

Graduation Remarks
Pam Karlan
Stanford Law School
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Members of the graduating class, spouses, partners, children, and friends of the graduates, parents of the graduates and also their in-laws, members of OUTLaw, people who are bisexual and people who are bilingual and people who are biracial, people of color, people in the minority, other dissenters, people who want to do justice and people who plan to be a Justice, people who represent the convicted and people with convictions, people with backbone, people with six-pack abs, people with staggering figures and people who owe staggering figures, well-paid people, underpaid people, members of the faculty, people with citations in the Stanford Law Review or from the Stanford Police Department, and people who are just plain out of sight. . . Welcome to Stanford Law School's graduation.

This is the last time that the class of 2009 will gather in one place, and the first time none of you is shopping on line for shoes, playing FreeCell, or checking the weather. It's as true today as it was two years ago in Con Law: the weather is sunny outside. You don't need to look it up.

But if you have been on line an awful lot recently . . . well, I confess I've been there too. (My fingers hurt from Googling myself.) An awful lot of people I don't know have written very nice things about me. But the thing that has brought me the greatest pleasure are the emails I've received from former students. That's why the Hurlbut is so special to me. I just love this job.

I found out that you'd chosen me in the most wonderful way – not online from the email Cathy Glaze sent around, but late on a weekend afternoon, meeting with a clinic team working on a case so eye-glazing that Larry Marshall didn't even send around an email when we bored the Court into denying cert . Bev Moore, one of the team members, asked me what I planned to say. Getting to work with students like her and the rest of you is itself more of a reward than any prize could be. Over the last three years, you've become my friends, my colleagues, the people who challenge me with your questions, who inspire me with your plans, and who make my workdays such a joy.

It struck me when I started to think about what to say today that I graduated from law school 25 years ago this spring and I turned 50 this winter. As most of you know from having had me in class, I tend to think in literary terms. So what popped into my head almost immediately are the opening words of Dante's Divine Comedy: "Nel mezzo del cammin di nostra vita . . ." That's Italian, of course. Part of Dante's innovation was to write in the vernacular and not in pretentious Latin. That's a lesson worth learning for

a lawyer. In English, the poem begins “Midway on our life’s journey, I found myself/In dark woods, the right road lost.”

The Divine Comedy is 14,000 lines of terza rima, a verse form consisting of tercets (or three line stanzas) with the rhyme form aba . . . bcb . . . cdc (not the Centers for Disease Control) . . . and so forth.

I thought of delivering a whole commencement speech in terza rima. Here’s how I would have begun:

Midway through cramming for bar exams,
When you’re doubting why you took this journey,
You may find some help in these pointers of Pam’s

To construe section 5, look at Boerne.
Squeeze the Lemon test and you’ll get messy.
Gideon gives the right to an attorney.

You think Eldred’s wrong? Not compared to Plessy.
Abandon ambiguity ye who enter here.
On the MBE, might as well be guessey.

In the grand scheme of your future career
See the bar as purgatory’s my advice.
On this point I am quite sincere:

Study. Don’t get trapped in the bar’s dark wood twice.

Well, . . . you can see why I soon stopped. But something about Dante stuck with me. Maybe it’s because I’ve gone to lunch with so many of you at Cool Café and we always walk past Rodin’s famous Gates of Hell on our trip.

Anyway, the poem has three parts – the Inferno, the Purgatorio, and the Paradiso – and in each part, Dante encounters a series of figures, both historical examples and contemporaries, who committed various sins or who possessed various virtues and who are now reaping the appropriate punishments or rewards.

Wouldn’t we all like the world to work that way? Imagine. Dante describes how flatterers – today, we’d say suck-ups – find themselves mired in pools of sewage just like the garbage they spewed in life. By contrast, great lovers and artists sit around heaven singing beautiful songs. If Dante were writing today, I’d imagine he’d consign to a special circle of hell the journalists and bloggers who’ve been writing nasty unsourced stories. There, they’d find themselves blindfolded while people mutter nasty things

about them behind their backs. And he'd put heroes like Cesar Chavez in a special heaven filled with shady trees under which they could drink wine from grapes that picked themselves. Bob Weisberg would run a 2:55 marathon while Larry Marshall starred in a revival of Fiddler.

As I said, the poem is long, and you should read it for yourselves. Today, I want to draw lessons from three cantos that have stuck with me ever since I first read the poem nearly thirty years ago, with two of the teachers who have inspired my teaching – Jaroslav Pelikan and Bart Giamatti. They did more than simply strive to make teaching an art – the thing the Hurlbut rewards. They actually succeeded.

The first, Canto III of the *Inferno*, involves the vestibule to Hell. Here, Dante encounters the Futile – people who were never really alive, because they never made any choices. These are the people who avoided taking any position on the great issues of the day. These are the people who held back from all real engagement and spent their whole lives trying to keep their options open. Now they find themselves endlessly running after a meaningless banner that flutters in the breeze while wasps sting them.

Don't be one of those people. Your first year of law school, on my way to a conference about *Gonzales v. Carhart*, a case we discussed in Con Law, I was riding on the New York City subway. The MTA has a great program called Poetry in Motion, which posts poems in the trains. I saw a short poem from Vera Pavlova, that beautifully captures this point:

If there is something to desire,
there will be something to regret.
If there is something to regret,
there will be something to recall.

If there is something to recall,
there was nothing to regret.
If there was nothing to regret,
there was nothing to desire.

I can't tell you exactly what you should desire to make of what Mary Oliver calls your one "wild and passionate life." We're different people. But I can tell you how important it is to desire something and not to be so diffident or cautious that you become one of the Futile.

So let me say something quite personal. Would I like to be on the Supreme Court? You bet I would. But not enough to have trimmed my sails for half a lifetime. Sure, I've done lots of things I regret over the years. But the things I regret aren't the things that keep someone from being nominated or getting confirmed. I regret being unkind to

people I love and respect and admire. I regret getting frustrated by little things. I regret never taking a summer off. I regret not being able to stick to a diet. But I don't regret taking sides on questions involving the Voting Rights Act. I don't regret helping to defend the constitutional rights of criminal defendants. I don't regret litigating cases on behalf of gay people. I don't even regret being sort of snarky.

One of the biggest differences between law school and life is this: in school, you always know when the exams are, and get a grade – in your case, as the last Stanford class under the old grading system, an artificially precise grade – a month later. (Or two months. Or three) In the real world, though, you won't always know when you've been given a test, and you may not realize until years later whether you passed or failed.

There's a well-known book about a high school basketball team called "In These Girls, Hope Is A Muscle." Well, in a lawyer, courage is a muscle. You develop courage by exercising it. Sitting on the fence is not practice for standing up.

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Most people stop reading the Divine Comedy after the Inferno. It's understandable. Most people stop reading after the Inferno. It's understandable. The Inferno has most of the really fun stuff. But there's just as much to learn from the remainder of the Divine Comedy. I don't want to leave you in Hell. So let's turn to the Purgatorio.

Much of Purgatory, in Dante's cosmology, is filled by people with undeniable virtues, but whose virtue was misdirected. In Canto XIX, in the fifth cornice, Dante dreams about the Sirens – the nymphs who tried to seduce Ulysses and his men away from their journey. When he awakens, he and Virgil encounter the covetous. These people – who directed their talents only towards acquiring greater and greater wealth – were seduced from a better path. They do their penance weeping facedown on the ground to signify that they were too earthbound while they were alive.

The message is not that material goods are bad. The people in the fifth cornice are not sent there rather than to heaven for making money. They're there for making nothing more than money.

It's okay to make a decent living. You have loans and families and an entirely human desire to live comfortable lives. I had loans. I have a family. I like being comfortable. Why else would I have spent so much money on that orange custom made folding bike? But as Oliver Wendell Holmes once wrote, "While we . . . do not pretend to undervalue the worldly rewards of ambition, we have seen with our own eyes, beyond and above the gold fields, the snowy heights of honor."

And so we come to the second poem I want to read to you. It's a poem that my colleague Barbara Fried once showed me, and I now read it to students at least once a year, and to myself much more often than that – every time I redo my CV, in fact.

It's called "Writing a Resume" by Wislawa Szymborska

What needs to be done?
Fill out the application
and enclose the resume.

Regardless of the length of life,
a resume is best kept short.
Concise, well-chosen facts are de rigueur.
Landscapes are replaced by addresses,
shaky memories give way to unshakable dates.

Of all your loves, mention only the marriage;
of all your children, only those who were born.

Who knows you matters more than whom you know.
Trips only if taken abroad.
Memberships in what but without why.
Honors, but not how they were earned.

Write as if you'd never talked to yourself
and always kept yourself at arm's length.

Pass over in silence your dogs, cats, birds,
dusty keepsakes, friends, and dreams.

Price, not worth,
and title, not what's inside.
His shoe size, not where he's off to,
that one you pass off as yourself.
In addition, a photograph with one ear showing.
What matters is its shape, not what it hears.
What is there to hear, anyway?
The clatter of paper shredders.

Do not confuse your resume, just because it's often called a curriculum vitae, with your life. Some of the most important things you do, even in your professional life, will never show up on paper. Aim high. Contribute to more than your 401(K). Even if it's now only a 201(K).

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Finally, we come to the Paradiso, a fitting place to end a talk at this world class institution in Paradise. Here, Dante takes us through a series of heavens. In the Sixth Heaven, the heaven of the Just, for example, Dante describes the inhabitants as sort of a celestial card section at a cosmic football game. They spell out the command “Love Justice, you who rule the world,” one letter at a time. The gradual forming of the message teaches us that we approach justice by fits and starts, by trial and error. That is what it means to say that constitutional interpretation changes, even as the text remains the same. It is what Dr. Martin Luther King, Jr., meant when he said that the moral arc of the universe is long, but it bends towards Justice.

But I want to focus for a moment on an earlier Canto, Canto XIII, where Dante encounters scholars and teachers in the fourth heaven. The scholars in paradise get to sit around in a sunny place – a Stanford of the sky – and discuss their ideas with each other. They’re intellectually generous. They see things from each others’ points of view. They don’t jump to conclusions and they recognize the fallibility of all human judgment. Near the end, Dante is given some advice. In my quite free translation – but hey, no one ever said I was a strict constructionist – it goes like this:

You’ll make yourself a special breed of fool
If you get blown up with self- confidence.
If you think there’s always an ironclad rule

You can derive alone from sheer brilliance
that condemns others harshly, but acquits
You from your mistakes. That’s hardly prudence.

So the final message is the importance of generosity, and friendship, and collaboration. Of being careful and compassionate. Of listening. Listening to others and to the still small voice of your own conscience. Of forgiving, both others and yourself.

Let me end with one last poem. It’s not really a poem. It’s actually a quasi-haiku from John Hart Ely, the greatest constitutional law professor of his generation and the man behind whose desk I get to sit, in pale imitation, every day. He dedicated his masterwork, *Democracy and Distrust*, to his old boss, with these words:

For Earl Warren. You don’t need many heroes if you choose carefully.

The Paradiso is filled with heroes whose exemplary lives inspired Dante. I’ve found such people too – in the pages of U.S. Reports, in the stories of the Civil Rights Movement, and in my mentors – but also among my colleagues, my clients, my friends,

and my students. My greatest wish is that you find such heroes for yourselves and that they inspire you to live the best life you can.

Thank you and good luck on the search.