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Remarks

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Remarks

Cover Page Footnote

Keynote address by Governor Mario M. Cuomo at the ALI-ABA Environmental Law Conference held in Washington, D.C. on February 14, 1986.

REMARKS†

MARIO M. CUOMO††

Those of us in the profession of law, who must stand on our feet in classroom or courtroom, draft contracts for clients, or draft legislation, like to speak of the law as enduring and eternal, but we all know that it is dynamic and constantly evolving.

Because of that we have a special responsibility to educate ourselves constantly.

So we owe special thanks to the American Bar Association and their Committee on Continuing Professional Education, not only for their work with this course, but for all that they do to keep us up-to-date and prepared. Thanks also to the Environmental Law Institute and the Smithsonian Institution for their sponsorship of this course of study.

Of course, professional education has its limitations. The law as it is read, taught, and learned in the classroom is different from the law as it is lived. Practicalities have a way of intruding.

This reminds me of a story they tell in upstate New York about an old fisherman who no matter how bad the fishing, always came in over the allowed quota of fish. Nobody knew how he did it, least of all New York's Department of Environmental Conservation.

One afternoon, the day before opening day of the fishing season, the old man and a brand new young fish and game warden found themselves together in the general store.

The old man looked over at the young warden and said, "How would you like to start the season with me tomorrow?"

The young warden asked, "Do you know who I am?"

The old man said, "Yes, I do."

The young warden said, "Well, then I'd love to."

The old man picked up the warden the next morning, drove out to the lake, put him in the rowboat, rowed out to the middle of the lake, set down his oars, looked over at the young fellow, reached under his seat, took out a stick of dynamite, lit it, and threw it overboard.

Boom! Dead fish came floating to the top of the lake.

"You can't do that!" said the young warden. "You violated three statutes and six regulations, with me looking at you!"

† Keynote address by Governor Mario M. Cuomo at the ALI-ABA Environmental Law Conference held in Washington, D.C. on February 14, 1986.

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While the consternated young warden fumed and shouted and reeled off the laws and regulations, the old man took another stick of dynamite, lit it, held it a second or two, leaned over, handed it to the young warden, and said, "Are you gonna fish, or are you gonna talk?"

The environmental movement has known from the beginning that it had to both fish and talk.

David Sive first organized this course fifteen years ago in January, 1971. Fifteen years — to many of us, that isn't so long ago. But think about it. A lot can happen in fifteen years, and much has happened since you first offered this course.

You were pioneers in 1971, mapping new territories. Or perhaps more accurately, you were members of a revolution. You were outsiders. Now many of you are insiders. You are governors, legislators, judges, environmental lobbyists, and corporate lawyers. And you are law students, and law teachers. Those are particularly wonderful things to be.

I have been lucky enough to be both. I went to St. John's Law School and found and fell in love with our lady of the law. The years of study at St. John's and two years as a law clerk to Judge Adrian Paul Burke of the Court of Appeals, New York's highest court, were the beginning of a profound affair that has lasted ever since.

I found the beauty of the law's logic and power awesome. And when I learned to use it, as a practicing lawyer, serving what I thought were good ends, the daily joy of the office and the courtroom became so absorbing that they threatened to eclipse other parts of my life.

I have learned from it what is, I think, the essence of my political philosophy, something more basic than whatever is implied by political labels visited upon use by our collective need for simplicity.

That essence is *reasonableness*.

Not an addiction to ideology or slogans or canned solutions, but an intelligent, prudent, responsible application of general principles to specific situations.

Viewed this way, the truth is often found at neither Scylla nor Charybdis, but somewhere near the middle of the straits. And effective government, despite the competitive frenzies of campaigns, must be more a matter of compromise and mediation than confrontation.

So perhaps neither the terse, hard pragmatism of the old fisher-

man, nor the blind faith in rules and regulations of the young warden, will serve us well, as we search for solutions to our environmental problems. Something more subtle and elusive is required in the search for reason.

Overall, I think we do it very well in this country. In this society of fallible men and women, the profession of law has served as a guarantor of due process, the protector of civil liberties, and the promoter of the common good. And in the fifteen years since 1971, the law has become our most important tool for protecting and preserving the environment.

I have known that as a lawyer — one concerned about the environment — and most of all, I know it now as a governor. As governor, I have a special responsibility, indeed, a sworn duty under our state constitution to “conserve and protect New York’s natural resources and scenic beauty . . . its forest and its wildlife.”

It’s a responsibility as awesome as the law itself, particularly because New York is so generously blessed with great natural resources — mountains, rivers, hundreds of miles of harbor and ocean front; perhaps the nation’s richest supply of water; millions of acres of productive farmland; virgin forests; and an immense network of parklands. All in all, New York is a web of natural systems that is unique, complex, and irreplaceable.

The resources we have are immense. But so are the problems we face in preserving them. Two problems, in particular, have demanded our attention and much of our resources for protection because the threat these problems pose is so devastating — and so immediate.

The first is acid rain.

We face a national — indeed, an *international* — challenge. The copper smelter about to begin operations just south of our border with Mexico is an example. It was built with no pollution control equipment.

By now, the threat is clear.

To Canadians and Europeans, to most Americans — to people who’ve seen acid rain wither and destroy their forests, poison their lakes and rivers — the threat is clear to almost everyone.

Almost, but not quite.

Unfortunately, it’s still not clear to Washington. So far, we’ve been unable to obtain the national help necessary to eliminate this threat.

The recent report issued jointly by the United States and Canada, while recognizing the harm caused by acid rain, fails to

put forward any meaningful solution.

More study is *not* needed. We need action.

The sad irony is that we *know* the causes of acid rain. We can see the short-term effects. In New York, all we have to do is look around. The effects are worse each year. Over 200 lakes in the Adirondack Mountains in upstate New York are too contaminated for fish to exist in. Hundreds more lakes are endangered. I won't recite the entire litany of the effects of acid rain on New York. But I will say that for New Yorkers, acid rain is no abstraction. It is real. Its devastation increases annually, affecting our resources, our economy, and potentially our health.

Because acid rain has such a direct and measurable impact on New York, we haven't had the time for a long debate over where acid rain comes from, and whether it can be diminished or controlled by this or that method. We acted decisively in New York. We had to. We were the first state to pass acid rain legislation, establishing firm sulfur-dioxide reduction targets. Our statute serves as a model for action by other states. I speak only for New York, of course, but I believe that the actions that New York and other states have taken are a strong signal of our resolve to do everything we can to help ourselves; transcending the political moment to make sacrifices today for the benefit of tomorrow's citizens. But there is so much more to do. Far beyond acid rain.

A second problem is hazardous waste. In New York, we were among the first to learn how costly — in every sense — hazardous waste sites would become, how difficult it would be for us to undo past negligence or ignorance.

Nearly a decade ago, Love Canal became a symbol of a national problem. With it came the discovery of dumpsites all over the country where radioactive or chemical wastes spread contamination and disease, as well as fear and uncertainty among our citizens about their own, and especially their children's health and well-being.

In New York, we have acted, and all that we have done is based on law and legislation. Some of that law hadn't been imagined before the crisis. But decent and responsible people entered effectively into the process of finding solutions, using our law.

Just in the past three years, for enforcement and clean-up, we have provided the largest increase ever in enforcement staffing for our Department of Environmental Conservation and increased seven-fold the revenues available to the state superfund to investigate and clean up hazardous waste sites.

We've begun an innovative program with industry to negotiate the responsibility for cleanup, rather than litigate. The purpose is to speed up the cleanup by using mediation devices instead of the tediously burdensome court procedures that are available.

We closed more than 100 polluting landfills, banned the use of dangerous pesticides like chlordane, and developed the toughest standards in the nation to regulate discharges of toxic substances in our waterways. And this year we are proposing a major new law. A 1.45 billion dollar Environmental Quality Bond Act. Most of the funds will be used to remediate hazardous waste sites throughout New York. Still, much, much more needs to be done as to hazardous wastes.

As with acid rain, we wait eagerly for a response from Washington. A program which began with such hope and promise — the federal superfund — is a mere shadow of its potential. Even the small assistance the states have received may terminate unless a legislative resolution reauthorizing the superfund statute is soon passed.

Along with the governors across the county, I have urged the two houses of Congress to agree quickly on a means to finance the superfund and to build the most ambitious program possible. And since it appears that we are on the threshold of finding advanced technologies for disposing of toxic wastes in an environmentally sound way, we have urged the federal government to help bring those technologies to the production stage, and to help make them available to the states as soon as possible. This, too, is part of our unfinished agenda.

Our bond issue and our other environmental protection costs represent a massive amount of money for New York's taxpayers and businesses to pay; but to stint in our sacrifice or to delay our efforts would be to jeopardize the public health and worse, it would violate a moral obligation.

It was more than 20 years ago that Rachel Carson shook our easy assumptions about the "Conquest of Nature" and made us examine what she called "a chemical barrage . . . hurled against the fabric of life." *Silent Spring* was deeply disturbing and accurate. Rachel Carson helped create a whole new mentality in this country, educating an entire generation to see the delicate balance of the life systems that support us all. Thanks to her vision and thanks to the tireless work of others, including some of you here, we began to confront the challenge of a planet in danger of self-contamination.

That movement has energized and expanded the work of conservation. It has taught us the importance of intelligent preservation of the good things God has given us. We learned that we need the capacity to correct the mistakes of the past. And that we cannot treat nature — life itself — as a kind of raw material to be used, transmuted, and discarded. And over the past fifteen years, the environmental movement has reminded us that there is no tool of governance more powerful than the use of law in a democracy. And now we are using it in the attempt to preserve the very stuff of life.

Let me tell you one more story about New York. Last year, we celebrated the centennial of New York's Forest Preserve — the Great State Preserve within the Catskills and Adirondacks that was proclaimed to be "forever wild" by chapter 283 of the Laws of 1885 of the State of New York. That was the first legislation in the United States to recognize the special value of the wilderness to us all. One hundred years ago, by writing into our laws the simple truth that we could no longer hope to survive if we went on destroying the natural surroundings that support us, a group of New Yorkers became the pioneers of a whole new attitude toward the environment.

They didn't use the word, "environment." They didn't have our science to tell us about the inescapable interdependence of all creation, the balance of the food chain, what Rachel Carson described as the "close-knit fabric of life." But they knew what their eyes and minds and souls taught them. They knew that if the Adirondacks and Catskills were deforested, our water supplies would be endangered.

They knew more. They knew the tangible impoverishment we would suffer as a people. They understood the magnitude of the resources that would be denied to those who came after them. And they could see the devastation of the permanent loss of a beautiful and essential element in the creation that surrounded them.

Even beyond that, they knew that the law *worked*, that the law was a powerful tool, that this wonderful creation of the mind that we call law could be designed and written to stand for a hundred years and more. And to stand for something.

When they wrote this legislation, they gave something up. They lived in the gilded age, an age of industrial expansion and vast economic growth. The demand for raw materials was increasing exponentially. Fortunes were being made. Quick profits. Easy wealth.

If the New Yorkers of 1885 had been willing to forget about us, their descendents, they could have had more for themselves. Ex-

ports, raw materials, land for development. The worst consequences wouldn't have come in their lifetime.

But they understood their obligation — their moral obligation. They thought of themselves as more than the creatures of a single moment in history concerned only with their own comfort. No matter what the costs for the future, they were costs they'd never have to pay.

They thought of *us* — in a magnificent way. They joined, without regard to political labels, to pronounce those forest lands “forever wild.”

And when that law didn't seem strong enough, they wrote it in stone. They wrote into our state constitution, declaring with eloquent directness and simplicity that “the lands of the State now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands.”

We have kept that faith. What began in 1885 as 71,500 acres is today over 2,750,000 acres — the largest and most securely protected wilderness area east of the Mississippi. It's an invaluable legacy, and we're still adding to it. Thanks to the *law*.

But there was something else needed, too — a faith in the common purpose and the common responsibilities that the law makes clear for all who share the benefits and burdens of our society: the vision to imagine the law; the courage to write it; the consensus and commitment to enforce it; and the faith in the power of law that travels to neither one extreme nor the other, that finds the just settlement, that neither fishes with dynamite nor hides behind a babble of rules and regulations.

This I think is a good model for approaching *all* of our societal concerns.

In my years of law, as student, clerk, litigator, teacher, and finally as public servant, it seems I am driven back, again and again to one idea. It's found in our national constitution given to us by those geniuses who wrote that instrument. It's sense of the common good.

The constitution says to me that freedom isn't license; that liberty creates responsibility; that we have been given freedom in order to encourage us to pursue that common good. And if the constitution restricts the powers of the state in order to save us from the temptation to judge and persecute others, it does not thereby deny the necessity of the shared commitment to help one another.

There is a fundamental morality in the goals of the environmental movement, and it speaks directly to our need for shared values.

Our commitment to preserve the environment for future generations — as distinguished from ourselves — is an act of selflessness. And it is in selflessness, I believe, that the means to the common good is often found.

In recent times, some have tried to obscure that truth. Environmentalism has been labeled by some as a “special interest.” It has been pictured as an impediment to progress and to prosperity. In fact, the care and protection of nature *are* a higher *self*-interest for all who live on this planet, all who breathe its air and are sustained by its water, whatever our party or ideology, industrialists as well as farmers.

We have come to see what over three centuries ago the poet John Donne sought to teach us. And this is where morality, and self-interest, and law, and the larger, living communities of our planet come together. We have seen that we are all, in Donne’s familiar words, “A piece of a single continent, a part of the main”

The environment is the common ground we all share. And the way we approach it — in philosophy and in practice — manifests even more than an intelligent instinct for survival. It manifests our morality. Our deepest values; our reverence for “the great chain of being,” for the generations before us who planted and preserved this earth, and for the generations to come.

Our reverence for the life that surrounds us — the magnificent links of creation, reaching forward and beyond us to places and to dreams we ourselves will never reach.

It is a work of fundamental and pervasive significance. I’m privileged to have been able to share this time with people so intelligently and effectively committed to it.

Thank you.