

## REMARKS

### ADDRESS BY THE HONORABLE J. JOSEPH CURRAN, JR., ATTORNEY GENERAL, STATE OF MARYLAND\*

It is an honor to be here with you tonight.

Congratulations to all for being part of such a prestigious law school like American University.

I especially congratulate you for being part of an even more prestigious part of the school—its *Law Review*. You should be commended.

But so should your friends and loved ones who are with you tonight. I hope you realize that, after agonizing with you over classwork and *Law Review* work, they, too, are a part of the *Law Review*. I want to particularly thank Jamie Raskin for giving me the opportunity to speak to such an elite group tonight. As so many of you already know—Jamie is a great legal scholar, an advocate in the truest and finest sense of that word, and a wonderful friend.

Jamie gets around, too. Michael Enright, my assistant who is with me tonight, is going to be attending the Kennedy School at Harvard next year and on the drive down here tonight he told me that when he mentioned this to Jamie, Jamie congratulated him on his acceptance and urged Mike to pick up a book called *How Harvard Rules*<sup>1</sup> if Mike wanted to read the “Definitive Book” on the university and the Kennedy School.

Well, Mike rushed out to get a copy of the book and surprise, surprise—guess who had written one of the definitive chapters in this definitive book. That’s right . . . Jamie Raskin!

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\* This speech was delivered at *The American University Law Review Annual Banquet*, at The Embassy Suites Hotel, Washington, D.C., on April 20, 1996.

1. *HOW HARVARD RULES* (J. Trumpdour ed. 1989).

Members of the *American University Law Review* are such an informed and genuinely curious group, I had some difficulty arriving at one topic to discuss with you tonight. I have been Attorney General for almost three terms and you cannot even imagine the interesting and important issues and cases I have had the pleasure of handling in that time. There is one issue, however, which has not only taken hold of me and my office in the last few years, but also which many of you are reading and hearing about on a daily basis. It is this issue that I would like to discuss with you this evening. It is—tobacco.

Now, I will admit there was a time when I, like many of my generation, was a cigarette smoker; I want to add this disclaimer right from the start. But those days are long gone for me and I hope for you, too.

Since I have been Attorney General, my office has been very concerned about the costs and problems to society that are associated with cigarette smoking. It has been a long and slow battle—and the only one to really compare to it in my career has been my thirty-year battle for sensible gun control laws. The tobacco lobby, just like the National Rifle Association (NRA), have done their best to slow things down in Maryland and, quite frankly, in every state in the Union.

I am reminded of the story once told about Mark Twain, who was walking down a farm road to his friend's house and bumped into a farmer and asked him how far away he was. "Bout a mile and a half to go," the farmer said. A little further down the road, Twain asked the same question to another farmer. "Bout a mile and half," came the answer. After this happened three more times, Twain finally said, "well, thank God I'm holding my own."

This is similar to the way I felt after years of butting (excuse the pun) heads with the tobacco lobbyists in Annapolis. Year in and year out, the lobbyists made grand gestures and statements about how they were against kids smoking and for prevention efforts, but whenever it came time to vote on specific proposals to do something about these issues—they were always against such efforts.

And to a certain extent they are still successful with these tactics.

But there have been a number of developments in recent months that lead me to believe we are getting a little closer to Mark Twain's mythical friend's house. (I just hope we don't discover when we get there that he is a tobacco farmer!)

This week, it was announced that the Maryland pension system has divested from tobacco stocks. Two years ago, I called on the pension system to divest because it simply made no sense to me that, on the

one hand, the State was doing everything it could to encourage people to stop smoking and prevent youth access to tobacco, but on the other hand, the State was profiting from the very companies whose product caused all this misery.

We ought to speak with one loud and unified voice on this issue and I am pleased to say that a couple years later more voices are joining that chorus.

Last year, Maryland instituted the first workplace smoking ban of its kind in the country. We fought long and hard, once again, to uphold this regulation and had to go all the way to the State's highest court to make it happen, and I am proud to say we prevailed. If we protect judges and lawyers from the harmful effects of cigarette smoke when they enter courtrooms, it should not be any different for the receptionist at a construction company or the clerk in a mailroom.

In addition, my office this year joined twenty-six other Attorneys General to support regulations proposed by the FDA to regulate the sale and distribution of tobacco products.

Although all these efforts are noble, I believe they will eventually be dwarfed by a lawsuit my office will be filing in a few weeks against the tobacco industry to recoup hundreds of millions of dollars the State absorbs every year in health care costs that are directly associated with cigarette smoking and to enjoin advertising directed at kids. I honestly believe that when all the smoke clears on this issue, the states who are involved will prevail and the tobacco companies will have to pay their fair share of a public health disaster that they have helped create.

For years, the cigarette manufacturers and their trade associations have engaged in a conspiracy to mislead, deceive, and confuse the State of Maryland and its citizens regarding the overwhelming evidence that cigarettes will harm you and that the nicotine placed in cigarettes is a powerfully addictive substance. The manufacturers promised the public that they would lead the effort to disclose the truth about smoking and health, but, instead, they have systematically suppressed and concealed material information.

They have waged an aggressive campaign of disinformation about the health consequences of cigarette smoking.

They have known for years, based on their own secret research, that their products eventually injure or kill the consumer when used exactly as intended. As a lawyer, your initial reaction probably is: This cannot be legitimate conduct. Remarkably, however, the industry can and has gotten away with such conduct.

For many years, the only lawsuits pursued against the cigarette companies were brought by individual consumers, who were largely unsuccessful because the cigarette manufacturers were willing to throw all the weight of their considerable financial resources to defend the litigation.

As one industry spokesman actually said, and I give you his direct quote:

The aggressive posture we have taken regarding depositions and discovery in general continues to make these cases extremely burdensome and expensive for plaintiff's lawyers, particularly sole practitioners. To paraphrase General Patton, the way we won these cases was not by spending all of [R.J. Reynold's] money, but by making that other son of a bitch spend all his.

While they may have overpowered individuals, might cannot make right. It is in this context that Maryland, among other states, is stepping forward to say: The tobacco manufacturers have broken state laws, and they can be, and ought to be, held accountable for that behavior.

First, cigarette manufacturers have for years been making false and misleading statements about the health and addictive effects of tobacco. I believe that behavior runs afoul of Maryland's consumer protection laws and that the state is entitled to recover from the cigarette companies for this wrongful behavior.

Second, I believe that the cigarette manufacturers have been conspiring to suppress alternative healthier and less-addictive products. That behavior also runs afoul of the State's antitrust laws, and thus, the cigarette manufacturers must be held accountable.

Third, I believe the cigarette manufacturers have been enriching themselves at the expense of states who subsidize health programs and bear the significant costs of medical problems caused by cigarette smoking. I believe that this conduct can be addressed through the tort laws of the State of Maryland.

By now, you may have heard from the cigarette manufacturers a familiar refrain that the industry has, in fact, informed the public of any health risks, as has the federal government and that, therefore, they ought to be immune for the consequences of marketing and selling an addictive and harmful product. They assert that this defense is so overpowering and logical that states such as Maryland need not even bother filing suit.

Instead, the new idea being promoted is that the cigarette companies should get immunity! This immunity would fall under the umbrella of regulation that would allow continued manufactur-

ing—perhaps accompanied with slightly lower levels of nicotine and slightly larger warnings.

This new view, from the cover of Sunday's *New York Times Magazine*, is that it is time to "Dance with the Devil"; that if America is serious, "It's time to cut a deal with the tobacco companies."<sup>2</sup>

Well, *The Times* never asked me what I thought of this legal strategy, but I will tell you.

In my view, it is a mistake. It is of paramount public importance that, whatever form the future regulatory scheme takes, cigarette manufacturers must confront the consequences of the laws under which they have operated and benefitted. The cigarette industry must face a jury that will judge whether they should pay their fair share for the damage that they knew, or should have known, their product inflicted.

The unique role of the State of Maryland, and other states in this area is to ensure that the facts about this industry's efforts to hide their knowledge from consumers and the government come to light and that these facts are brought before a jury.

You will be hearing more from me on this in the coming weeks and the coming years. I assure you, I plan to keep plodding down Mark Twain's farm road. This case could truly be the most important legal effort out of my office during my terms, and I truly believe we will ultimately prevail.

We will prevail not by dancing with the devil but by taking the counsel of those dear nuns who taught me at Blessed Sacrament School so many years ago: "Resist the devil, and he will flee from you."

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2. Richard Kluger, *A Peace Plan for the Cigarette Wars*, N.Y. TIMES, Apr. 7, 1996, at 28 (Magazine).