



Department of Justice

ADDRESS

BY

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BEFORE

THE CONNECTICUT BAR ASSOCIATION

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I have been Attorney General now for almost nine months.

I gave myself six months to conclude problems that I found at the Department of Justice when I arrived. I have not been able to conclude many of those problems but I suppose that it is fair to say that they are now my problems and not those of the previous administration. These problems in the main are sensitive and difficult prosecutions. They involve complex legal questions and the delay in disposing of them is exacerbated by the delays which are inherent in the processes of the law.

Meanwhile, we have been doing many other things. We have new programs which are designed to establish and implement a national policy for the delivery of justice with the Attorney General in a planning and leadership role.

We are developing new approaches to the problems of organized crime, white collar crime, public corruption and drug trafficking. I am particularly interested in prosecuting those who steal from the government.

A great effort has been made to have the men and women of the Department rededicate themselves to the highest level of professional responsibility.

We have invoked certain fundamental principles which must pervade the Department and which must be present in everything that we do. One is openness. We strive to be as open with the public and with the media as we can possibly be within the confines of the law, the rules governing grand jury proceedings, ongoing investigations and due process.

We insist on a policy of fundamental fairness in our dealings with others which includes due process and one step beyond, a high level of decency and civility. We believe that sometimes our country, acting through its agents, is not as civil as it should be in dealings with its citizens and that there is often also a lack of civility between citizen and citizen.

And it would go without saying that we expect complete integrity in all that we do in the Department.

Another fundamental principle that we are trying to observe is that of restraint. We know that power is subject to abuse and that power is often abused. Our view is that the best use to make of power is to use it not at all or when absolutely necessary, to use it as sparingly as possible. We do not want anyone in the Department of Justice to assume a status of having a roving commission, going about making the world over in his or her own image.

I often think of Faulkner's great statement made on the occasion of his receiving the Nobel prize for literature. He said that, "I believe that man will not merely endure; he will prevail." It is easy to recall that statement when one is in Washington in a position such as Attorney General. However, one's thoughts are bifurcated. First, can one endure? Second, it is possible to prevail? I think of it in terms of coping and prevailing. I have learned to cope; I believe that we are prevailing.

We have a good program. We have good leaders, good lawyers in place to carry out our programs. We are carrying them out. We have a broad legislative program. It is progressing. Each of the twenty-five parts of the Department is functioning on a two-year plan which includes missions, goals, and methods to achieve the mission and goals.

You may want to know how I spend my time as Attorney General. I began by assessing the general situation and came to the view that the Department of Justice, like most of the government, was in need of refurbishment. We had been through the civil rights revolution of the 60's, the Vietnamese War, and Watergate. General management as well as continuing refurbishment necessarily gave way to these crises and the crisis environment which existed. The leadership of the government became issue oriented to the exclusion of the more mundane matters which required planning and effectuation. This background statement bears on how I function on a daily basis.

The work of the Attorney General breaks down into four general parts, each taking roughly one-fourth of my time. One is in the area of foreign intelligence which I handle for the President under delegated authority.

Second, I spend a good deal of time working with Congress. This is particularly true when we are pushing a large Justice Department legislative agenda such as now is the case, and in our function of assisting the President with the appointment of federal judges, United States Attorneys, and United States Marshals.

Another important area consists of speaking engagements and general attention to the media. It is important for the American people to have confidence in the Department of Justice and this is largely built through the perceptions of the media and in the transmittal of the media's perceptions on the air and in print. It is also important to insure accuracy to the extent possible in whatever is transmitted. I have long recognized the importance of the First Amendment and freedom of the press in our country, and I

make a strenuous effort to work with the media within the confines of the Constitution and consistent with my own responsibilities.

The balance of my time is consumed in general management which includes conferring and supervising some of the problems of the Department -- such as the difficult cases which we are now handling. Some part of this time also includes conferences with the President, but only as a last resort, and then about matters which should be approved by him or concerning matters about which he should be advised.

Now all of this is well and good but you would perhaps be more interested in understanding some of the techniques which one learns in government if one is to cope, much less prevail. I speak directly to the problem of bureaucracy and those techniques which the bureaucracy uses to survive, to control, and seemingly to expand, despite any change in leadership in government under our constitutional system through the election process.

I recite some general bureaucratic principles which are drawn from my own experiences in Washington. These are true experiences although they may sound humorous. For example, I was subjected to what we now call "the flooding principle" immediately upon assuming office. This principle operates on the basis of department heads flooding the new supervisor with long reports, more voluminous than can be absorbed, even if all could be read. This creates the facade of much work being done, and much importance being given to what is being done.

A variation of this principle is to use the method of inducing an assumption of authority by burying some proposal in the midst of a long report. We can identify this as the "burying principle." Some contemplated action is buried in the report and will be undertaken unless one is fortunate enough to stop it.

Another great technique is the "leak principle." It operates in two ways. One, the new leader is embarrassed and

confused by constant leaks concerning matters which have not come to his or her attention. This keeps one in the position of playing catch up, rather than being in charge. The second and most vicious use of the principle is to attempt to control one's conduct. A good example was in a case where I had authorized an indictment and someone in the Department had recommended other indictments. It is fair to say, I think, that some thought that I might not authorize the additional indictments, and a story was thus promptly leaked that I would authorize the additional indictments. This was designed to put me in the position of appearing to change my mind rather than to make up my mind. It is important to recognize these techniques for what they are and to act accordingly.

Another principle is known as a "cry politics" theory. If some member of Congress happens to inquire about a matter, it is easy for those immediately in charge of the matter to contend that there has been an effort to politicize and thus wrest

control from the Attorney General or other person in charge.

Ninety-nine per cent of such inquiries are proper in a representative form of government such as ours and quite harmless. A variation of this principle is seen in a few U.S. Attorneys and others who assume a form of tenure by virtue of having engaged in sensitive prosecutions. The theory is that one having the audacity to remove or replace them is siding with those being investigated; hence, one would not dare remove them.

One bureaucratic technique that interferes with management is to avoid making decisions, the "play it safe" principle. This works in two ways. The question can be sent up or bucked up for decision with the predictable result that it will be sent back for study. Or, it can be bucked down for study. In either event, decision-making can be avoided.

There is no discipline in the bureaucracy comparable to what might happen in the private sector for this kind of activity.

Indeed, these techniques are foreign to the private sector and are not readily recognizable to the newcomer.

There is, however, another bureaucratic principle which I wish to discuss. It is one that is easily recognized. It is a combination of expansion and power. Most every agency in the government and many subparts of agencies now have their own lawyers. There are numerous people in Washington who bear the title general counsel. It is commonplace for these agencies to rely on the advice of their own counsel in important matters, rather than seeking the opinion of the Office of Legal Counsel at the Department of Justice. The President relies on the Office of Legal Counsel. I rely on it. A few others do. More and more, even the Congress seeks the advice of the Office of Legal Counsel.

It is normal in the private sector for corporations to have their own house counsel. But hardly any business today is without the advice of outside counsel. Every businessman knows that the advice of objective outside counsel is needed

on important questions. It seems to me that one way to improve our government is to have one office staffed by good lawyers who render objective advice on any question of importance. This will ensure orderly government within the strictures of the law and will make certain that the government speaks with one legal voice. This is not now a substantial problem in the government but there is considerable room for improvement.

I must point out, however, that a new dimension is arising in the increasing use of house counsel and this new dimension will become a problem. More and more, the agencies are seeking their own litigating capacity. Thus they want not only their own legal advisers but they wish to have their own litigators. There would be no central authority to represent the government in court. A number of agencies have been able to obtain authority to litigate their own cases. Others are seeking such authority. The result will be Balkanization. The legal voice of the government will be split into many parts. One favorite approach is to give the Department of Justice a limited time to litigate

or appeal, and if nothing is done, the matter then is placed in the hands of the agency litigators to take whatever route they wish to take.

I think that this effort is improvident. It represents a poor governmental practice. We must have one Justice Department and one central unit to represent the United States government in the courts. I am fighting for this principle on all fronts and I intend to continue the fight.

This presupposes, of course, that the Department of Justice will be professional: that we will have competent litigators and adequate litigating capacity. It presupposes that we as lawyers will treat the agencies as clients, and it presupposes that the Solicitor General, as is now the case, will seek the views of all interested or affected agencies where there is multiple agency concern.

In closing let me emphasize that only this last bureaucratic principle is not readily soluable. The first four, once recognized, will be unsuccessful if tried on strong managers.

In any event, these techniques will not be used by any person dedicated to high standards of professionalism.

The last principle, however, that of expanding house counsel operations, involves the Congress and many parts of the Executive Branch. It is being studied as a part of the reorganization of the government. To cope and prevail over this effort will be a major challenge since its premise is based on expanding the power of the bureaucracy. If successful, its effect will be to weaken our system of government in a profound way.

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