Graduation Speech

Well, class of 2007 . . . you are now officially graduates -- alumni -- of the Harvard Law School. Congratulations. Well done. All of you, every single one of you, should be bursting with pride. I know your parents and spouses and friends are. And so too are we, the faculty of the Law School. Congratulations.

To family and friends, I personally want to thank you. You made this day possible. Your support, your encouragement, your sacrifice, your love. The graduates, I am very sure, know this. Both they and I applaud you.

Above all, I want to thank the graduates themselves. I've said it before, but it can't ever be said too often. Students make Harvard Law School what it is. In so many ways you're not even aware of, you give the place its vitality, its spark, its energy, its *edge*, and its driving sense of purpose and mission. And you leave Harvard Law School a better place because you've been here. Your curiosity and your passion, your ambition and your extraordinary talents have greatly changed and vastly improved the School. My thanks go to each one of you and to all of you as a group for making that extraordinary contribution.

Soon we'll give our modest acknowledgment on paper of your terrific work and accomplishment. I will hand each of you a diploma – or to be more precise, as you've learned at law school (sometimes to your family's consternation) to be, I'll hand each of you a leather case, and after shaking hands with me, you'll each pick up your diploma as you exit the stage.

But before we do that, I want to take a little while to talk with you about some of the choices you'll make – some of the choices you'll be *called upon* to make – as lawyers and as leaders in this world. I want to talk with you about some of the values that I hope will guide those choices – and the courage it sometimes take to live and work by those values.

I'll start, but most assuredly not end, with the graduation speech I gave three years ago, at the conclusion of my first year as Dean of this great Law School. That week a man named Archibald Cox died. You've passed his portrait hundreds of times in Pound Hall. He joined the Harvard Law faculty in 1945 and taught here for 40 years after. But what he is best known for is not the many years he spent at Harvard, but a few months he spent in Washington DC – because in those few months in the year 1973 he defended and upheld the rule of law in this country.

Cox was then the special prosecutor charged with investigating crimes arising out of the burglary of the Democratic National Committee offices in the Watergate building during the 1972 presidential campaign. Shortly after he began his work, Cox learned that President Nixon had secretly taped conversations in the White House potentially relating to his investigation. Cox subpoenaed some of those tapes. Nixon resisted the subpoena. Cox took the matter to the courts, which ruled in Cox's favor. Still, Nixon ordered Cox

to stop pursuing the tapes. Still, Cox refused, saying he was bound by law not to capitulate. Nixon responded by having Cox fired. But that was a pyrrhic and short-lived victory, because that very act marked the beginning of the end of Nixon's presidency.

In a then-famous press conference that he gave after he was fired, Cox talked about what was at stake in his actions and decisions. He said: "Whether our government shall be a government of laws and not of men is now for the American people to decide." He spoke, that is, of the primacy of the rule of law. The rule of law – meaning the practice of resolving disputes (even the most important and bitter disputes) by reference to common norms and the reasons underlying them, rather than by sheer power or coercion or force. Archie Cox taught a nation in those years about that value. He taught a nation that it would be strong only to the extent that *law* would be respected *above all*. That vision lies behind, and gives meaning to, just about everything that good law schools and good lawyers do. It's what makes the legal profession – your profession now – so important and *potentially* so noble.

But as I talked about Cox then and on other occasions since, I wondered whether his example seemed too remote, too distant in time – really too historic – to speak vividly to students of this generation. Indeed, I wonder now, as I look out at this audience, whether his story resonates less with you graduates than with the parents and grandparents sitting beside you. The story of Archie Cox – the story of a humble Harvard law professor (and you thought that was an oxymoron!) facing off against a President – that is your parents' rule of law story, the one *they* lived through and learned from and kept as a reference point for what law meant and how it mattered in a nation.

So today let me tell a rule of law of law story especially timely for you graduates – a story that we've all learned about just these last few weeks. This one also has elements of high drama. This one also concerns a dispute among high governmental officials. This one also involves a Harvard Law professor, as one of its several characters. Most important, this one also teaches fundamental lessons about the role of law, and the role of lawyers, in a good society. It is a story I hope you and your generation will learn from and keep as a reference point for what law should mean and what lawyers should do

The story begins when this generation's HLS Professor, Jack Goldsmith, arrives at the Office of Legal Counsel in the Justice Department in 2003. According to published reports, Goldsmith began to review a set of memo issued by that office in the prior two years and found them not legally supportable. One of those memos concerned and authorized a top-secret wiretapping program. Professor Goldsmith took his objections to the Deputy Attorney General James Comey and the Attorney General John Ashcroft, each of whom accepted Goldsmith's analysis.

Now shift your focus to the then-Attorney General. John Ashcroft becomes seriously ill and is taken to the hospital for an emergency operation. The next evening, while he is under medication and in intensive care, he receives two visitors – the White House Chief of Staff Andy Card and the White House Counsel, Alberto Gonzalez. Although Ashcroft has officially handed the reins of power to Comey while he is incapacitated, these two

high White House officials press Ashcroft to certify the wiretapping program, thereby allowing it to continue. From his hospital bed, both groggy and in pain, Ashcroft refuses. Back at the Justice Department, according to Comey's recent testimony before a Senate committee, numerous officials are ready to resign over the matter. As a result, the White House eventually backs down and agrees to comply with a set of additional legal requirements.

It's an extraordinary story really. The standoff between two powerful sets of people, the hospital bedside scene – all of this makes it seem as though it comes from the movies. And yet it happened.

What is striking for all of us is that there are lawyers on both sides of the story at each of its stages. One lawyer who issues expedient and unsupported legal opinions to justify whatever his client (in this case, the government) wants to do. And another lawyer who questions those opinions on the basis of precedent and principle and insists, even as he tries his hardest to serve his client's legitimate goals, on steadfast adherence to legal restraints. A third lawyer who attempts to pressure a sick and sedated man to declare something legal that he thought was not. And the final lawyer, that same hospitalized man, who refuses to bend under this pressure notwithstanding his illness, his own career goals and ambitions, and his appropriate loyalty to his boss. This is a story, to put it bluntly, of some lawyers who failed to respect the rule of law and of other lawyers who, Archie Cox-like, stood up for and vindicated it.

Now what does this to have to do with you? I think quite a lot. Some of you will be the kinds of people in these stories – presidents (or in other countries prime ministers), attorneys general (or ministers of justice), and their respective highest advisers. Others of you will have similarly important positions in the private or non-profit or academic sectors. Still others of you will choose to represent individuals in less glorified settings, but on matters of vital importance to those involved. And a number of you, who go into business or other endeavors, will deal with law mostly from the vantage point of a client. But in each of your spheres of life, and at every level of responsibility, you will face choices that have much in common with the choices that I've related to you today. You will face choices between expedience and principle. You will face choices between doing what is easy and doing what is right. You will face choices between disregarding or upholding the values embedded in the idea of the rule of law.

So which character in the story will you be? The lawyer who stands up for principle, and upholds the true and the right? Or the lawyer who manipulates or bends or evades the law to seek short-term advantage?

To make the former choice, to uphold rule of law values in the way that Cox or Ashcroft did, often takes a special quality. Judge Calabresi told you yesterday that excellence alone is not enough; that to make a positive contribution to the world – to advance justice, to improve human welfare – you need to combine excellence with humanity and love. And that is right. What he said reminded me of the Wizard of Oz. Judge Calabresi told us that like the scarecrow, we need the brain -- *and* that like the tin man, we need the

heart. But you'll recall that there is another character in that story, the Lion, and another coveted item, courage. And to choose in the way I've been talking about, we often need that quality of courage – or to use a few closely related words: steadfastness, integrity, valor.

I look at all of you and I know one thing for certain: the Harvard Law School class of 2007 will wield more power, have more influence, alter more lives more profoundly than any class of law students graduating this year. You will define, again more than any other law school class in 2007, what in the years to come law and lawyering will mean. That is just a fact – a product of what Harvard Law School is and who you are. What is not a simple fact – what is a hope and an expectation – is that you will define these things in the right way, that you will *do more good* than any class of law students graduating this year, for your communities, your nations, the world.

I think you will. It has been my great privilege and pleasure to get to know many of you as you've passed through Harvard Law. I've taught some of you in the classroom, seen others of you at events and activities around the school, and discussed with many of you issues of law and legal education. I have been enriched by those connections. And the School has been enriched: you have changed it very much for the better. The truth is I think you're splendid. So now I count on you to go out and do similar great deeds in other communities, across the nation and across the world. And I hope you will keep in touch with us as you do; all of us here will look forward to celebrating and honoring you as we hear of the wonderful contributions you are making.

Happy graduation, class of 2007. I wish you all the best in your careers and your lives. I thank you for giving so much of yourselves to this place. And I salute you for everything I believe you will do to make us so proud you went to Harvard Law School.