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CENTER ON

PROFESSIONALISM

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**PROFESSIONALISM
IN SOUTH CAROLINA**

a resource for new lawyers

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THE GREAT ADVENTURE

USC Law School Commencement Address, December, 2002

JACK B. SWERLING, *Esquire*

I am most honored to have been asked to be here to address you on this wonderful occasion.

As I look out over this group of people, I see the faces of graduates who have worked so hard to reach this moment and now with great hope and anticipation, stand at the threshold of what I call the great adventure. I also see the beaming faces of parents, family and friends whose hearts and minds are rightfully swollen with pride. My own son will be graduating law school in May from New York Law.

Why do I refer to your future as the great adventure? It is because of the uniqueness of our profession, and the impact we lawyers have had throughout our history in many forms and in many ways. Go back to the birth of our nation. Of the 56 men who signed the Declaration of Independence, 30 were lawyers. The author, Thomas Jefferson, was a lawyer. Patrick Henry, the passionate champion of rebellion, was a lawyer. Of the 55 delegates to the Constitutional Convention, 31 were lawyers. The author of the Star Spangled Banner, Francis Scott Key, was a lawyer.

At another momentous moment in our history, 6 stubborn lawyers fought with 180 other men to defend the Alamo. The commander of that group of men, William Travis was a lawyer, and he was born in South Carolina. General Sam Houston who eventually defeated Mexico a short time later was a lawyer.

The Alamo story would not be complete without mention of the colorful James Butler Bonham, a South Carolinian, who was 29 years old when he died at the Alamo. Long before he traveled there, he achieved fame as a spirited lawyer. One day in court, another lawyer insulted Bonham's female client. Bonham interrupted the proceedings and took a buggy whip to the surprised opponent.

Bonham's contempt charge and subsequent jail sentence were relieved somewhat by the ladies of the town, who saw to it that he was well fed and outfitted with whatever comforts his jailers would allow.

Bonham's reckless courage later made him a natural choice to ride through enemy lines in search of reinforcements for the besieged Texas forces. Though he had escaped, he fought his way back through a blistering assault to return to the Alamo and to certain death with his comrades.

Those who believe that lawyers never act for anything but profit should read the letter to General Sam Houston in which Bonham volunteered his services as

a soldier. "Permit me through you to volunteer my services in the present struggle of Texas, without condition. I shall receive nothing, either in the form of services, pay, land, or rations."

And there have been others.

Twenty-five of the nations 43 Presidents were lawyers including John Adams, Thomas Jefferson, James Madison, James Monroe, John Quincy Adams, Andrew Jackson, William H. Taft, Calvin Coolidge, Richard Nixon, Gerald Ford, and Bill Clinton. Everyone knows that Abraham Lincoln was a lawyer, but many do not know that our other wartime Presidents, Woodrow Wilson and Franklin Delano Roosevelt were lawyers. These lawyers, as well as countless others, have always been a courageous group of people, no matter what their calling. Throughout history the lawyers who have come before us have also been at the forefront of many of the great social and political changes, by providing a vehicle for change through the law and in the courts. During your great adventure, you too will have the opportunity to cause change, to make a difference and to make the world a better place.

As a lawyer, you will have the opportunity to touch the lives or cross the paths of so many different people. We represent the rich and powerful, the poor and downtrodden. We represent widows and orphans, the injured and oppressed, the corporation or the businessman, the professional, the laborer and the unemployed. We represent women and men of all religions and people of every race. We represent these people in every possible legal conflict known to mankind and those that are yet to be discovered.

Because of lawyers, we have a system of criminal justice unparalleled in history. Women and minorities have a right to vote and serve on juries, the disabled and the elderly are now protected, civil liberties continue to be preserved, American products are the safest, our environment is cleaner every day, our homes, workplaces and our recreational areas are the safest in the world.

These achievements do not come easy.

No other profession has to become so skilled in so many disciplines. Not only must we be well versed in the law, we must acquire enough knowledge to examine doctors, chemists, numerous forensic experts, engineers, surgeons, pathologists, psychiatrists, economists, crime scene investigators, or accident reconstructionists and a thousand other disciplines. We also need to be skilled in the art of communication, for without communicative skills we cannot deliver what we have learned to the people who judge our client's cause.

On your adventure you will continue these pursuits – you are young, you are the new doers and the achievers, the ones who have the energy and initiative to

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continue the great fights ahead – in you we place our trust and hope for a better world.

To do what we do and to do it effectively, you must maintain civility toward each other, give obedience to the rule of law, and proceed in your quest honorably and ethically. Remember that no one can create your honor and integrity except you, and no one can destroy it but you. Once lost, it can never be completely regained.

The practice of law is not only about winning and losing. No one will remember your won/lost record. The great trial lawyer Clarence Darrow once said that no one will remember how many cases you win or lose, what they remember is how you fought for the great causes.

You won't be remembered for the money you made, the property you acquire, the car you drive or the power you attain. The former are all material things and quickly forgotten – no one really cares what you had, and power is fleeting – once you have stepped from power, your following dwindles to your family and your closest friends.

What will cause you to be remembered with dignity, respect, and love? First and foremost be the best child, parent, spouse, brother, sister and friend you can be. These folks will always be there for you. They are the most important. Second, take time to savor life, to smell the roses as they say, and to appreciate the world we live in. The great John Lennon wrote in his song, "Beautiful Boy" that "life is what happens to you when you are busy making other plans." After 30 years at the bar I can tell you how fast life moves on. Third, be a great lawyer, not just a good one. Give something back to the disadvantaged – the people who have no money, no voice, no opportunity, no hope – as lawyers we cannot and should not walk away. Try to make a difference. Fight for somebody or something. Cause some change for the better or prevent an injustice from being done. The great people of history are all remembered not for their wealth or power, but for their vision and wisdom, their courage and their willingness to stand and fight for a noble cause. Clarence Darrow, will be remembered not for his wealth or power, but as being the "attorney for the damned," which by the way is the epitaph on his tombstone; the one person who even the most unpopular, most notorious, most despicable and least sympathetic, could turn to for justice as guaranteed by our Bill of Rights. These are rights which were drafted not just for the innocent or the conformer, but for the person who challenges the system, the one who wishes to speak out against injustice, and the one who wishes to fight for change; much like our forefathers did 200 years ago in a revolution, which was for all practical purposes an act of treason and for which the framers would have paid with their lives if they had been unsuccessful.

I love the law. I love being with lawyers. We are a unique group of people with a common bond and with similar hopes, fears, and aspirations. We have experienced things and feelings that only another lawyer could understand. We are motivated by some fire within us to seek justice and to be willing to stand up, speak up, and fight for a principle no matter what the odds or the costs.

I love this adversarial system in which we practice and while it is not perfect, in its best form it is a search for justice. I also love being a trial lawyer. With all we have to deal with and subject ourselves to, I cannot think of a day in thirty years that I did not look forward to the practice of law.

At the beginning of any journey, you must have an idea where you are going, how you are going to get there and what you hope to achieve along the way. At some point in your adventure you will begin to wonder what will be your legacy as a lawyer? What will you be most proud of and what do you want to be remembered for as a lawyer?

As for me I like to think of the words of James Hay that were given to me by an outstanding trial lawyer and judge, Alex Sanders. They were written over a century ago, and I now commend them to you:

If you live a long, long time, and if you keep the faith in all you do, day by day and hour by hour, then remembering the colonnade of the courthouse, the purple shadows of the courtroom, and the dreams of your youth, you can look upon this magnificent temple of justice we call the law, and say with pleasure and with pride: "the work of my hand is there."

If at any time in your life you start wondering if what you put yourself through, what you do, or what you stand for makes a difference, I would like you to remember one of my own life experiences. A few years ago my son Bryan and I ventured off to Europe for a father-son trip, a bonding experience, and bond we did in an unexpected way. In one of the places we visited, we saw the following proclamation on a wall in a building:

Legal Bulletin:

Articles 114, 115, 117, 118, 123, 124, and 153 of the Constitution are invalid until further notice. Restrictions on the freedom of the individual, the right to free speech, including freedom of the press and the right of assembly and to form groups, infringements on the secrecy of mail, telegraph and telephone communications, house searches, confiscation and limitation in property ownership are now permissible.

This decree takes effect from the date of its proclamation.

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Do those principles sound familiar? Does the abolition of those rights chill and frighten you? Well it should! That proclamation was on the wall of the reception center at the Dachau Concentration Camp on the outskirts of Munich, Germany. The proclamation was signed in Berlin by President Von Hindenburg and Chancellor Adolf Hitler on February 28, 1933.

As we walked the grounds of the concentration camp, our legs got heavy; we heard no music; no birds singing; only silence conjoined with the cries of millions of people who were murdered by the Nazis. One cannot help but cry from the savagery of mankind when man is left unchecked or unchallenged. The experience changed me forever, not only because I am Jewish, but for the first time in my career as a lawyer I truly realized what we as lawyers preserve if we are vigilant, and what can happen if we are not. One of Hitler's first official acts as Chancellor of Germany, within thirty days of his election, was to suspend the German Bill of Rights and with them the vehicle to enforce those rights – a court system with an independent judiciary and bar. He knew that once he controlled the legal system, nothing and no one could stop him. It took thirteen years, a world war, and millions of lives to extinguish this fire that ravaged the world.

Make no mistake about it. It is our Bill of Rights, our court system, we lawyers, and an independent judiciary that prevents that from happening here. The world has gone a little mad. Crime has reached nightmarish levels. It pulls at the very fabric of our society. Now we are all afraid of the new evil thrust upon us – terrorism. It is times like this when politicians and the public criticize our system of justice and question our Bill of Rights. It is times like this when legislation is introduced and passed eroding and lessening our rights and giving the government more opportunity to intrude on our privacy through searches, wiretaps, and similar intrusions. Even restrictions on the peoples' access to the courts. Remember, it is not just the terrorist or criminal who is intruded upon. It is potentially the people who sit right here in this room. I have yet to rationally and intellectually sort out to what extent I might be willing to give up any of my rights because I am afraid, too. But I do know one thing. Once our rights are taken away, they are difficult, if not impossible to get back. It is exactly times like this when our fortitude and resolve as lawyers must be stronger and more determined than ever. As long as there are lawyers prepared to defend our rights, challenge the wrongs and stand up for what is just, what happens in every totalitarian society will not happen here.

Everyone remembers the oft quoted remark of Shakespeare from Henry VI, "The first thing we do, we kill all the lawyers." What is unfortunate is that those words are taken out of context. They were never meant to be an indictment of the legal profession. The speaker, Dick the Butcher, was an anarchist. He made those remarks to his friends on what they would have to do to overthrow a legitimate government. He knew that the lawyers would stop them!

A few years ago the South Carolina Bar had what I thought was a great slogan: it went something like this – where there is no freedom, there are no lawyers, and where there are no lawyers, there is no freedom.

As we go through our careers, remember that we share many of the same feelings in our daily experiences. As trial lawyers, we are motivated by many of the same emotions. We are a fiercely independent group, but we are also united as one force with common goals and aspirations. We are never alone.

Stay the course. Fight the good fight. Be proud of your heritage. Be proud of what you are. Be proud of what you do, and be proud of your colleagues who are in this with you. Lawyers are special people working within an extraordinary process for the administration of justice. As long as one trial lawyer remains standing, I am confident that our voice will be heard and our presence felt in the halls of justice. After all, they cannot kill us all!