



Department of Justice

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ADDRESS

BY

THE HONORABLE EDWARD H. LEVI
ATTORNEY GENERAL OF THE UNITED STATES

BEFORE

THE UNITED STATES ATTORNEYS/UNITED STATES MARSHALS CONFERENCE

9:00 A.M.
WEDNESDAY, NOVEMBER 19, 1975
DOUBLETREE INN
TUCSON, ARIZONA



I am delighted to have the opportunity to talk with you today. Our common purpose is to help the Department of Justice fulfill its mission. A large part of that mission involves the reinforcement of public confidence in the administration of justice. Probably more than any other attribute, the quality of our administration of justice tells us the kind of country we now have and will have in the future. The fair application of law is a pledge to the future, as it is also a guardian of our present rights and liberties.

If one looks at the work of other departments of the Federal Government, administering vast programs, influencing in innumerable ways the lives of citizens, one might be led, mistakenly I think, to have a lesser view of the work of the Department of Justice. Beyond the governmental programs, although often closely involved with them, are the hopes and endeavors of private citizens, individually or in groups, companies or associations, and the work of many public, non-governmental institutions. But as to all of these activities and aspirations, governmental and non-governmental, the role of law has a persuasive influence. Law enforcement facilitates or hinders the achievement of that level of civility within communities indispensable to individual freedom; it determines the procedures through which decisions and rules with the ultimate in binding force are to be arrived at and enforced. It carries forward a code of conduct and a set of values. The quality with which this is done affects the moral tone of the whole society, and the regard which groups, and therefore people, have for each other and for their government. Improprieties in the administration of justice are the more serious on this account; such virtue as we can attain is that

much more important. No task has more to do with the future of our country than the work in which we are engaged.

The reinforcement of public confidence in the administration of justice cannot be a show thing, particularly when that confidence has been wounded. What has to count is both effectiveness and fairness in performance. What has to count also is our willingness to confront issues as they are. Some issues take legal form when law cannot solve the problem. Others require us to take a new look at what we are doing.

At least four things may be said to be true of the Department of Justice. First, as to the great majority of questions which arise we have ready answers. But in some instances the answers are evasive, ways of avoiding responsibility, or are rooted almost solely in the habits of past years. Second, as to many crucial issues, including our own understanding and control of priorities, it is hard to get the time and it is hard to achieve the intensity of effort to make the necessary changes. I speak here not only of a change in priorities but important changes in direction or the assumption of duties which the Department for some reason has not undertaken. New duties in fact are constantly being placed upon us. Legislation and to some extent judicial initiatives have greatly increased the load of litigation. This helps to explain, but I don't know that it justifies, gaps in enforcement programs or the rethinking of directions. Again, while it is true the Department should emphasize those areas in which it is most competent, it is also true that competence itself can be a function of priorities we set. Third, so as not to be misunderstood, let me emphasize that it is the day

to day work of the Department, its attainment or retention of high professional standards which in my view is the most important contribution we can make. I include in this the Department's duty to make clear that it is not to be used--and will not use itself--for partisan political purposes. Fourth, I realize as we all do, that the Department has many parts, and that these parts to some extent have autonomy. But the reverse is also true. We are one department. This means we must work on the problem of working together. I think we have been increasingly doing just that.

For many years after the founding of this republic, federal justice was a fragmented affair. The relationship between the Attorney General and the United States Attorneys and Marshals was not strong. The first Judiciary Act in 1789 borrowed from the precedent of colonial county attorneyships and created the position of district attorney. District attorneys were appointed by the President and acted as the lawyer for the United States in each judicial district. The Attorney General, a part-time employee in that era, had no direct control over the conduct of the district attorneys. He was authorized by statute to represent the federal government only in the Supreme Court. By his control over government appeals, he had the basis for exercising some supervision over cases in the lower courts, but for more than a half a century the Attorney General did not exercise such control to any extent. It was not until after the Civil War that the Attorney General was given a department and authorized by statute to supervise district attorneys and marshals.

Between the Judiciary Act of 1789 and the creation of

the Department of Justice in 1870 resistance to central control of the administration of federal justice was strong. Many preferred to leave to the other departments of government the development of their own legal staffs and to keep district attorneys in independent control of specific litigation in the district courts. Daniel Webster, a leader in 1829 of the opposition to the creation of a strong Department of Justice, feared that a strong Department would in fact increase the complexity and disunity of the federal establishment. In his words one can detect skepticism that any agency could fulfill the difficult role of being the general counsel to government. He said a strong Attorney General heading a centralized Department of Justice would be "a half accountant, a half lawyer, a half clerk--in fine, a half of everything and not much of anything." These words have a certain persuasiveness--I am fearful of repeating them.

But by 1870--with the nation spread across the continent and the federal role growing inexorably in complexity--it became clear that a Department of Justice had to be created.

Though the Attorney General after 1870 had statutory authority to supervise the operation of district attorneys and marshals, he exercised the authority only rarely. It was only in unusual cases that he intervened. There was not the time--nor was there manpower in the small Department of Justice of the era--to do more.

The size of the Department of Justice has grown greatly since then. In 1975 less than half of the Department's 3,400 attorneys worked in United States Attorneys' offices. Of the

Department's 50,650 employees, only 3,350 worked in United States Attorneys' offices. The professional staff of the Department's legal divisions has, largely due to the growth of the Antitrust Division, grown at approximately the same rate as the legal staff of U.S. Attorneys' offices during the past five years. The liaison between the United States Attorneys' offices and the Department of Justice is much closer now than it once was. There are, of course, a variety of cooperative measures, involving particular divisions and bureaus, that are of long standing and have developed over many years. I believe and hope we have now achieved a better appreciation of how interrelationships on specific tasks and in policy formulation can be of help to the Department in Washington and to the United States Attorneys' offices. In the growth of these relationships, the Attorney General's Advisory Committee of United States Attorneys has been most welcome and significant. I know I have benefited greatly from its reports. I would like to pay a special tribute to the members of that committee over the two years of its existence and to Dean C. Smith of the Eastern District of Washington and Ralph B. Guy, Jr., of the Eastern District of Michigan who have been its chairmen. I want to do everything I can to encourage the work of the committee and also in support of the Executive Office for the United States Attorneys.

If my figures are correct, the number of attorneys in the United States Attorneys' offices has increased over the last five years by 78%. The number of Deputy Marshals has grown over the last six years by 100%. In addition to the 94 Marshals, there are

now 1,782 Deputy Marshals, and the headquarters staff numbers about 100. No other major unit of the Department has shown such an increase for this period. I do not have to tell this audience that the United States Marshals Service is an indispensable part of the Department, representing the universal lawman and proving worthy of an extraordinary history by living a most versatile and lively present. We have called upon the Service for help in the most delicate and troubled situations whether in Guam or in Boston, and this in addition to its varied and continuing duties. I am proud of the response we have received. A part of this response, I have no doubt, is due to the organization and planning which the Service has and is accomplishing. The reorganization under way during the last six years represents a knowledgeable balancing between the requirements for regional response and centralized direction. But of course the quality of appointments and the quality of leadership here and elsewhere in the Department can make all the difference. Wayne Colburn has endeavored to provide that leadership to the United States Marshals Service -- just as outstanding United States Attorneys have given reality to the aspirations we all have, and which are so easy to speak about, but much more difficult to accomplish. That leadership often involves a certain sacrifice but also an extraordinary opportunity at a time when the administration of justice requires performance and a restoration of confidence. While I am thus expressing my gratitude to you, let me stress an equal pride which I have in the extraordinary Deputy Attorney General and the other officers of the Department with whom you have worked closely and who have made possible a collaboration of leadership.

High on the agenda for this collaborative leadership has to be a special recognition for these times of the inseparability of effective enforcement and the most careful and willingly given fairness. These do not represent different roads. It is a misreading--and particularly for this period--of our adversary system to believe they can be separated. If we are to have effective enforcement, and we must have, this will only be possible if we are to have an understandable and scrupulous fairness. This is to recognize that we live in an age of lingering cynicism about the law itself. It is a period which cries out for effective enforcement, doubts that effective enforcement can be achieved, and when it is achieved, doubts that it is impartial and understanding. United States Attorneys and Marshals are close to the people. You handle the cases people read about in the newspaper. You speak for the United States. You speak for federal justice. Your conduct can reverse the cynicism.

Legitimate and indeed essential law enforcement and prosecutorial techniques often carry the hazard of actual or apparent unfairness. These techniques, while necessary, must be used with great care. This is the reason why department regulations require consultation within the Department--and sometimes with the Attorney General--before certain techniques are used, such as granting immunity, or issuing subpoenas to newsmen, or using electronic surveillance devices.

The assurance to criminal defendants that if they cooperate with the government they will not be prosecuted can be very valuable in tracing criminal conspiracies from the lower echelons where the criminal conduct is most vulnerable to investigation and prosecution up to the leadership which tries to insulate itself from direct involvement. It can be argued that the promise of immunity in such a situation is only one variation of plea bargaining and that plea bargaining, no matter how much it is criticized, is only a form of that discretion which is inherent at various levels of the criminal justice system. There are special problems not only in the appearance of fairness but of actual fairness in all these approaches. The promise of immunity from prosecution is a dramatic recognition of the prosecutor's power. It can have the appearance of a crude and unwarranted payoff for damaging testimony. It raises the specter of untruthful testimony, as to which it is not always a complete answer to say that the court and jury will decide. And sometimes, perhaps not often, its use was not required because it was an unneeded shortcut. I need hardly tell you there are strong movements in our society to develop guidelines, rules and regulations, sometimes in statutory form, to curb investigative and prosecutorial discretion. We must recognize that this movement, whatever else it represents, is in part a response to a sense of possible unfairness. Most prosecutors could persuasively explain, if the facts were known, why his grant of immunity was fair and necessary. It may well be that this is an area where too specific rules are self defeating. But it is an area of sensitivity where second thoughts may be required. Consultation may be a sufficient answer. The Deputy Attorney General has established a working committee with the United States

Attorneys to rethink this problem.

The issuance of subpoenas to writers and reporters raises different issues. The news media, as well as scholars and authors of non-fiction material, have expressed great concern about the effect upon their work of demands by the government for information given to them in confidence or the identity of confidential sources. I cannot help but notice what I think is the paradox of the press's concern for the confidentiality of the identity of sources in that setting but its lack of concern for the confidentiality of the identity of the same kind of sources when the information is given to government investigative agencies. But this does not change the point that there are important values to be considered. The Supreme Court has ruled that the First Amendment is not abridged by requiring reporters to disclose the identity of their sources to a grand jury when that information is needed in the course of a good faith grand jury investigation. But this is a recognition that the issue does involve values close to First Amendment rights, and the Department therefore has a special responsibility. There is another related aspect to be considered, and that is the importance of avoiding the appearance that the government by use of subpoenas is trying to harass writers who have reported on matters embarrassing to the officials of government. For these reasons, the pertinent Department of Justice regulation requires the authorization of the Attorney General for the issuance of a subpoena to "any member of the news media." It sets forth a

series of guidelines to be considered in requesting such authorization, and it calls for preliminary negotiations with the person to be subpoenaed to try to work out an arrangement which can avoid conflict over the issue. In most cases these negotiations have proven successful so that even when a subpoena is ultimately used, the reporter has given his consent to testify or to produce material in his possession. Careful adherence to these procedures is important. In one recent instance when the subpoena was not authorized, it was quashed. The Department of Justice has taken the position on several occasions that the scope of the regulation should be construed broadly to cover not only employees of recognized publications or broadcast organizations but also to cover all individuals engaged in reporting on public affairs. I ask your cooperation in this. Whenever the potential issue of confidentiality of sources arises -- whether the subject of the proposed subpoena is a newspaper reporter, documentary film producer, or author -- you should refer the matter to my office for approval.

Wiretap and microphone surveillance under Title III of the Omnibus Crime and Safe Streets Act of 1968 is another area of sensitivity. The statute itself requires special approval, sets forth the standards for the use of non-consensual wiretapping and microphone surveillance and, in general, requires a showing of the necessity for the use of this form of investigative technique in the particular situation. Courts have also required that efforts be made to minimize the interception of communications that do not concern the commission of a crime

or that would intrude upon the privileged relation between an attorney and his client. Under Title III the Department does not have the last word, nor does it have the sole responsibility. Nevertheless, the involvement of a court in the procedure, of course, does not relieve us of our important duty to see that these standards are met. Even when a warrant is not required under the statute because the consent of one party to the intercepted conversation has been obtained, the rules of the Department require that the authorization of the Assistant Attorney General for the Criminal Division be given. Where the statute does apply, under our current practice, the application to the court requires the authorization of the Attorney General. Let me add that I believe that in the investigation of particular kinds of crimes, electronic surveillance under proper safeguards is important and should be used. The number of Title III surveillances has been declining. In 1971 there were 285 applications by the Federal government for electronic surveillance warrants. In 1972 there were 206; in 1973 there were 130, and in 1974 there were 121. There is a question whether these surveillances have been used to their greatest effect and whether they have proven productive. I believe this is an area where further joint discussions with the Advisory Committee of United States Attorneys would be helpful.

Grants of immunity, subpoenas to reporters, and electronic surveillance are but a few examples of areas in which the care which is required makes special collaboration necessary. Over all, however, a collaboration of leadership is required if the Department is to fulfill its affirmative obligation to enforce the law. The job grows more difficult

each day. Crime is on the rise. The case load of the United States Attorneys' criminal units is on the rise. The work of the marshals increases. In fiscal 1975 the number of criminal cases filed in United States Courts numbered 46,951. This was an eight percent increase over the prior year. The requirements of the Speedy Trial Act of 1974 will increase the burden. At the same time that criminal prosecutions are on the rise, the civil case load is increasing even more rapidly. The work of the Civil Division has become much more familiar and is much more shared with the United States Attorneys. In fiscal 1975, the Federal government was involved in 41,341 new civil cases, 25 percent more than the previous year. The figures indicate the importance of management of professional resources. In the District of Columbia office a computerized information system has helped prosecutors develop their priorities. A similar system will be tried in Chicago in 1976. If its early success continues, it may be a most important tool for all United States Attorneys.

The statistics only indicate the situation in gross; they do indicate trouble ahead. But in addition there is a great demand today for the Department of Justice to be more aggressive in the investigation and prosecution of what has come to be called "white collar crime." The phrase is unfortunate since it suggests a distinction in law enforcement based upon social class. Regardless of the phrase this is an area which, while it has been given attention, should be given greater emphasis. It can be urged that the Federal law enforcement effort can have

a much greater influence in deterring non-violent than violent crime. Most violent crime is not within the Federal jurisdiction. Non-violent crime -- fraud, embezzlement, bribery and official corruption within the Federal reach -- is an important and insidious factor in the pattern of crime in America. The investigative and prosecutive problems are of course great. The passage of S. 1 will help somewhat, but the problem of actually discovering that such a crime has been committed will remain.

For this reason there have been recurring complaints that efforts against "white collar crime" are hampered because we lack enough specially trained investigators and because of a lack of cooperation from the Internal Revenue Service. I know that this has been a matter of concern to you. I believe we have made progress; the Deputy Attorney General has been giving the matter of the relationship with the Internal Revenue Service a great deal of attention. I am most anxious that we find a way to be more effective in the "white collar crime" area. I do not think it is necessary or wise to set up a new division within the Department of Justice to coordinate the program, as has been suggested. But just as surely I do not believe we can be satisfied with the situation as it now exists. Perhaps within the Department of Justice there are now adequate mechanisms to deal with corporate crime and official corruption. If so they had better be more fully used. Last April, a committee composed of 11 representatives of divisions and agencies within the Department including two United States Attorneys was set up for

the purpose of making recommendations on this subject.

In the area of violent crimes, I hope the Federal enforcement effort can be strengthened. Gun crime in the United States has reached staggering proportions. In some neighborhoods in our major cities, armed violence is the regular way. This is a matter generally for the State courts. But not always. The illegal trafficking in handguns that feeds the violence is of Federal concern. It moves across State lines. It may involve criminal organizations. We know very little about this illicit market. We need to know much more.

Investigating the illegal commerce in handguns has not been a popular assignment. The current Federal laws on the subject make successful prosecution difficult. But the fact is that our present laws, while in need of strengthening change, have not been used to the full. The President has sent to Congress a proposal to improve the existing laws. His proposal was made after an intensive study in the Department of Justice; some of you took part most helpfully in the deliberations at that level. But as important as the passage of some strengthening legislation is, equally important is the commitment by Federal law enforcement agencies, including United States Attorneys, to bring their resources to bear on those who now deal in this illegal traffic.

There are other areas in which the Federal role in deterring crime can be rethought. For example, it is not enough to state that such matters as auto theft and bank robbery are primarily of local concern. It may be that this will remain

our view after thoughtful reconsideration, but it is the thought that is important. Imagination is required. There are many different approaches that can be taken. The Marshals Service, for example, recently did a study in 16 cities of the quality of bank security systems. It undertook the project in cooperation with the Criminal Division, and its recommendations for improving security can be of significant value.

I have spoken of the importance of consultation and leadership among us. We have not succeeded in doing many of the things we ought to do. They are matters of mutual concern. Despite the advances which have been made in our training programs, we can do much more in this direction. Because we are one department, it would be helpful if there were more rotation -- a planned rotation -- for younger attorneys between the Department in Washington and the United States Attorneys' offices. This would bring, I think, considerable benefit. And overall I know it would be helpful if on so many of the great issues which the Department is now facing we devised better ways of seeking your counsel, even though I know you have quite enough to do as it is. On the other side, when there are difficult and highly publicized cases, it is important for us to know the matters on which you expect us to give you, after the fact, our reasoned support. We can do this better if we know what lies ahead, and if we are not going to do it, it is better for all of us to know it sooner rather than later.

Upon our mutual success depends, in large part, the strength of the law generally. Our job requires effective

enforcement. Fair enforcement is essential to that end, and essential in its own right. Ultimately fair and effective enforcement requires not only adherence to certain procedures but the development of new methods and perhaps new directions. Perhaps the burden upon all of us is heavy. But I think we all welcome the chance to make a difference, for there is no reminder and assurance to our country than that we do live under the rule of law, and that the rule of law does work.