Department of Justice

ADDRESS

OF

THE HONORABLE GRIFFIN B. BELL

ATTORNEY GENERAL OF THE UNITED STATES

BEFORE THE

VERMONT BAR ASSOCIATION

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In my 20 months as Attorney General, one of my foremost concerns has been to make the Department of Justice as independent and as professional as possible. I would like to discuss with you today some of the difficulties we have faced and how we are working to resolve them, and to indicate the directions we see for the future.

To appreciate the nature of our tasks, it is important to understand something of the background of the Department and its problems. When the first Attorney General was appointed in 1789, his duties were few and sharply defined: He was the legal advisor to the President and other executive officers, and he represented the government in court. There was not even a Department of Justice until 1870.

By contrast, I administer a complex Department of 55,000 employees, only about 3,800 of whom are lawyers engaged in lawyering. The Attorney General now also has to be responsible for two huge investigative agencies, the FBI and the Drug Enforcement Administration; the Federal prison system; administration of immigration laws; law enforcement grants and research funds; recommending nominees to be Federal judges and U.S. Attorneys and Marshals; and much more.

While all of that work is important, the supervision of prosecutions, civil litigation and counselling are still the most important duties of any Attorney General.

In these roles, the Attorney General necessarily wields enormous power over Americans. Nearly 40 years ago, Attorney General Robert H. Jackson discussed this power.

"The prosecutor," he said, "has more control over life, liberty, and reputation than any other person in America. While the prosecutor at his best is one of the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst. . . . The citizen's safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches his task with humility."

Attorneys General and the Department of Justice traditionally have exercised their power with fealty to Jackson's principles. The same is true today.

Unfortunately, however, the partisan activities of some Attorneys General in this century, combined with the legacy of Watergate, have given rise to an understandable public concern that some decisions at Justice may be the products of favor or pressure or politics. The President, as a candidate, was deeply troubled by this public perception. As you know, he promised an "independent" Attorney General and Justice Department. At the time, and even after becoming President, he gave some thought to making the Attorney General independent of the President, since White House influences on the Justice Department -- real and suspected -- had contributed greatly to the public concern.

He has done all that he can, given our Constitution, to make the Attorney General independent. In sum, this campaign pledge has been carried out.

The President is charged by the Constitution with the duty to "take Care that the Laws be faithfully executed." He, and he alone, is ultimately accountable to the people for his performance of this duty. But the President has delegated certain responsibilities to the Attorney General in the first instance. The Attorney General must discharge his functions with a high sense of public duty, and with the customary ethical accountability of any lawyer to the courts. But in a constitutional sense the Attorney General remains responsible to the President, and the President to the public.

Although true institutional independence is therefore impossible, the President is best served if the Attorney General and the lawyers who assist him are free to exercise their professional judgments. Just as important, they must be perceived by the American people as being free to do so.

The President retains the power -- and the duty -- to accept or reject the Attorney General's judgments. There will and must always be free access and easy but confidential communication between the President and the Attorney General. That is the case now. The course best calculated to inspire public confidence in the "faithful execution of the laws," however, is for the President to allow the Attorney General freedom from undue

influence in the first instance, to accept the Attorney General's judgments in specific cases, and to remove him if his judgments seem wrong. I know that President Carter agrees with that statement.

Both the President and I continue to search for the most realistic ways to minimize the chance that improper influence may be brought to bear on the Department, and to reduce the public's concern.

I have come to believe that the task requires three things. First, we must establish Department procedures and principles that will ensure, to the extent possible, that improper considerations will not enter into our legal judgment. Second, the public must know of and have confidence in these procedures and principles. Third, we must ensure that the lawyers in the Department are persons of good judgment and integrity.

I believe that the last requirement is now met. I know from personal observations that the lawyers in Justice are faithful to a high standard of professionalism and are steadfastly independent in their legal judgment regardless of outside pressures or controversy. Earlier this week I spoke at an open meeting to all lawyers in the Department and set forth the procedures and principles which I believed necessary to protect our legal judgments from even the appearance of improper influence. Although some of the procedures and principles were established before my arrival in Washington, I discussed them at length with

the lawyers to emphasize the Department's current policy. I was gratified that my remarks received good coverage in the media, because I believe it important that the public know of the steps that are taken to ensure that justice is administered fairly. In that spirit, I would like to share with you briefly the procedures and principles as I laid them out to the lawyers.

The primary responsibility for exercising the Department's functions as prosecutor and as a civil litigant has been assigned by regulation to the various Assistant Attorneys General in the Department. It is their responsibility to make decisions concerning the prosecution, filing, and defense of such cases. In the process of reaching any decision, an Assistant Attorney General may consult with the Deputy Attorney General or the Associate Attorney General, or with me. But it is the Assistant Attorney General's responsibility to reach a decision in the first instance.

The Assistant Attorneys General must be insulated from influences that should not affect decisions in particular criminal or civil cases. Thus, all communications about particular cases from Members of Congress or their staffs, or members of the White House staff are to be referred to my office or the offices of the Deputy or the Associate Attorney General. It is our job to screen these communications to ensure that any improper attempt to influence the decision does not reach the Assistant

Attorney General. Any relevant information or legal argument is, of course, passed on.

Singling out these persons whose communications are to be screened does not mean that they are especially prone to attempts to exercise improper influence. The problem is that their positions of power create a potential for unintentional influence upon a decision, or more often, may give rise to the broad appearance of improper influence.

Cabinet officers, state officials, political party officials, recognized "interest groups," and the like are exempt from this screening procedure. This does not mean that they may never try to exercise improper influence. But the potential for improper influence or questionable appearances in communications from such persons is not so great as to require that their communications be screened. The Assistant Attorneys General have been instructed to be alert for perceived improper communications from whatever source, and to report them to their superiors.

As an additional measure to help spot potential trouble, I directed each Assistant Attorney General to report to the Deputy or the Associate <u>all</u> communications about specific cases by persons other than those involved in the litigation. This includes especially any communication whatever that seems even marginally improper.

In addition to these measures, I have promised that the Deputy, the Associate, and I will reduce to writing our reasons for overruling any litigation or prosecution decision of an Assistant Attorney General. If possible, those reasons will be made public. I recently did exactly that when I overruled the Antitrust Division and permitted a major merger which they had opposed.

These procedures reflect the principle that must govern outside contacts with respect to the Department's cases. Simply put, that principle is that it is improper for any member of Congress, any member of the White House staff, or anyone else to attempt to influence anyone in the Justice Department with respect to a particular litigation decision except by legal argument or the provision of relevant facts.

This principle is essential to the proper function of the Justice Department because litigation decisions are frequently discretionary. The ultimate criterion is that they be fair. We at Justice are not infallible, but the awesome responsibility for wielding our power fairly is ours alone. Our notions of fairness must not change from case to case. They must not be influenced by partisanship or the privileged social, political or interest group position of either the individuals involved in particular cases or those who may seek to intervene against them or on their behalf. I believe that these restrictions are a small price, and a necessary one, for restoring and maintaining

public confidence in the Department of Justice. The only disadvantage involved is that communications may be less direct. But these costs are substantially outweighed by the benefits of renewed confidence in the integrity of the Department's decisions. We cannot quantify benefits, but everyone knows intuitively that the confidence of our citizens in our government and its justice system is beyond value.

Regulations and rules -- even the ones I have just discussed -- can, on occasion, prove to be fragile. It may be that the most powerful influences on the side of what is lawful and right could be custom and tradition. Recent events, including the direction by the President that the Attorney General be independent, have given us an opportunity to strengthen the tradition of independence for the Justice Department.

I am reminded of the English experience. As you may know, the English Attorney General is independent by tradition. This tradition was greatly strengthened after an incident in the 1920s. At that time, it was believed by many that the English Attorney General had yielded to pressures brought on him by some of his colleagues in the Cabinet in deciding not to prosecute a certain case Whether that was true is still debated, but the mere suspicion precipitated the downfall of the government. Since that time, the independence of the English Attorney General and the impropriety of anyone's attempting to influence his decisions have assumed the status of a constitutional rule. Any violation of that rule in Great Britain today would result either in the dismissal of the Attorney General or the fall of the government.

What happened in this country during the Watergate period may roughly parallel the fall of that English government in the 1920s. Out of these unfortunate events we, like the English of 50 years ago, may now be in the position to establish firmly the tradition that the Attorney General and the lawyers under him must be free from outside interference in reaching professional judgments on legal matters. I hope to do everything I can in my time to help establish and reinforce such a tradition.

In the ultimate sense, viable government must rest on neutral principles. The law is perhaps the best example of such a principle, and the Department of Justice is the acknowledged guardian and keeper of the law. It follows, necessarily, that the Department must be recognized by all citizens as a "neutral zone" in which neither favor, nor pressure, nor politics is permitted to influence the administration of the law. This Department is such a neutral zone now, and all citizens should pray that it remains so.