

Law Day

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**"THE CRISIS OF ACCOUNTABILITY"
LAW DAY REMARKS
ATTORNEY GENERAL ELIOT SPITZER
MAY 1, 2002**

THANK YOU FOR THAT WARM INTRODUCTION. THIS IS MY FOURTH OPPORTUNITY TO DELIVER A LAW DAY ADDRESS, AND EACH OF THESE OCCASIONS HAS BEEN VALUABLE TO ME, BECAUSE EACH HAS ALLOWED ME TO FOCUS AND REFLECT ON THE UNIQUE ROLE OF LAW IN OUR SOCIETY. I HOPE TO BE INVITED BACK TO CELEBRATE LAW DAY WITH YOU AGAIN NEXT YEAR -- A DESIRE PERHAPS APPRECIATED BEST BY THOSE IN THE AUDIENCE WHOSE TERMS EXPIRE IN EVEN YEARS.

NEARLY A DECADE AGO, SENATOR DANIEL PATRICK MOYNIHAN FAMOUSLY WARNED OF THE DANGERS TO ANY SOCIETY THAT WAS "DEFINING DEVIANCY DOWN." BY THAT PHRASE, SENATOR MOYNIHAN WAS REFERRING TO THE INCREASING TOLERANCE FOR FORMERLY INTOLERABLE CONDUCT, WHETHER THAT CONDUCT INVOLVED ENGAGING IN VIOLENT OR CRIMINAL ACTIVITY OR THE SHIRKING OF RESPONSIBILITY FOR ONE'S ACTIONS. HIS THESIS WAS THAT:

"THE AMOUNT OF DEVIANT BEHAVIOR IN AMERICAN SOCIETY HAS INCREASED BEYOND THE LEVELS THE COMMUNITY CAN AFFORD TO RECOGNIZE AND THAT, ACCORDINGLY, WE HAVE BEEN RE-DEFINING DEVIANCY SO AS TO EXEMPT MUCH CONDUCT PREVIOUSLY STIGMATIZED..."

I WANT TO TALK TODAY ABOUT A SIMILAR PROBLEM – ONE THAT INVOLVES NOT THE CONDUCT OF INDIVIDUALS, BUT OF OUR SOCIETY'S LEADING INSTITUTIONS, WHETHER FINANCIAL, PROFESSIONAL, CHARITABLE OR RELIGIOUS. THE MANDATE OF THESE INSTITUTIONS IS TO SERVE THEIR INVESTORS AND SHAREHOLDERS, THEIR CONTRIBUTORS AND MEMBERS, AND IN MANY CASES, THE PUBLIC. YET EVEN AS THEY PURSUE THESE OBJECTIVES, WE HAVE REQUIRED THEM TO OPERATE WITHIN CERTAIN BOUNDARIES, DELINEATED BY CAREFULLY ARTICULATED STANDARDS OF CONDUCT, DISCLOSURE AND MORAL RESPONSIBILITY.

INSTITUTIONS ARE REQUIRED TO ACT IN ACCORDANCE WITH THESE STANDARDS EVEN WHEN THEY CONFLICT WITH PURE SELF-INTEREST. YET RECENTLY, ABIDING BY THESE STANDARDS HAS COME TO BE VIEWED AS AN IMPRACTICAL IDEAL INSTEAD OF A PRACTICED REALITY. AS A RESULT, THESE INSTITUTIONS TOO

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OFTEN HAVE BEGUN TO ACT IN A MANNER THAT HAS VIOLATED THESE BOUNDARIES AND GENERATED PUBLIC MISTRUST AND CYNICISM. OUR GRADUAL DISSIPATION OF EXPECTATIONS FOR INSTITUTIONAL BEHAVIOR HAS NOW CREATED A CRISIS OF ACCOUNTABILITY, AS THE FAILURE OF THESE INSTITUTIONS TO ABIDE BY PROPER STANDARDS HAS BEEN EXPOSED TO THE GENERAL PUBLIC.

OUR SILENCE IN THE FACE OF THIS DECLINE WAS PERHAPS UNDERSTANDABLE. BECAUSE THESE INSTITUTIONS PLAY SUCH A VITAL ROLE IN OUR SOCIETY, THE PUBLIC WAS HESITANT TO CHALLENGE THEM. STORIES THAT SHOULD HAVE RAISED CONCERNS OF POSSIBLE MISCONDUCT WERE MET NOT WITH INQUIRY AND OUTRAGE BUT WITH A LOWERING OF THE STANDARD OF WHAT WE WOULD CONSIDER TO BE ACCEPTABLE.

INTERNALLY, STANDARDS DECLINED INCREMENTALLY YEAR AFTER YEAR, SUCH THAT ONE OFF-BALANCE-SHEET PARTNERSHIP BRED EXPONENTIALLY MORE AS THE YEARS ROLLED BY. AND EXTERNALLY, INQUIRY AND ACCOUNTABILITY WERE BOTH AVOIDED AND EVADED. IF CONDUCT SEEMED INAPPROPRIATE AND DEMANDED AN EXPLANATION, WE SIMPLY LOWERED OUR STANDARDS TO REDEFINE THAT CONDUCT AS ACCEPTABLE. WE ALLOWED THIN ASSURANCES OF PROPRIETY TO SERVE AS A PROXY FOR VIGOROUS ACCOUNTABILITY GUARDING AGAINST IMPROPRIETY.

SADLY, THE EVENTS OF THIS PAST YEAR HAVE TAUGHT US THAT WE HAVE MORE TO LOSE BY LOWERING OUR STANDARDS THAN WE DO FROM EXPRESSING SKEPTICISM AND DEMANDING ACCOUNTABILITY. BECAUSE AFTER YEARS OF DOWNWARD PRESSURE, THE INTERTWINED THREADS OF PUBLIC TRUST THAT GIVE THESE INSTITUTIONS THEIR TRUE STRENGTH HAVE BECOME TERRIBLY FRAYED.

AT THE HEART OF THIS BREACH OF TRUST IS AN EVER-INCREASING OPAQUENESS IN THE OPERATION OF THESE INSTITUTIONS. THE LACK OF TRANSPARENCY AND ABSENCE OF ACCOUNTABILITY TO THE CONSTITUENCIES SERVED BY THESE ENTITIES ONLY HEIGHTENED THE DISTRUST THAT DEVELOPED WHEN INAPPROPRIATE CONDUCT WAS FINALLY EXPOSED.

I WOULD LIKE TO TAKE A MOMENT TO OUTLINE THE BREACHES OF TRUST THAT WE HAVE WITNESSED THIS PAST YEAR, AND WOULD THEN LIKE TO OFFER A PROPOSAL THAT RECOGNIZES THAT THE LAW AND OUR LEGAL INSTITUTIONS CAN PLAY A SINGULAR ROLE IN MENDING THAT BREACH.

WHEN ARTHUR ANDERSEN KNOWS THAT ITS CLIENTS ARE

ISSUING MISLEADING FINANCIAL STATEMENTS BUT REFUSES TO PUBLICLY DISCLOSE THAT INFORMATION IN ITS AUDITS, WE MUST ASK: DO OUR NATION'S ACCOUNTING FIRMS SERVE THE INVESTING PUBLIC OR ARE THEY SO BEHOLDEN TO THE CLIENTS WHOSE BOOKS AND ACCOUNTS THEY ARE SUPPOSED TO BE REVIEWING THAT THEY FAIL TO STATE THE TRUTH?

WHEN ENRON AND ITS CHIEF EXECUTIVES CAN ENGAGE IN NUMEROUS TRANSACTIONS TO HIDE THE TRUE VALUE OF ITS BUSINESS FROM SHAREHOLDERS AND EMPLOYEES, WE MUST ASK: WHY ARE PUBLIC COMPANIES PLACING THE INTERESTS OF THE EXECUTIVES WHO RUN THE COMPANIES BEFORE THE INTERESTS OF THEIR SHAREHOLDERS, WHO OWN THE COMPANIES?

WHEN INTERNAL COMMUNICATIONS REVEAL MERRILL LYNCH RESEARCH ANALYSTS DISPARAGING THE VERY STOCKS THEY ARE RECOMMENDING TO MILLIONS OF HARD-WORKING FAMILIES SEEKING GUIDANCE ON HOW TO INVEST THEIR LIFE SAVINGS AND THEIR CHILDREN'S COLLEGE FUND, WE MUST ASK: DO THEIR INVESTMENT RECOMMENDATIONS SERVE THE INVESTORS TO WHOM THEY OWE A DUTY OF LOYALTY AND HONESTY OR TO THEIR INVESTMENT BANKING CLIENTS?

WHEN HALE HOUSE IGNORES THE INFANTS IT WAS ESTABLISHED TO ASSIST, AND USES THE FUNDS CONTRIBUTED TO CARE FOR CHILDREN TO UNDERWRITE LAVISH HOME RENOVATIONS FOR ITS CHIEF EXECUTIVE, WE MUST STAND UP AND ASK: DO OUR CHARITIES REMEMBER THAT THEIR PURPOSE IS TO ASSIST THE LESS FORTUNATE AND NOT TO AMASS A FORTUNE?

WHEN THE AMERICAN RED CROSS UNILATERALLY DECIDES TO SHIFT DONATIONS INTENDED TO HELP THE VICTIMS OF THE SEPTEMBER 11 TERRORIST ATTACKS INTO ITS GENERAL FUND, WE MUST ASK: DO OUR CHARITIES RECOGNIZE THAT THEIR ACTIONS MUST BE GUIDED BY THEIR DONORS INTENT AND NOT THEIR INSTITUTIONAL INTERESTS.

WHEN CHURCH LEADERS RESPOND TO REPORTS THAT MEMBERS OF THE CLERGY MAY BE INTERACTING INAPPROPRIATELY WITH PARISHIONERS AND THEIR CHILDREN WITH AN EYE TOWARD PROTECTING THE ABUSER INSTEAD OF COMFORTING THE ABUSED, WE MUST ASK: HAVE OUR RELIGIOUS LEADERS FORGOTTEN THAT THEIR SERVICE OF GOD DEMANDS THAT IT IS THE ABUSED - AND NOT THE ABUSER - WHO IS ENTITLED TO PROTECTION?

FOR TOO LONG, WE ALLOWED THESE INSTITUTIONS TO FOCUS INWARD, WITHOUT REGARD FOR THE EFFECT OF THEIR ACTIONS ON THOSE THEY WERE DUTY-BOUND TO SERVE. WE ALLOWED THEM TO TRADE ON THE TRUST WE PLACED IN THEM BY

ACCEPTING A MODEL OF SELF-POLICING WHOSE CURRENCY WAS NOT IN ACCOUNTABILITY BUT IN ASSURANCES. THOSE ASSURANCES WERE TOO OFTEN HOLLOW, AND THAT CURRENCY HAS NOW BEEN SUBSTANTIALLY DEVALUED.

SINCE THIS CRISIS - AND IT IS INDEED A CRISIS WHEN SO MANY OF OUR LEADING INSTITUTIONS HAVE AT ONCE BETRAYED THE PUBLIC -- WAS CAUSED BY A BREACH OF TRUST, ANY SOLUTION MUST RESTORE THAT TRUST. WE MUST BRIDGE THE EVER-WIDENING DIVIDE SEPARATING THE PUBLIC'S EXPECTATION THAT THESE ENTITIES ACT IN THEIR CONSTITUENTS' INTERESTS AND THE INSTITUTIONAL INSULARITY AND ARROGANCE THAT HAS LED THEM TO IGNORE THAT DUTY.

AN EMINENT SOCIAL SCIENTIST HAS SAID THAT "TRUST IS THE EXPECTATION THAT THE FAITH ONE PLACES IN AN INDIVIDUAL OR INSTITUTION WILL BE HONORED. IT DEMANDS VULNERABILITY AND GROWS THROUGH SMALL RISKS." BUT BECAUSE IT ACCUMULATES SO SLOWLY, THE PROCESS OF RESTORING A SHATTERED TRUST IS A LENGTHY ONE. UNFORTUNATELY, WE DO NOT HAVE TIME TO WAIT FOR THE PUBLIC TO DEVELOP A RENEWED SENSE OF TRUST IN THESE INSTITUTIONS. TOO MUCH WILL BE LOST DURING THE TIME THAT THIS PROCESS NATURALLY UNFOLDS; THE SKEPTICISM AND DISTRUST THAT EXISTS WILL CONTINUE TO EXACT A TREMENDOUS COST FROM THOSE WHO CAN LEAST AFFORD IT.

I WOULD LIKE TO SUGGEST TODAY THAT THERE IS A METHOD TO RESTORE THIS TRUST QUICKLY AND EFFECTIVELY. SOCIETY'S DEFENSE AGAINST MISPLACED TRUST MUST BE FOUND IN A SYSTEM OF LAW THAT WILL MAKE TRUST IN OUR INSTITUTIONS BOTH REASONABLE AND PRUDENT. IF OUR LEGAL SYSTEM OPERATES AS IT SHOULD, WE WILL UNCOVER THE ABUSES OF TRUST -- LIKE THOSE THAT I OUTLINED A MOMENT AGO -- WE WILL BRING THEM TO THE PUBLIC'S ATTENTION, AND WE WILL DEMAND THE IMPLEMENTATION OF SYSTEMIC CHANGES TO ENSURE THAT THIS DERELICTION OF DUTY DOES NOT REOCCUR.

IN THIS WAY, OUR LEGAL SYSTEM CAN SERVE AS A BRIDGE OVER THE CHASM OF DISTRUST SEPARATING THE PUBLIC FROM THESE INSTITUTIONS.

THE FAITH THAT WAS ONCE RESERVED FOR THESE INSTITUTIONS AND THEIR POLICIES OF SELF-POLICING WILL BE RESTORED BY A RENEWED RELIANCE ON OUR LEGAL SYSTEM AND ITS INSISTENCE ON ACCOUNTABILITY.

FOR THIS TO WORK, THE LAW MUST DEMAND -- AND THESE INSTITUTIONS MUST ACCEPT -- THAT STANDARDS OF BEHAVIOR

THAT WERE BEING IGNORED MUST NOW BE STRICTLY FOLLOWED. THE RIGOROUS ENFORCEMENT OF EXISTING LAWS AND CODES OF CONDUCT WILL ENSURE THAT THESE INSTITUTIONS ARE ACCOUNTABLE TO THE BROAD PUBLIC THEY ARE MEANT TO SERVE, AND NOT THEIR OWN NARROW INSTITUTIONAL INTERESTS.

I WOULD LIKE TO RETURN TO THE EXAMPLES THAT I PROVIDED EARLIER TO DESCRIBE HOW THIS MIGHT WORK:

WE NEED TO INSIST THAT OUR BIG FIVE -- PERHAPS SOON TO BE FOUR -- ACCOUNTING FIRMS RETURN TO THEIR ROOTS AS AUDITORS, AND SEPARATE THEIR AUDITING FUNCTION -- WHERE THEY STAND AT ARMS LENGTH FROM THEIR CLIENTS -- AND THEIR CONSULTING PRACTICES WHERE THE CLIENT'S INTEREST IS PARAMOUNT.

WE NEED TO INSIST THAT PUBLIC COMPANIES REPORT RESULTS THAT REFLECT REALITY AND NOT CLEVER GAMESMANSHIP, AND THAT ALLOW INVESTORS TO UNDERSTAND THEIR TRUE FINANCIAL POSITION.

WE NEED TO INSIST ON A SYSTEM THAT REQUIRES WALL STREET FIRMS TO COMPENSATE THEIR ANALYSTS BASED ON THE QUALITY OF THEIR RESEARCH INSTEAD OF THE INVESTMENT BANKING FEES THAT THEY GENERATE, AND WE NEED TO REQUIRE THESE FIRMS TO DISCLOSE THE FEES THAT THEY RECEIVE FROM THE COMPANIES THAT THEY RATE AND THEIR RELATIONSHIP WITH THEM.

WE NEED TO INSIST THAT OUR CHARITABLE AND NOT-FOR-PROFIT ORGANIZATIONS ARE LED BY DIRECTORS WHO UNDERSTAND THE NATURE OF THEIR RESPONSIBILITY -- WHICH IS TO ACHIEVE THEIR CHARITABLE MANDATE, AND TO LEAD THEIR ORGANIZATIONS - AND NOT MERELY TO ACT AS RUBBER STAMPS FOR ENTRENCHED STAFF-MEMBERS.

WE NEED TO INSIST THAT OUR RELIGIOUS LEADERS ARE NOT TREATED DIFFERENTLY THAN OTHERS IN POSITIONS CARING FOR CHILDREN, AND ARE REQUIRED TO REPORT ANY SUSPICION OF ABUSE TO DISTRICT ATTORNEYS FOR INVESTIGATION.

I RECOGNIZE THAT THESE PROPOSALS DO NOT FULLY ADDRESS THE PROBLEMS ARISING FROM THIS CRISIS OF ACCOUNTABILITY. BUT IT IS IMPORTANT THAT WE UNDERSTAND THAT THIS CRISIS EXISTS, THAT IT HAS ALREADY DAMAGED IMPORTANT INSTITUTIONS, AND THAT WE MUST TAKE IMMEDIATE ACTION TO RESTORE THE FAITH OF A BETRAYED PUBLIC.

TAKEN TOGETHER, THE IDEAS THAT I HAVE SUGGESTED CAN SIGNAL TO A DISENCHANTED PUBLIC THAT OUR SYSTEM OF LAW CAN PROVIDE -- INDEED, CAN ITSELF BE -- THE SOLUTION TO THE CRISIS CREATED BY THE BETRAYAL OF THEIR TRUST. OUR INSISTENCE ON A COMPREHENSIVE SYSTEM OF ACCOUNTABILITY WILL ANNOUNCE TO A NERVOUS PUBLIC -- TO INVESTORS AND STOCKHOLDERS, TO CONGREGANTS AND CLERGY, TO THOSE WHO CONTRIBUTE TO CHARITY AS WELL AS THOSE SUPPORTED BY CHARITY, TO LITIGANTS AND LAWYERS -- THAT OUR LEGAL SYSTEM WILL NARROW THE BREACH CREATED BY THIS DISTRUST.

THOSE OF US HERE TODAY, WHO HAVE DEVOTED OUR PROFESSIONAL LIVES TO THE LAW, ARE ESPECIALLY ATTUNED TO THE ABILITY OF OUR LEGAL SYSTEM TO MEND BREACHES OF PUBLIC TRUST. THE GLORIOUS HISTORY OF OUR CIVIL RIGHTS MOVEMENT IS PERHAPS THE MOST SHINING EXAMPLE OF HOW THE LAW CAN BE THE MOST EFFECTIVE TOOL TO REPAIR THE FRACTURED FAITH OF A DISENFRANCHISED AND BETRAYED PUBLIC.

MANY OF US WERE INSPIRED TO BECOME LAWYERS BY THE HARD-FOUGHT VICTORIES WON BY THE HEROES OF THE CIVIL RIGHTS MOVEMENT. AS WE REFLECT ON THOSE VICTORIES AND ON OUR OWN PERSONAL DECISIONS TO ENTER THE LAW, WE SHOULD ALSO REMEMBER THIS IMPORTANT LESSON: WHATEVER THE BATTLE, A RENEWED RELIANCE ON OUR SYSTEM OF LAW WILL ALWAYS PROVE TO BE A POTENT FORCE FOR ACHIEVING CHANGE AND RESTORING PUBLIC FAITH.

I THINK THAT THIS MARKS AN APPROPRIATE MOMENT TO OFFER MY RECOGNITION AND GRATITUDE TO CHIEF JUDGE KAYE FOR HER INSPIRED AND INTELLIGENT LEADERSHIP OF THE STATE'S JUDICIAL SYSTEM. JUDGE KAYE HAS LONG BEEN IN THE VANGUARD OF EFFORTS TO IMPROVE THE STATE'S JUDICIAL SYSTEM, MOST RECENTLY THROUGH HER TIRELESS ADVOCACY TO FAIRLY COMPENSATE LAWYERS WHO REPRESENT INDIGENT CLIENTS AND TO ENSURE THAT ALL ARE AFFORDED EQUAL ACCESS TO JUSTICE. THOSE EFFORTS, ALONG WITH HER EFFORTS TO REFORM THE ROCKEFELLER DRUG LAWS AND TO ENSURE THAT THE COURT'S ARE HOSPITABLE TO VICTIMS OF DOMESTIC VIOLENCE, REFLECT A SENSITIVITY TO THE IDEALS OF JUSTICE THAT EXPLAIN WHY THE NEW YORK JUDICIARY MAINTAINS THE GREAT RESPECT OF THE PUBLIC. THE PUBLIC'S ESTEEM AND RESPECT FOR OUR LEGAL AND JUDICIAL SYSTEM IS THE FOUNDATION UPON WHICH THE PROPOSALS THAT I HAVE OUTLINED TODAY REST.

JUDGE KAYE AND MEMBERS OF THE COURT, I THANK YOU AND WE

ALL THANK YOU.
