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**Georgetown University Law Center &
American Law Institute**

**"Fair and Independent Courts: A Conference on the State of
the Judiciary"**

Remarks By:

**JOHN J. DEGIOIA, PRESIDENT,
GEORGETOWN UNIVERSITY**

**MICHAEL TRAYNOR, PRESIDENT,
AMERICAN LAW INSTITUTE**

**Welcome
8:45 – 9:00 a.m.
September 28, 2006**

**GEORGETOWN UNIVERSITY LAW CENTER
HART AUDITORIUM – MCDONOUGH HALL
WASHINGTON, D.C.**

JOHN DEGIOIA: Justice O'Connor, Justice Breyer, Justice Souter, Justice Thomas, good morning everyone. It's a privilege and honor for me to welcome you to the Georgetown University Law Center. Georgetown is privileged to cosponsor this conference on the judiciary with the American Law Institute. For more than 80 years, ALI has worked to promote clarification and simplification of the law and its better adaptation to social needs, and we could not be more pleased to partner with this distinguished organization.

It is an honor to welcome our co-chairs for the conference, Associate Justice Stephen Breyer and former Associate Justice Sandra Day O'Connor. We are fortunate that our discussions and analysis will be guided and informed by these two distinguished American jurists. Throughout their careers, Justice O'Connor and Breyer have been

dedicated stewards of the American legal tradition of a fair and independent judiciary. The work we do here will be all the more valuable because of their participation and leadership.

I would like to recognize Alex Aleinikoff, the dean of Georgetown Law Center, and Judy Areen, the Paul Regis Dean professor of law and dean emeritus, for their efforts and leadership. Alex and Judy have made invaluable contributions to the Georgetown community and to the law center, and I am grateful for their leadership and efforts to ensure that the Georgetown Law Center continues to flourish both in its mission to educating new generations of servants of justice and of its contributions to the common good.

I'm also grateful to Meryl Chertoff, Lance Liebman and Michael Traynor for their efforts in bringing us together for this important conference. Many other distinguished guests join us from the U.S judiciary, from the U.S. government, from private practice and private sector industry, and from the academy. We look forward to hearing from all of you over the course of the next two days.

We are here to explore the state of the United States judiciary, and it is appropriate that the discussion and analysis takes place here on this campus in this city. Georgetown has a rich tradition of engaging in the public discourse on pressing contemporary challenges dating to the very early days of our republic. Archbishop John Carroll founded Georgetown in 1789, the same year that the constitution of the United States took effect, and the same year that George Washington was sworn in as the first president. Archbishop Carroll's initial prospectus provided that Georgetown University would be, quote, "agreeable to the liberal principle of our constitution." And since those early years, this university has been deeply engaged in the pressing debates and challenges that have defined this nation and the world.

Since Georgetown first opened its law school in 1870, the same year in which the federal government created the Department of Justice, this campus has been a gathering place for the nation's foremost legal thinkers, and it's been a staging ground for developing pioneering legal ideas and analysis. Our earliest professors were judges, justices, and noted public servants. Supreme Court Justice Samuel Freeman Miller taught for the first three years of the law school's existence, and was the sole salaried professor. In its first decade, Georgetown's law faculty included a future Supreme Court justice of the District of Columbia, the first associate justice of the Court of Appeals of the District of Columbia and member of Congress, and a founding member of the American Bar Association and attorney general of the United States. And now today, more than a century later, Georgetown continues in this important tradition of bringing together distinguished public servants and eminent scholars to investigate pressing contemporary legal issues and to generate new ideas and new consensus regarding the future of the United States judiciary.

Alexander Hamilton wrote in Federalist number 78 that the complete independence of the courts of justice is essential to our constitutional system. The idea of

separation of powers between the branches of government is seemingly a bedrock principle taught in every American politics course on campuses across the nation. And yet, a recent American Bar Association poll found that fully 56 percent of the American public believes that there is a crisis of judicial activism in our nation. The work of this conference will help identify the underlying issues that foster this sentiment, and the conversations we will have and the work we will produce promises to have significant implications for the legal community, from those who sit as justices and judges, to those who argue the cases, to the professors and students in our law classes. It will help policymakers by clarifying and crystallizing contemporary legal issues and frameworks and it will benefit the American citizenry by encouraging good government and the best tradition of our constitutional system.

And in keeping with that tradition, you will find that this is a different kind of conference than ones that we may have known before. Our emphasis is on discussion and the sharing of ideas rather than lecture halls and long speeches. Your thoughts and opinions are essential to the ultimate success of this gathering. It is true that we may not all agree on a particular law or on the outcome of a particular case, but we do all agree that the best way forward is to be united, working together to share ideas, to investigate new ways of thinking and modes of action, and that is the spirit with which we will engage with each other at this conference.

Our work will not end tomorrow when the conference concludes. The Georgetown Law Center is guided by the idea that law is but the means—justice is the end. This conviction animates all that we do, including our involvement in this conference. Our purpose here is ultimately to help ensure that the law is just and that justice is done. This will require our attention long after we have published our last paper from this gathering. Georgetown University stands always ready to support further work and new efforts to keep these important legal issues at the forefront of public discourse.

Georgetown is privileged to cosponsor the conference on the judiciary with the American Legal Institute, an organization that is led with distinction by Michael Traynor. Mr. Traynor specializes in appellate, intellectual property, first amendment litigation, in internal corporate investigations, and in product liability and risk management consulting and counseling. In 2004, the U.S. Court of Appeals for the Ninth Circuit awarded him its outstanding lawyer award, which recognizes attorneys who demonstrate outstanding character throughout a lifetime of service to the rule of law. Mr. Traynor is senior counsel with Cooley Godward, as well as president of ALI. Ladies and gentlemen, it's my privilege to introduce to you this morning, Michael Traynor.

(Applause.)

MICHAEL TRAYNOR: Justice Breyer, Justice O'Connor, and distinguished members, friends, and friendly critics of the American judiciary, welcome to this conference on the state of the judiciary. On behalf of the American Law Institute, it is a special pleasure to cosponsor this conference with the Georgetown University Law Center, to work with our dedicated co-chairs, Justices Breyer and O'Connor, and their

steering committee, and to have the chance to help present an extraordinary panel of speakers throughout our conference, this set of timely and scholarly papers, and the opportunity to listen to and act on your comments and suggestions.

On behalf of your sponsors, I want to give special thanks to the Annenberg Foundation and other contributors for their support for this conference and the preparation and publication of the papers; to ALI-ABA, the leading national provider of continuing legal education to our profession, for assembling and publishing the papers; to Judy Areen, professor and dean emeritus, and Dean Alex Aleinikoff of Georgetown University Law Center, Lance Liebman, director of the American Law Institute, and Meryl Chertoff, director of academic projects and continuing legal education at Georgetown, for their remarkable efforts and skill over the last year in organizing this conference and matching a superb list of presenters with a superb list of invitees; and to all of you for making the commitment to be here today.

This conference marks the 100th anniversary of Dean Roscoe Pound's famous talk entitled "The Causes of Popular Dissatisfaction with the Administration of Justice." The topics we will discuss include causes for dissatisfaction today with the judiciary, the meaning of judicial independence and why it is important, what can be done to educate the public, the role of the media, the selection, tenure, and discipline and removal of judges, relationships among the judiciary, the legislative, and the executive branches of government, federal and state, and grounds for improvement of the judiciary and how best to accomplish needed improvements. In addition to the presentations, we will have small group discussions. They are a critical part of the conference, and we solicit and welcome your candid criticisms, and your constructive suggestions.

The term judicial independence is widely misunderstood. To some, independence connotes inappropriate activism, requests to create law unbound by the constraints of statutes or common law precedence. For many thoughtful people, it is an "I know it when I see it" kind of term. Like the elusive phrase "sustainable development" in environmental discussions, it reflects values that are important to the people who hold them, even though they may not agree about details. In general, the term in my view connotes judges whose tenure is reasonably secure, who have been selected carefully, recognizing that systems of selection vary, and who will decide cases according to the rule of law, unconstrained by political fear, fear for physical safety, or other undue pressures, and uninfluenced by the status of the parties, the threat of salary reductions, or extraneous considerations. The concept also includes principles of judicial accountability and judicial restraint.

In May, Chief Justice John Roberts gave a welcome and friendly greeting to the members of the American Law Institute at our annual meeting in Washington, D.C. He distinguished between informed criticism of judicial decisions and collateral attacks on judges because of disagreements with their decisions. We will hear more about that subject during our conference, and we are honored that Chief Justice Roberts will address us at dinner tonight. Justice Breyer, Justice O'Connor, and others of their Supreme Court colleagues, are taking a leading role in educating Americans about our justice system. In

his book, *Act of Liberty*, Justice Breyer develops the theme that liberty means not only freedom from government coercion, but also the freedom to participate in government itself. In speeches before many audiences and in writings, Justice O'Connor has been outspoken about the importance of judicial independence and the vital public need for greater understanding of the role of the judiciary.

At the ALI's annual meeting, we held a special ceremony in Justice O'Connor's honor to celebrate not only her magnificent service on the Supreme Court, but her dedication throughout her life to judicial and public service, her positive and generous spirit, and her standing as one of our country's great citizens. Justice Ruth Bader Ginsburg spoke warmly of Justice O'Connor's collegiality, holding her own as she did on the Lazy Bee Ranch in Arizona and her surprise appearance in a performance of *Henry V*, where Justice O'Connor played the role of Isabel, Queen of France, and spoke the famous line, "happily a woman's voice may do some good." (Laughter.)

Chief Judge Mary Schroeder of the U.S. Court of Appeals for the Ninth Circuit spoke of their long and collegial relationship beginning in Arizona, and said that Justice O'Connor will always be the role model's role model. And U.S. District Judge Brock Hornby spoke of her personal interest in people and the time that she sets aside for individuals, her appreciation for the important institutional role that trial courts play, and her commitment to improving civic education in high schools and elsewhere so that American citizens better understand why judicial independence is important. Justice O'Connor is also the author of the children's book *Chico*, about a young Sandra, her horse, and the challenges they faced on an adventurous outing on the ranch. I read it to my four-year old granddaughter Emma, who does not yet appreciate the high stature of Supreme Court justices or even grandpas. (Laughter.) Emma's judicious, uncomplicated, unbiased, and completely independent verdict: Papa Mike, read it again. (Laughter.)

It is a privilege to join in welcoming Justice O'Connor as our next speaker. Thank you.

(Applause.)

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