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CLOSING REMARKS

BREAKING THE POWER OF THE POWER BROKERS

STEVEN PAUL MCSLOY*

It is a great pleasure and privilege to offer some closing remarks for this remarkable symposium on environmental justice. I believe this has been a timely and important event, and I think the incredible diversity of topics discussed today, including law, justice, race, poverty, class, the environment, civil rights, capitalism, democracy and many others, is matched only by the real diversity of the panelists, who cross all lines of ideology,¹ politics,² gender,³ race⁴ and class, and who represent all manner of governmental,⁵

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I would also like to thank my brother, Christopher Michael McSloy, for his constantly inspiring thoughts about the geographical and ethnic politics of New York and for insisting that I read Robert A. Caro's *THE POWER BROKER: ROBERT MOSES AND THE FALL OF NEW YORK* (1974). These remarks were inspired by our many discussions of politics, and are dedicated to his memory.

¹ For example, compare the presentation of Dr. Michael S. Greve, *Environmental Justice or Political Opportunism?*, 9 ST. JOHN'S J. LEGAL COMMENT. 475 (1994), with that of Anthony D. Taibi, *Environmental Justice, Structural Economic Theory, and Community Economic Empowerment*, 9 ST. JOHN'S J. LEGAL COMMENT. 491 (1994).

² For example, Dr. Michael S. Greve and Richard A. Samp are or have been affiliated with the conservative Washington Legal Foundation, while on the other hand Larry Shapiro is associated with the liberal New York Public Interest Research Group ("NYPIRG"). See also David L. Gregory, *Racism or Economics?*, 9 ST. JOHN'S J. LEGAL COMMENT. 439 (1994) (discussing politics involved in environmental justice debate).

³ Of the 23 panelists and moderators, six are women.

⁴ Of the 23 panelists and moderators, five are African-American and two are Latino(a), including Gerald Torres, the keynote speaker and currently Counsel to the United States Attorney General.

⁵ Two of the panelists currently serve in federal or state government. The keynote speaker, Gerald Torres, is Counsel to the Attorney General, U.S. Department of Justice. Samara F. Swanston is Chief, Eastern Field Unit, New York State Department of Environmental Conservation, Division of Environmental Enforcement. In addition, Martin Topper, who at the last minute was unable to attend this symposium in person, but who submitted

legal,⁶ academic,⁷ sociological,⁸ media⁹ and community¹⁰ points of view. I would also like to say, parenthetically, that the *St. John's Journal of Legal Commentary* really came of age today.¹¹

If I may offer a concluding thought to all that has been said here today, I would note that the title of this symposium, *The Merging of Civil Rights and Environmental Activism*, is an accurate description of a major modern trend,¹² and, as the speakers have demonstrated, a great many other disciplines are merged as well into the environmental justice debate. I would suggest, and since

a paper, holds a position as National Indian Program Coordinator of the Environmental Protection Agency. See Martin D. Topper, *Environmental Protection in Indian Country: Equity or Self-Determination?*, 9 ST. JOHN'S J. LEGAL COMMENT. 693 (1994).

⁶ Six of the panelists are practicing lawyers.

⁷ In addition to the moderators, four of the panelists are professors.

⁸ E.g., Dr. Robert D. Bullard, Ware Professor of Sociology, Clark Atlanta University.

⁹ E.g., Viki Reath, Reporter for *Environment Week*; Richard Kleiner, Public Affairs Director for the Louisiana Chemical Association.

¹⁰ E.g., Ms. Hazel Johnson, Executive Director of People for Community Recovery and a recipient of the President's Environment and Conservation Challenge Medal for her persistence and determination in striving to obtain appropriate governmental enforcement of EPA regulations.

¹¹ Founded in 1985 as an alternative to the traditional-style law review, the *St. John's Journal of Legal Commentary* is now in its tenth year of publication. Recent symposia and special issues have focused on such timely and important topics as emerging issues in evidence law (*Symposium on the Emerging Issues in the Rules of Evidence: Federal and New York*, 9 ST. JOHN'S J. LEGAL COMMENT. 1 (1993)), attorney-client confidentiality (*Symposium: Ethical Guidelines on Attorney-Client Confidentiality*, 8 ST. JOHN'S J. LEGAL COMMENT. 369 (1993)), and victims' rights (*Victims' Rights Symposium*, 8 ST. JOHN'S J. LEGAL COMMENT. 1 (1992)), and have featured such notable authors as New York Governor Mario Cuomo (*The Crime Victim in a System of Criminal Justice*, 8 ST. JOHN'S J. LEGAL COMMENT. 1 (1992)), and the Honorable Joseph M. McLaughlin of the Second Circuit Court of Appeals (*Introduction to Symposium on the Emerging Issues in the Rules of Evidence: Federal and New York*, 9 ST. JOHN'S J. LEGAL COMMENT. 1 (1993)).

¹² Other recent symposia on environmental justice include *Symposium, Urban Environmental Justice*, 21 FORDHAM URB. L.J. 425 (1994); *Symposium: Race, Class, and Environmental Regulation*, 63 U. COLO. L. REV. 839 (1992). Major published works include UNEQUAL PROTECTION: ENVIRONMENTAL JUSTICE AND COMMUNITIES OF COLOR (Robert D. Bullard ed. 1994); ROBERT D. BULLARD, DUMPING IN DEXIE: RACE, CLASS, AND ENVIRONMENTAL QUALITY (1990); COLIN CRAWFORD, UPROAR AT DANCING RABBIT CREEK (forthcoming 1995).

In addition to these symposia and books, major articles on the topic include Vicki Been, *Locally Undesirable Land Uses in Minority Neighborhoods: Disproportionate Siting or Market Dynamics?*, 103 YALE L.J. 1383 (1994); Vicki Been, *What's Fairness Got to Do With it?: Environmental Justice and the Siting of Locally Undesirable Land Uses*, 6 CORNELL L. REV. 1001 (1993); Luke W. Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 ECOLOGY L.Q. (1992); Colin Crawford, *Strategies for Environmental Justice: Rethinking CERCLA Medical Monitoring Lawsuits*, 74 B.U. L. REV. 267 (1994); Michael Gerrard, *Fear and Loathing in the Siting of Hazardous and Radioactive Waste Facilities: A Comprehensive Approach to a Misperceived Crisis*, 68 TUL. L. REV. 1050 (1994); Richard J. Lazarus, *Pursuing "Environmental Justice": The Distributional Effects of Environmental Protection*, 87 NW. U. L. REV. 787 (1993); Samara F. Swanson, *Legal Strategies for Achieving Environmental Equity*, 18 YALE J. INT'L L. 337 (1993); Gerald Torres, *Environmental Burdens and Democratic Justice*, 21 FORDHAM URB. L.J. 431 (1994); Philip Weinberg, *Environmental Protection in the Next Decades: Moving from Clean Up to Prevention*, 27 LOY. L.A. L. REV. 1145 (1994).

I was not a principal speaker I do not have the responsibility for supporting this suggestion, that perhaps the common denominator in all the various strands of the environmental justice debate, transcending race, poverty, class, gender and politics, is the issue of power. Power is the ultimate issue in all societies,¹³ and the constant struggle for material advantage unfortunately still characterizes the human condition. I would also like to offer a footnote to the symposium by noting that though the environmental justice debate is often drawn in terms of black and white,¹⁴ a major and often forgotten victim of environmental injustice is the red race, the indigenous peoples of North America.¹⁵

As a final note, I would like to offer the audience something to think about as they make their way home from St. John's University.¹⁶

Some of you may be heading back to Manhattan, and may get there by way of the Triborough Bridge. I have always been fascinated by that bridge, because in coming in from Queens to Manhattan it makes an almost perpendicular hard right turn north, so that the traffic lets out in Harlem, not on the wealthy Upper East Side.¹⁷

¹³ The classic exposition of this thesis is HAROLD D. LASSWELL, *POLITICS: WHO GETS WHAT, WHEN, HOW* (1958).

¹⁴ See, e.g., BULLARD, *supra* note 12; Crawford, *supra* note 12.

¹⁵ See, e.g., Charles K. Johnson, *A Sovereignty of Convenience: Native American Sovereignty and the United States Government's Plan for Radioactive Waste on Indian Land*, 9 ST. JOHN'S J. LEGAL COMMENT. 589 (1994); Topper, *supra* note 5; see also Marcia Coyle, *Unequal Protection: The Racial Divide in Environmental Law*, NAT'L L. J., Sept. 21, 1992, at S9; Robert Tomsho, *Dumping Grounds: Indian Tribes Contend with Some of the Worst of America's Pollution*, WALL ST. J., Nov. 29, 1990, at A1.

¹⁶ St. John's University is located in Jamaica in the borough of Queens, City of New York, approximately ten miles east of midtown Manhattan. Maps of the area discussed in the text can be found in the front endpaper and frontispiece of ROBERT A. CARO, *THE POWER BROKER: ROBERT MOSES AND THE FALL OF NEW YORK* (1974) [hereinafter *THE POWER BROKER*].

¹⁷ A map of the Triborough bridge complex can be found in *THE POWER BROKER*, *supra* note 16, at 388. An aerial photograph of the bridge and its approaches can be found in the picture section of *THE POWER BROKER*, *supra* note 16, following page 562. As noted by Caro:

The Queens terminus of the Triborough Bridge was directly across the East River from 100th Street in Manhattan. Therefore, the Manhattan terminus of the bridge should have been placed at 100th Street. It certainly should not have been placed any further uptown; the bulk of the bridge traffic—85 percent by one estimate—would be coming from, and going to, destinations south of 100th Street. Placing the Manhattan terminus at 125th Street condemned most motorists . . . to thus add two and a half totally unnecessary miles to their every journey over the bridge.

THE POWER BROKER, *supra* note 16, at 390.

Nonetheless, a combination of regard for the wealthy Upper East Side, disregard for the residents of Harlem, and plain old-fashioned graft led to the bridge's Manhattan terminus being located at 125th Street in Harlem. *Id.*

Others of you may leave St. John's and head east toward Long Island on the Grand Central Parkway, which further along turns into the Northern State Parkway. I have always been fascinated by that road as well, because in making its way east the Northern State Parkway deliberately detours well south of the wealthy communities of Long Island's North Shore.¹⁸ The Parkway's companion road, the Long Island Expressway, similarly keeps to a southerly course,¹⁹ and, in addition, as it does so, all the overhead highway lights disappear. I have always wondered what special rights those North Shore communities had, not only not to have parkways cut through their land but also to have starry nights. These rights were obviously not shared by the other, less wealthy communities through which the otherwise well-lit roads cut.

Some of you in the audience may leave St. John's and head home on the Southern State Parkway, which leads you east along Long Island's Southern Shore, home to the beaches known as the "American Riviera."²⁰ As you travel on the Southern State, you will notice that the bridges spanning the parkway are very low. Those who have read Robert Caro's excellent biography of Robert Moses,²¹ the "Power Broker" responsible for almost all of New York State's twentieth century public works projects, will remember that the bridges were deliberately designed that way in order

¹⁸ The so-called "Gold Coast," home to Fitzgerald's Great Gatsby and numerous real-life estate holders. See *THE POWER BROKER*, *supra* note 16, at 148-54. The fact that the Parkway passes south of the "lush [] North Shore estates" is due to "pressure from estate owners [, who] persuaded [Robert] Moses [, the parkway's builder,] to reroute the parkway to bypass them." See Philip Lutz, *Where Has the Northern State Gone?*, N.Y. TIMES, Sept. 11, 1994, § 13, at 1; see also *THE POWER BROKER*, *supra* note 16, at 277-78, 300-04. A map comparing the Parkway's originally planned route with its actual southward course can be found in *THE POWER BROKER*, *supra* note 16, at 302-03. As noted by Caro:

The long term costs to the public of Moses' accommodation [of the North Shore estate holders] include figures that cannot be prefaced with dollar signs. For one thing, the accommodation condemned users of the parkway to a perpetual detour of five miles around the Wheatley Hills. Coupled with the six-mile detour forced on parkway users by Moses' previous accommodation with Otto Kahn and the other Dix Hills [land] barons, it meant that a commuter who lived anywhere east of Dix Hills and who used the parkway to get to his job in New York City was condemned to drive, every working day of his life, twenty-two extra and unnecessary miles. He had to drive 110 unnecessary miles per week, 5,500 per year By the 1960's there were about 21,500 such commuters, and the cost to them alone . . . totaled tens of millions of wasted hours of human lives.

THE POWER BROKER, *supra* note 16, at 301-02.

¹⁹ A map showing this can be found in the frontispiece of *THE POWER BROKER*, *supra* note 16.

²⁰ From Jones Beach to the Hamptons, Long Island possesses some of the sandiest, widest, and longest beaches in the world.

²¹ *THE POWER BROKER*, *supra* note 16.

to prevent buses of city dwellers, and particularly African-Americans, from reaching the Island's fabled beaches.²²

The power wielded by men like Robert Moses in deciding which communities would be demolished for or blighted by freeways and bridge outlets and which would be spared and preserved is just another example of the topic under discussion here today, and one which took place long before the phrase "environmental justice" had been coined.²³ The struggle between those with political and economic power and those without it continues in every part of our society, and in all likelihood will continue.

I would like to offer, however, a somewhat self-serving ray of hope in this ongoing struggle. It is self-serving because this ray of hope emanates from here, at St. John's University. The community that is St. John's, drawn from the working class, from the so-called "ethnic" populations of the boroughs surrounding the isle of

²² See *THE POWER BROKER*, *supra* note 16, at 318-19, 546-47, 951-54. The bridges, which are only eight feet high, are also found on the Northern State Parkway, which was also designed and built by Moses. When Lee E. Koppelman, the executive director of the Long Island Regional Planning Board, "questioned a top Moses aide at the Long Island State Park Commission, Sidney M. Shapiro, he [Shapiro] acknowledged that the bridges had been designed to keep out buses. 'Young man,' Mr. Shapiro said, 'precisely.'" Lutz, *supra* note 18, at 6.

The classism and racism embodied by Moses continue today. In discussing proposals to widen the Northern State Parkway and raise the bridges, a recent *New York Times* article noted that "the question of allowing buses would become purely political. . . . [B]eyond the Queens border, 'politically, I don't think it would fly.' The [North Shore] Village of Westbury has opposed any expansion of the parkway that would lead to higher bridges." See Lutz, *supra* note 18, at 6 (quoting Lee E. Koppelman, executive director of the Long Island Regional Planning Board).

²³ As put by Caro:

If the number of persons evicted [by Moses] for public works was eye-opening, so were certain of their characteristics.

Their color, for example. A remarkably high percentage of them were Negro [sic] or Puerto Rican. Remarkably few of them were white. Although the 1950 census had found that only 12 percent of the city's population was nonwhite, at least 37 percent of the evictees . . . and probably far more were nonwhite.

And their income. The income of evictees not only for slum clearance projects but for *all* Moses' public works including expressways was far below the citywide average. *THE POWER BROKER*, *supra* note 16, at 968. On Moses' particular animosity toward African-Americans, see *THE POWER BROKER*, *supra* note 16, at 557-60. Caro relates one telling and almost inconceivable instance:

Robert Moses had always displayed a genius for adorning his creations with little details that made them fit in with their setting, that made the people who used them feel at home in them. There was a little detail on the playhouse-comfort station in the Harlem section of Riverside Park that is found nowhere else in the park. The wrought-iron trellises of the park's other playhouses and comfort stations are decorated with designs like curling waves.

The wrought-iron trellises of the Harlem playhouse-comfort station are decorated with monkeys. *Id.* at 560.

Manhattan, is comprised of exactly the same people Robert Moses sought to keep off the beaches of Long Island and away from the great estates of the North Shore.²⁴ In the modern era, however, these same people have become Robert Moses' boss, as St. John's has produced two governors of New York State²⁵ and three of the seven judges currently seated on the state's highest court,²⁶ as well as numerous other high government officials²⁷ and eminent private citizens.²⁸ St. John's has thus been a means for those of

²⁴ As noted by Caro:

[Moses held a] deep distaste for the public that was using [the parks] "He'd denounce the common people terribly. To him, they were lousy, dirty people" [H]e began taking measures to limit the use of his parks. He had restricted the use of state parks by poor and lower-middle-class families in the first place, by limiting access to the parks by rapid transit; he had vetoed the Long Island Rail Road's proposed construction of a branch spur to Jones Beach for this reason. Now he began to limit access by buses; he instructed [his aides] to build the bridges across his new parkways low—too low for buses to pass For Negroes [sic], whom he considered inherently "dirty," there were further measures. Buses needed permits to enter state parks; buses chartered by Negro [sic] groups found it very difficult to obtain permits, particularly to Moses' beloved Jones Beach

[Moses] further limited park use by the poor by instituting parking fees at all state parks, fifty cents at Jones Beach, twenty-five at all the rest, [doing this during the Depression,] in violation of the American tradition of free parks.

THE POWER BROKER, *supra* note 16, at 318-19 (quoting Frances Perkins); *see also id.* at 489-90.

²⁵ Former New York State Governor Mario M. Cuomo and former New York State Governor Hugh L. Carey are graduates of St. John's University School of Law.

²⁶ Hon. Joseph W. Bellacosa, Hon. Vito J. Titone, and Hon. Carmen Beauchamp Ciparick, judges of the Court of Appeals of the State of New York, are all graduates of St. John's University School of Law.

²⁷ For example, Secretary Ron Brown of the United States Department of Commerce; former Governor George Deukmejian of the state of California; Governor Alexander A. Farrelly of the U.S. Virgin Islands; Hon. Edward D. Re, Chief Judge Emeritus, U.S. Court of International Trade; Hon. John E. Sprizzo, U.S. District Court, Southern District of New York; Hon. Raymond J. Dearie, U.S. District Court, Eastern District of New York; Hon. Joanna Seybert, U.S. District Court, Eastern District of New York; Hon. Guy J. Mangano, Presiding Justice for New York State Supreme Court Appellate Division, Second Department; Hon. Israel Rubin, New York State Supreme Court Appellate Division, First Department; Hon. Joseph P. Sullivan, New York State Supreme Court Appellate Division, First Department; Congressman Thomas J. Manton, House Representative for the Seventh District of New York (Queens); Congressman Charles B. Rangel, House Representative for the Fifteenth District of New York (Harlem).

²⁸ For example, Jerome Belson, Chairman and CEO of Jerome Belson Associates; Leon Finley, Of Counsel to Baer Marks & Upham; Kate Walsh O'Beirne, Vice President of Government Relations at The Heritage Foundation; John V. Brennan, Chairman and CEO of U.S. Aviation Underwriters; John T. Thornton, Executive Vice President and Chief Financial Officer of Norwest Corporation; Bernard Kennedy, President and CEO of King Kullen Grocery Co., Inc.; Jeffrey S. Maurer, President of U.S. Trust and operating head of the Asset Management and Private Banking Group; John O'Callahan, Partner/Member at Whitman, Breed, Abbott & Morgan; John Ingram, Partner/Member at Burlingham Underwood & Lord; P. Kevin Castel, Partner at Cahill Gordon & Reindel; Robert J. Hausen, Partner at Chadbourne & Parke; W. Thaddeus Miller, The Goldman Sachs Group, L.P.; Roy L. Reardon, Member of Simpson Thacher & Bartlett; Dennis Orr, Member of Shearman & Sterling; Cora T. Walker, Partner at Walker & Bailey.

lesser fortune to rise in this society and break the power of the "power brokers." The University has stayed true to its original mission,²⁹ most notably by its commitment not to build dormitories, tying itself to the community in which it was founded, however much of that community has changed and will change again since that founding in 1870.

It can only be hoped that those who go forth from St. John's, as they travel the paths built by the power brokers of another era, remember from whence they came.

²⁹ The Right Reverend John Loughlin, D.D., the first Bishop of Brooklyn, invited the Vincentian Community to found St. John's University in 1868 "for the purposes of opening a day college where the youth of the city might find the advantages of a solid education" Bishop John Loughlin, Letter to the Vincentian Community (1868) (quoted in *St. John's University Undergraduate Bulletin* iv (1991-1993)). Non-Catholics were welcomed at St. John's University from the first, as was noted at the school's groundbreaking in 1868 by Governor E. Louis Lowe of Maryland, who saluted the University "for the education of . . . youth . . . without distinction of religious belief, political opinion, or social condition." Governor E. Louis Lowe of Maryland, Remarks at St. John's University Groundbreaking Ceremonies (1868) (quoted in *St. John's University Undergraduate Bulletin* iv (1991-1993)).

