

## **Risk and Responsibility: The Contours of Civic Courage**

The Honorable Carol A. Beier\*

Good evening. I appreciate the opportunity to speak to you students tonight, as you and your family and friends, and the Washburn and court communities, celebrate the fruits of your considerable labors. I know the commitment and hard work that has been required of you. Quite properly, we take time to recognize that commitment and hard work tonight.

I also know from personal experience the patience and understanding that have been required of those who care about you. No matter what a star you are now or what a star you will become, these people who care about you—your spouses and partners; your children and parents; your chosen family of friends; the Washburn deans, faculty, and staff—have helped to make you shine. Let us take time to thank those among them who could join us tonight, first thing, before we get too carried away.

When I received your gracious invitation, it was suggested that I talk to you this evening about what you can do with the legal theory and skills training you have acquired during law school. It is a broad topic, and we could focus on the purely pragmatic: What types of jobs are available to me? Once I land one, how do I persuade my employer that I am indispensable?

However, the times and the events in the news of the last few weeks have made me reluctant to be pragmatic tonight. Instead, I am going to talk about a somewhat broader picture. And I am going to insist, indeed demand, that you must be better, and bigger, than purely pragmatic—at all times, in all situations, from this moment forward.

My essential point is that law school is not trade school. It is true that because you have chosen to capitalize on your natural talents and the education you previously possessed by obtaining a law degree, you have enormously improved the odds that you will be able to earn a living. With your tuition dollars and your investment of sweat, you have purchased an insurance policy of sorts against personal hunger and homelessness. If there is a future chill in the air, you will be able to clothe yourself and your loved ones. If you become ill, you will be

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able to access decent health care. In varying degrees, you will be “successful,” in these, the most pragmatic senses of that word.

But, you are and you must be far more. Your legal education has outfitted you for leadership. And *we need you*.

When you receive your degree, you will join the ranks of 6000 previous proud Washburn Law graduates among the world’s professionals. From where you stand on the commencement stage, you will be able to catch at least a glimpse of greatness. “The price of greatness,” however, in the words of Winston Churchill, “is responsibility.”<sup>1</sup>

I should like to add one more price: risk. What are the contours of this responsibility? Of this risk? I suggest they are three. One, an eagerness to engage in the most wrenching of our public debates. John Kenneth Galbraith has recognized that all great leaders have one characteristic in common: “the willingness to confront unequivocally the major anxiety of their people in their time.”<sup>2</sup>

Two, an ability and willingness to speak truth to power, whatever the cost. Recently a freshman Democratic legislator named Josh Svaty attended a meeting in which he and the other members of the House Elections and Local Government Committee discussed a bill requested by Secretary of State Ron Thornburgh, a Republican. Thornburgh had suggested that the Legislature amend old statutes prohibiting the Communist Party from registering candidates for office in Kansas. In other words, Thornburgh sought to eliminate the impact of these blatantly unconstitutional statutes. Representative Svaty was chagrined to see that many of his colleagues were unwilling to amend the statutory language, especially during wartime, apparently believing their constituents would view their votes as unpatriotic. They gave him the rhetorical equivalent of a pat on his youthful head, telling him he did not remember the days of duck and cover during bombing drills. Perhaps not, but apparently Representative Svaty *did* remember his social studies lesson on the First Amendment. The six members of the committee who voted to kill the bill were simply unwilling to speak truth to the power of those voters who might be ignorant of the core constitutional rights all of us share.

Three, the guts to make the tough call and endure whatever criticism or other consequences it births. Lately, we see examples of this all around us:

- Private Lori Piestewa and countless other men and women leaving young families to face danger and death in Iraq because they believe in their mission;

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1. Prime Minister Winston Churchill, Address at the Harvard Law School (Sept. 6, 1943).

2. JOHN KENNETH GALBRAITH, *THE AGE OF UNCERTAINTY* 330 (1977).

- Western peace activists going to Baghdad to act as human shields in hospitals and power plants in order to preserve them for the civilian population;
- New York's recent reversal of the convictions of five men whom authorities ultimately concluded were wrongly convicted in the 1989 Central Park jogger case;
- Central Park jogger Trisha Meili's decision to go public with her name and her story of survival and recovery to assure other brutalized women that at least she realizes they are more than their history of victimization;
- And, just this Monday, Justice Thomas' indictment of his colleagues' irrational conclusion that cross burning can be something other than violent and intimidating conduct in a culture still enslaved by a legacy of lynching.<sup>3</sup>

Your education and training for leadership will require you to risk disapproval, even ostracism, because you will be the ones who express controversial opinions, speak truth to those holding the cards, or move forward with decisions when others are paralyzed by inertia or by fear. It is, from now on, your unavoidable responsibility to serve the Constitution and your community and to personify civic courage. Such courage will be the ultimate measure of your character and your understanding of what it means to be a true professional. "Courage is not simply one of the virtues," C.S. Lewis said, "but the form of every virtue at the testing point."<sup>4</sup> It is at the testing point where we can grasp the "highest reality" of our world and ourselves.<sup>5</sup>

Billy Collins, our nation's current Poet Laureate, recently remarked that it is the vanity of every age to think that "it's peculiar, that it's part of a kind of historic turning point."<sup>6</sup> In reality, he urges us to appreciate; every age is merely *a* "part of a great community of human experience."<sup>7</sup>

When I name you as tomorrow's leaders and urge you to recognize that you are schooled for future heroism, please understand that I expect more than indulgence in the vanity Mr. Collins describes. (My fellow baby boomers and I have already cornered the market on at least this version of vanity anyway.)

Self-satisfaction and arrogance are not equivalent to leadership. An ability to read the political wind and set your sail to maximize the distance it will take you does not amount to statesmanship. Popularity tells us nothing about the worth of one's ideas or the merit of putting them into practice. Right and wrong are never decided by which receives the most and least votes.

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3. *Virginia v. Black*, 123 S. Ct. 1536, 1567 (2003) (Thomas, J., dissenting) (*United States Reports* pagination not available at time of publication).

4. CYRIL CONNOLLY, *THE UNQUIET GRAVE* 99 (rev. 2d ed. 1951) (quoting C.S. Lewis).

5. *Id.*

6. *Morning Edition* (NPR, Apr. 1, 2003) (statement of Billy Collins).

7. *Id.*

Let us reflect for a moment on one timely illustration of this point. In a week or so, the Kansas Legislature will return to town from its spring recess. Its members also will return to what can only be described as the most popular parlor game in state politics: resisting raising taxes, no matter what. Our certainty that this game will continue to be played demonstrates convincingly that we desperately need the leadership your legal educations have prepared you to provide.

Compare what we see on this issue to the three contours of leadership's risk and responsibility I described a moment ago. First, very few of our elected representatives are eager to engage in this wrenching debate. Second, fewer still will speak truth to the power of the voters. And, third, virtually none appears capable of making the tough call and facing the fallout. They simply lack the civic courage necessary for this job.

Your professors here at Washburn have done what they can to help you to do better. They have nurtured your abilities to gather the relevant facts, to research and synthesize the rules that have led to workable resolutions of similar issues or disputes in the past, and to communicate analysis and outcome effectively. You now think like a lawyer. As your presence at this banquet symbolizes, you have mastered this habit of mind and its tandem set of skills. When you address the county commission, get involved at a neighborhood association meeting, advocate for your child at a parent-teacher conference, speak at a rally for your favorite gubernatorial candidate, or become a candidate yourself, you will persuade others and inspire their confidence in you as a leader. Others will view you this way, in part, because you learned in law school how to present your views and vision clearly and authoritatively.

We know there will be no shortage of serious issues and problems for you to address. Specifically, consider these examples.

- The Justice Department reported about a week ago that the proportion of African-American men ages twenty to thirty-four in jail or prison has risen to 12%, the highest rate ever measured. By comparison, 1.6% of white men in the same age group are incarcerated.<sup>8</sup> It is plainly impossible to explain fully this huge disparity without acknowledging lingering racism in the workforce, in law enforcement, and in our own judicial system. It must be eradicated, but only with your help.
- The State Department has recently released its annual, less-than-diplomatic report on human rights violations worldwide. Several of our partners in the current "coalition of the willing" are included. In addition, the sins of the "axis of evil" coun-

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8. Fox Butterfield, *Prison Rates Among Blacks Reach a Peak, Report Finds*, N.Y. TIMES, Apr. 7, 2003, at A12.

tries—Iraq, North Korea, and Iran—are catalogued. They include executions without trial, torture, deliberate starvation, and stoning. In some ways worse, our own nation's practices in Afghanistan and Guantanamo Bay are alleged to mirror offender countries' use of sleep and food deprivation to extract confessions.<sup>9</sup> We are reminded of Eleanor Roosevelt's speech to prep school students in May 1940: "How to preserve the freedoms of democracy in the world" when it is at war. She said, "How really to make democracy work at home and prove it is worth preserving . . . . These are the questions the youth of today must face . . . ." <sup>10</sup>

- The Department of Health and Human Services reports that cases of child abuse and neglect rose in 2001. Child and protective service agencies across the country received 2.6 million referrals. In the approximately one-third of those cases where the complaints were substantiated after investigation, the perpetrator was a parent eighty-one percent of the time.<sup>11</sup> Increased risk of child abuse is associated with the economic downturn and rising unemployment.

You did not create these or our other challenges. But, neither can you and your fellows in the bar ignore them. Plan now to make your contribution to their solutions.

It is time for me, in the immortal words of Irving Younger, to "sit down and shut up."<sup>12</sup> The time to applaud your accomplishments has arrived. As you collect your congratulations, I ask only that you remember we are counting on you to attack the difficulties that face our society and our world with the same vigor and enthusiasm you have brought to your law school endeavors. You can do no less. We can ask no more. Thank you.

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9. *A Global Catalog of Wrongs*, N.Y. TIMES, Apr. 7, 2003, at A18.

10. DORIS KEARNS GOODWIN, *NO ORDINARY TIME: FRANKLIN AND ELEANOR ROOSEVELT: THE HOME FRONT IN WORLD WAR II* 30 (1994).

11. See generally United States Department of Health and Human Services, Administration on Children, Youth & Families, *Child Maltreatment 2001* (U.S. Gov't Printing Office 2003), <http://nccanch.acf.hhs.gov/topics/overview/facts.cfm> (updated Oct. 28, 2003).

12. Videotape: Younger on Evidence: Basic Concepts of Evidence (The National Institute for Trial Advocacy 1975).

