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YALE LAW SCHOOL COMMENCEMENT ADDRESS *CLASS OF 2019*

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Thank you Dean Gerken, and May It Please the YLS Class of 2019:

For three years, you have put up with everything from the intricacies of the Coase Theorem to social psychology and rational choice, from deconstructionist attacks on authorial intent to theories of unconscious bias. Maybe, hopefully, along the way, you learned a little law, too.

Last year, my friend Justice Goodwin Liu stood before the class of 2018. His brilliant speech had 21 footnotes. Now, this isn't gonna be that kind of speech. I'm going to speak personally, because every day since I received the call from Dean Gerken inviting me to do this, I've woken up thinking about it, wondering what to say to you, having improbably received this gift of a chance.

I had hoped to be light today, because that's part of what the day calls for. But I lost a dear friend and my right-hand Supreme Court researcher 3

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months ago, a young man named David Whipple. David was whom I hired when Zoe Jacoby, of your graduating class, left my side to attend school here. As you all know, it's darn hard to replace Zoe. But David did. And while working with me, he was admitted to the YLS class of 2022 — which means, 3 years from now, he was supposed to be sitting where you are. But he was killed in a car accident. And that got me thinking: If you want humor, you've got late-night T.V. — and you can always make fun of Harvard Law kids.

So in my few minutes, I want to talk about life, since the loss of David has reminded me, again, of how fragile it all is, and what lessons I have learned in the 24 years since I sat in the chair you sit in today.

The first lesson is this: *You have no idea where your life will go — and that's okay.*

Take it from me. It took me a long time for me to learn this lesson. It took not getting my dream job....more than once. When I was in school here, I had my heart set on clerking for a particular judge. I interviewed, and didn't get the job. And was devastated. I know, that's the *definition* of a first-world problem. But at the time, it was deeply painful. What do you do when your dream job doesn't come through? I remember Professor Amar telling me: be careful what you wish for. He was right.

Ultimately, I got a better clerkship when our then-Dean, Guido Calabresi, was named to the Second Circuit. Let me tell you: The best job a lawyer can have isn't heading the Solicitor General's Office — it's a year with Guido.

When I finished clerking, I knew what I wanted to do. For sure. I wanted to be a theoretical law professor. Like Akhil. Like Guido. And I worked my tail off — writing papers I can't make any sense of when I go back and read them today.

And within just a few years, I got the call I dreamed of — an invitation to return and teach here, at Yale, on a 1 year trial run. I put my entire heart into it. I never taught harder, wrote more, cared more. My first child had just been born.

Every Wednesday, the faculty would meet, and I'd wait with bated breath that they would vote me an offer. There were 6 of us professors in this trial-run position. In October, one person got the invite. In December, another.

I never did. Again, I was heartbroken. And again, it's a .01% problem — but in some ways .01% problems bring their own challenges because other folks can't understand them. I'd spent so long trying to become a theoretical law professor, I had no idea where I'd go next. This time, there was more than pride, I had to move my brand new family. Again. I remembered Akhil's advice, and looked for new doors to open.

Then, one did, because my mind was open to it. I never thought I'd be a practicing lawyer. But then Guantanamo happened – literally while I was teaching here.

At the start, I was stuck in theoretical law professor mindset. I testified in Congress. I wrote a YLJ article with Larry Tribe. Nothing changed. (As best as I can tell, no one read the article.)

But as those Wednesday meetings kept passing by, I realized I had one other tool. After all, YLS had given me a juris doctorate, baby. I could file my first ever lawsuit. Now the problem was that representing someone at Guantanamo wasn't like representing someone in this audience. They are all accused of terrorism. And I had hoped one day to serve in Government again. Was this case worth my career?

Here's where I learned my second lesson: *Keep checking your moral compass and respect the ethos of our profession.*

My mind flashed back to a conversation I had as a law student with Bruce Ackerman. I made some remark questioning why some lawyer was representing some client. He asked me if I believed it could *ever* be wrong for a lawyer to defend a client.

I ultimately came to the view that our system depends on lawyers arguing the other side. Even if they represent a client we might not like, or defend a policy we think harmful. Because it's not just people who deserve their day in court. So do ideas. Law only works if both sides of the issues are

presented, and attorneys test their theories against each other. It's the only way to tell what's right.

This goes back to before the Constitution itself. One day in 1770, a crowd of American colonists confronted a group of British soldiers. Insults were hurled, and then rocks. Tempers flared; things got out of hand. Before it was over, the soldiers had shot and killed five Americans. The newspapers called it the Boston Massacre, and just about every patriot wanted the British soldiers hanged.

Eight soldiers were put on trial, and the prosecutors sought the death penalty. The problem was, they couldn't find a single lawyer to defend the soldiers. They finally found a guy, John Adams, who took the case to show that Americans had a greater sense of justice than their British rulers. Adams lost his friends. Some even started rumors that Adams was a secret British loyalist, or bribed by the King. Adams wrote that he could feel 'the contempt of all mankind.'

As the trial went on, Adams became convinced of the soldiers' innocence, that they had acted in self-defense. But he had to argue that to a jury that hated his clients. Adams persevered, telling them: 'Facts are stubborn things.'

In the end, the jury acquitted six soldiers, and not one was put to death. Thanks to Adams, the most hated men were able to walk into a courtroom and tell their story. Americans had shown – far better than with any protest – the principles they were fighting for. And even though Adams represented enemy British soldiers, he said it was one of the best acts of service he had ever given his country.

Now, it's easy to believe this in the abstract. When Guantanamo came along, I had to make a real choice. But let me tell you: I never, in my wildest dreams, thought the client I would get would be... Usama Bin Laden's driver. When faced with that choice, what do you do? Remember, I had a new baby to think about.

In the end, I didn't doubt the right answer—hadn't I just written and testified about it? I knew I had to step up. What I didn't know, because, well, I went

to school here, was how to write a Complaint. But I had a secret weapon: 4 super smart Yale Law Students, who somehow had managed to learn some law. Together, we wrote a Complaint on behalf of the Driver. No one thought we could possibly win. But this rag-tag group of students and random law professor brought the case. I was 33 years old. Eight years after leaving this courtyard as a new YLS graduate. It was my first Supreme Court argument. And we won.

I remember, like it was yesterday, sitting in the courtroom on June 29, 2006, when

I heard the news. That the gitmo tribunals would be shut down. That the Geneva Conventions applied to the War on Terror — which meant the end of ghost prisons and waterboarding, not just at Gitmo, but around the globe.

And we went out to a media firestorm. People asking “what does it mean”? The decision was long — 184 pages. I hadn’t had time to digest it, but I knew what a win meant. I said this almost verbatim on the courthouse steps: Here’s what happened--A Yemeni, Salim Hamdan, with a fourth-grade education, accused of conspiring with the worst of the worst, sued the nation’s most powerful man. And he brought his challenge not in some little court, but all the way up to the highest court in the land. And he won. That’s something special about America. In other countries, Mr. Hamdan would have been shot just for bringing his case. More to the point, his lawyer would have been shot. But America is different, special. It says something special about America that, after defending the enemy, John Adams was eventually elected President. It says something special about America that, after defending Gitmo detainees, I could serve at the highest levels of the Justice Department.

Unfortunately, today this notion is under attack. Professor Ron Sullivan of Harvard Law School has been lambasted for defending Harvey Weinstein, and last week was removed from his job as faculty dean. Jamie Gorelick, a lawyer in

Washington, has been attacked for representing Jared Kushner. These are just 2 of many examples. Sign me up for disagreeing.

Bruce Ackerman was right—our ethos as a profession is that we do not vilify the attorneys who defend our enemies. We celebrate their service.

Returning to the story, when the Court sided with us, other doors opened. Companies wanted to hire me, and then-Senator Obama heard about me. But none of it would have happened if things had gone according to plan — if I'd gotten that clerkship or that professor position. I know what many of you are thinking, "What? Me Fail? I'm a graduate of The Yale Law School." But you will fail. For me, it took my failure to sow the seeds of my success. If I didn't fail, I might have been churning out mediocre theoretical articles forever. And that simply wasn't my highest and best use. It took failure to see that. And that's true whatever your dream job may be. You can be so close to what you think your dream may be—so close—and yet not get it and wind up with something better.

It's a good thing that you have no idea what your next life will be. I remember Harold Koh telling our class that the average YLS grad changes jobs 5 times in her first five years. Breathe. You've got time. Harrison Ford was a carpenter at 30. Morgan Freeman got his first big movie part at 52. So don't be worried if your life isn't figured out just yet. We cannot fully plan out our lives in advance—there is too much we don't control, and too much we don't yet understand about ourselves.

But what you can control is this: put your heart into what you are doing and keep searching for what you're meant to do until you find it. Don't take the advice, said by a former Justice Department official last week, that "you need to be prepared to compromise when you can do so without violating your principles." When it comes to the law, there is no way to compromise without violating your principles.

My third lesson kind of snuck up on me over the years, but it's equally important: *Professional success is only one part of a well-lived life.* You need a lot of love and friendships. Clerking for Guido, this lesson was lived every day. His daily life was filled with family and tending to others. He was enormously successful in each of his careers (Professor, Dean & Judge), but it was all second fiddle to the rest.

I want to make this very concrete. At Law School, I had 6 close friends. If I have to be honest with myself, I didn't deserve them. I worked too hard and cared too little at the time for them and their needs. But they were already grown up, and gave me second, and third, chances.

I look at each of them now. Each is thriving. At the top of each of their careers.

But they thrive because of one thing: love. Love of family, of children, of friends. The happiest people, in my experience, are those who know how to love.

Now, none of the 6 are Supreme Court Justices, or Presidents, or cabinet secretaries. But I know a bunch of folks who are those things, and I'm telling you, these 6 are happier. Not even close.

There's Alan, who did what he loved. He blew off the law firm rat race in law school to pursue this new thing called the Internet. Worked for a public-interest think tank devoted to it upon graduation – and later opened the first DC Google office. He's one of the most successful people in our class – because he followed his heart and his passion.

There's Anand, who never let work interfere with his family. He went to a major law firm, but was so ruthlessly efficient that he'd get his work done by 5:30 to eat with his family. His clients loved it, the senior law firm partners...not so much. But he made partner, and is now one of their most successful—not in spite of, but because of, the fact that he has a happy life outside the office.

There's Bruce, the guy I didn't know as well in law school. But when my father got sick and died suddenly, Bruce was there for me. He had known loss himself, for his sister had passed away. To get out of yourself, to show empathy for another human being going through loss--there's nothing more profound. You will each face loss, horrific soul-eating loss. And so will those you care about. Be there for them. It will enrich your lives and those around you.

There's Elizabeth, whom I met on the *Yale Journal of Law & Feminism* on our first day. Brilliant, and clerked for the Supreme Court. When her son

was diagnosed with a serious kidney ailment, she went straight to her own surgery – giving up her kidney for her son. She knew there was nothing more important than giving to her family. And now she is a tremendously successful law professor, fulfilled both in career and everything else.

There's Alex, who is here today with us, as he works at Yale. A few years ago, I was tasked with saying a few words about him. After looking up his bio, I realized he was a Rhodes Scholar. Now, he is probably the only Rhodes Scholar who did not let me know he was a Rhodes within 2.5 seconds of my meeting him. And I daresay he is the happiest of the lot. Humility. Humility is what allows you to bond with others who don't have all the things you have.

Finally, there's Mark, who always had a twinkle in his eyes as he introduced his friends from disparate parts of his life to one another. To convene lovely people, there is no greater gift. That sparkle is part of why he is such a successful lawyer, too. He recently joined the government, and instead of pursuing the hot cases, pursued friendships. One of his colleagues recently knocked on his door and handed him one of the most consequential cases in our system today. Why? Not just because Marc is brilliant, but because he is the kind of person you want in the trenches with you.

I can't give you the recipe to legal success, but I can give you the recipe to a happy life. Doing what you love, family, empathy, humility, and friendship. That's what makes this place so special. Take a moment, look around. Some of these people are going to be with you your whole life—when you get married, have children, when your parents die. These aren't your competitors or marking sticks. These are your supporters and allies for the rest of your lives.

Doing well in your job is important. But whatever professional accomplishments I may have, nothing comes even close – not even for a millisecond – to the pride and joy I take in my family, my marriage and my three boys, and my friendships.

Guido was right: find happiness elsewhere — in one another and in those you love.

Today is the last day that many of you will be in school for the rest of your lives. While your formal learning ends, your informal one begins. Be mindful, be resilient, be caring, be zealous, be loving, be humble, be open to change, and most of all—today—be proud.

Congratulations.