

## "Finding the Balance"

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Dean Robinson, Chairwoman Hardy, President Adamany, President Britton, Professor Denning, Distinguished Faculty and Guests: I am honored to be given this opportunity to address you. But, with all humility, it is we -- all who are on the podium today -- who have come to honor you and your families and loved ones for your years of hard work, dedication and sacrifice. That is what has allowed you to accomplish this wonderful goal, one that few people in our society have either the ability or the opportunity to attain.

To the parents, spouses and loved ones, let me say a special word of thanks. All of us in this room, sooner or later discover that, no matter how well-educated we are, or how clever we may be, we can never really "go it alone." If we try, we're doomed. To succeed, we are dependent on others from the day we break from our mother's wombs. The sacrifice and passion of those who believe in us, despite the evidence we present; the patience and affection of those who love us, despite what we have done to them -- these are, as much as academic gifts, what nurture us to our graduations.

And so I congratulate all who made today's graduations possible. The glory of this day belongs to the graduates; but if we were to divide the honor from the glory, much of the honor would stay with you. And I trust you'll forgive me if I direct the remainder of my remarks to the graduates themselves.

Well, graduates: congratulations. I am honored to stand before you. If certain faculty from my student days had served on your commencement-speaker selection committee, this honor would likely have gone to someone else. It isn't that I was a weak student; at least, it isn't only that. It's that I had more than a little learning still to finish when I left.

I first arrived on campus in 1968 and headed for the Neef Library. When I got to the front entrance, I couldn't get in. Members of the Black Student Movement had chained themselves to the doors in protest of the Law School's admission policies. It was, I think, the first time I sensed that I was somehow personally involved in a system that was unjust.

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I walked to the one door they'd left available for access. As another student came up behind me, a woman, I opened the door and stepped aside to let her through first. With a look of perfect disdain, in succinct if impolite terms, she encouraged me to perform a common sexual act on myself.

It took me a while to realize that her message was simply: "I don't need your help to get into this law school." And it took me years to realize that this woman, and all women, were closely linked to the students chained to the front door. They were both defining their lives in terms of equality. Grandmothers of both groups had been denied the vote. Both were convinced that their rights had to be taken, because they would not be given.

Now, a quarter-century later, I stand before you, a graduating class distinguished by, among other things, diversity. The Law School and the world have changed -- too slowly, perhaps; too reluctantly, no doubt -- but they have changed.

In an ideal world, all people would, from the beginning, have been equal in the eyes and the hands of the law. But we do not live in an ideal world, which is why the law is so necessary, and so potent, and -- yes -- so precious. Good women and good men use the law not only -- and not first -- to achieve personal success, but first and mainly to achieve justice. Then there is hope.

The diversity you represent is, by itself, a better setting in which to be prepared. But for all the changes, something has not changed; it has merely become more evident during the past quarter-century: We are, as a profession, as a Nation, as a people, desperate for women and men of substantial character.

And that is why I, who have long since forgotten my own graduation here twenty-five years ago, wanted to attend yours. I wanted to say that our profession, the law profession, is honorable. We have our share of shysters and charlatans and celebrities. In this regard, we are undistinguished from the occupants of pulpits and congresses, kindergarten classrooms and corporate board rooms. Those who chained themselves in protest to injustice; those who rejected traditions that camouflaged paternalism -- they risked popularity for character because they were willing to forfeit personal ease for honor.

The truth is, I am back not only to say congratulations to you, but to admit that the ghosts of those chained and angry warriors for justice have haunted me successfully throughout my career.

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I trust that, to graduate, you have taken the mandatory course on Rules of Professional Conduct. It seemed so "light-weight" to me when I took it years ago. I blew through it, doubting that it would ever matter.

It was not until I faced an ugly and memorable issue of ethics within my own life as an attorney that I decided I might profit by re-reading those Rules. And what I discovered was that I didn't even need to reach the Rules. Its two-page Preamble contained wisdom enough. It demanded, and still demands, in stark and remarkable simplicity, that we swear to protect three public trusts: that of Public Citizen, that of Client Advocate, and that of Officer of the Court. And if we can achieve the balance of those three trusts, we are likely to be on solid ground.

The first trust is that of "Public Citizen." It demands that we not only practice law as it is, but that we improve law according to standards of justice, prudence, and decency. It calls us not only to shrink from an unjust law, but to oppose it -- vigorously, courageously, with chains across our wrists if there is no better way. The rules of self-regulation that maintain the legal profession's independence from government domination is built on this assumption: that those sworn to uphold the law will also seek laws worthy of upholding. We have a trust as Public Citizens, says the Preamble.

The second trust -- that of Advocate -- is the most popular in the 1990s, quoted in every high-profile case: We are, as attorneys, obliged to zealously assert our client's position within rules of the adversary system.

The first and third trusts have often been ignored; but the second, this one -- the duty to vigorously advocate on behalf of the client -- has been less ignored than wildly, consistently, and shamelessly abused. What was intended as an ethical trust has been carved into an unethical weapon with which to bludgeon the legal system. If we worship any of the three trusts while despising the others, we will lose our ethical balance. We will fall.

The second trust -- that we assert the rights of our client -- was not intended to relieve us of responsibility to be Public Citizens and Officers of the Court. It was intended to balance us. Its first purpose was to keep us from self-corruption by reminding us that it is not the lucrative settlement or the wealthy client that should motivate us, but the fact that our client deserves justice -- whether our client is an executive within the corporate aura of Shell Oil, or a homeless woman within a Cass Corridor shelter. Therefore, no matter who our client is, no matter what gain or loss, fame or infamy, we might achieve; we are indebted to our client and owe him or her nothing less, nor anything more, than justice.

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The third trust is as an Officer of the Court, a representative of the legal system. We should respect the system enough to make it worthy of respect. We should use the rules of the system to elevate justice, not harrass or intimidate others; to pursue honorable ends, not pursue every possible tactic by which to corrode the wheels of justice.

It's a balancing act, not a juggling act. We can't serve first the client, then the public, then the system, like juggling balls in the public square. This is a balancing act in which we need to give all three responsibilities the same weight at the same time, so that, when we cross an ethical tightrope, no one of the three tips us so we fall.

I should tell you candidly that I have failed to find that balance on more than one occasion, and every one of them has stained my memory. Because I'm convinced that when I failed to achieve the balance, I failed at justice. Because justice for an attorney is not success at one of the three, or even two of the three; it is, consistently, success at all three simultaneously.

The challenge to an attorney's ethical vitality is not new. A century ago J.P. Morgan and Cornelius Vanderbilt reigned over American industry. They were economically divine.

And while Morgan and Vanderbilt and their Rockefeller friends ruled America's purses, waves of homelessness and poverty and immigrant despair swamped major cities. Sinclair Lewis's The Jungle held up the squallor of Chicago's immigrant-filled slaughter houses to the glory of Morgan and Vanderbilt.

And here's the irony: Most of us, as attorneys, expect clients to have the humility of the hopeless derelict, who throws himself at the mercy of his benevolent lawyer, with the wealth of Morgan and Vanderbilt for whom billable hours are a potential goldmine. We want clients who will do what we want and then pay what we ask. We want to be ethical champions, and rich. We want to prove our commitment to compassion while lowering our handicap at the country club. And we probably can't have it both ways.

J.P. Morgan said of his attorneys, "I don't want a lawyer to tell me what I can't do. I hire him to tell me how to do what I want to do." Welcome, my friends, to marketplace ethics.

"What do I care about the law?" crowed Cornelius Vanderbilt; "Ain't I got [all] the power?"

Public Citizen, Advocate, Officer of the Court. What first seemed like sterile ideas have become earthy, flesh-and-blood, life-defining roles in my past quarter century. I am still trying to balance them today, like a trio of wobbly plates spinning atop skinny poles in a wind storm. It's a trick.

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And the magician who performs that trick, I now believe, 25 years from the graduation ceremony I've forgotten, needs two qualities I've grown to admire beyond all others.

The first is integrity. Integrity is what I might once have confused with self-righteousness. They are very different.

Self-righteousness assumes what you are not: flawless. Integrity knows you as you are: flawed. It's based in honesty, and a sense of honor, often a sense of humor, always a willingness to be vulnerable. Integrity says we aren't perfect, but we'll tell the truth about our imperfections.

I learned about integrity early from a partner in a small firm shortly after I left here. I'd been given a simple assignment: draft a complaint against the Michigan Department of Transportation. The first day on the case I realized that the two-year statute of limitations had expired. My senior partner had no case. I figured he'd kill me when I told him he'd missed the window for the law suit which had a ton of merit and, now, not an ounce of opportunity. I spent two hours trying to draft a clever excuse for him, so he'd have his pride and I'd keep my job. Then, trembling, I went into his office.

He looked at my memo, thumbed through the statute, and muttered something that sounded very unhappy. Then, ignoring me, he picked up the phone and called the client.

"I have good news and bad news," he said, "and let me start with the bad news." He explained that if the case had been filed on time, it should have prevailed. But he'd missed the deadline. He'd failed to get his client her day in court.

There was a brief pause during which I took my first breath. Then he continued. "But here's the good news: You can now sue us and I admit liability. So your injuries and damages should all be paid, every last cent of them, by our firm."

It was not a Supreme Court case or the stuff that's endlessly discussed on C-Span and Court TV. It was simply, but impressively, an act of absolute integrity -- and a splendid example of balancing duty toward the client, and the public, and the court.

The second quality that must become integrity's partner, it seems to me, is courage. Courage is not arrogance or self-confidence; on the contrary, courage I've seen has been quiet and sometimes quite gentle. If arrogance is a stuffed shirt, courage is a drenched shirt -- because courage isn't the absence of fear, but the wisdom to act wisely when we are most afraid.

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I have seen more courage in the law profession than you, or the media, might imagine. I saw it early when a close friend, seeing the unethical behavior of a partner in one of Detroit's most famous firms, faced his own terror and risked his career by taking his findings to the firm's management committee. He's at another prestigious firm now. But what he retained by his courage was his integrity.

In 1981 I was in the sixth week of a tough product-liability trial in federal court. We were all exhausted, physically and mentally. After a day of especially rancorous testimony, the opposing attorney blew up. The judge called a recess. My adversary and I walked toward the back courtroom doors where he ripped them open, smashing them into me, knocking me to the floor.

On that floor I had two equally intense desires: To kill, and to quit. I wanted to flatten my opponent as he had flattened me, and I wanted to never again admit that I was a lawyer. I wanted out.

My wife, ever helpful, suggested that I both kill and quit. But a thoughtful mentor persuaded me to do neither. And I'm grateful.

Because, since the day I lay on the cold tile floor of a West Michigan courtroom, I have seen judges risk public wrath by making unpopular but constitutionally honorable decisions. I've seen parents of victims of intentional torts and crimes, too horrendous to recount, stand up and plead for mercy on behalf of those who injured their children, because justice is not only about reparations or retribution; it is also about compassion. I've seen women who could have shattered a glass ceiling in their law firms refuse, because the price was their own integrity. I've watched lawyers who pursued political careers to write better laws be drummed out of office for refusing to condone what was popular, because it was also evil. And I have been proud, beyond imagination, of what it means to be at one and the same time a Public Citizen, and an Advocate, and an Officer of the Court.

It has taken me nearly a quarter-century to learn what, if I'd been listening, I might have learned here, in a course on the Rules of Professional Conduct, sometime around 1971: that the only solution to making our profession better is not better marketing, or better promotions, or better images. It is better people, who have the integrity and courage to seek justice at their own expense.

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I have never been prouder to claim this Law School as my alma mater than in 1989 when a past dean of this school, John W. Reed, silenced the State Bar of Michigan with an eloquent address. He spoke of shortcomings, his own and those that afflict us all. He spoke of hope sometimes dimmed and then brought to life again when some courageous soul blows honor across a spark of justice.

John Reed finished by recalling the Prophet Isaiah. He remembered Isaiah's confession of unworthiness, "Woe is me, because I am a man of unclean lips...." And he reminded us that, despite Isaiah's self-doubts, when he heard the voice of the Lord say, "Whom shall I send? And who will go for us?", Isaiah replied softly, perhaps with a stutter: "Here...here I am. Send me...?"

You and I are going to face unscrupulous adversaries who slam doors in our faces and powerful clients who want blind advocacy and will pay for it in cash. One day we will stand before a judge who is saintly; the next, before a bench that is absurdly dysfunctional. We will have partners who shade the truth, and partners who love the truth. We will need to choose between devotion to our practice and devotion to our marriages, between one more impoverished client and one more child going to college. And it is yours and mine -- in every one of these instances -- to determine whether we will be a loyal public citizen, a generous Advocate, and a faithful Officer of the Court.

I cannot offer you myself as the model. I am not the model. I am merely one more lawyer who struggles to have integrity, to find courage, and to perform the balancing act on a daily basis.

But I can offer you, as counsel for the counselors, the wisdom of John Ruskin: "The highest reward for a person's toil," he said, "is not what he gets for it -- but what he becomes by it."

That maxim may not get you through the Bar exam, but it may go a long way toward getting us all through life.

To the Class of '96 I offer best wishes for integrity, and for courage, and for all of God's grace. Beyond that, I believe, you will need very, very little.

Congratulations -- have a splendid day.

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