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Remarks of Justice Alito: The Catholic University of America, Columbus School of Law Commencement

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ADDRESS

REMARKS OF JUSTICE ALITO: THE CATHOLIC UNIVERSITY OF AMERICA, COLUMBUS SCHOOL OF LAW COMMENCEMENT⁺

The Honorable Samuel A. Alito, Jr.⁺⁺

It is a great pleasure for me to have the opportunity to speak with you all here, and to share in a small way with you what is, I am sure, a very special day in your lives. Certainly it is a special day in the lives of the graduates. It's been a long time since I went to law school, but I still remember how much hard work it took to get to where you are today, and I congratulate you for those efforts. That is a great accomplishment. And I would be remiss if I didn't say that a lot of congratulations are also due to all of the other people who are here to see you graduate. If your lives have been like mine, then we all owe a big debt of gratitude to many other people—people who are here to see this event, and I am sure some people who are not here to see this event but whom you are thinking about—and in a figurative sense, they should be wearing a cap and gown today, too, and should be receiving some of the congratulations that you are receiving.

I have been thinking for some time about what I should say on this occasion, and I had some remarks planned out. But then about a week ago something happened to me that gave me pause. I was speaking to a woman whose husband had a long and distinguished career as a university professor and as a university dean. And I said, "I'm going to be giving a commencement address next week at Catholic University Law School." She said, "You know, I can't tell you how many commencement addresses I have heard over the years, and I can't remember a single thing that was said by any commencement speaker on any of those occasions, with just one exception." I said, "Oh, well what is the exception?" because I thought maybe I could take some pointers for this address. She said, "This was a commencement that was outside, and it was a very hot day—blistering hot. The program ran on past the scheduled time. It was far behind schedule and by the time the speaker got up to give the commencement address, the graduates and the other people in the audience were wilting and dropping. And this speaker looked around, and he surveyed

⁺ The text appears substantially as it was delivered on May 23, 2008. The Catholic University of America bestowed the Honorary Degree of Doctor of Laws upon Justice Alito before his remarks.

⁺⁺ Associate Justice, United States Supreme Court.

the situation, and this is what he said: 'Remember the turtle. If you don't stick your neck out, you won't get anywhere.' And with that, he sat down."

So now I've gotten your hopes up, right? But I can't promise that I will give you a two-sentence address. In fact, I have already far exceeded that limit. It takes a lot of courage—it takes a lot of self-confidence—to give an address that is that brief. So I do have the lesson from what she said, but I'm not going to quite honor it literally.

So what am I going to talk about? Well, it is probably not a surprise to you that I am going to talk a little bit about our Constitution and about our legal system, but I hope I am going to do it from a different perspective. Let me start with the Constitution. Perhaps I am biased (I am sure that I am), but I think that our Constitution is the best that the world has ever seen. And I feel confident that our Constitution could not have endured and provided the framework for our country's growth if it was not based on a deep understanding of human nature and human behavior.

So what are these insights? One of the most basic is the importance of identifying the things that are really important. One of the most striking features of our Constitution is its brevity. Our Constitution contains about 4,600 words. You can compare that to the proposed constitution of Europe, which has over 160,000 words, or about thirty-five times as many words as our Constitution.

Our Constitution is brief because it separates the matters that are essential and permanent from the things that are merely important. It sets out the essential structure of our government. It protects basic rights, but then it basically leaves everything else to be decided by the people, through their elected representatives, as the needs of the time demand. If our Framers had taken a different approach—if they had tried to nail everything down—then I don't think that the basic constitutional structure that was established in 1787 would still be in force today. The Framers' strategy—a disciplined identification of what is most important—has served our country well. And I think that the same strategy is a good one for all of us to follow in our personal lives.

Now I don't suggest that we each print up little personal constitutions and carry them around in our pockets. But I think that it is useful to go through the mental process that the Framers used in drafting the Constitution, and that is to identify what is essential and permanent in our lives, and to keep those things in mind. This is important because the things that call out most loudly for our attention on a daily basis are not necessarily the things that are most important, the things that matter the most in the long run.

Most of you, I am sure, have been working very hard during your years in law school and unfortunately, I must tell you, you are probably going to have to continue to work very hard in your careers once you leave here. There will be many things that will be demanding your attention on a daily basis, things that are important in many ways—important to you, important to the law firm

or government office or other entity for which you are working, important for your clients. But it is critical that you do not confuse the things that are merely important with the things that are essential.

Another instructive feature of our Constitution is its insistence. Now what do I mean by that? I mean that our Constitution is hard to forget, and it is hard to change. It won't easily leave us alone when we would prefer to ignore its precepts and do what seems most convenient, most expedient, most modern, most up-to-date. In this connection, I want to note two features—two obvious features—of our Constitution in particular.

First, it is written. Now we tend to take this for granted, but this feature was certainly not inevitable. The country from which the United States broke away, Great Britain, had and still has a venerable constitution, but it is not memorialized in a single, easily consulted document. The Framers of our Constitution took a different approach. Our Constitution is written, and it is easily accessible to anyone who cares to read it. You can carry around a little pocket Constitution if you're so inclined. This makes our Constitution hard to forget and hard to bend.

The second feature that I want to note is that our Constitution is exceedingly difficult to change. Indeed, the amendment process is so difficult that the Constitution has only been amended twenty-seven times in more than two-hundred-twenty years, despite the fact that during that period of time more than ten thousand amendments to the Constitution have been proposed in Congress.

The Framers deliberately made the amendment process difficult, and it is instructive to consider why they did so. Part of the explanation, I think, rests with their understanding of the nature of the fundamental rights that the Constitution protects. I am sure that we all remember the famous words of the Declaration of Independence: "all men are created equal [and] are endowed by their Creator with certain unalienable Rights."¹

This short and famous statement speaks volumes, and one of the most important things that it says is that there are certain moral principles that are true and immutable. These principles of right and wrong, in the view of the Founders, are not relative or circumstantial. Having this conception of rights, and having confidence that through their study of the political institutions of the past they had identified the principles of government structure that would best promote the aims of the American experiment, the Framers fortified their work against ill-considered change. They knew that times would inevitably come when people would be tempted to make fundamental changes. The precipitating event might be a crisis of some sort or another; it might be the latest intellectual fad. But whatever the precipitating event, they knew that such times would come, and they knew that in the long run, the well-being of the country depended on the ability to resist these temptations.

1. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

The same idea—that there are certain principles that we should not be so foolish to think that we can set aside without paying a fearsome price—applies to our personal lives just as much as it applies to our Constitution. For almost all of us, there will be times when we will be tempted in our professional lives, and when these times come, if we have fixed and clear principles—principles that are written in bold letters in our conscience—then we may be able to find our way through. If we don't have fixed and clear principles then it is very easy for us to go astray. I am sure that you know that many lawyers have gone astray in this way. In a sense, our legal training makes us particularly vulnerable in this regard because we know certain secrets. We know the weaknesses that are inherent in all rules. We have been trained to spot the ambiguities in language and to capitalize on the ambiguities in language. This makes us particularly susceptible to the belief that we can make any rule mean whatever we want it to mean to suit ourselves or to suit our clients, and that we can exempt ourselves and our clients from the operation of the rule. So we lawyers need to be especially vigilant that we do not succumb to this temptation because the rules that matter most are the rules that really cannot be bent.

So far I have spoken about the way in which our Constitution guards against rash and unwise change, but this is only half the picture. Our Constitution has survived and flourished because it was designed to accommodate change, because America is and always has been a nation of change. Our Constitution would not be an authentic expression of what we are as a people if it did not recognize this feature of our national character.

In one of the most important decisions that the Supreme Court ever issued, Chief Justice Marshall famously proclaimed that our Constitution was “intended to endure for ages to come, and consequently, to be adapted to the various *crises* of human affairs.”² The Constitution did not, he said, “attempt to provide, by immutable rules for exigencies which, if foreseen at all, must have been seen dimly, and which can be best provided for as they occur.”³

In other words, the Constitution, while providing a basic structure of government and a few fixed principles and rules of operation, otherwise entrusts the future to the decency and to the good sense of the American people. And in this way, the Constitution is a very optimistic document. If the Framers had lacked confidence in the Americans of the future, then they would have tried to nail everything down. They would have written a constitution that has hundreds of thousands of words, but they didn't think that that would work. And what is more important, they did not think that it was necessary. They had confidence in the American people, and they welcomed the changes that they knew would be inevitable.

2. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 415 (1819).

3. *Id.*

As you graduates leave here today, I hope that you have this optimism and this openness to change, because we live in a time of great change, whether we like it or not—a time of change for our country, for our world, for the way in which we live our lives on a daily basis, and surely for the legal profession. And the only prediction that I would make with any confidence about the world that you will see twenty-five years from now, thirty-five years from now, fifty years from now, is that it will be in many very important ways, in many important respects, quite different from the world that I have known. But each new generation of Americans has accomplished the task of reconciling what is indispensable about our heritage with the changes that we have accepted and welcomed. And that is your challenge: to continue that effort. I am sure that I speak for everyone who is here today to congratulate you on your achievements when I say that we are counting on you, and we have faith in you to rise to the challenges that lie ahead.

In meeting those challenges I hope you will take two more lessons from our legal system. The first of these is respect for calm reason. Our legal system is built on the premise that it is possible for fair and open-minded people to solve their problems by reasoning together, by a process of rational and respectful argumentation. This process begins with a disposition to question everything and to demand a reason for everything. The aim of this questioning is not skepticism, but knowledge, and I hope that none of you ever lose faith in reason as a path to truth, or in our ability to reason with each other calmly and tolerantly and courteously, and to work together in good faith to solve our problems and our differences.

Our legal system is fueled by rational argumentation. That is something that I am sure has been a focus of your entire time at law school. But our legal system does not exalt reason above everything else. As I am sure you know, if you have read any opinion issued by any court in this country, the text is full of citations to past court decisions.

You graduates are familiar with the doctrine of stare decisis, but on the off-chance that there are any non-lawyers in the room—and in Washington, D.C., you don't expect to encounter anybody who isn't a lawyer (possibly some have sneaked in here today)—stare decisis means to stand by things decided. In simple terms, the doctrine means that the court will generally follow a prior decision, even if the court would not reach the same decision today. Stare decisis is a doctrine that respects the judgment—the wisdom—of the past and that reflects a certain degree of humility about our ability to make sound decisions based on reason alone. This principle of respect for what has gone before has applications in life as well as in law. We here in the twenty-first century know much more than our ancestors did about many things, but not necessarily about the things that are most fundamental. And so there should be a sort of presumption in favor of a venerable wisdom. We should not be rash about discarding this invaluable asset.

I began my remarks by invoking the image of the turtle, and I am going to end with the same image in the hope that maybe twenty years from now you will say: “Justice Alito spoke at that commencement address, and I don’t remember anything that he said, but he said something about turtles.” So I’m ending with turtles as well.

Turtles figure prominently in the ornamentation of the Supreme Court building. If you look closely at the east pediment of the Supreme Court building, you will see on one of the sides a sculpted turtle. There are also four turtles supporting each of the lampposts in the plaza of the Court, and also in all of the interior courtyards in the Court building. Now when I asked what the symbolism is for the turtles—“Why are there turtles all over the place?”—I received some conflicting explanations. I was told that the turtle on the east pediment represents the slow and steady pace of justice. A lot of lawyers think that the slow part, at least, is correct. As for the turtles that are supporting the lampposts, I received several different explanations. One was that they are based on a myth that turtles support the world—that turtles are supporting the entire weight of the world. The other explanation was that turtles simply signify longevity; they signify tranquility and stability, endurance, and the permanence of the most important things. I like that explanation much better than the other ones. So with that in mind, I wish all of you here today those attributes of the turtle. I wish you long, productive, and satisfying careers in what is still a wonderful and honorable profession.

Congratulations to all the graduates and to everyone else who is here to help me congratulate them. And thank you very much for this opportunity to share the day with you.