

Law Quadrangle (formerly Law Quad Notes)

Volume 29 | Number 1

Article 7

Fall 1984

Rites of Passage, Rites of Spring: The Honors Convocation and Senior Day Speeches. The Rewards of Excellence

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Recommended Citation

Thomas E. Kauper, *Rites of Passage, Rites of Spring: The Honors Convocation and Senior Day Speeches. The Rewards of Excellence*, 29 *Law Quadrangle (formerly Law Quad Notes)* - (1984).
Available at: <https://repository.law.umich.edu/lqnotes/vol29/iss1/7>

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Rites of passage rites of spring

may 11 and 12, 1984

*Like the new leaves on the Quad-
rangle's trees, Honors Convocation
and Senior Day demarcate the end of
the Law School academic year. In
speeches made on these occasions
last May, Law Professor Thomas
Kauper and Federal Judge Patricia
M. Wald urged graduates to take the
risks that excellence mandates and
to live full lives both inside and out-
side the law. Their addresses follow
in abridged form.*

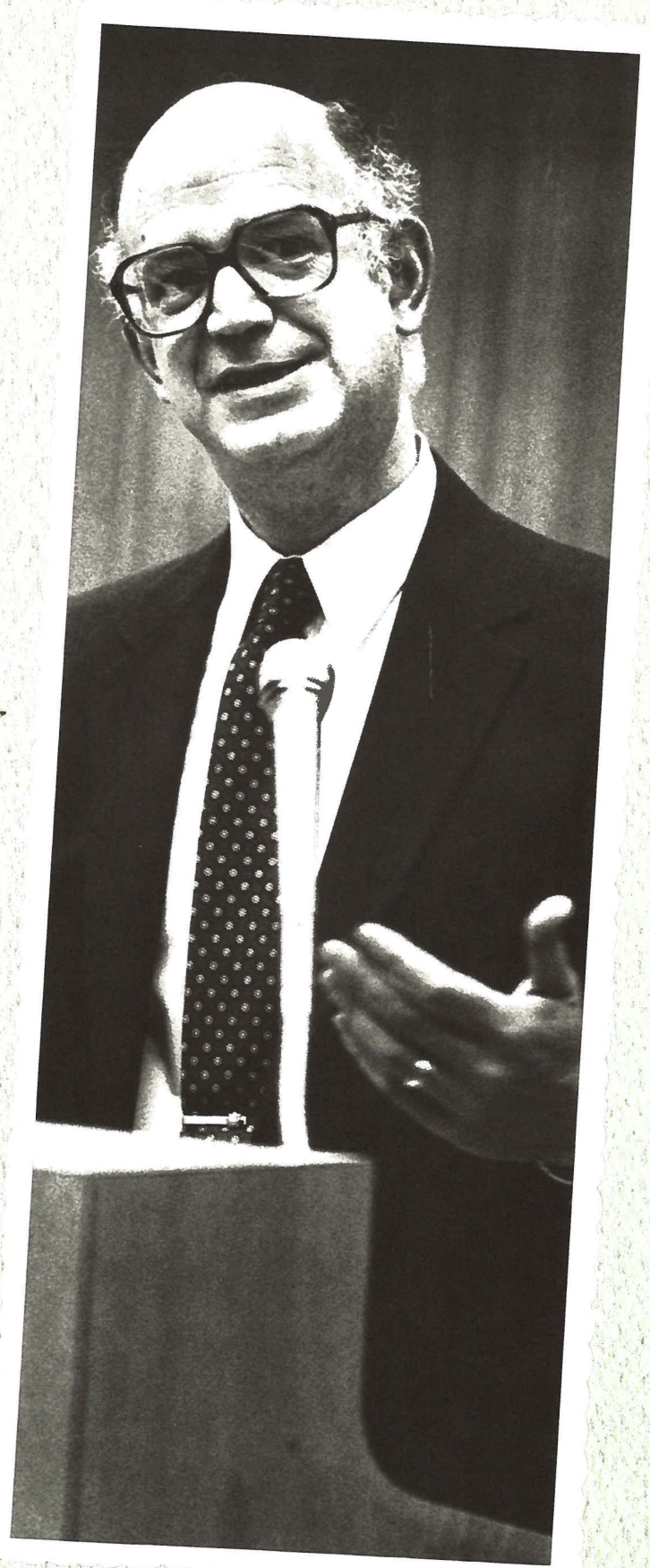
The rewards of excellence

by Thomas E. Kauper
Henry M. Butzel Professor of Law
University of Michigan Law School

I was confident that I was asked to speak this afternoon to explain to all of you the extraordinary benefits to American society of the breakup of AT&T, a subject dear to my heart. And seldom do I get such a captive audience. But when I called the Dean's office to suggest a topic, my telephone didn't work. Clearly the subject must be saved for another day. Then I thought we might reconsider *Pierson v. Post*, the infamous dispute over the corpse of a fox, or the *Rule in Shelley's Case*. But bright as this group is, I doubt that many remember who got the fox, or what a vested remainder is. While these deficiencies will undoubtedly haunt you the rest of your lives, they suggest a lack of common ground upon which to base these remarks. So I turn to something more traditional for such an event.

I begin, therefore, with congratulations to those we honor today for academic excellence and leadership in the Law School community. I think I can speak safely for the entire faculty (although even here I recognize a certain degree of peril) in expressing our pride in your accomplishments. Yes, we are proud, though expression of such sentiment from a member of the faculty may come as a shock to some of you. And particular congratulations to those who have supported these we honor, for you can legitimately share in their awards. For those whose daughters, sons, and spouses have finished the course, an envious hurrah! You have taken a big step toward financial independence.

Today we honor excellence. The honors we confer are but one of the rewards for ability, diligence, and accomplishment. Measured against a lifetime, these awards may seem small. Indeed, in one sense they are. There are greater rewards, as I want to discuss in my further remarks. But in another sense, these rewards are great indeed. They are the measure of a particular accomplishment. Seen through the eyes of the Law School as an institution, such convocations are an important ritual permitting us to make clear what we are all about. We today identify, and reemphasize, what we truly value.



For many of you, gatherings such as these are both accepted and expected. Most of you have been in school most of your lives, and recognition has come in the form of offices, grades, ribbons, plaques, and certificates bestowed in such solemn gatherings from at least junior high school on. They have been the measure of your success, the sought-for judgment of those who, we hope, have the ability to evaluate and to motivate. But for most of you, the days of ribbons and plaques are over (or nearly over). Professional life contains no such annual ceremonies. There are no grades, no prizes, and few public honors.

Excellence has its rewards, of course, and they will continue into the future. But the rewards, and the measures of success, are not as obvious as one might think. They include, among other things, high expectations, ever-increasing responsibilities, and the opportunity to accept new challenges. These are the "rewards" I will address, not only from the perspective of an academic but as one who has dabbled in a number of other careers. Lacking a single career, I hope to have something to say drawn from several.

To many in this room, the immediate rewards seem self-evident—a challenging job, a high salary, financial independence, the American dream in its material form. Those who have contributed to your support these many years will also view such rewards with approbation. You are, of course, right, at least in the short run—law school achievement brings obvious financial gains. Indeed, some of these immediate gains in the eyes of a few of us are extreme. And, as time goes along, financial gains and professional promotion provide some further measure of professional excellence. Such "paycheck recognition" is a time-honored method of giving excellence its due, and of stimulating even higher levels in the future. But for many—I hope most—it is not enough to provide individual satisfaction.

It is not enough because too often financial advancement measures longevity, not merit. It is a reward for loyalty, not achievement. Nor does it have the public or personal acclamation to which those nurtured in a system with regular grades, offices, and honors have become accustomed. One of the most common laments I hear from young lawyers is "I don't know how I'm doing." Superiors say little affirmative. Peers may not be able or willing to evaluate: they, after all, view you as competitors. Clients seldom say well done, even when you are successful in their behalf. They are more likely to complain about your bill! Even those who speak well of you to others will seldom say it to you. The lack of applause, of approval of superiors and peers, plants seeds of doubt, and breeds insecurity. You will of course know when you have done poorly; there will be no lack of criticism. But without the plus, confidence may wane.

A proven record of excellence has a high degree of expectation as one of its primary rewards. Professional excellence brings few plaudits precisely

because it is expected. Law firms, public interest groups, corporate enterprises, and government agencies which reward achievement through the employment process, and are willing to pay very substantial salaries, justifiably contemplate a high level of performance; they are not likely to be overwhelmed when their contemplations are met. Some will draw praise, but others will not, even though it is earned. For some, financial reward will be sufficient. For others, such rewards even if forthcoming will not satisfy.

In the end, then, excellence may have to be its own continuing reward, and it must be adjudged less by the views of others than by a developed set of internal standards. If there are no prizes to win, no accolades to be given, you must at least satisfy yourself. Whether preparing a brief, making an argument, or counseling a client, do not perform at a level which is simply adequate, although there often is the temptation to do so. Time is always short, and tasks may begin to seem routine. Professional life is also



lonely. No one may even know what you do every day. In these circumstances, it is your own view of yourself which will ultimately remove self-doubts. The final satisfaction lies in meeting your own expectations, not the expectations of others.

If high expectations by others are one part of your reward, added responsibility is another. Some of you will constantly strive for it. Others, assuming that this group is typical of others like it, will work hard to avoid it. My own experience with government brought me into constant contact with many for whom responsibility avoidance had become a consummate skill, if not an art form. I do not speak here of social responsibility, about duties to society at large. Clearly such responsibilities exist, and are the right of a society which has sought and nurtured excellence to demand. But that is a complex subject for another day. I refer today to professional respon-

sibility in a more limited fashion, what might simply be characterized as accountable decision making, decision making which affects someone other than one's self. And I address it today as a measure of and reward for excellence, for it is to those who excel that greater responsibility of this sort comes most quickly.

Many are those who want responsibility offered; the offer itself is a coveted accolade, and to turn it down may be highly disadvantageous. Fewer are those over the years who want to take the responsibility tendered, for added responsibility means greater burden. And fewer yet are those who carry

responsibility, however, is the fear of failure, of being unable to do what is asked and of censure as a result. Of greater public consequence, your failure may bring losses to others, whether that be clients, taxpayers or associates. The decision to file the *AT&T* case posed such risks, and some believe the jury is still out!

There is a clear dilemma here for the professional. Professional life without a significant degree of

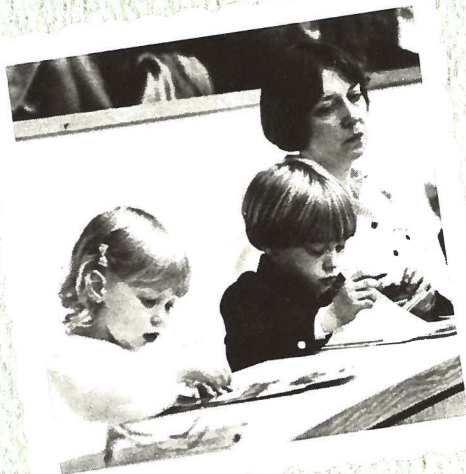


those burdens easily. Let there be no doubt. Professional excellence brings responsibility in ever increasing measure. From your first brief to your first sole client to supervision of others, from responsibility for your first motion to your first little case to your own multi-million dollar case, responsibility grows. Some will thrive on it, and find it the most satisfying element of professional life. But for many of you, added responsibility will be at best a mixed blessing.

Responsibility brings burdens; not the burden of added work, for in many cases it is those with least responsibility who put in the longest hours. Some of you will learn that lesson immediately. But direct and final responsibility cannot be left at the office. As my wife put it during our deliberations over the *AT&T* case, "Even when you're at home, you're not here." The greater the responsibility, the more it is likely to be an abiding presence. The greatest fear of

responsibility is likely to be less than satisfying, and, indeed, marks a failure to achieve the promise with which you have entered the "real" world. At the same time, the assumption of responsibility for which you are unprepared, or which is clearly beyond your ability, is itself unprofessional. It is not only unfair to yourself, openly inviting failure, but may cause untoward harm to others.

The secret, of course, is to find the level of responsibility which truly reflects the maximization of your



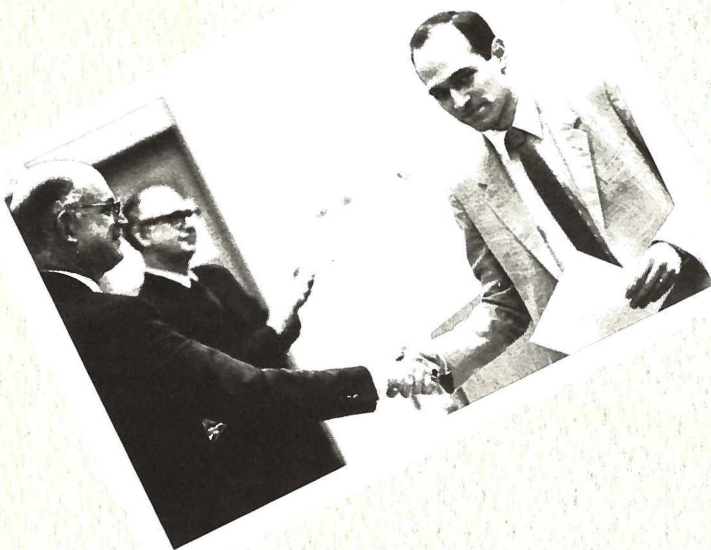
ability. To stop short will bring work which is increasingly routine, work which will not over time keep your interest or bring forth your best effort. The temptation for many—a temptation created by professional ambition or the lure of monetary reward—is to go beyond, to act out of impatience, without careful self-evaluation. You may win big; you may lose even bigger. In the end, you must find your level of responsibility on your own. Just as you must act in accord with internal standards of excellence, you must come to know the degree of responsibility you can assume consistent with those standards.

Finally, let me stress one additional reward of excellence—what might be called the opportunity for

a wide variety of professional experience. You will leave one of the nation's finest law schools with an outstanding record of achievement. For many of you, opportunities for significant and rewarding professional lives already exist. But beyond what might be called first-time opportunity, continued excellence may result in further opportunities, not simply to advance but to broaden experience in a variety of other ways. And many of you, I am afraid, will forgo them, depriving yourselves of a large measure of satisfaction and the broadening a different professional experience provides, and depriving others of the benefit of your talent.

Let me be more specific. Most of the young people in this room have spent many hours in the placement process. I have spent many hours talking with some of you about career decisions. What has distressed me time and again is the extent to which students stress the urgency of joining firms or institutions where they will advance and be satisfied throughout their professional lives. The initial job decision is viewed not as a first step into professional life but, assuming a modicum of success, as the final step as well. There seems to be a general assumption that career choices are made but once in a lifetime, and, moreover, that one needs to get about it as rapidly as possible.

Some will protest that this is not so, that they are taking public interest jobs, clerkships or government positions to broaden their outlook at the outset. I grant that this is so. But most with such plans have already decided to stay at such posts for a limited period, and to then enter into their real career. Those with such plans contemplate a two-stage, rather than a one-stage, career. Yet plans are largely made now. I applaud the variety of experience this represents, but such initial experience is not really what I am talking about. I am speaking of a new opportunity not three years from now but in fifteen or twenty years, of viewing one's professional career as a series of segments, each with its own rewards and satisfac-



tions. Not all choices need be made now. It may be better to proceed without "a lifelong plan," and to take opportunity as it comes. To simply use your achievements and degree as a first time entree, to be left on the shelf thereafter, may be to deprive yourself of a substantial part of what you have earned. The future effect of your degree may be little more than guaranteed membership in the University of Michigan Alumni Association, and an assured place on the solicitation list for the Law School Fund.

The clearest illustrations of my concern relate to public service. In 15, 20, or more years, some among this group will be asked, by virtue of a record of achievement, to ascend the bench, take a high government position or seek major public office. The opportunity might take a different form—to become corporate general counsel, or to head a public interest organization. Obviously not all such opportunities should be seized. But some should, and more should be at least seriously considered. Often they are not. The reasons are common, and are heard repeatedly. "I can't afford it; I'll lose my place in my firm; I'll lose clients; I can't shift my family." Each of these may be true, but are they as important as the speaker suggests? If you are really good, what matter that you leave your firm, or lose money for a few years (usually of course made up later)? Are family concerns really a justification? Have you even discussed it? Or are you simply sticking to a preconceived plan which brooks no adventure and no risk? Worse yet, are you simply comfortable in what you are doing, and perhaps fearful that a new challenge will result in failure?

There are no simple answers to these questions, even if notions of a duty to serve the public are set

aside. As with the assumption of responsibility, the answers rest upon self-evaluation and confidence. Too often, however, the negatives appear first. The preconceived plan places the burden of persuasion on the new opportunity, which, because its benefits are unclear, will generally fail to carry it. There is much to be said for the opposite approach. Fifteen or twenty years in one place ought to bear the burden of justification, in terms of continuing learning, self-satisfaction, and ongoing challenge. The first question perhaps should be: "Why should I stay where I am?" Judge Learned Hand, in a passage from the *Alcoa* case which some of you may recall, asserted that:

Unchallenged economic power deadens initiative, discourages thrift and depresses energy; . . . the spur of constant stress is necessary to counteract an inevitable disposition to let well enough alone.

This description of the quiet life of the monopolist may well describe the life of many at the midpoint in their careers, whether those careers be in practice, government or, yes, even teaching. What may well be needed to provoke their very best is interjection of a new source of stress. Continued excellence, and the self-satisfaction which accompanies it, needs stimulus. For some, this will require a willingness to take calculated risks, to engage in what may at first seem gambles. But for those with talent, the deck is stacked in their favor. Too seldom, however, do they realize it.

The days of blue ribbons are about over. In the end, professional life requires internal standards, not only of right and wrong but of excellence as well. These will not come easily, as you leave a system which has always measured you against *its* standards. Hopefully, internal standards have come in the process. So now you must grade yourselves. I hope 30 or 40 years from now, you can give yourself all "A's." And maybe, from time to time, you can even give yourself a ribbon. ☒

Thomas E. Kauper, the Henry M. Butzel Professor of Law, has taught at the Law School since 1964. Twice a graduate of the University of Michigan (J.D. '60, A.B. '57), he began his career with a clerkship to Supreme Court Justice Potter Stewart, and, in recent years, has twice served in ranking positions with the United States Department of Justice, first as deputy assistant attorney general in the Office of Legal Counsel (1969-1971) and then as assistant attorney general in charge of the Antitrust Division, the chief enforcement officer in that field.