

# professor papke's remarks at the mid-year graduation

*Professor David Ray Papke addressed the Law School's mid-year graduating class at the graduation ceremony and luncheon on December 19, 2004.*

*Dean Kearney introduced Professor Papke as follows:*

*"David Papke is a native Milwaukeean and a product of the city's public schools. He departed at age 18 to attend Harvard College, and by the time he completed his formal education, he had earned an A.B. from that institution, a law degree from Yale University, and a Ph.D. in American Studies from the University of Michigan. Even after all that, it took several more decades for Milwaukee to succeed in reclaiming David, which it did a few years ago when Marquette Law School lured him away from a tenured position at Indiana University. David is both an accomplished scholar and a popular teacher, and I am delighted to be his colleague in legal education and at Marquette." The following are Professor Papke's remarks.*

It is a special treat for me to share a few remarks at today's graduation lunch. I realized in looking over the list of today's nineteen graduates that about two-thirds have studied with me. One took a course with me in the spring of 2002 and another course this past semester. Two took two courses with me just this past semester. One took three courses with me during law school and also worked as my research assistant. It is exciting to see each and every one of you finishing law school and to be a part of these graduation festivities.

When Dean Kearney asked me to speak today, he suggested that I limit my remarks to only five minutes. Asking a law professor to speak for five minutes is an outrageous request. It may

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in fact be genetically impossible for a law professor to limit his or her remarks on any subject to only five minutes. Please be patient as I exceed my time limit. I will not speak until the sun sets in the west, but I do have about ten rather than five minutes of comments.

I have heard a number of law school graduation talks over the years, and I would say in general they have concerned the great achievement of earning a law degree and the accompanying obligation to use that degree thoughtfully. I agree with both of those points. Earning a law degree is a demanding, draining experience, and the award of the degree carries with it important duties and responsibilities. However, with your indulgence, I would like in my remarks today to emphasize instead just what it is you have learned in law school and both the power and a few of the dangers of that knowledge.

What has law school been about? Some people go to law school assuming that they will learn the laws, and most friends and relatives of law students—at least those who did not attend law school themselves—probably believe law school is about learning laws. I think of this as the gas station vision of legal education. You drive your car into the gas station, pay your money, fill up your tank with laws, and drive away.

Fortunately, this is not what happens in law school. There are too many laws to learn them all, the laws keep changing, and even the ones that do not change are open to various interpretations. There will be times after law school when you will have to look up laws, but it will rarely be the case that you look them up in your law school notebooks or in those outrageous \$100 textbooks.

If it is not about learning laws, law school might be understood as learning "to think like a lawyer." This is a vener-

able notion, one familiar to all law school graduates in the room. I like the way it emphasizes a habit of the mind rather than merely reified laws per se, but, to be honest, I have never been crazy about the phrase. For one thing, law school hardly addresses all the ways lawyers think. We do not consider whether to take on a new associate, how to get a secretary to work harder, or even how much to bill a client. But certainly lawyers think about all of these matters. Also, many law school graduates do not become lawyers. Some become judges or legislators. Others have careers as educators, businessmen, or military officers. Indeed, some law school graduates use their legal educations simply to be better citizens.

Personally, I think of a law school education as the acquisition of a competence in or a mastery of the legal discourse. That is, a legal education provides a distinctive way of thinking, writing, and arguing in law and also a special ability to understand legal procedures and institutions. This discourse is extraordinarily important in our society. It is one of the ways, perhaps the most important way, our society gets from power and self-interest on the one side to fairness and justice on the other. The discourse is fundamental in the way we put ourselves together as a people.

But while a mastery of the legal discourse is an important and powerful thing to have, it should also be noted that there are dangers in and draw-

backs to this mastery. Allow me to share with you some cautionary words about the legal discourse from two successful lawyers turned writers. Being lawyers and writers, these two individuals might have a particular sensitivity to and

distance on what I am calling the legal discourse. Having mastered a second discourse, they might see more clearly the one they mastered first.

The first is Arthur Train, and my guess is that most people in the audience have not heard of him. Train grew up in Victorian Boston, and his father was for a time the Attorney General of Massachusetts. Train graduated from the Harvard Law School and then practiced law in New York City for over twenty years. He was an assistant district attorney and a member of several small firms. He became famous, meanwhile, when right after World War I he began spinning tales of the fictional lawyer Ephraim Tutt. Train published no fewer than 86 stories about Tutt and his New York City practice in the *Saturday Evening Post* during the 1920s and '30s. The stories also appeared in various collections—my favorite of which is *Tut, Tut! Mr. Tutt*—and Train also authored a mock casebook and fictional autobiography for his alter ego. Ephraim Tutt was America's most famous pop cultural lawyer prior to Perry Mason.

Train eventually abandoned the practice of law, but he did not reject the legal discourse. He thought its greatest strengths were its exactitude of definition, its accurate use of words, and its reliance on logic, and Train liked to point out that it was, after all, a country lawyer who had written the "Gettysburg Address." But Train also had a warning. He wrote in his autobiography:

"Lawyers labor under the curse of vicarious solemnity. In order to satisfy a client's requirements an attorney must conceal all his natural high spirits and interest in the lighter and more available side of life. Once a client perceives a gleam in the lawyer's eye, the client vanishes

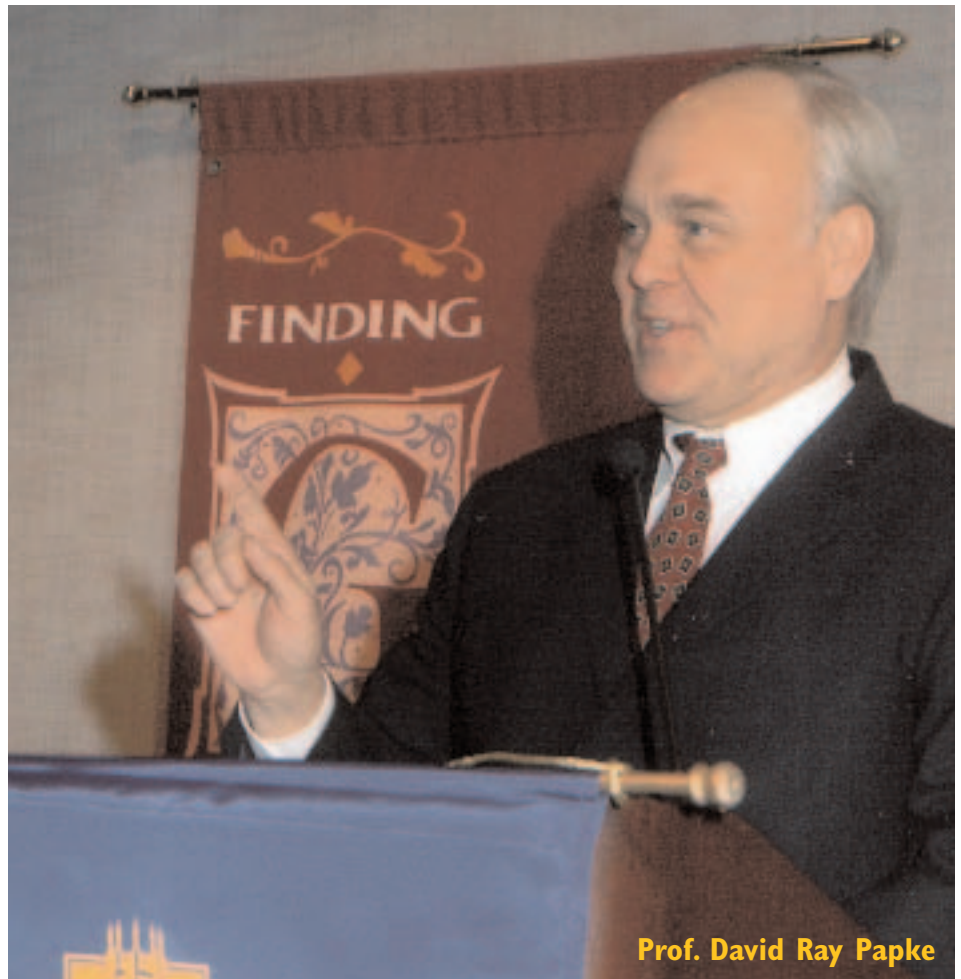
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through the outer door. Hence, lawyers become unduly cautious, taciturn, and unenthusiastic.”

My second lawyer/writer with words of caution is Scott Turow—a more modern and familiar figure. Turow wrote *One L*, an account of his own legal education, in which he reported that the better he became at legal argument and the more he used it in discussions with his wife, the faster his sex life went south. After law school Turow went on to work as an Assistant United States Attorney in Chicago, where he participated in the Greylord investigations. He then joined the Chicago law firm of Sonnenschein, Nath & Rosenthal, where he still practices. Turow published the novel *Presumed Innocent* in 1987—the first of the modern blockbuster legal novels—and he has published another bestseller every two or three years since then.

What words of wisdom does Turow have to offer? While acknowledging that law is an admirable way to order human affairs, Turow expresses concern that the legal discourse broadly understood conveys “an ineradicable impression that it is somehow characteristically ‘legal’ to be hard and even brutal.” Turow also warns that the legal discourse is often disdainful of ambiguity and uncertainty: “Too much of what goes on in law involves strategies for avoiding, for ignoring, for somehow subverting the unquantifiable, the inexact, the emotionally charged—those very things which pass in my mind under the label ‘human.’”

I hope my reflections on the legal discourse and especially the words from Train and Turow are of some use and benefit to you in the future. The legal discourse is indeed something special in our culture.



There is nothing trivial or marginal about it, and a mastery of it can be a tremendous vehicle for personal reward and self-actualization. There are lives of meaning to be lived in the law. But as Train insists, do not lose touch with “the more available side of life.” As Turow warns, do not assume you have to be “hard” or “harsh” to be a lawyer and also do not start thinking everything is certain and unambiguous.

In conclusion, I urge you to proudly display your mastery of the legal discourse, but I remind you to be true to the full range of your humanity as well. I speak for every man and woman on the law school faculty when I say it has been a tremendous honor to be your professor. I extend the heartiest of congratulations on your graduation and wish you great success and happiness down the road of life. •