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Class of 1980 Commencement

Allan F. Smith
University of Michigan

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It was almost exactly two and one-half years ago that Mrs. Smith and I first saw Athens and the University of Georgia. And it was but a few days after our arrival that I first met most of the members of this class in a course known as Property. It is a very special pleasure for us to return here today, for the months we spent here are surely among the most pleasurable of our lives. We established new and higher standards of beauty from dogwood, azaleas and flowering shrubs. We gained new and rewarding insights into the history and culture of this and surrounding states. But most of all, we made new friends--in the Law School, in the University, and in the community, and the warmth of those associations floods upon us today as we recall the time spent here.

I am going to mention one characteristic of these students in Property which struck me when I was here before, and which was

again demonstrated when the invitation came to me to be here today. I suppose that you parents of these graduating seniors have known about that characteristic for a long time. What I thought I detected in these students is a slight tendency to overstate matters. For example, when a proper statement of affairs might be that the apartment was in need of some little repairs, they might express it by saying that the place was "in a shambles and unfit for human occupancy". I suspect that when they needed another \$50 to pay the expenses of the month, they might write that "there is no way I can survive without another \$100."

I was reminded of this tendency to overstate when I got the letter inviting me to speak today. I'm going to quote a part of it. This is what it said: "Since your departure, an unsophisticated confused group of first year students have metamorphosed into knowledgeable, confident practitioners of the law." Well, really! I knew this Georgia Law Faculty was a good one, but to achieve that in two years would surely require a miracle. I had to see this. And now that I am here, I can see that it is

true, and to you knowledgeable, confident practitioners of the law I offer for all of us the heartiest of congratulations upon the completion of your eligibility for the diplomas you will shortly receive. I think it only fair (having exposed a foible of our honored guests) that I report to them on one of my own foibles, which they may remember. You will note that I have nothing in my hands. I simply must report that the coins which you gave me to assure my having an adequate supply to jingle in my pocket and in my hand have yielded to the pressures of inflation and have been expended for various necessities, such as golf balls.

But now before you get the diploma, let me speak just a moment of some matters which I hope are relevant to you in your new status as members of the legal profession. The title of these remarks--Advocacy Unlimited--cuts both ways. You are going to be advocates. You will be engaged in advocacy all during your professional lives. I want to speak of some areas where the traditions of your profession will cause some of your advocacy

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Georgia
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Diploma
Ceremony

Allan F.
Smith

areas where I would encourage you to become advocates, for I believe there may be some societal institutions which we badly need and which may even now be threatened and in need of help. But, in two cases, I hope to point out some dangers which may accompany single-minded advocacy of any single principle, which may require some limits on your practice of advocacy.

First, then, on traditional advocacy. Our profession has long held as a basic tenet that every person, every cause, is entitled to have professional representation. Our system of justice is heavily based upon the adversary concept. The idea is a simple one: if all claims, all ideas, all desires, are presented forcefully and with the best possible arguments in their favor, our judges can choose wisely among competing arguments, establish guiding beacons for human behavior, and produce in abundance those values which the people of the society most desire. For such a system to work--for such a system to produce a justice satisfying to those who are governed--it is imperative that claims and

desires be presented in their best light. And that is the job of the lawyer. He is called upon for other functions--adviser, counsellor, draftsman of documents and of legislation, expeditor of commercial ventures and business transactions. But his essential role in our system of administering justice is that of the advocate for his client's position; and the skill and manner in which he performs that role will determine the success of the system.

Are there any limits upon this role? What do you do when your client seeks a position which you find wrong (morally or socially wrong)? Does your obligation of representation come first and come without restraint? Must we advocate evil? There are those who, in the past have answered that question affirmatively. Montaigne once said: "There's no reason why a lawyer should not recognize the knavery that is part of his vocation. An honest man is not responsible for the vices of his calling, and need not refuse to practice them. A man must live in the world and avail himself of what he finds there." As recently as 30 years ago, in

an article in the Stanford Law Review an eminent Boston lawyer approved Montaigne and wrote:

"I don't know any other career that offers ampler opportunity for both the enjoyment of virtue and the exercise of vice, or, if you please, the exercise of virtue and the enjoyment of vice except possibly the ancient rituals which were performed in some temples by vestal virgins, in others by sacred prostitutes. . . . Nor is the practice of law a characteristically Christian pursuit. The practice of law is vicarious, not altruistic, and the lawyer must go back of Christianity to Stoicism for the vicarious detachment which will permit him to serve his client."

I submit that that is a mistaken view of the obligation to see that all persons are represented. And I submit that the moral and social conscience of the lawyer himself is a legitimate limit upon his obligation of advocacy. It is a very modest limit, and, for example would not prohibit acting as defense attorney

for one charged with murder (I do not have to advocate murder to provide defense and to be sure that the state acts properly in its prosecution.) And I urge you, as you grow in your profession, to keep constantly in mind the underlying need to assure that our system works for justice and not against it.

Needless to say, the lawyer's integrity is essential. He may get his facts from his client, but it is unwise to let the client put the words in his mouth. There is a little story recently which may indicate some danger in letting your client push too far. It seems that a fellow was in bed with a terrible hangover. When his wife tiptoed into the room, he groaned: "Honey, I feel terrible. I wish you'd say a prayer for me." With a despairing shake of her head, she started: "Lord, please help my husband who feels bad because last night he..." "Wait" interrupted the husband, as he whispered "Don't tell him I got drunk. Tell him it's the flu."

The suggestion that lawyers must at some point restrain advocacy

is closely allied to my next request: I want you to become advocates for the legal profession itself. Our image is not without tarnish. There is recurrent proof that some of our members are faithless to the profession's standards. There is still the stench of Watergate, of which Gerald Auerbach in his book on Equal Justice wrote: "Watergate was the most severe jolt to the integrity of legal authority. The mask that disguised lawlessness as law and order disappeared. The law-enforcers, lawyers all, were the law-breakers..." He went on to look at Law Schools, and said: "The question was not whether ethics should be taught (they already were), but which ethic should be taught: the ethic of the marketplace and client loyalty, or the ethic of equal justice." You and your fellow 1980 graduates across the nation will be the leaders of this profession as America enters the 21st century two decades hence. You can become advocates for our profession, and defend its role, only if you have yourself lived it as an honorable profession, and have done your best to insist that others have similarly lived with honor. The public will let you know where remedies are needed.

Let me shift gears to your role as citizens.

There is a second area where I want to solicit your concern, and ultimately, perhaps, your advocacy. That area is higher education, and more specifically, the colleges and universities of this nation. Of all the institutions created in our society, the colleges and universities are given two prime responsibilities: first, the creation and dissemination of knowledge, and second, the training of persons who can serve our society as engineers, doctors, nurses, lawyers, chemists, social workers, business executives, accountants, and many other employment categories. I would not distinguish too sharply between the functions, for there is much overlap, but my principal concern, which I hope to make yours, lies in the unique mission of the universities in nurturing scholarship. I want to suggest that there are some external threats to the management of universities which carry with them threats to the continued effectiveness of universities in the generation of scholarship. My thesis is three-fold: (1) the scope of governmental intervention into the management of universities had increased enormously in recent years (in part because of excessive zeal in single-principle advocacy) and seems

destined to increase further; (2) such intervention can only make it more difficult for universities to continue their unique role in the fostering of scholarship for its own sake; and (3) it behooves the leaders of our society (and lawyers are heavily represented) to pay heed to these developments, and to advocate and take such steps as will reverse the present tendencies which are inimical to the cause of our universities.

Let me start with some statistics, which only those benighted people who serve as administrators are likely to encounter. Today there are 34 Congressional committees and at least 70 subcommittees with jurisdiction over 439 separate laws affecting post secondary education. The number of pages of federal laws concerning higher education was 90 in 1964. By 1976, there were 360 pages of laws. As you know, a law generates regulations and interpretations. Millions of words of regulations have been generated. The regulations covered only 92 pages in 1965. In 1977 almost 1000 pages were required. Put into one

perspective, there is an increase of 1000% in the regulations with which colleges and universities must comply. Add to that (for publically-assisted universities such as this one) the state acts and regulations, and you get some sense of the extent of financial and regulatory control which is already in place. And it requires no imagination to perceive the time and resources which are consumed in compliance efforts, compliance reporting, visitations by auditors and agencies, etc.

But, you say, these laws are surely in part supportive of higher education. Some of them produce dollars for the colleges and universities. Some of them have produced the National Endowment for the Humanities and the Arts. Some of them produce large support for scientific research. How can it be said that these are harmful to the cause of higher education? I must, of course, acknowledge that we have come to be dependent upon federal dollars for the continuation of many programs which serve the universities well, and which serve our students well, and which serve society well. But I must submit simultaneously that

if we have learned anything at all over the past quarter century, it is that federal dollars bring in their wake a degree of control and regulation which may impinge upon important university values. Lawyers bear a special responsibility in the framing of our laws, in the interpretation of our laws, and in guiding their application. They bear a special responsibility to guard the societal structures which undergird wisdom. My plea to you as persons who are best prepared to be the guardians of our universities is that you keep watch of the developments, and become advocates for university values when they are threatened. There is every reason to expect that we will continue to seek federal support. There is every reason to suppose that the federal student aid programs, the research programs, and the international programs are destined to be a part of our future. And there is every probability that federal support will be forthcoming in some fashion. The key to the successful preservation of our traditional emphasis upon scholarship will lie in the extent to which we can mobilize support which can be channeled

toward that purpose. And in turn, that will only be done if those citizens who believe in the goal can be mobilized politically (politically in the best sense of the word) to assure proper priority. It will be you, and persons like you, who must bear that responsibility.

But some of you are perhaps saying to yourself: But I like these government programs. I believe in safety and health for employees. I believe in equal opportunity for women in athletics. I believe that we should not discriminate in employment on the basis of race, sex, age or religion. So what is wrong with having the Department of Health, or the department of Education telling the University what to do? What is wrong with having the Department of Labor or the EEOC telling us what to do? I want them to do that, and this notion that they are hampering universities is just plain nonsense.

Well, I must confess that I have wondered the same thing sometimes. I, too, believe in all those things. I want universities

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to achieve a status of nondiscrimination in all things, safety in all things, health in all things, and so on. So, why is it that we get distressed with intervention?

I am indebted to Robert Bork, a former assistant attorney general, now a law professor at Yale, for expressing an idea which I think helps explain this phenomenon that good things are sometimes irritating. He points out that:

"Bureaucrats are as well-intentioned a group as I have ever seen, but they move according to bureaucratic imperatives of which they are not even aware. We tend to create a new bureaucrat for every principle we wish to enforce. That means that every such organization has one principle: health; safety; clean environment; racial equality; sexual equality; whatever. But no single principle is fit to live with. At some point, every principle becomes too expensive--in terms of other values--to be pushed further. But most of us would recognize the stopping point much sooner than would an

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equally intelligent person whose career is defined entirely by the single principle, and so bureaucracies thrust past the balance point to produce results that are disastrous to institutions and processes that depend upon a balance of principles."

This has helped me to understand why it is that I do not always respond with joy to every request that comes from a governmental agency. It is, I suggest, another instance of excessive advocacy, of failure to be concerned with the total result of your position. If there is one institution in the world that depends upon a balance of principles, it is the university, and the notion that it can absorb the continued pummelling of single-principled advocates is a false one.

Responses to bureaucratic requests can sometimes produce humor. The story is told that the State Secretary of Commerce in Pennsylvania, who had to make an affirmative action report.

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He asked an aide to give him "a list of male and female employees in the Department, broken down by sex." A few hours later he received a memo, which said: "We have no male or female employees broken down by sex, but we do have two alcoholics."

I have probably talked too long. This is a day for joy, for celebration. You are soon to enter an exciting professional career and I hope only that it brings those satisfactions which make life worthwhile. I close with some words that must have been written for an occasion such as this:

Your days are short here.
This is the last of your springs.
And now, in the serenity and quiet of this lovely
place, touch the depths of truth. Feel the hem.
You will go away with old good friends.
Don't forget, when you leave, why you came.

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