and slow,
Through Eden took their solitary way.

Right now, the world is all before *you*, ready for *you* to choose. So what advice do I have as you take your way through the outside world? And, by the way, congratulations to all you couples who are leaving hand in hand.

I still think something I suggested at your orientation is exactly right. Read more poetry. It will cleanse your mind and help you to see things more clearly. Keats' "Ode on a Grecian Urn" describes a pot with a scene of a boy chasing a girl painted around the rim. But Ike McCaslin's father explains in Faulkner's novella *The Bear* that the poem is about more. Keats, he said, "had to talk about something.... He was talking about truth.... Truth is one thing. It covers all things which touch the heart -- honor and pride and pity and justice and courage and love.... Courage, and honor, and pride, ... and pity, and love of justice and liberty. They all touch the heart and what the heart holds to becomes truth, as far as we know truth." Poetry will help to remind you that law and justice and truth and liberty are connected to honor and courage and pride and pity.

After September 11, I reread W.H. Auden's poem about the beginning of World War II, "September 1, 1939." Over the last eight months, I've returned again and again both to Auden's warning and his invocation. The poem describes a world littered with the "windiest militant trash/Important Persons shout." We've seen a lot of that recently. I hope you've learned here that one of a lawyer's most important jobs is to resist that trash. Especially when it's shouted by important persons. And the final stanza brings me back to how I think of being a lawyer:

Defenceless under the night
Our world in stupor lies;
Yet, dotted everywhere,
Ironical points of light
Flash out wherever the Just
Exchange their messages:
May I, composed like them
Of Eros and of dust,
Beleaguered by the same
Negation and despair,
Show an affirming flame.

The rights our Constitution gives us are among those points of light. Particularly in dark times, lawyers have a special responsibility to kindle and protect that uncertain, flickering flame.

And where else can you look for inspiration? At the beginning of Ken Burns' series on baseball, a writer said that 2000 years from now, America will be remembered especially for three things: the Constitution, jazz, and baseball. All three are good sources of advice for how to live your lives as a lawyer. The last three years have been in significant part about how the

Constitution should inspire you. For a century, Stanford alumni have been helping to shape the Constitution as lawyers, public officials, teachers, and citizens. If you find yourselves on the Supreme Court fifty years from now -- the way two graduates of fifty years back find themselves today -- please remember what I said about equal protection, qualified immunity, habeas corpus, congressional enforcement power, substantive and procedural due process, the role of federalism, the relationship between fundamental rights and suspect classification strict scrutiny, the First, Fourth, Fifth, Sixth, and Eighth Amendments, remedial backwash, effective assistance of counsel, and the fact that the Fourteenth Amendment came *after* the Tenth and Eleventh Amendments. And please hire Stanford clerks. Having had so many of you over the past three years in so many courses that concern the Constitution, I don't have much else to say about what it should tell you. But I hope you'll stay in touch, so we can continue our conversation.

And what about jazz? What guidance can *it* give to you about what sort of lawyer to be? This being an occasion for advice, I can scarcely leave you with the observation often attributed to Louis Armstrong: Jazz? "If ya gotta ask, you'll never know." In fact, the most important thing we've taught you to do here at Stanford is to ask questions. So let me point to another line of Armstrong's: "What we play is life." You need to remind yourselves that there are real people behind the records and briefs you pore over, the rules you advocate, the laws you pass, the opinions you issue. The structure of what you do may resemble what you did in moot court or Fed Lit or negotiation or Deals, but the consequences are different. People will trust you with their fortunes, their freedoms, and their lives. Respect that trust.

And like jazz, the law is about a lot more than rigid rules already laid down. It's about improvisation, reaction, collaboration with others. I've long been struck by something Benito Juarez said when he was asked his plans on coming into office: "For my friends, grace and justice; for my enemies, the law." Sound that grace note of justice. Work to make the law more just; don't work just to make more law.

But the best piece of advice about how to live that I've gotten recently is attributed to the great baseball player Satchel Paige. No, it's not from his well-known list of six rules for staying young. Not that they're useless. Paige is right: You *should* "avoid fried meats"; they *do* "angry up the blood." And he's also right when he tells you "Don't look back; something *may* be gaining on you."

But Paige has a far less well-known, and more poetic piece of advice:

Work like you don't need the money.

Love like you've never been hurt.

Dance like nobody's watching.

For those of you who are clerking, or going into public service, you're already following that first suggestion. Special congratulations to Holly and Dylan and Kathleen and Matt and Jeffrey and Lynne and Sharon for being in the first wave. But for *all* of you, you need to do something where the paycheck is not the best part of the job. Lots of commencement speeches quote a remark attributed to Paul Tsongas -- "No man ever said on his deathbed 'I wish I'd spent more time in the office.'" Tsongas was wrong. People who do work that they love *will* feel that way. They'll wish they'd had more time in the office, as well as having more time for their parents and relatives, their spouse and children, their friends, their pets, or just smelling the flowers. As a matter of statistics, many of you will spend about half your waking hours over the next 40 or 50 years at work. Make those hours count for something other than a fancy house or a huge 401(k). Prosecute the guilty. Defend the innocent.

As for loving like you've never been hurt, I hate to say it today, but bad things will happen. You will lose cases you should have won. You will see injustice triumph -- in particular lawsuits and sometimes in whole areas of the law. It hurts, believe me. But don't give up or become cynical. Martin Luther King said that "the moral arm of the universe is long, but it bends toward justice." Be inspired by Stanford lawyers before you -- Jim Liebman and Xavier Becerra, Michelle Alexander and Peter Bouckaert and Matt Nosanchuk. You may not have heard of all of them -- perhaps you don't recognize any of those names -- but that's not the point. What matters is what they're out there *doing*. All of them have won significant victories. All of them have lost important battles. But they are still at it, and they are bending that moral arm toward justice. Like baseball, law has a long season. Everyone has slumps; even the best teams will lose at least one out of three. So pace yourselves. Or as Satchel said, "Let whomsoever wishes sit around recollecting. I'm looking up the line." Look up that line, and keep on keeping on.

And as for dancing like nobody's watching. . . . Much of the delight in life will come from unexpected things and places and people. Some of you will make a life in the law enforcing statutes that haven't yet been passed or protecting rights that haven't yet been conceived. You can't choreograph a lifetime. Do pro bono work because it's the right thing to do, and because what you're doing will make the world better, not because someone is watching. Pick projects that promote justice, or freedom, or fairness, or peace or dignity, or a cleaner environment, not ones that promote *you*. As in baseball, the point is to *connect*, not to look good to the crowd. If you're anything like other Stanford graduating classes, the odds are that some of you will get nominated one day for a big job. What Satchel is telling you is that it won't be worth it if you've spent your entire life doing a solemn waltz when your heart cries out to do the funky chicken or the mashed potato. So what I hope most, for all of you, is that you have a life in the law that makes you want to dance.

Those of you who have taken courses with me know that I always end the last class with a poem. As this is my last time with you all as a class, I will end with a poem that has sustained me in *my* work. It's something many of you have already heard me read -- the end of Tennyson's "Ulysses." Thanks, Kyle, for telling me it was one of your favorites, too: Come, my friends,

'Tis not too late to seek a newer world.
 Push off, and sitting well in order smite
 The sounding furrows; for my purpose holds
 To sail beyond the sunset, and the baths
 Of all the western stars, until I die.
 It may be that the gulfs will wash us down;
 It may be we shall touch the Happy Isles,
 And see the great Achilles, whom we knew.
 Though much is taken, much abides; and though
 We are not now that strength which in old days
 Moved earth and heaven, that which we are, we are,
 One equal temper of heroic hearts,
 Made weak by time and fate, but strong in will
 To strive, to seek, to find, and not to yield.

Good luck on your tripss. Travel safely. Come back soon.