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1996 SPRING COMMENCEMENT SPEECH

by Peter G. Angelos

Mr. President, Dean Sebert, members of the faculty, graduates, distinguished guests:

I accept this high honor with great pride and sentimental recollection. Thirty-five years have passed since I as a law school graduate sat there where you are seated now excited, happy, and looking forward with great anticipation to the years ahead that I would spend as a practicing member of the Bar.

You are all to be heartily congratulated. Certainly your families who stood by you deserve equal congratulations. Your presence here is proof that you have accomplished a marvelous achievement, the first phase of a remarkable adventure. When you walked through the door to the Law School, most of you did not know what lay in front of you. Oh, you knew there was a lot of work ahead, that you would be burning the midnight oil absorbing books stacked as high as the eye could see. But what you may not have known as you nervously entered the door of your first class, was that you were going to learn a new way of thinking, of observing, indeed of being.

Law school does that to you. It makes you — indeed, forces you — to challenge your own assumptions, not only about law but about life. You have learned, for example, that there are not only two sides to every issue, but often three, four or five sides. You have discovered the importance of nuance and distinction. You understand now, as perhaps you did not before, how important foundational definitions are to the way we think, the way we act, even the way we feel. Hopefully, you will come away from the experience with a new sense of self-confidence and belief in the law, the courts, and in the importance of your chosen profession.

Never forget as you enter law practice, that serving your client, your profession, your community is the most valuable and important role you fulfill as a legal professional. You are the weavers of the fabric of a peaceful community. You are the architects and protectors of freedom and democracy. You defend the

weak against the powerful and when you represent the powerful you must temper their conduct so that they will not take advantage of the weak.

By choosing the law, you are placing yourself right in the middle of the intricate workings of society, where tempers flare, values are tested, and in the end, sometimes even mountains are moved. That old Chinese saying comes to mind, “May you live in interesting times.” By making the law your life’s work, you definitely shall “live in interesting times.” Happily, you will find when the cases are the hardest and the issues most difficult, these are the times when the thrill of being a lawyer is at its most compelling.

But I must warn you, if you thought that by becoming a lawyer you were going to win a popularity contest, you made a big mistake. Lawyers have never been popular, probably not even in Shakespeare’s day. Of course, few know that Shakespeare’s famous line about killing lawyers is uttered by an evil character in Henry VI, who supports a rebellion that would impose tyranny upon the people. You see, Shakespeare had it right. In order for tyranny to prevail, you must indeed kill all the lawyers, whose personal and professional commitment is to preserve and protect individual rights.

You enter the profession at a very difficult time for lawyers and the law. Lawyers are under unremitting attack, slandered, and vilified as the cause of many, if not most of society’s woes. We are blamed for an allegedly out-of-control system of litigation. We are even accused of harming the economy and costing jobs. But think about that: were the jobs lost at AT&T because of lawyers? Have the jobs that have been exported to cheap labor countries by the hundreds of thousands been exported from the USA because of lawyers? Ridiculous! The truth is that corporate bean counters have no concept of community and worker loyalty and refuse to recognize that America’s first and fundamental obligation is to take care of its own.

We are called all sorts of names: ambulance chasers, shysters, mouthpieces. And then there are the lawyer jokes — you have all heard them — which in the guise of humor, degrade, demean, and defame.

Yet, despite our wounded feelings, it behooves us to look carefully at why many people have such a low opinion of lawyers. Part of it is us. Legal representation often costs too much, restricting access to justice for far too many people, with the concomitant and tragic effect of undermining the people's belief in the rule of law. Some recent high-profile trials are mistakenly believed to be typical of the legal system, and the, shall we say, flamboyant conduct of controversial lawyers is seen as the norm. And often some lawyers fail to conduct themselves and to discharge their responsibilities in a manner consistent with the high calling of our profession.

There can be no doubt that these are problems that need addressing. They are not, however, the cause of the depth of hostility and bitterness that we see directed at lawyers by many Americans today. Rather, the hostility has been intentionally ignited as part of a cold and calculated strategy being mounted across the country by the nation's most powerful economic forces and their minions. The aim of this campaign is simply this: to turn the American people against lawyers in the basic assumption that if enough people hate lawyers, they will unwittingly or even willingly sacrifice their very precious legal rights.

This campaign of lawyer vilification is spearheaded by the so-called tort reform movement. Reform implies changing for the better, which is clearly not what this movement is about. Tort reform is funded lavishly by such corporate noteworthies as Dow Chemical, Aetna Insurance Company, Monsanto, Eli Lilly, General Motors and a multitude of other sly corporate foxes striving to gain entrance into the hen house of American individual rights.

Lest any of you think I am exaggerating the danger, recall the election held in California last March. This same crowd along with Silicon Valley mega-millionaires and other fat cat corporate henchmen attempted to nullify the California Civil Code by placing three initiatives on the ballot — all of which would have severely restricted the rights of individu-

als. One proposal was a radical no-fault plan that would have stripped Californians of the fundamental American right to a jury trial in auto injury cases.

A second initiative would have protected the Charles Keatings of the world from lawsuits brought by cheated security purchasers. A third initiative would have drastically cut contingency fees, making it much more difficult to find a lawyer willing to take a case without money up front, the idea being that people would be unable to afford to hire lawyers and grievances would go unredressed. As I will discuss later, this strategy has worked quite well for insurance companies in the field of medical malpractice.

These three initiatives were profoundly anti-consumer and destructive to fundamental American civil rights. Supporters of the initiatives knew that the people of California would not vote for the initiatives if they were argued on their merits. So, they came up with a scheme to blame lawyers for every ill known to man, spending more than ten million dollars in the process, mostly on anti-lawyer television commercials.

The message was simple, get the lawyers by voting for the propositions. It almost worked. It took an extraordinary coalition of consumer advocates to turn the tide. Even so, the initiative to limit contingency fees only lost by a few points.

Another favorite tactic of the tort reformers is to reinforce negative feelings generated by lawyer bashing with the misleading horror story of a legal system run amok. I am sure many of you have heard the tort reformers' version of the McDonald's coffee case. For those who may not have heard of it, the real story is as follows.

In February 1992, 79 year-old Stella Liebeck was a passenger in her grandson's car. She bought a small size cup of coffee at a McDonald's drive-through window. She opened the top of the coffee while the car was stationary. When she removed the lid, all of the coffee in the cup spilled onto her lap burning her. Ms. Liebeck sued and won. The jury awarded her nearly three million dollars in general and punitive damages.

The big money propagandists swung into action and pounded on the case as the mother of all horror

stories. The U.S. Chamber of Commerce produced a radio advertisement stating, "Is it fair to get a couple of million dollars from a restaurant just because you spilled hot coffee on yourself? Of course not. It's ridiculous! But it happened." Attack faxes were sent throughout the country, stimulating newspaper editorials and radio talk show hosts to criticize Ms. Liebeck, her lawyer, the jury, and the legal system. You knew there was resonance when Jay Leno, the barometer of the country's attitudes, told a series of withering jokes about getting rich off of spilled coffee.

Of course there was more to this story than the corporate propagandists were willing to tell. The spilled coffee was so hot — 180-190 degrees — that the skin on Ms. Liebeck's vulva and thighs literally melted off her body down to the fatty tissue in three to seven seconds. She spent eight days in the hospital, in agonizing pain. She needed extensive skin grafts. To this day, there is permanent scarring over sixteen percent of her body — all this from a spilled cup of coffee.

Early on, Ms. Liebeck offered to settle for her out of pocket expenses of fifteen to twenty thousand dollars. Do you know what McDonald's offered? A mere eight hundred dollars. At trial, the jury heard some compelling and disturbing testimony of McDonald's disregard for the safety of their customers. For example, it turns out that more than 700 other McDonald's customers have been seriously burned by their too hot coffee. A McDonald's executive candidly admitted this fact but called these serious injuries "statistically trivial," refusing to appreciate that each case was about a human being who had suffered one of the most painful injuries that one can experience. The jury also learned that by reducing the temperature of the coffee to 160 degrees, still hot and satisfying, it would take twenty seconds to cause a third degree burn, enough time for the victim to wipe away much of the spill and minimize or prevent the extent of the injury.

The jury was incensed by McDonald's callous disregard for the safety of their customers and its failure to adequately warn their customers of the danger. So, they decided to get the company's attention, awarding \$2.7 million in punitive damages, an

amount equivalent to two days of coffee sales. That is a lot of money, but it needs to be kept in perspective. At the time of the jury verdict, McDonald's was reporting annual profits of more than one billion dollars.

Our system of justice has checks and balances to prevent injustice and it worked in this case to McDonald's advantage when Judge Robert Scott, a conservative Republican, reduced the punitive damages award to \$640,000. Still, in reducing the award, he noted on the record that McDonald's deserved to be punished because it "knew that the coffee, at the time it was served, was too hot for human consumption" and was dangerous.

This case, in its distorted and disingenuous version, along with others equally distorted and misrepresented, has been presented over and over again to the American people as proof that lawyers are getting rich by filing frivolous cases in a legal system that is out of control. Yet, this case ended with fair and just results. Ms. Liebeck received just compensation and McDonald's just punishment by way of punitive damages. More importantly, McDonald's has reduced the temperature of the coffee it sells to an acceptable level no longer capable of inflicting third degree burns on unsuspecting consumers.

A third way in which the agents for the power elite attack lawyers and the rights of the general public is literally to lie about the contingency fee system. Now, this is a serious proposition because if the contingency fee becomes unavailable, most people will be denied access to justice. Of course, that is what the big money interests want. They detest the contingency fee because it is the great equalizer. It allows wronged citizens to obtain redress against the most powerful economic forces in the country.

How long would the average American, except for the very wealthy, last in a lawsuit against a General Motors, an Aetna Insurance, or a Dow Chemical Company if they had to pay their lawyers by the hour? These corporate Goliaths would ridicule their feeble pursuit of justice and bankrupt individual plaintiffs by protracting the litigation until they ran out of money with which to pay their legal fees. Make no mistake, without the contingency fee there would be little

justice available to Americans.

We can see how this has worked in the field of medical malpractice. Most people do not know it, but medical malpractice is one of the leading causes of unnatural death in the country. A recent Harvard University study found that up to 150,000 people a year die because of medical mistakes. That is more than homicide, suicide, and auto accident deaths combined. Medical malpractice produces many more permanent total or near total disabilities than do workplace accidents.

Historically, the systematic and unrelenting defamation of the American legal profession began as a consequence of severe financial losses sustained by the liability insurers of the medical profession more than twenty years ago. These insurers had suffered major financial losses totally unrelated to claims paid on behalf of insured physicians. Their losses were a result of bad investments, collapse of the real estate markets, and general deterioration of the economy at that time. Desperate to retrieve their financial positions they announced to the public that it would be necessary to raise medical malpractice insurance premiums to astronomical levels, blaming the American legal system and of course the lawyers. In other words, the legal profession somehow was accused of being responsible for the thousands of medical mistakes made annually by the practicing physicians of the country, and the legal system itself was equally condemned for overcompensating the victims. No mention of their bad investments or real estate or economy or the need to vigorously weed out the small percentage of physicians and medical institutions responsible for the totally unacceptable degree of medical malpractice which still exists in our country today. Dishonest? Yes. Effective? Yes. Did they succeed in deceiving the public, state legislatures, responsible print and broadcast media? Yes.

The reaction was telling — doctors pressured government to restrict the rights of their patients so that their insurance premiums would be reduced. That pressure led to a stampede of legislation all over the country limiting contingency fees of lawyers whose responsibility it is to represent malpractice victims, and limiting severely the damages that even grievously

injured victims could collect.

So what happened? Exactly what the insurance companies wanted. Many victims of malpractice today can no longer find a lawyer to take their case on a contingency basis, unless the injury is so catastrophic that a lawyer who wins a case can earn a fee commensurate with the time and expense of prosecuting complex and difficult cases. Thus, since the cost of paying a lawyer by the hour for a few years of intense struggle is totally beyond the means of most people, serious wrongs are for all practical purposes without the capability of being redressed. Look at the statistics:

- Only between three and seven percent of malpractice victims ever seek compensation for their injuries. Even the most serious injuries often go uncompensated.
- Of those who bring valid claims, at least in the eyes of the insurers, only half prevail in court.
- Even those who are compensated generally receive damages below their actual losses.

How can this be? How can people who have been injured through no fault of their own be so abandoned in this country that pledges itself to equal justice for all?

Emboldened by their success in the medical malpractice scam in totally fooling the American people, the media, and responsible elected officials, these same insurers joined now by the Dows and Monsantos, increased their scurrilous attacks a thousand fold. Their unremitting attack on lawyers as the fomenters of frivolous and fraudulent lawsuits, their casting of aspersion on the justice system by spreading phony or anomalous horror stories, their lobbying to pass laws to restrict rights has elevated the bottom line above the importance of individual health — and the insurance companies and their corporate cohorts are laughing all the way to the bank.

We can see a similar pro-corporate, anti-consumer attitude in the field of asbestos litigation, an area with which I am intimately familiar. A recent

study conducted under the auspices of Yale University confirmed that the injuries and deaths by suffocation that asbestos victims suffer has been caused by the manufacturers' and suppliers' gross, wanton, reckless, and outrageous conduct in the production and distribution of asbestos-containing products. To put it bluntly, these companies knew that the product could injure and kill thousands, and they flat-out did not care. Rarely in American history has such a blatant blood sacrifice been made on the altar of corporate profits.

What is the reaction of the authors of the Yale study, which was a project in government/business relations? No concern was expressed in the article about people dying and becoming disabled, yet the authors were concerned about insurance company profits, urging that compensation to people intentionally injured not be "at the expense of present and future uses of the economy's financial resources. Compensation has to be achieved by means that are not disruptive of the insurance function in risk taking." That is an actual quote from the report.

This form of private tyranny is the spirit of this age, and it is up to us lawyers to stop it. That is the purpose of the legal profession — to ensure that justice, that all-important concept to freedom, is available to everyone, not just to the rich, the powerful, and the few. And because the powerful understand that, they relentlessly try to convince the American people to dislike and distrust lawyers, to see lawyers as their enemy rather than the protectors and guarantors of their fundamental legal rights. By attacking the civil justice system, by attacking lawyers who help average people obtain justice within that system, by seeking to create a legal Darwinism in which only the rich and powerful have meaningful access to justice, by putting profits over people, they undermine the viability and vitality of freedom itself.

That is the bad news. Now the good news. There is abundant reason for hope here in this room today — you. Each and every one of you, and others like you across this great country of ours — by the way in which you perform your professional duties, by the way in which you interact with your clients, by your willingness to serve your profession and the

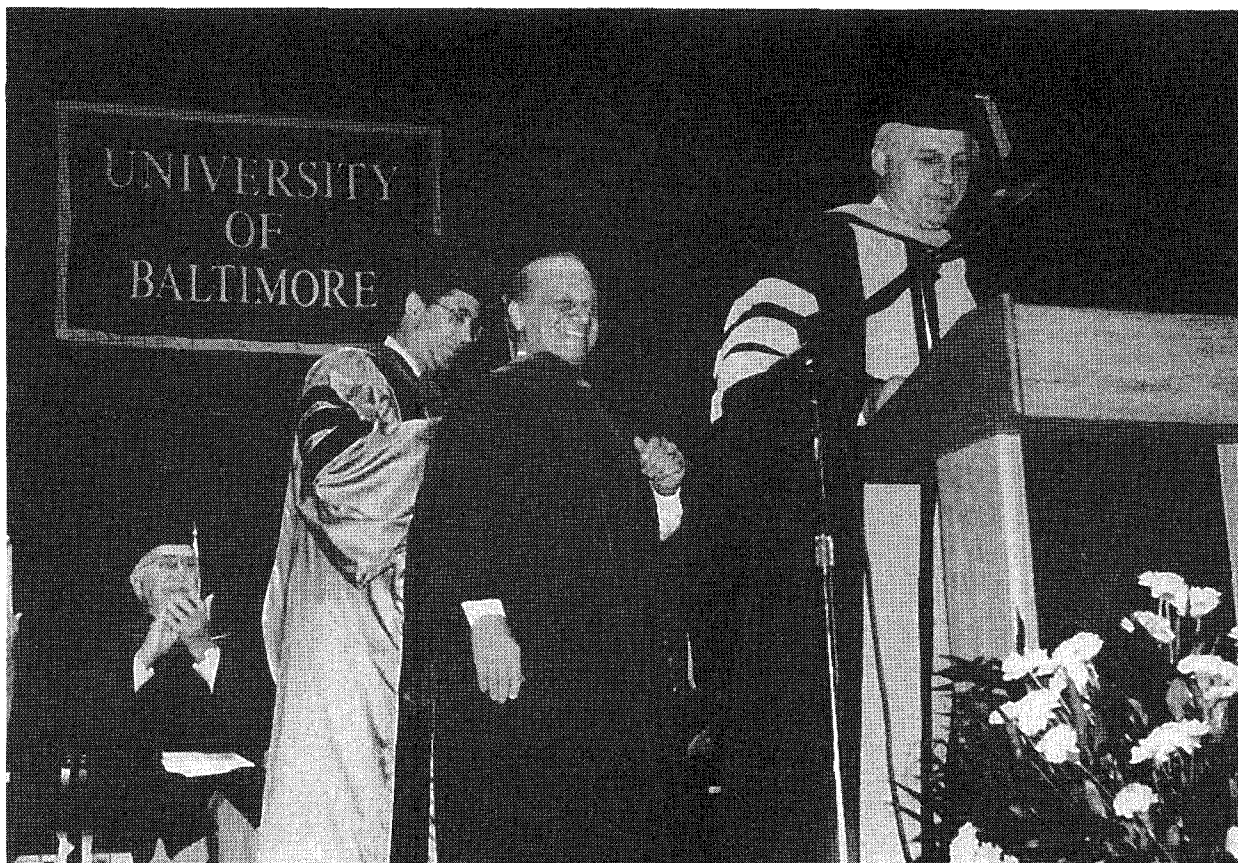
public above and beyond the necessity of earning a living, by doing your best to ensure that the term "officer of the court" is more than an empty phrase — have a tremendous opportunity to reverse the downward trend and restore to our profession the respect it deserves and must have to carry out its mission.

How? By speaking up for justice. By representing the underdog against the powerful, pro bono if necessary. By refusing to cut ethical corners. By doing the right thing by your profession and our system of justice, even if it means standing up to your client or your boss. For by becoming lawyers, you have decided that you want more than just a job. Your life is to be about more than merely making money. Your passion must be to participate in making real and concrete those wonderful intangibles that make America the light of the world. What makes this nation the light of the world is freedom, freedom under law, not just for the rich, not just for the few, but for everyone.

So I urge you go out and make a difference, a difference in the lives of your clients, in the legal system of which you have become an essential part, a difference in your country and indeed, in the world. From such service will come deep joy and satisfaction. From such service will come a more just society. From such service will come greater equality. And from such service yours will be a life of great challenge and fulfillment and ultimately you will know the satisfaction that you did indeed make a difference.

Thank you and good luck.

About the Author: Peter G. Angelos is a practicing attorney in Baltimore and a graduate of the School of Law. Please see the *Forum Faces* section for a more in-depth biography of Mr. Angelos.



Dean Sebert awards Mr. Angelos the honorary degree of Doctor of Laws as President Turner addresses the graduates at the 1996 Commencement Ceremony