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ADDRESS BY

THE HONORABLE RICHARD G. KLEINDIENST

ATTORNEY GENERAL OF THE UNITED STATES

AT THE

NINTH CIRCUIT CONFERENCE

FEDERAL BAR ASSOCIATION

PHOENIX, ARIZONA

MARCH 28, 1973

It may be a surprise to many to know that, as late as Lincoln's time, the President of the United States devoted a good part of his day to receiving ordinary citizens who had some special business with their government.

"They do not want much, and they get very little," he said. "I know how I would feel in their place."

However, such demands upon the time of a chief-of-state with ever more complex duties were obviously impractical, and even in Lincoln's time the visiting hours had to be sharply restricted. Over the following century the proliferation of Federal responsibilities necessarily widened the gulf between the government and the people. It became extremely difficult for an ordinary citizen to lay his case before a Cabinet officer, much less the President. Beginning in the 1930's the Federal bureaucracy mushroomed to a point where numberless officials were making decisions strongly affecting the lives of ordinary citizens, but without ever seeing or hearing from those citizens. Very few of these officials could say, as Lincoln said, "I know how I would feel in their place."

This mistake is easy to make in a democracy, where government is legitimized by a vote of the people and therefore presumed to speak for the people. When the Republic was young, Alexis De Tocqueville warned against this tendency as the single most probable threat to American democracy. The people, he wrote, "are willing to acknowledge that the power which represents the community has far more information and wisdom than any member of that community; and that it is the duty, as well as the right, of that power, to guide as well as govern each private citizen."

But the fact is that justice must be meaningful on an individual basis, or it has little meaning at all; and it is possible to perpetrate great injustice under the lofty but deceptive slogan "The greatest good for the greatest number."

How we might solve or at least mitigate this problem is of very great personal concern to me, and in discussing it with you tonight I would like to wear, alternately, two different hats--that of President of the Federal Bar Association and that of Attorney General of the United States.

First, as President of the Federal Bar Association I would like to emphasize that this problem of keeping the Federal Government in touch with the people is one of the principal reasons for these circuit.

conferences of the Federal Bar Association. Among other things they are an earnest attempt to bridge the gulf between the bureaucracy and the public. They constitute an effort to bring government attorneys concerned with Federal laws and regulations into personal contact with those private attorneys whose work is most affected by those laws and regulations. And this year we have also brought the businessman together with representatives of the agencies that affect him.

This effort sponsored by an unofficial association rather than by the Government may seem like a "back door" method of tackling this problem, but it is perhaps the only practical method if we consider that the bureaucracy as such is a necessary fact of life. We may try to control it, and President Nixon is embarked upon the monumental task of doing just that, but we cannot abolish it.

Therefore, it seems to me that one of the most useful and truly momentous services that the Federal Bar Association can perform is to bridge, in its quasi-official manner, the gap that exists between the people and their government.

Now for a moment I would like to put on my other hat and converge on this same problem from the viewpoint of the Attorney General, head of the Department of Justice, and a Cabinet officer in the Nixon Administration. To the more generalized philosophy that I have just

propounded, I would like to add something more specific.

I do not believe, and the Nixon Administration does not believe, that the purposes of government and business are antagonistic. I am not saying that they are always compatible, by any means, and I am certainly not saying that what is good for any large company is always good for the country. But I do not believe we are sworn adversaries. I do not believe that we should turn our backs on one another, or that we should only deal with each other at arms' length and at swords' point. There have been and there will be cases in which we come to that, but this should be possible only at the end of a line of action which began with mutual education, discussion, and persuasion.

There was a time when, so far as Washington was concerned, American business was in the doghouse, or at least had the feeling that it was in the doghouse.

This Administration's approach is entirely different. We believe that through mutual education as to the meaning and intent of the law, mistakes by business can be avoided and many head-on confrontations by both sides can be obviated. We are not lying in ambush, hoping that you will make a misstep and fall into one of our legal snares. If you do, after our sincere efforts to keep you acquainted with the law, then the

processes of justice will most certainly have to take over. But we assume you are innocent until proven guilty.

This is why we welcome efforts by such organizations as the Federal Bar Association to build links of communication between private interests and the public interest. And I must point out that such communication is a two-way street. We are not here just to inform business about government policies. Just as important is the continual education of the Federal lawyer. He needs to have his consciousness broadened beyond the forms and documents which come across his desk. He needs to know at first hand the flesh-and-blood people who stand behind these documents out in the Main Streets and byroads of this great nation. Both the Federal lawyers and their counterparts in private life need to come out from behind the shields of paperwork and meet each other as human beings. In my opinion this process of communication and understanding can lead to better government and to better citizenship.

Let me emphasize--and I am still wearing the Attorney General's hat--that we do not want to get so cozy that we will never have the heart to blow the whistle on business. This Administration is dedicated to enforcing all the laws regardless of where the chips may fall.

For example, in its first four years the Nixon Administration filed more antitrust cases than were filed by any administration in the same period of time since World War II. Many of these were against very large mergers, and I wish to point out that it was this Administration

which was able to find the legal means to halt the trend of anti-competitive conglomerate mergers which had mounted alarmingly in the 1960's.

At the same time, this Administration has filed far more criminal cases against alleged polluters than any other Administration, and it is the only one to have added the even more effective weapon of the civil injunction suit against pollution. Again, the defendants have included some of the largest operations in the country.

While I'm at it, let me mention one or two other areas of enforcement that are of special interest to this conference. In the field of consumer protection, it was this Administration which created a special section in the Antitrust Division to enforce through legal action all the consumer-type laws, from the Pure Food and Drug Act to the Truth in Lending and the Truth in Advertising Acts. And in the area of civil rights, it was this Administration which finally succeeded, largely through negotiation, in carrying out the Supreme Court's Brown decision requiring unitary school systems.

In these areas, as well as in occupational safety and the other legal issues currently in the public eye, this Administration intends to continue carrying out the letter and the spirit of the law. These conferences can be a means, on a person-to-person basis, of making clear these intentions, so that there is no misunderstanding.

On the other hand, these conferences are not designed as a setting in which business is put in its place. You have not been invited to a dinner in which you are the main course. Our attitude here--as I trust it is in Federal offices throughout the country--is embodied in the quotation carved in the vestibule of the Attorney General's quarters: "The United States wins its point whenever justice is done its citizens in the courts." Our overriding attitude must be one of fairness--fairness to both the elements to which De Tocqueville referred, that is, the community and the private citizen. In short, we would not want to file or win an unjust case just for the sake of winning, and we would try very hard not to lose a case that we considered just.

So, with these considerations in mind, I want to offer a few assurances and a few clarifications.

First, this conference is designed, at least in part, for the mutual advantage of government and business. It demonstrates an earnest desire of Federal attorneys to learn more about business problems, to inform businessmen more about the requirements of Federal laws, and to initiate a dialogue which will prevent much difficulty from arising--difficulty that might have occurred through ignorance, insensitivity, or misunderstanding.

Second, it is never our intention to harass, but only to require

that all shall walk upright in the law. Government is not the controller of business, but the referee. It should not try to stretch the law so that it can control. But it cannot abdicate its responsibility as referee. This specialized government role helps to keep business competitive, helps to keep it working in the public interest in addition to its own interest, and helps to keep it morally defensible against the theorists who would tear it down.

Where this proper government role was lacking in other countries at other times, the results proved disastrous to business. We know from history that where capital was unregulated it became indefensible, and was rejected in favor of socialism. Regulatory enforcement is, therefore, not an enemy of business, but a means of conserving it. We in this Republican Administration recognize this, and we trust that business recognizes it also.

Finally, I wish to point out that the process we are going through today and tomorrow--that of opening and maintaining lines of discussion and understanding--comes to us with impressive credentials. We find ourselves in an age where negotiation rather than confrontation is the order of the day. Internationally, President Nixon--working always from a position of strength--has opened cultural ties, avenues of communications, and successful negotiations on some of the thorniest

geopolitical issues in history. The concept of reasonable people sitting down to talk out their differences eyeball to eyeball, if you will, is working at the international level. If this method is working between sovereign nations, surely it can work within one nation. And in the process we will maintain that kind of Government which is the agent, and not the master, of the people.