

Commencement Address: Remarks of the Solicitor General of the United States

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Repository Citation

Paul D. Clement, *Commencement Address: Remarks of the Solicitor General of the United States*, 90 Marq. L. Rev. 1 (2006).
Available at: <http://scholarship.law.marquette.edu/mulr/vol90/iss1/2>

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MARQUETTE LAW REVIEW

Volume 90

Fall 2006

Number 1

MARQUETTE UNIVERSITY LAW SCHOOL HOODING CEREMONY

MILWAUKEE THEATRE
MILWAUKEE, WISCONSIN – MAY 20, 2006

REMARKS OF THE HONORABLE PAUL D. CLEMENT

SOLICITOR GENERAL OF THE UNITED STATES

Introduction by Dean Joseph D. Kearney

It is a privilege for me to welcome and formally introduce the Honorable Paul Clement, tonight's commencement speaker.

Mr. Clement holds the position of Solicitor General of the United States. President Bush nominated him to this position, and the United States Senate confirmed him. In his capacity as Solicitor General, Mr. Clement is the United States' chief lawyer in its highest court. It is a position of enormous importance and influence. The Solicitor General has the responsibility of formulating and articulating the position of the United States, on the most important legal issues of the day, in the United States Supreme Court. This is an awesome undertaking, not only because of the learning it requires, but also because it demands another quintessential quality: judgment. The Solicitor General, through the office that he heads, must at times tell others in the Executive Branch—whether the Attorney General, a federal agency, or even the President—that the law does not support a position that the government would like to see maintained, and that he cannot in good faith advocate it to the Court. This combination of learning and judgment is why the Supreme Court frequently turns to the Solicitor General, even when the government is not a party to a case, and requests his views. In short, it is not for nothing that some refer to the Solicitor General as “the tenth Justice.”

Paul Clement discharges his duties as Solicitor General with excellence, making important arguments on matters of immense public significance over the past several years before the Supreme Court. He comes to the position well prepared: he holds a

bachelor's degree from Georgetown University, a master's degree from Cambridge University, and a law degree, magna cum laude, from Harvard University. He comes to the position as well after clerking for Justice Antonin Scalia of the United States Supreme Court and practicing in Washington for a number of years before joining the Justice Department, first as Deputy Solicitor General and now as Solicitor General.

And he comes to all of these positions from the Milwaukee area. He is a native of Cedarburg, Wisconsin, and a product of its public schools. He honors us this evening by marking the commencement of a new band of Marquette lawyers, soon to be officers of the court. We admire your excellence, General Clement, and we are grateful for your presence.

Please join me in welcoming the Honorable Paul Clement, Solicitor General of the United States.

Thank you, Dean. Congratulations to both the graduates and their families and friends.

I want to extend a particularly hearty congratulations to all the graduates who plan to practice law in Wisconsin. You have something going for you that distinguishes you from virtually every other law graduate in the nation: the diploma privilege and a summer without a bar exam. While others face a long, hot summer of review courses to be followed by the ordeal of the bar examination itself, you need only decide what to wear to the swearing-in ceremony.

Personally, I think this speaks volumes about your good judgment and bodes well for your professional careers. If, through the same kind of careful thought and advance planning that allowed you to excuse yourself from the need to take a bar exam, you can help your clients avoid similar ordeals, you will be well on your way to a successful career with many happy clients.

Even more importantly, though, I want to congratulate every one of the graduates, even those who face a bar exam so that they can practice elsewhere. The degree you will receive represents a ticket that will allow you, if you so choose, individually to make a difference in your professional life. This is no small matter. There are many pursuits in which your success is critically dependent on others. Anyone who watched Brett Favre play without Marco Rivera and Mike Wahle last year can understand the point.

I do not mean in any way to underestimate the importance of collaboration or having talented colleagues, but the reality is that a single individual with a law degree has a tremendous potential to make a difference. The law degree represents an opportunity to challenge

unjust laws, to bring the guilty to justice, to compensate victims, or to make abstract ideas a reality.

The legal careers of legends such as Thurgood Marshall and Ruth Bader Ginsburg demonstrate the potential for lawyers to bring about transformative change through hard work and carefully chosen litigation strategies. And while such examples can be intimidating because of the scale of their accomplishments, they clearly show the kind of potential to make a difference that a law degree holds. In my own relatively brief professional career, I have come across scores of lawyers who clearly have made a difference in their professional lives.

Early in my career, I had an opportunity to work on the school choice litigation here in Wisconsin and ran across Clint Bolick, a lawyer who has dedicated much of his professional career to the legal battles surrounding school choice. When Wisconsin expanded its pilot school choice program to include religious schools, Clint was part of the legal effort to defend the statute against an Establishment Clause challenge. That effort, which involved two trips to the Wisconsin Supreme Court, was successful, and school choice has become a reality in Milwaukee. Clint worked here in Wisconsin along with in-state lawyers such as Ed Marion and Jim Friedman. He also was involved in defending school choice initiatives in countless other states, including the Ohio program that ultimately led to a United States Supreme Court decision upholding the constitutionality of school choice.

While Clint has dedicated most of his career to causes like school choice, most of us will spend the bulk of our careers on things like commercial litigation, corporate transactions, and real estate. Work on such matters may not make headlines, but it very often makes a difference. The specialized skills that a lawyer has can make it possible to bring a new product to the market, to enable someone to purchase a business or a home, or to get back property wrongfully taken.

Moreover, every lawyer—no matter what the nature of his or her everyday practice—has the opportunity to make a difference in pro bono work. And one of the great things about being a lawyer is that it only takes one pro bono case to make a world of difference.

Last Term, I had the opportunity to share time in a Supreme Court argument with Bert Deixler. Bert has an entertainment law practice out in Los Angeles and represents groups such as the White Stripes and Puddle of Mudd. Bert also was appointed by the United States District Court to assist a pro se inmate's effort to try to stop California's decades-old practice of racially segregating inmates in its prison system. Bert took over the case and, after losses in the district court and the

Ninth Circuit, ultimately persuaded the Supreme Court to review the case. Then, with the support of the United States as amicus, he convinced the Supreme Court to overturn the Ninth Circuit's ruling and to issue a decision that signaled the end of California's practice of segregation.

That kind of successful effort to strike down an unconstitutional government practice is perhaps the most dramatic example of how a lawyer can make a difference. But my work in the Justice Department has introduced me to countless government lawyers who make a difference by defending government policies that are constitutional or by prosecuting criminals. In many cases, this work comes at a great personal sacrifice. The recently completed Moussaoui prosecution, for example, involved the dedicated efforts of prosecutors like Dave Novak, who spent the better part of two years separated from his family down in Richmond so he could work on the prosecution in Alexandria. On the other side of the case, you had the federal public defender, Frank Dunham, working tirelessly for a defendant who did not even want to be represented.

And even beyond those who stand up and argue in court, there are government lawyers who make a difference by mastering the complexities of legal regimes that profoundly impact people. In the course of preparing for a Supreme Court argument involving the reach of the Clean Water Act this year, I had the pleasure to meet Lance Wood, a dedicated public servant who works for the Army Corps of Engineers and can tell you more about what is or is not covered by the Clean Water Act than any other person alive.

But lest you get the wrong impression, the lawyer's ability to make a difference is not a one-way ratchet. The capacity to act as a fiduciary and to gain your client's trust or the public trust carries with it the potential to betray that trust. I wish I could tell you that the lawyers who prosecute and defend criminals in court never end up as the criminal defendants themselves. Unfortunately, the Justice Department's corporate fraud, and even terrorism, prosecutions tell a different story. And it was just two years ago that the District Court for the Eastern District of Wisconsin up in Green Bay accepted the guilty plea of the Winnebago County prosecutor, who admitted to, among other things, accepting bribes in order to dismiss charges and reduce sentences. The court departed upward from the agreed-upon sentencing range and sentenced him to fifty-eight months in prison for using his legal license and position of public trust "to make a difference."

Finally, I should emphasize that while a law degree may enable you

to make a difference in your professional life, it should not end up being an obstacle that prevents you from making a difference in your personal life. Some of the doors that a law degree opens up are to offices where lawyers work very long hours and are sometimes expected to place work priorities before family matters. Each of you will need to make your own choices in the difficult enterprise of achieving balance between your professional and personal lives. In trying to strike that balance, I urge you to consider the commonsense advice of Wisconsin's own Chief Justice Rehnquist: if you say you want to spend time with your young children, you need to do it while they are still young.

In closing, let me simply congratulate you on attaining this honor and wish you good luck and Godspeed with your own opportunity to make a difference.

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