

THE 2001 SANDRA DAY O'CONNOR MEDAL OF HONOR RECIPIENT – GRETA VAN SUSTEREN

Remarks by Dean Kathleen Boozang:

Welcome to my favorite event of the year, the awarding of the Sandra Day O'Connor Medal of Honor. For me, this award represents how far women and women's law forums in law schools have come. When some of us started out, we looked through the Women's Law Forum to the trailblazers. Women were trailblazers, and that is what the Women's Law Forum is about to this award. And now this is an opportunity to honor the success of women. This award and those who have received it represent many paths of success women have had. I welcome you today and thank the Women's Law Forum and other student organizations, the Legislative Bureau and the Law Review, for their participation and sponsorship. Thank you.

Remarks by Erika Maricich:

Good afternoon. Thank you again for attending the 8th annual Sandra Day O'Connor Medal of Honor presentation. My name is Erika Maricich. I am the Director of Staffing and Symposia of the Seton Hall Law School Legislative Bureau. In recognition of the historic achievement of women in the legal profession, the Seton Hall Legislative Bureau and Seton Hall Women's Law Forum choose to honor women with the Sandra Day O'Connor Medal of Honor. Named after the first woman on the United States Supreme Court, the award honors women who have distinguished themselves in the fields of law and public service. To introduce Ms. Van Susteren is Rebecca Oleksy, Chair of the Seton Hall Women's Law Forum.

Remarks by Rebecca Oleksy:

We are proud to present this year's Sandra Day O'Connor Medal of Honor to Greta Van Susteren. Ms. Van Susteren¹ is a deserving recipient of the Sandra Day O'Connor Medal of Honor because she has dedicated her life to teaching others about the American Legal System. She has repeatedly demonstrated her ability to achieve the highest standard of excellence, beginning with her undergraduate education at University of Wisconsin, Madison, where she earned a bachelor's degree in Economics. From there, she went on to earn her law degree and masters of law in trial advocacy at Georgetown Law Center, where she taught as an adjunct professor. In addition, Ms. Van Susteren was the first Stuart Stiller Fellow at Georgetown Law Center.

During her career as a trial attorney, Ms. Van Susteren represented clients in civil and criminal cases, ranging from murder, racketeering and death penalty cases to divorce, product liability and patent/contract disputes. She has argued in federal appellate courts and the supreme courts in several states. Ms. Van Susteren also wrote a chapter on witness and client representation in *Federal Enforcement 1992: Defense Strategies for Winning White Collar Trial*. Ms. Van Susteren has expanded her legal career by using her legal knowledge and expertise to teach the public about the law through the media. She began her association with CNN in 1991 as a legal analyst. She has contributed analysis of high profile cases such as the William Kennedy Smith rape trial and the O.J. Simpson criminal and civil trials. Recently, she has been a legal analyst for the network's coverage of Election 2000, bringing her legal expertise to the campaign, election, and events surrounding the Florida recount, including the Supreme Court rulings. Ms. Van Susteren also played an intricate role in CNN's legal analysis of the Elian Gonzalez custody case and the impeachment and trial of President Clinton. Currently, she is the host of "The Point with Greta Van Susteren," CNN's prime-time news and analysis show. She is also the co-host of CNN's legal show "The Burden of Proof" and contributes to CNN's legal webpage. For CNN.com's Law Center, Ms. Van Susteren serves as chief legal advisor and contributes on-demand video interviews, features and special reports with key legal experts and newsmakers in an area called Greta@Law. Through Greta@Law, she

¹ The information contained in the introduction was taken from the CNN website. *Cnn.com anchors and correspondents: Greta Van Susteren*, (Sept. 3, 2001) at <http://www.cnn.com/CNN/anchors_reporters/cnn/vansusteren.greta.html>.

also participates in an interactive Q&A forum called Ask "Greta," where she answers questions about legal issues in the news, sent via e-mail by Internet users. Through these outstanding accomplishments, Greta Van Susteren has demonstrated that she is a trailblazer in the law and public service. She also exemplifies what women in this nation have achieved over the last century and can continue to achieve in the future. For these reasons, we are honored to present the 2000-2001 Sandra Day O'Connor Medal of Honor to Greta Van Susteren.

Remarks by Greta Van Susteren:

Good afternoon. I can't tell you how flattered I am to be here today and to get this. I promised the Dean I wouldn't tell you that the last award I got was a bowling trophy in 1967 when I was still at the University of Wisconsin. When he spoke to me, I promised I wouldn't go into the details about that. I have to tell you that when I got the letter from Seton Hall I quickly skimmed it and thought, "What an honor, I will get to present someone with the Sandra Day O'Connor Medal of Honor." I looked down this very distinguished list and I thought, "My God" Hillary Rodham Clinton,² Judge Wald,³ who I knew very well from the United States Court of Appeals, D.C. Circuit, and who, of course, went over to the World Court in the Netherlands, and Barbara Jordan⁴—who could forget the speech she made at the Democratic

² Hillary Rodham Clinton received the Sandra Day O'Connor Medal of Honor in 1992. Since graduating in 1973 from Yale Law School, Clinton has had a distinguished career in law and politics. *About Senator Hillary Rodham Clinton*, (Sept. 3, 2001) at <http://clinton.senate.gov/about_hrc.html>. In 1977, she was appointed by President Jimmy Carter as the chair of the Legal Services Corporation. *Id.* Ten years later, she served as chair of the American Bar Association Committee on Women in Professionalism. *Id.* Clinton also chaired the board of the Children's Defense Fund from 1986 to 1989. *Id.* In 1993, Clinton, after serving 12 years as the First Lady of Arkansas, *Hillary Rodham Clinton Biography*, (Sept. 3, 2001) at <<http://www.wic.org/bio/hclinton.htm>>, became the First Lady of the United States when her husband, William Jefferson Clinton, became President of the United States. *Id.* On November 7, 2000, Clinton became the "first First Lady to be elected to the United States Senate and the first woman to be elected statewide in New York." *About Senator Hillary Rodham Clinton*, (Sept. 3, 2001) at <http://clinton.senate.gov/about_hrc.html>.

³ The Hon. Patricia McGowan Wald was the 1993 recipient of the Sandra Day O'Connor Medal of Honor. Wald served on the U.S. Court of Appeals for the D.C. Circuit from 1979 to 1999. *Judges of the United States Courts*, (Sept. 3, 2001) at <<http://air.fjc.gov/servlet/uGetInfo?jid=2475>>. From 1986 to 1991, Wald served as the Chief Judge. *Id.* After retiring from the D.C. Circuit in 1999, Wald became a member of the International Criminal Tribunal for the Former Yugoslavia. *Id.*

⁴ In 1972, Barbara Jordan, the 1994 recipient of the Sandra Day O'Connor Medal of

Convention a number of years ago.⁵ I looked down this list and thought, "Who am I going to be lucky enough to give this award to?" It was only upon further reflection that I saw that the award was to be given to me.

I am greatly humbled but I have to tell you that as I stand here to receive this distinguished award I feel sort of like a front in the sense that I am grateful to receive it. But you must know that no one really arrives at these awards without an awful lot of help from everybody else. I am just lucky to be in the front lines and lucky enough to have had a lot of people help me in my career so I can do these things. I have the world's greatest job, but I must confess that I am able to do things like teach the law only because people took the time over the years to help me get through school, to help me learn the law, and even today on my show the people, whether it is fixing my collar because I always seem disheveled or whether it's giving me research to make us feel better or whether it is fixing the camera, it is always sort of a joint effort and someone's always lucky enough to be on the front line and getting all of the awards. So I stand here basically on behalf of everybody who has been kind enough to help me to achieve the things I've been lucky enough to do. But I thought it would sort of be fun. I would like to take some questions from all of you and sort of bring you all with me, and do a little bit of teaching myself, but I have not been an adjunct professor for a number of years. I want to tell you a little about how this crazy story happened, and how I ended up on TV, because when I was growing up, I did not aspire to be a bowler, although it does seem I had an early aptitude. Actually, I had a very high handicap. That is why I got the trophy, because I was such a bad bowler.

Honor, became the first African-American woman from a southern state to serve in the United States Congress. *A Tribute to Barbara Jordan*, 20 SETON HALL LEGIS. J. 261, 261 (1996). Ms. Jordan began her legal and political career in Texas, where in 1966 she became the first African-American to be elected to the Texas State Legislature, where she served as a state senator until 1972. *Id.* As a United States Congresswoman, Ms. Jordan played a key role in the House Judiciary Committee's 1974 impeachment proceedings against former President Richard Nixon. *Id.* Ms. Jordan also served as an educator and, in 1979, became the recipient of the Lyndon B. Johnson Public Service Professorship at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin. *Id.* at 262. Ms. Jordan's final act of public service occurred in 1994, when President Bill Clinton appointed her to chair the U.S. Commission on Immigration Reform. *Id.* at 263. Ms. Jordan died in Austin, Texas, on January 17, 1996. *Id.* at 261 fn1.

⁵ Ms. Jordan spoke at the 1992 Democratic National Convention. Susan Estrich, *POLITICS; The Great Congressional Exodus: When the Center Does Not Hold*, L.A. TIMES, Jan. 21, 1996, at Opinion, PART-M.

I grew up in a small town in Wisconsin, Appleton, Wisconsin. My father was a lawyer. I always thought the practice of law was such a noble profession and I still think that there is an awful amount of criticism in this country about being a lawyer. My father was a small town lawyer and he seemed to have a great job. I used to go at night with him to his law office. I will never forget it because in the old days, before they had laptops and black berries and palm pilots and all the rest of the things, they had Dictaphones and electric typewriters, and even some that self-erased. They were amazing. I used to go with my father and play at his secretary's station with the Dictaphone and hear my own voice. Maybe that was a bad sign, I wanted to hear my own voice. I would play with the electric typewriter and my father, who spoiled me rotten, would keep candy in this little drawer on the lower side of his desk. My father was the kind who saw no limits for his daughter. So I would sit and eat candy and play on his Dictaphone and the typewriter until late into the evening and I thought, "You know, this is a great job." "This is for me." "This is right up my alley." So I decided that I wanted to become a lawyer because I thought that was a great profession.

I went to a Catholic high school in Wisconsin. The school invited me to give the commencement speech a couple of years back and they honored me that way. When I was in high school I was a little rough around the edges and I always thought that I might need a lawyer based on what the nuns said about me. There was some question as to whether I would ever be able to afford one, so it always seemed a little bit wiser that maybe I might become a lawyer. That might be more financially prudent. So I decided I wanted to become a lawyer.

When I started this interview, I told you this was a noble profession and I made a few notes to myself. I've spanned a couple of different occupations, there's journalism, there's politics, and there's being a lawyer. People say to me they refer to me as a journalist. With all due respect to anyone who is a journalist here in the room or aspires to be one, I don't consider myself a journalist. I take great pride in the practice of law. And let me give you an example of why we have such a great profession. For instance, in journalism, oftentimes journalists will go on rumors. We don't do that. We require things to be tested. We have direct examination. We have cross-examination. We put people under oath. We don't go with rumors. In journalism, sometimes journalists will be quoting anonymous sources. We don't do anonymous sources. We require people to come in and say "my name

is Greta Van Susteren and this is what I saw, this is what I do.” In the odd instances where you have anonymous sources, for instance in an undercover operation, even then the affiant in the affidavits must say “I know the anonymous source,” or “I’ve worked with the anonymous source.” In an effort to get at the truth we are very, very cautious when it comes to issues of truth and fairness. Our system is not perfect and there are plenty of examples of that. But one of the core principles of law is that there really is an effort to get at the truth, to get facts out, and we tend not to be particularly sloppy as you might see in other fields.

We are even careful about such things as generalizing. Oftentimes you will hear a Democrat say all the Republicans say such and such or all of the Republicans say all of the Democrats say such and such, whereas we tend in the courtroom not to generalize. It is who said what, who said it when and we test it. I have the most amount of appreciation for that because sometimes people get accused of things wrongfully or people get quoted wrongfully, or they get hurt wrongfully. It is sort of the core principles of law. If we could just import them more into the field of journalism, I think that it would be particularly wise, although I don’t think any of my colleagues in the field of journalism would ever agree with me on that.

Politics. The best example of that was the impeachment trial of President Clinton. Imagine having a trial where they start the whole procedure with no rules. This is bizarre. There are no rules and procedure and when you question them about them they say we’ll come up with them as we go along. It sounded almost like some Joseph Kafka. It was as though there was this weird trial procedure and it was never exactly clear what the President was charged with and what the rules were. There certainly was no burden of proof. Even any of the offenses for which he was facing impeachment, for which there was an effort to undermine a national election, whether you thought he should have been removed from office or not, I find it alien at least, that things were so built upon because my training is that we try to do this so fairly, with such precision.

Now having said that, I am back to where I started in that all of you who are studying to be lawyers, it is a fabulous profession. It really, really is. You can do so much good. I know many of you will go off and be great successes in all your endeavors. But if you have the chance to do pro bono work, I guarantee that you will never forget it as long as you live. If you have a chance to do some clinics you’ll never forget it as long as you live. Even if you go down to the criminal court,

I don't know if you have a night court here, but just see how so many people in the population live. We are the lucky ones. There are a lot of people in this country who live a very different lifestyle than we do. Just the opportunity and honor to stand next to someone in court who got himself or herself into a fix and you have the chance to attempt to remedy the problem. It is an experience that you won't forget for the rest of your life.

After going to law school, I practiced law for about 17 years. And then the question goes how do you end up on TV? Well, I'm not sure really how, but let me try to explain just a little bit. When I grew up there was no "L.A. Law," there was no "Burden of Proof," and there were no other shows that are on now. There was "Perry Mason," a great show. I don't know if any of you have ever seen it. Perry never lost and that really seemed appealing to me. Who wants to be a loser? But that is fiction and everybody knew that.

So, as I said, lawyers hung up shingles back when I was growing up. I went to law school in a big city, Washington, and when I finished I hung up a shingle because that is the way they do it in Appleton, Wisconsin. They didn't go to these big firms. I was going to hang up a shingle. Throughout the early 80's there still wasn't any such thing as a legal analyst for the most part. In fact, one of the reasons is because of something that happened in this state back in, I think, the 1930s, when the trial of the Linburgh kidnapping case occurred in a small town in New Jersey. It was in the mid-1930s that people sneaked movie cameras into the court room. They were scandalized about it. I mean they were absolutely scandalized that they were cheapening the process. The American Bar Association came out with prohibitions on cameras and everyone thought this was just a terrible thing.

But then, as time went on, the State of Florida, one of the leading states in the mid-1980s, started opening up the courtrooms to cameras.⁶ Many people were opposed to cameras, thinking that that is how they cheapen the process. But, in about 1991, the Mayor of the District of Columbia got himself into a little fix.⁷ He got picked up for cocaine. I knew the local media because I had been trying murder cases in the District of Columbia. They would chase me from the courthouse door to my car and try to find out what horrible thing my client had done. So

⁶ *Zamora v. State*, 422 So. 2d 325, 327 (Fla. 1982).

⁷ *United States v. Barry*, 1990 U.S. Dist. LEXIS 14090 (D.D.C. Oct. 26, 1990), *aff'd*, 291 App. D.C. 68, 938 F.2d 1327 (D.C. Cir. 1991).

I knew the local media. When the mayor got into trouble, they wanted someone to stand on the courthouse steps of the federal court – no cameras are allowed in the federal court – and answer questions about what happened. So I thought, that sounds sort of fun. I'm out of work and I do it at five o'clock at night. So I did that and I thought it was sort of fun.

In the midst of that trial, Court TV came into creation and a friend of mine from the Washington Post called me up and asked what did I think about Court TV. Unfortunately, print quotes will sit with you forever. I said I thought it was a big snore and I didn't think it would last. How dead wrong could I be? But anyway, in the fall I did the courthouse steps thing on the Mayor's trial.

In September, Court TV called me up and said, would you come up to New York and do this analysis for a day on this trial, whatever trial it is going to be. So I thought, well I could do this standing on my head and that would be sort of fun for just one day. I love practicing law. Don't get me wrong. I never intended leaving the practice of law. So I went up to New York and I sat around all day long giving this analysis of the trial.

The anchor, who I had never heard of before, was Cynthia McFadden. I had never heard of her before but we got along quite well. The trial that we were doing was a murder trial out in California. It was an interesting trial and I spent the whole day doing an analysis of it. In the end of November, the William Kennedy Smith trial occurred.⁸ He [Smith] had been arrested in early April for an alleged rape in West Palm Beach. CNN called up the American Bar Association. CNN had never gone gavel to gavel, and they were looking for someone for three weeks. They called the ABA wanting someone who had TV experience. My whole TV experience was a lot at that point. It was more than anybody else. I had tried a couple of cases and they figured we were only going to be on it for three weeks, what do we care who shows up. So I got a call from CNN. The American Bar Association had recommended me. The funny thing is that the person who talked to the American Bar Association was a roommate of a lawschool classmate of mine whom I hadn't seen in years and I had gone to some party at her house once. So as luck would have it my name got thrown into the mix and CNN called me. The rest was pretty much history.

⁸ *Klacsman v. Kennedy*, No. 92-30441, 1994 U.S. App. LEXIS 27741, 37 F.3d 636 (11th Cir. 1994). {Unpublished Opinion}

This was an extremely popular case. The ratings went through the roof. Not because of me, but because of the salacious nature. The American people were finally getting into the courtroom. It had been such a mystery of what goes on in the courtroom, but now they were getting to understand for the first time and see a little bit of it.

Now another sort of interesting thing is that I never left CNN. I never applied for a job. It just sort of evolved and here I am today. But the sort of interesting thing is that when the O.J. Simpson case started there was something familiar to me about the prosecutor in that case. And I was sitting there thinking. It was only about midway through the trial that I remembered that when Cynthia McFadden and I were doing the analysis for that earlier case, the prosecutor, then an unknown district attorney, was Marcia Clark. So it sort of came full circle with Marcia Clark and suddenly I spent the entire year of 1995 doing the analysis of O.J. Simpson, gavel to gavel.

I think cameras in the courtroom; a lot of controversy over it. Obviously my bread and butter is provided to a large extent by cameras in the courtroom. But I think cameras in the courtroom, for the most part, are good. Some of you may agree and some of you may disagree and have strong arguments on that position. But I must tell you that I was very happy for our Supreme Court in December when they opened the doors and let the American people hear the oral argument on the issue of whether the recount in Florida should go forward.

I was also very much disappointed in our United States Supreme Court. I oftentimes think they forget that they work for us. They gave us an audio feed. They didn't bring cameras in, but audio. They delayed it until after the argument was over. I had the privilege of sitting in the argument. But frankly, I really think the American people are entitled to more than that. I think, that at the very least, we should have real time audio to hear what goes on in the Supreme Court because, unlike the President who can come and go for four or eight years, the United States Supreme Court makes decisions that affect us for generations. Maybe the American people won't listen, but the Court is ours. Some people may disagree, but I think audio feed would certainly be worthwhile. Having said that, you've heard my rant about cameras and audio. I want to open up the floor to questions and again thank you very much. You have deeply flattered me with this award.

Question and Answer Session with Greta Van Susteren:

Based on what happened with the audio feed provided by the United States Supreme Court, do you think that the Court will allow more audio feeds to be released to the public?

I am very hopeful that there will be more audio feeds on the United States Supreme Court. I am always hopeful. I am an eternal optimist. I am mindful of the fact that Justice Souter said that cameras would be in the Supreme Court, that's cameras, over his dead body.⁹

But let me tell you about my sneaky little campaign. At CNN they have this great thing called the "green room." Since I have a show at night I get to sort of go in and meet everybody who comes in the green room. Every United States senator I get my hands on I talk about the litmus test. I say let's have this litmus test for the next United States Supreme Court justice, but forget abortion whether you are for it or against it. The abortion issue has created so many problems in this country. There are so many people fighting about it. Why not make cameras in the courtroom, or at least an audio feed, a good idea? I have yet to find a United States senator who doesn't think it is a good idea to have an audio feed. Orrin Hatch, the Senator from the State of Utah, has come around to my position. And Senator Harvey from the great State of Iowa is a populist type-guy and he loved the idea. Every time I get the women senators, they seem particularly receptive to it. I always corner them in the green room at CNN. No one thinks it is a bad idea to have an audio feed. The answers are hopeful.

Unfortunately, there is tension between who owns the court. Is it the nine justices or us? Right now the nine justices get to make the decision on whether it is audio or camera feed. So I think the only way it would change is first we get experience, which I think we have. I'll take a delayed feed over nothing. Believe me. I think we had a good experience. We didn't have risings in the street. We didn't cheapen the process. We didn't have witnesses who were intimidated. There was no jury there. I think we had a good experience and I am hopeful.

I think we have another big case that we might get Chief Justice Rehnquist to change his mind. But I think the greatest prospect of it

⁹ Justice Souter told Congressional members at a 1996 budget hearing that "a television camera would have to roll over my dead body" before it made its way into the Supreme Court. David R. Fine, *We've Had "Son," Now For "Lumiere,"* The National Law Journal, December 18, 2000, at A25.

coming into being is as the bench changes. I think that then we may be more likely to see it. It may not be audio. It may not be TV. Maybe it will be something on the Internet. I am hopeful. I think it is really important.

It's amazing. We know so much about the Court. You guys know so much about the Court. You read so much about the Court. But you know the kindergarten teacher in an inner city school in Chicago doesn't get the chance. That Court is just as much hers as it is yours and mine. Maybe he or she doesn't want to watch it. But it affects that person and sometimes those courts affect those people more than the rest of us. You guys will all for the most part end up in a social economic class that will give you enormous privileges that a lot of people don't have. Maybe you won't be affected by some of these decisions but there are a lot of people out there who don't have a voice and a lot of people out there who ought to be able to hear what goes on so they can make decisions in their own lives.

What do you think about the fact that O.J. Simpson was arrested in Florida again?¹⁰ What do you think the outcome of this case will be?

What do I think about the fact? Some people just don't learn. The last thing that guy needs to do is be in the public eye. Fascinating trial. By the way, both trials I thought were great trials. I am sorry that you didn't get to see the civil trial. It was a very different trial. I've been subjected to much criticism because I believe that both O.J. Simpson trials were fair, good trials, and, that the right decisions in both of them. The question wasn't whether or not he was guilty. The question was whether or not it was proven beyond a reasonable doubt. If anyone wants to take me on about that I'll be happy to talk to you. Having said that, what is it with O.J. Simpson being arrested? I have no explanation. I am speechless, one of the few times. I think that if he were in California he would face it tougher because they are gunning for him out there because many people think he slipped under the radar in terms of the criminal trial. Frankly, I saw the civil trial. The civil

¹⁰ On February 9, 2001, O.J. Simpson was charged with burglary and battery for allegedly reaching into another driver's window and yanking the man's glasses off his face. David Cazares, *Simpson Charged in Road Dispute*, SUN_SENTINEL, February 10, 2001, at 1A. Simpson said that he welcomed the criminal prosecution as an opportunity to show what kind of life he lived. Mike Clary, *Simpson Faces Road Rage Charges*, L.A. TIMES, February 10, 2001, at A3.

trial was a very different trial than the criminal trial. In the State of Florida they may not quite feel the way they do in the State of California. I suspect he will get probation. Most people do. He is a first offender.

I have to tell you, the O.J. Simpson trial, if I could just deviate for one second, that is one of the few instances, as much as everyone talks about it being a circus, and indeed it was, but it really taught everybody. It gave everyone an incredible education about the law. Even my mother in Appleton, Wisconsin, was debating the 4th Amendment at her beauty parlor. You don't have salons in Appleton. You have beauty parlors. It showed one side goes first and gets to ask a lot of questions. And then the other side goes. It gave people the basics. That trial was about one thing. It was about a level playing field. There are enormous problems in that case and it is very easy for everyone to say that he is guilty. I have to tell you the lawyers look at the evidence and how it is presented and whether there is reasonable doubt. I can march you through that trial and show you reasonable doubt. I can't convince you he's innocent, but I can show you why a verdict of not guilty was a reasonable one. If you took the civil trial, which you did not see, and if you could transplant that to the criminal case, and even apply every standard, you will see why he was found civilly liable because that civil trial was put together by very different lawyers. We have instances like the footprints and they actually put those shoes on his feet, very different case. That is why that verdict was a correct verdict as well.

*What do you think will be the legacy of Bush v. Gore?*¹¹

I think the legacy of *Bush v. Gore* will be an interesting one, especially when we see what happens with the *Miami Herald*. The *Miami Herald* began on November 27 a campaign to get access to all the ballots to do a recount of the ballots. They have engaged an accounting firm and they have different standards. The *Miami Herald* is not going to say who won and who didn't win, but they are going to say we have "x" number of ballots with hanging chads, "x" number with dimples, so you can reach your own conclusion. I think that CNN, for whom I work, and other organizations are sort of linked to this process.

I think the legacy is that we can put somebody in the room, we can

¹¹ *Bush v. Gore*, 531 U.S. 98 (2000).

build these aircraft carriers with 5,000 men and women serving 20+ thousand meals a day, we can have aircraft carriers taking off and landing at incredible precision, but we can't figure out a way to make a vote that will satisfy the American people. We talk about other countries and their systems and I think that, if nothing else, we are going to learn how to count votes.

Do you want to know one of these stories nobody talked ever about? I was down in Palm Beach, Florida. I have to tell you the stories I heard from African Americans attempting to vote that will make your skin crawl. Having to show more identifications than white Americans. I think as the *Miami Herald* told me that they went and looked at one precinct in a predominantly African American jurisdiction in which there were 20 machines before they were open and 14 didn't work, or something like that. The legacy is we have a lot to be ashamed about. And that's Florida, because Florida got caught, because Florida was close. I don't know about the other states. I have no idea what New Jersey was like. I have no idea what Wisconsin was like. But I hope that the legacy is that we are quick learners and that we fix it so that we don't have that happen again. It is only the close nature of the votes. Obviously, if it is a landslide those aren't huge problems. But in a close race it is.

Have we seen a sudden turn in the approach to Federalism on the Court?

Maybe. Federalism is an interesting concept. It depends on who you are talking to. It's federalism until it is something like tort reform. Then suddenly people who think we should have States' rights and all of a sudden they want tort reform because they think the States are too stupid to handle it themselves. We need national tort reform. I have to tell you that there are a lot of interesting issues with Federalism and States rights. I think that we are forever going to sort of chew on all of these issues and battle them and have all of our advocacy arguments either way. But I don't know the answer to that. I think a lot will depend on how many vacancies there are in the United States Supreme Court in the next four years. And that can go from none to a lot.

You talked about your role in educating the public about the legal system. One of the things that I read that other people observed was the increasing tendency of your colleagues that come out as journalists, and some of the journalists in your profession, to

identify federal Article III judges by their designation and who appointed them. Do you think that journalists have a responsibility to educate the public that the judiciary is separate from the political life that they might once have held?

I think that is an invitation for more people to be schooled in the law to participate in the media. To be frank, a lot of people say that, but I don't think they really understand it. I think they are trying to be factual, too, but sometimes communicate a wrong intention. For instance, when everyone talks about the fact that President George Bush, father Bush, put David Souter on the bench, that that is supposed to mean something, when of course, Souter has sort of been what many would think a surprise to George Bush. I think they are trying to give facts but, oftentimes, when you hear things like that, since you have an education in law, you see things a little differently.

Journalism is like law. It is not perfect. One of the advantages of having so many media outlets is that we police each other, and that you hear me say something and you disagree but thank God you can turn on my competitor and hear somebody else say something; or, if I'm wrong, someone is going to correct me. One of the advantages of not having one media outlet, but having so many, is that we are forced to hopefully try to get it right and compete with each other. I think that you are forever going to find things that you disagree with that the media says. Even in my role as an educator, I have a peculiar role that I try to juggle at CNN. Sometimes I am the educator and sometimes I am the advocate, depending on the show I am on. Am I a columnist or am I a reporter? Oftentimes I play both roles. Fortunately I think the viewers are extremely smart and they know when I am advocating a particular position. Like if I am saying in my opinion that this is a violation of the 4th Amendment, I think that they get that that is my opinion based on the facts as compared to when I say in an opening statement, Mary Smith said "x." Until we can sort of get perfection out of our own system, the judicial system, we are hard pressed to require it of the media although I think we all have to strive to get it.

I would like to know what your opinions are on the burdens that are brought into the courtroom by allowing TV cameras in the courtroom, such as sequestering juries.

Well, I'm an old-fashioned trial lawyer, so I think sequestering juries is a bad idea. I think it imposes an obligation on our citizens that,

in most cases, just cannot be met.

It is just unfair to most, especially with a lengthy trial. I have to tell you that California is like no other state. I have tried cases with multiple homicides and racketeering, and anywhere else that take two or three weeks in a federal court, where out in California it will take two to three lifetimes. So California is unusual for some reason. I don't know if you know about the child abuse case that is down in Manhattan Beach, California, a few years back, well probably more like fifteen years now, but that took forever. Judges need to have the authority to toss the cameras out of the courtroom when it creates a problem. They seek sequestration and I think that is a problem. That would be a reason for me to toss a camera out of the courtroom if I were a judge because I wouldn't want to impose that on the citizens.

There are lots of cases. Court TV, which is a competitor of mine, has probably broadcast a thousand trials. I know that three years ago it was seven hundred so maybe it's one thousand now, and I don't think one case has ever been reversed based on cameras being in the courtroom. It is not a bad statistic. I think that cameras need to protect children. I think there are a lot of times we don't want cameras in the courtroom. Frankly, having tried cases, if there is a camera in the courtroom on me, I have never tried a case with a camera in the courtroom, the last thing I have time to think about is the camera in the courtroom. When you try a case it is like life or death. Your attention is so focused on what is going on you really don't have the chance to be a showman or a showwoman. You want to win. You don't want to lose and you don't get any extra points for being a loser in a trial. There are exceptions. Some lawyers will grandstand, no question about it, but I think most good lawyers will ignore the cameras. But if cameras become a problem, they have to be removed.

Kind of going along with that, do you think it is significant that first of all we don't have cameras in any federal courtroom and that some state courts will say okay, some judges will say okay and other ones just down the street say forget it. Do you think if there was a little bit more uniformity it might not be such a big deal anymore? Do you think that maybe the federal government made a little bit more of a push there would be a little more uniformity and it wouldn't be such a circus?

I think that is probably true. I think that with more "good experiences" people would become more comfortable with it and with

"bad experiences" they don't. Take one O.J. Simpson and it is like dropping a bomb in the room and suddenly no one wants to do it. There is a lot of backlash after O.J. Simpson. I am sure there are a lot of supreme courts in this country that saw that there weren't riots or people weren't making fun of the justices down in Florida.¹² I think we will probably see more supreme courts receptive to that. Frankly, people are not going to necessarily want to watch all of these trials. I don't know if you know a lot of these aren't exciting arguments. There is that aspect to it. But it requires judgment and the judges have to know when cameras can't be in there. And you can always pull the plug, too. I mean you can start something and pull the plug. In fact, I remember when Judge Ito pulled the plug at one point. I forget what the issue was, but he plugged it back in. I think that it would be a mistake to make the decision of cameras based on one case. Either way, whether for or against, I think you have to look at the big picture and take a look at the fact that, ultimately, you have the fundamental question of whether both sides have a fair trial, because that is the goal.

What is your position on televised executions?

I heard Timothy McVeigh wants his execution televised and I watched his trial. I tell you, he had a fair trial. He had a 9 or 12 million dollar defense which no defendant in this country ever gets. Because he wants to have his execution televised, I don't want his execution televised. That is a tough question. I go back and forth on it. I used to do death penalty work. I have talked to a lot of my colleagues on it. And I guess the first one would get ratings equal to "Survivor" or better. The second one, after we do about 30 or 40 of them, it is going to be "Honey, should we watch 'Seinfeld' reruns or should we watch the execution down in Texas tonight?" I think that we would get pretty flat on the whole concept.

I don't know if there is a right answer or not, and even I have struggled with the issue of the death penalty. I have defended people on death row. I have watched trials in which people have received the death penalty, such as the McVeigh case.¹³ I have to tell you, you sat

¹² On November 23, 2000, the Florida Supreme Court refused to extend a deadline for tabulating recounted ballots. James V. Higgins, *Recount Deadline Won't Be Extended*, THE DETROIT NEWS, November 24, 2000, at 1. The unanimous court ruling meant that Gore could not rely on vote recounts from Democratic-leaning counties. *Id.*

¹³ *United States v. McVeigh*, 918 F. Supp. 1452, (W.D. Okla. 1996), *aff'd*, 153 F.3d 1166 (10th Cir. 1998), *cert. denied*, 526 U.S. 1007 (1999).

there through that [McVeigh] trial. There were no cameras. It was a federal case. You saw those Americans who were victims with some who were missing limbs, some who were missing eyes, and those were the lucky ones. There were a lot of orphans and widows, widowers. If you had seen those American people parading into that courtroom, and, of course, this trial should not be run on passion, it should be run on facts, which indeed this one was. These American people went off to work one day and all of a sudden their lives were changed. Not changed for the better by any means.

Timothy McVeigh, I believe, was guilty. I watched that trial and he is even worse than just guilty, if there can be such a thing. He actually cased the joint. He knew well in advance that there would be children there, Americans there, and he went in there and blew it to smithereens, ruining lives forever. He wants to have his execution televised. And if he wants that, I don't want that for him. I got to tell you, I don't think that is his privilege. Now, when you catch me tomorrow and I have talked to other people who are wiser and have more judgment and might have changed my opinion. One thing that I've noticed in getting older is that what I think today, I might not think tomorrow. Some people might think that is just fickle but sometimes I have a chance to consult with others who are a lot smarter. I listen to people and, sometimes, they convince me otherwise.

I have actually witnessed an execution. I witnessed an execution in Virginia, and I will never forget it. I am sitting there in a room and it is so bizarre because they have the phone open to the governor, they rush the person out and as they strap the person down, as they strapped the man down to the table, they dabbed, this was by lethal injection so before they stuck the needle in him to execute him, they cleaned him with alcohol so he wouldn't get an infection. I have to tell you I am sitting there watching this and thinking "Am I the only one?" It is laughable because you think to yourself, "My God." Then you see this pathetic thing and you feel like a voyeur, like "What am I doing watching this man die?" I mean, "what's wrong with me that I'm here doing this?" I have that thought. The whole thing is so twisted. Then I get out into the car and I think to myself, well, at least he got a trial. The poor woman he smothered and raped and murdered didn't get a trial. There are always these interesting questions about the death penalty.

So many people say I am for the death penalty or I am against the death penalty. I am not so sure, at least for me I go back and forth on

all of these issues. Even the death penalty, I wonder if my current, right now, decision might be tempered. It might be different if a family member were murdered, for instance. These are all very difficult decisions. It is an extremely difficult decision and you catch me on different days. I have to tell you that my current view is that I am opposed to the death penalty because I think that it lowers us to the level of the killer, himself or herself. I have to tell you the one thing that sits in the back of my mind is Timothy McVeigh. I have tried murder cases and that murder has to be one of the coldest, meanest, nastiest things I have ever seen. If he wants to die on television, I say let's not let him die on television. They always say the death penalty should not be a matter of being vindictive, and maybe it is a little vindictive. So you might be able to persuade me otherwise. So your answer is an unknown answer other than it is a difficult issue and certainly one that will be on debate between now and May 16, which is the execution date.¹⁴ This is the other bizarre thing. He is trying to decide whether to ask our new President for clemency. I have to tell you, now, I've raised some arguments and gone to the mat for clients, but I have to tell you, the chance of getting the death penalty lifted from this President is zero.

Do you think that the presence of women in the law has made any difference?

When I started law school in 1976, 40% of my class was women. In 1972, when one of my friends started she was one of 3 or 4 at Georgetown. I was actually at the beginning of when you actually saw a lot of women in law school, but I saw a lot of those women who would leave the profession. I have yet to see the job dissatisfaction that everybody is talking about. I actually thought the practice of law was

¹⁴ On June 6, 2001, a federal judge heard defense motion to postpone Timothy McVeigh's execution. Tim Jones, *McVeigh Lawyers Say U.S. Got Tip on Blast*, THE CHICAGO TRIBUNE, June 6, 2001, at N9. On May 10, 2001, Attorney General John Ashcroft postponed McVeigh's execution until June 11, 2001 because the government failed to turn over approximately 4,400 pages of evidence to the defense. *Id.* The judge refused to delay the execution on July 7, 2001. Andrew Buncombe, *McVeigh Execution To Go Ahead Rules Judge*, THE INDEPENDENT (London), June 7, 2001, at 11. McVeigh was executed by, lethal injection on June 11, 2001 at a federal prison in Indiana. Joe Williams, *Trial Taxpayer Tab: \$14 Million*, DAILY NEWS (New York), June 30, 2001, at 8. The execution was never considered to be nationally televised, but was televised on closed-circuit. The Associated Press, *Let the Public Watch Me Die*, NEWSDAY, February 12, 2001, at A7.

always fun and interesting. I never saw the other side. I was never the odd ball out in terms of walking into a room with all of the men. When I became a lawyer, there were actually quite a number of women in it. I was lucky that way.

I hear tales from women who have suffered all sorts of discrimination. I think that having practiced in a big city with a lot of women, you see less of it. I remember my father, who is a judge, talking about the first woman lawyer that came to my hometown. All the male lawyers use to talk about it. She talked too fast. They always complained about how she talked too fast. It is so funny because I am a fast talker. I always think they are talking about me. I don't think that we are going to run any men out of the profession if that is what you think. I don't think the profession is that much fun to run men out of it.

With the ever-increasing interaction between media and law, such as your position on CNN, do you see that changing the way that we learn the law or the way that the law is taught?

I think what we will find is that it isn't so much how you learn the law. You have to learn the basics, go to the classroom, and learn how to be a lawyer. I think what you really will learn is that your clients are going to be a little smarter. We can't hoodwink our clients anymore. They know what the law is all about. You will have a new challenge.

Right after O.J. Simpson, the lawyers started to talk about the fact that they go to their clients and their clients want DNA tests. I think you are going to find that the clients you are going to meet have a lot more knowledge about the law. The worst thing for a lawyer is to get a client who does a lot of research, or those who do private research or get their colleagues in prison doing research. Those are always the very helpful ones too.

I think it is not so much the way you learn the law. I tell you one challenge you will have that I didn't have. When I practiced law, the forum was the courtroom. I think with the media, in fact I was talking with one of your professors earlier today, is that now you have to worry, to some degree, about public opinion. You have to change public opinion. The best example may be the tobacco litigation. Everybody thought tobacco, people smoke, they get cancer, it is their own problem. But what happened in the tobacco litigation is that the public opinion changed towards that, and so, the tobacco companies started to become more receptive to the concept of trying to find a method to improve

healthcare and recognized this as a health plan. So I think that you are going to find that you have to fight battles on separate fronts in many cases and one may just be public opinion.