

Yale Law School Commencement Ceremonies
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I want to thank the law school for its tradition of allowing retiring faculty to speak at graduation and for giving me this opportunity to say a few words to this graduating class of 2009. I last spoke at this law school's graduation in my second year of teaching here, twenty-five years ago, and it was one of the great honors of my life.

I also want to thank Kate Stith's Administration and its four predecessors, all of the wonderful staff here--both past and present--and my colleagues and friends here at Yale for making my time here the best professional experience of my life--as good as anyone could ever wish for.

And, I want to thank the parents and grandparents, the spouses and children, the family and friends of this graduating class for sharing this gifted group of people with us for the past few years.

But most of all, I want to thank you, the graduating students, both for yourselves, and on behalf of the 26 graduating classes that have preceded you in my time here, for making the Yale Law School the great institution that it is. You are truly a remarkable group of people, and it has been a great privilege to have taught you and to be associated with you. While here, you have been full partners with the faculty in our mutual quests for a greater understanding of law, the promotion of

justice, and the preservation of liberty. You have written and published extraordinary papers, edited numerous journals, and represented clients in clinics: clients, who without you surely would have gone without counsel. Some of you, like others before, have been more like junior colleagues than students to me.

The rewards of being able to teach students with your talents, your energy, and your dedication are enormous. I, along with Bob Solomon, started a new transactional clinic, which still exists. And I have supervised many published articles and prize-winning papers over the years. Former students of mine are themselves now teaching tax law at Harvard, Columbia, NYU, Chicago, Miami, Michigan, Brooklyn, Berkeley, UCLA and even here at Yale --with several more soon to enter the teaching ranks. I have taught countless others now teaching in countless other fields at countless other institutions. And former students are now working in important jobs at the White House, the Treasury, the Congress, the Metropolitan Museum, and the Center on Budget and Policy Priorities, to name just a few-- not to mention those practicing law at our nation's great law firms. What could be a more rewarding career?

Now, I cannot resist taking this unique opportunity to make a few observations and offer you graduates a little advice.

The best graduation speech I have ever heard of was at a medical school graduation where the speaker came to the podium, looked

straight at the graduating class and said, "Wash your hands!" Then he sat back down.

Unfortunately, the study of law does not lend itself to such straightforward verities. Indeed, while we have--I hope-- sharpened your analytical skills, as we have taught you different theories and perspectives of law, you are no doubt today less certain, more questioning, of your prior firmly held beliefs about the law than you were when you first came to us. I know this is true from a conversation I overheard among three law students who entered this courtyard last fall just as a red squirrel ran across the ground on the opposite side, over there. The first-year student said, "Oh, I see some of the squirrels at Yale are red." "No," said the second-year student, "What you see is that one squirrel at Yale is red." "You are both wrong," said the third year student, "What you see is that *one half of one squirrel* at Yale is red." That is the kind of education \$150,000 can buy today.

In addition to sharpening your analytical skills, the one other thing that we are supposed to have done for you here--in spite of our best efforts to focus your attention on things like the relationship of law to literary criticism, economics, philosophy, mythology, and history—is to teach you how to think like lawyers. For a long time, I resisted the notion that there was any such thing as thinking like a lawyer. I knew, of course, that there was such a thing as talking like a lawyer, speaking the foreign language of the law. But I thought there was only good thinking

and bad or not thinking; no such thing as thinking like a lawyer. But it dawned on me dimly a number of years ago that there really is such a thing as thinking like a lawyer. In case you somehow missed it in your three years of law school, here it is in all its fullness:

1. I was not in Chicago, and I did not kill him;
2. If I was in Chicago, I did not kill him;
3. If I was in Chicago and I killed him, I did not mean to;
4. If I was in Chicago and I killed him and I meant to, it was because of something he did to me (or was about to do); *and* (not "or"— the “and” is important).
5. If I was in Chicago and I killed him and I meant to and it was not because of something he did to me (or was about to do), I was crazy.

Not everyone thinks like that. Only lawyers think like that.

And there are two serious problems with thinking like that. First, it is distancing. It not only distances lawyers from the people who are our clients, but it also far too frequently distances and insulates the lawyer from really confronting the personal and social problems at hand. People’s problems and social problems are morphed into lawyers’ arguments. Second, this way of thinking is morally empty, morally bankrupt; morality is completely left out, perhaps to be filled in later. Thinking like a lawyer reflects an unwarranted faith that an *adversary* legal process will reveal truth and serve justice.

From the point of view of the clients—and I have had the misfortune to be a client—it is all too clear that our adversary legal system favors the rich, promotes delay, is dehumanizing, and far too often has only the most tenuous and accidental connection with justice and with the ethical values of the community. For the average client, there is no more joy in going to a lawyer than in going to a car mechanic. You simply hope not to be ripped off. It is our duty—yours and mine—and that of the institutions we serve—the law schools and the practicing bar—to work to change that. That is a difficult assignment.

When you leave here, I ask that, throughout your career wherever it might take you, you continually ask yourself two questions:

First, "Do I like my work?"

Second, "Is what I am doing helping at all to preserve liberty and promote justice?"

If the answers to these questions are "No," remember that you have a Yale law degree and you can be doing something else. Don't let the mortgage, the BMW payments, or even the children, trap you in a job you do not like. Remember President's Obama's campaign refrain: change can often be a very good thing.

Finally, this year I taught a course with both law students and undergraduates, and I overheard a conversation between a law student and an undergraduate who asked, "How do people at the law school spend their time? On being told that they read a lot, surf the web, watch

some DVDs, have some but not very much sex, the undergraduate remarked, "It sounds like an old-age home to me." Think what a Wall Street law firm would sound like to that undergraduate.

Remember that, before you came to the Yale Law School, you too were undergraduates. And you knew how to have fun.

Remember that, before you came to the Yale Law School, you were educated and talented people with a variety of interests, indeed with passions.

Remember that you did not get where you are today by embracing orthodoxy. Pursue justice.

Remember also that in his list of fundamental rights, Mr. Jefferson included the pursuit of happiness.

Above all, remember that it is an *inalienable* right. You cannot sell it. Pursue Happiness. Pursue it with energy and with laughter. The law has been said to be a jealous partner. But remember there is much more to life than the law.