

We Must Lead the Charge

Remarks of Mario Cuomo

Editor's Note: As New York's top state jurist, Chief Judge Judith Kaye, noted in her introduction, former New York Governor Mario Cuomo has a well-deserved reputation as one of the nation's top public speakers. To give our readers the flavor of his speech, as well as the message, we reprint Gov. Cuomo's remarks in their entirety, including his introductory remarks to the audience and most of the introduction of him by Judge Kaye.

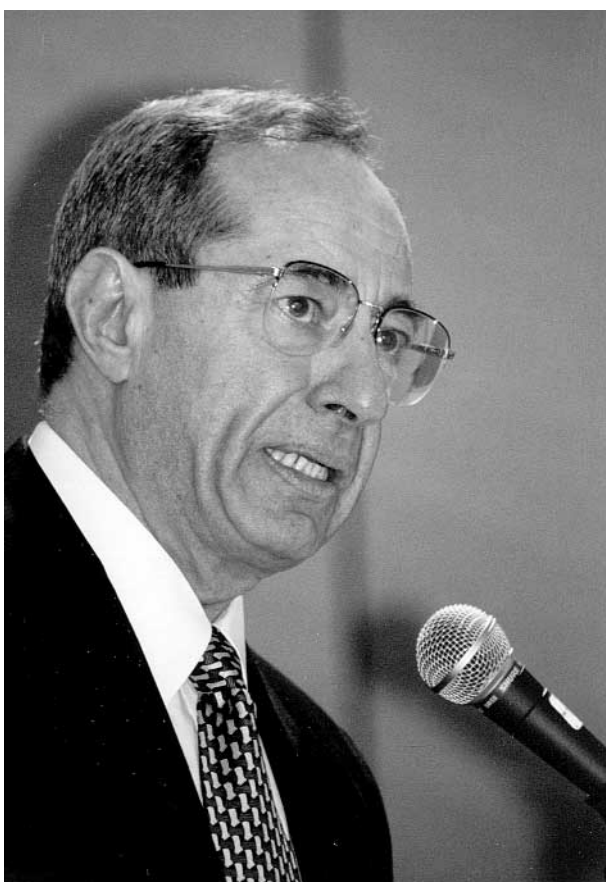
JUDGE KAYE: Good afternoon, colleagues and friends. I'm Judith Kaye from the State of New York. It is a high honor and yet a formidable challenge to introduce Mario Cuomo. I, of course, have in mind the enormous difficulty of conveying in a brief time the greatness and the uniqueness of Governor Cuomo, as I would wish to do. But even beyond that, I know that I can never approach his magnificent introductions of me, first, when he appointed me directly from a New York City commercial trial practice to the state's highest court and then, ten years later, when he named me Chief Judge of the State of New York, the first woman to hold either office.

But we all know right off the bat that Mario Cuomo is a person of truly incredible courage. The very mention of bats reminds me of our Chief Administrative Judge Jonathan Lippman's observation that "although a serious blow to the head ended the baseball career of young Mario Cuomo, then playing outfield for the Pittsburgh Pirates farm team, it did not seem to impede his choice of New York State's Chief Justice." Judge Lippman adds that "it is best to leave for another day the issue of any causal connection between the two events." Judge Lippman, who holds his office at the pleasure of the chief judge, obviously is also a person of true courage.

It was, I am sure, a loss for baseball that Lindy LaDuke, as the governor called himself back then, hung up his cleats. But what

a gain for our country that Mario Cuomo chose law as his fallback occupation.

After achieving top honors at St. John's University School of Law, Governor Cuomo began his legal career by clerking for Judge Adrian Burke of the New York State Court of Appeals. He then entered private practice and also taught law at St. John's.



In time, he would serve the State of New York as secretary of state, lieutenant governor and then for twelve years as governor of the State of New York. Today, he is a partner in the distinguished New York City law firm of Willkie, Farr and Gallagher; and he is, in addition, a renowned lecturer, radio commentator and grandfather of nine girls. Thus far.

As a person who has lived his life in the law and public service, as a person who has tussled with the issues of making government meaningful and accessible to the ordi-

nary citizen, Governor Cuomo is an eminently qualified speaker on the issue of public trust and confidence in the justice system. . . .

Just recently, one specific issue to which he turned his prodigious talents is the barrage of politically driven attacks on the federal and state courts. Working with Citizens for Independent Courts, a bipartisan group of scholars and public officials, he has spoken out against corrosive assaults on the judiciary, seeking to raise the general level of consciousness about the role of courts in protecting individual rights and liberties and the long-term implications of shortsighted attacks on the third branch.

Having myself been privileged to watch and hear and read many of Governor Cuomo's speeches, I have concluded that his well-deserved reputation as one of the preeminent speakers of our time is not simply the consequence of his distinctive delivery and cadences, which are marvelous, or his powerful presence, which is undeniable, or even his towering intellect, which shines through so clearly. It is rather, I believe, because he thinks profoundly and he speaks from the heart.

That sense of struggle, of sympathy, of passion, whether for baseball or for government, or for the rule of law, lights a spark. It makes us feel. It helps us see. I know today will be no exception. Please join me in welcoming our speaker, Mario M. Cuomo.

Thank you. No one could possibly follow that introduction, and fortunately it is not a problem to beat the level of expectation that Judge Kaye has set because I'm not Mario Cuomo. He was not able to come. I'm Mario Cuomo's younger brother, who failed speech three times.

I'm really honored to have been invited at all to address this distin-

gushed group of jurists and lawyers and citizen supporters of our judicial system. And I mean that very sincerely, especially because, despite the chief's burnishing of my credentials — and, frankly, had I known she was capable of that kind of hyperbole, I would have thought twice about making her chief judge. But despite that, I'm not a judge, and I'm not even an elected official. And at the very best, I'm a former governor.

And as governor I learned, while I was such, it is not always regarded as honorific in its implications. There was a time, for example, not long ago, while I was governor, that I addressed a group upstate and was introduced by a judge — whose name I won't give you, but I will tell you it was a judge I had not appointed — before a gathering of judges who were extremely indignant with me and unhappy because the budget had just been released and they had not received the raise that they thought they were entitled to.

And this judge introduced me, having indicated he was going to be careful about it because of the implications of the occasion; that he would go to the dictionary for some help in the introduction. And he introduced me by saying, "The next speaker is Mario M. Cuomo. He is a governor. From Webster's dictionary: a device attached to a machine to see that it does not operate at maximum capacity."

Your invitation to me helps soften the pain of that unhappy recollection. And so, I thank you, and I'll try to show my gratitude by keeping this relatively brief.

The work of this conference starts with one fundamental proposition: the public's express dissatisfaction with our judicial system impairs its effectiveness and demands amelioration by those of us most intimately involved with its work. That's the main challenge. And your principal thrust, as far as I can gather, has been to improve in every way possible the system's basic function, which is, of course, deciding cases and controversies.

You have gathered and discussed an array of reforms and remedies designed to improve efficiency and fairness while affording at the same time maximum accessibility, especially to those who are least able to reach the system on their own. I have read the extensive reports of your work. Indeed, I have studied some

of them. And, frankly, I have nothing much to add to the work you have already done.

I can't think of a whole lot of things you have left out with respect to how to improve the day-to-day operations of the court. And I can, however, take credit for some of the ideas, maybe even a lot of them, by reminding you that I did indeed supply you with one of the nation's clearest and most compelling forces for intelligent reform of our justice system, a progressive trailblazer who extended reform into social service programs dealing with complex problems like drug addiction, child abuse, family dysfunction — problems that have inundated many of the courts in New York and elsewhere.

And, frankly, and in all seriousness, in twelve years as governor, through two recessions, with wonderful opportunities to do good things, I'm certain I never made a better decision than the one that made available to the state and to the nation the intelligence and wisdom, the inexhaustible competence of Chief Judge Judith Kaye.

You know, the temptation was in those years, when one ran for public office, to make a lot of promises. I refused in 1982, when I ran my own improbable race for governor — because no one thought I could win. But I refused to make any promises except one or two. But one of them was that, if at all possible, I would appoint the first woman to the court of appeals and the first African-American.

Believe it or not, the great bastion of liberalism and progressivism, New York, hadn't ever appointed an African-American to a full term after 200 years. And I was, as a matter of fact, the first Italian-American ever elected governor after 200 years.

And I said I'll try to do that, but it is not going to be easy because, as I see it, it would be wrong to appoint a woman or an African-American who wasn't at least as good as the other available candidates. That would be unfair to the women, and it would be unfair to the African-Americans. So I'm going to have to have situations where they are at least as good. You know, I would prefer if they are obviously better than the other candidates. And that's what Judith Kaye was.

Now, it took some looking and

searching because they didn't make it easy. They tried to hide her, frankly, because they thought, the politicians, that they had a better woman for me, and it was someone that they knew better. It was someone who was politically involved, and a good candidate. And so, they disqualified her at the Women's Bar Association. Did you know that? They said this woman, Judith Kaye from Sullivan County, wasn't qualified.

Well, that's all you had to say to a guy with a name like Mario Cuomo — wasn't qualified.

And so, I looked and I saw and I studied and I interviewed her, and I compared her, and I made phone calls all over the State of New York, to the Women's Bar, to some of the other candidates, to everybody, and decided.

And I remember my counsel saying after one discussion about the possible choices: "Do you think," the counsel said, "that Judith Kaye would make a good court of appeals judge?" I said, "No, she will make a great court of appeals judge."

And I was right. She did. And that's why she was made chief judge of the court of appeals. And that was true, also, of our choice of the first African-American.

Now, the work that Chief Judge Kaye and all of you are doing to improve the day-to-day performance of the system, that work is necessary and valuable even if the improvements were never noticed by the public. You should be doing that, anyway, even if you never told anyone about it. But that work is considerably more valuable because eventually it will be noticed, and it will enhance trust and confidence in the courts. When people know that the courts are accessible, when they know that they are fair, when they know that they will get justice and they will get it efficiently, that will improve the confidence and trust.

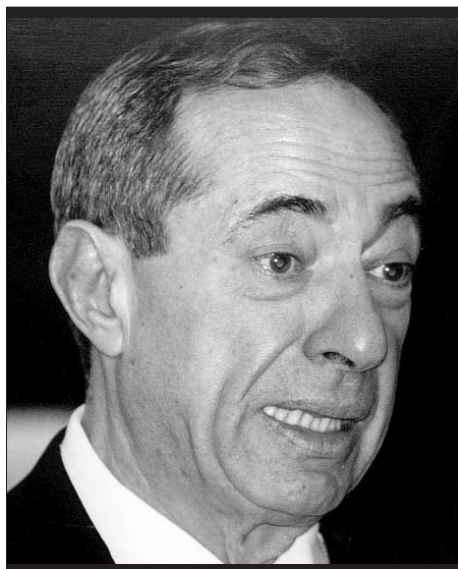
It is also, however, a regrettable reality that you should focus on that that will not happen quickly, even with all your most energetic efforts at communication of real reforms excellently accomplished, because it is difficult to communicate to this country of 270 million people anything unless it is a very simple message. And then you need extensive media and great repetition.

That's why people need millions of

dollars to run for office, so they can get experts to design a very simple message and then hit you over the head with it in your living room night after night on television. It is very difficult to do that. Trying to communicate dozens of discrete changes about thousands of courts in hundreds of cities in scores of states in a way that will make a significant difference in the overall perception of people is, to put it mildly, a daunting, although achievable, task.

This process of public enlightenment about systemic change, fragment by fragment, from place to place, will be more like the accretion of sand against the shore. It will be gradual and virtually imperceptible as it is occurring. That's the way accretion is, visible only after a long

period, and then only with the benefit of historic perspective.



currently receiving. And so, I concentrate on it in this opportunity you give me this afternoon. And it is a subject I have been thinking about since the beginning of my own political experience some two decades ago, and it started with my mother and father.

My parents were immigrants from Italy who arrived just before the Great Depression began, uneducated — they never went to school a day in Italy, nor did they ever get to go to school a day here, actually. Poor. Hopeful. My father was a ditch-digger. They had modest aspirations for their children, just a life with their kids that was easier than the one that they were able to achieve with their very limited opportunities.

I was their youngest child. And when

[I]t is difficult to communicate to this country of 270 million people anything unless it is a very simple message. And then you need extensive media and great repetition.

Even then, after all the changes are made and their salutary effect on the image of the courts is accomplished, there will be another and perhaps more serious challenge to credibility that will persist unless we do something more about it now, and that is the growing perception that the courts are, like the rest of the government, the Congress and the presidency, sharing the distasteful aspect of what is loosely called politics.

From what I have observed, it doesn't appear that this particular aspect of our challenge has been as intensely considered as have the broad questions of day-to-day inefficiency of the courts, and I am convinced that it is an insidious problem that deserves more attention than it is

I became the first in the family to get a college degree, they were thrilled beyond imagination. Until I got to be a lawyer — and then they were ecstatic.

But some years after that, when I announced that I was entering politics, they were shaken. All they knew about politics and politicians was that, except for Franklin Delano Roosevelt, politicians weren't worth much, couldn't be trusted; would say whatever they had to go get elected, then ignore everyone but the really powerful until the next time they needed your vote, when they would lie to you again.

Trying to find a way to soothe my parents, I told them, "Don't feel bad, Mom. Don't feel bad, Pop. I'm going to be a politician because this is the way you get to be a judge." That relieved them con-

siderably. Papa says, "Now, you are making sense."

Why? Because to my mother and father, being a judge was a whole other thing. The judge was respected. The judge did what was right, or at least there wasn't any hard evidence to the contrary because it was very difficult to refute the judge. They didn't know exactly how the judge went about doing justice. They couldn't read a book. But it did seem that most of the time it was more or less the right thing that resulted when you got to the judge.

The judge was special. That's why the judge wore a robe, but politicians just wore suits. In those days, my parents weren't far from the dominant view of other Americans about their judiciary. Most believed there was indeed something special about the people in robes and the work they did.

The truth, of course, is that the intelligent design of our government had given the judiciary that special quality since the very beginning. They were different. They were to be special. A government of two parts: a political side consisting of the Congress and the presidency, to which voters would elect people they expected would reflect their ideas and desires on a day-to-day basis. But there were plenty of governments like that, representative governments, that were, presumably, to do the will of the people.

And then the difference. To anchor and stabilize this new experience in representative government, they designed a special, second part, a federal judicial system to protect people from the deprivation of rights that were deemed so basic in the Constitution that no majority should ever be strong enough to deny them, no matter how large a majority, no matter how strong, no matter how loud.

My mother and father never changed how they felt about judges, but in recent years, many other Americans appear to have. Television is probably one of the reasons, although I don't understand television well enough. I'm not sure any of us do. I'm not sure any of us have even studied enough the implications of television. But in thousands of hours of programs, television has torn away the veil, even disrobed some of the judges, creating a different image of them. It's made them less distant, more profanely present, tangible and fallible than they used to be.

Even the recent live coverage, which I admit to having advocated as governor, has created distortions because viewers seldom witness an entire proceeding, and most of them lack the familiarity with the law necessary for a full understanding of what's happening in the nightly glimpses on the screen. The O. J. Simpson episode is a good example.

For many viewers, the O. J. trial was the most they had ever seen of the law at work and proved to be a devastating blow to the favorable image that the courts had preserved for so many years. Surveys — I saw three of them — indicated that millions of Americans who watched the trial had lost respect for both the system and the judge. Only a small number said that it enhanced their opinion.

Now, that was not because the system did not work in the O. J. trial — it worked. It is because the people didn't understand how the system works.

In fact, the whole wide world of explosive technology has dramatically changed how both our political and judicial systems are regarded and how they are being treated.

Thanks to television, movies, radio and computers, we have been saturated with information about everything imaginable, from the mating habits of tsetse flies to the possibility of life on other planets, often without adequate interpretation.

And there must be interpretation.

That's why Mom and Pop, in the old days, when we lived in one room behind the store, would chase us out of the back room. If they wanted to say something about someone having been stabbed in the neighborhood or some woman having had a child without being married, something that our young ears weren't ready to hear, our young minds not able to absorb, then they would chase us away. Why? Because they couldn't impart that information to us without the danger of distortion and misunderstanding because they weren't competent to explain it to us. So they excluded us.

Nobody gets excluded from television. Nobody gets excluded from the violence, from the mystery of it. And everybody is required to make their own judgments, ready or not, mature or immature, distorted or straight. And so, that is having a huge effect on this population, and on our court system.

As a result of this exposure in our Internet, too, I think we have become better at facts than at philosophy, more knowledgeable without becoming wiser, certainly more self-assured and less willing to accept opinions or decisions from experts or established authorities.

We think we know it all. Why? Because no one has ever known as much as we do.

This generation of children that is growing up now, they know infinitely more than I did when I was in their stage. And because they know so much, they think they understand everything.

At the same time as television came along, the startling growth in violence and crime, which was made so terribly vivid by the electronic media and movies, frightened and outraged us as a people, so much so that we had little tolerance for labored explanations from the judge as to why apparently technical errors or insufficiencies should allow someone we were all sure was guilty to go free.

We didn't understand that. We were outraged by that, a lot of people.

An angry public demands something be done. In one survey, eighty percent of the people said we should get rid of that darned constitutional presumption of innocence — that's absurd, to say we have to prove he did it when a grand jury says you ought to try him. Make him prove he's innocent. That appealed to a lot of sensible people, eighty percent in the poll I saw.

And poll-watching politicians responded with Pavlovian assurance. They touched every button, satisfied every rabid craving with swift passage of draconian and regressive measures. We stuffed our prisons to overflowing. Politicians served up a binge of new death penalty statutes as though there had suddenly been discovered proof that the death penalty can save lives.

Even the so-called liberals signed on to legislation curtailing the rights of immigrants to protect themselves from false accusations, limiting the writ of habeas corpus, reducing the protection of prisoners from barbaric mistreatment or even threatening to allow the children of the poor to go hungry if their parent is not able to work — all of it offered up in part to assuage the discomfort and anger of an irritated majority.

That's the way the political system

works. And the judicial system had become, as a result of this — and still is — a prime target for some of these politicians. They mock and ridicule judges and their legal decisions with an excessiveness that may help their standing in the polls.

And it does help, believe me. If you want to run for office, it is a good way to run because you have the advantage. The people don't know, and you can make a score by talking about mushy-headed judges who aren't doing their job and they are the problem of crime: it is because the courts don't do it right. It is because the law is not operating correctly. Get rid of those judges, and we will solve the problem.

How bad has it become? Well, a couple of sessions ago, some Congressman began a drive to impeach some sitting judges, as you know, because their decisions were deemed by the Congressman — I don't know the particular Congressman or Congresswoman or what, but, you know, they disagreed with the constitutional interpretations, so we ought to impeach.

And more recently, Robert Bork — and this is my favorite, because I always liked Judge Bork. I remember when he was sitting, and I thought what happened, frankly, in his appointment process was devastating, a disaster. Whether you liked him or didn't, whether you liked his positions or not, I thought it was an awful way to handle the appointment process.

But then he wrote the book, *Slouching Toward Gomorrah*. I read it because I read just about everything I could that he had written. I couldn't believe what he proposed in that book. So I read it again. I put it down, actually, one night and I said, no, I'm tired, I'm not reading it. Then I got up very early and read it again.

Judge Bork suggested that the courts were so wildly out of control that there be a constitutional amendment making any federal or state court decision subject to being overruled by a majority vote of each house of Congress. Now, that was an alarming proposal. But even more alarming was the fact that the public seemed totally untroubled by it.

I remember talking to Ted Koppel about it. He said, "There is no outrage anywhere, Mario." Nobody. They like it, he said, the public. And they probably did.

There are proposals to do it right now in Congress. Did you know that? Get rid of judicial review. Forget about Marbury against Madison. It was a mistake.

The Founding Fathers chose a better way than the one that Judge Bork suggests when they made the Bill of Rights a part of the Constitution and asked the Supreme Court to enforce it openly. And I'm sure most of us here understand that. And I'm just as sure that most of the public at large does not. And because they do not, our judicial system is vulnerable.

The American people need to be educated to this truth. They need to appreciate how well the system has worked, how it helped rescue us from the Great Depression, insured us of the right of free speech, protecting the immigrants and the poor, the disadvantaged, the different, set aside racial segregation; how, with this judicial system — with this judicial system — like it or not, understand it or not, we have become the strongest, richest, freest nation in world history when all the other representative governments that they tried without our kind of judicial system failed — or at least failed to achieve our kind of greatness.

We must be sure that the nation understands these good things happened because courts were protected from the uncertain and patently unfair impact of current public opinion. We ought to be doing everything we can to insure that the growing sanctification of popularity, which is what is happening politically, doesn't threaten more seriously that protection by impairing our judicial system.

And you and I know all of this. That is why we are here, because we understand these truths and we cherish them. But we privileged insiders — and that's what we are, understand that — we privileged insiders can't treat these truths like personal jewelry. We can't lock them away for our private reveries at happy gatherings like this one to be brought out and discussed and exalted in. These gifts will shrivel unless given the bright light of broad public awareness.

We must share this gift with all the people by helping to educate them, using our own strong voices, the voices that we are using to talk to one another here today every way that we can, using all the power of the Information Age — using radio and television and the Internet to reach the whole public.

We must explain to the public in language they all understand that the judicial system is different from the political branches of our government and that difference makes all the difference to our strength and glory as a democracy. It is the reason we are so great.

We must tell them that, while the politicians reveal what is popular, our judges protect the constitutional rights of all our people, even the despised: the accused, the prisoner, the immigrant, the poor, the disabled, the children, the people who can't vote, the people who don't vote. We represent them all by giving them the benefit of the Constitution.

We must remind our public that if justice were available only to those in the majority, many of us would not have thrived here. There never would have been an American dream if the majority had its way every time it spoke.

We must tell them to keep that dream, judges must remain independent of the politicians, even independent of the ones who appoint them and confirm their appointment. And that's why a lot of us don't like to see judges having to run for office — and I know many do — the way politicians do because they can be compromised. At the very least, they can be perceived as being compromised by having to take vital campaign funds from special interests who expect something more than justice in return. And they do expect something more than justice.

We should tell people that it is in order to protect against the intrusion of politics and to insure the ethics of the court that candidates to the bench of the Supreme Court or any other position should never be asked in advance of a case how they are going to vote on a controversial question. What an absurdity to ask me whether I'm going to vote for or against the death penalty or anything else. It is as absurd as asking an umpire how he or she is going to call a close pitch before it is even thrown.

Judges aren't politicians who can make the policy you want prospectively. We don't work prospectively, we work retroactively. We decide cases and controversies on the basis of occurrences that have already transpired and on the basis of evidence that is produced for us. We don't draw from the Koran or the Talmud or the Bible or our own wisdom to decide what is right. Politicians do that. We

draw from the record and from the precedent after the event and limited to the event.

And after reviewing what has transpired, then we judges will tell you what the law requires without respect to popular opinion. Judges are different from politicians, and it makes all the difference.

That's the message we have to convey. And we should be delivering it everywhere — on radio, talk shows, the Larry King Show, Rivera, public service television. We should write it in op-ed pieces. We should speak it in commencement addresses, visit schools that teach civics, conduct conferences like this one.

And it doesn't take a whole lot of imagination to find out that opportunities are plentiful. This moment in time is especially opportune because you are about to have a new presidential election campaign.

More than that, on the verge of the new millennium — until recently, nobody knew what a millennium was, and nobody cared; now, nineteen percent of the people know what a millennium is — the Year 2000 presidential race means the appointment of Supreme Court justices will be a focus, and so will the problem inherent in political campaigning. There will be plenty of free television and air time available for outspoken people. It will be a perfect time to be talking about the differences between judges and politicians.

There are going to be plenty of opportunities. The only question is, are you going to avail yourself of it?

Let me conclude with one final, fundamental observation. Maybe I'm wrong. Maybe I'm just getting old. But isn't America searching for something? Don't you have a feeling that, despite all the wealth and grandness that is so apparent, there is a feeling that something is missing?

The feeling, I think, was described cogently in a nice line in a memorable song that has become a commentary on the current focus: "Where have you gone, Joe DiMaggio? A nation turns its lonely eyes to you. What's that you say, Mrs. Robinson? Joe has died and gone away."

No more Joe DiMaggio. They killed John Kennedy. Then they killed Martin Luther King, Jr. Then they killed Robert Kennedy. There is no hero. No hero. No

great cause. No soaring ideology. We are riddled with political answers that seem too shallow, too shortsighted, too explosive, too hard. We are demeaned with pandering attempts to protect the public by victimizing the weakest and most vulnerable Americans.

We are tempted to see ourselves as a nation of 270 million individuals struggling for survival and dominance in a dog-eat-dog, free-market world instead of as a fully integrated society, interconnected, interdependent, growing stronger together. That's discouraging.

We desperately, it seems to me, need something real to believe in, to hold onto, something deeper, stronger, grander than

Now, I think it would take more than the time we have now and perhaps more than the wisdom that resides even here today in this august assembly to do that, to find and describe a total solution to this profound discomfort. But I also think that there is one thing we lawyers and students of the judicial system know will help the unsureness that troubles us, and that is our lady of the law.

Our 200-year-old legacy of law and justice is a magnificent monument to the best we have been able to accomplish as a people. We must not allow it to be torn down nor even defaced by a political system whose claim to morality is the latest urge of the American people, however

and the people like us. We — the judges, the lawyers, the citizen supporters of the justice system — we must lead the charge; we, who understand these truths the best; we, who feel them most deeply; and we, who owe them the greatest loyalty.

Our lady of the law calls us. America needs us. Now, *carpe diem*. Thank you for listening.

We must explain to the public in language they all understand that the judicial system is different from the political branches of our government and that difference makes all the difference to our strength and glory as a democracy. It is the reason we are so great.



can help us deal with our problems by making us better than we are instead of meaner; that can lift our aspirations instead of lowering them; something simple enough for everybody to understand; something sensible enough for most people to say, yes, that's right; something sweet enough to be inspiring.

We need that desperately — something larger than ourselves; something more nourishing to our economy, to our souls than the satisfaction of knowing we have kept poor people in their place or even that we have made a lot more rich people in America. We need something sweeter than the taste of a political victory.

distracted, however misled we may be.

For two hundred years, our lady of the law has proven stronger than the sins of her acolytes and has made us better than we could have been without her. Now she must be lifted above the political melee and confusion before her bright, guiding light is doomed. That, I believe, is the kind of message we need.

And we can get experts to teach us exactly how to say it, to design clever phrases and memorable metaphors. We can urge the schools and the media to help in the effort, and we should. But they are not the best people to deliver our message. The burden of persuasion rests with us, the people in this room today,

Mario Cuomo was elected governor of New York in 1982 and won re-election in 1986 and 1990, setting records in both contests. Following his keynote address at the 1984 Democratic National Convention, he has been a defining figure in American politics. After losing his final campaign for governor in 1994, Cuomo has returned to the practice of law in New York, where he is a partner in the firm of Willkie, Farr & Gallagher.