



Department of Justice

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ADDRESS

BY

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ATTORNEY GENERAL OF THE UNITED STATES

AT

THE COMMENCEMENT EXERCISES

FOR

OHIO STATE UNIVERSITY LAW SCHOOL

4:00 P.M.
THURSDAY, JUNE 6, 1974
DRAKE UNION AUDITORIUM
COLUMBUS, OHIO

Three years ago, I had the pleasure of delivering the Orientation Lecture to your law class. It is now an even greater honor to speak at this Hooding Ceremony on the eve of your commencement.

My interest in the College of Law here goes beyond my relationship with this class because this is where I studied and received my law degree, and, as many of you know, my youngest son is enrolled in the law school. But I do have a particular interest in your law class, stemming from the opportunity to meet with you during the orientation in 1971.

A great deal has happened in these intervening years -- to you and to the Nation.

You have prepared yourselves for careers in the law. Your new responsibilities are enormous -- a sobering fact that will become more apparent as time goes on.

The Nation has undergone marked changes in the conduct of its affairs and has been confronted by a series of momentous events.

Whatever successes the country has fashioned or failures it has suffered, one fact of paramount importance stands out: We now live under what I believe historians will conclude is the greatest cloud in our history.

Its name is short -- Watergate. But the facts that are known, and the implications springing from them, make it

apparent that Watergate has had a monumental effect on the Nation.

The impact on the legal profession is particularly acute. Public perception of attorneys and their confidence in attorneys should be of special interest to all of us who devote our lives to the law.

Unfortunately, confidence in the legal profession has diminished, as it has in other institutions which have been major sources of strength for this country. It is all too apparent that, when put to the test, lawyers too, have been found wanting.

Most men and women in the legal profession love the law and cherish what it stands for. But it is also fair to say that as a group, attorneys often have the trait of hunkering down to wait for the crisis to blow over. And then they continue business as usual.

There is frequently an impulse to put on blinders and to say that many of the ways of carrying out public duty which have grown up over the years are really not bad practices.

The sad fact is that there are a lot of bad practices. We have come to accept things in public life and in politics that simply have no place there. The list is a long one: Lying to the people; twisting the truth; using public position for private gain; failing to do those things which the oath of office requires. And I could list more.

For decades, many persons in public life have attempted to shift responsibilities elsewhere -- often saying that the bad practices are simply our traditional ways of doing business.

This is no longer a viable position, if indeed it ever was.

Responsibilities of the most important sort rest upon each of us -- no matter what role we may have in society.

There is often a tendency to blame the news media, contending that their muckraking is the result of bad motives or a quest for power. We should not allow ourselves to follow false scents. Too many hard facts are known -- if we just take the time to look at them -- to permit anybody but the most narrow-minded to believe that we have never had it so good.

Without in any way commenting on the cases, let me simply recount a few things known to any newspaper reader:

-- The Special Prosecutor's Office lists a dozen attorneys charged in cases it is handling.

-- Six of them have entered pleas of guilty. One is a former Attorney General, who pleaded guilty to a charge of refusing to testify to a Senate Committee. Never before has a United States Attorney General been found guilty of criminal conduct. Two others were on the White House staff.

-- Of the remaining attorneys under indictment, another is also a former Attorney General -- acquitted at one trial but still facing other charges.

-- In addition, a number of non-lawyers have been indicted on charges relating to alleged offenses committed while holding positions of high trust.

In studying the dimensions of the over-all crisis facing the Nation, we have to look beyond the rolls of Watergate indictments.

The legislative branch is also involved in a matter of utmost importance.

The President is now the subject of hearings before the House of Representatives involving the most grave aspect of the Constitutional process -- the possibility of impeachment.

It may be some time before the House reaches a decision on the issue under consideration. But it already has had a deep impact on the Nation.

Other unsettling events also have occurred. Not many months ago, for instance, a Vice President resigned from office and entered a plea of no contest to a charge of tax evasion.

The long roster of difficulties involving public confidence does not stop at the Executive Branch.

Last year, the Department of Justice obtained more than 50 indictments of state and local officials. In recent years, federal cases also included the conviction of three former Congressmen, a former Senator, and a Federal judge.

When I left office as Ohio's Attorney General five years ago, five of my fellow State Attorneys General across the country were either in prison or heading for it.

In recent years, there have been Federal convictions of a former Governor and several state legislators, as well as mayors, city councilmen, and other state and local officials. Numerous prosecutions also have been carried out by state and local authorities of public officials ranging from policemen to prosecutors.

Persons outside of government can also hold positions of enormous public trust and responsibility, and, as we have seen, they can also violate that trust.

Eleven major corporations have entered pleas of guilty during the past year to Federal charges of illegal campaign contributions. Ten business executives have entered pleas of guilty or no contest to similar charges.

In recent years, two men who at different times headed one of the nation's largest labor unions went to Federal prison. And the former head of another large union was convicted not long ago of murder.

Faced with all of these things -- and more -- no one in public life or private life can afford to hunker down until the storm of public distrust passes by, because it isn't going to be that easy.

The only good that I can see coming out of Watergate is that it will always be there as a goad to our conscience. And in its aftermath, we can set about to fashion new ways -- much better ways -- of carrying out matters of the public trust.

Watergate should be the watershed for morality for all public officials, both elected and appointed.

That word -- morality -- seems suddenly popular today -- as it always should have been. One of the nation's great tasks is to see that it remains that way.

The road of reform and responsibility lies open to us. It is a high road, a road that can be followed only by adhering to some old-time truths. And that includes honor and ethics, and yes, morality.

There is great ferment and discussion these days about the best in our traditions. Some suggest the old-time truths really are not true any more.

When we hear that, we should ask what the options are. It seems to me they are very limited. We are either truthful or not truthful. We are either honest or dishonest. We are either moral or immoral. And it really doesn't take much soul-searching to know which is which.

Men of goodwill can always disagree -- and usually do -- about the best ways to carry out tasks that affect the public.

There can be little dispute, however, over the merits of dishonesty, or of breaking the law, or of feathering your own nest -- with somebody else's feathers.

My estimate is that political pressures have diminished substantially at every level of government in the wake of Watergate. Those changes for the better should be institutionalized and made a permanent part of society's fabric.

To cite one example, the White House is not trying to get the Department of Justice to do anything for political purposes. Believe me, it wasn't always like that.

But it could always be like that -- not just in Washington but throughout the nation -- if public officials remain on guard and keep connivers at arm's-length. They've also got to learn to say no.

Another essential ingredient is for the public to keep a much closer watch on things. It is not enough to periodically rise up and throw the rascals out. Rascals should not be put in positions of trust in the first place. And those who may have latent tendencies in that direction can be held in check by unrelenting public scrutiny.

The public also should be aware that not all of those who misbehave in positions of trust are merely colorful rascals. Some are men of finely-distilled evil who would do irreparable damage to our freedoms.

Civics texts are filled with discussions of the system of checks and balances involving the Executive Branch, the Courts, and the Congress. It is about time that another balancing force -- the public -- began exerting greater influence.

For attorneys, the opportunities and the responsibilities are particularly great. The legal profession has a choice, either to become more responsible or to have the public's faith decline even more.

Each lawyer has what might be called a golden trust, something like that of the physician, and no attorney should ever allow himself to be placed in the position of having it turn out to be counterfeit.

Being honest, however, is the very least that is expected of us. A great deal more has to be built on that foundation. Virtually every part of the legal system needs attention.

One particular concern, though it has been recounted many times, is whether there really are two systems of justice -- one for the affluent, the other for the poor.

Evidence accumulated over decades leaves little doubt that such a double standard does exist. Regardless of the facts in each instance, the public perception of justice too often is that the rich man gets favors and goes free while the poor man gets the back of the hand at justice's bar and goes to jail.

What you do in your legal careers is for you to decide. But let me just remind you that a lot of promissory notes for fair and equal justice are falling due -- and they must be met.

For its part, I believe that the Department of Justice is carrying out its responsibilities in an even-handed manner and without bias. I also am convinced that the Department is functioning and functioning well.

Its 48,000 employees -- nearly all of them in the career service -- are able men and women, dedicated to performing in the best traditions of the Department and beyond. Though the Department has been buffeted by events, no fatal wounds have been inflicted.

I hope to help improve that career service, and in particular to enhance the skills of our attorneys. One problem faced by the legal profession today is the standard of conduct by some attorneys when they appear in court. While not yet an epidemic, we do know that misbehavior and flagrant disrespect by attorneys occurs all too often and that judges sometimes have substantial difficulties in keeping order. Such disrespect by attorneys strikes at one of the foundations of our society itself. No such problems are caused by the Department's attorneys. But we do in some instances see a second problem -- the level of advocacy skills displayed in the courtroom.

This is not a problem restricted to the Department. I have heard more than one prominent attorney in private practice say he considers lost the day he spent in court. The profession -- and the law schools -- are going to have to do a great deal more to improve the level of advocacy. In some areas, it is virtually a lost art.

Whatever else the Department of Justice does, it must remain responsive to the people. Proposals have been made recently that the Department be made an independent agency and that a permanent special prosecutor's office be created.

Both steps would be a mistake because they would place essential functions in some sort of limbo beyond the public's recall. Many commissions and administrative agencies set up in the past have as their common trademark a failure to meet the needs of the people.

The basic flaw in those proposals is that they suggest that new systems will correct the weaknesses of men. But defects in character and conscience can be corrected only by men themselves.

Every public official -- like every private citizen -- has to make a commitment to honor. If he fails, it is like a pebble tossed into a pond and a ripple results. Given enough ripples, they can turn into a tidal wave that engulfs us. The dreary spectacles that result range from Watergate to an attempt to fix a soap-box derby.

The rule of law is what stands between this country and tyranny. Would-be tyrants appear in many guises other than that of the storm trooper. Some in blue jeans are apostles of New Left terrorism. Others wear the hood of the Klansman. And there are some in Brooks Brothers suits.

As Attorney General, I am determined to do everything within my power to help improve our legal system, and to see that the laws are enforced uniformly and without bias.

Perhaps our system's essential element is that the accused be given a prompt and fair trial, with the issues decided on the merits.

One thing the public should keep in mind as Watergate unfolds is that indictments are not the same as convictions, and that even when there are indictments there sometimes are no decisions on the merits because of hung juries.

The scandals during the Administration of President Grant included the Whiskey Ring, whose activities were so widespread that two special counsels were appointed to help prosecute the cases.

While a number of convictions were obtained, the trial of a Presidential aide considered to be a key figure in the Ring resulted in an acquittal.

Fifty years later, Teapot Dome and other scandals erupted in the Administration of President Harding. Special prosecutors were again appointed, and Albert Fall, the Secretary of the Interior, was convicted of taking a bribe. Two prominent businessmen were also tried but were acquitted.

In other cases growing out of the Harding Administration, several more convictions were obtained. But in a landmark case, the trial of Attorney General Harry Daugherty ended in a hung jury and the indictment was dismissed.

By briefly recounting those earlier cases, I simply wish to again make the point that allegations are one thing and convictions are another. We have to accept the verdicts of justice -- whether they are acquittals or convictions. Sometimes we also have to accept the terrible inconclusiveness of hung juries.

Those who equate allegations with guilt are deceiving themselves, as are those who believe that any conviction will somehow automatically cleanse the Nation and put us back on the right track.

As we see from history, some measure of scandal has been cleaned up from time to time, only to have other scandals develop. In a sense, corruption is put into mothballs, to reassert itself in different forms in later periods. And in some areas it just seems to go on forever.

Historians are permitted harsher judgments than attorneys, but the benchmarks they provide should be instructive, not only in viewing the past but in trying to forge a better future.

Allan Nevins, in his biography of Hamilton Fish, describes the Grant era this way: "Washington became an irresistible lodestone for crooked men." Burl Noggle in his book, "Teapot Dome," quotes a member of the Senate as saying after the two businessmen were acquitted: "This is emphatic evidence that you can't convict a million dollars in the United States."

None of this makes pleasant reading, even 50 years later. But it is important -- if not essential -- to look at the unpalatable in order to avoid the unspeakable.

In another book that examined the Teapot Dome era, Harold Faulkner noted this comment of a reformer of the time: "Popular government can be no better than public opinion and the public conscience insist upon." What is astounding is not only the amount of corruption the Nation has tolerated but how quickly it seems to forget what happened and to allow the evil ways to reassert themselves.

Watergate presents the Nation with what are in effect two challenges.

The first, of course, is to see that all of the allegations are resolved through due process of law.

The second matter relates to what happens after Watergate is concluded -- after each of the grand juries has issued its findings, after every trial jury has rendered its verdict, after every appeal has been decided.

Will Watergate have so exhausted the Nation that we will turn to other things in an attempt to forget about the tragedy that has befallen us?

Or will the abhorrence of it become so ingrained in the public spirit that we will insist that every person in any position of public trust be honest -- and then maintain our vigilance to make certain?

I don't know the answers to those questions. Part of our national record shows that the public has been misled at times. But another part shows that we have made remarkable strides under decent and honorable public figures. The scales seem to tip in some sort of rhythm -- from progress to scandal and back again.

It is incredible what we as a Nation have come to expect from some of our people -- and also what we will tolerate from them.

The men who left their bare and bloody footprints in the snow of Valley Forge were not fighting to make this Nation secure for generations of predators seeking ungodly power and illicit fortunes.

Nor were the men who sacrificed at Gettysburg, the Marne, the Normandy beachhead, at Porkchop Hill, or in Vietnam.

There is no way to predict what we as a Nation will do after Watergate is concluded, but we had best start doing some hard thinking about it now.

Special responsibilities rest upon attorneys as we try to fashion higher standards in both public and private life. And the challenge to those of you just entering the profession is especially acute.

Attorneys do a lot more than simply hang out a shingle and practice law -- as important as that is. Lawyers are in public life in great numbers, both as elected and appointed officials.

You can make an impact on the quality of politics at the local and state levels, and all the way to the top. There will be many chances to make a contribution. Sometimes it will be by saying no to overtures you know or suspect are improper. And sometimes it will be by seizing opportunities that otherwise would lie fallow. All of this requires that you be constantly on the alert.

And that is really what every citizen has to do as well -- be on the alert for misdeeds and be constantly aware of chances to enhance standards and conduct.

If we are tough-minded about this business of protecting our liberties, then perhaps we have a chance to prevent the Watergates of the future.

But if we ignore past lessons and thus shrug off future perils, the next Watergate may grow to dimensions that would prove

to be insurmountable.

Thank you.