



“WHO WE ARE AND WHAT WE LEAVE BEHIND”

THE DEAN'S ADDRESS
PREPARED AND DELIVERED BY:
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President Russomanno, First Lady Sally, Officers, Directors, and Fellows of the Academy, Academy spouses and significant others, distinguished guests and our Executive Director, Linda Scher, and staff, Abby, Lacey.

It is my privilege to address you as Dean of the International Academy of Trial Lawyers. It is not, however, my ambition or desire to draw from the house of wisdom an address for the ages, or to hear any phrase from what I am about to say pass any lips but mine. I offer a perspective and a “sense of things” under the banner: Who We Are and What We Leave Behind.

I came to this profession quite by feel and instinct. Not to be presumptuous, but my sense is most, if not all of you, did as well. It is in our DNA and it is who we are. You all express an appetite for intellectual analysis and intellectual combat, innate courage and audacity, as well as intolerance for incompetence, dishonesty and injustice. You bear empathy born of some suffering and an irrepressible need and ability to grasp, analyze and articulate the stories that abound around us.

In the service of others those talents assume stature and express a purpose to elevate our efforts beyond common exchange and narrow pursuit of self-interest. And ours is a profession of personal service, as is no other. Those whom we represent face crushing challenges and/or have suffered life-altering loss, the course of which we are often powerless to fully amend. They open to us the most private quarters of their lives in a bond of trust and confidence.

To serve them we must claim them as our own and make their cause our cause as we prepare prosecution or defense to enable the fullest measure of a just resolution. We thus find ourselves ministers to body and soul; holding, supporting, instructing, inspiring, guiding, and all the while protecting and enhancing the system of justice through which crucible we and our clients must pass.

The breadth of our roles is as daunting as it is exhilarating. Priest, rabbi, confessor, teacher, detective, psychologist, student, historian,

and finally producer and director of profound true reality dramas with actual life-altering consequences. These elements of our professional calling and responsibility are by their very nature the most ennobling and inspiring. They continually revitalize our reserves for the ongoing struggles of others to which our nature and our talents have so dedicated us. Everything Hollywood produces, or pretends to produce, pales in comparison.

Arching over all our engaging, challenging, and sometimes agonizing roles is the one most fundamental to the question of who we are and what we leave behind. We are the indispensable guardians of our system of distributive justice. And in that role we serve the twin causes of our clients and the indispensable standards and traditions that constitute our system of justice—a delicate balance in the best of times and an immense Herculean effort in the worst. Professionalism and our attendant duties to our system of justice transcend concepts of contract and prescribed obligation. They participate in a professional tradition of increasing excellence and civility over centuries.

In the course of our professional duties we sometimes attract the title of warriors. While it speaks to the intensity of the struggles in which we engage and the courage necessary to meet daunting challenges, justice neither needs nor can she well tolerate warriors. Warriors project power in the interest of conquest. Justice cannot abide power. It is a universal truth that power corrupts, and absolute power corrupts absolutely. Justice exists only in the garment of authority, integrity, and respect and never in that of power. Justice must always have guardians to both protect her from interference by power and from the accretion of power, a perennial enemy. Crushing power will always seek to corrupt the independence of the judiciary, strip it of its juries or silence its voices. It will never cease in its efforts to do so.

Power seeks control of outcome which is incompatible with our system of justice. The judiciary must be protected but not powerful, honored but not feared, followed but always questioned and contested.

Our greatest challenge as both practitioners in, and guardians of, the judiciary is that it must always rest on that delicate balance, sustained by a reserve of trust, honor, integrity, civility and independence.

Contrast for a moment one of the primary seats of power in our system of trifurcated but far from equal branches of government. The legislature has been at war with itself as the polarizing expressions of power have rendered it at once dangerous and incompetent in the pursuit of our nation's needs. Money, the most profound, corroding, and implacable source of power, is now concentrated in increasingly greater amounts and in fewer hands than ever before. That undeniable reality is alarming because our form of government, which carries the seeds of its own destruction, is easily exploited. The politicians must run for office—an ever increasing and absurdly expensive enterprise. Bribes are permitted if delivered in various costumes such as campaign contributions or through their masters, the political syndicates.

There is, too frequently, as a result, an unseemly free market exchange—money for influence in the crudest sense. That degradation is accelerated by the dominance of controlled mass media, with the proclivity to blend news and entertainment so as to extinguish the value of either, as they miscast and misrepresent facts in slogans that fit neatly into the nation's ever shortening attention span. Many facets of legislative and executive government are simply for sale. In such environment, reasoned discussion is irrelevant and all attempts to engage in such are abused. Integrity is honored in its utter disregard, and problems of enormous moment are abandoned completely for narrow special interests.

There is only one branch of government in which reasoned discussion can and does occur. In courtrooms around this nation, as in few other places on the face of the earth, the great and the humble, the rich and the unwashed, not only may speak truth to power without fear of reprisal, but must do so.

Courtrooms are the places in which the consequences of human behavior, its abuses, its thoughtfulness, its thoughtlessness, its mendacity, its honesty, its good and its evil are made plain, understood and addressed. The ground around the great and small is made level (more or less) by the talent, zeal and commitment of dedicated advocates, and the fair and even application of the rules of engagement, by independent judges. Juries composed of our fellow citizens, examining the evidence, observing the testimony, and hearing the argument, assess, interpret, judge credibility, and render a verdict upon it.

If the recent major political decisions such as those that have cast us pell mell into endless war, and which caused wrenching dislocation of peoples, the bankruptcy of our treasury and the death and injury of tens of thousands had been presented to a jury of our peers and had been subject to even a fraction of the required evidence, cross-examination, and burden of proof that any court requires in even the most common matters, the world would be a different and better place.

In our courts of justice, truth borne by vetted evidence is the only acceptable medium of exchange. When disputes arise there are such forums in every village, town, city, county, and state and in our nation's capital in which rational, predictable, and traditional rules can be applied with integrity and impartiality. Juries are instructed that only facts count and not rumor, innuendo, supposition or speculation. Only demonstrable reality is in play, which carries enough ambiguity itself when viewed from variant angles and through divergent lenses. Reasoned arguments founded on relevant evidence are in contest, such that matters of individual conflict or those of the greatest moment to society may not only be resolved but be resolved justly.

These venues are the places where the smallest voices seeking justice may be amplified and resonate with the same force and clarity as those of the most powerful. These are the places where numbers and statistics give way to real people who have suffered that others may avoid suffering in the future. While the vast number of citizens may

be yet unaffected, the hidden defect is exposed to a jury of citizens in open court, crushing injustices are explored, and fundamental rights and protections can be restored.

Our judiciary is the refiner's fire that ensures the strength and legitimacy of all our political architecture sustaining a diverse and perennially contentious citizenry. The ability to dispense justice dispassionately and with energy, diligence, and fidelity is singular and essential. Performed correctly there is no more difficult human endeavor. Performed with integrity there is simply no higher secular calling.

No ordered and just society can long endure unless a set of fundamental rights are guaranteed to each and every citizen. Those rights are not determined by the ballot, nor well protected by either the legislative or executive branches of government. Therefore, only one institution can and must be counted upon to protect those rights—however unpopular the exercise.

Our government, typically described as a democracy, has of course never assumed (and most argue never should assume) that pure form. Founded on the hallowed principle of majority rule, the will of the majority, if expressed, has always been circumscribed by constitutional guarantees to the minority. And that minority is defined, if necessary, down to an individual citizen. The fundamental rights so guaranteed and protected, sustain essential freedoms and in turn the means by which minorities can, in the free exchange of ideas, peacefully become the majority, hopefully in a continual and renewing transfer of power. Without an independent judiciary to protect such individual rights, and dedicated advocates to address the nature and breadth of those rights, the essential meaning of democratic government is completely lost.

And, it is not, and never should be, a question of what side of controversies any of us assume. It is, however, critical that the honest and civil contest in these judicial forums can and always will occur. Because, in the last

analysis and plainly stated, an independent judiciary and the men and women who serve as judges and advocates are indispensable to any just government based upon democratic principles.

Our judicial system and the embedded right of trial by jury has been an immense legacy. It is to the constructs of these rich judicial traditions, that our greatest citizens, by dint of intellect and character have devoted the best they had to offer. This legacy however, comes with formidable conditions. It exacts a price, and that price is constant effort, sacrifice and diligence. That effort starts with the understanding that professionalism and civility of its advocates is an absolute mandate. This system of justice will not be preserved by the dysfunction of advocates on either side of any issue following scorched-earth tactics. Scorched- earth and exploitive tactics are a corrosive form of cheating.

The surest protection of our judiciary and our tradition of jury trials is in their increasing exercise. Unfortunately, the opposite trend is occurring as litigators have captured large portions of the space and vast resources are squandered in paper wars by actors ostensibly undertaking the steps necessary for trial preparation with little concept concerning the conduct of a trial, the supposed end-game of their effort. Such litigation is a debilitating influence on the conduct of the jury trial and will continue to be such until and unless early trial dates are set, discovery rules mandating prompt and voluntary disclosure of all relevant information are strictly enforced, and trials themselves expedited such that jury trials become the alternative dispute resolution of choice.

Alexis de Tocqueville, the brilliant French lawyer who viewed the American scene in the early and mid-19th Century, penned the book entitled “Democracy in America.” His study is considered by many as the most perceptive and influential book ever written about American politics and society. In it he reviewed and addressed the civil jury. He said, among other things, the following:

“By contrast, when juries are used in civil cases, their work is constantly in the public eye. It affects interests of every kind. Everyone serves on them. Thus they become part of daily usage. The human mind becomes habituated to the juries’ forms, and the jury itself comes to be identified, as it were, with the very idea of justice.”

“The jury instills in all classes a respect for judicial decisions and the idea of law. Remove those two things and the law of independence becomes a destructive passion.”

The understanding in the citizenry of the nature and general purpose of the judicial branch is in need of constant refreshing. If citizens do not understand the indispensable importance of an independent judiciary, they will not value it and if they do not value it they will not fight to preserve it. It must be seen and understood as an indispensable civil right. Our citizens must not only comprehend the critical role of the judiciary but be its enthusiastic participants and champions. It is our missionary work.

This must be our response to powerful interests that have and continue to influence and bias the broader citizenry with myths of wild, irrational and fictitious excesses by juries or “so called activist” decisions by judges. We have personally witnessed the alarming reaction within our own seemingly law abiding and bright red state of Utah to the principled and well-reasoned decision of Federal District Judge Robert Shelby, our former law partner, that found anti same-sex marriage laws unconstitutional based upon prior Supreme Court precedent. Some of the responses, even by “lawmakers,” were chilling.

We are the formidable counterbalance to such corrupting influences. We are that professional corps of independent advocates with diverse roots and decentralized stations acting together with jurists who possesses knowledge, skills and the conviction that the judiciary is the indispensable check on the excesses that naturally flow from the seats

of political and commercial power. We represent a vanguard that no corporate interest or governmental power can defeat.

This is a nation of stunning diversity, remarkably different backgrounds, and ethical, religious and mythical traditions. All its original peoples, its pioneers, immigrants, refugees and various constituents of the “huddled masses” mix together. Our people interact, transact, work for, work under, work against, harm and heal one another in a phenomenally vibrant productive and contentious society. And all of the conflicts, all of the wrongs, all of the real or perceived injustices have a place of resolution in which essentially all citizens are eligible and called upon to participate, and in which all conflicts can be addressed, rationally considered, and peaceably resolved. It is both magnificent and awe inspiring.

There will always be contests and conflicts in this or any society. In fact, we know that the most dangerous times and places are those without apparent questions and controversy. And the most desperate of times will find us without judicial forums in which such conflicts can be peacefully, civilly, and justly addressed.

It is not by chance that a Fellow by the name of Tom Girardi was the one who received the anonymous whistle-blower disclosure of theretofore secreted and stunning revelations of wrongdoing regarding the drug Vioxx™. With that information Tom and others secured recovery for thousands of victims in civil courts of justice.

Government agencies were not the greatest challenge that Lincoln Savings and its like savings and loan conspirators had to deal with, nor are they now to the constant parade of corporate abuse and wrongdoing. The challenges have been and are now the product of ongoing efforts led by Fellows like Cotchett, Pitre, Ciresi and Silberfeld and hundreds of you, who like them, lead brilliant and audacious public and private law firms.

The epic disasters to our vaunted space program brought about by bureaucratic indifference and ineptitude did not find justice at the hands of a governmental agency. That was the product of skilled and implacable effort led by a Fellow named Ronnie Krist.

The commercial collision of two American oil giants exploded on the American scene when a Fellow by the name of Joe Jamail laid bare wrongful commercial conduct to a Texas jury of common citizens (you know, the ones that daily live with the consequences of the rules everyone is supposed to follow) and which rules they applied to the evidence.

Pan Am flight 103 exploded over Lockerbie, Scotland. The lapse of security and the means of explosion were uncovered, not by any governmental agency or criminal investigation, but by Fellows Lee and Jim Kreindler. In very few places on earth could that be accomplished in courts of civil justice.

Morris Dees and Richard Cohen and the staff at the Southern Poverty Law Center have literally risked, and still risk today, their lives to staunch the surge of hate groups like the KKK and Skin Heads, not with the weight of official prosecution powers, but in civil courts of justice. They carry forward, as do countless others, the legacy of advocates such as Thurgood Marshall, John Lewis and Fred Gray, and our own Fellow, Bill Baxley, who lent the magnetism of their effort and sacrifice to the tectonic pull toward the full realization of our nation's declarations and aspirations of human freedom and individual dignity.

And finally contrast the transfer of power in Egypt with that which played out in *Bush v. Gore* under the respective advocacy of Fellows Beck and Boies. This most monumental of political contests ended peacefully—not in blood-stained streets, but in courts of law—courts with doors that are always open to contests between the least or greatest that walk among us.

You represent a singular tradition of excellence in advocacy and must pass on this immense and unique heritage to those with whom you have shared and can share your vision, skills and sense of civic duty. There must always be courageous and independent advocates like you who are not only willing to weather the storms, but eager to fly to their centers. It is the real and plain fact that your independence, integrity, efforts, abilities, and the system of justice in which those elements are applied are not just helpful to securing our way of life – they are essential to it.

This is what we and our colleagues in common cause leave behind. Not a monument in some park, but rather a tradition that is living and dynamic. It is a central element of our contribution to the better practices of humankind. And it accounts as much as any other feature for our nation's admired resilience, vibrancy and prosperity. It is plainly not coincidence that the world's largest and greatest economy has been achieved under this American legal system.

This culture and tradition is, by necessity, as vulnerable as it is priceless. It resides in those you have taught, those you have trained, and those you have inspired. It is found in the institutions, dedicated to the continual education and inspiration of advocates and judges and in the hearts and souls of a free people and their advocates who, in the spirit of the great poem "Invictus," both pledge and celebrate that: We are the masters of our fate; we are the captains of our soul.

It is carried forward in our protection and enhancement of the independent judiciary, and the commitment to excellence in advocacy, and most fundamentally, in the courage and commitment to confront all seats of power and all authors of abuse and, bring them or meet them at the bar of Justice, before a jury of our peers, and put them to their proof now, always, and forever. Because that is who we are and that is what we are proud and dedicated to leave behind.

Thank you.

INVICTUS

By William Ernest Henley

Out of the night that covers me,
Black as the Pit from pole to pole,
I thank whatever gods may be
For my unconquerable soul.

In the fell clutch of circumstance
I have not winced nor cried aloud.
Under the bludgeonings of chance
My head is bloody, but unbowed.

Beyond this place of wrath and tears
Looms but the Horror of the shade,
And yet the menace of the years
Finds, and shall find, me unafraid.

It matters not how strait the gate,
How charged with punishments the scroll.
I am the master of my fate:
I am the captain of my soul.



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