Thank you very much, Dean Miles. It’s great to be here. I want to say thank you to the other alumni who are present, the soon-to-be alumni, members of the faculty, distinguished guests. Most importantly, though, I want to say congratulations to the class of 2017 and to your families and friends here this morning. It truly is a privilege to be part of this day.

Having spent the last several years in the White House, I could talk about all those grim topics that Dean Miles mentioned. I did use my rigorous training that I received here every day in the White House. Today, though, I want to talk about how being armed with that training and possessing a craft is only a start. I want to talk about what it means to be a lawyer in public service at this moment in our country and why, although you should savor that sense of accomplishment you feel today—it is well deserved and hard earned—your work is not yet done.

***

I confess to indulging in a bit of nostalgia in preparing for today’s remarks. I was thinking about the last time I was in this chapel. It actually wasn’t for my own graduation. It was three years later when I came with my then-boss, Attorney General Janet Reno, to attend a memorial service for one of her predecessors, the 71st Attorney General of the United States, the great former dean of the Law School and president of this university—Edward Levi. The dignitaries were all on hand to honor a man who was not only a fixture here in Hyde Park but who restored faith in the rule of law and the credibility of an institution—the Department of Justice—that I would
grow to love and which would have everything to do with forming me as a lawyer and a public servant.

Ed Levi became Attorney General in the throes of Watergate. It was 1975 and the Watergate scandals and independent counsel and congressional investigations had thrown institutions fundamental to our democracy into chaos. The norms and traditions of those institutions were upended by the actions of a president, and some who served with him, that did not respect the rule of law. Faith in government, the accountability of those in power, and the credibility of institutions that we rely on for the impartial administration of justice were all in question. Our institutions were being tested in ways we had not seen before.

Ed Levi took the helm at the Justice Department after the famous Saturday night massacre, the resignation of an Attorney General and his deputy, and after the firing of the man who was investigating the President. Levi is rightly credited with restoring faith in the Justice Department and its proper role—as independent investigator and prosecutor free of political influence. He did so by, among other things, establishing a set of guidelines to govern the most sensitive of investigations and to keep them free of political influence. He is said to be the model of the modern Attorney General because of two fundamental things: he believed deeply in the separation of powers and the independence of law enforcement from politics.

The first is, of course, enshrined in our Constitution, but the second is largely a function of customs that have grown up over time to ensure faith in the institutions we rely on to enforce and uphold the laws. Levi understood that these customs require custodians. He understood that the institutions entrusted with great powers must be guided by norms that check those powers and ensure public servants who are temporarily entrusted with power are held accountable for how they exercise it. This understanding allowed Levi to reverse a crisis of legitimacy in Washington by restoring the public’s faith in an institution and belief in the rule of law.

I begin with this reference to Ed Levi because he exemplifies the role the lawyer has in upholding norms and institutions at a time of crisis and change. The world you enter when you cross the Midway today holds tremendous challenges. Whether in public service or wherever you decide to apply your talents, you will be called upon to confront hard questions. You will have the opportunity—and I believe the responsibility—to navigate those questions while following practices that can make a difference between merely advising on what is allowed and doing what is wise.

Today I want to share with you a few observations from my time at tables in government. I want to make the case to you that the skills you leave with today are necessary, but not sufficient, to enable you to confront hard questions. I hope to persuade you that no one can teach you the craft of being a lawyer better than the University of Chicago, but you will also need to bring to it your own framework that extends beyond that craft to navigate a complex world and to act as the custodians we need today and in the future.

Today we are experiencing some of the most complex challenges in our nation’s history. Now, this might sound like commencement hyperbole to you. Or maybe not. Only time will tell—and you will help us decide.
The forces of globalization, technological evolution, proliferation of powers that defy traditional structures—whether it’s ISIS, an increasingly assertive Russia, a new microbe, or artificial intelligence. The problems you will face today tell me that Tom Friedman has it right when he says that we are living in the age of acceleration. The problems you face today will test our current conceptions of privacy and security, of the law of nations and the rules-based international order the United States has led since World War II, and of science and inequality.

It’s a complicated picture, but it’s also one that is filled with tremendous opportunity for you. My prediction is that in the not-too-distant future:

- one of you will counsel a client on the intellectual property of a vaccine for the next infectious disease;
- one of you will advise on issues of digital sovereignty confronting a start-up that another one of you will have started up;
- one of you will try to figure out how a system of laws, designed with human agency in mind, should apply when machines learn and are guided by artificial intelligence;
- one of you will wrestle with the responsibilities and opportunities inherent in a world in which huge volumes of data can be collected, digested, analyzed, and used for good and for ill; and
- all of you will think about the social compact enshrined in our Constitution, and when our government’s responsibility to protect us may or may not yield to the belief that you alone should have access to your data.

There will be questions that the law does not answer. And that is where you’ll need to go beyond the ability to slice and dice a text or Supreme Court case to exercise judgment.

What precisely does this mean? Well, the law doesn’t always provide pat solutions. The Constitution itself is full of open-ended dictates—searches and seizures must be “reasonable”; individuals are entitled to all of the process that is “due”; the President must “take care” to faithfully execute the laws. And in international law, we do not even have a Congress or Supreme Court to settle the question whether cyber operation violates another country’s sovereignty or constitutes the use of force.

To answer these questions, it is essential to know what the law is—but that is only the first step. You also need to know how to handle the unresolved issues and navigate the “gray.” When should you read the existing law in a way that the government deems as necessary? When should you not?

Lawyers don’t answer these questions by themselves—in many cases, it is the client who gets to make the call. But you will be forced to think through these issues. What are the ethical and moral implications? Is it consistent with our nation’s values and who we are? What precedent will you be setting that others might follow? Your clients will be looking for not only legal acumen—you have that—but rather a good judgment and sense of responsibility that is much more rare and harder to define. Society will need those who can navigate the gray space, those who, like Ed Levi, respect and uphold the practices, norms, and institutions that—while not written into law—are the connective tissue that keeps the rest of our rule of law muscle strong.

I am purposely drawing a distinction between that which we proscribe in law and that which we adopt as custom, a practice, or a model for our behavior. Because what’s allowed is not the same as what’s wise. It’s important for a lawyer to make clear when she’s providing legal advice, but there will be moments when it would be a grave mistake for her only to provide such advice.

Let me give you an example. The Constitution clearly gives the president a role in law enforcement matters: he’s the head of the executive branch and he has the power of the pardon. But as time has shown us, it is vitally important that the government’s power to deprive persons of liberty be divorced from partisan politics and without fear or favor. That’s why it is important to have practices like the Levi Guidelines.

Another example might be how the government handles transparency. There is a body of law that dictates when the executive branch must make information public. But even when there is no law requiring it, transparency about what is being done in the people’s name is important for the credibility of government’s actions, for confidence
in its operations and accountability of those elected and appointed to serve. Some measure of transparency may be the difference between public confidence and public cynicism. When it comes to national security, this norm of transparency may yield to legitimate concerns about security and safety. But lawyers and policymakers are the ones to strike that balance.

There will come a time when your ability to both practice the craft you’ve been taught and navigate the gray will have nothing to do with the LSATs, your grades, or clerkships and everything to do with your credibility and integrity. Just as our confidence in the government’s judgments rests on how credible the actors and institutions are that are making those judgments. This is particularly true when you can’t say everything about what you’re doing. There were times when I found myself in exactly that space—the terrorism operation that could not be fully explained, the intelligence tools whose efficacy was only as good as the secrecy surrounding them. In these times, the process used to reach a decision is critical. Were all of the key players with different views in the room? Were the subject matter experts relied on or were they marginalized? These are the questions that dictate when a decision has integrity. When I was at the Justice Department and on the National Security Council, I was conscious of being part of a strong tradition of professionals who viewed themselves and believed deeply in their role as stewards of an institution where process mattered.

These are examples from my government service, but regardless of your path, you will be looked to to not only answer the narrow question of what is allowed, but to be custodians of institutions that enable us to also get it right. And you will need more than raw legal horsepower;
that’s why I said at the outset that there’s more work.

You will need a framework to help you transcend the tactical.

Before I close, let me ask you to consider the following: Imagine you are seated at a table in your future life. That table could be anywhere—a boardroom, a courtroom, your kitchen table, or the table in the Situation Room at the White House. You will be well equipped to answer the tactical issue at hand. You will be able to determine what is “allowed,” to assess the risk inherent in a particular course; to guide your client on how the legal rules will apply. But, the questions that will often prove the most challenging will require you to look beyond these immediate considerations.

The framework you’ll need at this future table might include questions you ask yourself when you are confronted with an issue that may not accommodate black or white as easily as it fits itself into a shade of gray.

The first question—your professors will be happy to know—should be: is it legal? You’re taught here to weigh risks and costs and benefits—I suggest to you that the cost in malpractice fees of not making this your first question may well be substantial . . .

But if I leave you with nothing else today, please don’t let this be the only question you ask yourself.

In the Situation Room, we always started with the question of whether the options we were considering were lawful. But no matter what the issue—intervention in Syria or elsewhere in the world, disruption of a terrorism threat, cyber aggression—knowing what the law says was almost always just the threshold question, not the end of the inquiry.

While you are seated at this table, imagine the questions continuing to come at you; the stakes are exceptionally high and the time is exceedingly short. This is when you will need to reach for your framework.

In the Situation Room you might confront the following question: Are we or our allies facing an “imminent” threat; is the force being contemplated to disrupt that threat “necessary and appropriate”? The question comes to you: Do facts exist to justify the path the group is leaning toward? You ask yourself: Do they? Another way to put this is—and another question you might ask: Is the exercise I’m engaged in lazy? Is there rigor attached to this? What do the experts say? Are they even involved? Were considerations afoot that somehow left them out of the room along with dissenting voices? Are other voices trying to drown out others who “just don’t get it”? Are the arguments in favor leaning too heavily on a need for expediency and urgency? Will you be able to look back and say the decision was reached through a process with integrity? And even if the result is not perfect, will it be more legitimate because of the questions you asked?

Another question that will be familiar to any 1L: Is there precedent for the path you’re choosing?

Here in this imaginary room, at this future table, precedent should not be a straitjacket but a blinking yellow light that cautions you to avoid the result that is backed into.

Now some of you may be thinking that I’ve spent my time telling you to consider issues outside the law, to supplant hard analysis for values that divert you from a lawyer’s expertise. That’s not in your client’s interest, you may say, the cardinal sin of the lawyer.

That is not my intent. I would argue that the ability to counsel a client about issues beyond just the law—such that you can convince them that, even if the law says “yes,” the right answer is “no”—that’s the hallmark of a good lawyer.

Lawyers, particularly in public service, often confront decisions that are of such moment that, as Janet Reno used to say, you will be “damned if you do, damned if you don’t, so you might as well do the right thing.” Well, the “right thing” can be hard to discern. But the framework that you operate with can provide the ballast you need to navigate both what is allowed and what is wise.

The story goes that when Ed Levi met with President Ford to discuss becoming attorney general, Ford asked him what he thought the Department of Justice needed. Levi is said to have answered, “A soul.”

As you go forth from here with skills that will allow you to answer any hard legal question, I wish for you the joy and privilege of exercising a unique responsibility—to provide the soul we all need to navigate the world ahead.

Congratulations.
I thank my fellow speaker, Lisa Monaco, who has spent her public service career working tirelessly in some very demanding and important jobs. I must confess that I’m a bit envious of Ms. Monaco. President Obama called her Dr. Doom. I’ve always wanted Dean Miles to call me “Professor Doom.” Perhaps after this speech.

You earned your law degree during a momentous period for the law school and the nation.

You enjoyed the exceptional leadership of not one but three deans: Mike Schill, Geof Stone, and Tom Miles. The speakers that this class welcomed to the law school included President Barack Obama, Justice Elena Kagan, and 1985 Chicago classmates Senator Amy Klobuchar and former FBI Director James Comey.

You began law school in the midst of a controversial series of police shootings.

You leave during a momentous and unusual legal investigation into a successful presidential campaign. You were in law school when Justice Antonin Scalia died and when Justice Neil Gorsuch replaced him. And for that day last September when atmospheric CO₂ levels, at their seasonal low, exceeded 400 parts per million for the first time in human history.

Some might quibble with my examples, but I don’t think anyone will disagree with the general point that there was...
a lot going on in the world while you were studying to become lawyers.

Zora Neale Hurston once wrote, “There are years that ask questions and years that answer.” She was not talking about law school, but what graduate would deny that the years of law school ask a great many questions? Your years more than most.

It is the next few years and decades in which all of us will find or make some of the answers.

I take comfort that we are sending the class of 2017 out into the world. I have enjoyed your irreverence; underneath I see dedication and brilliance, and it gives me faith and hope for the future.

Soon, you will be concerned with the consequential tasks of mastering your first job and paying off student loans. But today I want to spend a few minutes discussing how you might use your law degree to answer some of the broader questions we face.

You’ve already shown your commitment to causes broader than yourself. That’s why many of you came to law school; why this class tallied over 10,000 hours of pro bono service. I just want to say something about the how: how lawyers can serve the public interest.

I want to do that by reminding you of three exemplary Chicago law graduates—a professor, a corporate lawyer, and a politician. Their years of the past may help answer your questions of the future.

The professor was Sophonisba Breckinridge. Born 151 years ago in Kentucky, her father and brothers were lawyers, but they resisted her efforts to study law. No woman had ever become a lawyer in the state. Nevertheless she persisted, studied in her father’s office, and passed the oral exam. She joined the bar by swearing, as all Kentucky lawyers did, that she had “never fought a duel with deadly weapons.”

The obstacles to her practicing law remained. She moved around them by coming to the University of Chicago, where she earned a PhD in political science and economics, then a single field. Despite graduating summa cum laude, she received no offers to teach. Yet she kept going.

She entered law school and became a member of our first graduating class in 1904.

Persistence rewarded, she received an academic job in the University of Chicago’s Department of Household Administration. That began an extraordinary career. Breckinridge and a few others essentially created the professional and academic fields of social work. She introduced the case method, borrowed from her study of law. Her work on poverty, immigration, juvenile justice, and women’s suffrage was heavily influenced by her legal training. She became the first woman a president ever sent to represent the United States at an international conference.

Her life exemplifies persistence.

Breckinridge once wrote: “If the progress seems often incredibly, unendurably slow, the social worker must pray the prayer of the poet, to be filled with a ‘passion of patience.’” The same is true of the lawyer. For the causes that matter to you, when the progress is unendurably slow and interrupted by setbacks, we need a passionate patience, the willingness to engage for the long haul.

Persistence also defined the corporate lawyer Earl Dickerson. His journey started in Mississippi, the grandson of slaves. At age 15, his mother put him on a train to Chicago. They did not have enough money for the whole trip, so when his ticketed destination came, he became a stowaway.
With the help of porters, he hid from conductors, spending hours by the coal bin and in the baggage car sitting on a casket. Years later, Dickerson explained his arrival: "I left the desperate life of a black person in feudal Mississippi. I fled, clothed with little else than a burning sense of outrage and a driving resolve, cradled in the Declaration of Independence, not to be bullied, browbeaten, or held hostage . . . ever again!"

He started law school here in 1915 and did extremely well. When the US entered the First World War, Dickerson volunteered and went to France as a second lieutenant, where his French fluency allowed him to work as an interpreter; he also saw plenty of combat. After the war, he returned to Chicago and finished law school.

The law school’s dean, James Parker Hall, and Professor Ernest Freund, a mentor of Sophonisba Breckinridge, wrote letters recommending Dickerson to three major law firms in Chicago. But none were willing to hire their first African-American lawyer. So, Dickerson opened his own law office.

An early client was Liberty Life Insurance. He would eventually become president of the firm. In 1937, as general counsel, he convinced the company to make a loan to Carl Hansberry to buy property in Hyde Park, notwithstanding the consequent violation of a racially restrictive covenant.

When Illinois courts would not listen to his challenges to the covenant, Dickerson took the case to the US Supreme Court, argued it, and won a unanimous decision. Carl Hansberry’s daughter Lorraine would go on to write the Broadway play *A Raisin in the Sun* about similar events.

The lawsuit is but one example of Dickerson’s lifelong commitment to civil rights. He never lost his outrage at injustice. He served on FDR’s Fair Employment Practices Committee. He served terms as president of the National Lawyers Guild and the National Bar Association, and served on the national board of the NAACP. When he was 72 years old, he was part of the 1963 March on Washington and was on the stage when Martin Luther King, Jr. delivered his “I Have a Dream” Speech.

Dickerson never saw an either/or choice between working as a corporate lawyer and working to reshape the world. With great persistence, he did both.

My final story is about a politician, Abner Mikva. Some of you may have met him when he delivered the Benton Lecture in your first year. He passed away last summer at the age of 90, after an exemplary life of public service. Mikva served at a high level in all three branches
of the federal government: in Congress, for the US Court of Appeals, and as White House Counsel.

His beginnings were more humble: the child of Jewish immigrants during the Depression, he attended college on the GI Bill. In law school, Mikva was editor-in-chief of our _Law Review_. A story: One day, the Chicago dean passed on to him a letter from the dean of the Harvard Law School, advertising the _Harvard Law Review_ for students whose law school did not have a journal. Mikva’s reply to the Harvard dean is something one of you might have written:

Thank you . . . for your generous offer, but the University of Chicago has a . . . law review of its own. But your proposal raises an interesting possibility. Perhaps we should merge our two law reviews. . . . [T]here might be a problem about the name, so I suggest a simple solution: We use the first half of our name and the second half of yours. Hence, the new journal would be known as the _University of Chicago Law Review_.

In law school, Mikva was interested in political campaigns. One night he stopped by his ward headquarters and said, “I’d like to volunteer.” As Mikva told the story: “a quintessential Chicago ward committeeman took the cigar out of his mouth and glared at me and said, ‘Who sent you?’ I said, ‘Nobody sent me.’ He put the cigar back in his mouth and he said, ‘We don’t want nobody that nobody sent.’” This was the beginning of Mikva’s political career and one of the classic lines in Chicago political lore.

Starting in the State House, he then won a Congressional district containing Hyde Park, where he lived. But because he was a Democrat outside of the Democratic machine, he saw his district gerrymandered in a way that made reelection impossible. This is how many promising political careers end. But Mikva was persistent. He moved—he moved from Hyde Park to Evanston to run in a different district. And he lost. But he ran again and won, and was reelected twice. He left Congress only to become a judge. He left the bench to become White House counsel for President Bill Clinton during a somewhat busy time. After that, he returned to Chicago and taught here for several years, serving as Senior Director of the Mandel Clinic, to great acclaim from the students.
His commitment to public service is reflected in an organization he created, the Mikva Challenge, a vital force in civics education in public schools, encouraging high school students to engage democracy, as by serving as poll watchers or campaign staffers. President Obama recounted last summer: “Ab. . . believed in empowering the next generation of young people to shape our country.”

Like many of you, Mikva started out in a very good law firm, but his career shows many other ways that a lawyer can contribute to the greater good.

All three graduates contributed to causes larger than themselves. They illustrate how many different careers are possible with your law degree. I hope their different paths are an inspiration to you, whatever path you choose for yourself. Also, their persistence.

They knew that the years that answer may come only after lifelong struggle.

I am excited to see what answers the class of 2017 will provide. Yet as I have gotten to know many of you, I am also sad to see you leave. You will visit often I hope. As another writer once said: “The pain of parting is nothing to the joy of meeting again.” Thank you.