

CALEB NELSON: Thank you so much, Harper, for that introduction. It's an enormous privilege for me to be part of this event today. I know all of you are expecting me to touch on some of the big picture themes that I've covered in my courses for the last three years or so. And I'll do that in the second and third hours of my talk today.

In the portion of the talk about legislation, I'll spend some time listing each of the titles of the United States Code that Congress has enacted as such in the structure that you see in the code, contrasting of course, the titles that are merely editorial compilations put together by the Office of the Law Revision Council. We'll also explore the use of letters in section designations, like section 285A, without parentheses around the A, which obviously is different from subsection A of section 285.

I don't want to get too controversial at an event like this. So I'm going to leave aside whether the letters in section designation should be lowercase or uppercase. But we will have plenty to cover. In the portion of the talk about federal courts, we'll go through each of the federal judicial districts, just as I do for some weeks in class, asking a question that many professors here have called to my attention. Why do some states, like Illinois, have a Northern District, a Southern District, and a Central District while other states like Georgia have a Northern District, a Southern District, and a Middle District?

But I hope you'll forgive a brief digression first. This morning I took a look at the calendar. And I suddenly realized that you are nearing the end of your time in law school. So I thought it might be appropriate for me just to take a few minutes at the beginning to reflect on your time here before we get into the different analytical positions in the central versus middle debate.

I think back to the fall of 2020, which for most of you was your first semester of law school. I was teaching Civil Procedure to 35 of you from the closet of my son's old bedroom with a plush stuffed animal moose head on the wall behind me. The stuffed animal, of course, was mine rather than my son's. At the start of the semester, I had the vague idea of having a different strange object in the background each day on the theory that you might be feeling a certain amount of stress. And maybe a random curiosity that rotated would lighten the mood a little bit.

But as it turned out, the moose wanted to learn civil procedure too. So he stayed on the wall throughout the semester. That's why the softball shirts for section E, which I saw Matthew with one, have a moose with a tie, an extremely professionally drawn moose with a tie, which I'm sure inspired appropriate feelings and recognition from the rest of you on the softball diamond. Needless to say, Zoom was a strange experience for me. I'm sure it was a stranger experience for you.

But you made it work. And I think that's emblematic of your time here. As a group, your class faced highly unusual challenges and had to do unusual things, not least taking classes over Zoom, and wearing masks, and maintaining social distancing. Some of you had to do those things to protect yourselves or loved ones. But many of you did them to protect other people, maybe members of a classmate's family or those of us who work at the university and members of our families, or people in the broader community, or people whom you don't at all and have no idea that you were helping.

Early in the epidemic, I was struck by news reports about how rapidly the virus had spread from a conference for a company's executives to homeless shelters in the same city. Some people don't have the luxury of being able completely to protect themselves. And vulnerable people do breathe the same air as all the rest of us, unless, of course, they're protected by the magic plexiglass squares that we had in our classroom for your first two years here.

Air molecules obviously couldn't get around those. When you got vaccinated, and wore masks, and isolated yourselves when you felt sick, you were being genuinely altruistic. You were pitching in to help people whom you'll never meet and who will never be able to thank you. Thank you for making those sacrifices. In some ways, the interconnectedness that the pandemic demonstrated is bad. Viruses spread and so do crazy political views and other bad things.

But our interconnectedness also enables good things to spread. That's one positive lesson to draw from the pandemic. What you do can have ripple effects that help people who you don't even know you're helping. The culture of the UVA Law School is a small example of that point. The students who preceded you over the years got it started. But every one of you contributes to it. You help each other out in little ways, like providing notes when a student misses class, and in larger ways, like rushing to support a friend in need.

Most basically, from what I've seen in the classroom and in the halls, you show respect for each other and for everyone whom you interact with. In some important ways, legal education is a group project. And the culture of respect that you've created and maintained enables it to work. That culture of mutual respect isn't something that just one person can create. But each of you makes it stronger and more lasting. And every time you show respect for somebody, you generate ripple effects that help maintain that culture for the school as a whole and for future classes.

As you head out into the world, keep generating those ripple effects. The world could use them. You know better than I how to do that because you've done it here. But try to bring the culture of UVA Law School to the places where you'll be working and living. Whether you're interacting with people in your office, opposing counsel, or just people whom you encounter in day-to-day life, treat everybody with decency and respect. If you can spread a culture of respect to the larger legal community and to the world as a whole, we will all be better off.

Over the years, you're likely to encounter some lawyers who are creating the opposite sort of ripple effects. Try to make your ripples bigger than theirs. One of the unfortunate consequences of how you had to begin law school was that it made building a community with your classmates harder. In your first year, you were taking a lot of classes from your own apartments. Or you were sitting far apart in large auditoriums. And you also weren't able to get together outside of class in the usual way.

But I think you managed to build a community anyway. And you've strengthened it in your second and third years. Again, take that same spirit to your workplace after law school. You'll enjoy work more if you're working with friends. And your friends, and colleagues will enjoy it more too. Just as I hope you'll carry the culture of UVA Law School out into the broader world, so too I hope that you will continue to use the intellectual skills that you've honed here.

The world could use those too. For purposes of improving our polity, I don't mean just the skills of the advocate, trying to draw people to your position. Those skills are important and useful. But how good they are for the world depends on the merits of the position that people are being drawn to. I'm thinking more of the skills of a student, somebody who doesn't yet know what the right answer is, but is trying to learn.

At its best, legal education helps train you to do that, to evaluate different arguments, to sift through the evidence that's being cited for those arguments, and to arrive at something like the truth more often than other people might. At the same time, legal education encourages people to recognize weak points even in conclusions that they accept and to be willing to reconsider those conclusions in light of new information.

Non-lawyers often assume that all legal questions have definitive answers. But law students come to see more uncertainty, at least that's what I tell myself. Some amount of uncertainty does not mean that you had a terrible teacher. Whether you end up participating in public debates or just following those debates and arriving at conclusions for yourselves, it's important both to want to find truth and to be aware that finding truth can be hard.

In that vein, I think of Judge Learned Hand's observation that the spirit of liberty is the spirit which is not too sure that it is right. That's not a call for radical skepticism. Nor is it license to believe whatever alternative facts fit your ideology. To the contrary, I charge you to seek truth, but do that as you've done in law school, with open mindedness, intellectual honesty, and the desire to keep learning.

Ultimately, you'll come to better positions if you keep the habits of a student, if you try to learn as much as you can and fit your conclusions to the facts rather than the other way around, and if you remain willing to adjust those conclusions in light of the information that you continue to learn. A minute ago, I quoted Learned Hand on the spirit of liberty as the spirit which is not too sure that it is right. That's a very famous quotation.

But it's meaningful to me. When my father died, I included it in my eulogy for him. And in fact, so did another speaker at the memorial service. It fit his cast of mind. Let me tell you a little about the background for that quotation. It was May 1944, during World War II. A few years earlier, Congress had suggested designating a day in May as the annual 'I am an American Day', a day for cities and states to hold events that among other things, would recognize and celebrate newly naturalized citizens of the United States.

In 1944, New York City was holding its version of this event in Central Park. I understand from Professor Gerald Gunther's biography of Hand that 150,000 new citizens were going to swear their oaths at a crowd of more than a million people turned out for it. Hand, who at that point had been a federal judge for 35 years, was supposed to make brief remarks, and then lead the crowd in reciting the Pledge of Allegiance.

Hand's remarks were brief indeed. In the book of his papers and addresses, they cover two paragraphs. Paragraph one referred to the United States as a country of immigrants who had sought liberty, which Hand associated with freedom from oppression, freedom from want, freedom to be ourselves. Paragraph two asked, what then is the spirit of liberty? Here's what Hand said.

"I cannot define it. I can only tell you my own faith. The spirit of liberty is the spirit which is not too sure that it is right. The spirit of liberty is the spirit which seeks to understand the minds of other men and women. The spirit of liberty is the spirit which weighs their interests alongside its own without bias. The spirit of liberty remembers that not even a sparrow falls to Earth unheeded. The spirit of liberty is the spirit of him who near 2,000 years ago taught mankind that lesson it has never learned, but has never quite forgotten, that there may be a kingdom where the least shall be heard and considered side by side with the greatest."

I'll set aside the religious thrust of those last words. As Professor Guenther reports, Hand was for decades an agnostic. So I take those words more as an ideal for this world than as a reference to an afterlife. But be that as it may, I'm struck by what Hand said next. At this explicitly patriotic occasion, in the midst of a World War, Hand acknowledged that America had not, in fact, achieved the spirit of liberty that he described.

Thus he asked the crowd to recite the Pledge of Allegiance quote, "in that spirit of an America which has never been and which may never be, nay, which never will be, except as the conscience and courage of Americans create it, but which lies hidden in some form in the aspirations of us all." As I read those words, I wonder at the psychological complexity of what Hand had in mind.

He wanted people to have the conscience and courage to create a better and more just society. That project obviously requires passion, and commitment, and vision. But at the same time, he praised the spirit which is not too sure that it is right. Those two things don't necessarily go together. An awareness of fallibility would seem to undermine the passion and commitment needed to improve the world.

Yet Hand was surely correct that both things are important. And if different individuals have those traits in different measures, our society and our institutions need both. I think of Hand's remarks as fundamentally liberal, not in the sense of liberal versus conservative versus progressive, but in the sense of liberal versus illiberal. These days, some people scorn liberalism. But I worry that the people who do so are too sure that they are right.

So here is my charge to the class of 2023. Individually continue to spread the culture of respect that I associate with UVA Law School and have the positive ripple effects that our interconnectedness makes possible. Collectively act with the conscience and courage that Hand spoke of while preserving the spirit of liberty to which he aspired. Don't take that spirit for granted. Nurture it in your own intellectual habits and in your communities.

As your time in law school comes to a close, you should be very proud of what you have accomplished. You have faced real challenges. More than any other class, your time here was defined by the pandemic. Not only have you gotten through it. But you have lived, and learned, and excelled. Take pride in that. But don't stop. There is a spirit of UVA Law School, as well as a spirit of liberty. They reinforce each other. And you can help spread both.

Thank you for letting me be part of this occasion. And congratulations on your graduation. I know I speak for all the faculty when I say how proud we are of you. Thank you.

[APPLAUSE]