



# Department of Justice

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ADDRESS

BY

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BEFORE

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Many of you, during the almost 15 months that I have been Attorney General, have asked me what it is like. In brief, I can say that it is exciting, complex, demanding and almost impossible. It involves administering a department consisting of 54,000 people, divided roughly into 26 parts.

It is a department which has drifted for several years from issue to issue, reacting rather than acting; usually on the defensive, sometimes under attack from the media and always a favorite target. It's goals were hardly discernable when I arrived in Washington. Attorney General Levi had just begun to bring the Department out of the doldrums and I am thankful for his start. I have been building on his start and we are beginning to manage it with stated policies and definite goals as tools.

My time as Attorney General has been devoted to:

(1) general management including advising the President on legal matters, (2) working with Congress, (3) public relations through speaking and the media; and (4) foreign intelligence. Each of these areas takes about one-fourth of my time.

I have tried to learn all that I can about the history of the Justice Department. The last history of the Department is entitled "Federal Justice." Federal Justice was written by former Attorney General Homer Cummings and his special assistant, Carl McFarland. It covers the office of

Attorney General from 1789, and the Department of Justice from 1870, when it was created, through 1936.

It is a story of history repeating itself. Many of the things in controversy today have been great issues in the past. Even the IBM case has a short life, only nine years to date, compared to the litigation that ensued over the telephone patents. That litigation lasted for 30 years. More correctly, the litigation covered just 15 years and it took an additional 15 years to find an Attorney General who had the courage to dismiss it, given the fact that it was a loser for the government. Several of the Attorneys General during this period sought the advice of Congress, hoping for some sharing of responsibility, but they were never able to raise a response.

The first Attorney General was Edmund Randolph. The office of Attorney General was created in the First Congress, 1789. Randolph had served as an aide to General Washington and as an Attorney General of Virginia. He was a close friend of President Washington, as well as his lawyer -- but in that day, far from Watergate, no one suggested that he was disqualified by virtue of being a friend or, as some would say, a crony.

In those days the Attorney General was not expected to work full time. He spent most of his time in private practice. Over the years it was thought that private practice

would sharpen one's intellect and improve one's legal ability so as to enable the rendition of more efficient service to the government, or so said Senator Rowan of Kentucky in 1830.

Many of the great cases of the day, the Dartmouth College case, Gibbons v. Ogden, Chisholm v. Georgia, were private cases but were argued by Attorneys General in their capacity as private counsel.

It was not until 1853 that the office of Attorney General became a full time office, and the private practice of law was no longer permitted.

Even in the early days of the Republic, there were those in public life who objected to the loss of privacy. For example, Attorney General Evarts, who served immediately after the Civil War, resigned and in so doing stated, "I shall return to my business of farming and lawing and leave to the newspaper correspondents the conduct of affairs."

During this history of the Department of Justice, there were a total of 55 Attorneys General. They served an average of 2.6 years, some serving less than a year and one as long as 11 years. Some were brilliant, some hardly up to the office. One was described, in a contradiction of terms, as being a "fat-brained, good-hearted, sensible old man."

Even in the early days of the Republic there were comments on public officials who did not socialize to the degree thought proper by Washington society. Harper's Weekly

in the late 1850s wrote of President Buchanan's Attorney General, Jeremiah Black, "... though you never meet the Attorney General at a ball or a soiree you can find him all day in the Supreme Court and nearly all night at his office."

One feels the history of our nation when viewing the portraits of the past Attorneys General which hang in the main Department building. There were two from Georgia -- Berrien and Akerman. I naturally have moved them to the fifth floor near my office.

In the Attorney General's Conference Room, I have the portraits of Tom Clark and Robert Kennedy, two friends. I also have the portrait of Justice Robert Jackson in the Conference Room. I have him there because he was a great Justice of the Supreme Court, a great Attorney General, and the last Attorney General who did not go to law school in the formal sense. It has been said that he is there because he was the last Baptist to be Attorney General -- before January, 1977, that is.

I have had the portrait of Lincoln's second Attorney General, James Speed of Kentucky, moved to the Conference Room. I feel an affinity to Speed. He was a Southerner who had a difficult time being confirmed by the Senate. Some thought that his place of birth made him suspect.

Until the James Speed portrait was moved in, Chief Justice Harlan Fiske Stone's portrait hung in the Conference

Room. As Attorney General in 1924, Justice Stone appointed J. Edgar Hoover as Director of the Federal Bureau of Investigation, the first Director of the Bureau to be confirmed by the Senate. I felt it appropriate that his portrait stay close by during our search for a new FBI Director to remind me of the high standards set for the FBI.

Part of the Bureau's lore is that oft-quoted, although perhaps apocryphal, conversation in the Attorney General's office in 1924. Stone offered Hoover the job. Hoover reportedly said, "I'll take the job, Mr. Stone, on certain conditions."

"What are they?" the Attorney General asked.

"The Bureau must be divorced from politics and not be a catch-all for political hacks. Appointments must be based on merit. Second, promotions will be made on proved ability and the Bureau will be responsible only to the Attorney General," Hoover replied.

Stone was delighted with the terms and said, "I wouldn't give it to you under any other conditions. That's all. Good day."

I think it is more than coincidence that our new director, Judge William Webster, was careful to exact similar terms.

One of the most positive public events I've witnessed in Washington was the swearing-in ceremony of Judge Webster as Director of the FBI. Present in the FBI

Auditorium was the President, the Vice President, the Chief Justice, the leaders of Congress, and a number of others. I told the President at the beginning of the ceremony that I had done a good deal of studying to see if we couldn't trace the beginning of the FBI to Georgia. I had found that there was no Department of Justice until 1870. We had an Attorney General from 1789, the First Congress. But in 1870 an Attorney General from Georgia, the last one we had, whose name was Amos Akerman, was appointed by President Grant and that was the year the Department of Justice was created. We have been careful not to know anything about Mr. Akerman in Georgia because he was appointed by U. S. Grant. The fact is that he got the first appropriation from the Congress to form an investigative unit to assist the Attorney General and the U. S. Attorneys over the country. That appropriation was annual thereafter and it was that money that was finally used, along with some more, to establish the Bureau of Investigation in 1909.

Most of the investigative work of the U. S. Attorneys at that time was done by U. S. Marshals. This was something else that I brought to the President's attention on the day the new FBI Director was sworn in. The Marshals were able to save a good deal of money. They were paid one dollar for capturing fugitives . . . alive. If they were brought in dead, they got no money at all and had to pay the burial expenses.



The high point, probably, of law enforcement in the federal government, prior to the establishment of the FBI, was in 1903 when Attorney General James McReynolds was in office. Someone got in touch with him seeking help to find a kidnaped daughter. He replied, "You should furnish me with the names of the parties holding your daughter in bondage, the particular place where she is being held and the names of the witnesses by whom the facts can be proved."

Now let me say a few words about where I think we are at the Department in terms of accomplishments and problems.

I perceive a change of attitude on the part of the American people. I hope that we are reaching the end of the Watergate syndrome. I believe that the confidence of the American people has been restored in their government at least to the extent that they are now willing to give those in government an opportunity to perform as public servants in the traditional sense. When I say traditional sense, I mean traditional in that all Americans, including public officials, have been presumed to be honest and the burden of proof is on those contending otherwise. We have been through a low period where the burden was shifted in the eyes of too many of our citizens. I believe that we are nearing the end of a period of healing in our country and that we can go forward in a spirit of civility toward each other and toward those who perform in positions of leadership in our government.

No one in particular can claim credit for this shift. The American people shift as they please, but I do recognize it and we must assure that their confidence is enhanced.

Now at this point I must add a caveat. My perception is based on my visits over the country and in Washington with people from all walks of life. Their views and hopes are a good deal more charitable than those of a few of our opinion givers who unfortunately are holding fast to the Watergate syndrome and are not yet ready to face the reality that our country must put suspicion and carping behind us. The alternative, as I see it, is something approaching the McCarthy era of the 1950s but this time using the Watergate lexicons of obstruction of justice, cover-up, aider and abettor and the like in a loose, unethical and non-due process approach toward those who have the audacity to serve in high public positions. We can do better than this. Indeed, we are better.

As to the Department of Justice, itself, it must be as independent as possible. It cannot be completely independent because the Attorney General serves as the agent of the President in carrying out the constitutional duty of the President faithfully to execute the laws. It is necessary, however, for the Attorney General to have a full measure of independence if we are to hew as carefully to the law as possible. It is the Attorney General who is responsible

through the Office of Legal Counsel for rendering the more substantial legal opinions to the President and other high government officials. It is the Attorney General, acting through the Solicitor General, who sets the tone and thread of the law through the appellate process.

We must take care not to balkanize the legal position of the government. This means that the more substantial legal opinions must be rendered from one source. We must also maintain a centralized litigating capacity.

It was this balkanization of the litigating capacity of the government that led to the creation of the Department of Justice in 1870. The litigating capacity and the lawyers were scattered through the various departments of the government at that time and it was impossible for the government to speak with one legal voice in court or, for that matter, out of court.

Almost continually since 1870, we have seen an effort on the part of some agencies to have their own litigating capacity. There are now 31 agencies who go their own route in litigating, notwithstanding that we are supposed to have a Department of Justice. Others are seeking such power. One sees the problem when we observe that there are 3,806 lawyers in the Department of Justice and 11,934 outside the Department (incidentally up from 115 in and 785 outside the Department in 1928).

It is one thing to be a government dedicated to law. It is quite another to be a government of many parts, each part following its own view of the law, with one part in conflict with other parts. It is the difference between a system of law and a nonsystem.

In 1977, in another area, we endeavored to give national leadership in improving the administration of justice, including both criminal and civil justice. We concentrated on improving the delivery of justice in the hope of making "equal justice under law" a meaningful promise in the sense that justice will be available to all on a prompt and inexpensive basis. We are working closely with the Senate and House on a number of important measures in this area. It was for this purpose that we created the Office for Improvements in the Administration of Justice. We have high hopes for 1978. It may be a vintage year for those who want our justice system to be as responsive as possible.

The great issues facing us this year lie in the area of legislation having to do with resolving the problems of undocumented aliens, in completing and implementing a program to reduce crime, in completing the reorganization of LEAA, in finishing the legislative efforts begun in 1977, in completing the reorganization of the litigating divisions of the Department, and in organizing the relationship between my office and the 94 U. S. Attorneys of our nation. We are at work on these problems.

Your greatest governmental problem, as I said here in 1974, when I referred to the future role of the federal courts, is to demand that the individual citizen and business -- the private sector -- are protected from the government. The basic premise of our system is to protect the governed from the governors.

In closing, I urge that we maintain our perspective of justice. Our justice system is not perfect. It will never be. It is like a democracy. It is the nature of a democracy never to be complete. Thus we strive to improve rather than to maintain the status quo. This adds a dimension of idealism to democracy, and this is true with justice. Problems sometimes appear larger than reality, but as Americans, a litigious lot, each of us has a feel for equal justice under law and we are able to discern any short-fall from equality or from fair treatment by governors, the regulators. It is our nature to demand the best in a system of ordered liberty -- where laws and not men are in control. I join you in seeking that end.

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