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Commencement Address by John Biggs, Jr.

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SPECIAL

COMMENCEMENT ADDRESS BY JOHN BIGGS, JR.*

An occasion of this sort is one of joy and one of solemnity. Today, you, the members of the graduating class of the Dickinson School of Law, and your teachers and guides of the last three years part company. While you will return as alumni to Trickett Hall and Sadler Curtilage, those pleasant places where you have worked so hard and spent so many happy hours, you will never come back as students, as neophytes. The silver gloss on your knowledge of the law will not remain for long but I will hazard the prophesy that you will never permit it to become tarnished. When you return for your reunions you will have acquired that experience which is of aid to understanding. You will miss your friends and associations here but you will be dealing with new things and new experiences and with the raw materials from which the law is made.

You have had as sound a legal education as this great country affords. You have been educated at one of the very best of our schools of law. The institution from which you are now graduating has the very great distinction of being the oldest law school in Pennsylvania. The Dickinson School of Law can trace its beginnings back to a series of legal lectures delivered in 1834 by Judge John Reed, the Pennsylvania Blackstone. The first law degree ever given in Pennsylvania was conferred by this School in 1835.

From Trickett to Shafer the Law School has had an excellent faculty. Its teaching roster has included and includes distinguished specialists in the respective legal fields. What the Law School has done for generations of its graduates and what its graduates have accomplished has been demonstrated for more than a century and a quarter. Dickinson Law School numbers among its alumni at least two Chief Justices of Pennsylvania, the latest being the Honorable Charles Alvin Jones, only recently retired from the supreme bench of this Commonwealth. I believe that at one time the Dickinson School of Law had more judges on the benches of the courts of Pennsylvania than all the other law schools of the Commonwealth combined. The Law School has cast its bread upon the waters and it has been returned fourfold in honor and in affection.

It is now my purpose, members of the graduating class, to try to give you some useful advice. First, I want you to consider the law to be a calling and not a business. It is a calling to promote justice, for each of you when

* Chief Judge, United States Court of Appeals for the Third Circuit.

you are admitted to the bar will become an officer of the court. You must act on all occasions with complete fidelity not only to your client but also to the court. Employing even the finest of scales, you will have difficulty in discovering any difference in the weights of these two obligations. One duty must and will in fact weigh as heavily as the other in the delicate balance of your conscience and, paradoxically, the weight of these imponderables is great.

Your primary aim as a practicing attorney cannot be the earning of money, though I would be less than candid if I told you that fees were not an important consideration in the life of every practicing lawyer. But, to the true advocate, duty is first. A breach of a client's trust is unpardonable and should be unthinkable. Such a breach is really a breaking of faith to the court itself. I know that none of you will do such a thing, for if you do, you will in time lose your own conscience. No worse fate is reserved for the lawyer.

I ask you particularly not to forget, as many successful lawyers do, that you owe a duty to the defendant accused of a crime who may have little or no money as well as to the defendant who may have a great deal. I believe it was Cicero who cynically remarked that it was easier to defend a rich man. Forget Cicero and remember Abraham Lincoln who defended rich and poor alike. If my suggestion to you were followed generally, there would be far less criticism of the law.

And, my young friends, do not underrate yourselves too greatly because of inexperience or permit older members of the bar to do so. As you get older you will get hardening of the categories. The aging lawyer had better beware of the young man. I have seen a young lawyer come into court not only fully prepared but having covered the particular field of the law in which his case lay like the dew covers the grass on the fields of Pennsylvania early on a June morning, for he greatly feared that he might commit error. The young lawyer's recollection is pristine and pure, and he can remember the names of cases and page numbers and can quote opinions aptly word for word. In addition, he is frequently aggressive and he can be like the raging lion. What he lacks are patience and experience. And bear in mind that every case must be presented to the court with patience and that it takes experience to prepare a case well. Proof and argument should be built up carefully point by point.

The element of surprise in the trial of cases, which today can be held to a minimum, has produced some startling results in the past. One example from the old days, when much more was left to chance than now, was a will contest involving an estate of many millions of dollars. The result hinged on the contents of a previous will that was thought to have been destroyed.

A reputable witness "remembered" the contents of the will. The lawyer conducting the cross-examination pinned him down with regard to details concerning it of which he was quite positive, including the fact that the will had been typewritten. Later the cross-examining lawyer produced a holographic will which he claimed had just been found and which completely refuted the testimony of the witness as to its contents. The case fell apart on the spot. Of course, there are instances in which all the discovery in the world would not provide adequate protection. In a criminal case tried in a large city a few years ago, the defense claimed the crime was committed while the accused was in a blackout caused by an epileptic seizure. While an expert witness, a physician, was testifying for the prosecution that the defendant showed no indications of epilepsy, the defendant proceeded then and there to suffer a severe attack of epilepsy which could not have been feigned. Modern discovery processes should be employed, however, to remove as many elements of surprise as possible from the trial.

Be particularly careful about cross-examination. Someone has said, "Do not ask any question to which you do not know the answer." I wish that someone had taught me that forty years ago, and remember that every one with a talent for talking wishes at least once that he had been born dumb.

Don't be afraid of making a fool of yourself. There is no trial judge or trial lawyer who can conduct a trial of medium length without making some idiotic mistake even if it be only a minor one. When things go well, take the credit; when they go badly, accept the blame. I remember a case in which a newly appointed judge, presiding during a too-extended cross-examination, shouted from the bench, "I object!" after a particularly horrendous question. The cross-examining attorney coolly remarked, "Overruled!", and was allowed to continue amid gales of mirth. I am told that in an argument before a supreme court, not too far distant, eleven references were made by the appellant's lawyer to the fact that there was an insurance carrier back of the defendant. The defendant's counsel is alleged to have immediately moved for the withdrawal of a justice. Quite recently in an appeal in our court it appeared that a young, brilliant and inexperienced attorney had filed interrogatories to his own client and had answered them himself. The presiding judge asked the young man if he had given himself the right answers and he replied that he thought he had.

But now let me speak in a softer tone and on a somewhat more personal note. Do not forget your families and do not neglect them. The law is a jealous mistress and you will find that she can pre-empt all of your time and suddenly you may discover that you have grown old and that your children have passed beyond you—that you are working in a kind of vacuum with nothing but law at your fingertips. You will find when you look back at your

life from the vantage point of close to three score years and ten that your happiest days were those you spent with your family and that among the best were those in which you took part fully in community activities. You will also find that your triumphs and disasters in the law run a bad third in every personal race and that both triumph and disaster look much the same after thirty years. Do not take yourself too seriously. Do not think of your legal life as a separate existence unto itself. If I have given you anything useful today, it is probably contained in this paragraph. I want each of you, as the years go by, to think again and again of what I have just said.

I was admitted to the Bar of Delaware in June, 1922, in a time that seems like another age. Atomic fission were two words, pages apart even in a small dictionary and were never joined. In 1922 there were scarcely a hundred million persons in the United States. The number of pending cases was comparatively small. The business of the courts has almost quintupled in the last forty years. Probably there will be four hundred million people in the United States by the year 2,000, A.D., if atomic catastrophe is avoided. To me the year 2,000, *anno Domini*, is an unattainable year, but most of you here will live to see it.

The question that keeps returning to my mind is: Can the law keep pace with the developments of our astounding age? It has been less than twenty years since that day, December 2, 1942, when those two brilliant young scientists climbed to a point above the massive pile of graphite blocks at the Stagg Athletic Field in Chicago where the uranium was imbedded and the atomic age was born. Technological development has proceeded at an increasingly rapid rate, and has brought many problems. As a small example let me point out that as the result of a government antitrust suit terminated in Philadelphia last spring, some eighteen hundred civil antitrust actions have been filed in various metropolitan districts of the United States. As you know, it is private civil litigation that consumes most of a court's time and is the most difficult to dispose of. And then there are the large accident cases when there is an airplane catastrophe or a collision between ships. The technique of the long trial with a multitude of witnesses is being constantly studied by committees appointed by the Chief Justice of the United States. Ways must be found for disposing of these cases with celerity but with justice.

But there are many other puzzles which advancing technology and increasing population have produced which must be solved by the lawyer, as legislator, as trial counsel, and as judge, by concerted effort. In the field of labor alone, automation, machines which make machines to make machines, has created an area where the law and hard-rock economic facts must be resolved and this cannot be done at the expense of constitutional rights.

Problems in space law, growing out of such tremendous achievements as Colonel Glenn's and Lieutenant Commander Carpenter's orbits of our globe, have barely begun to be considered. How are the factors of increasingly common international markets to be interpreted in terms of tariff law? What are the interstate and international problems which will be created by the desalting of sea water in this country of ours which is beginning already to show water shortages? The problems in the field of conflict of laws created by the two subjects last mentioned are indeed staggering.

But most important of all, how do we preserve our constitutional form of government in an increasingly militaristic and bomb-ridden world with the infinite pressures arising from an exploding population? How do we assure adequate representation of that population even in our state legislatures? I can assure you gentlemen of the graduating class that the problems of the next fifty years will tax the wisdom and ingenuity of each of you and that of every American lawyer. It is issues of this sort that you will have to solve. The lawyer is one of the entrepreneurs, one of the creators of the future. The attorney-at-law is and will remain an important social engineer. He must not fail in his task.

In the past few years and in the past few months our country and our liberties have been exposed to the activities of those whose faith in our free institutions and their validity is weak. They would short-cut legal processes and suspend for some of our citizens the basic rights to speak, write and even think with freedom. The means suggested by these extremists are incredibly naive. There are no effective short cuts in our modern, complicated, technological society.

You must always bear in mind that freedom is indivisible. We all have freedom within the framework of the Constitution and the law or none of us have it. There is no middle course. In this, as in all else, no man is an island unto himself. You must defend the rights of others as you would defend your own.

In conclusion, I cannot think of the work of law schools and lawyers and judges without thinking of the weavers of Gobelin tapestries. I have been told that it is the unwritten law that the weaver making a tapestry may not step from behind his loom and view the picture until the work has been complete. But we of the law never see the picture complete and whole. The tapestry is too complicated for us ever to fully grasp its significance. Only the long eye of history can perceive its meaning. The knots that we tie are as numerous as those which the weaver ties. In creating the tapestry of the law in the last two hundred years many knots have been put into the fabric. I will name a few: the *Dred Scott Case* in 1856; the *Legal Tender Cases*; the Interstate Commerce Law; the Sherman and Clayton Antitrust Acts; the decision of *Morgan v.*

Daniels in the Patent Law; the revival of the Civil Rights Statutes by the decision of the Supreme Court in *Hague v. CIO*; *Tompkins v. Erie Railroad*; *Brown v. School Board of Topeka*, and last in time but certainly of the greatest importance, *Baker v. Carr*, holding that the districts for election of state legislators might violate the Constitution of the United States and that the federal courts have the power and the duty to pass upon the districts' validity.

The law is developed like a tapestry. A knot is put in here; a knot is put in there; hundreds of knots; thousands of knots. But the completed picture is never quite visible, for no man living can interpret adequately contemporary history.

Let us look at the tapestry tonight and describe it briefly but to the best of our ability. We see in this State and in this Nation a pattern of liberty that our forebears have woven and that we have preserved and have added to. True, it may not be absolutely perfect. Here a knot has been broken and has been replaced with another. There a thread has slipped and the fabric has had to be repaired. We have not been as mindful of some of our minorities as we should have been. We have left undone some of the things which we should have done and have done some things that we should not have done. But by every general test our work has been good. Our courts are open and we do substantial justice, not perfect justice perhaps, and justice sometimes delayed, but no man in this land today can be denied a fair trial or be deprived of life or liberty without due process of law. The Fifth and the Fourteenth Amendments and the Constitution still govern us.

And, members of the graduating class, I am convinced that at the turn of the next century, if you, and others like you, do your part, and I am confident that you will do so, what I have just said about the administration of justice in our great country will remain as true as it is today. Before you stretch many long, happy and useful years in which honors, pleasures and, let me add, serious duties, await you. I know that you will enjoy the former and that you will do full justice to the latter.

Good luck and long life to each and all of you! Thank you for listening to me so patiently.