Commencement Address, Class of 2006

Boston College Law School

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Thank you very much, Dean Garvey, for your kind introduction.

I thank the faculty, the administration and you -- the graduating Class of 2006 -- for inviting me to speak today, and for your warm hospitality.

It is a tremendous honor for me to receive the Founder’s Medal from my alma mater, and I thank the faculty for bestowing this award on me. I am deeply humbled.

When I graduated from Boston College Law School in 1972, sitting where you are today, I did not imagine that one day I would receive the award named after the Reverend John B. Creedon, S.J., who founded this great law school, or that some day I would be asked to deliver the commencement address. Perhaps some day you too will stand on this side of the lectern.

I ask everyone in the audience to join me in warmly congratulating the Class of 2006.

Now I ask the graduating class to stand and express heartfelt appreciation to your family and friends for all the support they have given you for so long. You would not be here without that support. Do not forget that.

Dean Garvey assures me that you are well prepared for the bar examination, so I will forego any pep talk on that subject, other than to urge you to work as hard as you possibly can to prepare for it. Do not take it for granted. Give it your all.

Today you join more than 10,000 alumni of Boston College Law School who practice law throughout the United States and the world. They too, made it possible for you to graduate from an outstanding law school by their generous financial and other support. Dean Garvey did not ask me to say this – but remember that generosity, and help make it possible for those who will follow you.

Today you embark on the next phase of your journey in the law, and in your lives. You have accomplished a very important goal. There will be other important goals in your future.

On whatever path your career in the law takes you, remember the firm grounding in ethics, professionalism, and scholarship that you have received from Boston College Law School. Some of the specifics you have learned may fade with time – the rule against perpetuities, anyone? – but what will stay with you – must stay with you -- are the ideals and values that are now part of you -- dedication to professionalism, to public service, and to serving the legal needs of your fellow human beings.

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This afternoon I want to talk with you about the role of the lawyer in society – your role in society. About the challenges that now confront lawyers and our profession. And about how we must respond to those challenges.

I begin with the importance of an independent legal profession in America.
You will learn, if you have not already discovered, that our profession is now under unprecedented attack, unlike anything I have seen in my thirty-four years as a lawyer. During the past several years Federal government agencies have been adopting policies and regulations that, either inadvertently or by design, have the effect of diminishing and marginalizing the role of the lawyer in society.

Those of you who have taken courses in which you have learned about the Sarbanes-Oxley Act and regulations thereunder imposing on lawyers new obligations relating to client misconduct, or read about the Gramm-Leach-Bliley Act in which the Federal Trade Commission (unsuccessfully as a result of an ABA lawsuit) tried to regulate lawyers as “financial institutions,” or the new Bankruptcy Reform Act of 2005, which makes lawyers liable for errors in a debtor-client’s asset schedules, and, astoundingly, restricts advice that lawyers may give clients, know what I am referring to. These developments, and others, reflect a dangerous trend for our profession and society.

Perhaps the greatest challenge relates to current federal government efforts to erode the attorney-client privilege, which has been a bedrock principle of our common law system for more than 700 years. The attorney-client privilege belongs to clients, not to lawyers. It protects the American people – and all of us.

It has made our legal system function fairly and justly since the beginning of our country. Fairness and due process are the hallmarks of America – they define our national character for us, and for the world.

The attorney-client privilege is the doctrine by which a client confidently and confidentially entrusts to his or lawyer the worst news, so that the lawyer, thereby fully informed, can faithfully and effectively counsel the client on how best to comply with the law, for both the client’s protection and ours.

Today the attorney-client privilege is under attack.

The Justice Department and U.S. Sentencing Commission have adopted policy that encourages prosecutors to require – many say coerce -- corporations and individuals to waive the attorney-client privilege in order to qualify for “cooperation credit” in charging and sentencing decisions. The ABA firmly opposes the policy. The ABA Task Force on the Attorney-Client Privilege was appointed in October 2004 to confront this issue, and I reappointed the Task Force when I became ABA president nine months ago so that it could continue its efforts.

The Task Force has been negotiating with the Department for twenty months to cease this dangerous practice, one which impinges on both the 5th and 6th Amendments to the US Constitution, and which undercuts fundamental due process and fairness in our justice system.

In April 2006, as a result of sustained efforts and persuasion by the ABA, joined by an extraordinary coalition of organizations ranging from the US Chamber of Commerce to the American Civil Liberties Union, the US Sentencing Commission, unanimously and prudently reversed its policy on this issue, by removing from the Sentencing Guidelines language that had encouraged prosecutors to force waiver of the privilege.

The Justice Department has yet to demonstrate similar good judgment. The ABA and the coalition will continue to negotiate with the Justice Department, an agency of the Executive Branch of government, to urge abandonment of this harmful practice. On May 2, 2006, I sent a comprehensive letter to Attorney General Alberto Gonzales detailing the seriousness of the problem, and setting forth the ABA’s proposal that would both protect the privilege and enable prosecutors to obtain the factual information they need to enforce the laws. No response has been made to the letter.

If our negotiation efforts fail, the ABA will look to the other two branches of our government
to Congress for legislation and, if necessary, to the Judiciary for a court ruling on this fundamentally important question.

In recent meetings with the US Senate’s Judiciary Committee Chair, Arlen Specter, and other members of Congress, we urged the scheduling of Senate hearings and congressional action to preserve the attorney-client privilege.

Why am I talking with you about federal government attempts to erode the attorney-client privilege?

Because it is part of a broader trend that I, as President of the ABA, am greatly concerned about – a concentrated effort by those who are trying to change the fundamental role of the lawyer in society – to diminish or marginalize that role.

Clients who are concerned that confidential information they provide to their lawyers may be disclosed to the government will stop maintaining business records and confiding in their counsel. This is now happening across the country.

And if lawyers are no longer consulted by clients, if lawyers are removed from our role as independent advocates for clients, with complete knowledge of a client’s confidences so that we can effectively counsel, in time lawyers will become largely irrelevant.

And the fundamental and historic role in society of the lawyer as trusted counselor, problem solver, advocate for social causes, and defender of freedoms, will be greatly diminished – to the great harm of society.

There are interest groups and Federal government regulators in our country who would like to see such a greatly diminished role for our profession, and a greatly diminished role for our judiciary. Why?

Because it is lawyers who stand between the people and the excesses of government and business. An independent legal profession and an independent judiciary protect not only the people’s rights, but democracy itself.

The lead paragraph of an article that appeared in the May 12 edition of the New York Times reported that the President of Egypt, “dispatched thousands of riot police officers into the center of [Cairo] on Thursday to silence demonstrators intent on showing support for judges who were demanding independence from the president. The police clubbed men and women trying to demonstrate as well as half a dozen journalists...”

You might be asking, what does the beating of people who want an independent judiciary in Egypt have to do with the US justice system? We are in America, where that kind of thing doesn’t happen.

I mention what’s happening in Egypt for several reasons. First, because we have to be mindful of what is happening in other countries regarding attacks on the judiciary.

Because, while the attacks on an independent judiciary and independent legal profession may take different forms in countries like Egypt, other forms of attack and intimidation are occurring daily in most nations of the world, including the United States.

Because any harm to the legal profession or judiciary in one country is harm to the legal profession and the judiciary in every country, including ours.

And because any harm to people in other nations due to the failure of the rule of law because of a weakened legal profession and judiciary is harm to the people of our country and to
humankind, of which we are all a part.

That is why I have been urging my counterparts in other nations – the bar leaders of the world – to recognize the critically important role of an independent legal profession to maintaining the rule of law, and to think of ourselves as part of one, united, profession throughout the world – not islands, not separate professions, but one profession. Because united, and helping each other, the legal profession will be able better to withstand governmental and other attacks on the rule of law, on the judiciary, and on the justice system throughout the world.

To that end, the organized bars of the world, following an extraordinary meeting that took place in Paris, France, that I attended last November, have been adopting the Statement of Core Principles of the Legal Profession that I authored and that was unanimously adopted by the approximately 100 bar leaders who attended the Paris meeting.

The Statement of Core Principles simply and briefly, but firmly, states that the legal profession throughout the world, in the interest of the public, is committed to these core principles: an impartial and independent judiciary, without which the rule of law cannot exist; an independent legal profession, without which the rule of law and freedom for all people cannot exist; and access to justice for all peoples of the world, which is only possible with an impartial and independent judiciary and an independent legal profession. And that these principles shall not yield to any emergency of the moment that is sought to be used as pretext by any government to restrict freedoms.

Since the Paris meeting in November 2005 dozens of bar associations around the world have adopted the Statement of Core Principles, and I continue to receive word of such adoptions each month.

In our own country the judiciary is now under unprecedented and irresponsible attack from ideologues, extremists, powerful interest groups, and irrational politicians who seek to undermine respect for an independent judiciary, for political or other gain. Judges who are sworn to do justice are attacked as “judicial activists” from both the right and the left. But the mantra of “judicial activism” is simply the rant of ideologues who disagree with a judge’s decision.

Irresponsible calls – by elected officials, and others -- for impeachment of judges for unpopular decisions, threats of judicial budget cuts and withholding of judicial salary increases, and other forms of retaliatory intimidation for "wrong decisions" pose a grave danger to our republic. Equally dangerous are congressional attempts to strip jurisdiction from courts to hear constitutional claims in controversial cases such as those involving the pledge of allegiance, religious expression, the definition of marriage, and writs of habeas corpus.

In some states we have astounding initiatives such as the crazy one in South Dakota, which will have on its ballot this November a referendum called Jail 4 Judges. This provision would eliminate judicial immunity, would render judges personally liable for making decisions that someone doesn’t agree with, and would subject judges to removal from the bench for decisions that a special grand jury determined to be a violation of law. Such a measure poses a serious threat to the independence of the judiciary.

In the Congress, some are now calling for the creation of an Inspector General to monitor judicial conduct – a development that Supreme Court Justice Ruth Bader Ginsburg in an interview several weeks ago called "scary." Such a provision directly infringes on the separation of powers doctrine.

The organized bar, and all lawyers, must counter ideological and extremist attacks on the one branch of our government that truly protects the rights and freedoms of individuals. As our Founders warned, without an independent judiciary and independent legal profession, there can be no democracy.
Shakespeare had it right in Henry VI, part 2, when he noted that the surest way to create chaos and unleash tyranny throughout the land is by killing all the lawyers. In the 21st Century, it is a different kind of death to lawyers, and judges, that we are dealing with – death by marginalization, by diminishment, by containment and removal and, in the end, by irrelevance. Make no mistake -- attacks on the independence of the legal profession and judiciary are a direct assault on our justice system and democracy.

I call on all Americans, particularly lawyers, and on you, our newest lawyers, vigorously to oppose this insidious trend with every ounce of our might.

When I took office as ABA president nine months ago, the ABA commissioned a survey by Harris Interactive to gauge Americans’ knowledge of their constitutional government. The results were disheartening.

Forty percent of Americans were unable to identify the three branches of our government. Forty-eight percent did not know the meaning of separation of powers. Twenty-nine percent did not know the meaning of checks and balances. Perhaps most troubling, forty-four percent did not know what are the core duties of a judge.

The survey made clear that we must educate Americans about their constitutional government, about the roles of the three separate but equal branches, and particularly about the critical role of an independent judiciary. If half of the public does not even know what’s in our Constitution, and the other half is not fully engaged and divided, democracy is at risk.

That is why I appointed the bi-partisan ABA Commission on Civic Education and the Separation of Powers, led by retired Supreme Court Justice Sandra Day O’Connor and former US Senator Bill Bradley. The 14-member Commision, a non-partisan group comprised of outstanding American patriots and leaders in government, business and education, is working hard to influence educational policy in the states, to urge that civic education – which has been squeezed out of most schools – be taught effectively, and that it be accorded the same priority as English, math and science.

Two weeks ago in Washington, DC, I joined Justice O’Connor and Senator Bradley, my Princeton classmate, and members of the Commission in the taping of an inspirational television program on the separation of powers and the role of an independent judiciary in our democracy that will air on television, and that will be distributed to schools and other groups across the country.

During the program the question was posed -- what is the greatest danger to democracy? An overreaching executive branch? An overly aggressive – or too compliant -- Congress? A weakened judiciary that is not checking the other two branches?

The Founders warned us that the greatest danger to democracy is an uninformed and disengaged public that does not know their constitutional rights, that does not know enough to fight for the principles that protect their freedom, and that allows their rights to be taken away from them.

It is our responsibility as lawyers – yours and mine -- to help educate our fellow citizens – now and continuously -- and to make them understand what’s at stake. If we do not protect our uniquely independent American judiciary, it will not be able to protect us.

Another responsibility that you and I have as lawyers is to guarantee access to justice for all Americans.

Do you know that 70-80% of the legal needs of the poor in our country go unaddressed year after year? That close to 50 million Americans qualify for legal aid to the poor because they are at the poverty level? That the funding provided by Congress through the Legal Services Corporation provides legal services for only 1 million of those 50 million poor Americans?
Do you think that those 50 million people might feel that society has forgotten them, that the justice system is for people of means, but not for them?

To address this issue, I appointed the ABA Task Force on Access to Civil Justice. I have asked this distinguished group of judges and lawyers to consider an idea whose time, I believe, has come: a defined right to counsel on the civil side for the poorest and most vulnerable in America, parallel to such a defined right that now exists on the criminal side.

From constitutional law you know that in 1963 the Supreme Court of the United States in Gideon v. Wainwright found such a constitutional right for indigents facing imprisonment who cannot afford to hire a lawyer, the right to have counsel paid for by the state because liberty is at stake.

But imprisonment can be by other than steel bars.

In our country the poor and vulnerable among us are threatened to be imprisoned by poverty and despair and discrimination every day of their lives. I have asked the Task Force to consider whether we now should finally recognize a defined right to counsel for the poor, not in all cases, but regarding basic needs that every human being has a right to expect will be protected in a democracy.

In a democracy all citizens have a right to expect that custody of their children will not be taken away; that they will have a roof overhead and shelter; and that governmental health benefits will be accessible. In those three areas, family, shelter and health, when a poor person in America is threatened with denial or loss of those basic legal rights, that person should have counsel at his or her side to help secure those rights.

No one in America – the most bountiful land of hope and promise in the world – should have to go without counsel when those basic needs are threatened. No one.

As you enter our profession one of the most important things you can do to expand access to justice for all is to engage as much pro bono and public service work as you possibly can.

In order to encourage and enable more lawyers to perform more pro bono and public service work I appointed the ABA commission on a "Renaissance of Idealism in the Legal Profession." This ABA Commission is looking at ways in which to effect a culture change in the way law is practiced in law offices across America; and to persuade decision-makers in law offices to free up time in a lawyer’s schedule so that he or she can engage in the levels of pro bono and public service work that lawyers used to be able to do.

Growing up in Illinois, I realized as a young boy that I wanted to become a lawyer when I saw that in my town – the Village of Hinsdale -- it was lawyers who led town committees such as the School Committee, the Planning Board, numerous other town boards, and public service organizations, and who helped people in need regardless of their ability to pay.

Those lawyers worked in Chicago or local law offices during the day, but they also found time to fulfill the time-honored role of Lawyer as Public Citizen. We have too few lawyers performing public service and pro bono work today in our communities. Law offices across America must enable more lawyers to do more pro bono work. We must reclaim that important role of lawyer as Public Citizen – for the personal fulfillment of each individual lawyer who engages in pro bono and public service, for the betterment of our profession, and for the benefit of the American people. This is what the ABA Commission on a Renaissance of Idealism in the Legal Profession is working hard to accomplish.

Public service is the defining and proud calling of our profession. I ask you to become active in the Renaissance of Idealism in our profession that is now blossoming across the country.

As leaders in your profession and in your communities, you will have opportunities to stand up to injustices, and to defend the civil liberties and freedoms that the Constitution guarantees to
all of us – especially now as our country struggles to strike the right balance between freedom and national security.

Do not turn your back on those opportunities, even if they place you in the center of controversy. Embrace them. The American people look to us to protect their freedoms. If we don’t protect their rights, who will? We cannot fail them.

In years to come, if you remember little else of what I say to you today, I ask you to try to remember this.

Wherever and whenever injustice has been banished, conflict has been resolved and human understanding has been advanced, lawyers and the legal system have played a vital role.

The lawyers who have been responsible for monumental change in America did not assume that someone else would bear the burden, that someone else would confront the challenge, that someone else would advance civil rights, that someone else would uphold the rule of law, that someone else would defend freedom.

Instead, those great lawyers knew that what they did not value would not be valued, that what they did not change would not be changed, and that what they did not do would remain undone.

You will be the stewards of individual rights, the trustees of our justice system, the protectors of our constitution, the defenders of justice and freedom. Never lose sight of that fact. The role of the lawyer has never been more important than it is today.

I conclude with this thought.

Seventeen centuries before Christ, in the first written code of law, Hammurabi wrote that the purpose of the law is to protect the powerless from the powerful.

Powerless people will come to you for help, for desperately needed legal help -- and many will not be able to pay for your services. Help them. Protect them.

That, after all, is the most important role of the lawyer in society.

You have my best wishes in your pursuit of justice, and I thank you for your kind attention on this memorable afternoon.