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## Message from Dean Caminker

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# MESSAGE

## from Dean Caminker

The following is an excerpt from the Dean's remarks to the graduating class of 2005. (See commencement story on page 24.) A number of requests have been made for copies of the speech, so we have reprinted an edited version here.

Lawyers are routinely blamed for many of society's ills. In fact, the practice dates back to William Shakespeare and a character who famously uttered the phrase: "The first thing we do, let's kill all the lawyers." Now, I don't mean to suggest that this single sentence is the progenitor of all subsequent lawyer-bashing. But it is a phrase that pundits freely repeat today; it's a phrase that has become a part of our cultural vocabulary, often used indiscriminately and thoughtlessly, even if typically in jest.

Certainly there are moments when lawyer-bashing seems justified; for example, Enron and its aftermath certainly shined a spotlight on some lawyers who had lost their way. And I've been known to laugh at a good lawyer joke as much as the next guy. But over the past year I've become increasingly worried that public criticism of lawyers, and especially of judges, has become unjustifiably and dangerously shrill.

Lawyers and judges today are asked to grapple with some of the most fundamental, emotionally charged, and divisive issues imaginable. Issues such as the detention of enemy combatants, the legality of various interrogation methods, and the use of domestic security measures authorized by the U.S. Patriot Act, require lawyers and judges to make decisions balancing national security and individual liberty.

Given the stakes, it is not surprising that these issues engage the passions of politicians, pundits, and laypersons alike. This is a sign of a healthy democracy:

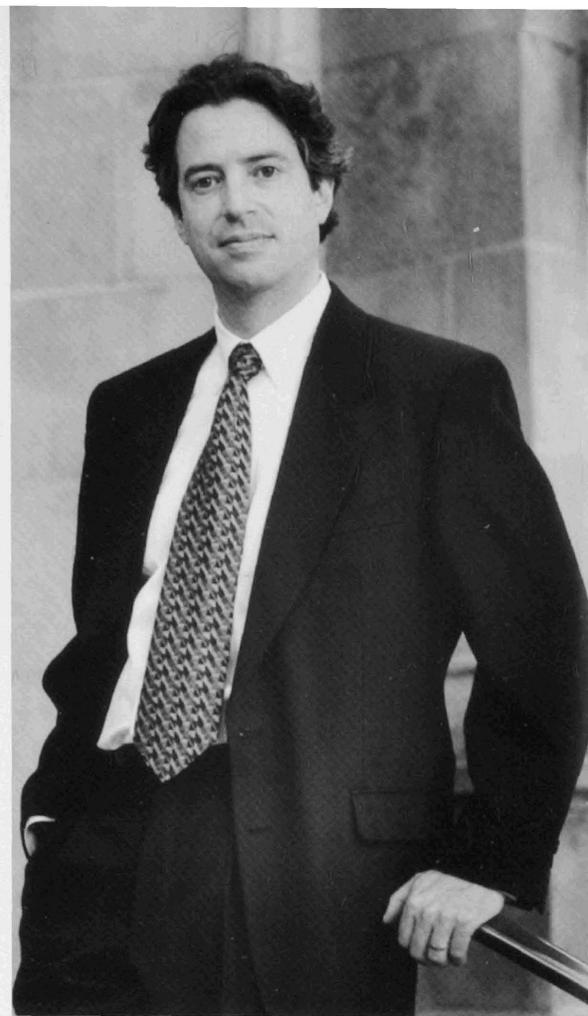
people publicly discussing deep-seated values and emotions, and debating how they ought to be applied to resolve divisive social issues.

But reflective debate is one thing; and knee-jerk reaction is another. Modern-day media tools such as on-line insta-polls create a wave of visceral responses that then become publicized as "popular opinion." Poll results are in turn trumpeted as the "will of the people" by politicians seeking to galvanize political support for their electoral agenda.

Yet in a constitutional democracy, law is not and should not be determined by the passions of the moment or by political demagoguery. Rather, lawyers must argue, and judges must decide, specific cases based both on the concrete facts and on the enduring values imbedded in our Constitution and common law. Judges are supposed to consider precedents and context and nuance, not the raw emotions of the moment.

Of course, lawyers and judges will inevitably have good faith disagreements about what the law and facts dictate in specific cases. It is in the nature of law that there will be room to argue, within boundaries set by a good-faith interpretation of longstanding norms.

But recent proclamations by high-profile political officials and opinion-leaders have, in my view, gone so far as to threaten a healthy separation of powers, if not the rule of law itself. Judges who issue judicial rulings that are disfavored on political grounds are routinely castigated for being "unaccountable" and "out



of touch," rather than praised for having the courage to apply the law even in ways that may prove unpopular. The epithet "judicial activist" is bandied about so frequently that it no longer has any principled meaning. Indeed, now sometimes judges are accused of activism when they refuse to act, if the critic believes action is warranted. "Judicial activism" ought not mean simply "deciding contrary to my personal views."

Criticism of judicial decisions has been a staple of American politics since Chief Justice Marshall penned *Marbury v. Madison* two centuries ago. But it is in my sense that the lack of civility in public discourse is reaching new heights. Overheated and even threatening rhetoric suggests an unprecedented hostility being directed personally at judges themselves just because their rulings depart from the critic's own views. Given the ferocity of recent *ad hominem* attacks, one wonders whether the oft-repeated Shakespearean threat to lawyers has become so engrained in our cultural lexicon that we

have become inured to such blatant challenges to judicial independence and the rule of law.

We would do well today to take a deep breath, step away from the battle lines, and recall the actual context of Shakespeare's famous dictum. It was the rebellious commoner Dick Butcher in *Henry VI* who suggested to his fellow schemers that, after they overthrew the reigning government, they should kill all the lawyers. The revolutionaries believed that the lawyers must be eliminated because they would stand in the way of the rebellion, by steadfastly maintaining their fidelity to and defense of the Rule of Law. Thus Shakespeare was not declaring open season on lawyers. Rather, he was actually extolling their virtues, and highlighting their special training and role in defending the Rule of Law and principles of justice against the raw emotion of the masses.

While perhaps this is a melodramatic way to put the point, the scene captures a central reality of our society: It is the cadre of well-trained lawyers and jurists, committed to a society ruled by law and not men, that forms our strongest bulwark against oppression and injustice.

It is imperative that, even in the face of relentless criticism, lawyers and judges maintain their sense of perspective and mission. They must continue to use their own best, independent judgment to interpret and apply the law in a manner that prioritizes foundational values over raw passion, and to make decisions based on evidence, not anecdote.

Now, this is not to say that passion plays no role at all for lawyers or judges. But the point is that the law has its own integrity, its own character, that tempers raw emotion and guides it towards long-term, clear-minded resolutions of difficult issues — indeed, part of the point of law is to temper the passions of the day.

The University of Michigan Law School is proud to do its part in cultivating this penchant for careful, critical and independent legal analysis that properly balances reason and passion — what might be called the public character of a lawyer — in educating the next generation of young lawyers. Indeed, this mission was emblazoned over the entryways of the Quadrangle by William W. Cook. Cook, of course, was the Law School's preeminent benefactor who, paving the way for many thousands of other alumni who have supported this School, originally provided the private funds to build the lovely and grand Quadrangle.

He explained, in language inscribed around the Quad: "American institutions are of more consequence than the wealth or power of the country; and . . . the preservation and development of these institutions have been, are, and will continue to be under the leadership of the legal profession. [Furthermore, the] character of the legal profession depends on the character of the law schools. [And the] character of the law schools forecasts the future of America."

We are very proud of the character of this law school. We expect our graduates to take what they have learned here about the integrity of the law and the ethics of

lawyering, and share these principles with a cynical society. We expect alumni to serve others with integrity, with generosity, with civility, and with an eye towards pursuing justice. Each one of us should be an ambassador of the rule of law, and in our work, personify this "character" of Michigan Law School.

*Evan Caminker*