

Remarks by Senator Robert Torricelli at Seton Hall University School of Law[†]

Let me start by thanking not only the Dean but Professor Poirier and Professor Gorman for giving me this opportunity today, as well as a couple of other people: Lillian Barone who is the Director of the Port for the Port Authority, one of the great public officials that I've worked with in my career who is directly responsible for, in my judgment, the cleaning, the salvation, and the economic vitality of the Port of New York; Ed Lloyd who was from the Rutgers' Environmental Clinic; Jessica Lerner who was a student of this law school, but more than that, has been very high standing in life, who was a former intern in my office in Washington (I am the only person in Washington still introducing their interns and I am pleased to do so); Ella Filippone who is on the Passaic River Coalition, who has been a driving force in cleaning the Passaic River through these years, mostly by driving those of us in public life nuts, but it is a strategy that has worked, and her work has been tremendous. There is another person to mention who has done such a tremendous job. I can honestly say that if there is one individual, without whom the dumping of oils and dredge spills in the Atlantic Ocean would not have stopped, it is Cindy Zipf. She is directly responsible for stopping the dumping in the oceans. And finally, to Andy Willner from New York/New Jersey Baykeepers, who is also a critical part of that coalition and we are very proud of his work.

I looked forward to this today not only because it is a chance, after all these years, to come back to this law school knowing that no professor is in a position to directly attack me, question me, or assault me and to be on the other side of the podium, but because it is an interesting program in which to share some perspective on the environmental movement in our country at what really is a critical time of redefinition of the environmental movement itself. This movement has gone through so many phases in the twentieth century, beginning with Theodore Roosevelt's observation in 1910 that conservation policy and the quality of rural life cannot be separated.

[†] This keynote address was delivered at the Environmental Symposium held on March 30, 1998, at the Seton Hall University School of Law.

The environmental movement began with people like Roosevelt who believed, in essence, that what was being preserved was the quality of life. It is part of the American mystique of rural life on the frontier. And so it is no coincidence that it began by saving large tracts of western land. It is an interesting place to begin because while the environmental movement began in the twentieth century by saving Yellowstone Forest, ironically we end the twentieth century recognizing that the environmental movement is about saving Newark, New York, Chicago, and Los Angeles.

We are back where we began, and for a variety of reasons. Last year, the United States Congress approved approximately 700 million dollars for a one-time land purchase. We took money from the Land and Water Conservation Fund and several other sources where there were direct appropriations available to do direct land purchasing, including the Sterling Forest. What was interesting however, was that out of all that money, only one million dollars went to the states of New York and New Jersey. Four hundred and eleven million dollars, or fifty-nine percent, went to three individual western projects. Now I will confess to you, in my fifteen years in both houses of the United States Congress, I have voted for hundreds and hundreds of square miles of Alaska, which, not only have I never visited, I never hope to visit, and yet I don't regret those votes. And there are vast, vast tracts that I have flown over in Utah and the Wyoming desert that look beautiful from a first class airline seat, and I don't intend to ever walk on them, and again I have no regrets. They are the right thing to do to the tune of hundreds of millions of dollars. We cannot duplicate them — they would be destroyed, and they should be preserved.

Not so many years ago, with Ella Filippone, and other allies in this room, I began an effort to save the Sterling Forest of New York and New Jersey. It offers an interesting contrast of environmental policies of land conservation in our country. We calculated that twenty-five percent of the American people were within a four-hour drive of the Sterling Forest. That is fairly significant. We were matching its preservation with money from the State of New York and the State of New Jersey and private resources. We probably needed no more than fifteen million dollars of federal resources over a period of years. Not only were we saving the last open land in the metropolitan New York area, twenty thousand acres for which there was no alternative, but it was directly related to the quality of water of ten million people.

It took me (we purchased it this past year) ten years to get fifteen million dollars to buy twenty thousand acres within an hour's drive of midtown Manhattan. It is an indication of just how far away we are from recognizing that we save land and the environment not simply for the sake of the land or the environment, but also for people, for economic resources, for quality of life, and for health. Theodore Roosevelt never could have imagined that the environmental movement would have expanded to this point. We are not simply saving land for his big-game hunting, for another generation to see what the wild west was like, or to preserve the quality of life in the American mystique. In fact, it is for the health of our own people, air, water, and quality of life. But that indeed is how we end the twentieth century.

Today, a great deal is being said about Newark, Camden, and our major cities. And it is a mixed story. But I want our discussion not to begin with despair. Although Newark has had a troubled thirty years, it is fighting back. Progress is slow and difficult, but we are making progress. This law school and this building were the beginning of a renaissance that has not ended. Today, for instance, Newark Airport is arguably the fastest growing airport in America. Continental Airlines is now the largest employer here in the City of Newark, with the potential to double in size during the next ten years. As you can see, we are attracting jobs — a lot of jobs. Within the next few weeks we are going to announce the construction of a new convention center and hotel complex, Waverly Yards. This project will be attached to Newark Airport by a new light rail system, ultimately allowing people to fly in from around the country and come to Newark for small business conventions. It alone will produce another three thousand jobs and five million dollars a year in tax revenues directly for the City of Newark. And, of course, our Performing Arts Center, of which I will admit I was initially skeptical, but by any measure is an extraordinary cultural addition to the City of Newark, with a world-class design and tremendous employment opportunities. And there is more. The International Center for Public Health will bring an additional three thousand jobs. By the time we have finished airport construction with our monorail system and a connection to the main line, it is estimated that 2.2 billion dollars in wages will come to the City of Newark from the airport alone.

People now need to see that if indeed we are going to create a full picture of quality of life and economic progress, our environmental priorities are going to have to change. And this is not just about environmental priorities or encouraging people who do not believe in environmental protection to come to our cause. It is often

about persuading people who are committed to environmental protection to come to assist us as well — people who still will fight for environmental resources anywhere *but* in proximity to people.

In Newark, this requires a focus on several fronts. First, in the development of our great cities from New York to Chicago to our own here in New Jersey, the urban planners of the late nineteenth and early twentieth centuries recognized that having viable park land for recreation and aesthetic purposes was a critical part of having people live in cities and enjoy the experience. In Newark, some of this very park land has been lost. For example, Riverbank Park in the Ironbound section closed in 1996 when dangerous levels of lead, arsenic, and toxins were discovered, leaving the entire area of what is a viable community that is growing economically, a community that is paying taxes and attracting jobs and new businesses, without a recreational alternative. I do not care if you don't think about the environment, if you don't care about the environment, if you came here as a messenger for the Chamber of Commerce to report on this terrible Torricelli, who is advancing environmental causes. Take this back to your employers, if you don't care about the environment: you cannot have a viable economic unit within the city or preserve a neighborhood without a recreational facility. That there have not been state resources to clean that park and make it available to residents again is a stab in the heart of one of the most viable neighborhoods in the City of Newark.

Second, I want to offer to you what to me is a challenge, and the easiest challenge, to every mayor, environmental officer, parks department and public works employee in every major city of New Jersey. I offer as exhibit A, in the spirit of the room, Minnish Park. My office is in a building adjacent to us in the Legal Center. One year ago at this time we would look out along the banks of the Passaic River and see a dusty old area filled with garbage with a heliport in the middle of it. One day, for the opening of the Performing Arts Center, several dump trucks arrived with top soil. It was immediately spread a few inches thick. Someone else came with some grass seed. Nature did the rest. Sometimes preserving the quality of life and making something attractive aesthetically does not have to involve millions of dollars. Nor does it require complex technology.

My friend, Senator Bryant of Camden County, has proposed an initiative in the State Legislature that is as simple as it is logical, and I will argue for it in every city of New Jersey: Where you see a vacant lot or an abandoned building, off the tax rolls and not providing jobs, filled with junkies, and a magnet for crime, I see a park. Not

much of a park. It is not Central Park. There aren't going to be beautiful bridges. There are not going to be wonderful ponds. There is not going to be a great meadow. But do you know what? For a kid, for a family thinking about whether they are going to stay in Newark, for those taking pride in their neighborhood, it can work out almost as well. Knock down the abandoned buildings. Cover it with a little soil. Plant a few trees and some grass. And even if it is an environmental problem, let it warehouse itself while it is green, with somebody taking advantage of it rather than letting it sit as an abandoned building. And what are we talking about financially? It is the least expensive investment that can be made in an urban environment. And from some kid's perspective, by far the best.

Fortunately, with Minnish Park, we are taking the next step. We did this — the soil, the grass — and it looks great from my window. That matters, too. But we are also taking the next step. We have now received three million dollars to start construction on a bulkhead in the Passaic River and we can make it, in fact, a premiere urban park in the City of Newark. We are going to build something lasting and meaningful as an urban park. What I suggest to you, again, is that there is a transition phase the cities can often implement themselves using their own labor and sometimes their own local and state resources.

That brings me to what, in my judgment, is the most important part of urban policy in America. A year and a half ago, while campaigning for the Senate, people would often ask me, "Well fine, you live in a suburban community in Bergen County, tell me about the Clinton Administration's and your urban policy." Well the simple truth of the matter is that in our country, there is no urban policy. Unlike the Johnson Administration and the Carter Administration, America today has no urban policy. And, given the realities of the country, we are not going to have one. But we do have two things. We have a transportation policy that substitutes for urban policies. For example, if our cities become magnets of mass transportation, as Newark is — and that position will be enhanced in coming years thanks to our new ISTEA Bill¹ — that itself attracts jobs and keeps people. So our transportation policy in America substitutes for ur-

¹ See 23 U.S.C. §§ 101-402 and various sections of 49 U.S.C. §§ 101-5907 (1994). Essentially, the Intermodal Surface Transportation Efficiency Act (ISTEA) requires states to set aside a minimum of 10% of federal highway funds to make "aesthetic and environmental 'enhancements'" such as creating bike paths on old abandoned rail lines. See Kamron Keele, Comment, *Preservation and Use: Road Building, Overcrowding, and the Future of Our National Parks*, 11 TUL. ENVTL. L.J. 441, 459 n.89 (1998).

ban policy. And then we've got something else as an urban policy: Brownfields.² The single most important environmental initiative of the Clinton administration is our urban policy. And it is based, as you know, on a very simple premise that for more than 100 years, this country invested billions of dollars in buying rights of way, laying railroad tracks, and constructing highways into a network centered on urban centers. Within those urban centers not only are there existing roads and railways, but there are also sewer systems and utility lines. Hence, everything is in place for job creation and for domiciles except the investment itself.

Because we've robbed the cities of their own land, we have invested billions of dollars to get from somewhere to someplace where you cannot build or invest because of environmental regulation. You could not, in your wildest imagination, conceive of a more irrational economic plan. That all this labor and all this investment of generations comes with no purpose, forcing instead major American corporations to spend the taxpayers' money building highways into virgin farmlands, and destroying virgin forests to build companies where there are no power lines, no sewer lines, no roads, and no railroads duplicates the entire investment.

That is America of the last thirty years, and Brownfields is the answer. Under the Brownfields' proposal, we can take land in direct proximity to all these investments, land that was once productive and where new investors would be paying taxes in areas where increased revenues are needed most. Coincidentally, they also address our largest social problems, and take lands that now pose a threat to public health and convert them into productive investments. The formula is simple: We allow corporations to take this land, and use their resources and public resources to clean it. Additionally, the cities would be able to provide their own tax abatement and to accelerate how this is done. That program has been years in the making, but we have arrived. The Administration has now established sixty-four priority national Brownfield projects across America. Four of them are in New Jersey and one is in Newark. If we can ensure that, based on economic criteria, corporations can gain title to this land, clean it and bring it into operation profitably through the use of the tax laws, we will have turned a major corner in bringing investment

² See *THE BROWNFIELDS BOOK 1* (Jenner & Block & Roy F. Weston, Inc. pubs., 1997). The term "brownfields" refers to urban facilities that had been closed down and abandoned in the years following World War II because they had become "inefficient, noncompetitive, and financially marginal." See *id.*

back to American cities. It is something about which we simply cannot fail.

Finally, I want to bring your attention to that other perennial problem of environmental investment and planning in New Jersey: flood control. For most of my life I lived in Franklin Lakes in northern Bergen County near the banks of the Ramapo River. Growing up, I learned something about people. Every spring the river would rise, people would lose their homes, and the newspaper would be filled with pictures of people walking out of their homes with their mattresses on their heads in total despair, professing absolute shock. I still have never reconciled what this was about. What's the shock? It happened this year. It happened last year. It'll happen again next year. And yet when you return to your house, you will buy a new mattress and expand the house. And someone will come along and build a house next to you. They'll get city approval, a mortgage, put it up for sale and incredibly — I guess some of them were not reading the same newspapers I was reading — someone will buy it and the next year profess complete shock. Well, we've been through a lot of cycles.

In 1984 it happened again along the Ramapo and Passaic Rivers. This time it not only cost hundreds of millions of dollars, it also cost lives. And one of the most ambitious public works projects in American history was devised to deal with it — The Passaic River Tunnel. It was to the movement of water what the Euro Tunnel is to the movement of tourists. It cost 1.2 billion dollars basically to duplicate the Passaic River underground. Actually using some of the same machinery that created the Euro Tunnel, the plan was to dig in bedrock under the Passaic River or near to it and to bring water basically from Wayne out into the Newark Bay. It was a masterpiece of engineering and I fought the good fight, not to mention a lot of people in this room, because I thought the only way to end this was to get it done. I came here today to tell you that I am a bigger man for admitting defeat. It simply cannot be done. Whether that's good or bad, it cannot be done. I said I had been defeated. I did not say I'd be gracious about it. As a matter of financing, it is too expensive. As a matter of engineering, it is too complex. As a matter of environmental protection, it is too uncertain. And so with this Congress I am going to move to de-authorize the construction of the Passaic River Tunnel and, I hope, instead, to substitute it with a better plan. The better plan may sound appealing but is going to require some political leadership, some sound planning, and more than a little public courage, because it is one thing to say that instead of building a tunnel we are going to preserve wetlands, stop over-

development, and have the public purchase endangered lands that should be saved. It is quite another thing to do it. This process is going to require the leadership of Governor Whitman and the Legislature and mostly some sound, responsible planning for all of the communities that abut the Passaic and Ramapo Rivers.

The fact of the matter is the entire flooding of the Passaic River is an unnecessary financial and human tragedy. It never should have happened. A confluence of factors, including zoning boards over 50 years, and mayors who were not responsible to their people or communities, created a tragedy that did not have to happen. The plan I am about to outline to you does not guarantee success either, unless we've learned something along the way.

First, it will require significant investment in buying open spaces in these watersheds. Even those most committed to stopping this flooding are still approving the division of land, the new housing tracts and new shopping centers. This will fail unless from Lyndhurst to Wayne and from Mahwah to Little Falls people have the sound judgment to stop over-construction in these lands. This will require federal and state money to purchase the most endangered lands and to assure that they are preserved forever.

Second, it will require the beginning of municipalities stopping the combined sewer overflow problem. The most significant water pollution problem in our country is now combined sewer overflow. It is not only the principal route of garbage and water pollution into our rivers, but it also is leading to massive overflow in your systems, which not only brings dirty water but excess water into the rivers at the same time.

To do all this will require probably replacing the \$1.2 billion authorized for the Passaic River Tunnel with \$700 million of sewer construction, land preservation, work on the banks of the Passaic and Ramapo Rivers, and a variety of other engineering objectives. It will be long, difficult, and complex, but what is also notable about this marker in the environmental movement 100 years after it began is that the technology and the knowledge do exist.

If Teddy Roosevelt believed our only environmental problems were in saving Yellowstone and the vast forests and plains in the west, it was a reflection of the reality of his time. If others simply believe that abandoning our cities to provide opportunities for companies in farmlands and forests was good economic planning, they cannot be faulted because perhaps at *their* time they didn't understand the consequences or did not know better. Some did not believe that the viruses and bacteria that grow in these water systems and polluted sys-

tems are a danger to our children. It could be said that the science did not exist. But in our time, none of those things can be said. We have abandoned the fight to have recreational and permanently preserved lands in the midst of our own population. We now know better. We know what has led to water pollution. We know the consequences of over-development. If we fail to do something now, it is not because we do not know better; it is because we chose to live with the problem. It does not have to be part of *our* time.

I am very proud to have in this room so many allies that have helped in so very many ways. Lillian Barone is an example of the public sector, as certainly as Cindy Zipf is and as Ella Filippone is on the civic side, and so, too, some of our best corporate citizens. But most significant today is the fact that Seton Hall would take this initiative to bring all of us together for this conversation. Knowing that we are not only educating ourselves or the leaders of this movement, but in many ways people who will prepare the next generation to lead to what will be many, many years of concerted efforts to solve these problems. Seton Hall has reason to be very proud today, and I am very proud to be a part of this.

Thank you.