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Foreword - Democracy and the Rule of Law

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FOREWORD

DEMOCRACY AND THE RULE OF LAW

*Delivered by U.S. Sen. Kay Bailey Hutchison
SMU Dedman School of Law Commencement on May 14, 2005*

DEAN Attanasio, members of the faculty, graduates, families and friends—and my SMU husband, Ray. Thank you for inviting me. I do love SMU.

A lawyer was once asked to define what he meant by “contingent fee.” He responded: “Well, a contingent fee means that if I fail to win your suit, I am paid nothing.”

“And if you win, sir,” the client asked, “what are you paid then?”

“Well, if I win, I get everything.”

Our profession is a remarkable pursuit, rich with men and women like you, yearning to promote justice. It is an honorable profession, and the rule of law it professes is the bedrock of democracy.

We, as a nation, are currently embarked on a worldwide effort to promote democracy abroad. We are engaged in this quest for the sake of others but also because it is in our own best interest.

Our theory is that democracies provide the sturdiest platform for advancing human rights, that human rights and freedom are the surest path to stability, that freedom removes the bitterness and hopelessness and despair that breeds terrorism.

Our efforts to foster democracy, even in areas where it has never been known, is a noble effort. But it's based on self interest. Until we interrupt the cycle of radicalism and repression among the tyrannies of the world, we will never be safe. In today's world, our security depends upon the freedom of others.

Democracy starts with voting and majority rule. But it is successful only when it has, at its foundation, a society that provides minority rights, dispenses equal justice, tolerates a free media, and operates under the rule of law. This concept harnesses individual rights as well as majority rule to the democratic process.

We have grown up in the United States in a society of laws, not of men. We tend to take that concept for granted. But in most emerging democracies, the rule of law is an alien idea, almost incomprehensible. It is critical, as we promote free elections, that we also promote the rule of law throughout the world.

The rule of law involves four basic requirements: equality under the law; a respect for individual rights; an independent and honest judiciary;

and transparent court proceedings. Without a strong commitment to every aspect, even a democratic society will not mature.

DEMOCRACY IS SPREADING AROUND THE WORLD

The West, particularly the U.S., has pushed hard for democratic reforms in recent decades. Thanks to improved telecommunications, most of those living in oppressive countries and cultures can now see democracy for themselves.

In 1974, there were only thirty functioning democracies in the world. With the collapse of communism starting in Eastern and Central Europe, and advances in Africa and Latin America, there are now more than 120 operating democracies in all areas of the globe.

The forward march of freedom is the major story of our time. It always comes at a cost. But it must continue, as President Bush has said, because freedom is the only reliable path to peace.

THE RULE OF LAW

When I started visiting new emerging democracies, I found the concept of voting is easily grasped . . . even when it involves risk.

It's been only a few months since Iraqis faced down the bombings, and the threat of death for themselves and their family members, in order to vote. You may have read the story about one neighborhood, where a large crowd stood outside a polling station for several hours, afraid to go inside. Then one sixty-five-year-old woman announced she'd been waiting her entire life for this moment. She entered the polling station and everyone followed her in to vote.

The rule of law, however, is a more difficult concept. When a visitor talks about having a judge who will rule against the state or when you talk about a legal decision against a prominent local person in favor of a foreign corporation—one is often left with the question: "How can that happen?"

I once met with members of the new Russian Duma, and emphasized how eager the U.S. was for the fledgling Russian democracy to succeed. One member replied, "No you don't. You don't. Americans are not investing here."

I replied that for American companies to invest, there has to be a rule of law established. There must be private property rights. There has to be an independent judiciary so there is a guarantee that the state will not be able to confiscate private property. This was extremely difficult for the Russian parliamentarians to understand. A simple concept that we take for granted—civilian control of the military—is almost incomprehensible in some countries.

I am pleased the Dedman School of Law has taken an important role in promoting the concept of the rule of law throughout the world. I worked with Dean Attanasio and the Department of State to found the Rule of

Law Forum to broaden understanding of the rule of law among emerging democracies and those nations moving in that direction.

The SMU program has been highly successful. It is being looked at by the State Department as a model for public diplomacy, and I hope it will be emulated and expanded.

Democracy is our best American export.

But unless that democracy is built on a sound foundation, including minority rights, curbs on executive power through checks and balances, freedom of the press, freedom of worship, and the rule of law, it will not be a permanent advance.

In this audience of law school graduates, there are numerous career paths ahead of you.

We undoubtedly have future prosecutors, criminal defense attorneys, corporate lawyers, judges, and international tax attorneys among us. Perhaps we have some future members of Congress.

Whatever path you take, there is a particular duty you have, with your priceless legal education, to safeguard the rule of law.

On a personal basis, that can mean holding the legal profession in respect.

On a broader basis, it can mean defending our judges from unfair attack. It can mean fighting to ensure that our court system continues to be honest and transparent.

It's not an accident that the American democratic system is recognized as the beacon of light to the entire world.

We should be proud of that distinction and do everything in our power to defend it.

Thank you.

Articles

