

Lawyers and the Arc of History

**“Last Lecture” delivered by
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Life would not be possible without the skill, and training, and dedication of others. When the pipes spring a leak, you need a plumber. When your toothache becomes unbearable, you need a dentist, an endodontist, or a periodontist. When the cupboard is bare, you need the fruits of a farmer’s labor. When your car breaks down, you need a mechanic. When your body begins to fail, you need a nurse, a physician, a physician’s assistant. Life would not be possible without the skill, and training, and dedication of others.

It is a rare person who never needs the services of a plumber, a dentist, a farmer, an auto mechanic, a physician. But who needs a lawyer? I mean, really! Wouldn’t life be best if one never needed the services of a lawyer? After all, doesn’t the well-worn joke proclaim that 5,000 dead lawyers on the bottom of the ocean is “a good start”?

The next time someone relates this joke to you, perhaps you might think about responding in the following way:

Let me ask you something. Do you like the fact that, when you purchase a one-pound loaf of bread, you are not given a 12-ounce mixture made from putrid, adulterated flour? Do you like the fact that you can worship at any church you wish, or at no church at all? Do you like that fact that no one can build a slaughterhouse next to your home? Do you like the fact that you can gather with your friends and enjoy each other’s company without asking someone’s permission, and that you can criticize the local police chief without fear of reprisal? Has it ever occurred to you that the secure and dependable social order that you move about in so confidently each day would not exist were it not for the efforts of lawyers? By the way, don’t take offence, but I notice you’re kind of puny. Here. Read this book. It’s an oldie but goody, published in 1651, and it’s called LEVIATHAN. Then get back to me and we’ll discuss how lovely it would be for puny you to live a “nasty, brutish, and short” life in a world without lawyers.

Well, of course you don’t actually give this speech to your joke-telling acquaintance. Like the letters that Abraham Lincoln penned and then consigned unsent to his desk drawer, such words may be nice to think about, but are better left unsaid. Moreover, such an outburst—no matter how good it might make you feel temporarily—cannot take away the sting of realizing that many people find this joke to be funny. Is it really the case that, as Homer Simpson likes to say, “It’s funny, because it’s true?”

Back in the 1980s, I was a member of the Vanderbilt Law School faculty. In the highlight of the year, the university community—thousands and thousands of graduates and their proud families—would gather on sun-drenched Alumni Lawn for the spring commencement ceremony. Even though the day was typically splendid, the pomp and festivities uplifting, there was always one moment in the proceedings that made me cringe. The Chancellor of the University—a dis-

tinguished looking leader in a fine robe, adorned with a heavy gold medallion—would ask the graduates of each college to stand, to be recognized and to receive what was called “the charge”—an exhortation uniquely tailored to each college. The language of this ritual was highly formal, and remains the same to this day.

The Chancellor begins as follows: “The charges that I will read are a legacy that comes to us from the [past]. They are imparted to every graduate of Vanderbilt University. In receiving them, you are joined to a lineage that precedes you, that will endure after you, and that flourishes because of you.”

To the graduates of the School of Engineering, the Chancellor intones: “I congratulate you on the academic and professional foundation you have built for yourselves and commend the use of your exceptional training in the building of a better world for all people.” Once the graduates of the School of Medicine have stood and received their applause, the Chancellor declaims: “I congratulate you on your distinguished attainment to the role of physician and caring individual and commend to you lives of healing in service to the welfare of human kind.” To the degree candidates from the Graduate Schools, he recites: “I congratulate each of you on the advanced academic standing you have earned and commend you to the advancement of an educated society. I welcome you into the ancient and universal company of scholars.”

And then comes the turn of our profession. The candidates for the J.D. and Master of Laws degrees are asked to stand, bask in the applause, and receive their charge: “I am pleased to congratulate you on your command of the ways of justice and how it is attained, and I commend your exceptional training to the advancement of a just social order.” And then it begins. Always. A faint chuckle begins to rumble through the crowd, invariably ending in an undercurrent of community snickering. “Justice.” Hah! That’s a good one!

It’s been more than twenty years since I attended my last Vanderbilt commencement, but I’ve never really gotten over my frustration with these memories. For many years, I thought the solution would be to revise the “charge”—removing the references to “justice” that evoke such a cynical response. What I’d like to talk about today is why the Vanderbilt “charge” to the law graduates is precisely right, why the common reaction to it is so sadly wrong-headed, and what this might all mean for those of us who are lawyers and who will soon be lawyers. To do so, it may seem that I meander a bit, but my wanderings have a destination.

Martin Luther King famously said “The arc of history is long, but it bends toward justice.” I have been blessed to live through a remarkable period in American history in which the truth of this statement has been repeatedly demonstrated. Let me give you a few examples.

When I was born in 1947, African Americans could not vote in many, many States. Oh, it may be that they could vote in theory, but in reality, the violence against them in vast areas of the United States was so profound that attempts even to register to vote led to defiance, beatings, and murders.

In 1955, when I was eight years old, Emmett Till, a fourteen-year-old African-American child visiting from Chicago, was brutally beaten in the Mississippi Delta, his eye was gouged out, he was shot through the head and thrown into the Tallahatchie River with a 70-pound cotton gin fan tied to his body with barbed wire—all because he had accepted a dare to speak to a white woman. When his white murderers were prosecuted, an all-white, all-male jury returned an ac-

quittal after just 67 minutes of deliberation; one juror said, “If we hadn’t stopped to drink pop, it wouldn’t have taken that long.”

When I was ten years old—in 1957—African Americans in many communities still could not vote, could not drink from “white” drinking fountains, could not use “white” restrooms, could not sit at “white” lunch counters, could not go to “white” schools (even though *Brown v. Board of Education* had been decided when I was seven), and could not stay in “white” hotels.

In 1958, when I was eleven, Mildred and Richard Loving were arrested in their home and charged with the crime of interracial marriage, conduct prohibited by Virginia’s Racial Integrity Act. That statute made it a crime for a white person to marry a person who was not white, and further made it a crime for interracial couples to be married out of State (as the Lovings had done) and return to Virginia. The Lovings pleaded guilty and were sentenced to one year in prison, with the sentence suspended for 25 years on condition that the couple leave the state of Virginia. Until the U.S. Supreme Court struck down the Racial Integrity Act in its unanimous 1967 *Loving v. Virginia* decision, interracial marriages were against the law in 16 States. Two of my daughters could not have married their wonderful husbands under such laws.

In 1961, when I was fourteen, Freedom Riders attempted to challenge racial segregation on interstate buses operated by Greyhound and Trailways. The tactic for their journey was to have at least one interracial pair sitting in adjoining seats, with at least one African American rider sitting up front (seats usually reserved for white customers only), while the rest would sit scattered throughout the rest of the bus. In Anniston, Alabama, a mob attacked the Greyhound bus and slashed its tires. When the crippled bus had to stop several miles outside of town, it was fire-bombed by the mob chasing it in cars. As the bus burned, “[s]everal members of the mob . . . pressed against the door screaming, ‘Burn them alive!’” When the riders did eventually escape the flaming bus, they were viciously beaten. “[N]o one in a position of authority showed any interest in identifying or arresting those responsible for the assault.”

When my mother was born on the North Dakota prairie in 1916, women could not vote in federal elections and could vote in State and local elections in less than a dozen States. Throughout my childhood, women were effectively prohibited from obtaining work in numerous occupations; the “help wanted” ads in the newspapers I read were broken into jobs for men and women. In 1954, Justice Ruth Bader Ginsburg was one of only 9 women in Harvard Law School’s entering class of more than 500. After following her husband to New York City and graduating first in her Columbia Law School class, she went looking for a job. “I don’t hire women,” said Supreme Court Justice Felix Frankfurter. In the early 1950s, Justice Sandra Day O’Connor finished third in her Stanford Law School class—completing her legal education in two years, rather than the usual three—but no California law firm would hire her for any job other than that of a legal secretary.

One of my greatest fears at this stage of my life is that young people simply will not know how much the beauty, richness, and fullness of their lives is due to the efforts of the ordinary, but incredibly brave people who carried on the civil rights movement to change all of these things I have mentioned. It is a great injustice to these people not to learn their stories and celebrate their achievements. I wish every American high school student were required to read Taylor Branch’s stunning three-volume history of the civil rights movement. The titles of these volumes are “Parting the Waters,” “Pillar of Fire,” and “At Canaan’s Edge.” If you have not yet read this magnificent trilogy, give yourself a treat and dive into it.

So, during my lifetime, I have been privileged to witness the arc of history bend toward justice in the long fight for basic human dignity. I like to think of that arc as being composed—not of something insubstantial, like the arc of a rainbow—but of tempered steel. It is bendable, yes, but only at great effort.

All right. What does all of this have to do with the lawyer joke with which I began today, and with the scorn shown at Vanderbilt's commencement exercises to the very idea of lawyers and justice?

Let me ask you this. Every time the arc of history bends slightly more toward justice through the efforts of courageous Americans like these civil rights pioneers, who is it that fulfills the all-important task of fixing the new curvature of that arc into place, assuring that the arc will not revert to its former, more unjust configuration? I'll tell you who does this. Lawyers. Down through history, lawyers have pounded great spikes to keep that arc of history in its proper, newer, more just shape—spikes with labels like the Thirteenth Amendment, the Fourteenth Amendment, the Nineteenth Amendment, *Brown v. Board of Education*, *Loving v. Virginia*, the Civil Rights Act of 1964, the Voting Rights Act of 1965, the Fair Housing Act of 1968, and *Varnum v. Brien*. Although the names of the attorneys toiling on the arc of history will often be unknown to us or forgotten with the passing of the years, the edifice they have helped to build and shore up is our inheritance.

So, when the Chancellor of Vanderbilt University says to the law graduates “I commend your exceptional training to the advancement of a just social order,” these words accurately describe what lawyers have done through history, and what lawyers still can do. Why, then, does an audience which has listened respectfully to the charges delivered to the graduates of the School of Engineering, the School of Medicine, and the like, snicker at the charge to new lawyers?

I think we know why. Not all lawyers “use their exceptional training to the advancement of a just social order.” In fact, they may use their training to resist the advancement of justice, and may even seek to remove the spikes securing the arc of history in its periodically remolded, ever more just configuration. Other fields of endeavor may have incompetent members, but the anti-plumber who deliberately introduces water leaks, the anti-mechanic who sets out to ruin engines, the anti-physician who endeavors to induce illness in her patients—such actors are so unusual we can scarcely conceive of them. When it comes to the law, however, we must concede that the pursuit of injustice is not nearly so rare. When it was decided that slaves should be counted as three-fifths of one person in apportioning the House of Representatives, it was lawyers who helped enshrine that principle in Article I, Section 2 of the Constitution. When racial discrimination was institutionalized in such documents as Virginia's Racial Integrity Act, it was lawyers who hammered out the wording. When America formally adopted a policy of torturing prisoners with water-boarding, it was lawyers who wrote the memoranda granting the green light and purporting to immunize these war crimes.

Now, we must be honest and concede that—in some instances—reasonable people may disagree about whether a certain outcome or direction will further or inhibit justice. But really, can anyone seriously deny today that it was unjust to forbid interracial marriage, that it was unjust to prevent African American citizens from sharing a drinking fountain, a lunch counter, a bus seat, a public school with their white brothers and sisters, that it was unjust to limit a female law graduate to work as a legal secretary, that it was unjust to prohibit any adult citizen from voting on account of their color or gender? The lawyers tenaciously defending these unjust laws and

practices, purported to base their arguments on religion or the natural order of things, but their arguments were really grounded in implacable prejudice. Moreover, some lawyers today cynically pursue the goals of their clients in business dealings, in marriage dissolutions, and in the public sphere even though they must recognize that their goals and their tactics are unjust.

Ultimately, however, such lawyers—the ones who serve the cause of injustice—must not be allowed to sully what is truly a majestic and noble profession—the profession for which graduates have the right to stand tall on commencement day—the profession of Abraham Lincoln, of Mahatma Gandhi, of Nelson Mandela. What has sustained me through thirty years of teaching is the knowledge that so many of our former students have joined the great host of attorneys whose work on the arc of history has made society better for everyone.

Those of us who have gone into the law usually have heroes that have inspired us. When I was a teenager, that hero was Atticus Finch. Now that I am older, I realize that the story of that fictional attorney is told through a lens colored by the experiences of its author and shaped by its times—a lens that may distort and undervalue its African American characters. But in my formative years, it was a powerful story. Now that I am in my sixties, I think I have found new heroes to inspire me, and I'd like to tell you about two of them.

Charles Vaughan Sr., and his son “Charlie” are both Valparaiso Law School graduates. They practice law in Kokomo, Indiana, a town of less than 50,000 people. It's hard to imagine a less likely setting for lawyers to bend the arc of history toward justice. Nevertheless, they did.

In 1985, a thirteen-year old child with AIDS sat with his mother, Jeanne, in Charles Vaughan's Kokomo office and expressed his heartfelt desire to attend seventh grade at Western Middle School—a public school that had expelled him because of his disease. As Rennard Strickland and Frank Read explain in their book, *THE LAWYER MYTH*:

Were it not for Charles Vaughan Sr. and his son “Charlie,” “the world might not know the name Ryan White. Sir Elton John would certainly not have sung at his funeral nor would the United States Congress have enacted a Comprehensive AIDS Resource Emergency Act in his name”

The story of Ryan White is fairly well known, but the role of his legal representatives is not Twenty-one years after Ryan was excluded from public schools, Charles Vaughan Sr. recalled the experience:

I told [Ryan's mother Jeanne] the situation wasn't good but I also said I wasn't interested. . . . I thought she ought to talk to the principal and superintendent to solve the problem. But Jeanne said school officials told her they knew she was a single mother without the money to fight the decision so there was nothing she could do about it. Well as soon as she said that, I said we would take her case. . . .

As Ryan White says in his autobiography, “You'd think I had declared war.” I'll briefly recount the chronology of the litigation in a moment, but first it is helpful to understand what Ryan meant by this comment. Ryan continues in his autobiography:

The . . . Western school board [voted] . . . to keep me out. Then about fifty teachers came back from vacation early to take a special vote to refuse to teach me. One mother . . . started going around with a petition, collecting signatures from parents who supported the school's stand. . . .

[K]ids were marching up and down outside with big picket signs that said, “Students Against AIDS.”

[An opposition group calling itself the] Concerned Citizens and Parents . . . tried to have our county’s welfare director declare Mom an unfit mother, take me away from her, and make me a ward of the court. Then, they figured, the court would keep me out of school. They said that by letting me go to school, Mom was allowing me to kill other kids

Rumors about me . . . appeared in the . . . Kokomo Tribune Someone . . . wrote in, “Would you want your little brother [or] sister . . . to be with a young man who constantly threatens to bite, scratch, or spit on children if things aren’t, done ‘his way’? How about eating food from a local store where his family was asked to leave because he was spitting on the fresh produce?

Kids biked or drove by our house practically every day and threw beer cans, whiskey bottles, and garbage on our lawn, or egged our windows or our car

When we got home from church [one Sunday], there was a bullet hole in our front window

[At one point], Mr. Vaughan [went] to court to force the Concerned Citizens to post a \$12,000 bond to show good faith So we thought that \$12,000 would really set them back. But . . . they had been setting out glass jars at all their meetings to collect money for their legal fees [and] in three nights they raised \$19,000!

Mr. Vaughan wasn’t about to quit—just the opposite, in fact . . . But Mom was flat broke. If she stayed home [from work] because I was sick or because we had to be in court, she didn’t get paid.

She said, “I’m worn down. I want to stop. All the pressure on our family—I just can’t take it anymore.”

Mr. Vaughan looked at me. “How about you, Ryan?” he asked. “Do you want to quit?” “No!” I said “We’re right. They’re wrong. We can win.”

Mr. Vaughan turned back to Mom. “Well, Jeanne,” he said, “Ryan’s my client now.” . . .

Here’s the basic chronology of the Ryan White litigation. Those of you who are lawyers—or are currently studying law—will understand that behind the dry cadences of this chronology are many procedural steps that required research into wholly new legal areas, the development of strategies, the drafting of pleadings and briefs, the preparation of witnesses and exhibits, and the presentation of all of these materials in multiple forums.

July 30, 1985: The Western Schools Superintendent bars Ryan from school, saying the health risk for other children is too great.

August 8: Ryan’s lawyers file suit in U.S. District Court in Indianapolis, seeking to get Ryan admitted to school.

August 12: Parents of Kokomo school children sign 117 claim forms, threatening to file a civil suit if Ryan is allowed to enter school.

August 16: The U.S. District Judge in Indianapolis says he cannot rule on the case until Ryan exhausts all local and State remedies.

November 1: A Hearing Officer in the State Education Department hears testimony from lawyers for Ryan and the school district.

November 25: The Hearing Officer rules that Ryan should be allowed to go to school.

December 17: The local school board votes to appeal the Hearing Officer's ruling.

February 6 [now 1986]: The State Education Department Appeals Board rules that there is nothing to prevent Ryan, now 14, from attending classes.

February 21: Ryan returns to school. 151 of 360 students stay home. Seven transfer. By the end of that very day, in response to a lawsuit filed by parents, a State court judge in Kokomo issues a temporary restraining order once again barring Ryan from the classroom.

March 17: Ryan obtains a change of venue to State court in Frankfort.

April 10: The State court judge in the new venue dissolves the restraining order. Ryan immediately returns to school. 27 students walk out. Parents opposing the return announce an appeal.

April 11: Ryan spends his second full day at school in more than a year. 53 students are absent. Four withdraw.

As Ryan explains in his autobiography:

[T]he parents opened their own school For the last six weeks of school, their kids went to class in an old American Legion hall. I'd seen TV documentaries about white parents setting up separate schools when public schools in the South were being integrated. Kokomo had [set up] a new kind of segregation school

We'll let Charles Vaughan Sr. complete the story:

For nine months the [Ryan] White case was all we did. We went back and forth from federal to state court. It was an adventure like no other Ryan effectively ended the ability of a school system to keep kids with AIDS out of classrooms. [He] helped a nation understand what AIDS is—and is not—and how people do and don't get it.

Think of it. Charles and Charlie Vaughan, Attorneys at Law, Kokomo, Indiana. What a pair of unlikely legal heroes. The parents who made Ryan's life so miserable were not inherently horrible people. They were just terrified, as we all were at that time, of AIDS. As has so often been true in American history, it took lawyers—acting with their extraordinary client—to alter the arc of history.

When you live in a house with a reliable and leak-free water delivery system, thank a plumber. When your unbearable toothache is removed, thank a dentist, an endodontist, or periodontist. When your cupboard is well stocked and you sit down to a nourishing meal, thank a farmer. When you travel safely through the long night in your motor vehicle, thank an auto me-

chanic. When your health has been restored and you regain your prior zest for life, thank a nurse, a physician, or a physician assistant. And when you pause to consider how wonderful it is to live in a just society in which you are entitled to dignity and equal opportunity—when you pause to consider just how new and fragile is your right to vote, to attend the school of your choice, to drink out of any public drinking fountain, to stay in any hotel, to apply for any job you wish, to marry the person you love—give thanks for lawyers.

For those of us who are lawyers—or will soon be lawyers—it seems to me that our highest calling is to be ever mindful of that arc of history and, when the opportunity presents itself, take our place alongside the great band of attorneys who have helped to bend and stabilize that arc’s steady progress toward justice down through the ages. Not all of us can work on the great human rights cases. For most of us, as Mother Teresa used to say “We can not do great things. We can only do little things with great love.” Most lawyers do little things: they help to structure business deals, they develop estate plans, they seek relief for people who have been injured, they help to set up charitable organizations, they work to disentangle marriages that have come to a sad end. But whatever we may do as lawyers, we can pursue justice. As a physician pursues healing, as a scholar pursues learning, so we as lawyers must always pursue justice—even in little things.

A “last lecture” must end, of course, with some parting words. I leave you with these: be the kind of lawyer that your friends, your community, the nation, the world, and future generations will want to thank, for helping create and preserve a just society. When you take your rightful place along the arc of history, you need never be ashamed to be called “lawyer.”