

John Bingham Hurlbut Award Speech
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Thank you, Courtney, for that generous introduction. And thank you, graduates, for the privilege of addressing you today as the recipient of the Hurlbut Award. I really am overwhelmed by this honor, particularly because I have such deep respect and affection for so many of you.

You, the class of 2018, are an impressive group. In your time at Stanford, you have not only learned to speak the language of the law, including jargon like “supplemental jurisdiction” or “collateral estoppel”—you have also learned to *use* the law. You helped write a will so a Native American couple’s tribal regalia could be preserved by their grandchildren. You helped a prisoner protect the right to observe a religious holiday by winning an appeal in the Ninth Circuit. You won a ruling that the government wrongfully withdrew protection for the bi-state sage grouse under the Endangered Species Act. You’ve advanced the frontiers of knowledge with *Stanford Law Review* Notes on classified state secrets, false confessions by people with intellectual disabilities, and anticompetitive patent settlements. You’ve used your already-impressive advocacy and leadership skills in everything from writing op-eds to founding new organizations in order to advance dialog and to seek justice—both in the broader community and right here at the law school. I think there are few obstacles a team of SLS students can’t conquer. You’re basically the Avengers of law school graduates.

But as the Supreme Court wrote in a recent patent law case, quoting that well-known source of legal authority, the Spider-Man comics, “[I]n this world, with great power there must also come—great responsibility.” (I love being a teacher of intellectual property law—we get the best fact patterns.)

And yet giving you any advice about how to use your legal superpowers *responsibly* is a daunting task. What can I say that you haven’t heard before? And more importantly, how can I teach you anything new without interactive clickers and handouts?

You already know all the graduation speech tropes: Follow your passion. Don’t let others define you. Take risks. Wear sunscreen. They’re all good advice, but platitudes seem inadequate for this moment, when you are stepping out as some of the world’s most qualified law school graduates . . . into a world that desperately needs some superheroes. The real world might not be in as bad of shape as the world at the end of *Avengers: Infinity War*—which I won’t spoil for the ten of you who haven’t seen it—but the time you’ve spent at Stanford has not been easy.

In any recent month you could open the papers to read about another school shooting, another incident of racially charged policing, more allegations of sexual assault by prominent men across the political spectrum, more records being set by the changing climate, and escalating global tensions and threats to national security. Each month also seems to bring a new story about increasing political polarization, echo chambers, and lack of interest in underlying facts—making it seem ever more difficult to address these collective challenges.

I'd love to be able to confidently point you toward the best path for using your impressive legal skills to confront these problems. But standing here in front of you for the last time in my role as a teacher, I'm going to use the one phrase us teachers dare use only as a last resort: I don't know.

Still, I decided that my uncertainty is itself a useful message. Having a Stanford Law degree doesn't mean that you have all the answers. It's ok to say "I don't know." It's ok to change your mind. And it's ok to keep asking the important questions, since what I think your Stanford degree *does* mean is that each of you has an impressive toolkit for tackling them. You have the tools to recognize that the real world isn't neatly divided into good and evil, to construct the best arguments in favor of those who might initially seem like villains, and to seriously reflect about what you will use your superpowers for.

I'm still slowly learning these lessons. I started at Stanford not long before most of you. Just as some of you have surely worried that you were an admissions committee mistake, I worried that I was an appointments committee mistake. (Don't tell all these folks behind me.) My physics PhD work gave me a lot of skills that are pretty unique on a law school faculty, but I wasn't sure that the ability to make a carbon nanotube transistor would be all that useful in front of a classroom. I was convinced that you would start asking me your brilliant questions, I would have to admit, "I don't know," and you would curse your bad luck for being stuck with an IP professor who was just a few years out of law school.

You did in fact ask brilliant questions, and there were plenty of times when my answer was "I don't know." But nothing calamitous happened. In fact, I think part of why you chose me for this honor today is that I was always honest about what I didn't know—and then I followed up.

Sometimes I had to admit that the answer was embarrassingly simple. Sometimes you asked about obscure doctrinal puzzles, and I explained how I went about unraveling them. And sometimes your doctrinal or policy questions turned out to not have satisfying answers—which is a useful learning experience in itself.

When I was a budding physicist, I thought that scientists had already figured out most things about the world. But one of the things I learned in physics graduate school was that many basic questions still lack satisfying answers. I still remember being asked as part of

my qualifying exams to explain how an individual cell like an amoeba crawls across a surface, and to design an electrical measurement technique to learn more about crawling cells. At first, I was daunted by the idea that I could add anything to the quite complete explanation of cell motion that I was sure biologists already had. But it turned out that how amoebae crawl across a surface is pretty poorly understood. After more hours immersed in the biology literature than I'd like to admit, I was able to figure out what the current models were, what evidence there was for them, what questions remained, and how one might use some of the tools of physics to help fill those gaps.

Crawling cells might seem like quite a digression in a *law* school graduation speech. But I think recognizing how much uncertainty exists about the world of *natural* laws makes it seem less surprising that there should be so much uncertainty in the world of *human-made* laws. Sometimes there aren't answers, and sometimes the answers need refining in light of new evidence. Indeed, I think that a defining characteristic of a scientist is a willingness to change your mind in the face of contrary evidence—and that this is a virtue well worth embracing.

I want you all to take a minute, right now, and ask yourself: What is something you have changed your mind about, and why?

I don't mean something like what you want for dinner, or which course to drop at the beginning of the quarter—I mean some significant fact about the world. If we were in class, I'd make you write down your answer or talk about it with your neighbor, but you should at least really think about it. [PAUSE.]

Maybe some of you changed your mind after learning something from one of us. Perhaps you were convinced that the trend toward integrated healthcare will save money and improve patient outcomes—and then you became less certain after reading Dan Kessler's work on hospital competition. Perhaps you thought that the biggest challenge of mass incarceration was policing, and then you read Joan Petersilia's work on the staggering difficulties of prisoner reentry. Perhaps you believed the hype that information disclosure and checklists are cheap and easy fixes to problems of administrative discretion—and then you read Dan Ho's research on the inadequacy of posted restaurant grades and food safety inspection checklists.

I used to believe that the solution to public polarization on climate change was better science education—and then my own research with other scholars convinced me that more scientifically literate people are actually *more* polarized, so that other interventions are likely to be more effective for improving public discourse in this area.

I suspect many of you have also helped change each other's minds through the discussions you've had on campus: Late-night chats in Munger. Federalist Society debates. LLM students sharing details about other legal systems. Students of color sharing

their experiences of law school this spring. You're not just amazing students—you're also amazing teachers, and I've had students tell me that what most stood out from their SLS education was the things they learned from their peers, both inside and outside the classroom.

I got to see some of this in my classes on intellectual property law—which is a somewhat unusual area of law in that there aren't deep partisan divides and high-profile lawsuits against the current administration. At first glance, our IP system seems to be working pretty well: we keep having new patented technologies ranging from lifesaving medicines to the amazing computers we now carry in our pockets, and under our copyright laws we have a wealth of creative production ranging from self-published novels to the latest Marvel movies. Plus IP cases give us plenty of fun class props, ranging from the Super Soaker to the parody Louis Vuitton dog toy, the Chewy Vuiton.

But as noted by my favorite Marvel Avenger—Black Panther's genius little sister, Shuri—“Just because something works, doesn't mean it can't be improved.”

Those of you who have taken an IP class with me know that there's remarkably little credible empirical evidence on even the simple question of whether stronger IP rights actually encourage research investments. And I think this uncertainty and your lack of deep prior beliefs about the right answers actually made IP a wonderful area for us to have real conversations about the effect of legal institutions, ranging from the impact of the “Blurred Lines” copyright case on cultural appropriation to the impact of international patent treaties on the millions of people who die every year due to lack of access to medicines.

A number of you have told me that our class discussions caused you to change your mind about the effect of IP law on the issues you care about, and that appreciating the magnitude of the big-picture empirical problems helped you recognize how much good you can do by tackling little issues and getting them right. And I hope you will continue to take this willingness to discuss difficult topics with open minds to other areas of the law that may seem even more intractable.

I know you can do this because I saw it happen in my home this spring among those of you who came for our discussion group on science and the law. Our group included scientists and non-scientists, conservatives and liberals. You had opposing views on polarizing issues like gun ownership and government regulation of businesses. But you were willing to admit that you didn't have all the answers, to ask questions, and to listen to each other with respect. My favorite session was when we discussed nuclear energy policy, on which you were initially divided between those who thought it posed little risk and should be subject to less regulation and greater investment, including to address climate change, and those who thought the health and environmental risks were unacceptably high. But after reading more and discussing the topic, a number of you

changed your minds—even if the shift was just from having a strong view of what the right policy was to acknowledging doubt and uncertainty.

But I hope you won't stop there and use uncertainty as an excuse for inaction. Admitting that you don't know doesn't mean that you shouldn't worry about it, or that your job as a lawyer is nothing more than to come up with arguments to support whatever your client wants the answer to be. As you've learned from your time at Stanford, being a lawyer means more than having an arsenal of arguments. Being a lawyer means joining a *profession*, and one with a deep commitment to public service. You've already demonstrated an amazing dedication to public interest work, with more students graduating with pro bono distinction than for any SLS class in history. But the public service of lawyering is about more than pro bono hours. It's also about approaching *all* your work with integrity and a commitment to getting things right, whether you are ensuring the accuracy of your representations to a court or figuring out what aspects of a deal are actually most important to your client's interests.

As Stanford Law School graduates, YOU are as well positioned as anyone in the world to be contributing to the ongoing development of the legal system. And based on the many of you I've gotten to know, that makes me optimistic about the future.

So as you receive your diplomas on this glorious California summer day, I hope you will take the time to reflect on what entering the legal profession really means to you. Who is going to look up to you as their superhero? What will you do with that privilege? What will you do when you encounter a question to which you don't know the answer?

As I've told many of you, one of the best parts of teaching is getting to revel in your students' successes and to pretend that you had something to do with it. And my colleagues and I can't wait for each of you to come back and make us feel like we did.

Thank you again, and congratulations.