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INTRODUCTORY NOTE:

SOME THOUGHTS ABOUT THE VALUE OF A PROFESSION

ROGER G. KENNEDY*

We who are lawyers and conservationists have in recent years overvalued adversarial jurisprudence, I think, and undervalued the law of community. It is time to give more energy to law as a binding force, more emphasis to equal rights within a system of ordered liberty. Lawyering may more often be generous and affirming. It may be participatory and deferential, rather than manifest that invidious cleverness which has rendered good causes too often unappealing.

I do not suggest that the law of community should be smug or indolent. When equal rights are violated, idiosyncratically or systematically, when the social compact is betrayed or ruptured, we should take to the streets, we should sue, we should deploy every shrewd device to call to conscience the better sense of the community. But conscientious environmentalists must learn to be more respectful and to build alliances.

Reinhold Neibuhr is a good mentor: no citizen should be treated as if he or she were unworthy of being heeded. Nor should any citizen, however rich or celebrated, be accorded disproportionate power or credence. The implicit ground of the law of community is that none of us are either so depraved or so exalted either to be dealt out of the great game of civil life, or dealt extra cards.

In the eighties, our sense of law as a binding force frayed and unraveled. Litigation became the first resort, not the second; sustained ameliorative effort became unappealing to ardent spirits. The calvary raided, and the infantry stayed home. The institutions of conservation, the patient conservators and protectors, such as the National Park Service, suffered. The physical assets they tended were allowed to deteriorate disgracefully, as their antagonists and predators gained converts while their leaders were muzzled and too many of those who should have been their friends were content with one-liners, photo-ops, thirty-second spots and spasms of heroic litigation. The cause of conservation suffered as feeling good replaced doing good. The long-sustained, arduous, complex process of learning science, learning the law and managing in accordance with experience, seemed to many bright young things too much trouble and boring. Professionals—people who go to the trouble of doing

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things over enough time so as to learn what works and what does not—were undervalued, while celebrities danced out a choreography of clever haste on television.

It is time, I think, to interest ourselves again in process, in honest consultation and discussion, in listening, in striving for consensus (yes, even for consensus) so that change will become internal to organizations and will endure. There will always be a role for the calvary—or, if that reference seems hopelessly antiquated—for the stukas. But they should be more respectful of people slogging around on the ground, bloody and muddy and very tired, but getting up every day to get back to the uncelebrated, unglamorous, and the lasting. It is on the ground that one learns about the care of the earth.

And here's a pitch—while we solicit a little more respect for the professionals—especially for the professionals in the National Park Service—I suggest to young lawyers: think about this line of work. It has its satisfactions. And they last.