

ORIGINAL

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3 ADDRESS

4 OF

5 HONORABLE BENJAMIN R. CIVILETT,
6 ATTORNEY GENERAL OF THE UNITED STATES

7 BEFORE THE

8 STATE BAR OF CALIFORNIA CONVENTION

9 SPONSORED BY THE

10 ITALIAN-AMERICAN LAWYERS OF CALIFORNIA

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17 SUNDAY, SEPTEMBER 16, 1979

18 12:00 Noon

19 LOS ANGELES BONAVENTURE HOTEL

20 SAN DIEGO ROOM

21 LOS ANGELES, CALIFORNIA

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1 (Applause)

2 THE ATTORNEY GENERAL: Thank you. Thank you,
3 Thomas, for your warm introduction, Rev. Fr. Trickle, thank
4 you for your prayer, eloquent and meaningful as it was.
5 Chief Justice Byrd, I am privileged to meet you today and to
6 be on the platform with you. Mr. President, thank you for
7 inviting me here and having Tom Cacciatore make such warm
8 arrangements as he has made, and it looks to me as if -- I am
9 not familiar with your luncheons in California or in this
10 organization, but it looks to me as if your work has paid off
11 with the number in the audience as well as their appearance,
12 as well as -- I think, unless I am mistaken -- as well as
13 their ethnic association with you and me.

14 Judge Clinco, Vice President Lavello, and all other
15 judges, dignitaries, both in the audience and on the dais,
16 Judge Geroshe who visited me in Washington, I had the great
17 pleasure to chat with him through an interpretor. My Italian
18 is as limited as his English, unfortunately, and I hope to
19 change that over the course of the next several years at least
20 on my part. And ladies and gentlemen.

21 Judge Byrd, I will take care of the doggerel today.
22 You did it perhaps one other time. I have a prepared text
23 which I am going to address in a few minutes, but I might
24 make some observations before I do that just to prove that
25 I am humorless and business-like.

1 (Laughter)

2 You know how anxious Americans are to be first in
3 something, and we admire the first occasion, the first event,
4 the first time in the history that this or that happened, and
5 it is getting a little tougher now. We have been around for
6 two-hundred years and a lot of the firsts are gone. I am no
7 different than you are, and the Department of Justice is no
8 different. And so here I am the 73rd Attorney General of
9 the United States, and we wanted to fish around and see what
10 I was first of, if anything.

11 So naturally we looked a little bit to see if I was
12 the first Italo-American Attorney General, and that wasn't so.
13 Charles J. Bonaparte -- some people say Bonaparte -- from
14 whose origins were in Corsica, was Attorney General of the
15 United States at the turn of the
16 century under President Roosevelt. In fact, he was from
17 Baltimore, and I knew of him as the auditorium in the Federal
18 Bureau of Investigation is named the Bonaparte Auditorium
19 and he is quite famous, of course, in our community as well
20 as in Washington.

21 Then they looked a little bit, the people on the
22 staff and others looked a little bit about, and ~~mid well~~, maybe this
23 is the first time an Assistant U.S. Attorney had ever become
24 Attorney General at a later point, and that wasn't true.
25 There have been three others who were Assistant Attorney

1 Generals or Assistant U.S. Attorneys and became Attorney
2 General. And then they said, well, let's look and see if
3 anyone has ever been an Assistant Attorney General in charge
4 of one of the operating divisions, Deputy Attorney General
5 and then Attorney General, and maybe that is a first. And
6 so we looked at that, and, no, that wasn't a first, Ramsey
7 Clark did that and I think Tom Clark did it and maybe one or
8 two others.

9 Well, they finally did find a first with regard to
10 me that I can call my own. The first gray-headed near-
11 sighted Ital-American Attorney General who was also an
12 Assistant United States Attorney, Assistant Attorney General,
13 Deputy Attorney General, and then Attorney General.

14 (Laughter, applause)

15 Sontimes it is a long run for a short jump.

16 (Laughter)

17 I am very pleased to be here today. I know that
18 the concern of your particular association as well as the
19 bar associations of California has been and is in the quality
20 of the legal representation that we provide our clients. As
21 Attorney General, I have those same concerns for the Depart-
22 ment of Justice.

23 The California State Bar has a deserved reputation
24 for providing continuing legal education to its members. For
25 a number of years, your CEB program has led the profession and

1 has been a model for like programs around the country. So I
2 thought that a good place to talk about the Department of
3 Justice's efforts to provide the best possible legal repre-
4 sentation to our clients, the citizens of the United States,
5 would be here at this time.

6 The department's attorneys are the principal lawyers
7 for the American people, directly and daily. The representa-
8 tion we offer therefore, in my view, must be of the highest
9 quality and must be sensitive to the real needs of our
10 clients. Traditionally, of course, some of the very best
11 attorneys in the country have served in the Department of
12 Justice. Nevertheless we must insure that the high quality
13 that existed in those attorneys and from time to time continues
14 and is uniformly applicable.

15 As part of the effort to maintain and improve the
16 quality of the representation of the department, we have
17 made and are making a number of improvements. One of these
18 improvements includes a close look at the training of our
19 lawyers and this is a subject that I would like to particu-
20 larly address today.

21 During the past year, we have examined our training
22 for litigation. We have decided to look at our needs, at the
23 quality of the efforts being made within the department and
24 how those efforts compare with what others in the private
25 sector were doing.

1 In a recent speech to the Fourth Circuit Judicial
2 Conference, that is my home circuit, the Chief Justice of the
3 United States spoke of this. He said: "One of the highest
4 obligations we owe to our profession and to the public is the
5 duty to look at ourselves objectively, take note of our
6 strong points and of our weak points and then by constructive
7 efforts try to improve the service of our profession to the
8 public."

9 We in the Department of Justice agree. We thought
10 a good place to start was at home, there. Because of our
11 size and the turnover among our lawyers as well as the im-
12 portance of our work, the task is not an easy one.

13 In a sense, we are one of the largest law firms in
14 the world. In the litigating divisions, the offices of the
15 United States Attorneys, and one of the largest offices and
16 one of the most well-run offices is here in Los Angeles under
17 Andrea Ordín, the shining star and pride of the entire
18 Department of Justice.

19 (Applause)

20 But in those offices there are just under 4,000
21 lawyers. These lawyers, especially the Assistant United
22 States Attorneys, must be in court on a regular basis nearly
23 daily and consequently a large percentage of department
24 lawyers, certainly a much greater number than in the bar as
25 a whole, are really trial lawyers. A significant complication

1 to our training efforts is not only those numbers but the
2 turnover among our lawyers.

3 In 1978, we hired approximately 23 percent of all
4 the lawyers in the Department of Justice, and this percentage
5 is even higher in some of the offices with the largest amount
6 of day-to-day litigation. Much of this turnover is under-
7 standable if you think about it for a moment. I need not
8 tell you of the greater financial rewards -- just to say it
9 makes me kind of reminiscent of the days in private practice.

10 (Laughter)

11 I need not tell you of the greater financial rewards
12 available or of the desire of law firms to have the expertise
13 of the lawyer who has been in the Department of Justice. My
14 predecessor, Judge Griffin B. Bell, who is now luxuriating in
15 those green fields, often said that in providing better
16 training for lawyers in the department we were investing in
17 the future of the legal profession as a whole. But as a
18 result of this turnover in department lawyers, a significant
19 percentage of our lawyers are young.

20 In 1978, for example, 32 percent of our attorneys
21 had been in the department less than two years, and over 40
22 percent of the Assistant United States Attorneys had less
23 than two years experience.

24 A second factor we had to consider in planning the
25 training programs was that the department attorneys would

1 have a large workload very soon after coming into the depart-
2 ment. We can't afford to have a train-in or a cruise-in
3 program where they are a year and a half in harness or in
4 place before they receive a substantial workload. Because
5 of the workload and the promptness of the imposition of it,
6 these attorneys carry substantial responsibility very early
7 in their career, and while many attorneys come to us fortu-
8 nately with some experience in state government enforcement
9 as well as in private work, few have experienced the level
10 of intensity or sophistication and responsibility expected
11 of them in the Department of Justice.

12 As we look at the makeup of the department attorneys
13 and the attendant heavy responsibility placed on them, we
14 became concerned that we had to prepare our attorneys to ex-
15 ercise their responsibility quickly and capably. Our concern
16 for adequate training was not new, but the intensity of the
17 search was.

18 In 1974, under William Saxbe, then Attorney General,
19 the Attorney General's Advocacy Institute was created. This
20 office was established primarily to train newly appointed
21 Assistant United States Attorneys in basic trial advocacy. It
22 also sponsored some specialized seminars in conjunction with
23 the legal divisions of the department.

24 While the institute and the seminars were an excel-
25 lent beginning, its efforts were modest. It trained about 200

1 lawyers a year, had not expanded its course offerings and was
2 not really a full-time operation with a director and a pro-
3 fessional staff. Judge Bell and I wanted the institute to
4 reflect the advances made in advocacy training in the past
5 ten years and to help lead the way for constant improvement.
6 To accomplish this, we examined the work of the best of the
7 new trial advocacy programs such as the one at the Hastings
8 Law School here in California and the National Institute for
9 Trial Advocacy, the NITA program, and we asked the attorneys
10 in the field what they needed and what was good and bad about
11 what was being done.

12 A task force of Assistant U.S. Attorneys and Legal
13 Division lawyers enthusiastically gave a great deal of their
14 time to help create an entirely new program. When I was
15 Deputy Attorney General, I took a personal interest and an
16 active role in the new Advocacy Institute and for the first
17 time engaged as consultants top educators and academicians
18 in trial advocacy to examine the institute and assist in the
19 development of these new courses and programs.

20 Through this review, suggestions for improvements
21 were made and implemented. As a fundamental change, we ex-
22 panded the institute and made it the focus for all lawyer
23 training in the Department of Justice for those in the Legal
24 Divisions as well as those in the United States Attorneys
25 offices. We created completely new courses in both trial and

1 appellate advocacy. Our program includes two weeks of inten-
2 sive civil and criminal trial advocacy work, a third week of
3 training in problems related to special needs of advocacy
4 such as grand jury work or motion practice or motion sup-
5 pression practices of one kind or another, third, a five-day
6 appellate advocacy program, and fourth, a series of special-
7 ized trial seminars for experienced attorneys such as in tax
8 evasion, how to try tax evasion cases, a net worth case or
9 many others.

10 Each day of the new courses is devoted to workshops
11 in advocacy problems from simple direct and cross-examination
12 to the use of demonstrative evidence and expert witnesses.
13 Each lawyer performs every day. The actual job of being a
14 trial lawyer and the workshops are supplemented by lectures
15 and demonstrations.

16 Moreover, the lawyers are trained by the most ex-
17 perience and able trial lawyers in the department. They re-
18 ceive a critique of their live performances and they are
19 videotaped for replay with one of the instructors for an in-
20 depth examination of the various stages of their performance.

21 The training is rigorous and it is intensive. In
22 the appellate course, the oral arguments are subjected to the
23 same sort of criticism with two of the three arguments video-
24 taped for further critique in addition to the questioning by
25 the presiding panel.

1 Each course utilizes a variety of legal problems
2 as contrasted with, for example, one criminal or civil case
3 in prior courses. In placing a much greater emphasis on
4 the learn . by doing method of instruction, each participant
5 performing a court room exercise and receiving critiques
6 each day, the number of workshop hours has been significantly
7 increased.

8 At the end of each course, there are two days of
9 full trials before federal district court judges who volun-
10 teer their services from around the country. These judges,
11 like others who aid the program by the giving of their time
12 unselfishly are commended and should be so commended for
13 their work. The institute and the entire department owe them
14 a great debt of gratitude and thanks.

15 Furthermore, the seminars for experienced attorneys,
16 such as the ones held on public corruption, fraud and abuse
17 and civil rights, provide attorneys with an opportunity to
18 learn about special trial programs, significant changes in
19 the law and new methods and procedures. Many of these
20 sessions involve the artire participation of FBI agents, drug
21 enforcement administration agents or other law enforcement
22 agents. This joint participation of investigators and
23 prosecutors allows for an exchange of knowledge so that each
24 can learn how to work better and more effectively and totally
25 lawfully, one with the other.

1 To complement these changes in the new course pro-
2 grams, we have not only revised the materials in the in-
3 stitute, we have borrowed from the successful and proven work
4 of others and we created our own materials, fashioning them
5 to the special needs of the federal government lawyer.

6 To further accommodate the government program, we
7 have expanded the physical facilities in which the programs
8 are given. For example, we have built four new mock court
9 rooms in the main Justice Department to provide realistic
10 settings for the courses and have purchased new equipment
11 such as the video recording machines to provide the valuable
12 training techniques which are necessary for the success of
13 this and other similar efforts.

14 Even before all of these changes were made, we had
15 increased the number of attorneys trained in 1977 to about
16 328. This year we will train over 600 attorneys compared to,
17 as you remember earlier, 200 at initiation in just the basic
18 advocacy courses of civil, criminal or appellate. The par-
19 ticipation of litigating division attorneys will nearly
20 double as they share equally in the courses with the Assistant
21 United States Attorneys from around the country. And another
22 thousand attorneys will participate in the forty or more ad-
23 vanced seminars which are usually at least two days and some-
24 times a full week.

25 Our goal which is now being realized is to allow

1 every attorney new to the department to attend either the
2 criminal, civil or appellate advocacy courses promptly. In
3 fact, these courses have become so popular that even experi-
4 enced lawyers when changing specializations from criminal to
5 civil or vice versa have asked to attend the appropriate
6 advocacy course in the subject field in which they are
7 entering.

8 Finally, in the full program we expect to have a
9 substantial number of additional specialized seminars. Be-
10 tween, for example, just July and the end of November of
11 this year, there will be twenty different events ranging from
12 the new bankruptcy law to narcotics conspiracy cases as well
13 as the regular menu of trial and appellate advocacy courses.

14 In the coming year, we plan to do even more. First,
15 I would like to develop a program that includes some of the
16 best litigators in the country from outside the department.
17 We expect to ask some of the most experienced members of the
18 private bar to come to the Advocacy Institute as senior
19 fellows to assist in the teaching, the demonstrations and to
20 work with us on even better new programs and materials.

21 Secondly, as part of President Carter's reorganiza-
22 tion of the civil service, we have been able to gain special
23 recognition for government litigators as well as managers.
24 As a part of the qualifications of the senior executive
25 service which replaces the old GS system in the upper grades

1 or super grades, candidates will be given special training
2 and opportunities for professional growth in a variety of
3 litigation experiences under close supervision.

4 And finally in a somewhat related development,
5 President Carter has asked the Department of Justice for the
6 first time in a long time to provide the legal training for
7 lawyers in all departments of the Executive Branch of the
8 government in addition to our own lawyers. President Carter
9 is committed to providing the best possible legal service to
10 the public and supporting fully the Department of Justice's
11 efforts to do so.

12 I appreciate having the opportunity to share with
13 you some of our efforts and our plans in training lawyers in
14 the department. As you know well here in California, this
15 is in an active and an exciting time in legal advocacy educa-
16 tion. Better training for the department's lawyers is just
17 one of the initiatives I hope to undertake as Attorney General.

18 A number of others, such as introducing management
19 techniques to the department, designing efficient systems
20 analyses, providing better informational flow procedures are
21 also under way.

22 These programs share a characteristic: They all
23 seek to enable the Department of Justice to serve the people
24 of this country well and efficiently and to do equal justice
25 and fair justice for all.

1 I am delighted to be here in California. I was a
2 little concerned about taking a swim for two reasons. I
3 didn't bring a gas mask, and I don't swim well with one any-
4 way.

5 (Laughter)

6 The weather back in Washington and Baltimore is
7 sunny, as usual.

8 (Laughter)

9 The humidity was about less than ten percent.

10 (Laughter)

11 The temperature was about 75. You could see for
12 fifty miles. So please, any of you who have any interest,
13 you are welcome back in Washington or Baltimore and
14 Philadelphia, if there are any difficulties out here with
15 regard to climate .

16 I am particularly fond of California. I have been
17 here many times, both in private practice and in my govern-
18 mental capacity. But on no occasion, although this is a
19 short visit, have I been welcomed more warmly, with greater
20 grace and more affection, and I thank you all very much.

21 (Applause)

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