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Governor's Remarks

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Law Day at Pace University School of Law May 1, 1996

Good evening. It's a pleasure to be here today. And it is a tremendous personal honor—both as a lawyer and as Governor—to accept this honorary Doctorate of Laws from Pace University.

Certainly Law Day opens up a wide range of topics. But I want to focus on two subjects: first, the environment and environmental law; second, the independence of the judiciary.

I truly believe—as I know many of you at Pace University believe—that we can use laws to preserve the natural resources of our state while also developing a healthy economic environment. Precisely that is the fundamental policy of our state, set forth in the very first paragraph of the Environmental Conservation Law.[1]

Those two goals can and have been achieved in regions throughout New York State. We must never view them as irreconcilable adversaries; instead, for the sake of all, we must always strive to achieve both. In that quest, we vindicate Thomas Jefferson's view on the purpose of laws, and the role that laws have in shaping a better world. He said, "[l]aws and

1. N.Y. ENVTL. CONSERV. LAW § 1-0101 (McKinney 1984).

institutions must go hand in hand with the progress of the human mind."

On a day as beautiful as this, we are reminded that we must shape our laws to the laws of nature. We are rich as a state because citizens in the past have nurtured a tradition of caring about nature. Governor Theodore Roosevelt did much to build and enrich that tradition. In 1908, as President, Roosevelt told the nation, "[o]ne distinguished characteristic of really civilized men is foresight. We have to, as a nation, exercise that foresight for this nation in the future."

Used properly, and sparingly, the law can be a positive force in the lives of present and future generations of New Yorkers and all Americans.

Last year, I signed a new law that builds on Roosevelt's enduring legacy. It's a law that will help make New York a better, cleaner place to live. It's called the Solid Waste Penalties Law[2] and, for the first time in fifteen years, it increases the penalties for illegal dumping, finally making the penalty fit the crime. It sends a clear message to would-be polluters that their crimes against the environment will not be tolerated in New York State. In fact, this legislation was an important weapon in the collective efforts of the State, the local municipality and [the] Pace Environmental Law Clinic in [their] successful struggle against one of the worst violators of our solid waste laws, which facility was located right here in Westchester County, in the Village of Hastings. The new law stiffens both criminal and civil fines by as much as twenty times. The worst offenders—the most unscrupulous of the illegal dumpers—now face felony charges, punishable by up to four years in prison for fouling our environment with their illegal trash.

We cannot allow criminals to gain an economic advantage over honest competitors. It's quite simple. We are helping business and local government understand our laws so they can comply, and we are cracking down on the ones who don't.

One thing students have learned here at Pace University is that there are countless laws and regulations—especially in the environmental field. We are working to help businesses under-

2. N.Y. ENVTL. CONSERV. LAW § 71-2703 (McKinney Supp. 1996) (amended L. 1995, c. 508).

stand those rules so they don't get lost in the maze and make unfortunate, unintended mistakes.

By emphasizing compliance, we can stop pollution before it happens. But as a complement to that effort, we must remain vigilant in the fight against illegal pollution by putting teeth in our environmental laws. We have made too many gains environmentally for us to ease up on that effort.

Pace Law and your environmental program have gained a world-wide reputation in leaders of the field of environmental law, and for that you should be justly proud.

I am pleased that more and more of us who care about environmental protection recognize that we can balance that important goal with economic growth.

Last year, I signed an historic agreement that will protect and preserve Long Island's Pine Barrens, an ecologically sensitive area that also sits over a portion of Long Island's aquifer. For years, local governments, developers and environmentalists battled each other at every turn over this issue, stagnating growth and creating bitter differences between all sides. Our agreement ended that period of bitterness by protecting vast portions of the Pine Barrens while setting up ground rules for development in the less environmentally-sensitive areas. By striking the right balance, we have enhanced Long Island's environment for generations to come and enabled the Island's economy to move forward.

And that is exactly what we achieved by putting together disparate interests to protect New York's watershed. Many people deserve thanks and praise for an agreement that protects the drinking water for nine million New Yorkers, saves New York City billions of dollars and sets up ground rules for economic growth for the watershed communities.

I want to thank, in particular, two individuals associated with the Pace Environmental Law Clinic: John Cronin, from the Hudson Riverkeeper, and Bobby Kennedy, John's able counsel and [Pace University] law professor.

Working with my Chief Counsel, Michael Finnegan—a Pace graduate himself—we were able to overcome years of distrust and bitterness between residents of the watershed, New York City and environmental groups. With their help, we were

able to provide both environmental protection and economic growth.

There are times, however, when the right balance means allowing environmental concern to outweigh economic considerations. We faced that decision this year in Allegheny State Park.

Many people wanted me to allow commercial logging in [the] park, that I believe is one of New York State's crown jewels. Our State Park's staff looked at the issue. They listened to arguments from all sides. But in the end, I decided that there was no compelling reason to open the park to commercial logging.

But I didn't just rule out commercial logging. We also established new protections for old-growth forest lands. We enhanced protection for the 770-acre, old-growth Hemlock-Hardwood stand, known as the Big Tree area. It is a timeless treasure that you—and now our children—can enjoy for years to come.

The economy and the environment must co-exist. Both are crucial to our future as a state, and we must be committed to ensuring that both prosper. I would like to remind you of the very first words of our Environmental Conservation Law:

> The quality of our environment is fundamental to our concern for the quality of life. It is hereby declared to be the policy of the State of New York to conserve, improve and protect its natural resources and environment . . . to enhance the health, safety and welfare of the people of the state and their overall economic and social well being.[3]

With these opening words, New York law recognizes and proclaims the need to achieve both a healthy environment and a healthy economy.

And just as a healthy environment and a healthy economy can co-exist in harmony, so too can an independent judiciary co-exist with criticism of that branch of government. As we celebrate today in New York the critical role of the judiciary in preserving our liberties, it seems fit to cite the words of a New Yorker: Alexander Hamilton. Hamilton was perhaps the most brilliant legal mind New York has ever produced, notwithstand-

3. N.Y. ENVTL. CONSERV. LAW § 1-0101(1).

ing the fact that he was, among other things, a newspaperman. In Federalist No. 78, Hamilton wrote that the general liberty of the people can never be endangered so long as the judiciary remains "truly distinct from both the legislative and the executive."

Like Hamilton, I cherish the transcendent importance of an independent judiciary. Throughout our history, that independence has served our people well. It took an independent judiciary to rule that separate but equal *was not* equal. It took an independent judiciary to rule that a citizen could not be punished, simply for speaking out in opposition to the government. It took an independent judiciary to rule that all defendants, regardless of their wealth, are entitled to effective representation. And it took an independent judiciary to proclaim that no person was above the law, not even a sitting president.

We are secure in our liberties today because the courts have defended our right to freedom. The independence of our judiciary has enabled judges to rise above the passions of the moment to promote the cause of justice in our state. As Governor, it is my solemn obligation to ensure that the judiciary remains, in Hamilton's phrase, "truly distinct from both the legislative and the executive."

But a critical question remains: Must a Governor or a legislator withhold *criticism* of the judiciary? Does criticism of judicial rulings constitute an "attack" on judicial independence? Does respect for the judiciary command silence when one disagrees with a court's pronouncements?

The answer, clearly, is no. As Justice Brandeis stated, "[t]hose who won our independence believed . . . that public discussion is a political duty . . . . Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law . . . ." Justice Felix Frankfurter put it best: "Judges as persons, or courts as institutions, are entitled to not greater immunity from criticism than other persons or institutions . . . . [J]udges must be kept mindful of their limitations and of their ultimate public responsibility by a vigorous stream of criticism expressed with candor however blunt."

The legitimacy of inter-branch criticism, moreover, is implicit in the very structure of our government. Like its federal counterpart, the New York constitution charges the chief execu-

tive to "take care that the laws are faithfully executed"[4] and to "recommend such matters to [the legislature] as he shall judge expedient."[5] As Governor, these are my responsibilities. But I also carry with me the strong, fundamental belief that the first obligation of government is to protect its citizens from crime and violence.

Pursuant to these duties and beliefs, I have recommended legislation and taken other actions relating to a host of issues facing our criminal justice system, and crime. I have proposed changes in the Criminal Procedure Law that would remove loopholes and technicalities that add nothing of substance to the fairness of trials, yet deny justice to victims of crime. Earlier this year, I announced the "Domestic Violence and Public Safety Act of 1996."[6] That act is aimed at strengthening the prosecution of crimes of domestic violence, which Chief Judge Kaye has rightly called a "modern-day scourge."

In addition to enabling prosecutors to bring felony charges in a much wider array of circumstances when orders of protection are flouted, the bill redresses two glaring imbalances in current law. First, it authorizes *prosecutors* to appeal unduly *lenient* sentences, just as defendants enjoy the right to appeal unduly *harsh* sentences. Second, it accords prosecutors the right to obtain review of bail decisions comparable to the right defendants enjoy.

These aspects of the bill represent no attack on the judiciary; [r]ather, they rest on the undeniable proposition that even the best of judges make mistakes. My support for the bill reflects another lamentable fact: these mistakes can have tragic consequences for the victims of domestic violence and other crimes.

Our system of criminal justice is, after all, not just about criminals, and lawyers, and judges and juries . . . It is about people. Most of all, it is about the innocent people who are victims of crime. Young women scarred forever by the horrible crime of rape. Families, the very backbone of society, torn apart by domestic violence. Young men, energized by the limitless

4. N.Y. CONST. art. IV, § 3.

5. *Id.*

6. S. 6621, 219th Leg., 2d Reg. Sess. (N.Y. 1996).

possibility of their futures, shot down in the midst of their ascent.

Mothers and fathers should not have to bury their children. But too often, they must. Violent crime makes that so.

Grandmothers should not be left to care for their grandchildren, left motherless by violence. But too often, they are.

The victims of crime love and laugh. They are just like you, and they are just like me. They hope and dream. They are happy, and they feel sadness. They get lonely, and they enjoy the company of others. Too often, they get killed, and all of the joys and wonders of their humanity are taken from them, and from us.

Last week, at a church on the upper west side of Manhattan, I was privileged to attend a candlelight vigil to remember the *victims* of crime. At the front of the church was a large posterboard, and people were encouraged to come forward and affix photographs to it of family members who were victims of violent crimes.

One look at the photographs confirmed that crime does not discriminate. There were pictures of young and old, male and female, black and white, Christian and Jew.

One of the photographs was of a young mother killed just this year, the victim of a preventable crime of domestic violence. The woman's five-year-old daughter saw the photograph, went back to her grandmother and asked her this question: "Is mommy going to be here today?" The little girl was Katriana Komar.

The people who become victims of crime get killed, beaten, raped and robbed. And then they must too often *endure* the criminal justice system, in the hopes that justice is done. Through it all, it is their families, innocents like five-year-old Katriana, who look to each of us in this room and ask: How can this happen?

It is my constitutional duty to ensure that the scales of justice are not tipped against the rights of victims.

I will take a back seat to no one when it comes to ensuring that a defendant receives a fair trial. But when courts become citadels of technicality—protecting the guilty and not the innocent—it is my duty to urge reform. I will not neglect that duty. I will do as my conscience demands.

I will speak out. I will fight for justice. When the court says the laws are not clear, I will propose new laws that are clear. When the system says the lines must be defined more sharply, I will propose laws that provide that definition. In the best tradition of the American principles of democracy that give us our freedom, I will criticize when criticism is warranted.

When I see little girls like Katriana Komar, I will not be silent. I will take steps to ensure that our innocent people are protected. I will insist that defendants, while entitled to a fair trial, have no claim to a perfect trial.

And, in particular, I would be remiss if I blinked at any weakness in our criminal justice system, regardless of its source. Criticism, then, is both legitimate and salutary.

With the historic freedoms that we have all fought so hard to preserve, we also accept historic responsibilities. Freedom to criticize, of course, carries with it obligations. Here, the words of another great New York jurist, Judge Learned Hand, seem fit. Judge Hand said, "while it is proper that people should find fault when their judges fail, it is only reasonable that they should recognize the difficulties in judging . . . . Let judges be seriously brought to book, when they go wrong, but by those who will take the trouble to understand them."

I will continue to take the trouble to understand, and my criticisms will remain respectful of our courts, and of the dedicated men and women who serve on them. Believing, with Brandeis, in the power of reason as applied through public discussion, I am happy to be judged by that standard.

Once again, I want to thank you for [the] privilege of addressing you here today. Receiving this honorary degree from a University that [is] home to some of the brightest environmental minds is an honor I will remember and cherish forever. Thank you and good night.