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Address

NORTHWESTERN UNIVERSITY SCHOOL OF LAW'S 151ST COMMENCEMENT ADDRESS

Justice John Paul Stevens[*]

Although I am a graduate of Northwestern Law School, this is my first Northwestern Law School commencement. The Class of 1947, of which I am a member, completed its six semesters of study in just two calendar years. We were mostly veterans of World War II anxious to begin earning an honest living as promptly as possible. Northwestern, like a number of other law schools, offered an expedited program that attracted students like us. In the summer of 1947—my last term—I only took one course: federal taxation. Because I was scheduled to start work in Washington soon as a law clerk, I was allowed to leave Chicago early, without taking my final tax exam or attending the graduation ceremony. I mention this history so that you will excuse any mistakes that you have found in my opinions in tax cases as well as deficiencies in this commencement address. I promise you, however, that my remarks will be brief.

I first congratulate you on your successful completion of your studies and welcome you to the proud group of Northwestern alumni. I shall add a comment about our Constitution and conclude with the obligatory giving of advice—including, in this case, two bits that I received from members of the Northwestern faculty: Homer Carey and Willard Pedrick.

During my freshman year in 1945, our principal study materials were casebooks that were arranged by the kinds of controversies that they presented, rather than by the rules that they illustrated. Thus, in Professor Havighurst's course on contracts, instead of studying rules about offer and acceptance, material breach, or the doctrine of consideration, we progressed from cases about personal service contracts to construction contracts, financing arrangements, and so on. In torts, instead of studying foreseeability or proximate cause, we began with personal injury cases, then turned to cases involving fire losses, cases involving injuries to reputation, and so on. The emphasis was on fact patterns and the relative roles of the judge and the jury in resolving particular issues.

Leon Green, our dean and torts professor, who had written scholarly essays in a volume entitled "Judge and Jury," contrasted his approach to

[*] Associate Justice, United States Supreme Court. Justice Stevens delivered this Address at the Northwestern University School of Law commencement ceremony on May 13, 2011, at The Chicago Theatre, in Chicago, Illinois.

law teaching to the rule-oriented approach that the Michigan and Harvard law schools followed. I have often thought that I received a vertical legal education that emphasized the importance of procedures that identify the correct decisionmaker, rather than a horizontal education that emphasized the rules that govern the conduct of law-abiding citizens. While we cherish the principle that we live under a government of laws, not of men, we also must recognize that specific applications of the law are the product of decisions made by executive officers and by the men and women who serve as jurors and judges. Identifying the proper decisionmaker is central to the administration of our system of justice.

When our Constitution was adopted, much lawmaking was intimately tied to specific disputes and the judges who adjudicated them. Judges routinely developed rules of law piecemeal as they explained their decisions in cases arising out of fact-intensive controversies. The Framers did not attempt to draft a Napoleonic Code or a set of substantive rules. Instead, their work product created three broad categories of decisionmakers and procedures defining how and by whom they should be chosen. The categories are not mutually exclusive, because the President's veto power gives him a voice in rulemaking[1] and the Senate must confirm his judicial appointments.[2] The guarantee of life tenure affects the quality of the judicial process without dictating any outcomes. In short, the common law lawyers who drafted the Constitution created a system of lawmaking in which they expected the members of all three branches to participate. Instead of trying to answer questions they could not anticipate, they forged a framework in which wise decisionmakers cooperated and clashed in a continuing effort to form a more perfect union.

Inheritors of these constitutional processes and aspirations have, by using them and applying their judgment to them, ensured that Amendments to the Constitution provide both procedural and substantive protections for individual freedom. The scope of some of the protections found in the Amendments is far broader than their authors actually contemplated. At the time of the adoption of the religion clauses in the First Amendment, it was generally believed that they merely proscribed the preference of one Christian faith over another, but would not require equal respect for the conscience of the infidel, the atheist, or the adherent of a non-Christian faith such as Islam or Judaism. The commentaries written by Justice Story made clear this narrow understanding.[3] But as we held in *Wallace v. Jaffree*,[4] when the underlying principle was examined in the crucible of litigation, the Court "unambiguously concluded that the individual freedom of

[1] U.S. CONST. art I, § 7, cl. 2.

[2] *Id.* art. II, § 2, cl. 2.

[3] JOSEPH STORY, 2 COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 631–32 (Melville M. Bigelow ed., William S. Hein & Co. 5th ed. 1994) (1833).

[4] 472 U.S. 38 (1985).

conscience protected by the First Amendment embrace[d] the right to select any religious faith or none at all."[5] And of course, if our construction of the state's duty to govern impartially enshrined in the Equal Protection Clause had been based on contemporary understandings at the time the Fourteenth Amendment was adopted, Justice Thurgood Marshall would have been on the losing side in *Brown v. Board of Education*.[6]

Just as rules of law may have broader coverage than their authors originally intended, so may the advice that law professors give their students have unforeseen ripple effects. I hope that will be true of some of my words today—it certainly was of these two pieces of advice I received while in law school: Professor Homer Carey, who taught courses in real property and future interests, advised us that every lawyer should adopt a unique practice that potential clients would recognize, such as using green ink in your fountain pen. Following his advice, I started to use my middle name when signing letters. I don't know whether that practice got me any law business but it did make my signature even more illegible than before. Professor Willard Pedrick, who taught both torts and federal taxation, advised us that when planning our futures, we should not try to decide what we want to be doing at the end of our careers, but rather we should decide what to do *next.* The decision that Jack Barry, Ed Rothschild, and I made in 1952 to form our own firm instead of climbing the ladder to a partnership in the firm now known as Jenner & Block was motivated, in part, by that sound advice.

In addition to sharing with you the advice that I received from Professors Carey and Pedrick, I shall also repeat two bits of advice that I have given to many young lawyers over the years. First, be sure to include a significant amount of unpaid work in your professional career. Whether it is bar association work, providing legal assistance to clients unable to pay, or political advocacy of some sort, you will not only receive unexpected intangible rewards from such work, but also learn important lessons not taught in any law school course. I think this excerpt from a letter that John Adams wrote in 1759 eloquently expresses my point:

> Now, to what higher object, to what greater character, can any mortal aspire than to be possessed of all this knowledge well digested, and ready at command to assist the feeble and friendless, to discountenance the haughty and lawless, to procure redress of wrongs, the advancement of right, to assert and maintain liberty and virtue, to discourage and abolish tyranny and vice?[7]

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[5] *Id.* at 53.

[6] 347 U.S. 483 (1954).

[7] Letter from John Adams to Jonathan Sewall (Oct. 1759), *in* 2 THE WORKS OF JOHN ADAMS, SECOND PRESIDENT OF THE UNITED STATES 79, 79–80 (Charles C. Little & James Brown eds., Boston, Bolles & Houghton 1850).

Finally, and of the utmost importance—because every lawyer sooner or later will confront an unforeseen temptation—remember that your most valuable asset as a member of the legal profession is your integrity. If your adversaries and colleagues know that your word is good, you will be a successful lawyer.

Congratulations and best wishes to every member of the Class of 2011!