

# Commencement Remarks—1990

*The Honorable Barbara B. Crabb ('62), US District Court, Western District of Wisconsin*

I consider you new graduates the most fortunate of people. You are about to enter into a compelling, challenging, difficult, rewarding life. You will face demands greater than any you ever realized would be made upon you, and you will respond more ably than you could have imagined. You will encounter seemingly insoluble problems and discover within yourselves resources and strengths you never knew you possessed.

You are entering a profession that is constantly criticized—often by its own members. As a group, lawyers are accused both of protecting the corporate structure of America and of contributing to its decline through the expansion of tort liability. Lawyers are accused of bringing too many lawsuits and of ignoring the needs of the poor for greater representation in landlord-tenant disputes or welfare rights or access to medical care. Lawyers are accused as often for protecting polluters, as for producing so much environmental legislation as to make it impossible to do business in the United States.

This ambivalence about the legal system is inherent in its adversary nature and in the consequent—and constant—reordering of rights and responsibilities. To the person whose rights are expanded, the system is superb. To the person whose rights are restricted or whose responsibilities are increased, the system is hopelessly flawed and out of control. In other words, at its best, the system cannot satisfy more than half its users.

But you're not becoming lawyers to avoid criticism. You chose the law because of its diversity, its challenge, its drama, the chance to make a contribution to society, the opportunity to take an active role in the world. You chose well.

The law is a spacious, diverse, multifaceted profession. Its most visible players are the trial lawyers—chief actors in the drama of the courtroom and the lawyers most often portrayed in books and movies. But it has room as well for the person whose skills are in negotiating or counseling or policy making. It accommodates persons whose skills make it possible for ideas to become products or for people with ideas to form companies to put those ideas to work. It includes lawyers who teach and undertake research and expand our understanding

of the law. It includes lawyers who attack the status quo, as well as those who defend it; lawyers who spend their careers saving estates from death taxes and lawyers who devote their lives to saving persons from the death penalty; lawyers who prosecute criminals and lawyers who defend them; lawyers who initiate conflict and lawyers who resolve it; lawyers who enact laws, lawyers who enforce those laws and lawyers who test them.

The law offers a continuing intellectual challenge. Even if the law never changed, the evershifting patterns of conduct to which the law applies and the diversity of people to whom it applies would require flexibility and creativity. With an evolving body of law continually added to by legislators, administrative tribunals, and courts, the lawyer's need for education never ends. The body of rules that students master in law school is only a starting point in the solution of the problems that clients bring to practicing lawyers. The solution to one client's dilemma is only a guide and not a pattern for the solution of the next one's difficulty. The law offers the opportunity to work closely with a panorama of human types, with all the frustrations and pleasures that entails. The pleasure comes from being able to help people in difficult circumstances: when they are accused of crimes or when they are badly injured and seek damages or when they are prevented from working because of their age or sex or race.

The law is drama—and lawyers witness it for free. The fictional trials of Captain Queeg, Phineas Finn, or Billy Budd are no more exciting than the real life trials of Claus Von Buelow, General Westmoreland or Ariel Sharon—or the trials that go on daily in the courtrooms in Dane County.

The drama is not limited to the courtroom. Every day in lawyers' offices, moral dramas are played out: over custody of children, challenges to wills, fights among heirs, threats of libel, anti-trust actions, attacks on patents, takeover battles.

The law provides the opportunity to influence the way in which society works. The special training that lawyers receive equips them well for playing an active role in government and policymak-



ing, for helping to build the world they want for themselves and their children. Doing so carries on the tradition of public service that has always characterized the profession.

Those who criticize lawyers as interested only in making money overlook lawyers' pro bono public work, that is, work done for the benefit of the public. In Dane County, lawyers perform volunteer legal work for homeless shelters, for the YWCA, for the Legal Action of Wisconsin tenant rights program, for state and federal prisoners who are challenging the conditions of their confinement, and for hundreds of non-profit groups and needy individuals. Lawyers contributed hundreds of hours to the State Bar's hot line for legal help, to the state high school mock trial competition, and to educating the community about its legal rights and responsibilities. Last year, the State Bar's Lawyers' trust fund, a project conceived, carried out and administered by volunteer lawyers, contributed \$1,500,000 to programs designed to improve the profession and expand the delivery of legal services.

If I sound particularly enthusiastic about the law, it's because I've never gotten used to my own good fortune in being able to be part of this profession. It would not have been an option in differ-

ent circumstances or in different times. I am indebted to the examples set by my grandfather, my father, and my uncle, all lawyers I admired enormously. I am indebted also to my mother for her never-failing encouragement of my plans, and to my husband in more ways than I can say and in particular for the very tangible support he provided in the way of tuition payments, and to the people at the law school (high among them: Gordon Baldwin), for making it so easy to enter law school and so rewarding to stay.

When I graduated from law school in 1962, I was the only woman in my class. I remember the graduation ceremony well. It was held in this theater, with the deans and the president of the university up here on the stage. It could be held in the theater because it was the mid-year ceremony and few people bothered to attend. I'm not sure why I went. But I do remember the barely suppressed horror on the dean's face when the law school graduates were asked to stand and the lone representative of the class was a woman.

I have never regretted my choice. I think the dean became reconciled to it over time. I am continually grateful for the pure pleasure of doing the work, of having to work harder than I ever thought I could, for the opportunity to put whatever abilities and energies I have to the work I do.

In a world in which many are barred from working because of mental, emotional, or physical handicaps, or language barriers, or the lack of education or job skills, I can never take for granted the privilege of being able to work. I can never take for granted the joy of being able to work at a job that is so satisfying.

I often reread a talk given by Justice Holmes in 1900, in which he talked about the pleasure that comes from working:

"The joy of life is to put out one's power in some natural and useful or harmless way. There is no other. And the real misery is not to do this. The hell of the old world's literature is to be taxed beyond one's powers. This country has expressed in story . . . a deeper abyss, of intellectual asphyxia or vital ennui, when powers conscious of themselves are denied their chance.

The rule of joy and the law of duty seem to me all one. . . . The joy, the duty, and, I venture to add, the end of life . . . life is action, the use of one's powers. As to use them to their height is our joy and duty, so it is the one end that justifies itself."

I return again and again to this text. It confirms, more forcefully than anything else I've read, the joy that comes of working as hard as one can within the limits of one's own intelligence and energy and imagination. Yet there is an

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irony to this passage. There is no indication that when Justice Holmes wrote it, he ever thought of all the people who were then "denied the chance" he found to be the very purpose of life. In 1900 few women and few blacks or any other minorities were able to attend law school, medical school or other graduate schools. In 1873, the United States Supreme Court had denied Myra Bradwell's Fourteenth Amendment challenge to Illinois' denial of her application for a license to practice law, holding that it was the paramount destiny and mission of women to fulfill the noble and benign offices of wife and mother. "This is the law of the Creator." In 1894, the court held that a Virginia statute allowing "any person" to be admitted to the bar need not include women. In 1892, Ida Wells, a black newspaper writer, was threatened with hanging by angry citizens of Memphis if she continued to write articles protesting the lynching of black men.

It was a different world in 1979. That year I was a newly-appointed federal judge. I attended the new judges' school in Washington, D.C. The highlight of the week-long session was dinner at the United States Supreme Court. We ate at large round tables in the high-ceiling, magnificently appointed dining room at the court, under portraits of the white men who had sat on the court in the 18th and 19th centuries. On my left was a newly-appointed Mexican Indian Judge; on my right, a newly-appointed Black Judge. A Black, an Indian, a Woman. What was impossible in 1900 had become manifestly possible in 1979.

I rejoice in the distance that our society has come from 1900. But I remind you of what you already know: that there remains a long way to go. As a society, we are still victims of bias and prejudice. For many the words of the author Lillian Smith in 1949 are still unheeded. She wrote then:

"I began to understand slowly at first, but more clearly as the years passed, that the warped distorted frame we have put around every [black] child from birth is around every white child also. Each is on a different side of the frame but each is pinioned there. And I knew that what cruelly shapes and cripples the personality of one is cruelly shaping and crippling the personality of the other."

Despite changes in the laws, racial prejudices and unequal opportunities still cripple our society. Too many are still denied the chance to use their talents to the fullest. Ignorance and indifference threaten to destroy the gains that have been made in social justice. The warped frame of stereotype encloses the other, whether that other be Black or Indian or physically handicapped or non-English speaking. The warped frame distorts the lives of the viewer and the viewed. Our country has not yet realized the rich rewards of a fully-realized diverse and multicultural society.

As lawyers know all too well, the passage of legislation does not ensure change. As enormous an accomplishment as the 1960's Civil Rights Act is, it is no guarantee of true equality or full opportunity. It must be guarded and nurtured and given content to make it real. This law school and this university are committed to that task. We can be grateful for their efforts while we continue to prod them to do more. We cannot delegate the problem to them. It is ours. We are all diminished so long as some are diminished.

Pope John XXIII said that the moral purpose of governments, the reason for their existence, is to promote the ability of individuals to experience their full potential. Our country is based on that premise. It is embodied in the words of lawyer Thomas Jefferson that governments are instituted to secure the inalienable rights of their people, which include life, liberty, and the pursuit of happiness.

As lawyers we are challenged to open our profession, to provide equal opportunities to all persons. As lawyers we are challenged to make the words of Thomas Jefferson and Pope John a reality within this country. As lawyers we must acknowledge how important it is to the sense of community upon which our system rests that education, work, the chance for self-fulfillment not be limited by economics, or color, or sex.

My wish is that each of you graduates will know the joy of working at tasks that call upon you to use to the utmost your senses, your minds, your faculties, every part of yourselves that makes you conscious of your being.

My hope is that you will use your talents, your abilities, the unparalleled educational opportunities you have been given at this law school, to work for the expansion of those opportunities for everyone within our constitutional community. I hope you will keep in mind the inspirational words of Vaclav Havel to the people of the United States: the salvation of this human world lies nowhere else than in the human heart, in the human power to reflect, in human meekness and in human responsibility.