



*The following address
was presented at the
J. Reuben Clark Law
School convocation on
April 27, 2001, in
the Provo Tabernacle.*

CIVIC VIRTUE

BY SETH P. WAXMAN

Deans, members of this distinguished faculty, and all of you triumphant graduates, thank you for inviting me to share this wonderful occasion. I feel truly fortunate to be among you and to honor in my own way the memory of Rex Lee.

Before I address the graduates, I would like to pay tribute to the unsung heroes in this tabernacle, to

the parents, grandparents, and other supporting family members of those receiving their degrees. It was only last year, when I sat bursting with pride at my eldest child's graduation from high school, that I genuinely appreciated how profoundly meaningful events like this are to all of us.

There are two things I don't remember about my own law school commencement and two things I do. What I don't remember is who the



speaker was or what he said. One of the two things I do remember is how long the commencement speaker droned on. I promise that you are not going to be subjected to that today!

I also remember how I felt on that day. In addition to feeling pride and relief, I was excited at the prospect of joining a noble profession and anxious to go out and make a difference in the world. I know you all feel much the same way, and you should. My wish for you is that a year from now—and 10, 20, 30, and 40 years from now—you still will. Many practicing lawyers lose that feeling. I want to share some thoughts with you about how I think you can keep it fresh.

In a few minutes each of you will receive a degree that will accord you tremendous privileges: broad career options, geographic mobility, and the potential to earn substantial salaries. Most important, because of your professional status, you and your families will have access to justice. If a dispute arises with a landlord, an adjacent property owner, a doctor, an employer, or your city, state, or federal government, the education you have received will enable you to ascertain what the legal options are and to navigate a complex justice system. Once you are admitted to the bar, your license will enable you to act within that justice system, to file motions, to obtain discovery, and to argue before judges and juries to get the right result. You will have the full force

of the legal system within your grasp, and you and yours will never be left without recourse in the face of injustice.

But now, think back to your first days of law school. If you were like me, it all seemed terribly bewildering. If you will be the first attorney in your family, like I was, perhaps you can recall a time when someone you loved or knew needed help and had nowhere to turn.

Now that you're an "insider," don't forget what it was like to be an "outsider," when you were unable to comprehend the legal system, much less use it. Now that you are an insider, you are empowered to help those who do not have access to justice. If you reach out to those who cannot afford your fees, you will be helping not only those clients but also your community, your nation, and yourself. You will be participating in a venerable tradition of lawyerly public service that stretches back to the earliest days of our republic.

This marvelous nation was founded on the dual principles of individual liberty and public service—what our founders called "civic virtue." As modern lawyers, we are highly attuned to the former; our Bill of Rights enshrines and protects the principles of individual liberty. But what about civic virtue? Where did that go? Our founders believed deeply that the sacred rights of the individual would not be safe unless people were also imbued with a sense of responsibility for their

communities. "Without virtue there can be no liberty," Benjamin Rush declared in a 1786 speech. Samuel Adams echoed that "men will be free no longer than while they remain virtuous."

No group in colonial times felt this responsibility more palpably than lawyers. Perhaps no lawyer ever better exemplified the twin principles of individual liberty and civic virtue than Thomas Jefferson. He envisioned—and emulated—the citizen-lawyer dedicated to serving his community and his nation.

Jefferson had plenty of company: 33 of the 56 signers of the Declaration of Independence and 34 of the 55 members of the Constitutional Convention were lawyers. In a multitude of less prominent but equally significant ways, lawyers generally were mindful of their role in protecting the public interest. They were trained and proud to be lawyers and citizens.

When lawyers attended to the public interest in their professional lives, when they viewed themselves in civic terms, they were esteemed by a public—then as today—that values those principles. Alexis de Tocqueville reported that "people in democratic states do not mistrust the members of the legal profession, because it is known that they are interested to serve the popular cause; and the people listen to them without irritation because they do not attribute to them any sinister designs."

Today, in the era of law as business, with the pressures of the bottom line, many people would smirk to hear those words. But 60 years after the founding of the republic, Abraham Lincoln—another skillful and public-spirited lawyer—often devoted time to representing people who could not pay his fees, such as widows seeking pension benefits, because he believed that he had a duty to help those who could not fend for themselves.

More than 100 years after the nation's founding, long before he became a Supreme Court justice, Louis Brandeis was one of the most prominent private attorneys of his time. Yet he committed himself to donating at least one hour of each working day to public service legal work. Even if his *pro bono* clients could afford to pay something, Brandeis never accepted fees from them, both because he viewed this work

as a lawyer's responsibility and because he recognized that accepting payment would diminish the joy he received from helping others.

What Brandeis, Lincoln, Jefferson, and so many of our predecessors understood was that in doing public service, a lawyer helps himself as much as he helps others. Translated literally, of course, *pro bono publico* means "for the good of the public." But *pro bono* work redounds at least equally to the lawyer's own good and to the good of the profession. As Will Rogers observed (and no truer words were ever uttered): "A man makes a living by what he gets. He makes a life by what he gives."

Today, many attorneys report feelings of apathy, malaise, and unhappiness. The ABA reports that the number of lawyers who were very satisfied with their jobs dropped by 20 percent in one recent seven-year period. I'll bet not many dissatisfied lawyers are committed to *pro bono* or public service activities. They complain about lacking direction in their lives, yet they fail to recognize that by cutting out public service, they sacrifice opportunities to have new experiences that might help them find that direction. They complain about lacking a sense of meaning, but they fail to realize that by stinting on public service, they sacrifice the unparalleled satisfaction of working toward their own personal idea of justice.

Other lawyers recognize the connection but fail to see the opportunities. Another ABA survey found that a perceived "inability to make a contribution to social good through the practice of law" is the aspect of practice that seems to disappoint young lawyers the most.

Many law students and young lawyers think they were born too late, that the days of groundbreaking legal movements are over. That is not true. Each of us brings something special to the table, a unique gift to give back to society. For each one of you, there is some *pro bono* work that will be deeply fulfilling, no matter how busy you are and whatever your jurisprudential interests, your political or philosophical beliefs, or your professional skills.

If you are interested in corporate law, you can help not-for-profit community groups organize and operate. If your pas-

SETH WAXMAN AND MIRANDA

Appointed by President Clinton as United States solicitor general in 1997, Seth Waxman served almost four years as one of the nation's top attorneys, patterning himself after Rex E. Lee, another solicitor general, who was the founding dean of the J. Reuben Clark Law School and a former president of Brigham Young University.

During his tenure Waxman argued 30 cases before the Supreme Court, including a challenge to the Miranda statute. He defined the familiar wording of the Miranda warning as being "part of the cultural and legal fact" of our country. He said, "Every man, woman, and child in this country not only knows what the Miranda warnings are, but can recite them." This argument was enough to persuade the Supreme Court to uphold Miranda.

Waxman has described traveling all over the world and being met by people who would recite the Miranda warning in a greeting to him—especially children. "People everywhere know that the United States is strong enough to tell people they have rights and then be able to enforce those rights."

sion is individual liberties, volunteer with the ACLU or the American Center for Law and Justice, or a similar organization. If you feel artists deserve more support, get involved with Volunteer Lawyers for the Arts. If you want to help law enforcement without becoming a full-time prosecutor, call your local prosecutor's office or victims' support group, and volunteer on a part-time basis. If you enjoy teaching, give a law-related class at a local school or adult education program. If you want to be a litigator but aren't getting enough experience or responsibility at your law firm, volunteer to represent indigent criminal defendants or to handle a civil case for one of the thousands of ordinary citizens who simply cannot afford legal counsel.

Or volunteer outside the field of law altogether. When I was solicitor general, one of the attorneys in my office led a Girl Scout troop. Others tutored and taught classes. Throughout her entire tenure as attorney general of the United States, Janet Reno spent one day each month in a local elementary school. As our founders knew, education is the foundation of a successful society. You can teach a child about the importance of public service through your good example.

Before I entered government service, I spent 17 rewarding years in the private practice of law. Several of my law school friends told me I was the only private attorney they knew who actually seemed to enjoy his job.

That was an exaggeration (I hope), but I never made any secret about what satisfied me. Yes, I had interesting cases and wonderful colleagues. But what made it truly worthwhile was the ability to use my skills to help people who were helpless and to promote a vision of society that I believed in. I gave away thousands of billable hours. But I was repaid a thousand times over for having done so. You will be too.

So before you get up to celebrate, while you are sitting right here, in the very last pause before your professional lives begin, resolve to emulate our founders in your careers. Understand that your professional obligations will extend far beyond your clients' interests to those of the community and the nation. Understand that the bar's tremendous power in American society brings an equally tremendous responsibility to protect the common good.

Think of your futures. Think of your lives. You are all, each one of you, at the brink of a wonderful adventure. Use the tools your teachers have given you to become great lawyers; use the values within you to become great citizens.

Seth P. Waxman is a visiting professor of law, Georgetown University Law Center, and Visiting Fellow, Harvard University John F. Kennedy School of Government. From 1997 to 2001, he served as the 41st solicitor general of the United States.