Department of Justice

ADDRESS

BY

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BEFORE

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In six months as Attorney General, one of my long-standing beliefs has been greatly strengthened: The belief that close cooperation must be developed among all levels of government if there is to be significant progress in criminal and civil justice.

Among other things, we need a clearer recognition that most justice responsibilities rest with cities, counties, and states.

Our system of government is based on Federalism. Washington should neither usurp the responsibilities of state and local governments nor try to dictate to them. Enlightened achievements are possible only if there is willing cooperation from partners with equal voices.

When I became Attorney General, I decided it was essential to have programs that aided the Federal system and also helped states and localities.

An intensive review of the Department was begun to see how every major activity could be improved.

One priority is to develop more effective programs against narcotics and dangerous drugs. We are studying an approach toward bringing the Drug Enforcement Administration together with the Federal Bureau of Investigation to combat drug trafficking.

New efforts also are being fashioned against other grave crime problems -- including white-collar crime, organized crime, and public corruption.

Another major study concerns the Law Enforcement Assistance Administration. Federal crime control aid must be continued, but it is essential that major improvements be made in LEAA.

One possibility would be to convert most LEAA funds into special revenue sharing. The new procedures would have to guarantee a fair share of funds for all segments of the justice system, including the courts.

In revitalizing the Department, it is not enough merely to improve existing programs. New efforts also must be fashioned to meet the complex judicial needs of the final quarter of the 20th Century. We have been through two decades of fixation on civil rights disturbances, the Vietnamese conflict, and Watergate. The time has come to return to the fundamentals; to examine, to refurbish, to innovate, and to rededicate our efforts to assuring a meaningful justice system which will also guarantee constitutional and statutory rights without diminishment.

One of my first acts as Attorney General was to create the Office for Improvements in the Administration of Justice, which is developing a variety of badly needed reforms.

Some relate directly to the Federal system, others to states and localities. But all are part of an intensive effort to help develop a vastly improved system for the national delivery of justice at all levels.

Many of the projects we are developing, while new to the Federal system, were first developed by the states. Under our system of Federalism, there is much we can contribute to each other. We all want, after all, to move toward a safer and fairer society.

The importance of state contributions was forcefully stated 45 years ago by Mr. Justice Brandeis in his dissenting opinion in New State Ice Company v. Liebmann. Though he was discussing social and economic issues, Justice Brandeis' comments apply equally to the justice system:

"It is one of the happy incidents of the federal system that a courageous state may, if its citizens choose, serve as a laboratory; and try novel...experiments without risk to the rest of the country."

Our 50 states are, indeed, laboratories for innovative developments in the law. A significant body of Federal law and procedure is based on spadework done by the states. I hope this spadework continues and increases, for it benefits the entire Nation.

A tentative proposal has been developed for compulsory but non-binding arbitration in some types of Federal civil cases. If successful, it could be a significant factor in eventually reducing case backlogs.

The proposal establishes methods of selecting arbitrators under the direction of the district courts and provides for right to counsel. Although intended to be informal, the hearings would generally be governed by the Federal Rules of Evidence and Procedure that apply to civil actions in such

matters as subpoenas and presentation of evidence.

Either party to arbitration could reject the decision and go to court. But, based on state experience, we feel there probably would be a high finality rate. One model for our study was the Ohio system, but programs in four other states were also studied.

I recently received for review another study that calls for creation of a Federal Justice Council -- a new development at the Federal level but one which dates back in some states to the early 1920s.

The Council would help resolve a problem that Mr. Justice Cardozo described in 1921. "Legislature and courts," he said, "move on in proud and silent isolation." The difficulties are not as acute today, but the need for congressional and judicial cooperation is still pressing.

One possibility is that the Council would be composed of the Vice President, the Chief Justice, the Attorney General, a judge selected by the Judicial Conference, and the chairmen and ranking minority members of the Senate and House Judiciary Committees.

The Council would be a catalyst for needed improvements in the courts and related functions. It also would make certain that legislative and executive branch proposals affecting the courts would be carefully studied before being enacted.

I have discussed the matter informally with Chief Justice Burger; indeed, it was his idea. I plan to discuss it with the President, the Vice President, and the appropriate members of the Judiciary Committees.

Earlier this year, the Justice Department made a major contribution to the proposed revision of the Federal Criminal Code. The code would be greatly simplified -- consolidated in the same way that criminal codes have been consolidated in nearly three dozen states. At the same time, the new code would be more effective and fair.

One of the bill's major provisions would create sentencing guidelines. Here again, the states have led the way. At least two states have eliminated indeterminate sentences for most offenses. Four or five other states are considering such a step.

Judicial tenure and removal commissions exist in 44 states, but not in the Federal system. The Federal government has no machinery short of impeachment to remove judges.

As I testified recently, we need new procedures to examine and investigate fully complaints against Federal judges relating to disabilities or improper conduct. We are lagging far behind the states.

I am not suggesting, of course, that everything we do stems from state projects. The Federal establishment also contributes. We have several efforts underway at this time.

One of the most promising is neighborhood justice centers, which will open in October in three cities with funds supplied by the Federal government. They will be in Los Angeles, Atlanta, and Kansas City, Missouri. We hope these centers, if successful, will be duplicated in scores of communities.

The centers would provide mediation services for settling many types of disputes in a setting of easy access, prompt decision, and low cost. If the centers were unable to resolve a dispute, the parties would be referred to courts or other agencies. The centers would be a major step toward moving justice closer to the people. It is our hope that centers of this type will become a part of state court systems.

Citizen access to the Federal District Courts would be facilitated by a proposed expansion of the authority of Federal magistrates.

Under a bill passed by the Senate and pending in the House, magistrates could preside over any civil case if the presiding District Court and the parties agreed. If authorized by the court, magistrates would automatically hear petty offenses and would hear other misdemeanor cases if the defendant consented. The bill also calls for improving the quality of magistrate appointments.

The new system would permit faster resolution of cases, giving access to the courts to many persons now kept away by costs or long delays. Another benefit would be the reduction of caseloads for the District judges.

I will mention some of our other efforts just briefly. We will intensify cooperation with the states in enforcing antitrust laws and in prosecuting fraud in government-supported programs. We are working to improve class action procedures, to develop more effective justice research and statistics programs, and to resolve problems in diversity jurisdiction.

Beyond the specifics of the Department's various projects there is a more fundamental consideration. As our society has grown more complex and justice problems have grown worse, we have sometimes heard pessimistic declarations that the difficulties can never be solved.

The problems are difficult, and solutions will not be easy or necessarily immediate. The costs will be great in labor and money. There will be discouraging setbacks.

But I believe that we can and will prevail. We must have tenacity. We must pursue the most elusive element in intergovernmental relations -- real, not surface, cooperation. And we must employ imagination.

Earlier, I quoted a sentence from the opinion of Mr. Justice Brandeis that may not be widely familiar. But Justice Brandeis concluded his dissent with a phrase that has become part of the language:

"If we would guide by the light of reason, we must let our minds be bold."

I adopt that statement. Let it be a beacon as we work to solve the difficult justice problems confronting the Nation.