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Homecoming Address

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HOMECOMING ADDRESS*

HON. DOMINICK L. GABRIELLI

Permit me to express my deep appreciation for the gracious invitation to participate in the Annual Homecoming observance of this great School of Law. I am indeed indebted to Dean Murphy and to my friend Justice Monteleone, the President of your Alumni Association for this opportunity, and, believe me, I have looked forward to this occasion with anticipation, for a variety of reasons.

First, let me congratulate your Dean, the Board of Trustees and Faculty for the excellence which has marked the reputation of this School of Law. The proof of the pudding is exemplified in the great lawyers and jurists you have given us all. Because of my service on the Board of Trustees of another fine law school—Albany Law—I am somewhat familiar with your responsibilities—and I am pleased to salute you.

Then, too, it gives me much pleasure to be back in Queens and to renew warm friendships with so many of your graduates who are here today. You see, I received my judicial baptism in Kings and Queens counties when I came down as a visiting county judge and, believe me, it was truly a baptism. The warm friendships that were forged with so many of your Alumni on the Supreme Court and other courts have been for me, most rewarding and indeed very pleasant. Like you, I am very proud of them all.

Additionally, I am pleased to acknowledge the presence of two of your Alumni, John Moore and Paul Corcoran who are associated with our court and who have distinguished themselves and have brought credit to the school.

In the past, I have had the pleasurable task of recruiting law clerks for two Appellate Divisions and the men you have given us (one of whom, Steve Limmer, was with us in the Fourth Department) have certainly lived up to your expectations and have served with distinction and credit to this school.

Today, let me share with you some of my thoughts and a few of the concerns that deal with our profession.

We all certainly recognize that there is nothing really and finally perfect. And just as with any human endeavor, the Judicial System—in whatever jurisdiction, local or federal—is not completely perfect. I am in

* Address delivered by Judge Gabrielli, Associate Judge of New York State Court of Appeals, at the 18th Annual Homecoming of St. John's University School of Law Alumni Association, March 24, 1973.

entire agreement with the views expressed by Chief Judge Fuld when he observed that we cannot expect it to be so “if we add to human fallibility the compounding frustrating elements of increasing case loads, lack of adequate resources, of personnel and the enormity of other problems and responsibilities which confront those who work on behalf of the court system.”¹ The dismaying fact, unfortunately, is the lack of understanding, on the part of the public, of the problems and the needs of our Judicial System. I am quick, of course, to recognize that the judiciary must be responsive to, and of course accountable for, responsible public criticism or evaluation. But, it is most important that they make a valid and intelligent assessment before any judgment is expressed. I was pleased to note the position recently expressed by the Editor of the Law Journal who put the problem in good focus when he said that “More than any other institution, the Judicial System has become the target of abuse and vilification generated by increasing public fear and frustration over crimes of violence, waves of riots, penal systems that neither deter nor rehabilitate, and over the general breakdown of law and order.” And he continues, “yet the courts are demonstrably not the cause of the malaise and discontent which disturb our society. . . . [T]ensions created by these and other developments have produced an avalanche of criminal cases and civil litigation that have taxed the capacity of the courts.”²

Unfortunately, the focus of resentment tends to be on the Bench and Bar. Someone has said that sitting judges are sitting ducks—and fair game for those who want to shoot. Traditionally, of course, judges are required to live and work under a discipline of restraint and moderation. Thus it is that it would be inappropriate for them to leap into the public arena and do battle with uninformed detractors.

An honest and purposeful overview of the problem requires not only an informed and educated public, but continuous restructuring and reform of the system—which, of course, can come only from a warmer marital relationship between all responsible areas of government.

Much of this can be accomplished by the Bar. Lawyers should be the nexus between the courts and the public. We look to the Bar to marshal its collective wisdom, talents and energies in our common effort to improve the administration of justice. In this regard it is the responsibility of each of us to alert the public to an understanding of our problems and the needs of our judicial system. No group is better than is the Bar to illuminate these concerns and inform the citizenry.

At times every lawyer and every judge must feel that his work consists of creating ad hoc solutions to a series of disparate problems or fact situations. This is as it should be. To be constant in discharging our heavy

¹ New York Law Journal, Jan. 24, 1973, at 1, col. 3.

² New York Law Journal, Jan. 24, 1973, at 1, col. 1.

responsibilities as lawyers, we must be ever alert to the legitimate demands of a society which has modern and sometimes changing moods, requiring us to look beyond old horizons. Quite unlike the physical sciences, the law cannot survive with the same precision of a lasting and permanent chemical formula. In short—for the law to remain alive and strong we need only to observe those rules of nature, the violations of which means the destruction of the individual or society itself.

We are indeed fortunate, for the law is basically the product of the human mind and can thus bend itself to fit the mores and requirements of the times. Computers may recall a great deal more than does the human mind, but they cannot produce a concept such as “Due Process” or “Liberty” or “Property” or “Contract”. Only the human mind can so act, creating a living, organic concept from the disparate mass of events which constitute human experience.

The ends sought to be attained by law have varied from age to age until, finally, as the modern world came into being, the concept of response to social and economic change placed power in the hands of new groups. And to our credit, these exerted the pressures which led to the concept of law as the maximization of individual free assertion—in short, the securing of natural equality and natural rights.

Many of us—long ago—were taught to base our legal theories and determinations on precedents. Yet, in order to establish a vibrant society based on law, it is required that we must, in neat balance, combine precedent with the power of growth based on the needs of society. In cautioning against an overemphasis on existing principle and thus stifle or impede the necessary growth of the law, Judge Cardozo observed. . . . “If we were to state the law today as well as human minds can state it, new problems arising almost overnight would encumber the ground again [R]estatement will clear the ground of debris. It will enable us to reckon our gains and losses, strike a balance and start afresh.” And he continued —“This is an important, an almost inestimably important, service The law, like the traveler, must be ready for the morrow. It must have a principle of growth.”³

In sum, logic, and history—and custom, and utility, and the accepted standards of right conduct, are the forces which in large measure shape the progress of the law. Unquestionably, adherence to precedent is one of the requirements, but to this must be added a symmetrical balance of social, ethical and economic needs.

And finally, I must stress that the process of change is not always perfect nor as rapid as is desirable. But nothing can be perfect in the realm of man’s life. Rather constant reevaluation and reconsideration is the

³ CARDOZO, *THE GROWTH OF THE LAW* 19-20 (1924).

theme of modern life, painful as that process sometimes may be. Change, creativity, innovation—these are the hallmarks of our time. That they create problems, one cannot deny; that they create untold opportunities for betterment, I firmly believe. It is in this spirit that we all must approach our daily tasks.

I believe that New York State has the most talented legal community in the world, and I am serenely confident that it can, as it has under the great leadership of our Chief Judge, continue to cope with and rise to the challenges presented by the new and changing socio-economic demands on our judicial system—and that we can continue to provide this state with an effective system of justice that will serve as a model for the nation.

We—all of us—must realize that change is due and it is our fervent hope that the legislature will address itself to meaningful court reform, so long overdue. Pious platitudes and homespun homilies will serve no purpose. We are at a critical crossroads and it is time for action—action that is measured, reasoned and with but one thought in mind—and that is, let us all—the Public, Government, the Media and the Profession commence an honest effort to go forward.