



Department of Justice

ADDRESS

BY

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AT

THE COMMENCEMENT EXERCISES OF WESTMINSTER SCHOOL

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As Attorney General, I have pondered our system of law: What it is; What it should be; Indeed, what it must be in a nation founded on law to the end that we may have "ordered liberty."

I have contemplated the substance of the law, those rules of conduct which, in a representative form of government, have been set for our society by our lawmakers (the legislature) and by our lawgivers (the judiciary).

But one does not perceive law as substance only. It is more. It is procedure. It is procedural due process. It is equality before the law. It is the promise of the nation to its citizens, as recorded on the portals of the Supreme Court building: "Equal Justice Under Law."

Our law is all of these but there is another dimension to it. The sine qua non of the law lies in its administrators. The measure of its grandeur will always relate directly to the character, individually and collectively, of those who administer the law.

As citizens of the Republic, the governed, we must hold the administrators to strict accountability. The standard must be no less than the Old Testament vision of the Prophet Amos, that the Lord had placed a plumb line in the midst of the people of Israel, by which to judge their conduct.

What then of these administrators of the law? What may we reasonably expect of them?

First, we expect absolute integrity. Those who would sully the fabric of the law must have no part in the law, whether judge, lawyer, or public official. All must be held to the highest professional and ethical standards -- whether in the public or private sector.

Second, we expect fundamental fairness. The law should exceed the required parameters of equal protection and procedural due process. It should strive for a generous degree of civility -- good manners, if you please -- and a high level of decency. These elements of civility and decency can only come from the hands of those who administer the law. These qualities will not be found in law books.

Third, we expect that the law must be open. Those entrusted to vouchsafe and apply the law must also be open. Open records and a perception of candor are essential. But of equal importance is an attitude of accessibility on the part of those in charge of the legal processes. The law belongs to the citizen. The administrators -- whether the President, the Attorney General, Governor, State Attorney General, Judge, high or low, whatever and whomever -- all serve at the pleasure of and for the citizen.

Fourth, we expect that there must be no arbitrariness, and no abuse of power on the part of the administrator. We have learned much since Thomas Jefferson warned that we must bind our public officials by the chains of the Constitution. We have seen public officials at the highest levels, as well as in the lower reaches, of government who view themselves as

having roving commissions to make the law into their own images. They assume power outside the law and thereby abuse the power vested in them. Only last week, a former President was claiming power which no President has.

It is axiomatic that few can manage power and that power is often abused even by the lowest of public employees in their treatment of the citizen. You must demand that no public official exceed the confines of his or her authority, and that each be accountable under law and to the law.

The public employee, on the other hand, is entitled to demand clear laws, to know the limits of the authority of every office, and to function under systems which afford protection from being directed to engage in unlawful conduct.

Fifth, and last, we expect that no system of law should be without an element of equity to ameliorate any harshness which may arise in the application of laws. It is equity in the broad sense, from whence comes humaneness, compassion, and even mercy. It is through a form of equity that we are able to fill the interstices in the law.

It is a challenge almost beyond belief to be engaged in an effort to make and keep our system of law as a workable institution. The challenge is to accommodate our peculiar manner of resolving disputes, of whatever kind or nature, by going to law.

Sir Edmund Burke remarked in Parliament, prior to the Revolution, that the Americans were unusual. They have purchased, he stated, more copies of Blackstone's Commentaries on the Law,

than have been sold in the whole of England. They are a litigious lot, he said.

We have not changed and that is our heritage. It is the basic safeguard in our system of government that ultimate dispute resolution is left to law and to the courts.

In closing, let me tell you a story which expresses my own idea as to how to govern.

Justice and Mrs. Blackmun and my wife and I were in Aspen with a group summer before last.

We were invited one evening to a home where there were some small children. There was a six-year-old boy there by the name of Matthew. Justice Blackmun sat down on a footstool and talked with Matthew for a little while and just had a visit with him. So that night, Matthew was going to bed, saying his prayers, and he said to his mother, "I met the nicest man tonight."

She said, "Who was he?"

He said, "I don't know his name, but I think he was the government."

I hope that is what people will say of us, that we are quiet, we are nice people, we do our work well, and we do represent the government in the best possible way.