It is my pleasure to welcome you, Class of 2011. You are a remarkably accomplished group, and the faculty and I are very pleased and proud to have you with us.

This is a momentous time in your lives, one to be savored and even celebrated. Yet I know the past few days have been tinged with sadness because of recent events in Georgia. As you probably know, Mikheil Saakashvili, the President of Georgia, earned his LL.M. at Columbia Law School in 1994. Obviously, we all wish for a just and peaceful resolution to that very difficult situation.

You join us as we celebrate the 150th anniversary of the founding of our school, and the extraordinary achievements of each of the 150 classes that have come before you. Like them, you are destined to occupy positions of leadership, in every field of activity and in every part of the world. Our goal is to train you not only to “think like a lawyer,” but to “think like a leader.”
In a fundamental sense, leadership is about making difficult choices wisely. Individuals and societies are defined by the choices they make, and those responsible for making these decisions bear a heavy burden — whether they are presidents, CEO’s, legislators, judges, advocates or, for that matter, family and friends.

At Columbia Law School, we offer rigorous training in decisionmaking. Today, I want to describe two habits of thought that will become second nature to you before long. First, you will come to see the significance not only of the decisions that you make, but also of the reasons that you give, and the broad-ranging implications that reasoning can have. Second, you will focus more on the process by which a decision is made — on who makes the decision, and how they make it.

I. The Power of Reasons

A Columbia Law School education should keep you from making the mistake that I made recently. My four-year old daughter, Eve, offered me a “dessert” that she made for me — plain sugar with a bit of water sprinkled on it. I was more polite than honest in saying that I didn’t want it because I was dieting. Indeed, I am dieting — but, I have to admit, not all that effectively — so I sometimes do eat dessert. When I do, Eve likes to remind me of the reason I gave for declining her creation. As the spoon is going into my mouth, she invariably says, “Daddy, you don’t want to eat that because you will get fat. You don’t want to be fat.” You can imagine that her commentary really enhances my enjoyment of dessert.

1. Principled Reasoning and Courts

The lesson here is to be honest and precise about your reasons. This matters in parenting and, of course, it is crucial in the law.
Here I am drawing on the work of Herbert Wechsler, one of the most distinguished scholars ever to serve on our faculty. It is especially fitting to remember Professor Wechsler today, since he arrived at Columbia Law School nearly eighty years ago — at the tender age of eighteen — as a first-year student in the Class of 1931. Professor Wechsler served on our faculty for over half a century.

One of his key contributions was to analyze what is unique about judicial decisionmaking. Unlike politicians, judges “are — or are obliged to be — entirely principled,” he said. “A principled decision … is one that rests on reasons with respect to all the issues in the case, reasons that in their generality and their neutrality transcend any immediate result that is involved.”

When a judge decides a case, she has to give a reason, and that reason is supposed to apply in other like cases too. Let’s say a judge dismisses a case against a movie star who has been prosecuted for drunk driving. If the judge says that a breathalyzer test is not sufficiently reliable evidence in the movie star’s case, then breathalyzer evidence can’t be used against less glamorous defendants either. According to his former student, Justice Ruth Bader Ginsburg, Class of 1959, Wechsler’s “point was that the way we decide things is very often … as important as what we decide.”

This is a foundational element of a legal education. With the Socratic method, we test the soundness and the limits of rationales for a decision. We ask you to decide a hypothetical case and to offer a justification for your decision, and then we change the facts in a way that casts doubt on the rationale you have offered. As Professor Kent Greenawalt has said, “The merciless examination of legal reasoning is … the law professor’s
profession.” Over time, it will become second nature to you to think through not only a decision you make, but also the reason you offer for it, kicking the tires to make sure you haven’t endorsed a rationale that, in different circumstances, will lead to unappealing results.

2. Finding the Right Reason: The Key to Advocacy
This lesson is important for advocates as well as for judges. In arguing a case, the key is not just to make the judge sympathize with your client, but also to suggest a rationale that the judge is comfortable adopting.

*The New York Times* faced this challenge in *New York Times v. Sullivan*, which Professor Henry Monaghan has called “the most important First Amendment decision of the last century.” The case was about an ad run in the *Times* in March 1960 describing abuses committed by police against members of the civil rights movement in Montgomery, Alabama. Sullivan, the Montgomery City Commissioner in charge of the police, brought a defamation suit based on inaccuracies in the ad, and won a $500,000 award from an Alabama jury.

When *The New York Times* appealed the case in the U.S. Supreme Court, the Justices had reason to be sympathetic. If the *Times* lost, how could any national newspaper print anything about the civil rights movement without fear of crippling expensive law suits? Yet the Times needed more than sympathy. They needed a principle that the Justices were willing to generalize.

Fortunately, the *Times* had a first-rate lawyer — none other than Columbia’s Herbert Wechsler. He argued that the First Amendment prohibits the old law of seditious libel, which
targeted libel against government officials. Wechsler argued that criticism of government officials is vital to our democracy. The Supreme Court agreed, holding that the media cannot be liable for defaming a public official unless they act with “actual malice,” knowingly or recklessly disseminating false information. This decision is a foundational pillar of our free press.

3. Articulating Reasons: Leading an Organization

Not only advocates and judges need to focus on the reasons offered for decisions. Any leader of an organization has to learn this lesson — whether in the private, public, or nonprofit sector. Senior executives are only the tip of the institutional iceberg, and they need to give effective guidance to colleagues. When they overrule a colleague, for instance, they should give a persuasive reason; unexplained fiats from on high will be grudgingly accepted, passively enforced, and ultimately ineffective.

While some issues are vetted personally by senior managers, much of the work is done without their involvement. How, then, can senior managers give guidance about issues they never see? Once again, we see the power of reasons. If the manager explains her thinking on issues where she is consulted, then her colleagues can extend the reasoning to situations where she is not.

For example, assume that a company is considering a transaction that is probably illegal. Let’s assume the CEO rejects the transaction. The reason she gives is important. If she says, “No, because I’m sure we would get caught,” that sends a different signal than if she says, “No, because that’s not the kind of company we are, and we won’t be involved in something like that.” In the first case, colleagues will keep looking for better concealed scams. In the second, they know that shady deals are off the table.
Steering your colleagues away from inappropriate conduct can be a challenge, and there is no truer test of leadership. Let’s change the example we were just considering, so that the transaction at issue is actually legal. Assume it will generate revenue in the short run but, in the long run, it could cause even larger losses by damaging the firm’s reputation. If you are the CEO, what should you do? What if your compensation this year will be larger if you do the transaction, and you might retire before the reputational costs arise? What if your competitors are all doing similar transactions? What if the reputational harm is uncertain to arise, for instance, because the media might not focus on the deal?

As you think about the kind of leader you will be, make sure your integrity guides your ambition, not the other way around. Make this an unalterable element of your philosophy, and communicate it forthrightly to your colleagues. Also, be careful about rationalizations. Highly intelligent people are unusually adept at justifying questionable behavior, and you mustn’t fall into that trap. If something feels wrong in your gut, don’t let yourself (or anyone else) talk you out of that intuition. Your reputation is your most precious asset, and you need to be true to your ideals.

Leaders should articulate reasons and goals not only to give guidance to colleagues, but also to improve their own decisionmaking. Indeed, whenever you make an important decision, it can be very useful, as a first step, to lay out your goals in order of their importance. What are you really trying to achieve? Once you are clear about priorities, the details of the decision usually follow straightforwardly. I’ve relied on this approach for both professional and personal decisions, and I commend it to you. I also should credit the friend who
suggested it to me, Richard Richman, Class of 1972, who founded and runs The Richman Group, one of the nation's largest residential property owners.

II. The Power of Process

Now let us turn from the importance of reasoning to the importance of process in decisionmaking. How is a decision being made? Who is making it? What information do they have, and what more are they seeking? How long will they take to make the decision?

The answers to these questions can determine whether those affected by the decision will accept it. Does the process have the mantle of legitimacy? For example, I’m sure you know that there is some controversy about the role of unelected judges in a democratic society. This is a very important issue, and a difficult one.

A separate question is about competence, rather than legitimacy. Under what circumstances are courts more effective than legislatures at making law, and vice versa? A crucial variable is the difficulty of generating relevant information. When legislators craft law, they invest upfront in analyzing how a host of scenarios should be treated. This is a challenging task, but the benefit is that broad rules are put in place, so private parties don’t have to spend as much time figuring out what they can, and can’t, do. In contrast, courts make law incrementally, since each decision gives guidance only on the issue presented in the case at hand. As a result, judicial decisions don’t give broad and detailed guidance in the way statutes can.

If it is particularly important to give clear notice of the law, then statutes have a distinct advantage over the common law. One
area in which notice is critical is criminal law, since we don’t want to punish people for conduct that they couldn’t have known was illegal.

A codification of the criminal law, known as the Model Penal Code, was perhaps the proudest achievement of Professor Herbert Wechsler. In this work, and in the commentaries that he later authored with Professor Kent Greenawalt, Wechsler made an extraordinary effort to anticipate and address an exceedingly broad range of issues.

For example, the Model Penal Code includes a general principle of justification. People will not be punished for behavior that is otherwise criminal, if they are avoiding a greater harm in circumstances where the legislature has not addressed the specific problem. Some applications of this principle are uncontroversial. You should be allowed to violate the speed limit, for instance, if you are trying to get someone who is gravely ill to the hospital.

But how far does this go? Is it legal, for example, to shoot down a hijacked airliner that is heading toward a government building? Under the justification principle in the Model Penal Code, the answer is “yes,” as long as more lives will be saved in the building than lost on the plane. But this is a very controversial conclusion. Indeed, the German Constitutional Court has come to the opposite conclusion, on the grounds that it violates human dignity for the State to take some lives in order to save others.

The Model Penal Code arose from Professor Wechsler’s work for the American Law Institute, a distinguished organization of academics and practitioners dedicated to law reform. Wechsler served for twenty-one years as director of the ALI.
Columbia’s connection to the ALI is strong. Wechsler’s successor as director, Geoffrey Hazard, an eminent expert in legal ethics, is a graduate from the Class of 1954. The current director of the ALI is a member of our faculty and a former dean, Lance Liebman. Several members of the faculty have led ALI projects, including Lou Henkin (on foreign relations law), George Bermann (on international arbitration), Petros Mavroidis (on world trade), Jane Ginsburg (on international copyright), and Jack Coffee, Ron Gilson, and Harvey Goldschmid (on corporate governance). These contributions spring from our faculty’s strong commitment to law reform and, more generally, to their passion for exploring real world implications of academic work on law.
III. Your Time at Columbia

You will learn a great deal from the faculty while you are here. The experience promises to be exhilarating and, at times, a bit daunting. I know you will take full advantage of this opportunity. I hope you won’t stress too much about it. One of the privileges of my position is that I spend time with our graduates, an incredibly accomplished group. I am sure they all would tell you that their grade in torts has had no lasting effect on their lives. Don’t worry about the minutia of your performance here. Instead, throw yourself into your work, and the results will be spectacular.

Be sure to enjoy the company of your classmates. Your time with them at Columbia is just the beginning. For the rest of your careers, you will travel a rarified path together at the pinnacle of the legal profession. You will be proud of their achievements. Someday, you will smile at the fun — even frivolous — memories you share with people who have become so prominent.

You have a priceless opportunity to learn from spectacularly talented peers, and to let them see you at your best. Your professional reputation begins now. Be sure you are remembered not only as exceptionally capable, but also as exceptionally decent.

While your professional life begins now, be sure your personal life does not end now. You will need to work hard in order to make the most of your talent, but you cannot, and should not, work all the time. A career is a marathon, not a sprint. Sometimes you will have to dig deep inside yourself to meet the challenges that life has thrown your way — both professional and personal — and you should keep a reserve of strength for those especially intense moments. You will weather these storms better, and you will also cherish the high moments all the more, if you have close friends and family to share them with you.
Remember that life is about more than work, just as happiness is about more than professional success. In my opinion, it’s a good bet that you will attain both — and so I wish you great success and great happiness at Columbia Law School.

Welcome to the Columbia family.