

University of South Carolina School of Law Commencement Address
by
The Honorable J. Michael Luttig
Executive Vice President & General Counsel
The Boeing Company
May 5, 2017

President Pastides, Dean Wilcox, thank you for that warm introduction. And thank you for this honorary degree.

I first stepped foot into South Carolina shortly after I was sworn in to the United States Court of Appeals for the Fourth Circuit. The court was sitting then in the Palmetto State during what we called the “summer session.” I loved everything about this State, and everyone in this State! And I have ever since. That was twenty-six years ago.

I urged The Boeing Company to build its commercial airplane production facility here in South Carolina seven years ago, because I knew the intelligence, the integrity, the work ethic, the “can do” attitude and the heart and spirit of this State and its people.

Elizabeth and I now are residents of South Carolina. And I will look forward to the day when I hang this diploma in our retirement home in this proud State.

Thank you so much!

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Heartfelt congratulations South Carolina Law, Class of 2017!

We are here to celebrate you today—to celebrate your extraordinary achievement in graduating not just from law school, but from this venerable law school.

We are also here to celebrate with you, as you enter the honorable and noble profession of law.

To you parents, family, and loved ones, thank you for the abiding love and support you have selflessly given these future lawyers. This is as much your graduation as it is theirs.

To the faculty and administrators of this Law School, thank you, not just for teaching these students, but for inspiring them to lives in the law. You have performed a public service for which all of us are profoundly grateful.

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It is a special honor to be here today, as this great law school marks and celebrates its 150th year anniversary. For a century and a half, graduates of the law have received their degrees from this school and entered into the Profession of Law. It is from this deserved Institution that you will soon accept your degrees of Juris Doctorate, having been educated -- and educated well, I would emphasize -- in the law and in the Rule of Law.

And hear what I say this morning: Increasingly, this can be said of fewer and fewer graduates, of more and more of our law schools, across this Country.

The South Carolina School of Law opened its doors in 1867. Today, 150 years later, this law school -- which, in only moments, will become your alma mater -- is one of our Nation's finest institutions of legal education. If this was once a local or a South Carolina law school, it is far from that today. Its reach, and its influence, is not only national but, increasingly, global.

You will always serve the great People of South Carolina, but in the tomorrows that follow, you will provide your professional services not just to this State and this region, but to the community international. And, because this law school, unlike many, has never abandoned its mission to educate students in the law and in the Rule of Law, there are few places that would have prepared you better for this career representing clients around the world than the one from which you will soon graduate.

Because of its unwavering focus on its mission, the South Carolina Law School has produced thousands of accomplished lawyers and countless notable jurists over its century and a half of distinguished education of young professionals.

I had the privilege to serve over 15 years on the Federal Bench with some of your most distinguished graduates -- including my dear friends The Honorable Judges Donald Russell, Robert Chapman, William Wilkins, William Traxler, Karen Williams, and Dennis Shedd. They were some of the finest minds, and the finest people, that I have ever known. And the list of your distinguished alumni extends to every level of the State and Federal Judiciaries and to the highest Executive and Legislative offices in the Land.

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As assuredly as your alma mater has a revered past, it just as assuredly has a future that is to be envied.

Three days from now, in a grand structure that befits its great mission, reverable history and that glistening future, the new home of the University of South Carolina Law School will come to life!

In the magnificent surroundings of that impressive edifice will be taught and shaped the legal minds of tomorrow, as you and your predecessor classmates have been educated and trained for over a century in the surrounds of the original Petigru College, a stone's throw from this Historic Horseshoe.

And just like you, those students of tomorrow will leave this great Institution, well-educated in the law and charged with the responsibility to protect and preserve the Rule of Law.

President Pastides, Dean Wilcox, congratulations to you and the entire law school on the accomplishments represented in that beautiful new home of the University of South Carolina, School of Law!

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South Carolina Law, Class of 2017, you have earned the privilege to join one of the most honorable and honored, the most noble and nobilified, and the most venerable and venerated of professions.

It is these, because we in the legal profession are the stewards and guardians of the Rule of Law -- the foundation of civilized society and the guarantor of liberty. If this sounds as if the lawyer holds a special place in the constitutional order that is our democracy and that we are weighted by an almost-sacred responsibility, it is because we do and we are. We have a high appointment and we have a high charge.

It is into this special community that you have earned membership. It is into this special community that you are warmly welcomed today. It is, with your membership into this special community that comes the heavy obligation to preserve and protect the Rule of Law, which is attendant upon those granted admittance into our honorable and noble profession.

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This obligation has never been greater nor more incumbent. For you, the graduates of 2017, assume this obligation at a time when the Rule of Law itself is under assault.

It might not be overstatement to say that during your lifetime, this great Nation of Laws in which we are privileged to live will effectively decide whether it will live by the Rule of Law or whether it will live by the Rule of Politics, so all-consuming has become the politicization of our Country, our Institutions -- and even our Institutions of Law.

This assault has long been underway by persons and forces outside our profession, but if we are honest with ourselves, we must acknowledge that the assault is being waged, as well, from within our ranks -- and even by ourselves.

Though not so much here in Columbia at this great Law School, but elsewhere, our law faculties have all but forsaken the teaching of law, for the teaching of politics and social policy. They teach not law, but what they believe the law should be. And they champion a vision of law and the Rule of Law as merely something to be manipulated to accomplish the asserted higher ends of their own political and policy objectives.

We practitioners of the law, too, more and more pursue our clients' and even our own interests, less and less in pursuit and furtherance of the law, and more and more in understood undermine of the law, and in pursuit of our own political and social policy ends.

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But in the few minutes I have this morning, I want to focus not on these, but on our Institutions of Government, which are preeminently -- and constitutionally -- responsible for the preservation of the Rule of Law. For decades now, these Institutions have, themselves, waged a relentless war on that precious object of their responsibility, all the while professing lament at law's nearing politicization and seeming bewilderment as to its cause.

For years, our Presidents -- at least collectively -- have cynically appointed to judicial position not those who they are assured will uphold the law and are possessed of the constitutional view of the proper role of the Judiciary but, rather, those who they are assured share their own political, social, and policy views, and will enshrine those views in the Constitution, once appointed. This, in surrender to their respective partisan political party's demands and of course in abdication of their constitutional obligation. Faithful adherence to the law and to the Rule of Law has been relegated to a lesser qualification for the Office, if, one must wonder, it remains a qualification at all.

Our Congress must accept equal, if not greater, responsibility for the approaching politicization of our law. As we have seen repeatedly -- up to and including the most recent partisan spectacle, which began over a year ago in attempt to fill the seat of the last Lion of the Rule of Law, and ended only recently in the same partisan spectacle with which it began -- Congress now routinely demands that candidates for Judicial Office declare their views, social and political, issue by issue. And it withholds confirmation from those who do not share its own social policy and political views and pledge to constitutionalize those views as a condition of confirmation to the Federal Bench.

There is scarcely a pretense of concern for law or, for that matter, even the Rule of Law. Far from that, these guardians of law are breathtakingly explicit as to their partisan political objectives. Depending upon the person and his or her party allegiance, the call is that the High Court must remain, or be made so if it is not, either Republican or Democrat.

Is it any wonder that appointments to the courts resemble more, political campaign than judicial confirmation.

That this naked politicization of the Judicial Office inevitably leads to the naked politicization of the courts and thereby of law itself, cannot be gainsaid.

And of course it has done just that.

Where our Supreme Court, followed in lock-step by our lower Federal courts, has not led the politicization of law itself, it has obliged those who have, with decisions that are, anymore, barely disguised acts of raw political will. Increasingly, its judicial decisions are transparently more political result in search of legal reason, than legal reason in support of legal and constitutional result.

And it escapes no one's notice that what are supposed to be decisions of law, which under a Rule of Law should more often than not be opinions of unanimity, are, today, more often than not, opinions of fractious dissent. Fractious dissent not just along the partisan party lines of the Presidents who appointed them, but along the partisan political party lines of the individual Justices themselves.

What are the odds of such, let alone the consistent odds of such, under a Rule of Law, we ask.

So far down the path toward politicization are we, that from the High Court, the institution that, by constitutional design, is to be the ultimate guardian of the Rule of Law, we now hear only an occasional, faint protest that the Court is not a mere partisan political institution. Of late, we have even been told that Justices are not Republican or Democrat.

But these protests of attempted assurance are met with a universal skepticism that has been earned by the Court itself. "Perhaps it doth protest too much," has come the withering response.

Commenting on the mutually reinforcing effects of the politicization of the appointment process and the ever-increasing politicization of the Judiciary and the Rule of Law, the late Justice Scalia lamented, in almost resignation, that perhaps the confirmation process has become what it ought to be -- that is, if the courts in the end are to be more instruments of politics, than, as constitutionally intended, mere interpreters of the law.

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As for these three institutions and their contemptible roles in the politicization of our law, I would leave you with this this morning: If the triumph of politics over law is to be, the cause of that triumph will have been the constitutional failure of these three Institutions of our Government, in whom “We, the People” have entrusted the protection and preservation of the Rule of Law.

And the proximate cause of that triumph? That there will be none left with the moral authority to stem the tide of the law’s politicization. Those with the moral authority (and the primary constitutional obligation) to protect and preserve will have long ago lost that authority -- as a battlefield casualty of the partisan political war that they themselves have waged on the Rule of Law.

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Graduates, it need not be thus.

As lawyers now educated and trained in the law and in the Rule of Law by this great law school, I challenge and entreat you today to commit yourselves to the Law and to the Rule of Law. Pledge yourself to these, and to their protection and preservation. Vow, instead, that it will be the Law that triumphs over Politics and not Politics that triumphs over the Rule of Law. If you do this, you will have risen to what is now your high calling.

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“Congratulations,” graduates of the University of South Carolina, Class of 2017! “Thank you” again for inviting me to share this most special of days with you and your families.

And godspeed, as you commence the next chapter in your lives, in the venerated Profession of Law!