

Law Day Speech to new Lawyers at the Capitol May 1, 2019
By Justice Cunningham (retired)

This is the 13th consecutive year that I have attended the May Day ceremony in this historic chamber. It's been my honor to hear outstanding speakers speak from this podium **the best of which some of my fellow brothers and sisters of the Supreme Court.**

I'm also mindful that perhaps the greatest orator in the history of the United States, the great **William Jennings Bryan** stood on this very spot and addressed the joint meeting of the Kentucky General Assembly on **January 19, 1922**—over 97 years ago.

So, to be very honest with you today...**I've always wanted to speak at this event.**

Wendell Ford story; the old prospector; I always wanted to.

So thank you Chief Justice and Associate members and **Ms. Clary**, for giving me the opportunity this morning to do something I've always wanted to do.

Another reason this is special for me personally is, that I celebrate 50 years as a lawyer this year. You are just beginning. ***I'm falling into the sere, the yellow leaf, you are just bursting into full bloom.***

I have no magical words of wisdom for you this morning...no profound insights, but only, to paraphrase the great **Patrick Henry**, **"I have but one lamp to guide you here today, and that is the lamp of my experience."**

First, the good news. If I had it all to do over.....I'd choose to be a lawyer everytime. There is no greater boast in the grand pantheon of callings, than to say, **"I am a lawyer. I work for justice."** You are only a few minutes away from joining that noble band.

My limited time this morning compels me to share with you only **two** of the most important things my experience of being a lawyer has taught me.

First, if you want to have a happy life as a lawyer be nice to everyone. ***If you want to have a disastrous life that will lead to alcohol and drug addictions, ruined marriages, and mental illness, then follow those miserable barristers who follow the deceptive sirens of greed, win at all cost—hard ball. They follow the failing banner that nice guys finish last. I present to you exhibit A to totally destroy that myth this morning. The seven justices sitting right here are all in first place. They are all some of the nicest people I have ever met. I rest my case.***

Be nice to everyone—opposing lawyers, their clients, jurors and witnesses, and secretaries and law clerks. *Be nicer to the judge's secretary than you are to the judge; nicer to the deputy clerks than you are to the clerks; nicer to the people who clean the building, than the person who owns the building.* **Back on a rainy afternoon in the late 1890s, an elderly lady walked into a Philadelphia department store. Young clerk asked if he could help, and she responded that she was just getting out of the rain. He didn't try to sell her anything, but simply got her a chair to sit in. After the rain stopped, she asked for his card and left. It was Andrew Carnegie's mother. Andrew Carnegie was one of the wealthiest men in the history of the United States. Later the store received a letter from Andrew Carnegie requesting that the store furnish his entire castle in Scotland and that the young man who gave his mother a chair be sent to fulfill the order. Yes, always be nice to everyone.**

Make small professional courtesies, steeped in the aged tradition of our profession a part of you being nice, a part of your practice.

****Marvin Prince.**

Secondly, do not let technology swallow up who you are. Do not lose your humanity to technology. The toughest thing about suffering through my speech right now is having your cell phone off. **Steve Jobs, the founder of Apple, refused to allow his children to have an iPad.** **"We limit how much technology our kids use," he said, "We think it's too dangerous."** **Senator Ben Sasse in his book "Them" says, "we are likelier to spend time seeking validation from our digital "friends" than to spend time with flesh and blood friends."**

You would be offended if I told you that you were enslaved to your girl friend, or your husband, or to a senior lawyer in the firm. Yet, we become impervious to being enslaved to technology. The ones here today who will rise above all others will be the ones who know when to quit the texting and make the phone call; when to turn off the e-mail and communicate face to face. Construct an inner antenna to recognize that need. It's ironic that modern technology makes it easier for us to communicate, but we use it to communicate less successfully.

In November of 1972, I voted by absentee ballot from Vietnam in the presidential election between incumbent **Richard Nixon** and challenger **George McGovern**. President Nixon won that election 3 with 60.7 % of the vote, carrying every state but one. Years later I was sitting in a fancy restaurant with my friend David Whalin, congressional aide to Congressman Carl Perkins. A man walked in the restaurant and began greeting people at the next table. He looked vaguely familiar. "You know who that guy is?" David asked. "I don't know. He looks very familiar." I responded. "That's George McGovern" he replied. I was incredulous. It couldn't be George McGovern. This man was smiling, shaking hands, engaging people in conversation. He was warm and appealing. I liked him. The real George McGovern did not come through on the technology of television. Don't let that happen to you. God gave each and everyone of you a personality. Use it. Don't lose it to the cold screen and unfeeling touch of your cell phone or computer.

Technology is the great equalizer..making everyone bland and lifeless.

With all of that said I fully recognize that it is highly unlikely that any of you will remember anything I say here today. In fact, fifty years down the road, when you are where I am, I bet you the farm, you will not even remember who was the speaker here today. *If you do....call me. I'll give you the farm.*

But I promise that there are two things which you will remember about today.

1. **You will remember how you felt.** You will remember the joy of being here with your family and loved ones, who look on proudly. Picture taking. Snap, snap, snap. Seeing your friends who also made it to the top of the heap, great sense of accomplishment from all the hard work.
2. You will remember this moment just as you will remember the thrill of that moment you learned that you passed the bar exam. **Hold onto that feeling.** You are going to need it over the long, challenging journey ahead of you. Put it in a bottle, and put it on your shelf. And when those days come, as they do in any profession worthwhile, when you become stressed from the burden of other people's problems; when you are discouraged and depressed from a series of setbacks and losses; when you dread getting up to face a particular client, a particular hearing; a particular judge.....when you have second thoughts about being a lawyer..take a big swig of this feeling and be renewed with that energy and pride....knowing that any job that matters, any job dedicated to helping others, and problem solving, any job worthwhile...the job of being a lawyer, will have days and moments like that.
3. The second thing you will remember is that you took **an oath** here today. The oath that you will be giving shortly.....the magical oath.....the scant few words. One moment you are a lay person, and the next.....poof....you are a lawyer. **You ride up here with family members who you have been giving free legal advice to for the past three years, and now you can charge them for it on the way home.**

What is an oath? The dictionary defines a oath as ***“a solemn promise, often invoking a divine witness, regarding ones future action or behavior.” A promise. Giving your word.***

I have taken this same oath seven times in my life. When I became a lawyer, and six times being sworn in to public office. I’ve administered this oath to Governors, Lt Governors, other constiutinal officers, judges and lawyers, school board members and mayors. I’ve never let them get off with a yes or no answer. I make them repeat it. It’s not my oath; it is their oath. Ms. Clary will let you off with a yes or no answer here today. But.....it is still your oath. You are giving your word to us, to the people of Kentucky, and “so help you God.”, that you will **support the constituion of the United States and the Commonwealth of Kentucky.**

We live in the land of the free and the home of the brave. We remain free only if we remain brave. It is not large fleets of black bottomed ships, nor marching brigades of soldiers that keep us free. It is the constiution. **The executive branch doesn’t keep you free. Unfettered it will become tyranical; it is not the legislative branch which keeps you free, for unchecked it becomses an oligarchy. It is the judicial branch and lawyers which keeps us free, through the enforcement of our constitutions.** So, in effect, *you are freedom fighters.* Outside your wedding vows, it will be the most important promise you will ever make.

During my 12 years working in this beautiful temple of democracy, I kept on my wall in my office the old and tattered 8th Grade Diploma of my father framed and hanging on my wall. My father only had an eighth grade education but he had a juris doctorate in character. My character was molded out of watching the way he lived his life with honesty, self-discipline, integrity, charity, hard work, and total devotion to my mother and his children. **Character is caught more than it is taught.** But there was one verbal admonition he gave me,

not once, but many times as I was growing up. He gave it to me so many times that that I came to think that *even my Baptist conversion would not save me from eternal damnation if I violated it*. That admonition was simply this. **“Always keep your word....even when it takes the skin off your nose.”** That description quickly catches the attention of a small child. Every rambunctious child knows the pain of having the skin taken off your nose.

Please take heed that keeping your oath, keeping your word to support and uphold the constitution may sometimes take the skin off your nose.

For Example: *A prosecutor provides evidence to a criminal defendant who has committed a heinous crime knowing that such evidence is likely to cause that criminal to go free—because the constitution through the interpretation of the U.S. Supreme Court requires it. *It takes the skin off his nose.*

For example: a trial judge suppresses evidence in a serious criminal trial—because the constitution requires it. And pays a terrible political price. *It takes the skin off his nose.*

For example: *this Court right here late last year struck down two important laws enacted by the General Assembly, and both the executive and legislative branch announced war upon the court and the judiciary for their upholding their oath of office in supporting the constitution of the Commonwealth of Kentucky.

For example: *a legislator stands here in this chamber and votes no to proposed legislation because he knows or strongly suspects it is unconstitutional while a mob of voters scream out in the rotunda for him or her to vote yes. Knowing that his vote may well lose him the next election he remains true to his word in supporting the constitution. *It takes skin off his nose.*

I wish I could impress you with these remarks of the gathering storm clouds which threaten our republic. It's the growing disrespect for our constitution. Our country is imperiled. **More and more public officials, some of them lawyers, are treating the constitution like a**

side dish no one ordered. More and more are treating it like an impediment to power, rather than a birthright to democracy. We live in the most perilous times in our history, endangered not by foreign powers, but by our own our own neglect of our constitutions. The only thing which prevents us from being ruled by dictators or tyrants is our constitution. If the 34 lawyers at the 1787 U.S. Constitutional convention had not been lawyers first, and politicians second....we would not have a constitution. If you are not lawyers first and politicians second, we will not keep our constitution.

I'm not sure we're going to make it. And I'm not the only one. But there is hope. The hope is in our lawyers. **David Brooks, noted columnist who is not a lawyer, was referring to these perilous times when he wrote in the New York Times on Feb 22 of this year:**

In speaking of lawyers as the saviors of America he said, "The legal institutions instill codes of excellence that are strong enough to take the heat. Those people(lawyers) have enough character to live up to those codes. They are clinging tenaciously to old standards of right and wrong, to the Constitution, and the rule of law. And if we get through this, it will be because of people like them."

So, when you stand here in a few moments and Ms. Clary ask if you will support the constitution of the United States and the constitution of the Commonwealth of Kentucky.... In that fleeting moment please insert in your own passing thought, "even if it takes the skin off my nose." Then, and only then, will you have the right to call yourself a lawyer.

(pause)

In closing, this old warrior wishes you nothing but success and happiness in the exciting years ahead. We send you off with the words of Virgil, **"God's speed to your youthful valor, may you scale the stars."**