



Department of Justice

ADDRESS

OF

THE HONORABLE BENJAMIN R. CIVILETTI
ATTORNEY GENERAL OF THE UNITED STATES

BEFORE THE

STATE BAR OF CALIFORNIA CONVENTION

SPONSORED BY THE

ITALIAN-AMERICAN LAWYERS OF CALIFORNIA

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LOS ANGELES BONAVENTURE HOTEL

SAN DIEGO ROOM

LOS ANGELES, CALIFORNIA

I am pleased to be with you today. I know that a principal concern of your bar association is the quality of the legal representation your lawyers provide their clients. As Attorney General, I have these same concerns for the Department of Justice.

The California State Bar has a deserved reputation for providing continuing legal education to its members. For a number of years, your "CEB" program has led the profession and been a model for like programs about the country. California seemed to me to be a good place to talk about the Department of Justice efforts to provide the best possible legal representation to our clients, the citizens of the United States.

The Department's attorneys are the principal lawyers for the American people. The representation we offer, therefore, must be of the highest quality and must be sensitive to the real needs of the clients we serve. Traditionally, some of the best attorneys in the nation serve in the Department of Justice. Nevertheless, we must insure that this high quality continues and is uniformly applicable. As part of our effort to maintain and improve the quality of the representation by the Department, we have made and are making a number of improvements. One of these includes a close look at the training of our lawyers, and this is the subject I would like to address today.

During the past year, we have examined our training for litigation. We decided to look at our needs, at the quality of the efforts being made within the Department, and at how those efforts compare with what others -- even those in the private sector -- were doing. In a recent speech to the Fourth Circuit Judicial Conference, the Chief Justice of the United States spoke of this. He said, "One of the highest obligations we owe to our profession -- and to the public -- is the duty to look at ourselves objectively, take note of our strong points and of our weak points, and then, by constructive efforts, try to improve the service of our profession to the public." We agree.

Because of our size and the turnover among our lawyers, as well as the importance of our work, our task is not an easy one. We are in one sense the largest law firm in the country. In the litigating divisions and the offices of the United States Attorneys there are just under 4,000 lawyers. These lawyers, especially the Assistant United States Attorneys, must be in court on a regular, nearly daily, basis. Consequently, a large percentage of Department lawyers -- certainly a much greater number than in the bar as a whole -- are trial attorneys.

A significant complication to our training efforts is that there is a considerable turnover among our lawyers. In

1978, we hired approximately 23 percent of our lawyers, and this percentage was even higher in some of the offices with the largest amount of day-to-day litigation. Much of this turnover is understandable; I need not tell you of the greater financial rewards available or of the desire of the law firms to have the expertise of the lawyer who has been in the Department. My predecessor, Judge Griffin Bell, often said that in providing better training for the lawyers in the Department we were investing in the future of the legal profession as a whole.

As a result of this turnover, a significant percentage of our lawyers are young. In 1978, for example, 32 percent of our attorneys had been in the Department less than two years, and over 40 percent of Assistant United States Attorneys had less than two years' experience.

A second factor we had to consider in planning our training programs was that the Department's attorneys would have a large workload very soon after coming into Government service. Because of the workload, these attorneys carry substantial responsibility early, and while many attorneys come to us with some experience in state government enforcement as well as private work, few have experienced the level of responsibility expected of them in the Department.

As we looked at the make-up of the Justice Department attorneys and the attendant heavy responsibility placed on them, we became concerned that we had to prepare our attorneys to exercise their responsibility capably. Our concern for adequate training was not entirely new. In 1974, under William Saxbe, the Attorney General's Advocacy Institute was created. This office was established primarily to train newly-appointed Assistant United States Attorneys in basic trial advocacy skills. It also sponsored some specialized seminars in conjunction with the legal divisions of the Department. While the Institute had an excellent beginning, its efforts were modest. It trained only about 200 attorneys each year, had not expanded its course offerings, and was not really a full-time operation with a director who had a professional background in advocacy training.

We wanted the Institute to reflect the advances made in advocacy training in the last ten years and to help lead the way for constant improvement. To accomplish this, we examined the work of the best of the new trial advocacy programs, such as the one at Hastings Law School, here in California, and the National Institute for Trial Advocacy. We asked the attorneys in the field what they needed -- and what was good and bad about what was being done. A task force of assistants and legal division attorneys enthusiastically

gave a great deal of their time to help create a new program. Furthermore, when I was Deputy Attorney General, I took a personal interest and active role in the Institute, for the first time engaging as consultants top educators in trial advocacy to examine the Institute and assist in the development of the new courses and programs.

Through this review, suggestions for improvement were made and implemented. As a fundamental change, we expanded the Advocacy Institute and made it the focus for all lawyer training in the Department, for those in the legal divisions as well as those in United States Attorneys' offices.

We created completely new courses in trial and appellate advocacy. Our new program includes: (1) two weeks of intensive civil or criminal trial advocacy work; (2) a third week of training in problems related to advocacy, such as grand jury work or motion practice; (3) a five-day appellate course, and (4) a series of specialized trial seminars for experienced attorneys.

Each day of the new courses is devoted to workshops in advocacy problems, from simple direct and cross-examination to the use of demonstrative evidence and expert witnesses. Each lawyer performs every day, and the workshops are supplemented by lectures and demonstrations. Moreover, the lawyers are trained by the most experienced and able lawyers

in the Department. They receive a critique of the live performance, and they are also videotaped for replay with one of the instructors, for an in-depth examination of the performance. The training is rigorous and intensive. In the appellate course, the oral arguments are subjected to the same sort of criticism, with two of the three arguments videotaped for further critique, in addition to the questioning of the presiding panel.

Each course utilizes a variety of legal problems, as contrasted with one criminal or civil case in prior courses. In placing a much greater emphasis on the learn-by-doing method of instruction, with each participant performing a courtroom exercise and receiving critiques each day, the number of workshop hours has significantly increased. At the end of each course there are two days of full trials before federal district court judges from around the country.

These judges, like others who aid the program by giving of their time voluntarily, should be commended for their work. The Institute and the entire Department owe them a great deal of thanks.

Furthermore, the seminars for experienced attorneys, such as the ones held on public corruption, fraud and abuse, and civil rights, provide attorneys with an opportunity to learn about special trial problems, significant changes in

the law or about new methods and procedures. In addition, many of these sessions involve the active participation of FBI, DEA or other law enforcement agents. This joint participation of investigators and prosecutors allows for an exchange of knowledge so that each can learn how to work better with the other.

To compliment the new course program, we have revised the materials used in the Institute. For these revisions, we borrowed from the successful and proven work of others, and we created our own material, fashioning them to the special needs of the Government lawyer.

To further accommodate the program, we have expanded the facilities in which this program is given. For example, we have built four mock court rooms to provide realistic settings for the courses and have purchased new equipment, such as video recording machines, to provide valuable training techniques.

Even before all of these changes were made, we had increased the number of attorneys trained to 328 in 1977. This year we will train over 600 attorneys in just the basic advocacy course. The participation of litigating division attorneys will nearly double, as they share equally in the courses with the Assistant United States Attorneys, and another 1,000 attorneys will participate in the advanced seminars.

Our goal, which is now being realized, is to allow every attorney new to the Department to attend either the criminal, civil, or appellate advocacy courses promptly. In fact, these courses have become so popular that even experienced lawyers, when changing specialization from criminal work to civil work or vice versa, have asked to attend the appropriate advocacy course. Finally, in the full program, we expect to have a substantial number of new specialized seminars. Between the end of July and the end of November there will be twenty different events, ranging from the new bankruptcy law to narcotics conspiracy cases, as well as the trial and appellate advocacy courses.

This is only a brief summary of the Advocacy Institute's training program. Its main design, as you can see, is to provide attorneys with a large amount of practical, actual, "on their feet" experience. The program has been highly successful, and we are very proud of its accomplishments.

In the coming year we plan to do more. First, I would like to develop a program that includes some of the best litigators in the country from outside the Department. We expect to ask some of the most experienced members of the private bar to come to the Advocacy Institute as senior fellows to assist in the teaching and to work with us on new programs and materials. Secondly, as part of President

Carter's reorganization of the civil service, we have been able to gain special recognition for Government litigators as well as managers. As part of the qualification for the Senior Executive Service in the Government, candidates will be given special training and opportunities for professional growth in a variety of litigation experiences under close supervision. Finally, in a related development, President Carter has asked the Department to provide legal training for lawyers in all departments of the Executive Branch of the Government, in addition to our own lawyers. President Carter is committed to providing the best possible legal service to the public and supporting fully the Department of Justice efforts to do so.

I appreciate having the opportunity to share with you some of our efforts and plans in training lawyers in the Department of Justice. As you know well here in California, this is an active, exciting time in legal advocacy education. Better training for the Department's attorneys is just one of the initiatives I hope to undertake as Attorney General. A number of others, such as introducing management techniques to the Department, designing efficient systems analysis and providing better information procedures, are also underway. These programs share a characteristic. They all seek to enable the Department of Justice to serve the people of this country well. To be successful, the Department must take

one more initiative -- the most important one. We must listen to what people are saying. Your ideas, suggestions, criticisms and support are greatly needed. Over the coming months I plan to meet with many different groups across the country so that I can present and discuss some of the projects we are working on. I look forward to this dialogue and to our working together to accomplish these important goals.