



STANFORD LAW SCHOOL

Law Class of 2004 Graduation Ceremony
Welcome Address

Kathleen M. Sullivan
Dean and Richard E. Lang Professor of Law
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Graduates of the class of 2004, mothers, fathers, spouses, partners, stepmothers, stepfathers, grandmothers, grandfathers, sisters, brothers, aunts, uncles, sons and daughters, and all the other family members and friends of graduates who honor us with your presence here in this hall, welcome to Stanford Law School.

I loved having the chance to meet so many of you at last night's magical reception in the garden at Arrillaga Hall—I hope you enjoyed it! I enjoyed greatly having the chance to tell you what wonderful individual contributions your sons and daughters have made to the collective life of our school. I loved having the chance to wish all you graduates the very best in the very exciting clerkships, law firms, consulting firms, businesses, government offices, public interest fellowships, and teaching posts we are sending you off to—and to remind you to PASS THE BAR.

Welcome now to our graduation ceremony. Or, as we might say here in Silicon Valley, our VIRTUAL graduation ceremony, because we haven't read your final exams yet and we're certainly HOPING that you all passed! Otherwise we might have to welcome you BACK to a world-class institution in paradise.

This weekend is an occasion for great joy and celebration. It is also an occasion for serious reflection. Today is the turning point when you will cease studying law and start practicing it, stop simulating problems and start solving them, and stop paying for the law and having the law pay you.

You certainly didn't get here by yourselves. As brilliant as you all are, and as hard as you

worked this past year or these past three years, you got here through the love and support of the people in this room who gave birth to you, who raised and loved you, who put up with you through adolescence, and who instilled in you their values of hard work, reaching for the stars, and never giving up. More recently, you survived and even thrived at Stanford Law School because of the love of those here who gave you so much support, both emotionally and materially, during your whole time here. Please stand up, turn around and applaud those wonderful people who graduate with you today—your parents, your families, your spouses, your partners and your friends!

It's now my great honor and pleasure to introduce the class of 2004 presidents, Rita Bosworth and Mike Merriman, to present this year's staff appreciation and teaching excellence awards. Let me say a word about this extraordinary class of 2004. I said last night that this is the most remarkable class ever to graduate from SLS—and a lot of you parents came up and asked me whether I say that to ALL the graduating classes; the answer is: I DO NOT.

No, this class truly is extraordinary. You JDs who first arrived here in September 2001 forged bonds of exceptional care and concern for one another in the terrible smithy of the events of 9/11, which occurred in just your second week in law school. You came here when the markets were up at dizzying heights, and you learned that markets are indeed things that can go down, and that law and policy and ethics are needed to manage their fall and the accounting for it. You have witnessed the beginning of a new war, and helped us to recognize the importance of international approaches to law and policy, a learning curve greatly aided by the presence of our wonderful SPILS and LLM and JSD students here from nations throughout the world in every

continent except Antarctica.

From the time I had the extraordinary privilege of getting to know two sections of you in my spring 2002 constitutional law class—the greatest teaching experience I have ever had—to the time a few months ago when we all gathered for your beautiful, zany Mardi Gras class gift party (laissez le bon temps roulez), I could see that this class, the class of 2004, uniquely combines great intellectual curiosity and passion with an extraordinary kind of bonhomie and camaraderie, a love for one another, a spirit that has led you to learn at least as much from one another as much as you did from us.

Don't take it from me—look at the fact that 98% of you contributed to your class gift, including 100% of all our foreign graduate students! That participation rate, so brilliantly achieved by the leadership of your treasurer Stacia Neely, has broken all records in the history of the Law School, and by a large margin all records in the history of Stanford University! Thank you, thank you, thank you, and congratulations to you all. It has been a great honor and personal pleasure to know and work with you.

With thanks for their tremendous leadership, let me now turn the program over to Rita and Mike.

[Break for student speakers]

KMS: CHARGE TO THE CLASS

Well, as you know from Eric Tuttle’s very clever video *The Final Days* that was shown a few months ago at the terrific SPILF [Stanford Public Interest Law Foundation] auction, things have been pretty slow for me as I head into these last few months of my deanship. [paper airplane]

After all, after giving you your beautiful classrooms and your splendid new library reading room, I’d run out of things to renovate. [hard hat] Thank goodness your magnificent class gift will now allow me to renovate the student lounge, so now I’ll have something to do this summer!

Oh sure, the last few months there have been a few new \$3 million gifts that have come in and a whole bunch of new faculty that have been hired and a few new centers launched and a few terrific conferences and symposia, including our spectacular tribute to my predecessor as dean, the late great John Hart Ely, whose passing was a great loss for us this past year.

But as you can imagine, I’ve been pretty distracted lately, getting ready for my new rap career. Say, I wanted to talk with you about the name. I mean, I’m not sure about the moniker “K Sully.” I mean, I’m a lot older than you. Indeed I was chagrined last night to realize that I’m older than some of your parents. So what about a more age-appropriate stage name, something like “The Artist Formerly Known as Dean...”

Now seriously, since I am in a sense graduating here with you, and this is my last chance to address you as your dean, I do want to give you a bit of a sermon. No, not a lecture—I could review free speech with you (if it’s CB then SS and if CN then IS unless it’s RR because an NPF or SS because a TMB—remember?)—but no, I’m not going to go over any con law.

I want to talk to you instead, in my charge to you, about three virtues: patience, courage, and doing the right thing.

Let's start with PATIENCE. You're young and you live in a world where ubiquitous wireless connectivity creates a sense of short time frames, constant motion and instant gratification. But all great legal careers require a sense of patience.

Tomorrow, May 17, 2004, we celebrate the 50th anniversary of the Supreme Court's decision ending the legal regime of enforced public educational segregation in its decision in *Brown v. Board*. It took the legendary Thurgood Marshall and the other great NAACP lawyers—Walter White, Nathan Margold, and the great Charles Hamilton Houston, to name a few—a great sense of patience to win that case. Not just because the case had to be argued before the Supreme Court twice, once in 1952 and once in 1953, between which Kentuckian Chief Justice Fred Vinson died, and President Eisenhower replaced him with Californian Earl Warren, prompting Justice Felix Frankfurter to tell a former law clerk, “This is the first indication that I have ever had that there is a God.”

No, the patience to win *Brown* began long before that. Beginning in the 1920s—fully 30 years earlier—the NAACP lawyers crafted a strategy to fight segregation by taking *Plessy v. Ferguson*, the infamous 1896 separate but equal decision, at its word. They reasoned that by demonstrating, case by case, that black and white schools were in fact materially unequal, they could force equal spending on black schools, making segregated schools prohibitively expensive, and thus compelling them to integrate. Their lawsuits against white-only public graduate schools and professional programs brilliantly exploited this strategy, beginning with Houston and

Marshall's victory in 1936 in *Pearson v. Murray*, in which the University of Maryland Law School, which had been closed to Maryland's own Thurgood Marshall some years earlier—he went to Howard instead—to admit its first black student, Donald Murray. They later did the same on behalf of Lloyd Gaines at the University of Missouri Law School, Ada Louise Sipuel at the University of Oklahoma Law School, Herman Marion Sweatt at the University of Texas Law School, and Dr. George McLaurin at the University of Oklahoma Graduate School of Education.

This methodical campaign was no doubt filled with its share of cognitive dissonance, as the NAACP lawyers patiently hoist the odious doctrine of separate but equal on its own petard. But it was only after this campaign that Marshall deemed the time right to argue at last successfully in *Brown* that the segregation was inherently unequal, and that, in our constitutional order, the doctrine of separate but equal had no place.

Sometimes the wait can be shorter, even if patience is still required. In 1986, in a case called *Bowers v. Hardwick*, the Supreme Court rejected a claim of constitutional privacy on behalf of consenting gay adults having sex in their own home. I had the privilege of writing the losing brief in that case, together with the ACLU of Georgia, on behalf of Michael Hardwick. The opinion in the 5-4 decision was written by Justice White. Some years before, in the first Supreme Court case I litigated involving proselytizing at the Minnesota state fair, we had lost, in an opinion by Justice White, that said our argument was “interesting but of little force.” This time, in *Hardwick*, Justice White wrote that our argument for a right of privacy there was “at best, facetious.” It kind of made me long for the days of “interesting but of little force.”

Well, a lot happened over the last seventeen years, including a fierce but patient legal

rights strategy developed by brilliant gay and lesbian lawyers throughout the country. They took on, patiently, the issues of protecting the brave gay and lesbian service members who serve our nation in the military, and laying the groundwork for the possibility of same-sex marriage. And of course there was the helpful intervention of Will and Grace—not the judicial virtues, the TV show!

And then just last summer, in its extraordinary decision in *Lawrence v. Texas*, the Supreme Court struck down Texas’s same-sex sodomy law. Writing for the Court, Justice Kennedy (a Stanford graduate) announced, “the rationale of *Bowers* does not withstand careful analysis. *Bowers* was not correct when it was decided, and it is not correct today...It should be and now is overruled.”

So be patient. Be patient in waiting for your deals to close, your discovery to find the crucial piece of evidence, your start-up to bear fruit. Be patient in coming back to work after you’ve had the joy of bringing your child into the world—and women of Stanford Law School I do want you to work, and come back to your 15th and 25th reunions telling me, by then a wizened old emerita, that you did work and you did revel in it and that you did rise to the top of it and that the pioneering efforts of Professor Babcock and all the other tough broads on this faculty to give you those opportunities have not been in vain! Be patient in believing that one day’s impossible dream can be tomorrow’s Supreme Court decision.

Now, COURAGE. I don’t just mean the courage to speak up in Professor Kelman’s or Karlan’s class. (They don’t look nearly so intimidating now, do they now, up here in their robes and little beanies...) I don’t just mean the courage to dance on stage in the school musical with the

exquisite Barbara Llanes and Monica Ramirez.

There are other kinds of courage in the world that make us shiver and weep with admiration and humility. The courage of Major Craig Largent and the other military officers in this class who have faced combat and led their fellows in untold discipline and bravery. The courage of the black schoolchildren who carried out the desegregation orders of *Brown*. Picture Elizabeth Eckford, that beautiful member of the Little Rock Nine— those footsoldiers for the fidelity to *Brown* that the Supreme Court insisted upon in *Cooper v. Aaron*—who was immortalized in that famous 1957 black and white news photo, walking tall and erect in her sunglasses and crisply starched dress, with such grace and dignity past the sneering and jeering and spitting segregationist crowd, under the protection of the national guard.

Few of us can be such heroes. But in countless other ways, both great and small, you will have the chance to show courage too in your careers. You will be faced with what you know are systemic wrongs—think of the prison abuses at Abu Ghraib, the pedophilia priest coverup in my own beloved Catholic Church, the accounting frauds that passed the eyes of accountants and lawyers alike at Enron and other corporations gone awry.

There will be countless more local ethical dilemmas that you will face as prosecutors, litigators, corporate counselors. You will often need courage just to go into work day after day when people in your workplace treat you unjustly and you have to keep showing them that you won't back off from doing a great job. And when things are rotten, systemically rotten, there will always be incentives to reward mute compliance. There will always be incentives to look away. There will always be the intellectual capacity to make it seem that the responsibility lies

elsewhere, that you were only following orders. But just think what a difference you might make. Think of what a big change you might make by taking such a small hit to do the right thing. And do it. Be courageous. Do the right thing.

For that is my dream of what a Stanford lawyer is. Brilliant, clever, articulate, witty, and intellectually balletic, to be sure. Not to mention sexy and well worked out. But that vital other piece, which I want to imprint upon you indelibly here today, is that you also pursue your career with tact and civility and decency and grace, and above all COURAGE—COURAGE TO ALWAYS, ALWAYS DO THE RIGHT THING.

Congratulations to you all, and may you have every possible happiness and success.

Thank you.

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