

**Hon. Frank C. Damrell, Jr.
Commencement Address of
MCGeorge School of Law
May 16, 2009**

RECLAIMING THE PROMISE OF THE AMERICAN LAWYER

Law School Graduation - A time to look forward. A time to look back. A time to embrace the future. A time to say goodbye. But above all a time for reflection at this difficult moment for our nation and everyone in this auditorium.

Three or four years ago when you decided to go to law school the world looked much different than it does today. Understandably, many of you probably expected to punch your JD ticket en route to an exciting and lucrative legal career with little worry about student loans or home mortgages. What a difference three years makes! What a difference three months makes!

Today much of America's wealth has seemingly evaporated. Credit cut off, jobs in jeopardy or lost. Anxiety and fear has seeped into everyone's life. The grim reaper has arrived at America's doorstep, but he is not a hooded terrorist holding an AK 47. Instead, he is an unblinking bookkeeper wearing green eye shades holding a balance sheet that is completely out of whack. He announces to America, "The consumptive binge is over." That "winner take all" economic arrogance, which has driven great institutions (and I might add several great law firms) into financial ruin, is no more. Many people in this country seem frozen with fear and aren't sure if America can make it back.

You graduates now may well be wondering "what did I get myself into?" Law may seem somewhat beside the point when economic disaster hits. When jobs are scarce, lawyers seem a luxury. There is a contraction of legal work, and firms are not hiring as they once were. But, I can assure you this nation of laws demands lawyers and, in short order, that demand will again exceed the supply. This is not a time to put aside your dreams or consign your hopes to some kind of holding pattern. This is the time you should pursue those dreams. Let me tell you why.

It is becoming increasingly evident every day that America needs to relearn lessons learned in earlier generations. Lawyers, in particular, need to relearn what it means to be a lawyer. We need to restore the idea that laws should reflect our common values as well as majority mandates. We need to remind ourselves, in the words of Alexander Bickel, “Law is the value of values.”

The economic crisis has stripped away much of the trappings of what we thought was valuable and important in our society. It has exposed the phoney facade of financial respectability and laid bare the unconscionable excess created by the selfishness of revered institutions and individuals. We are only now beginning to question the priorities of every aspect of our economic and political culture, including the legal establishment. For most Americans lawyers are perceived to be validators to our economic and political system. That perception of lawyers has been reinforced by various self-serving interests who care little for our system of justice, but only how to exploit it for their own gain. As a result, the legal profession is not just debilitated by today’s economic disaster, but ironically, from years of its own unbridled success representing those interests.

Today’s crisis, fortunately, gives us a real opportunity to step back and reassess, rethink and hopefully change the direction of this country and more specifically, the legal profession. Indeed I believe, you are each standing on the threshold of a most remarkable opportunity. I want you to embrace the opportunity to reclaim your profession and participate in its restoration.

You have received an outstanding legal education. I know first hand because McGeorge Law students and graduates have worked in my chambers for many years. Some, who served as law school externs for me, are in this class. They are some of the most gifted law students I have ever encountered. Many of my distinguished colleagues on the federal and state bench and outstanding members of the bar, including leaders of federal and state government, are graduates of McGeorge School of Law. Make no mistake you are graduating from one of the best law schools in this country.

And on this graduation day it is important that you remember your law school was conceived and built by people before your time - extraordinary people you will never know. People who were thinking of you at this precise moment in your lives before you were born.

You now are the beneficiaries of their creative labors. Indeed, every judge, lawyer, and law professor in this auditorium is likewise a beneficiary of the wisdom and dedication of judges, lawyers, and law professors who have gone before. We all stand on their shoulders, and our achievements are due in large part to them. They taught us, through their words and work and lives, the meaning of integrity and professional excellence, and those life values we hold close to our hearts.

Unfortunately, I believe much of today's legal establishment has lost its sense of the past and thus, the real meaning of the profession. The bar now often reflects the priorities of an American society that seeks to classify and pigeonhole and objectify people and institutions according to the appearances of success. Such judgments obviously avoid dealing with those messy but far more important human factors which defy measurement. In today's America we rank individuals and institutions according to measurements which bear no relation to human fulfillment and meaningful achievement. In the past year even the reliability of the most trusted numerical ranking has been exploded and what is left are corporate ghosts or, in some cases, just their fumes. Last year *Fortune* ranked the top 500 American companies and, as well, various financial institutions, and, the market genuflected before the numbers posted by giants such as AIG and General Motors. Need I say more? Or should I add Chrysler or Wachovia or Lehman Brothers to the mix?

Of course our most reliable indicators of America's lowest common denominator, television producers, still soldier on. They figured out long ago that Americans have an insatiable appetite for watching people rate people. So now we can watch people nightly being rated by how they sing, dance, cook, design dresses or wear them, survive the wilds, or impress Donald Trump. The reality of life has been replaced by reality TV. And while the virtual lawyer has not replaced the real lawyer, the legal establishment has nevertheless embraced the numerical ranking system with an enthusiasm I never thought possible. I suppose you could say lawyer ratings started innocently enough with *Martindale Hubbell* which rated lawyers within modest parameters. But now, there is a cottage industry of publishers ranking at a furious pace. For example, we have those ubiquitous "Super Lawyers" and then there are the endless editions of 100 Best Lawyers in every conceivable category. The most closely watched rankings, of course, are the most venal of all - rankings

based solely on how much money lawyers make. This tawdry final measure of professional excellence is now accepted without a peep.

Of course law schools are also measured and sifted and ranked much like law firms, except in a much more mysterious manner. Law Schools are rated by anonymous journalists/statisticians employed by commercial publications trolling for buyers. These educational cartoonists have morphed into the power brokers of legal education and, in fact, all higher education in America. Year after year these folks talk to the same people about the same subjects, and, from this echo chamber, they issue school rankings that become holy writ. Figure that out.

The banality of all this is truly breathtaking but not unprecedented. I am reminded of the lowly ranked young English student, with a speech impediment, who failed his entrance exam to Sandhurst College three times; and then there was the young unemployed high school science teacher in Switzerland who also failed his college entrance exam and could only find work in the patent office. They both were slotted for careers of quiet mediocrity by inconsequential, nameless functionaries. I should add that these nameless functionaries remained inconsequential only because Winston Churchill and Albert Einstein ignored their poor rankings and did quite nicely for themselves and, thank the Lord, for all humankind.

Despite these lessons of history every American law firm, lawyer, and law school are dutifully slotted and, in some measure, ranked. Surely we understand that the most important predictors of human achievement cannot be measured. Surely we know such numerical rankings cannot measure imagination, emotional maturity, compassion, integrity, or dedication, much less the uncanny ability to connect with other persons. Surely we know they do not measure the power of that law professor who can inspire the student to achieve beyond the student's own expectations. Nor do they measure the profound impact on society of committed civic engagement and leadership of a single lawyer. Indeed, among all professions, lawyers should understand we cannot measure the power of the human spirit.

Perhaps we would do well to imagine what these rankings and ratings would mean to some of our greatest lawyers. We could start with Thomas Jefferson's reaction to the latest ranking of his undergraduate alma mater, William and Mary, or check to see if any accredited law school in America would accept an awkward, self taught Abraham Lincoln as

a first year student. Or we could track those letters of rejection from national law firms to a young future Supreme Court Justice, Robert Jackson, who, like Lincoln, never went to college and never graduated from law school. Of course we could also ask the publishers of “Super Lawyers,” to please create a slot for Thurgood Marshall in a new “The Struggle To End Segregation in America” category.

I do not wish to trivialize honest assessments of today’s law schools or lawyers or law firms nor do I suggest we can divorce ourselves from the economic pressures and realities of the profession. We live and work in a very different world than our forebearers. I certainly concede that some surveys could assist consumers of legal services to make informed decisions. However, I reject the market regimentation imposed on the legal profession and upon our law schools by these arbitrary commercial yardsticks that are packaged as truth and then sold back to consumers as standards of quality. They are often flat wrong, but more importantly, the profession is diminished intellectually and spiritually when it docilely accepts these ratings and rankings as valid measures of excellence. We are talking about lawyers and law teachers and law students, not gas mileage and tire treads. The bar and academy are not commodities to be sold for anyone’s profit. It is time we reclaimed the profession and the educational institutions of the profession, for they remain central to the practical and moral issues we face, as well our history and the very meaning of America.

And this is where you come in. You are about to take on a great responsibility, perhaps greater than you ever realized. I ask you to spend a few more moments with me and reflect upon that responsibility.

Our reflection begins with retelling of the familiar but improbable beginning of our nation. The great American historian David McCullough once observed:

“What a story, what a noble beginning and think of this almost no nation in the world knows when or where they came from. We know exactly when we began and why we began and who did it.”

A few thousand farmers, shop owners, tradesmen and not a few lawyers, led by 43 year old George Washington, defeated the most powerful nation on earth. It was a stunning military victory, but even that victory paled in comparison to the stunning Declaration of Independence and human freedom written by a 30 something lawyer in 1776, followed by the creation of a small democratic nation on the edge of a vast wilderness and founded upon a

constitution also crafted by 30 something lawyers. This novel constitution actually guaranteed the rights and freedoms of the individual against the will of the majority and the government, itself.

Now I can hear the gears grinding. What does the retelling of this story, that we have heard a thousand times, have to do with graduating from law school in these miserable economic conditions? My answer is: Everything.

Listen to the words of one of the toughest of our Founders who never fired a shot, never signed the Declaration of Independence, never was elected to any office, and couldn't even vote or own property. She said, "These are the times in which genius would wish to live. It is not in the still calm of life that great character is formed. The habits of a vigorous mind are formed in contending with great difficulties. Great necessities call out our great virtues." Abigail Adams got it. She knew uncertainty and hardship and pain and defeat first hand. But she also knew how great the stakes were for those lives impacted by the American Revolution, including our own. This remarkable woman calls to her fellow Americans across the centuries, to everyone here in this auditorium - and reminds us that "we are never defined by what we ask of life, but, by what life asks of us."

Abigail Adams understood that it is in times of crisis and uncertainty that Americans and their Revolution would be tested time and time again. And as her husband, John Adams, understood, so must we understand, Americans have the capacity to meet "great difficulties" and overcome their own demons by embracing the truths of the Constitution. This is not for storybooks. This has really happened and continues to happen in our lifetime.

But we also know America has not always prevailed over its demons and our government has given in to raw fear and raw hate and done terrible things in the name of America. At those dark moments in our history when the American government has turned its back on the Constitution, it is the American lawyer who has stood in defense of the Constitution and held this nation accountable to its own history.

It is therefore critical that, as lawyers, you understand that to acknowledge this nation's failures to live up to the truths of the Constitution, is not a sign of weakness, but of strength. When we do not speak truth to power, we fail the Constitution. We fail the Revolution and the story that is America, and that extraordinary judicial process bequeathed to us by our Founders. But, guided by our better angels, when we embrace the truths of the

Constitution, we have become a stronger nation led by a more tolerant and a wiser government.

I spoke previously of those who have gone before us, the lawyers and judges and law teachers of all political persuasions, areas of practice and scholarship. Some of those prominent names are very familiar to you, names like Jefferson, Madison, Lincoln, Holmes, Jackson and Marshall, but in recent years there are prominent names which have a distinctly different ring, names like Shirley Hufstедler, Dorothy Nelson, Sandra Day O'Connor, Ruth Bader Ginsburg, Elena Kagan, Janet Napolitano, Kathleen Sullivan, Diane Wood and your own Elizabeth Rindskopf Parker. Well you get the idea, the judiciary, the bar and academy have changed dramatically for the better and now provide more sturdy shoulders. They now join that unique alliance reaching back centuries to those young lawyers who started it all.

And this year we celebrate the bicentennial of the birth of that small town lawyer who built the bridge from those young founders to the present. Abraham Lincoln's spirit still broods over this nation since an assassin's bullet struck him down 144 years ago. When he was born, Thomas Jefferson, the drafter of the Declaration of Independence, was President. When Lincoln died, California had been admitted to the Union and the capitol building, just a few blocks from where we are today, was nearing completion. How did this self-taught lawyer, from the remote and somewhat rougher western reaches of the United States, come to embody the meaning of America for all succeeding generations? In my mind there is only one answer. Lincoln took to heart the basic premise of America and made it the premise of his own existence. That is not to say he was not a shrewd lawyer and perhaps a shrewder politician. It simply means that he believed to the end that this form of government was indeed the last best hope of earth. In turn I believe we can only reclaim the legal profession by living that promise to preserve, protect and defend this form of government enshrined in our Constitution.

Like, Lincoln himself, I urge you to make your own personal assessment of the importance of the liberating values of the Constitution. You might do well to start your personal assessment by listening to the words of William Greider from his remarkable book, *Come Home, America*. He writes:

"I suggest Americans pursue the right of all citizens to larger lives. Not to get richer than the next guy or necessarily to accumulate more and more stuff but the right to live life

more fully and engage more expansively the elemental possibilities of human existence. That is the essence of what so many now seem to yearn for in their lives. People are frustrated because the intangible dimensions of life have been held back or displaced in large and small ways, pushed aside by the economic system's relentless demands to maximize yields of profit and wealth. Our common moral verities have been trashed in the name of greater returns. The softer aspects of mortal experience are diminished because life itself is not tabulated in the economic system's accounting."

In 1920, a favorite poet of mine, W.B. Yeats, lamented the descent of much of Europe into fascism and economic chaos when he wrote:

..... things fall apart; the centre cannot hold;
Mere anarchy is loosed upon the world.....
the best lack all conviction, while the worst
Are full of passionate intensity.....

Several years ago I thought these words might again be prophetic but I was wrong.

The center is holding. The tide is turning in favor of the moral verities of our Constitution. A new generation of Americans have taken hold of the levers of power, and the best of them have strong convictions and, importantly, they have found their voice. Perhaps another lawyer from Illinois, who has followed the footsteps of Lincoln, will help heal the wounds of division, doubt, and despair and restore America's confidence in itself. We shall see and we shall certainly hope.

Lincoln's words, however, continue to light our path. He looks upon us today and with the words he spoke to Congress in 1862, he again speaks to us in 2009: "The dogmas of the quiet past are inadequate to the stormy present. The occasion is piled high with difficulty, and we must rise with the occasion. As our case is new, we must think anew, and act anew. We must disenthrall ourselves, and then we shall save our country."

And save it we will because we will think anew and we will act anew. A vibrant economy will return and, I believe, a new historical perspective of America will return and your generation will lead the renewal of this nation. But all of us must bend every effort to restore the ideal of the American lawyer and remove market manipulated assessments of lawyers and law schools and establish fresh and honest criteria to educate consumers of legal services and legal education. Lawyers must live larger lives of civic engagement. The

American lawyer must regain the high ground as defender and protector of the Constitution.

That is your calling. That is your challenge. Nothing more. Nothing less. As Abigail would counsel you “This is a time of great difficulties and therefore an historic opportunity for you.” This is your time.

I envy you because you will see this through. McGeorge Law School has made that possible. Cherish this moment. Cherish this opportunity. It is yours and you are ready. Good luck and Godspeed.