

Vermont Law School
2011 Sterry Waterman Lecture:
“A Life in Public Service:
Finding Heroes in a Small World”
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Being back in law school in September takes me back to the beginning of my own law school experience. Along with my new classmates, I was sitting in a lecture hall, waiting for my professor to speak the words that would launch my legal career. I was also praying that those words would not be the dreaded: “Ms. Brill, what do you think?”

Many of you will leave, in a few months or years, with recollections like this, a diploma – most likely – and with the traditional reoccurring nightmare of a newly minted lawyer: you will dream you’re sitting at a desk taking the final exam in contracts and you’ll realize that you haven’t opened the text book or attended one single class all semester. With that, you will be kin to generations of past law school graduates, myself included.

Where you and I differ is in the world that has shaped us, and the world that we shape once we leave.

I grew up in an era when one president opened China to the U.S., and was later impeached. In an era when another president struggled to free 52 American hostages in Iran. In an era when a third president began the end of the cold war with his cry: “Mr. Gorbachev: tear down this wall.”

You have come of age with the agonies and ecstasies of the last decade. The 9/11 attacks of ten years ago, and the ensuing wars. The mortgage crisis, the collapse of Wall Street, and the Great Recession with its continuing challenges. The election of the country’s first African American President. And even the great flood of 2011, which brought in its wake both devastation and a renewed community spirit, with Vermonters coming together to help one another rebuild.

So far this world has shaped you much more than you have shaped it. But I am here, as one who has traveled a similar path, to tell you that won’t be true for much longer. Soon, you will turn a bend, shift the balance, and start to remake the fo

enjoy. As the Wizard said to the scarecrow: “Back where I come from, we have universities, seats of great learning, where men go to become great thinkers. And when they come out, they think deep thoughts and with no more brains than you have. But they have one thing you haven't got: a diploma.”

With your diploma in hand, you will have many different and remarkable opportunities to create an exceptional career. And I know that the reason many of you are here, at Vermont Law School, and even at this talk tonight, is that you want to focus, at least in part, on public service. So let me tell you a bit about my path, and about those who inspired me along the way. With this, I hope to give you some ideas about how to find your own yellow brick road.

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more likely was guided by an old Yiddish proverb that advises: “God created a world full of small worlds.”³

Brandeis began his career focusing on local issues in the small world he found in his adopted home of Boston. There, he opened up a practice with a law school chum, and, from this

A few years later, I got to lead Vermont's efforts on tobacco issues. Vermont joined a group of State Attorneys General concerned that the tobacco industry had been engaged in deceptive practices, including advertising to children and misleading the public about the harm smoking causes.⁶ Because we carefully crafted our case as a public protection lawsuit focusing on consumer protection issues, we were one of the few states that survived the industry's intense litigation onslaught. We also worked with the Vermont legislature to pass a state law clarifying the industry's responsibilities to reimburse the state for the tobacco-related health costs of Medicaid recipients.⁷ These victories for Vermont were also victories for the larger, collective litigation effort by all the states. And they gave Vermont an important role negotiating a settlement with the industry.

In 1998, the Attorneys General of 46 states signed a landmark agreement with the largest tobacco companies that created restrictions on the advertising, marketing, and promotion of cigarettes, and recovered billions of dollars in costs associated with treating smoking-related illnesses.⁸ Eleven years later, in 2009, Congress – building on the states' efforts -- passed legislation giving the FDA authority to regulate tobacco products by setting product standards, banning some chemicals, and implementing advertising restrictions.⁹

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I had the great privilege to find, within the small world of the Vermont Attorney General's office, issues of national import like credit reporting and tobacco. I also had the great pleasure to work with some wonderful role models.

Bill Sorrell, the Vermont A

and his counterpart in Iowa, Attorney General Tom Miller, met with the United States Comptroller of the Currency to warn that lenders

Granted, much of this data is collected to

famous and influential dissent, arguing that “against the government,” Americans have “the right to be let alone.”¹⁷

The Internet Revolution makes snapshot photography and wiretap technology look like child’s play. We at the FTC are playing both defense and offense in our work to protect consumer privacy online in this new digital age. We have brought a number of law enforcement cases against companies that failed to protect the vast amount of personal information they held about consumers, including sensitive financial information.¹⁸ We have also brought law enforcement actions against companies that disclosed personal data that consumers expected to be private: we took action against Twitter when it made some private tweets public,¹⁹ and action against Google when “Google Buzz” revealed identities of some consumers’ most frequent email partners.²⁰ And we stopped several online and mobile app services aimed at children from essentially tricking them into revealing personal data, in violation of laws protecting kids online.²¹

In addition to our law enforcement work, the FTC has launched an extensive policy initiative to consider whether the lens through which we examine privacy is adequate in the face of the Internet revolution. We are reconsidering our old notice and consent approach to privacy. It is not reasonable to expect consumers to read and understand privacy policies – most about as clear as the Rule Against Perpetuities – especially when all that stands between them and buying a new flat-screen TV, or playing the latest version of Angry Birds, is clicking the little box that says “I consent”. (And if you haven’t yet learned about the Rule Against Perpetuities in property class, you are in for a treat!) At the FTC, we are also calling on companies to build privacy and security protections into new products and not just to retrofit them after problems arise. And we are calling on companies to be clearer about how they collect, use, and retain consumer information.

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When I worked to solve Vermonters’ problems with credit reporting agencies, I didn’t think of it as a first step on a path in public service that has brought me to a job that allows me a part in reworking the nation’s privacy laws. I was simply working in my small world where I found issues and people that interested and inspired me.

¹⁷ *Olmstead v United States*, 277 U.S. 438, 478 (1928).

¹⁸ See e.g., *In the Matter of Ceridian Corp.*, FTC Docket No. C 4325 (June 8, 2011), *In the Matter of Lookout Services, Inc.*, FTC Docket No. C 4326 (June 15, 2011); *In the Matter of Settlement One, et al.*, FTC Docket No. C 4330 (Aug. 17, 2011).

¹⁹ *In the Matter of Twitter, Inc.*, FTC Docket No. C 4316 (Mar. 2, 2011).

²⁰ *In the Matter of Google, Inc.*, FTC File No. 102 3136 (Mar. 30, 2011) (consent order accepted for public comment).

²¹ See *United States v. Playdom, Inc.*, No. SACV11 00724 (C.D. Cal.) (final stipulated order filed May 11, 2011); *United States of America v. W3 Innovations*,

And I now work to develop the law that frames the world in which you will start your legal career – as you will someday end up working on the law that frames the world of future students.

Find your own small world in which to practice law, where – if you look hard enough – you will discover issues that have great significance for us all. And in those small worlds, find some heroes, just as I found Bill Sorrell, Roy Cooper, and Louis Brandeis.

You will all have the foundation to do what you set out to do – not just because you will have a law school diploma – but because you will have studied at Vermont Law School, with its unique and deep commitment to public service. Some of you will go in and out of public service, or find ways to serve the public while at the same time pursuing other career paths. The important thing is that you give back in some way, and make a difference. On a small scale or a large scale. If precedence serves as any indicator, many of you will dedicate your entire careers to answering Brandeis’ call to become a “people’s lawyer.”

And one day, one or more of you will be at this podium speaking to the next generation that will follow you, about how you found your own yellow brick road.

Thank you.