

Commencement Address, 2008

Only one thing more before we finish, which as your program indicates is our charge to you. Happily, I use the term “charge” now in a different sense than you’ve heard it from us for the past three years. Those charges are ended—to your relief, I am sure, not to mention that of your families. This charge has a different meaning and a different purpose. For as we confer your degree, we entrust you with a task and assign you a responsibility.

The charge to a graduating class is, in fact, a kind of set piece, in which the person in my position tells you to go out there and make a difference. To use your training for good. To be ambitious, and to make the world a better place. And this is indeed the charge I will give you in a few moments. But first I want to rehearse some lessons and remind you of a few things you ought to know and think about as you begin your career.

Some of these are obvious: Show up to meetings, preferably on time. Keep lists. Don’t dress like a slob. And use the outside fork first. Other lessons are less obvious, and I want to touch on a couple of these, using some cases that you may have encountered during your time here.

Let’s start with Justice Holmes’s venerable 1927 opinion in the case of Baltimore & Ohio Railroad Company v. Goodman. You all remember this one, of course. Poor Nathan Goodman was run over by a train at a railroad crossing, and the Court held that his widow had no action against the operator of the train because Goodman failed to “stop, look, and listen” before proceeding. It was actually a pretty dumb rule for a society in which the car and truck had just replaced the horse and railroad as Americans’ primary means of transportation, and it didn’t survive long. But it’s a really good rule for lawyers to keep in mind. Stop, look, and listen: that is, think before you jump to conclusions; watch for untested assumptions, especially your own; and do your best to get inside the arguments of those with whom you disagree.

And don’t kid yourself: that takes a lot of discipline. Indeed, the discipline needed to “stop, look, and listen” may be among the most important hallmarks of a lawyer. For while there is nothing about practicing law that requires you to surrender your beliefs or dampen your passions, there is something that requires you to act on your beliefs and passions differently. Jumping to conclusions, hearing only what you want to hear, assuming that the other side must really agree with you and take its position only because it is evil or self interested: these are indulgences a good lawyer cannot afford.

But it’s harder not to indulge than you think. Because it’s more satisfying and often more fun to rush ahead than it is to be patient, just as it’s easier to believe what is convenient than it is to dig for facts. It takes constant watchfulness to be sure you know what you’re talking about before you speak: know because you’ve done your homework and listened, and I mean really listened, to those who disagree.

A second lesson, closely related to this first one, comes from another Holmes opinion, also written in 1927: Buck v. Bell. You probably know the line: “Three generations of imbeciles are enough.” For the non-lawyers out there, this was a case in which the United States Supreme Court upheld the power of the state of Virginia to sterilize those it decided were “mental defectives.” And I want to read a bit more of the passage from which this infamous sentence comes, because I had forgotten just how

shocking it was until reminded when I looked back to prepare this speech. “It would be strange,” Justice Holmes tells us:

if [the state] could not call upon those who already sap [its] strength . . . for these lesser sacrifices . . . in order to prevent our being swamped with incompetence. It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. . . Three generations of imbeciles are enough.

Clearly, 1927 was not one of Holmes’s better years.

When I read this paragraph to a colleague, he nodded to me and said, “Of course! The lesson is obvious: Be careful what you put into writing.” And that’s actually a pretty good lesson too. But not the one I had in mind when I chose this line.

The lesson of an opinion like Buck v. Bell, I think, is not to be too certain about the truths you hold self-evident. I’m sure that when he wrote this passage Holmes felt quite at ease about what he was saying and never imagined that a day would come when an audience—any audience—would be as completely and thoroughly appalled by his words as we are today. Yet the point is not that Holmes was wrong and we are right, not that he was heartless where we are compassionate and good. Nor is it that judgments about right and wrong are relative, and there is no right but merely what some people think at a particular time in a particular place. The point is harder than that, and here you’ll see why I think it related to the first lesson.

As you live and work in the world, you will find that you cannot avoid making judgments about what you think is right and what you think is wrong. You should “stop, look, and listen” before making those judgments. But in the end, judgment is unavoidable—as is acting on your judgment.

So do that: think hard and choose what seems right to you. And act on it. Most definitely act on it, when you can. Especially the things you care about most. But in the back of your mind at least, maintain a bit of skepticism. Keep your beliefs slightly bracketed. Remember that you may be wrong or may come to be seen as wrong. And if you can do that, you may also be able to avoid the vice of taking yourself too seriously.

Maintaining perspective is important. Remember that what matters more than anything in the world to you may not matter so much to everyone else. Preserve at least a modicum of self-parody and the ability to laugh at yourself. For if you can do that, you’ll live a healthier life, and your family will most definitely be happier to see you at the end of the day.

A third lesson comes from the pen of Justice Potter Stewart. Not one of the Court’s better known Justices, but someone who, in a concurring opinion in Jacobellis v. Ohio, wrote a line that almost everyone knows and remembers: “I know it when I see it.” Justice Stewart was referring to pornography, of course, but I mean to wrench this quote completely out of context and use it to refer to truth. Not “the” truth in some deep philosophical sense. Just the simpler day-to-day truth of your own motives and actions.

Because if there is one thing you can be sure will be part of your future as a lawyer, it is that your values will be tested. I would be wasting your time if I stood up here and simply urged you to stay true to your ideals and beliefs. Of course that should

be your goal. But life is messy, and a lawyer's life is especially so. On top of the many compromises entailed in just living, lawyers assume obligations to their clients: obligations that sometimes, invariably, conflict with their sense of self, their sense of personal ethics, or their hopes for how they would navigate their way through life.

There are no easy answers. You will be tested, and you will have to choose when to compromise and when to hold firm. Sometimes the choice will be among the lesser of evils. Sometimes there will be no good choice at all. Sometimes your obligations to others may require you to choose things you hate. This much is unavoidable, so be prepared.

Your goal should be to maintain a sense of balance in the midst of life's messiness, to preserve your center—your sense of who you are and who you want to be—so you can judge which compromises are worth making and which sacrifices go too far. But to do this, you must be relentlessly (and I mean *relentlessly*) honest—at least with yourself. Self delusion is easy, and no one is better at it than a well-trained lawyer. A good advocate first persuades him or herself, after all, and lawyers quickly grow comfortable with the process.

It becomes so easy to convince yourself that what you are doing is for the best, is desirable, or is just plain right. Which may well be the case. But if there is a small nagging voice in the back of your mind—and you'll know it when you hear it—listen. You may still decide to do the same thing. But be honest with yourself about what you are doing and why you are doing it, and in this way you will retain control of your ethical core.

My last lesson is not a lesson at all. It's the exhortation I promised at the outset, an exhortation to be ambitious. And if that's a cliché, it's only because it's so important and because it needs to be said so often: set your sights high and expect to change the world. The world needs changing, after all, and it will be people like you who do it.

I urge this commitment on you, moreover, notwithstanding everything I just said about the need to “stop, look, and listen,” to maintain a degree of skepticism about your beliefs, and to listen to your own doubts.

There is a real tension here. I know that and I want you to know it too. No one ever said this would be easy. But someone needs to step forward and rise to the ferocious challenges of the day. And no one is better suited to do so than you.

You are, as I know you know, privileged: both as a group and as individuals. You may have earned that privilege through hard work, but you are privileged nonetheless. You have options and opportunities and abilities afforded to very few, and with these options and opportunities and abilities come responsibilities.

So indulge me in one last quote, this one from Murphy v. Steeplechase Amusement Co. The plaintiff in that case was thrown from a ride at Coney Island and wanted the company that ran the park to pay for his injuries. “The plaintiff was not seeking a retreat for meditation,” Judge Cardozo wrote. The risk of injury was plain, and Murphy took it when he chose to ride. And well he should, because how else to have a life? “The timorous,” Cardozo said, “may remain at home.”

Don't you be timorous. We're facing terrible challenges today. But if history teaches anything, it is that great challenges bring great opportunities. And, indeed, you leave here with opportunities to make a difference that are indeed rare.

So take advantage of these opportunities. Be ambitious. Make a difference for the better. Because you can, and because you must. You can do truly great things. And we are confident that you will. Again: congratulations, have wonderful futures, and keep in touch.