**PREPARED REMARKS OF GEORGIA SUPREME COURT JUSTICE DAVID E. NAHMIAS FOR LAW DAY AT THE CLAYTON COUNTY BAR ASSOCIATION (April 29, 2011)**

I'm honored to be with you today to celebrate, a couple days early, this year's Law Day. It would be nice to recognize the importance of law to our county more than one day a year. But even if it's just for a few minutes today, it's good for us to stop and think about the rule of law and the role it plays in this great nation.

Believe it or not, I want to begin with a song, and because you don't want to hear me sing, I need you all to join in. You all know the first verse of America the Beautiful, so sing along with me:

O beautiful for spacious skies,

For amber waves of grain,

For purple mountain majesties

Above the fruited plain!

America! America!

God shed His grace on thee,

And crown thy good with brotherhood

From sea to shining sea!

Very nice, thank you. I love that song. But I also love the second verse, which is rarely sung. The second verse end with these words – which for your benefit I'll just read instead of singing:

America! America!

God mend thine every flaw,

Confirm thy soul in self-control,

**Thy liberty in law.**

We often speak of the virtues of liberty, of the freedom, the individual rights, and the entrepreneurial spirit that are so important to our nation. But without law – and without the self-control that law brings to our society – liberty would not mean freedom; it would mean tyranny or anarchy.

What's the value of the rule of law? It's hard to put a precise number on it, and most citizens never really think about it unless they're in a courtroom, which is pretty rare except for traffic court and jury duty. But I learned a good lesson a few years ago when I was on a "rule of law" panel with the then-General Counsel of Home Depot. He explained how his Board of Directors and CEO had sent him out to learn about the BRIC countries – Brazil, Russia, India,

and China. As you may have read, that's where businesspeople think much of the world's economic growth will be in the coming decades.

But the lawyer came back with a sobering report. Yes, those countries have many advantages in terms of labor costs, natural resources, and development potential. But they – and especially Russia and China – do not have a rule of law anything like what we have here in the good old USA. What does that mean? It means you can invest millions to build factories – but the government may decide at any time to take your property without compensation, or to tell you who your new 50-50 partner is going to be. It means you can sign contracts, but whether those agreements are worth anything may depend more on the other party's influence and connections than what the contract actually says. It means that you may need to provide your own security for your property and your people, because you can't count on the government to protect you. And it means that you'd better be careful about what you believe and what you say, because the government may retaliate if it doesn't like it.

That is not how it works in the United States – but we usually just take that for granted. Here we sign contracts expecting that the other party will live

up to their agreement, knowing that otherwise a court will uphold the contract or force the breaching party to pay damages. We invest our labor and our capital understanding that our property can't be appropriated without due process and just compensation. And while we certainly have issues with security, we expect that if we're victimized by a crime or a tort, we'll be able to seek justice in court. Finally, and perhaps most important, we can think and believe as we wish, and pray to any God or to no God.

In fact, if the government tries to infringe on those constitutional rights, we can take government officials, however low or high they may be, to court to have a judge order the official to stop it – and the official will obey the judge. Most important, because the rule of law exists so strongly, we almost never actually have to go to court; the law provides an ever-present deterrent to unlawful behavior. The value of that, when you stop to think about it, is incredible.

But there is one other key point to the rule of law. The underlying laws can't be made by fiat or decree, if they hope to survive and be obeyed over time. Instead, the law must reflect the will of the people. That indeed was the greatest genius of our Founding Fathers, who started our Constitution with the

source of this country's law and justice: "We the people of the United States."

It's the rule of law, and the source of law in the people that it governs, that more than anything else holds back the development of the BRIC and other developing countries. It's the rule of law, and the idea that the law must come from the people that we have seen human beings around the world strive for now for more than centuries – most recently in my father's homeland of Egypt and in other nations throughout the Arab world that have endured decades under the rule of tyrants or tribes.

I think it takes three key things to establish and maintain the rule of law. First, it requires independent and incorruptible judges whose decisions are accepted as binding by both private parties and government officials. The judges must take an oath not to a leader or a party, but to the law itself. I think American judges, and other public officials, are unique in that when we take office, we swear allegiance not to a King or a President or even a country, but instead to a legal document, the Constitution the United States. The judge must apply the law as it is stands, to whoever may be standing before the court. The catchphrases are familiar: without respect to parties, without passion or prejudice, without fear or favor.

Second, the rule of law requires courageous and talented lawyers. Lawyers have always been criticized and complained about. But as the old saying goes, no one likes lawyers until they need one. Some clients are easy for lawyers to represent. It's easy to speak on behalf of the powerful, the wealthy, the popular. But who else will speak for the accused, the poor, and those whose speech or beliefs make them unpopular or worse, a menace to the government?

This is where lawyers play their most vital role in protecting the rule of law, when they stand up for clients who need a spokesperson who is knowledgeable about the law and about the community – as John Adams did for the British troops accused in the Boston Massacre in 1770, as Atticus Finch fictionally did for Tom Robinson in To Kill a Mockingbird, and as Thurgood Marshall really did for Oliver Brown, the lead plaintiff in Brown v. Board of Education. For many of us lawyers, those are the stories that made us want to go to law school and enter our noble profession. Don't forget those stories, and don't forget that representing the powerless and the unpopular is the most important, if also the most difficult, work of lawyers here and around the world. As Shakespeare recognized, if conspirators hope to establish tyranny, the first

thing you do is kill all the lawyers.

Finally, and in the end most important, the rule of law requires educated and involved citizens who understand that everyone is part of our society and that everyone must be equal in the eyes of the law. As I said before, to survive over time, the laws must come from the people and serve all the people. Our own laws didn't all begin that way. To pick the most obvious example, it took a bloody Civil War and another 100 years of struggle for America's Black citizens to be fully recognized in the law. But so long as our people continue to be involved in creating their own laws, I'm optimistic about the future.

That is not to say that things can't go bad in a hurry. My mother was born in Germany in 1932, six months before Hitler was appointed Chancellor. As she grew up, in the midst of the Depression and in the face of Nazi supporters who aggressively promoted their views and threatened anyone who resisted, the judges, the lawyers, and the people of Germany didn't stand up for the rule of law. And in just a decade one of the most civilized nations on Earth – the land of Beethoven and Schiller and Einstein – descended into barbarism, war, and genocide.

America has taken a different path, and our judges, lawyers, and

citizens have continued to strengthen the law and the rule of law. It is an element of our nation that has tremendous value – as important as our amber waves of grain, our purple mountain majesties, and our fruited plain. I'm glad to have the chance to be with you today to celebrate the law, and I hope we'll all leave here committed to doing our part to enhance the law and the rule of law in the days and years to come. Thank you, and God bless America.