



Department of Justice

ADDRESS

BY

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BEFORE

THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

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William Penn wrote in 1682, in his Frame of Government for Pennsylvania: "Governments, like clocks, go from the motion men give them; and as governments are made and moved by men, so by them they are ruined too. Wherefore governments rather depend upon men than men upon governments."

It followed from such thoughts that no person or group of men in government, no matter the level or position, should have unfettered discretion in any matter. The founders structured the Federal system to make certain of this.

Long before I came to my current perspective of the Federal governmental system, I recognized that one of the most important principles that governed me for nearly fifteen years as a Federal appellate judge was a commitment to the practical soundness and theoretical wisdom of what constitutional scholars usually characterize as "Our Federalism."

Federalism is the idea or concept of government by which a sovereign people, for the purposes of enlightened government, yield a portion of their sovereignty to a political system that has more than one center of power and responsibility. The Constitution is expressly based on two centers of power -- Federal and state; but local government, which exists by virtue of a delegation of state authority, is a third such center.

Whatever else may be said of it, federalism is the idea of shared power with those holding the power to be at all times responsive to the will of the people in whom sovereignty ultimately resides. It is the opposite of nationalism where the government is sovereign as distinguished from the people. Federalism is also the opposite of a centralized government where there is no sharing of power as between levels of government.

Among the things I hope to accomplish as Attorney General is to do my part to ensure that Our Federalism is respected, and functionally operates as an integral element of the missions and goals that the Department of Justice has to fulfill.

In my office earlier this year, I asked 21 members of your executive committee to form a liaison committee to the Department in order to fashion a structural mechanism whereby matters of mutual concern could be discussed. Later that day, while meeting with your committee in the Cabinet Room, the President made the same request.

Deputy Attorney General Flaherty, for example, solicited your views on improving the Law Enforcement Assistance Administration. A Justice Department delegation is here at your meeting in Indianapolis for what I understand have already been productive meetings, and I look forward to meeting with your committees later today for additional discussions on a number of important matters.

During the past few months, I have spoken around the country about certain fundamental principles that I hope the Department of Justice will represent and will be perceived by the American people to represent -- Integrity. Openness. Fundamental fairness. Restraint.

I want to discuss with you today the role of Federalism in formulating a national policy for the delivery of justice.

The nation's problems cannot be solved by one tier of government alone. Each must do its utmost, including cooperating more fully with the others. This is particularly true of law enforcement and justice.

It is quickly apparent that the greatest criminal justice burdens rest at the state and local levels.

The Federal Bureau of Investigation has 8,500 Special Agents -- an impressive number -- but New York City alone has some 25,000 policemen.

There are 1,700 lawyers in the 94 offices of U.S. Attorney -- but California alone has 2,100 state and local prosecutors.

State and local governments bear the brunt of criminal justice -- with their immense volume of cases and related responsibilities, and equally immense expenditures.

Conflicts will inevitably arise between the Federal government and state governments over law enforcement policies. One of your current concerns is that sometimes

the Federal government demands more of the states than it demands of itself.

The problem is real, and I pledge to work for a policy that will require the Federal government to do all of those things it seeks to require of the states.

This would not mean that we will lessen Federal standards. But it does mean that the Federal government should maintain the same standards and practices that it says the states must have -- whether, as examples, in the areas of employment discrimination or the conditions in our prisons.

The Department of Justice itself does not always mirror what it has sought in the states. But we are going to do a much better job -- one that I hope will be above reproach.

In shaping new enforcement policies, we will combine what is reasonable and fair with what is effective.

Let me cite one example of concern to many of you: Federal suits alleging that inmates in state prisons and patients in state institutions have been denied their rights.

We cannot waver in our determination to uphold the law, but we must give a state a reasonable opportunity to solve the problem voluntarily before filing suit.

The goal would be to negotiate an agreement that protected civil rights of inmates or patients while giving the state some latitude to work out its problems as promptly as possible.

We will bring suit against a state only after efforts at voluntary compliance fail. We will inform you of our decisions. No state attorney general will learn from a newspaper or the televised evening news that we have just sued.

Another area of significant concern is prosecution of cases where there is dual jurisdiction. The Justice Department's general policy is to defer to a state prosecution unless there is an overriding Federal interest.

The Justice Department is refining its prosecution policies. In addition, the proposed Federal criminal code revision would remove certain offenses from Federal jurisdiction. We have sought to enhance cooperation through creation of Federal-State Law Enforcement Committees, and 22 of them are now in operation. We are instructing our U.S. Attorneys to cooperate and discuss prosecution policies with state and local prosecutors.

Our policy of full cooperation includes antitrust enforcement. The acting head of the Antitrust Division met with you yesterday to exchange views and harmonize working relationships.

Most of you are aware of the most recent instance of our determination to cooperate fully with state attorneys general in antitrust matters -- the Ampicillin case. That civil action, for both damages and injunctive relief, involves claims by the Federal government as well as

approximately 35 states against two antibiotic manufacturers.

The Federal government was recently offered a settlement on both damages and injunctive relief, which we were considering accepting when the states requested that we not settle independently.

We reviewed that request and the total situation carefully, and decided to reject the proposed independent settlement, and work with the states to seek a resolution of the entire case.

As you know, the Hart-Scott-Rodino bill provided a framework for even greater cooperation between the Department and state attorneys general than had been true in the past. We have been working closely with various states to develop an approach toward information sharing and cooperation which will meet the needs of both the states and the Department in more effective antitrust enforcement. We are committed not to just the letter but the spirit of the statute, and we will provide whatever information and cooperation we can to assist state enforcement activity. Of course, we must be careful not to adversely affect on-going Federal prosecutions, but that can be avoided by cooperation between the Department and the states.

Another important area in which we are moving ahead together in antitrust is the implementation of the state grant program. The Department enthusiastically supports this effort to provide seed money for state antitrust enforcement activities. We have already worked out

regulations for that program, in close study with the state attorneys general, and we are prepared to put the program into action as soon as funds are available.

Of course, the news is not all good. The Supreme Court's decision last week in the Illinois Brick case is being studied to see if new legislation is required. We welcome your views.

Time precludes a detailed discussion of all the areas where the Department assists state and local governments, but let me briefly mention a few.

The Federal Bureau of Investigation provides a broad range of aid -- including training, fingerprint identification, and crime laboratory services.

The Drug Enforcement Administration also works closely with state and local police and operates joint enforcement task forces in 23 major cities. We want even more effective programs against narcotics and we are now studying the possibility of converting DEA into a division of the FBI.

The Justice Department helped prepare the pending revision of the Federal criminal code. Friction between Federal and local prosecutors would be lessened, because the code takes the Federal government out of the business of prosecuting a number of offenses that should be left to local authorities to handle.

The Federal Bureau of Prisons provides technical assistance to state prison systems. Last December, the National Institute of Corrections awarded \$40,000 to your Association for seminars on corrections litigation.

Large-scale financial support for the Association of Attorneys General has been provided by the Law Enforcement Assistance Administration, with grants exceeding \$1 million since 1969.

I want to emphasize at this point that we are conducting an intensive study of LEAA. The agency has major problems, and we are attempting to determine the most appropriate future course.

One possibility would be to convert LEAA's block grant funds into special revenue sharing. Another possibility under review would be to redirect LEAA into an agency similar to the National Institute of Justice proposed by the American Bar Association.

It would finance criminal justice research and, for the first time, civil justice research as well. It also would carry on development work by financing a limited number of innovative short-term programs based on its research.

We have reached no final decisions on LEAA. But we approach the matter with the utmost seriousness and we want your further views and suggestions.

The Federal government has major responsibilities. But the work carried on at the state and local levels, under any concept of federalism, is critical to a national policy for the delivery of justice.

Such a national policy has been established as our overall goal. Its realization is possible only if Federal, state, and local officials each meet their responsibilities and are sensitive to the proper spheres of activity of the other.

I believe that with effort, we can have a viable and feasible national policy.

As Henry V said on the eve of battle with the French when it was suggested that the odds were heavy against him:

". . . proclaim it . . . through my host that he which hath no stomach to this fight, let him depart; his passport shall be made and crowns for convoy put into his purse."

I once knew a lawyer in North Georgia who always, as a first question on cross-examination, said to a witness: "So that is your swear, is it?" What I have said about the missions and goals of the Department of Justice is my swear. We need your help and I look forward to working with you. Thank you.