



# Department of Justice

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ADDRESS

BY

THE HONORABLE GRIFFIN B. BELL  
ATTORNEY GENERAL OF THE UNITED STATES

BEFORE

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During the 15 months that I have been Attorney General, many people have asked me what it is like. Well, it is exciting, complex, demanding and almost impossible. It involves administering a department consisting of 54,000 people, divided roughly into 26 parts.

It is a department which has drifted for several years from issue to issue, reacting rather than acting; usually on the defensive, sometimes under attack from the media and some in the Congress, and always a favorite target. The goals of the Department were hardly discernable when I arrived in Washington. Attorney General Levi had just begun to bring the Department out of the doldrums and I am thankful for his start. I have been building on his start and we are beginning to manage it with stated policies and definite goals.

My time as Attorney General has been devoted, first, to general management including advising the President on legal matters; second, to working with Congress; third, to public relations through speaking and the media; and fourth, to foreign intelligence. Each of these areas takes about one-fourth of my time.

To refine my sense of the mission of the Justice Department I have tried to learn all that I can about its history. It is a story of history repeating itself. Many of the things in controversy today have been great issues in the past.

Even the IBM case has had a short life, only nine years to date, compared to the litigation that ensued over the telephone patents. That litigation lasted for 30 years. More correctly, the litigation covered just 15 years and it took an additional 15 years to find an Attorney General who had the courage to dismiss it, given the fact that it was a loser for the government. Several of the Attorneys General during this period sought the advice of Congress, hoping for some sharing of responsibility, but they were never able to raise a response.

The first Attorney General was Edmund Randolph. The office of Attorney General was created by the First Congress in 1789. Randolph had served as an aide to General Washington and as an Attorney General of Virginia. He was a close friend of President Washington, as well as his lawyer -- but in that day, far from Watergate, no one suggested that he was disqualified by virtue of being a friend or, as some would say, crony.

It was not until 1853 that the office of Attorney General became a full time office, and the private practice of law was no longer permitted.

Even in the early days of the Republic, there were those in public life who objected to the loss of privacy. For example, Attorney General Evarts, who served immediately after the Civil War, resigned and in so doing stated, "I shall return to my business of farming and lawing and leave to the newspaper correspondents the conduct of affairs."

During this history of the Department of Justice, there were a total of 55 Attorneys General. They served an average of 2.6 years, some serving less than a year and one as long as 11 years. Some were brilliant, some hardly up to the office. One was described, in a contradiction of terms, as being a "fat-brained, good-hearted, sensible old man."

Even in the early days of the Republic there were comments on public officials who did not socialize to the degree thought proper by Washington Society. Harper's Weekly in the late 1850s wrote of President Buchanan's Attorney General, Jeremiah Black, ". . . though you never meet the Attorney General at a ball or a soiree you can find him all day in the Supreme Court and nearly all night at his office."

One feels the history of our nation when viewing the portraits of the past Attorneys General which hang in the main Department building. There were two from Georgia -- Berrien and Akerman. Naturally I have moved them to the fifth floor near my office.

I have had the portrait of Lincoln's second Attorney General, James Speed of Kentucky, moved to the Conference Room. I feel an affinity to Speed. He was a Southerner who had a difficult time being confirmed by the Senate. Some thought that his place of birth made him suspect.

Until the James Speed portrait was moved in, Chief Justice Harlan Fiske Stone's portrait hung in the Conference Room. As Attorney General in 1924, Justice Stone appointed J. Edgar Hoover as Director of the Federal Bureau of Investigation, the first Director of the Bureau to be confirmed by the Senate. I felt it appropriate that his portrait stay close by during our search for a new FBI Director to remind me of the high standards he set for the FBI.

Part of the Bureau's lore is that oft-quoted, although perhaps apocryphal, conversation in the Attorney General's office in 1924. Stone offered Hoover the job. Hoover reportedly said, "I'll take the job, Mr. Stone, on certain conditions."

"What are they?" the Attorney General asked.

"The Bureau must be divorced from politics and not be a catch-all for political hacks. Appointments must be based on merit. Second, promotions will be made on proved ability and the Bureau will be responsible only to the Attorney General," Hoover replied.

Stone was delighted with the terms and said, "I wouldn't give it to you under any other conditions. That's all. Good day."

I think it is more than coincidence that our new director, Judge William Webster, was careful to exact similar terms from me.

One of the most positive public events I've witnessed in Washington was the swearing-in ceremony of Judge Webster as Director of the FBI. Among those present in the FBI Auditorium were the President and the Vice President, the Chief Justice, the leaders of Congress, and many others. For good humor, I announced to the President and the others in attendance that I had done a good deal of studying to see if we couldn't trace the beginning of the FBI to Georgia and that I had managed to do so. In 1870 when the Department of Justice was created, we had an Attorney General from Georgia. His name was Amos Akerman. We have been careful in Georgia not to know anything about Mr. Akerman because of the fact that he was appointed during the Reconstruction by U.S. Grant. The fact is that he got the first appropriation from the Congress to form an investigative unit to assist the Attorney General and the U.S. Attorneys over the country. That appropriation was annual thereafter and it was that money that was finally used, along with some more, to establish the Bureau of Investigation in 1909. So there is an argument that there was at least an attenuated Georgia connection to the beginning of the FBI.

Most of the investigative work of the U.S. Attorneys at that time was done by U.S. Marshals. This was something else that I brought to the President's attention on the day the new FBI Director was sworn in. It was a time of great

economy in the Government - another era. The Marshals were able to save a good deal of money. They were paid one dollar for capturing fugitives . . . alive. If they were brought in dead, they got no money at all and had to pay the burial expenses.

The high point -- or perhaps the low point -- of law enforcement in the federal government, prior to the establishment of the FBI, was in 1903 when Attorney General James McReynolds was in office. Someone got in touch with him seeking help in finding a kidnapped daughter. He replied, "you should furnish me with the names of the parties holding your daughter in bondage, the particular place where she is being held and the names of the witnesses by whom the facts can be proved."

Now let me say a few words about where I think we are at the Department in terms of accomplishments and problems.

I perceive a change of attitude on the part of the American people. I hope that we are reaching the end of the Watergate syndrome. I believe that the confidence of the American people has been restored in their government at least to the extent that they are now willing to give those in government an opportunity to perform as public servants in the traditional sense. When I say traditional sense, I mean traditional in that all Americans, including public

officials, have been presumed to be honest and the burden of proof is on those contending otherwise. We have been through a low period where the burden was shifted in the eyes of too many of our citizens. I believe that we are nearing the end of a period of healing in our country and that we can go forward in a spirit of civility toward each other and toward those who perform in positions of leadership in our government. No one in particular can claim credit for this shift. The American people shift as they please, but I do recognize it and we must ensure that their confidence is enhanced.

As to the Department of Justice, itself, it must be as independent as possible. It cannot be completely independent because the Attorney General serves as the agent of the President in carrying out the constitutional duty of the President faithfully to execute the laws. It is necessary, however, for the Attorney General to have a full measure of independence if we are to hew as carefully to the law as possible. It is the Attorney General who is responsible through the Office of Legal Counsel for rendering the more substantial legal opinions to the President and other high government officials. It is the Attorney General, acting through the Solicitor General, who sets the tone and thread of the law through the appellate process.

We must take care not to balkanize the legal position of the government. This means that the more substantial legal

opinions must be rendered from one source. We must also maintain a centralized litigating capacity.

It was this balkanization of the litigating capacity of the government that led to the creation of the Department of Justice in 1870. The litigating capacity and the lawyers were scattered through the various departments of the government at that time and it was impossible for the government to speak with one legal voice in court or, for that matter, out of court.

Almost continually since 1870, we have seen an effort on the part of some agencies to have their own litigating capacity. There are now 31 agencies who go their own route in litigating, notwithstanding that we are supposed to have a Department of Justice. Others are seeking such power. One sees the problem when we observe that there are 3,806 lawyers in the Department of Justice and 11,934 outside the Department (incidentally up from 115 in and 785 outside the Department in 1928).

It is one thing to be a government dedicated to law. It is quite another to be a government of many parts, each part following its own view of the law, with one part in conflict with other parts. It is the difference between a system of law and a nonsystem.

In 1977, in another area, we endeavored to give national leadership in improving the administration of justice, including both criminal and civil justice. We concentrated

on improving the delivery of justice in the hope of making "equal justice under law" a meaningful promise in the sense that justice will be available to all on a prompt and inexpensive basis. We are working closely with the Senate and House on a number of important measures in this area. It was for this purpose that we created the Office for Improvements in the Administration of Justice. We have high hopes for 1978. It may be a vintage year for those who want our justice system to be as responsive as possible.

The great issues facing us this year lie in the area of legislation having to do with resolving the problems of undocumented aliens, completing and implementing a program to reduce crime, completing the reorganization of LEAA, finishing the legislative efforts begun in 1977 in improving access to the justice system, completing the reorganization of the litigating divisions of the Department, and organizing the relationship between my office and the 94 U.S. Attorneys of our nation. We are at work on these problems.

Since the day I became Attorney General I have attempted to carry out the duties of that office with fealty to four basic principles, and to encourage others in the Department to act on these same principles.

The first principle is openness. I believe that openness is important to an accurate understanding by the media and the public of the work that we do in the Department. There are, of course, various laws and judicial rules governing grand

jury proceedings and pending investigations which make it impossible to be totally open about all of our work. But I believe we are doing a good job of being as candid and forthcoming as possible.

The second principle is fundamental fairness. To me this principle includes, at a minimum, the element of due process in the Department's dealings with anyone it is suing, investigating or prosecuting. If we abide by this principle there will be no calculated "leaks" of information about ongoing investigations which could unfairly slander the good name of a person who ultimately is exonerated of any wrongdoing. Nor will there be overblown press conferences to announce indictments, which are nothing but charges rather than proof of wrongdoing.

But I believe that fundamental fairness is more than due process. It includes as well a high level of decency and simple civility. I fully believe in the concept of government as a servant of the citizen. We at the Department should always approach private citizens with courtesy and respect rather than with an air of superiority.

The third principle is basic integrity. The people in the Department of Justice are professional and our professional integrity is our most important possession. We have an Office of Professional Responsibility which reports directly to me and investigates any allegations of wrongdoing by a Department employee. I have been impressed by the

integrity of the people in the Department and by the tenacity of the Office of Professional Responsibility in ferreting out those few lapses that do occur.

The final principle is restraint. All of you are sophisticated people who know that power breeds the abuse of power. I have long held the view that the best use of power often is not to use it at all, and if it is necessary to use it then to use it as sparingly as possible. Many members of the Washington establishment seem to think that their positions give them "roving commissions" to go about the land making over the world in their own image. I am happy to report that I found very few instances of this mentality in the Department of Justice, and I am seeing less evidence of it as time goes on.

In closing these brief remarks, I wish to assure you, as representatives of the American public, that the Department of Justice basically is in pretty good shape. It went through some rough times during the so-called "Watergate years," but under the guidance of Attorney General Levi it began to make a recovery from those years. I have dedicated my tenure as Attorney General to speeding that recovery.