

Graduation Remarks
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Dean Koh, Dean Emeritus Kronman, Double Dean Emeritus Calabresi, members of the graduating class, people of class, people of color, colorful people, funny people, straight men, gay women, everyone else in OutLaw, in-laws, parents, children, romantics, realists, people going to law firms, firm people, people with backbone, people with biceps, people with stupendous figures, people who now owe stupendous figures, people who're going to be public interest lawyers, aspiring professors, members of the faculty, people who've lost their faculties, the temporarily sighted, the insightful, people who've been cited, and the out of sight. . . . Thank you all, in the words of America's greatest philosopher, Yogi Berra, for making this day necessary.

I am so honored to be selected to speak at your graduation, . . . although I confess, as an election law scholar, my first thoughts went to questions of ballot spoilage and vote suppression. . . And I wondered how many of you had meant to vote for Mike Klarman or for Dan Kahan or for Paul Kahn but had somehow gotten the wrong chad pregnant.

This is a bit of a daunting occasion for me. I remember that at my own graduation in 1984, Mike Graetz spoke, and he described what it means to think like a lawyer – something along the following lines: “I wasn't there. I didn't do it. If I did it, I was provoked. If I wasn't provoked I was crazy.” But I don't remember the precise language. So I don't have any illusions that you'll remember much of what I say – the dozen words I remember best from my own graduation in 1984 are “Pamela Susan Karlan,” which someone said (I don't even remember who) as I crossed the stage and “So you're Pam Karlan's parents. Ahh! Now I understand,” which George Priest said to my folks at the reception afterwards. But when I left, I took a number of things with me. Some of them are entirely intangible – particularly the friendships with my classmates, my professors, and many of the staff members that endure to this day. But a number are, to use the copyright term, in fixed form. And I've brought several of them back with me today to help me in talking to you. These are the sneakers I wore throughout law school. They're now the only thing that still fits me. It turns out legal practice is broadening in

both senses of the word. And this stuffed bear was my constant companion. Let's just say you never forget your first love. Seriously, Yale Law School is the place where I fell in love with the rest of my life, and it is very special to have this chance to talk about some of the lessons I took away from this very special place.

The first is this cartoon, which I put in my carrel in the library and then in my office in the Law Journal, and which has graced my office walls ever since. It's a Charles Barsotti drawing: a clown is sitting behind a desk, facing a somewhat stolid gentleman. Here's what the clown says "Look at it this way: if I weren't a *very good* lawyer [emphasis in the original], could I practice in a clown costume?" Well, here I am, a very good lawyer, dressed up in, let's face it, something kind of like a clown costume. But why does this cartoon speak to me? Well, it reminds me that being a very good lawyer matters. The more creative or daring your practice, the better you need to be at the tiny details. And you want to be a really good lawyer not just for your clients, or for society, but for yourself. Because when you are really good, you have much more control over your work. Become indispensable and you can dress the way you want. At the same time, being a "very good lawyer" is a bit ambiguous: technically adept, to be sure, but also committed to more than just technique. Aspire to virtue as well as virtuosity. Finally, you've got to laugh every day. If you're a liberal like me – who started law school the year Ronald Reagan was elected – you have to laugh so you don't cry. (Every time I hear Smokey Robinson sing "Tears of a Clown," I think of the Warren Court.). But no matter how seriously you take the law – and the law is often dead serious, literally – don't take yourself too seriously.

The second is this clipping. It's a short op-ed in the New York Times by a great and inspiring teacher of my generation of Yale law students, the late Robert Cover. It's called "Your Law-Baseball Quiz," and it appeared in the New York Times on April 5, 1979. I saw it on a bulletin board somewhere during law school and made this copy. [I shudder to think what my files would look like if I got a request for production.] Bob asked his readers to figure out which baseball figure various Supreme Court Justices most closely resembled. For example, Earl Warren resembled Yogi because both were enormously effective players on great teams and both, Bob said, "saw through excessive

thought to the true essence of their game.” Byron White most resembled Jackie Jensen because, as Bob pointedly remarked, “[b]oth were better as running backs.”

Maybe I’m a better baseball fan than a lawyer, but the piece stuck with me because I have a mind that works from analogies. The poet Philip Larkin writes that “Reaching for the world, as our lives do/. . . Always it is by bridges that we live,” and he’s right. Much of my scholarship stretching back to my law journal note, 93 Yale L.J. 111 for those who want to read it – and I still have reprints available – involves comparing lines of doctrine . . . building bridges between seemingly unrelated areas of law. As many of you know, I’ve often described arguing before the Supreme Court as the most fun a lawyer can have . . . in thirty minutes . . . standing up . . . before an audience . . . fully dressed . . . doing nothing but talking. Well, doctrinal analysis is the most fun a lawyer can have . . . sitting down, . . . at a desk, . . . by herself . . . doing nothing but reading and writing in the still small hours of the night. I hope you will discover its joys in your work. Anyway, like Bob Cover, I have often thought about law in analogies drawn from baseball. It’s not as far out as you might think: there have been five major league managers with law degrees. Four are in the Hall of Fame already and the fifth, Tony LaRussa, will surely get there once he retires. So here's a piece of reassurance: what you've been doing the past three years is keeping your options open.

Two points from baseball (and Harold dared me to work baseball into my talk). During his confirmation hearings two seasons ago, Chief Justice Roberts compared judges to umpires: saying “Umpires don’t make the rules; they apply them.” The Chief is a very sophisticated and thoughtful jurist. And also a baseball fan. So he surely knows that different umpires, even excellent ones, have different strike zones. And he surely knows that while some of the rules umpires are called to apply are clear on their face, others call for a good deal of judgment based on experience and context. Think about the notorious infield fly rule – itself the subject of a famous law review essay – which begins: “An infield fly is a fair fly ball (not including a line drive nor an attempted bunt) which can be caught by an infielder with ordinary effort . . .” Even figuring out whether something is a line drive or an attempted bunt requires *some* judgment; determining what *ordinary* effort is depends on a lot of factors: are we talking about Bill Mazerowski or Bill Buckner? Many of you are going to be umpires, and you’re going to make the rules, in a very real

sense. Don't pretend otherwise. You need to think hard about the rules – not so you can flout them or circumvent them, but so that you can argue for interpretations that are true to the spirit as well as the letter of the game. Justice Scalia is only partially right when he says that the rule of law is a law of rules. It has to be more than that. The great Mexican revolutionary Benito Juarez explained his plans when he became president this way: “For my friends, grace and justice; for my enemies, the law.” He understood the difference between law and justice. It's important to see that if the rules are not just, then the law of rules is just not a rule of law. Just rules are not just rules, if you know what I mean ... grasshoppers.

But baseball is also filled with great advice for you personally. Here's just one piece. From Yogi: "When you come to a fork in the road, take it." Unlike Justice Scalia or Justice Black, Yogi is not a textualist. He's not telling you to pick up spare cutlery lying in the street. Rather, what Yogi is saying is that although sometimes we have to make choices, sometimes we should refuse to choose. You're not facing a choice between being a public interest lawyer or being a sellout. Truly great lawyers take both paths from the fork. They use their gifts to give back to the community, as well as to take care of themselves and the people they love. They make corporations more responsible. They prosecute crime. They pave the road for new technologies to bring life-saving and life-enhancing products to the market. They defend the accused. They remember a wonderful insight from one of my favorite poets and readers of poetry, Randall Jarrell: "If we judge by wealth and power, our times are the best of times; if the times have made us willing to judge by wealth and power, they are the worst of times." The best of times ... the worst of times. Rather than quoting more from *A Tale of Two Cities*, – “it is a far, far better thing” and all that – let me point to the opening sentence of *David Copperfield*. It goes like this: "Whether I shall turn out to be the hero of my own life, or whether that station will be held by anybody else, these pages must show." The pages of the briefs you file and the memoranda you write and the opinions you publish in F.5, or whatever we're at when you become judges, should be a part of making your own life heroic. And you should use the gifts luck and Yale have given you to enable people who have been excluded from the great good fortunes all of us have enjoyed, to become the heroes of their lives as well.

Finally, we come to this commonplace book, in which I've kept quotations that mean something to me. You can see that it's singed a bit – it went through a fire at my old house. But the very first passage in it comes from a particularly fitting source, given that we're together on Memorial Day. It's worth remembering, for more than a few passing moments, why we have Memorial Day: not to mark the beginning of summer, and the time when you can wear white shoes, and certainly not to trigger sales at the mall, but to honor the sacrifices of Americans who have died to protect our freedom – not only soldiers, but famous people who've become holidays, like Abraham Lincoln and Martin Luther King, Jr., and obscure folks who were perhaps even braver, like Viola Liuzzo and Vernon Dahmer and the 343 firefighters who died in the World Trade Center.

The quotation I want to read, fittingly enough, is from a speech Oliver Wendell Holmes gave on Memorial Day in 1884 – exactly 100 years before my graduation, and 123 years before yours.

Through our great good fortune, in our youth our hearts were touched with fire. It was given to us to learn at the outset that life is a profound and passionate thing. While we are permitted to scorn nothing but indifference, and 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 it is for us to bear the report to those who come after us.

What Holmes thought was special about his generation wasn't. It is true, in one way or another of every generation of Americans. Your hearts too have been touched with fire – the destructive fire that literally rained from the skies on September 11, and the inspirational fires kindled by your encounters here at the law school, in your clinics, your summer jobs, the books you read, the people you meet. You cannot be indifferent to the suffering of the world or its potential. It's good to be ambitious. You can change the world, through acts both great and small. In *The Summer Day*, poet Mary Oliver asks the question that Holmes thought he had answered: "Tell me, what is it you plan to do/with your one wild and precious life?" I still ask that question every day, and I hope you will too. And one answer I return to again and again for how to spend my wild and precious life comes from Satchell Paige (Oh God; here comes baseball again.)

Work like you don't need the money.
Love like you've never been hurt.
Dance like nobody's watching.

Up until now, much of your life has been preparation. But as my mother says, life is not a dress rehearsal for something else. It's time for you to live wildly and passionately, or at least as wildly and passionately as a lawyer can.

Those of you who were in my classes this fall know that always end with poetry. I got that habit of thinking about law and poetry here at Yale, from the teacher with whom I worked the most closely, Paul Gewirtz. (I have the chance now to say something that I couldn't have known back in 1984: that I am grateful beyond measure to the faculty here who made my life so much better.)

It's midday already, so Wordsworth's French Revolution, which I shared with many of you in Regulation of the Political Process, with its line "Bliss was it in that dawn to be alive, But to be young was very heaven!" doesn't exactly fit. It's actually hot as hell. So I'll end by quoting a passage that I arrived here at Yale Law School already having memorized, because sometimes it's how Yale works its magic on the things you came here with that makes this such a special place. It's from Tennyson's Ulysses:

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.

The many Yale law schools graduates who came before you, and the many with whom I've worked these past twenty-three years – from my clinic partner Ricky Revesz and our supervisor Jay Pottenger, to my co-counsel and co-authors Lani Guinier and Sam Issacharoff and Armand Derfner and Paul Smith and some of you in the audience on the historians' brief – all of these people have been part of that equal temper of heroic hearts, and I hope all of you will become part of a struggle that means something important to you and the world. So good luck on your trips. Travel safely. And come back home when you can.