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# Letter addressing objections to the choice of Michael Mukasey as the speaker at the commencement of Boston College Law School

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## Boston College Law School

### MEMO

Dear Members of the BC Law Community:

I am sure you have heard the recent discussions around the school concerning the selection of our 2008 commencement speaker, United States Attorney General Michael Mukasey. I want to update you on what has occurred so far, and some thoughts I have had on the subject.

Mr. Mukasey was a unanimous choice among the deans. He has a long record of public service as chief judge in the United States District Court for the Southern District of New York. Some time after the announcement of his selection a number of faculty, and some students and alumni, came forward to express concerns. Their objections were based on Mr. Mukasey's perceived position on waterboarding. I say "perceived" because several of his public statements suggest that he is personally opposed to it. But he has declined to take a public position on the legality of the practice. He may have reasons for doing so. As lawyer for the United States, he represents a client that will have to confront several issues in the near future: whether to prosecute CIA agents who engaged in waterboarding; how to handle *Bivens* actions arising from those incidents; what to do about evidence derived from waterboarding in the trial of Khalid Sheikh Mohammed. Many of those who are opposed have expressed their belief that his silence makes him unsuitable as a role model for our community.

At Boston College and elsewhere the controversies that have arisen over commencement invitations are sometimes bound up with the award of honorary degrees and other forms of recognition. Here at the Law School it has been a common, though not invariable, practice to give Founder's Medals (named for Robert Creedon, S.J.) at graduation ceremonies. The Provost and I have been talking about this issue for some time. One difficulty with these practices is that they make it harder to invite prominent public figures (except perhaps judges) who have taken sides on issues of public concern. Someone in the community is bound to feel that the speaker's position unsuits him or her for our praise. With this thought in mind we have decided that in the future we will not routinely confer Founder's medals at graduation – a rule that will apply to this and future years.

We have taken a number of steps to give the community the chance to express views on all of this. We held a faculty meeting three weeks ago, and another last week. The Law Student Association held an open meeting for students on February 14. I am meeting

with the 3L class today. We have organized a panel discussion on March 20 that will be open to the entire community. We are co-sponsoring an event with Jack Goldsmith, Henry Shattuck Professor of Law at Harvard, on the Chestnut Hill campus on March 25.

I have made many calls to law school deans and other academics, practicing lawyers, business leaders, judges, and other friends of the Law School asking for their opinions. They have all said that some controversy over a speaker can be healthy and that this sort of debate is an important part of any academic exercise. I agree with that. I believe this has presented us with a real teaching moment for our students. They will wrestle with ethical and legal issues like this in their own careers. We must address these issues head-on, and discuss all aspects, rather than refuse to face them. An institution of higher education must be able to consider unpopular opinions without censorship, and we must show our students that this sort of controversy is not something to shy away from. It is rather an opportunity to listen and learn.

I have also heard a good deal of useful discussion about the process for selecting a commencement speaker. We have in the past invited suggestions, though not consultation, from students and faculty. Our practice is the norm among law schools nationwide. Most keep the potential commencement speaker list private and known only to the top-level administration until an official announcement is made. There are many reasons for doing this. One of the more important is that a speaker who agrees to attend may not have been the first choice, and that is not something a school ever wants to have made public.

I do think, though, that there are ways to improve our process without ignoring these concerns. We can do a better job of inviting suggestions from the graduating class. Given the lead time necessary to invite people prominent in public life, we should probably consult with 2Ls in April of their second year. We might also benefit from consultation with a small group of senior faculty – assuming always that they are willing to respect the confidentiality of our decisions (even if they disagree). I have opened discussions with the faculty about doing something like this, and will report to you on further progress.

I welcome any thoughts you may have, and encourage you to make your voices heard on this and other matters of importance to the School. One of our greatest assets is our community. We can preserve it best by engaging in healthy debate and treating each other with civility when we disagree – a state of affairs that is natural to an academic community. .

Sincerely,

John Garvey