



Department of Justice

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Address By
ATTORNEY GENERAL NICHOLAS deB. KATZENBACH
at the
ASSOCIATION OF AMERICAN LAW SCHOOLS
Edgewater Beach Hotel, Chicago
Wednesday, December 29, 1965

Dean Miller, Professor McDougal, Ladies and Gentlemen:

I am not going to give a speech today. I know too well from my years as a law professor attending this gathering that speeches distract from the main business at hand and give unscrupulous competitors the chance to talk quietly with one's prey.

My recollection of years of these association meetings also makes me sensitive to the frustration an academic community feels when a representative of Government comes to talk. There sit professors, more knowledgeable than he about the issues, the pitfalls, the interrelationships of the fields in which he is working, and perhaps themselves the authors of the goals toward which he thinks he is moving. There he stands, his hands on a big lever of the machinery of social change, bungling their hopes.

Replacement of the Government official by an academic does not help. The proof stands before you. It does not help because the equipment with which one comes to the job soon becomes obsolete, and because the demands for decision-making in Government today often leave one too little time -- no matter how strong the impulse -- to dream about changes that ought to be made and to devise methods for making them.

Let me suggest briefly some of the demands of life at the Justice Department that distract our efforts at pure thought.

First, Administration: The Attorney General and his assistants must spend substantial time dealing with the fairly straightforward, but basic, and frustratingly recurrent, problems of housekeeping and internal administration: budgeting, recruiting, promotions, division of responsibility and jurisdiction, and the like.

Second, Counsel: It is one of the historic functions of the Attorney General to advise the President on a variety of subjects. This includes offering regular recommendations on appointments to positions ranging from United States Marshal to Supreme Court Justice -- recommendations that I find are usually difficult and often controversial.

Third, Significant Cases: The Attorney General must devote a substantial amount of his time to making a basic decision in each of a continuing succession of unusually important criminal and civil rights matters. "To go or not to go," is a question to which the Civil Rights, Tax, Criminal and other Divisions are constantly demanding prompt and explicit answers.

Fourth, Fire-Fighting: Riots at Oxford, Mississippi; a defiant Governor standing in a schoolhouse door at Tuscaloosa; a violence-beset civil rights march at Selma; rioting in Los Angeles -- all have demanded decisions by the Attorney General and personal action on-the-spot by the Deputy or an Assistant Attorney General.

Fifth, Legislation: More important and certainly more time-consuming than any of the tasks I have enumerated, however -- is the Attorney General's role in formulating and recommending legislation to the President and, under the President's direction, to the Congress.

I suppose that, during the past two years, I have spent more time drafting, urging, lobbying, expounding, explaining, defending, and conferring on the two great civil rights bills of this Administration than on any other subject.

Finally, the Attorney General, as the chief law officer of the Executive Branch, has a basic responsibility for policy planning, probing for what might be called the buried issues of our legal culture -- I mean the questions that are never raised, the injustices that are never denounced, the wastes and inefficiencies that are never decried because no articulate private interest is affected by them and no articulate public spokesman has found the insight or energy to rise and point his finger at them.

It is precisely in this area that it is fashionable to say the gap between Government and the universities must be bridged. But a bridge implies continuous traffic. The speed of development of special fields, the reduction of time for mastering them at the point of decision, the impossibility of postponing decision, simply mean that the traffic of new ideas flowing to Government has to be increased. There are a number of ways to do this.

One is, of course, the expression of opinion by professors in articles, letters and speeches as particular decisions develop and trends become visible. Government is in a good position to see the whole, but its view may be foreshortened by the pressure for decision.

Although fear of pronouncing judgment without knowing all the facts understandably deters many from writing the article or letter which burns within them, the value of unhurried reflection often outweighs the advantage of inside factual knowledge. I have been happy to note recently that on a number of subjects touching on my work, I have had the benefit of an impressively full and frank expression of views from some of my less bashful former colleagues.

However, reliance upon such advice from afar has its shortcomings and I have resorted to two other methods to keep the traffic moving.

One is pirating the people as well as their ideas. Archibald Cox just left the Department, having had a major influence on the future course of law in this country. Donald Turner of Harvard and Edward Zimmerman of Stanford have just begun the task of charting the direction of the Antitrust Division, and have already made their mark on Government policy in this area.

The other method is to institutionalize the contribution which scholarship and self-paced reflection can offer to Government decision-making. Our first experience with this sort of body was with the remarkable work of Frank Allen's Committee on Poverty and the Administration of Criminal Justice, which was a principal underpinning of the Criminal Justice Act. The success of this experience emboldened us and, 18 months ago, we created a permanent Office of Criminal Justice to serve as a continuing line of communication among those working in the criminal field, both inside and outside the Department.

It was obvious that a law professor should head this office, and for a year Jim Vorenberg of Harvard served as its director while continuing to teach in Cambridge.

This past summer, we established the Office of Law Enforcement Assistance in the Department and the President created the National Crime Commission, under my chairmanship (and the direction of Jim Vorenberg). Herbert Wechsler of Columbia, Frank Remington of Wisconsin, Abe Goldstein of Yale, Herman Goldstein of Wisconsin, Tony Amsterdam of Pennsylvania, Arnold Enker of Minnesota, Frank Allen of Chicago, and many more of you here today are participating in the Crime Commission's effort to deliver the large order the President has given us.

In the same manner of institutionalizing -- for shorter or longer terms -- the brains of the law schools for Government Projects, we are now looking ahead to a one-year residency for a professor of criminal law in our Criminal Division. Representatives of the Division are here today seeking to make this plan an accomplished fact and I invite your interest.

I recognize what this kind of institutionalizing means to deans of law schools. Establishing links between Government and the Academic Community in these ways means disrupting research and curriculum planning.

And I appreciate the response academic administrators have made to the insistent demands of Government. Three out of the four principal directors of the National Crime Commission's work were released by Harvard, Columbia, and the University of Southern California on the eve of an academic session.

But I do not think universities are losing in thus contributing to the public good. The experience of taking direct responsibility for the machinery of social change is of enormous value to the professor, his students, and his institution in insuring that the questions and answers upon which a reflective community feeds are relevant ones.

I hope that the law school deans' patience will grow with our growing demands. I would be less than frank if I denied that we look for expanding involvement of law professors in work in the Government. We hope that your involvement will expand in volume and regularity, but also in the scope of your role.

The traditional role of the academic world has been to define and justify our largest goals. But there is an increasing need to apply our best minds -- and the thought that is developed in conditions conducive to thought -- to the means and methods for achieving change.

Bail reform is one exemplary area where the academic community has already made a major contribution by designing the strategy for change after the goal had been clearly set forth. There was little argument that relying exclusively on money bail did an intolerable injustice to the poor. The subtler problem that remained, and which we are well on the way to solving, was one of detailed analysis of behavior and institutions, creative administrative thinking, and then a great deal of persuasion aimed at the men and women who run our courts and parole systems.

The National Crime Commission's recommendations -- which we hope can have visionary effect -- will also have to be accompanied by detailed plans for implementation if the major overhaul of the system of criminal justice which we all envision is ever to come about.

Comparable problems of implementing our goals face us urgently in the critical fields of pre-arraignment police procedures and civil rights. I don't think there is any general disagreement among us about the kind of relationship we want to exist between individuals, the police and the courts. Nor do any of us disagree about the goal of equal rights for all citizens in a society free of racial tension.

The job that confronts us in Government, and it should absorb you equally in the university, is that of devising the strategies of reaching those goals. It would help us all, I think, to remind ourselves that though the problem be a strategic one, it is no less worthy or demanding of the university's best thinking. We will need all the help we can get from you not just to locate our destinations on the map but to help us find routes through all the political psychological, sociological thickets that lie immediately before us.

There is no end to the assistance that the Government and the Department of Justice will welcome from you. And as a first step in getting it, I am going to stop talking and answer any questions you may have. After that I may engage in a little instant piracy myself.