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Opening Remarks

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FIGHTING CORRUPTION IN AMERICA AND ABROAD

OPENING REMARKS

*John D. Feerick**

I salute those who have been involved in the planning of this program and will be moderating, serving on panels, and making presentations throughout the day. I am not quite sure what my present qualifications are to be the opening speaker in such an august gathering of outstanding academics, teachers, lawyers, good government leaders, public servants, and others of distinction. My work these years of my life is largely in the field of social justice and poverty. I am no stranger to the field of law reform, however.

For the past almost fifty-five years since my graduation from Fordham University School of Law, I have been involved in some form of law reform, including the country's presidential succession system, electoral college system, and voter participation reforms.¹ These are not subjects for the short winded or faint of heart. Here in New York State, I have been involved in reforms of the New York State Constitution, government ethics reforms, judicial selection reforms, and reforms involving cameras in the courts.² You might say I have been tilting at windmills for a very long time. Finding sufficient common ground to effect reform is often an elusive goal. This program on corruption in America has reform written all over it. For that reason, I feel very much at home, and, of course, we are in Fordham's new law school building. I thank the *Fordham Law Review* for offering me this opportunity to speak on corruption.

What is corruption? Webster's Lexicon Dictionary defines it as "immoral perversion," "depravity," "perversion of integrity," "corrupt or dishonest proceedings," "bribery," "perversion from a state of purity," and

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1. See, e.g., *Electing the President: Recommendations of the American Bar Association's Commission on Electoral College Reform*, 53 A.B.A. J. 219 (1967).

2. See generally N.Y. STATE COMM. TO REVIEW AUDIO-VISUAL COVERAGE OF COURT PROCEEDINGS, AN OPEN COURTROOM: CAMERAS IN NEW YORK COURTS 83-89 (1997).

“debasement.”³ The Shorter Oxford English Dictionary describes it as “moral deterioration,” “depravity,” “perversion of a person’s integrity in the performance of duty or work by bribery,” and “change for the worse of an institution.”⁴ Corruption can be illegal or not illegal, as I see the sweep of these definitions. Indeed, concerns about corruption in different forms in the thirteen original states played a major role in the drive by the Framers of the Constitution to scrap both the existing constitution, the Articles of Confederation, and the then-notions of sovereignty by the states and their controlling groups, rather than by the people at large. One can find in the first draft of the Constitution the term “corruption” as a basis for removing office holders.⁵ The Constitution does not use the term but it does contain a number of conflict of interest provisions, making clear the view of the Constitution’s Framers that corruption should have no home in the national government they were creating.⁶

In my life as a lawyer, I have been afforded opportunities to chair and serve on commissions and committees dealing with subjects or aspects of corruption, both in the private and public sectors. There is not an area in which I have been involved that has been free from corrupting influences in the broader dictionary sense of corruption. The subject is a bedeviling one because we deal with human behavior and our weaknesses and limitations as individuals.

Among the opportunities I have had to serve were unique experiences to chair three New York State Commissions on government ethics, involving sixty-two months of service as an uncompensated volunteer. I found this particular service different from all the other activities of my life, which included serving on three committees dealing with proposed amendments to the Constitution and chairing two committees at the appointment of the Chief Judge of New York State concerning the judiciary. The government ethics commissions were relentless in their demands and occupied almost all my waking hours, even though I had a full time day job as a law school dean and as a practicing lawyer earlier in my life when I served on other commissions or committees. The ethics commissions challenged me in ways that sapped my energy and affected my health, but they gave me an unparalleled opportunity to understand the demands placed on public servants from outside government in rendering their performance of public duty. I was proud of the work of the ethics commissions I chaired, but they left me with concerns about areas of government ethics. This is because of the weaknesses of our laws in such areas and the reluctance of the citizenry to provide public financing support for people who choose to compete for public office, a competition that is encouraged by our democratic ideals.

3. *Corruption*, 1 THE LEXICON WEBSTER DICTIONARY (encyclopedic ed. 1978).

4. *Corruption*, SHORTER OXFORD ENGLISH DICTIONARY ON HISTORICAL PRINCIPLES (5th ed. 2002).

5. 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 185–86 (Max Farrand ed., rev. ed. 1966).

6. U.S. CONST. art. I, § 6.

The work of the 1987 Moreland Act Commission I chaired is set out in a book published by the Fordham University Press entitled *Government Ethics Reform for the 1990s*.⁷ I suggested the book when I realized that the Commission's investigative reports and reform recommendations would be ignored and placed in a scrap heap once it had ended its work. Troubled by this possibility for a Commission that was funded by more than \$12 million and had an incredibly dedicated staff and Commissioners like Cyrus Vance, the epitome of integrity as a public servant and lawyer, I asked Fordham University to publish the book and Professor Bruce Green of Fordham University School of Law to serve as its editor. As we prepared the book for publication, Professor Green and I discussed whether the title of the book should refer specifically to government ethics reform in the 1990s. My view was that yes, it should, because certainly by the twenty-first century, New York State would have addressed the many worthy recommendations made by the Commission based on a compelling factual record. How wrong I was, but then pleasantly surprised when the *New York Times* declared in a major editorial of November 2009 that the 1990 recommendations of the Commission were worthy of forming an ethics agenda for New York State at this time as well.⁸ These recommendations, I might add, were included in a white paper prepared for Governor Andrew Cuomo, with the help of Fordham law students, when I had the honor to cochair his Public Integrity Transition Committee at the time he became Attorney General in 2006.

Just a word or two about the 1987 Moreland Act Commission. It was created by Governor Mario Cuomo on April 21, 1987, after a series of corruption scandals that rocked New York City, the State legislature, and governments elsewhere in the State. The Commission's mandate was very broad: to investigate laws and practices in the state and municipal governments in New York that foster corruption and the appearance of impropriety and to make recommendations for needed reform.⁹ When the Commission ended its work in September 1990, it issued a blueprint for restoring the public trust, noting in its introduction that "[t]he scandals that prompted creation of the Commission have dimmed and political leaders in Albany seem unable to take additional steps to safeguard the public trust without the pressure of calamitous scandal."¹⁰

7. N.Y. STATE COMM'N ON GOV'T INTEGRITY, GOVERNMENT ETHICS REFORM FOR THE 1990S: THE COLLECTED REPORTS OF THE NEW YORK STATE COMMISSION ON GOVERNMENT INTEGRITY (Bruce A. Green ed., 1991) [hereinafter GOVERNMENT ETHICS REFORM]; see also N.Y. State Comm'n on Gov't Integrity, *Integrity and Ethical Standards in New York State Government: Final Report to the Governor*, 18 FORDHAM URB. L.J. 251 (1990); N.Y. State Comm'n on Gov't Integrity, *Restoring the Public Trust: A Blueprint for Government Integrity*, 18 FORDHAM URB. L.J. 173 (1990) [hereinafter *Restoring the Public Trust*].

8. Opinion, *It's All About the Money*, N.Y. TIMES (Nov. 29, 2009), http://www.nytimes.com/2009/11/30/opinion/30mon1.html?pagewanted=all&_r=1 [<http://perma.cc/QXB3-2VPF>].

9. See GOVERNMENT ETHICS REFORM, *supra* note 7, at 2–4.

10. N.Y. STATE COMM'N ON GOV'T INTEGRITY, RESTORING THE PUBLIC TRUST: A BLUEPRINT FOR PUBLIC INTEGRITY (1990).

Over a period of two and one-half years, the Commission met frequently, conducted more than twenty-five days of public hearings, questioned more than one thousand individuals privately and publicly, examined many thousands of government records and documents, issued 213 subpoenas, and laid out in twenty-three reports its findings of what was wrong and its recommendations for reform. As part of its investigative work, the Commission found evidence of possible violations of law that was transmitted to the appropriate law enforcement authorities for review. The Commission also engaged in extensive litigations in state and federal court to enforce its subpoenas and respond to efforts to hinder its investigative work. The court proceedings were uniformly favorable to the Commission's authority, in some instances establishing new legal procedures.¹¹ The Commission's staff was outstanding, and when we ended our Commission many of them went on to shape advancements in ethics in other parts of New York State government, including the New York City Campaign Finance Board, the New York City Conflicts of Interest Board, the New York City Procurement Board, counsel's office for a subsequent governor, a temporary state commission on local government ethical standards, and in other areas of heightened interest in need of improvement.

The 1987 Moreland Act Commission noted in its reports that there was an appalling relationship between those who give to office holders and those who receive the benefits government has to offer. The reports tell the story of a system riddled with flaws, gaps, and holes. The Commission's most public investigations were in areas of campaign financing. The testimony at public hearings suggested that many political gifts were more than a pure expression of American democracy. One witness said that he contributed "more to avoid a negative impact [on his business], than trying to incur a positive result."¹² Commission staff members were told by some business people that "it would be bad business judgment to stop contributing to campaigns."¹³ Some of those who testified had no idea how much they had given; playing it safe, they gave to opposing candidates vying for the same office, and some contributors saw no necessity to vote in the election in which they contributed. What seemed very clear to the Commission from its many investigations was that many business people saw their contributions as a cost of doing business, as payment for benefits they would not otherwise receive. The sad reality was, as the Commission staff advised, large gifts by those doing business with government bought access that average citizens did not enjoy and created an appearance of indebtedness damaging to public confidence in government.

Seven of the twenty-three reports of the Commission were in areas of campaign finance reform, with such titles as *The Albany Money Machine: Campaign Financing for New York State Legislative Races*;¹⁴ *The Midas*

11. See GOVERNMENT ETHICS REFORM, *supra* note 7, at 719–20.

12. *Restoring the Public Trust*, *supra* note 7, at 179.

13. *Id.*

14. GOVERNMENT ETHICS REFORM, *supra* note 7, at 85–115.

Touch: Campaign Financing Practices of Statewide Officeholders,¹⁵ and *Evening the Odds: The Need to Restrict Unfair Incumbent Advantage*.¹⁶ Other reports dealt with the failings of judicial elections,¹⁷ the underground government of public authorities and other public corporations,¹⁸ the contracting process of New York City, the blurred line between party politics and government in Westchester County,¹⁹ political patronage in New York City,²⁰ the state open meetings law,²¹ a new approach to municipal ethical standards,²² protections for whistleblowers,²³ and a pension forfeiture statute for government employees who are convicted of a felony involving their public responsibilities.²⁴

As I conclude, I acknowledge with gratitude the recent Moreland Act Commission for drawing on the work of the 1987 Moreland Act Commission. I also applaud Governor Andrew Cuomo for making a major commitment to ethics reform in some of the areas of reform which were embraced by his father based on the work of the 1987 Commission. The Governor has it right in calling for limits on campaign contributions, implementing a public financing system, adding new disclosure requirements, and adopting a pension forfeiture law. In testimony before the 1987 Moreland Act Commission on September 9, 1987, then-Governor Mario Cuomo said of campaign financing: “[Tilt] is a terrible system, and the only argument I hear against campaign financing is, you know, it is a political welfare system. I am utterly unimpressed by the arguments against public financing. It comes down to judgments by individual incumbents, mostly, as to what is best for them.”²⁵

I thank the *Fordham Law Review* for the opportunity to revive the work of a Moreland Commission that existed twenty-five years ago when I was in my early fifties. I am glad to have lived so long.

As the Constitutional Convention of 1787 began its work creating the United States Constitution, George Washington is reported to have said: “Let us raise a standard to which the wise and honest can repair.” Let me repeat those words: “Let us raise a standard to which the wise and honest can repair.” It is time for our generation to do the same.

Pessimists about the benefits and chances of reform can be found everywhere. Lawyers who are familiar and comfortable with the workings of the courts in which they practice worry about what judicial reforms will bring. Citizens are vulnerable to appeals that judicial selection reforms will rob them of the right to vote and will place power with a group with whom

15. *Id.* at 140–206.

16. *Id.* at 207–29.

17. *Id.* at 270–313.

18. *Id.* at 340–78.

19. *Id.* at 559–85.

20. *Id.* at 492–558.

21. *Id.* at 320–39.

22. *Id.* at 618–64.

23. *Id.* at 687–700.

24. *Id.* at 701–13.

25. *Restoring the Public Trust*, *supra* note 7, at 209.

they cannot identify. And yet, voters often do not know the judicial candidates whose names are on the ballot. How to deal with all of this? In my view, whatever we believe about any particular change, we should approach our democracy as agents for possible change as circumstances suggest. Reformers continually focus on what our democracy should be, glad for the limited successes that come along, but unwilling to give up the impossible dream, as in areas of campaign finance reform. As Miguel de Cervantes noted: "To surrender dreams is madness, but maddest of all is to see the world as it is and not as it should be."²⁶ I sense a new generation of impossible dreamers has emerged and many are present at this program today. I wish you every success.

26. *Restoring the Public Trust*, *supra* note 7, at 33.