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ENVIRONMENT AND THE LAW

Speech delivered at the Inauguration Ceremony of
the City University of New York School of Law

October 21, 1983

*Saul B. Cohen**

The historian will one day record the tale of the founding of this Law School as first and foremost a promise fulfilled by public leaders rooted in this community. Theirs has been a remarkable team effort—Donald Manes leading the Queens delegation's demand in Albany for "its" Law School; Senator Emanuel Gold—the indefatigable, persistent, subtle and sometimes not-so-subtle counselor and persuader; Alan Hevesi marshalling the State Assembly support, and vigorously backed in the Assembly by Saul Weprin; Judge Richard Brown furthering the cause when he served as counselor to Governor Carey; and Mario Cuomo—the voice of hope and powerful backer of this school when he was Secretary of State and Lieutenant Governor, and who, when he became Governor, fulfilled his promise of commitment in the most tangible ways—budget and building.

As well, there are individuals absent from the platform who also deserve our gratitude. Martin Barell, Vice Chancellor, who mobilized the Board of Regents because he believed in the concept of a public service oriented law school; and Willard Genrich, the Regents' Chancellor who stood fast in the face of last-minute pressures to halt the enabling legislation. Of course, our debt is to Chancellor Joe Murphy who conceived of the idea of the school—the idea which is the most powerful of all weapons that we have; and to Jim Murphy, our CUNY Board of Trustees President who supported the school so forcefully. I also want to cite an individual who is no longer with us—the late Chancellor Robert Kibbee. Bob provided me with the backing of the University in his inimitable, wise, courageous, and unflappable style. He provided the College, as he put it to me, with a "hunting license" to mobilize the necessary forces.

There are others in this team as well, and the historian will one day find them. I do want to mention four more. David Fields,

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who was formerly Special Assistant to two Queens College Presidents, Joseph Murphy and myself. Dave Fields kept the dream of the school alive through myth, when the project itself was a dead letter. I remember first coming to the College and looking into his office that adjoined mine. I saw a banner that said *Queens College Law School*. I said, "Where's the School?" And he said, "I have this banner, about 20,000 law books and a big file. That's a solution to half the problem. As for the other half, that's for you to solve." And Florence Luckow, my Chief of Staff, who has been at my side throughout the campaign to secure the school, and the struggle to support and to house it. I also want to extend my appreciation to Judge Seymour Boyers. In many ways Sy is representative of the commitment to the entire Queens Bar and its leadership to this school. Finally, let me thank Dean Constance Mandina who organized this splendid opening ceremony so skillfully and selflessly, and all of those who opened the doors of the school—Dean Charles Halpern, who has begun to implement the "idea" in so ingenious a fashion, Professor Howard Lesnick and John Farago, the other members of the starting faculty, administration and staff, and the one hundred forty students. You've all done a remarkable job, and we are indebted to you.

There is no simplistic route to creating a new law school that is different from others. A uniquely organized curriculum and set of training experiences, a special student body, a singularly dedicated faculty, and a particular set of issues focusing on the public good are necessary but not sufficient to create a school of law that will justify the hopes and struggles that have gone into this institution-in-the-making. More than any structural, social and attitudinal element of mission, the hallmark of a great school is the intellectual approach and spirit that permeates its being—in effect, its school of thought.

This is the time and the place for a new school of law because the legal profession is in danger of being swallowed up by its pragmatic orientation, by descriptive explanation, by mechanistic analysis, and by the search for precision—which all lead to reliance upon small units of analysis that, when added up, are assumed to constitute the whole. In so doing, the law risks losing its greatest strength—its role as an integrative discipline. This human, scientific discipline needs schools that will put in the forefront a theoretical orientation, a mode of analysis that begins with the whole, not the parts, and synthesizes the units into the larger system.

In the debate that now waxes within legal circles over the goals

and objectives of legal education, a great deal of attention is placed on ethics and morals, on job orientation and client-serving relationships, and on the honing of legal skills through real world experiences. In addition, the way lawyers feel, behave and view their societal role is surely important. Most fundamentally, basic change relates to thought processes and modes of analysis. Relating local theory to more humanistic and holistic approaches is the prerequisite to achieving these social, ethical, and experiential goals.

It is ironic that in this period when so much criticism and, indeed, hostility, has been directed toward the legal profession, the public relies ever more heavily on its practitioners. It is the lawyer who fashions the law, and interprets it; it is the lawyer who may in one lifetime serve in the executive, legislative, and judicial arms of government; who alternatively may represent the people on behalf of government or defend the people against it. Surely the members of this profession must understand the law within the broader, systemic context. Yet the mainstream in legal education directs them toward rigid and narrow modes of analysis. While lawyers must tackle the widest range of problems imaginable, they do so within a particularistic framework that undermines the broader perspective.

The approach of the legal technician is inadequate to the needs of our times. When lawyers specialize in certain subfields, it is important that their educational experience has included training in the cognitive discipline, normally a social or physical science pertinent to the specialization. One of the stated commitments and goals of this School of Law is to develop a program for such cognitive training.

Let me illustrate by referring to some general issues of law and environment. The essential element of successful regulation of natural and human resources is harmony between the law and this environment. The interplay is dynamic; as environment changes or as society acquires new goals, laws need to be altered, and there is usually a time lag between the reason for change and legal accomplishment. There will, therefore, be some legal discordance in the dynamically changing person-environment system.

When English Common Law as applied to stream rights was applied to the humid American East, it worked well. When superimposed upon the American Southwest and California, it failed. For in Mediterranean-type or dry climates concerned with irrigation and not navigation, it was Roman Law, consonant with dry summers, that permitted abutters to withdraw water under speci-

fied conditions, chief of which was the right of the first-comer to withdraw his quota. One by one, the Western states recognized the discordance of the English riparian law which, because of its concern for navigation and lack of concern for irrigation, had declared that each abutter had the right to the undiminished flow of water past his property. The Roman law that had been brought to this part of America by the Spanish was reintroduced.

To think broadly and systemically is not simply the province of the biologist or the geographer or the engineer—it is also the province of the lawyer. For lawyers write the local laws that permit jetties to be built to protect properties on one part of a beach, only to find that other beach areas become denuded of sand and their shorelines become exposed to massive erosion. Lawyers frame the land ordinances that permit higher-rise skyscrapers in exchange for setbacks and malls, but nevertheless add to overall human density of use, greater pressure on urban infrastructure, and aggravation of the negative aspects of the city as a heatsink.

Because lawyers fashion the laws that implement political decisions, it is essential that they do so with an understanding of the impact of these statutes and regulations on the system as a whole.

In establishing this institution then, our intent is not to add 150 additional technicians yearly to the current force of legal professionals. It is the provision of lawyers who are holistically oriented and educated that justifies the act of faith represented by this CUNY Law School at Queens College.

I have every confidence that the school will fulfill our hopes. It will do so by its commitment to substance, not form; to depth, not superficiality; to excellence, not opportunism; to scholarship, not sophistry; to the uncommon, not the common; and above all, to this holistic intellectual view.