

**REMARKS OF THE HONORABLE
TIMOTHY E. WIRTH: SYMPOSIUM IN
HONOR OF DAVID H. GETCHES**

TIMOTHY E. WIRTH*

Good morning and thank you all for coming. I feel privileged to be here today to join you in reflecting on the life and work of David Getches, one of the real treasures of the legal profession, of environmental history, of this University, and [of] our broader community.

David was my friend—we ran rivers together, talked a lot of politics, and he flattered me by inviting me many times to meet with his faculty and students. He recruited my son, Christopher—one of his students—to be his assistant on the little book, *Water Law in a Nutshell*, which has a proud spot in our library.

We all feel cheated by David's early departure—I think of punctual David; he was always on time. It is still a jolt to think of the late David Getches. I would have valued his counsel—as [always], we would have sat on river banks trying to puzzle through what had gone wrong in our country and what we could do about it. David and I—and many of you here today—were of a generation keenly aware of the opportunities we had been given and our responsibilities to [ensure] that future generations [have] [those] opportunities as well.

Like John Leshy,¹ I would like to frame my remarks in a generational context. Many [of my] thoughts echo John's good talk. We were products of a previous generation that made huge investments in our public spaces:

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1. John D. Leshy, *Reflections on Social Change and Law Reform*, 84 U. COLO. L. REV. 221 (2012).

- our great public universities;
- remarkable advances in the public health;
- public parks and public libraries;
- a vast public transportation system, open to everyone; and
- public electrification, public broadcasting, and a public interest standard to govern the public's airwaves.

The public invested in the Marshall Plan, rebuilt our international financial institutions, and built the United Nations. For our lucky generation, these investments were governed by a broadly shared sense of public responsibility and the public interest. An unprecedented number of Americans benefited [from the] deep sense of possibility and optimism.

David, and much of his generation, built another American structure on this public legacy and developed a new layer of common, public institutions:

- the Civil Rights Movement, in all of its ramifications;
- women's access and equality;
- the voice of the consumer; and
- the environmental awakening (perhaps most profound right here).

David was dedicated to making our country more economically, socially, and environmentally just. He believed that it was important to break down barriers to equal opportunity in the United States. He worked throughout his life to help ensure that all Americans had access to the educational experiences that underlie individual and societal progress. He valued wilderness and the natural world and wanted to make sure that future generations could enjoy the same experiences he had climbing the mountains of Colorado and running the rivers of the west.

Based on these values, David fought and won the Boldt² decision that gave Native Americans in Washington access to salmon fisheries. He founded and ran the Native American Rights Fund. His knowledge and work ethic made him a preeminent resource in the creation of wilderness areas and the establishment of water rights within them. He helped

2. *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), *aff'd and remanded*, 520 F.2d 676 (9th Cir. 1975).

brokered the agreement that recognized the water rights of the Southern Ute and Mountain Ute Tribes in southwest Colorado. He created the Natural Resources Law Center here. And, as Dean, he rebuilt this law school—as is reflected not only in this building but also in the diverse and dynamic scholars he recruited.

His life's work demonstrated that the law, the legislature, and the courts can be made to work for the disadvantaged, the disenfranchised, and the environment. But, as David—ever the cheerful optimist—often pointed out, this work was getting harder all the time. [For example]:

- our environment is more threatened than ever, with accurate measurements that tell this important and depressing story;
- battles for equal opportunity have had mixed results at best, with income indices for minorities, immigration law, and even the rights of women now under broad assault; and
- the gap between rich and poor has grown dramatically; while our historic investments in public institutions have frayed for one America, the other America lives within a gated community, with access to quality schools, good health care, and real economic opportunity.

David would be wrapping his head around these huge challenges, urging his faculty to join, and leading his students in a set of new commitments for what is right for America. [David would ask the following questions]:

- What is the role of corporations in governance? Is there an antidote to their enormous concentration of economic and political power?; and
- How should financial institutions be regulated? They were once considered akin to public utilities, and now seem to have become vehicles for private gain. Is this right, and if not, what is the solution?

As John Leshy described so well, the Executive [branch] and Congress are under attack, so too are the courts.³ Who else

3. Leshy, *supra* note 1.

can adjudicate questions of the common good, and will they maintain their more progressive role?

Work used to be defined in pretty much the same way, and so were incomes. But modern specialization has led to great disparities. Is capitalism too efficient?

Under what condition might our country, and the world, accept a climate treaty? What building blocks must first be in place, and what new legal regimes will be required?

Finally, and perhaps most important[ly], how might we deal with the tangled and destructive campaign finance system? From the earliest days of the Republic, special interests have attempted to purchase politicians and political outcomes. What is different today is the size and pervasiveness of the money involved, the growing veil of secrecy surrounding political money, and the apparent naiveté or indifference of our highest court to this powerful, corrupting, and stultifying political cancer. As Justice Stevens wrote in his dissent to *Citizens United*, “A democracy cannot function effectively when its constituent members believe laws are being bought and sold.”⁴

These are some of the major issues of today and tomorrow. As [Professor Sarah Krakoff] wrote in her invitation to this symposium, David lived several lives in one. His scholarship was as far reaching as his curiosity and grew to assume new issues and to try to understand new challenges. As he opened up Indian law, forged some order from the chaos of water law, codified new approaches to natural resource law, and even tried to streamline and reform the Department of the Interior, David demonstrated his enormous capacity, his ethical standards for how we should operate, and his moral code for right and wrong.

He had built his school, grown his faculty, and pointed the enterprise in the direction he had calibrated. I am certain that [now] he would [turn] his attention to the great emerging challenges of today and to ways in which the law could contribute. His cheerful leadership would have helped to sketch new definitions of the public good.

We are left behind to do that work without him. I suspect that we all know what he would [urge] us to do. So let us get with it before the country slips away. Time is short and there is so much to do. Thank you.

4. *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010).