Congratulations. I am delighted to welcome you to the profession of the law.

"The first thing we do, let's kill all the lawyers." That, of course, is from Shakespeare. It's generally cited as the first lawyer joke. Now that you're on the brink of becoming a lawyer, get used to it.

By the way, you and I have something in common. I graduated from law school exactly thirty-five years ago. We're therefore in the same reunion cycle. When you celebrate your fifth, I'll be celebrating my fortieth. When you celebrate your fifteenth, I'll be celebrating my fiftieth. Beyond that, you're on your own.

From where you sit now, the year 2041, when you'll celebrate your thirty-fifth reunion, must seem awfully distant. But, let me tell you, from where I sit now, thirty-five years ago was like yesterday. I promise you, it will be 2041 before you know it. Life is like a law school exam. Before you know it, you're on the last question and there's not enough time. When I think back to my law school graduation, there's only one thing I can remember—who spoke or what he or she said. Standing here today, I find that rather depressing.

We have something else in common. You and I both had the same teacher—David Currie. When I was a student, David was still relatively new to the job. You've had the privilege of studying with him in his final year of service as a full-time member of our faculty. For forty-four years, David has been a brilliant scholar, teacher, colleague, mentor, and friend.

David is one of the truly great legal educators and legal thinkers of the past half century. His presence has graced our Law School and our lives. Please join me, on behalf of thousands of University of Chicago Law School students who have had the privilege of learning from David Currie, in thanking him for all he has done for all of us.

You and I have another thing in common. When I graduated from the law school, the nation was at war.
Of course, it was a different war. But the war in Vietnam did have some things in common with the war in Iraq. By 1971, there was a lot of chatter about a phased withdrawal of American troops, and about gradually turning the fighting over to the South Vietnamese. As you may know, that didn't turn out too well.

By 1971, most Americans were wondering why we were fighting there, why the "coalition of the willing" was so small, and whether it was moral for us to inflict such awful suffering on the Vietnamese people in order to serve our own national interests. By 1971, the president was trying to stifle the New York Times and the Washington Post for publishing government secrets, criminal investigations of government leakers were well underway, and the NSA was unlawfully spying on the American people. Some things never change.

On the other hand, the public reactions to Vietnam and Iraq were somewhat different. By 1971, we had seen massive antiwar demonstrations in cities across America, students shot to death by national guardsman at Kent State University, and hundreds of college campuses shut by antiwar protests.

One of you asked me recently, "What's wrong with my generation? Why don't we seem to care?" I explained that there's nothing wrong with your generation—that a good old-fashioned draft wouldn't cure.

Many, perhaps most, of you came to law school at least in part because you believed the law would enable you to do some good in the world. Now, I know that many, perhaps most, of you have begun to recognize that even as a lawyer this will be harder to do than you thought three years ago. Do not despair and—most important of all—do not ever let yourself lose your voice. Although it may not feel like it at the moment, you have more power to do good in the world today than ever before in your life.

"The first thing we do, let's kill all the lawyers." You know, of course, that wasn't a lawyer joke. Rather, that statement was made in Henry VI by one of the conspirators in Cade's Rebellion—conspirators who were plotting to overthrow the English government and destroy the rights and liberties of the English people. "The first thing we do, let's kill all the lawyers." That speaks volumes about the role and responsibility of lawyers in a self-governing society.

Throughout American history, the most intense pressure for the sacrifice of civil liberties has come in time of war. Of course, this is only natural, for in wartime the national security is most directly threatened. In such circumstances, it is inevitable that grave questions will arise about whether we can afford our freedoms. The challenge is to decide how much sacrifice of freedom is warranted.

One of the lessons of history is that in time of war we not only compromise our liberties, but we do so excessively and to a degree we almost always come to regret. As Justice
Robert Jackson once observed, "It is easy, by giving way to the passion, intolerance, and suspicions of wartime to reduce our liberties to a shadow, often in answer to exaggerated claims of security." If we are to avoid repeating the mistakes of the past, we must understand why this happens. In large part, this is now your job, as lawyers.

To begin, we need a quick review of American history. I will briefly mention five episodes to illustrate the point. In 1798, the United States was on the verge of war with France. Less than a decade after we adopted the First Amendment, which provides that "Congress shall make no law...abridging the freedom of speech," Congress, in the throes of war fever, enacted the Sedition Act of 1798, which effectively made it a crime for any person to criticize the president, the Congress, or the government of the United States. So much for the First Amendment.

Sixty years later, during the Civil War, Abraham Lincoln suspended the writ of habeas corpus on eight separate occasions. As you know, the writ of habeas corpus is one of the bulwarks of Anglo-American law. If you are seized by executive officials, the writ of habeas corpus enables you to ask a court to decide whether your detention is lawful.

When the writ of habeas corpus is suspended, the president or his agents can arrest and detain you for any reason, or for no reason at all, and no court can intervene on your behalf. You are entirely at the mercy of the executive. During the Civil War, as many as 38,000 civilians were imprisoned by military authorities without any judicial review.

James Ji, '06, and Audrey Jeung, '06

During World War I, President Wilson pushed through Congress the Espionage Act of 1917 and the Sedition Act of 1918, which made it a crime for any person to criticize the government, the Congress, the president, the flag, the Constitution, the military, or the uniform of the military of the United States. Some 2,000 individuals were prosecuted under these laws. The punishment for criticizing the war or the draft typically ranged from ten to twenty years in prison. The effect was to stifle virtually all dissent.

In World War II, President Roosevelt ordered the internment of more than 110,000 people of Japanese descent, two-thirds of whom were American citizens. Not a single one of these men, women, or children was ever accused of disloyalty, espionage, sabotage, or any other unlawful act. But in an atmosphere of hysteria, they were shipped off to internment camps and held behind barbed wire for three years. As we now know, this tragedy occurred not because of any military necessity, but because of a desire to appease racism and curry favor with voters on the West Coast.

During the cold war, the United States stumbled into a vicious era of McCarthyism that was fed not only by a legitimate fear of Soviet espionage and sabotage, but also by manipulative politicians who exploited this fear for partisan and personal gain. By turning Americans against Americans, the "Red baiters" generated a frenzy of accusation, investigation, and persecution that ran roughshod over the Constitution.
As these episodes suggest, we have a recurring pattern of overreacting and needlessly abandoning our civil liberties. Indeed, after each of these periods ended, we came to recognize the magnitude of its excesses and promised never to do it again. It is easier to make this promise than to honor it. Once we are in the midst of a wartime atmosphere, it is difficult to strike the proper balance between security and freedom. Just as an individual in the midst of a personal crisis finds it hard to see clearly, a nation experiences the same problem, only worse, because each person’s fear reinforces the fear of those around him.

This is where you—as lawyers—enter the picture. Lawyers can and must play a central role in shaping these debates and guiding our nation’s policies. You have been trained to be clear eyed, principled, and rational. It is precisely because of that training that “the first thing we do, let’s kill all the lawyers.” You are the first and last line of defense against intolerance, hysteria, and repression.

Throughout our history, the best lawyers, like the best citizens, have opposed these excesses and helped to moderate them. During World War I, lawyers in the Free Speech League courageously defended those whose rights were attacked. During World War II, lawyers in the Justice Department resisted the internment of Japanese Americans, and more than forty years later a group of dedicated lawyers fought for and eventually won judicial vindication of the rights of those who had been unconstitutionally interned because of their race.

And during the cold war, lawyers like Thomas Emerson, Joseph Rauh, and Abe Fortas risked everything to stand up to the ravages of the House Un-American Activities Committee and other government agencies that were determined to humiliate and destroy American citizens because of their political beliefs and associations.

You should know that, over the years, individuals connected with the University of Chicago have played pivotal roles in these struggles. During World War I, U of C law professor Ernst Freund was one of the most effective and vocal critics of the Espionage and Sedition Acts.

Freund was the first to argue, even before Learned Hand, that free speech finds its limit in the realm of political discourse only in express “incitement to crime.”

During the cold war, University of Chicago president Robert Maynard Hutchins, a lawyer, was the nation’s most outspoken academic opponent of the witch hunts of that era. On one occasion, when the Illinois legislature demanded that the University of Chicago fire one of its more left-wing professors, a group of faculty members approached Hutchins and warned, “If the Board of Trustees dismisses Professor Lovett, you’ll receive the resignations of at least twenty full professors,” to which Hutchins replied, “Oh no, I won’t. My successor will.”

During the Vietnam War, your fellow alumnus Ramsey Clark refused as attorney general to indict the so-called Chicago Eight for conspiracy after the 1968 Democratic Convention. Several months later, when Clark’s successor, John Mitchell, reversed this decision, he charged that Clark’s “trouble was that he is too concerned with the rights of the individual.”

Another U of C Law School alum and faculty member, Harry Kalven, represented the conspiracy trial defendants...
on appeal, winning a reversal of their convictions from the Seventh Circuit.

Still another U of C Law School alum and faculty member, Edward Levi, as attorney general under President Ford, put in place a series of guidelines that sharply restricted the authority of the FBI to investigate groups and individuals solely on the basis of their constitutionally protected expression.

And still another of your fellow alums, Jim Goodale, was general counsel for the New York Times during the Pentagon Papers case and played a central role in crafting the vindication of First Amendment rights in wartime.

As we move forward in the next several years, we are going to see issues of this sort continuing to percolate through the political and legal systems. The issues may range from torture to electronic surveillance, from the secret detention of Americans citizens to the denial of habeas corpus. It will be lawyers who present these issues to the courts, the Congress, and, most important of all, to the American public. It is lawyers who will educate and inform citizens about the nature and importance of our liberties.

The profession you are about to join is fundamentally responsible for helping our nation strike the proper balance between liberty and security. As you move on in your careers, I hope you will remember that the first step of those who would deny our liberties is “to kill all the lawyers.”

**Have confidence in American values. Be fearless in your defense of liberty.**

It is, of course, much easier to look back on past crises and find our predecessors wanting than it is to make wise judgments when we ourselves are in the eye of the storm. But that challenge now falls to you. Have confidence in American values. Be fearless in your defense of liberty. As Justice Louis Brandeis explained some eighty years ago, “those who won our independence... knew that fear breeds repression” and that “courage is the secret of liberty.” Those may be the two most important lessons for you to bear in mind. Let that be the legacy of your generation.

Thank you.