



Department of Justice

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ADDRESS

BY

THE HONORABLE WILLIAM B. SAXBE
ATTORNEY GENERAL OF THE UNITED STATES

BEFORE

ATTORNEY GENERAL'S ADVOCACY INSTITUTE

9:15 A.M.

MONDAY, JULY 29, 1974

GREAT HALL, DEPARTMENT OF JUSTICE

WASHINGTON, D.C.

I AM VERY PLEASED TO WELCOME EVERYONE HERE THIS MORNING AS WE EMBARK ON A MAJOR NEW PROGRAM FOR THE DEPARTMENT OF JUSTICE.

NOW, EVERY NEW PROGRAM HAS TO HAVE A NAME, AND SOMEONE DECIDED TO CALL THIS ONE THE ATTORNEY GENERAL'S ADVOCACY INSTITUTE.

BUT I WANT TO TELL YOU THAT THERE ARE A LOT OF DEDICATED PEOPLE IN THIS DEPARTMENT WHO REALLY DESERVE THE CREDIT FOR PUTTING THIS OPERATION INTO EFFECT.

A GREAT DEAL OF WORK HAS GONE INTO THE PREPARATION OF THE INSTITUTE'S FIRST TWO-WEEK COURSE, AND ALL OF YOU HAVE MY DEEP PERSONAL APPRECIATION FOR YOUR EFFORTS.

THERE HAS BEEN ENTHUSIASTIC SUPPORT FOR THE IDEA OF AN ADVOCACY INSTITUTE FROM OFFICIALS OF OUR LEGAL DIVISIONS HERE IN WASHINGTON AS WELL AS FROM UNITED STATES ATTORNEYS THROUGHOUT THE COUNTRY.

IN ADDITION, I BELIEVE ALL OF US IN THE DEPARTMENT FEEL A SPECIAL GRATITUDE TO THE 29 FEDERAL JUDGES WHO HAVE SO GENEROUSLY AGREED TO TAKE PART IN THE INSTITUTE'S FIRST SESSION. THEIR CONTRIBUTIONS WILL BE INVALUABLE.

THIS ALL-TOO-BRIEF JOINING TOGETHER OF THE DEPARTMENT, MEMBERS OF THE BENCH, AND ATTORNEYS FROM PRIVATE PRACTICE SYMBOLIZES SOMETHING OF GREAT IMPORTANCE TO US ALL.

WHILE THE INSTITUTE WILL SEEK TO IMPART PARTICULAR SKILLS TO YOUNG ATTORNEYS, ITS ESSENCE IS REALLY AN EFFORT TO DEVELOP A HIGHER QUALITY OF JUSTICE.

IF THE FIRST SESSION AND OTHERS TO FOLLOW ON A PILOT BASIS ARE SUCCESSFUL, THE ADVOCACY INSTITUTE WILL BE MADE A PERMANENT AND INSTITUTIONALIZED PART OF THE DEPARTMENT'S OPERATIONS.

IT IS APPARENT THAT A GREAT DEAL HINGES ON THE WORK YOU ARE ABOUT TO BEGIN.

WE ARE NOT ONLY ASKING FOR A SUBSTANTIAL CONTRIBUTION OF YOUR TIME AND EFFORT, BUT WE ALSO WILL BE SEEKING YOUR CANDID EVALUATIONS OF THE VALUE OF THE FIRST TWO-WEEK TRAINING SESSION.

IF YOU CONCLUDE THAT THE TRAINING AT THE INSTITUTE HAS BEEN WORTHWHILE, THEN WE WILL ALSO WANT YOUR ADVICE ON HOW IT CAN BE IMPROVED AND EXPANDED TO COVER NEW SUBJECT MATTER.

I PERSONALLY HOPE THE INSTITUTE DOES SUCCEED AND CAN BECOME A PERMANENT PART OF OUR OPERATIONS, FOR I BELIEVE THE NEEDS IT SEEKS TO MEET ARE SUBSTANTIAL IN NATURE AND OF LONG DURATION.

EVERY CASE THAT COMES BEFORE THE COURTS IS IMPORTANT--FOR SOMEONE'S RIGHTS, OR FREEDOM, OR PROPERTY HANGS IN THE BALANCE.

AND YET I AM CERTAIN WE HAVE ALL SEEN INSTANCES WHERE THE LEVEL OF ADVOCACY BY ONE SIDE OR THE OTHER WAS POOR. SOMETIMES EVEN KNOWLEDGE OF THE MOST ELEMENTARY PROCEDURES SEEMED ALIEN TO THE ATTORNEYS.

TO CITE ONE EXAMPLE, A LAWYER MAY FILE AN EXCELLENT BRIEF BUT IN RESPONSE TO QUESTIONS FROM THE BENCH WILL BE UNABLE TO PROVIDE THE MOST BASIC INFORMATION WITHOUT FUMBLING THROUGH HIS PAPERS.

THE LEVEL OF ADVOCACY HAS BEEN OF GROWING CONCERN NOT ONLY TO THE DEPARTMENT OF JUSTICE BUT TO DISTINGUISHED MEMBERS OF THE FEDERAL COURTS AS WELL.

IN A LECTURE IN NEW YORK CITY LAST NOVEMBER, CHIEF JUSTICE WARREN E. BURGER SAID THAT MANY TRIAL JUDGES HAD TOLD HIM THAT FEWER THAN 25 PERCENT OF THE ATTORNEYS APPEARING IN THEIR COURTS WERE GENUINELY QUALIFIED.

I BELIEVE THAT ALL OF US IN THE LEGAL PROFESSION OWE OUR DEEP GRATITUDE TO THE CHIEF JUSTICE FOR CALLING ATTENTION TO THIS GROWING PROBLEM. WE ALSO ARE INDEBTED TO HIM FOR HIS THOUGHTFUL INSIGHTS AND PROPOSALS ON HOW TO RESOLVE THE ADVOCACY DIFFICULTIES. OUR EFFORTS IN THE DEPARTMENT STEM IN LARGE MEASURE FROM HIS PIONEERING WORK IN THIS FIELD.

IRVING R. KAUFMAN, CHIEF JUDGE OF THE COURT OF APPEALS FOR THE SECOND CIRCUIT, HAD THIS COMMENT ON THE SAME SUBJECT IN AN ADDRESS LAST YEAR:

"IF LAWYERS FAIL AS ADVOCATES FOR WANT OF SKILL OR DEDICATION, THEN JUDGES SURELY WILL FAIL AS WELL, AND THE COIN OF JUSTICE WILL BE DEBASED BEYOND RECOGNITION."

I DO NOT SUGGEST THAT WE FEEL THE ATTORNEYS WHO REPRESENT THE DEPARTMENT OF JUSTICE ARE EITHER UNSKILLED OR UNMOTIVATED. I BELIEVE THEIR LEVELS OF DEDICATION AND ABILITY ARE GENERALLY HIGH.

BUT I ALSO FEEL THE DEPARTMENT FACES A NUMBER OF SERIOUS PROBLEMS AND THE ADVOCACY INSTITUTE IS PART OF OUR OVER-ALL EFFORT TO ACHIEVE HIGHER LEVELS OF PERFORMANCE.

ONE DIFFICULTY WE FACE IS IN THE SIMPLE MATHEMATICS OF THE TURNOVER IN THE LEGAL STAFFS OF THE DEPARTMENT.

A YOUNG ATTORNEY OFTEN WILL JOIN ONE OF OUR OFFICES, STAY ON THE JOB FOR THREE OR FOUR YEARS, AND THEN RESIGN TO GO INTO PRIVATE PRACTICE.

SEVERAL PROBLEMS ARE TIED TOGETHER IN THAT SITUATION.

FOR ONE THING, WE NORMALLY RECRUIT ATTORNEYS WITH LIMITED TRIAL EXPERIENCE. WE SIMPLY DO NOT HAVE THE MANPOWER TO PERMIT THEM TO GO THROUGH A LONG LEARNING PROCESS WHERE THEY ARE IN EFFECT APPRENTICES TO SENIOR ATTORNEYS.

AS A RESULT, THE DEPARTMENT IS SOMETIMES FORCED TO PUT RELATIVELY INEXPERIENCED ATTORNEYS INTO THE COURTROOM. UNTIL NOW, THE BULK OF THE DEPARTMENT'S TRAINING IN COURTROOM TECHNIQUES AND PROCEDURES HAS BEEN ON-THE-JOB TRAINING.

HOWEVER, AS ONE UNITED STATES ATTORNEY TOLD ME RECENTLY, THE SCHOOL OF HARD KNOCKS LEAVES A GREAT DEAL TO BE DESIRED AS AN EFFECTIVE TRAINING MECHANISM.

EVEN AFTER THIS TRIAL-AND-ERROR METHOD EVENTUALLY SUCCEEDS IN IMPARTING SKILLS TO A YOUNG ATTORNEY, WE FIND THAT HE OFTEN DECIDES TO MOVE ON TO OTHER EMPLOYMENT. THE CYCLE THEN BEGINS ALL OVER AGAIN.

I DO NOT WANT TO LEAVE THE IMPRESSION THAT THE DEPARTMENT HAS NEGLECTED TRAINING OVER THE YEARS. A NUMBER OF DIFFERENT COURSES ON SPECIFIC SUBJECTS, AS WELL AS ORIENTATION SESSIONS, HAVE BEEN OFFERED HERE IN WASHINGTON. THE CRIMINAL DIVISION JUST RECENTLY HELD A WEEK-LONG TRAINING COURSE FOR 60 ATTORNEYS WHO HAD LITTLE OR NO CRIMINAL TRIAL EXPERIENCE. IN-HOUSE TRAINING IS ALSO CARRIED ON BY A NUMBER OF UNITED STATES ATTORNEYS.

UNTIL NOW, HOWEVER, THERE HAS BEEN NO FORMAL, STRUCTURED, IN-DEPTH TRAINING IN THE DEPARTMENT TO BRIDGE THAT CHASM BETWEEN LAW SCHOOL AND THE REALITIES OF LIFE IN THE COURTROOM.

OUR NEW INSTITUTE, AT LEAST ON A TRIAL BASIS, IS DESIGNED TO PROVIDE THAT TYPE OF POST-GRADUATE INSTRUCTION AND HELP DEVELOP SKILLS MORE RAPIDLY THAN THROUGH THE HARD KNOCKS ROUTE. IT WILL GIVE OUR NEW ATTORNEYS A HEAD START--TEACHING THEM THINGS THAT OTHERWISE MIGHT TAKE MONTHS TO LEARN.

THE LEGAL BUSINESS OF THE FEDERAL GOVERNMENT--REALLY, THE LEGAL BUSINESS OF THE PEOPLE--IS ILL-SERVED UNLESS THE DEPARTMENT'S ATTORNEYS ARE HIGHLY SKILLED.

THE EFFICIENCY OF THE COURTS CAN BE ENHANCED IF THE DEPARTMENT'S ATTORNEYS HAVE AN INTIMATE AWARENESS OF ALL THE PROPER PROCEDURES. THE MATTER OF DECORUM ALSO IS IMPORTANT. THAT IS SIMPLY ANOTHER WAY OF SAYING THAT GOOD COURTROOM PRESENCE CAN OFTEN BE AS CONDUCTIVE TO THE CAUSE OF JUSTICE AS AN ENCYCLOPEDIAIC KNOWLEDGE OF THE LAW.

EXCELLENCE MUST TOUCH EVERY ASPECT OF THE DEPARTMENT'S WORK IN BOTH CRIMINAL AND CIVIL CASES. WE CANNOT HAVE ATTORNEYS REPRESENTING THE DEPARTMENT IN COURT WHO ARE NOT INTIMATELY FAMILIAR WITH SUCH BASICS AS HOW TO PROPERLY MAKE MOTIONS OR HOW TO CROSS-EXAMINE WITNESSES.

OUR INSTITUTE SEEKS TO TOUCH ON THE ENTIRE SPECTRUM OF MATTERS RELATING TO THE COURTROOM. IT BEGINS WITH PRESENTATION OF EVIDENCE TO A GRAND JURY. HEAVY EMPHASIS IS PLACED ON EVERY ASPECT OF WORK IN THE COURTROOM ITSELF. AND INSTRUCTION IS ALSO PROVIDED ON APPEAL PROCEDURES.

AS A REPRESENTATIVE OF THE PEOPLE, ONE OF THE BASIC JOBS OF A DEPARTMENT OF JUSTICE ATTORNEY IS TO PROSECUTE ALLEGED OFFENSES ON THE BASIS OF THE BEST EVIDENCE POSSIBLE AND TO WIN CONVICTIONS ON THE MERITS.

IN BOTH CRIMINAL AND CIVIL ACTIONS, OUR LAWYERS FREQUENTLY ARE OPPOSED BY DEFENSE COUNSEL OF IMMENSE ABILITY AND SKILL. IN ORDER TO ADEQUATELY REPRESENT THE PEOPLE, IT FOLLOWS THAT OUR ATTORNEYS MUST BE JUST AS ABLE. UNFORTUNATELY, THAT IS NOT ALWAYS THE CASE, BUT THE INSTITUTE REPRESENTS ONE OF THE STEPS WE ARE TAKING TO REMEDY THAT.

WE DO NOT WANT DEFENDANTS TO ESCAPE FROM THE SANCTIONS OF JUSTICE BECAUSE OF ANY LACK OF ABILITY ON THE PART OF REPRESENTATIVES OF THE GOVERNMENT.

IN ADDITION, OUR ATTORNEYS ARE OFFICERS OF THE COURT. THEY HAVE NOT ONLY AN OBLIGATION TO JUSTICE BUT TO FAIRNESS AND DECENCY. THEY MUST BE SKILLED ENOUGH TO KNOW WHEN EVIDENCE IS SOLID OR EPHEMERAL. THEY MUST MAKE CERTAIN NO PREJUDICIAL MATERIAL IS INVOLVED. AN INVALID OR BIASED PROSECUTION COULD IMPRISON A MAN UNJUSTLY OR DEPRIVE HIM OF HIS REPUTATION OF LIVELIHOOD.

ALL OF THOSE PRIORITIES WILL BECOME APPARENT AS THE INSTITUTE GETS UNDERWAY.

IN EXAMINING THE SCHEDULE, I WAS PARTICULARLY IMPRESSED WITH THE MOCK TRIAL SESSIONS THAT ARE SCHEDULED. AS YOU KNOW, THERE WILL BE TWO CRIMINAL TRIALS--ONE ON BANK ROBBERY AND ONE ON DRUGS--AND A CIVIL CASE ON TORT CLAIMS.

BEYOND THE MOCK TRIALS, IMPORTANT SESSIONS ARE SCHEDULED ON SUCH SUBJECTS AS GRAND JURY PROCEEDINGS, QUESTIONING OF WITNESSES, DIRECT AND CROSS EXAMINATION, PROSECUTION OF CORRUPTION CASES, AND THE FEDERAL RULES OF PROCEDURE--INCLUDING DISCOVERY.

MOST OF THE NEWLY-EMPLOYED LAWYERS ATTENDING THE INSTITUTE ARE FROM THE STAFFS OF THE UNITED STATES ATTORNEYS--ABOUT 70 OUT OF THE CLASS OF 100. THE REMAINDER ARE FROM THE LEGAL DIVISIONS HERE IN WASHINGTON.

AS MANY AS 300 ASSISTANT UNITED STATES ATTORNEYS ARE HIRED EACH YEAR. SINCE OUR UNITED STATES ATTORNEYS HANDLE PERHAPS 95 PERCENT OF THE DEPARTMENT'S LITIGATION, IT IS ESSENTIAL THAT THEIR STAFFS BE WELL TRAINED.

THE INSTITUTE WILL SEEK TO DEVELOP NOT ONLY GREATER SKILLS AND A HEIGHTENED SENSE OF FAIRNESS. EQUALLY IMPORTANT, IT WILL ATTEMPT TO CREATE A SENSE OF PRESENCE, OF KNOWING WHAT TO DO AND WHEN TO DO IT IN COURT.

NO MAGIC FORMULA IS REPRESENTED BY THIS INITIAL SESSION OF THE INSTITUTE. IT IS ONE STEP--AND A BADLY-NEEDED STEP--IN OUR EFFORTS TO IMPROVE THE CAREER SERVICE AND GREATLY ENHANCE OUR PROFESSIONAL STANDARDS.

AN IMPROVED SENSE OF COOPERATION BETWEEN THE LEGAL DIVISIONS AND THE UNITED STATES ATTORNEYS' OFFICES SHOULD BE AMONG THE IMPORTANT FRINGE BENEFITS TO BE OBTAINED.

QUITE FRANKLY, WE ALSO HOPE IT WILL BE A FACTOR IN IMPROVING MORALE, PARTICULARLY SINCE THE UNITED STATES ATTORNEYS' OFFICES ARE SCATTERED THROUGHOUT THE NATION AND OFTEN FEEL SOMEWHAT ISOLATED FROM THE DEPARTMENT.

IF THE FIRST COURSES OF THE INSTITUTE SUCCEED, WE MAY DEVELOP A PERMANENT TRAINING FACILITY AND FACULTY. OTHER TRAINING EFFORTS THAT ARE EITHER IN EXISTENCE OR IN THE PLANNING STAGES MIGHT BE MERGED INTO IT.

IN ADDITION TO EVERYTHING ELSE, I HOPE THAT WE ALSO MAY SEE ONE ADDITIONAL BENEFIT FROM THIS PROGRAM.

WE NEED TO TAKE EVERY POSSIBLE STEP TO RETAIN THE BEST ATTORNEYS WHO COME TO WORK FOR THE DEPARTMENT SO THAT THEY SPEND THEIR CAREERS IN THE FEDERAL SERVICE, RATHER THAN LEAVING JUST WHEN THEY ARE BECOMING PROFICIENT.

I WOULD HOPE THAT WE CAN DO THIS IN PART BY SHOWING WE ARE VERY SERIOUS ABOUT THIS BUSINESS OF HAVING THE FINEST LEGAL STAFF IN THE ENTIRE NATION AT THE DEPARTMENT OF JUSTICE.

AND WE WANT TO COUPLE THAT WITH PERFORMANCE--BY SHOWING THAT WE ARE EQUALLY SERIOUS IN THE DEPARTMENT OF JUSTICE ABOUT FULLY CARRYING OUT EVERY ONE OF THE GREAT RESPONSIBILITIES GIVEN TO US BY THE PEOPLE.

EACH ATTORNEY IN GOVERNMENT SERVICE HAS A RARE OPPORTUNITY TO WORK FOR WHAT IS RIGHT, TO CONTRIBUTE TO THE PROGRESS OF OUR GOVERNMENT AND SYSTEM OF LAWS, AND TO HELP ALLEVIATE HUMAN SUFFERING.

I WOULD URGE EACH ATTORNEY IN THIS INITIAL CLASS
TO TAKE FULL ADVANTAGE OF THE UNIQUE OPPORUTNITY YOU ARE
RECEIVING. AND I AM CERTAIN YOU WILL.

THANK YOU.