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Keynote Adress

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KEYNOTE ADDRESS

*Dennis C. Vacco**

Thank you very much for the gracious introduction, and ladies and gentlemen, it's a pleasure to be here today.

Let me say that our environmental criminal enforcement efforts are only as good as the people that we have to spearhead these efforts. As far as I'm concerned, in the Department of Law we have assembled one of the best teams in the nation. With all due respect to the Department of Justice and my colleagues across the nation, I am very proud of the people that are working for us in the Department of Law, especially in our environmental enforcement arena. As you know from the introduction, I am indeed a career prosecutor. When I ran for office in 1994, while I had been in government service at that point for over 15 years, that was my first ever chance at elective office. We did a little research in the context of that campaign, we didn't have to go back too far because we limited our research to my lifetime. And since 1952 when I was born, there have been four other Attorneys General, and four of them all distinguished from Javitz¹ to Lefkowitz² to Abrams³ to Koppell.⁴ While all distinguished in their own right, I was the only one of the Attorneys General in this state since 1952 to come to this office with prosecutorial experience and background.

In addition to that distinguishing feature, I am also the first Attorney General in that time frame, indeed in over 70 years, to come from upstate New York. I come from Buffalo, that's where I still call home, admittedly only on weekends, but Buffalo and western New York is still home. Now, I know that some of you in

* New York State Attorney General.

1. Jacob Javitz, Attorney General, State of New York, 1955-1957.

2. Louis J. Lefkowitz, Attorney General, State of New York, 1957-1978 (LL.B., Fordham University, 1925).

3. Robert Abrams, Attorney General, State of New York, 1979-1993.

4. G. Oliver Koppell, Attorney General, State of New York, 1994.

the room are more familiar than others with western New York and Erie County and Niagara County in particular, but let me say for a moment that it is indeed an area that is rich in a lot of different ways. Obviously the people contribute mightily to the greatness of that area, but it is also very rich in its natural resources. Lake Erie is one of the most beautiful panoramic views in the country, as far as I'm concerned, with the greatness of Niagara Falls and Letchworth State Park with its Grand Canyon of the East. But unfortunately, western New York is also known for its prominence as a waste disposal site. There is a facility there some of you may know, I know Neil Cartusciello⁵ knows about the West Bailey Nuclear Demonstration Project. The West Bailey Nuclear Demonstration Project was a project that was initiated by Congress in the early 1960s with a goal of trying to identify means to dispose of nuclear waste. They entered into a relationship with Getty Oil . . . for Getty to manage the West Bailey Nuclear Demonstration Project, and an awful lot of nuclear waste was sent to a sleepy rural community in western New York, southeast of Buffalo. As I was growing up in the rural community, growing up on my father's farm, I always wondered why this facility was there, springing up from the corn fields and on the bank of a very substantial creek that flows into Lake Erie. My interest in this facility led me to research why the enabling legislation in the early '60s placed it there. And I found out that in the early '60s there were more hazardous dump sites in western New York than in any other location in the country. Now, the most obvious, and the most prominent and the most well-known, is obviously the Love Canal. But sadly for the beautiful area that I still call home, the Love Canal was figuratively and literally the tip of the iceberg, with much more concentration of hazardous waste sites in western New York than in any other location in the country. Obviously, besides the greatness of our natural resources, we are also therefore known in western New York for the abundance of our waste disposal sites. We're also known for such industrial sites as Occidental, Hooker Chemical, and again, everybody has heard a little bit too much

5. Partner, Stanley & Fisher, P.C.. Mr. Cartusciello was previously the Chief of the Environmental Crimes Section of the United States Environmental Protection Agency.

perhaps about the tragedy of the Love Canal.

The interaction that we as citizens have with the environment, has a different dimension than it does in the Adirondacks or in the Catskills or in the rural farming communities of New York State. Here, obviously, we are concerned about the air that we breathe and the water we drink. [T]he water shed is obviously a very critical issue to all of us. But in the more rural communities, the environment takes on different dimensions. The environment begins to interface with property rights, the ability to use your property the way you choose and the way you see fit. It also, in some instances, interfaces with the law and the Constitution. I'm sure many of you in this room know, for instance, that the forest preserve, the large natural beauty of the Adirondacks, is indeed protected and preserved by the Constitution of the State of New York.⁶ Indeed, the few ski resorts that exist within the preserve, the nature preserve of the Adirondack region, . . . are themselves protected by the Constitution. The width and the length of those ski trails [are] regulated by the Constitution of the State of New York. So growing up in the context of all of these different environmental challenges, from the use of the environment that agriculture employs on a daily basis, to watching Bethlehem on the shores of Lake Erie spew millions of tons of benzene and other carcinogens into the air on an annual basis, it wasn't too difficult for me, as I came to the office of United States Attorney in 1988, to turn to environmental enforcement. I looked at it from the perspective of: how can we make a difference with the resources of the Department of Justice in the Western District of New York, how can we make an impact.

I firmly believed at the time that one area that required our attention was environmental enforcement. I also happened to believe that western New York had some very substantial special environmental problems that needed to be confronted head on. With the help of many people, and indeed Rocky⁷ was one of them, we established in 1988 a coordinating committee on environmental enforcement. Under the auspices of the United States Department of Justice Law Enforcement Coordinating Councils Program (LECC),

6. N.Y. CONST. art. XIV, §1.

7. Rocky J. Piaggione, Assistant Deputy Attorney General, New York State Attorney General's Office, Environmental Crimes Unit.

this committee combined the efforts of all levels of government to attack the worst problems of contamination of our natural resources and environment in the district that I was United States Attorney in. Under my direction, the committee evolved, eventually, from a working group [which] talked about esoteric environmental issues, into a major weapon in the fight against environmental crime by giving federal, state and local authorities a forum for working together and sharing information with the law enforcement community. Indeed, one of the first efforts of this coordinating committee was to sponsor a national symposium on environmental enforcement issues. And Rocky was very gracious with his time in 1989, in October of 1989, to have participated in that four-day seminar that was attended by over 350 participants from around the nation. I was very pleased that we were able to use the efforts of this coordinating committee to advance, from an educational perspective, environmental enforcement issues.

But I thought it should be more than that, and indeed it did become more than that. From my perspective, it became a strong tool for environmental enforcement, where they etched beyond the educational effort, and the discussion effort became integrally involved in making cases and bringing cases.

In the introduction that Nick⁸ gave for me, he referenced the anti-landfill ban case that we [prosecuted]. I forgot exactly when that occurred, but in the early '90s, in this investigation and prosecution, I was at the hands of this law enforcement coordinating committee. The committee was an invaluable resource, and was fortunately recognized as a national model in the Department of Justice for prosecuting environmental crimes. I would like to think, Neil, that through that committee we worked very closely with the Environmental Crimes Section. While we, as in any marriage, had our disagreements, I think we accomplished more than many people gave us credit for, and I was glad that I had the opportunity to work with the outstanding men and women of the Environmental Crimes Section.

In addition to the committee, we also encouraged through the committee effort, and I should say in addition to our enforcement

8. Nicholas J. Johnson, Associate Professor of Law, Fordham University School of Law.

efforts we encouraged through this coordination committee, increased citizen involvement in protecting our environment. One of the things that we did was conduct user friendly seminars across the expanse of the district. I think that when all was said and done nearly 1,500 people, ranging from building code inspectors to fire fighters and police officers, emergency personnel in counties in the district, participated in that training. Our goal was to further sensitize them to environmental issues, to empower them to assist us in our environmental law enforcement effort. I was glad that the work of this committee was recognized at the national level. I am not so sure that the recognition was the best utilization of my time as U.S. Attorney, but it resulted in my appointment by Dick Thornburg as the chairman of his advisory committee on environmental issues. I think that it was a good experience for all of the United States Attorneys in the country at the time, because through our efforts, through this advisory committee to the Attorney General, we began the process of heightening the awareness of environmental enforcement issues for all 94 United States Attorneys across the nation. And I think that that resulted in a more effective-Neil, I would be interested in your retrospective opinion of it-but I think it resulted in a more effective law enforcement scheme for the Department of Justice across the expanse of the United States.

Now it's time for us to turn our attention to our enforcement efforts here in the state of New York. We need to send, I think, a clear and unequivocal message, and that message should quite simply be that if you commit a crime against the environment in New York State, against the people of New York State, you will be firmly prosecuted. I think that we need to use the deterrent of our environmental enforcement statutes to send a message that we are not going to tolerate individuals who are going to upset the playing field, upset the competitive balance of the playing field, by breaking environmental laws.

It's quite clear, from my perspective, that many people gain an unfair competitive advantage in the marketplace by violating laws. I can remember, for instance, a case, seemingly of little significance to the environment but nonetheless illustrative of the tipping of the competitive balance, where we prosecuted a paint shop in western New York, which, instead of properly manifesting its paint thinner off site and properly disposing of it, along with all of the cost of

doing so, merely poured it down the sewer. Pouring it down the storm drain. He effected the competitive balance in the marketplace for all of his competitors in the region, because all of the others were complying with the environmental laws. So not only was he desecrating the environment and endangering the water supply, he was also affecting the competitive balance in the marketplace. I think that our enforcement philosophy should be geared to making sure that we create not only a sufficient deterrent, but in the process, we also provide a level playing field.

But in the final analysis, beyond the deterrent message and providing the level playing field for competitive interest in the marketplace, I think that our environmental enforcement effort needs to be geared toward ensuring that we protect the precious natural resources that we enjoy here in New York State.

I am not going to go into great detail about the reorganization of our office. Suffice it to say that Andrew Goldsmith⁹ is now the head of our environmental crime section, the first time this office has had an environmental crime section. While this office traditionally has played a leadership role in environmental enforcement, curiously there was no specially delineated environmental crimes unit. We created that, and when we created that we recruited Andrew to head that unit. And I'm not going to spend a lot of time talking about case specific issues, but I can tell you that we are currently working on a number of cases involving such diverse conduct as dumping of toxic industrial wastes and irresponsible environmental practices leading to the death of workers. Indeed, we are currently engaged in an investigation which may, and I underline may, we haven't reached a judgment on this yet, but we may end up arriving at a point where we are going to be looking at the first homicide related environmental enforcement action that I am aware of in New York State. But we're also looking at improper storage of waste tires, intricate schemes designed to avoid training or licensing requirements, the filing of fraudulent documents with state agencies, unauthorized logging of timber on state lands, improper asbestos removal and, indeed, bribery cases.

As I mentioned to you earlier, it is abundantly clear to me that, if

9. Assistant Attorney General, New York State Attorney General's Office, Environmental Crimes Unit Chief.

we are going to have a professional and top notch unit and an effective effort, we must make sure that we have the right people in place to do so. So, in addition to Rocky and Andrew and their colleagues, we have also made sure that we are putting together the necessary scientific assets to augment their ability to prosecute environmental crimes. And indeed I am glad to say that most of the people we have assigned to the unit indeed have a great deal of environmental crime background, and, in addition to that, also have a great deal of prosecutorial background. My goal is to work more closely with people like Bill Murphy, Jim Ketterson and Linda Spahr¹⁰, and others around the state, who have shown leadership in the state enforcement of environmental statutes. I think that we need to create an effective statewide network. A lot of times I say to my staff that things that we do are not often of our own initiative. That things that we do and do well have been done before in other areas of the country. I know that we have Richard Nixon¹¹ here today from California. He comes from a DA's office out west that is doing many of the same things that many of these officers here in New York State are trying to do.

What I would like to accomplish with our resources here in the Department of Law is to replicate the Department of Justice model. Specifically, I would like to replicate what we did in the 17 counties of western New York. To bring together a coalition of state, federal and local environmental enforcement resources and to augment that with the ring services and the ring players that contribute to protecting our environment to make sure that we have a comprehensive and more focused environmental approach here in New York State. We are in the process, as we speak today, of putting together this coordinating committee, and I look forward to being able to work with the DAs across the state who are very much committed to these environmental enforcement issues.

Let me just take a moment before I close to mention just a few of the other issues that my office has been involved in during the past year in the environmental arena. As many of you know, in

10. Assistant District Attorney, Suffolk County District Attorney's Office, Environmental Crimes Unit Bureau Chief.

11. Deputy District Attorney, Riverside County (CA) District Attorney's Office, Special Prosecutions Section.

January of this year, just last month, the EPA announced its final policy on environmental self audits, and it's entitled "Incentives for Self-Evaluation."¹² Now, Herb¹³ and Neil can tell you that that's been on the table for about five years now at least. I was glad to have signed off on that document before it was promulgated by EPA, and, indeed, that Earl Devaney,¹⁴ who's in charge of enforcement at EPA, didn't have to twist my arm too hard to do so. I know that many of the speakers that will be here today will address this topic in greater detail, but let me just say that I believe that this policy is a sensible measure from both an environmental and law enforcement standpoint. I was one of only 17 attorneys general around the United States to sign on to the EPA policy, but I think that we are nonetheless in good company, because this policy has been supported by the New York State DA's Association, the California District Attorney's Association, and, indeed, the National District Attorney's Association. I am absolutely committed to strong and effective environmental enforcement in which businesses are given incentives to cooperate responsibly, where they are encouraged to do the right thing and where bad actors are vigorously prosecuted. In other areas my office will also play a significant role in enforcement of applicable water shed laws and regulations. Some of you may know that there is proposed legislation being recommended by the governor creating the position of Water Shed Inspector General. The Water Shed Inspector General, if the current proposal passes through the legislature, will be an assistant attorney general assigned to the Department of Law. This position will enable me to provide civil and criminal enforcement as well as work with other state and local agencies and water shed enforcement issues, and we all know how important that is here in the downstate region.

I hope that I have been able to give you some sense of what we are trying to accomplish in the Attorney General's Office from an

12. Incentives for Self-Policing: Discovery, Disclosures, Corrections and Preventions of Violations, 60 Fed. Reg. 66,706 (1995).

13. Herbert G. Johnson, United States Department of Justice, Environment and Natural Resources Division, Environmental Crimes Section.

14. United States Environmental Protection Agency, Director, Office of Criminal Enforcement Forensics and Training.

environmental enforcement perspective. Let me assure you that under my stewardship, the Attorney General's Office and its resources will professionally, diligently and aggressively prosecute those who choose to destroy our natural resources and jeopardize the health and welfare of our citizens.

Ladies and gentlemen, I thank you for the invitation today to address you and, again, thank you very much for the opportunity to be here.

