



Department of Justice

ADDRESS

OF

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

BEFORE THE

LEADERSHIP GEORGIA FOUNDATION, INC.

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One of the things I would like to discuss with you tonight is the Federal bureaucracy in Washington. Everyone has a favorite story to tell but let me begin with something that happened recently in the Justice Department. A Justice attorney had submitted material to my office two days before the deadline and a member of my staff told him the matter would be referred to the Office of Professional Responsibility, which investigates misconduct by Department employees. Let me read you the attorney's reply:

"I have been around the Department long enough to recognize that no one accepts blame for anything and that there is always a faceless culprit in the bowels of bureaucracy who bears the ultimate responsibility. This case is no exception. After receiving notice of your charge, I immediately checked with my secretary, who explained that in the incredible rush of business she had become confused and inadvertently typed the memorandum before the deadline had passed. However, she believed that she had corrected the error of her ways by placing the memorandum in our outbox, which has gone unsearched by the messengers (perhaps they believe they need a warrant) since my arrival. As luck would have it, a new trainee arrived that very day and mistakenly assumed that we wanted the material delivered promptly. You'll be pleased to know that he is no

longer with us.

"But there is always a silver lining. Because you were so shocked by the memorandum's arrival two days early, you obviously failed to note an even more egregious breach of Department policy. Unlike the usual case, where someone with no constructive comments to add produces a ten-page memorandum to that effect, we had no comments and said so. You may be sure that we will not let either breach occur again."

Now of course that exchange was just a joke between two very able, dedicated attorneys -- but it still illustrates an important point.

The Bureaucracy in the Federal government has an astonishing amount of power. Let me recite to you a few of the ways in which it can operate -- and those techniques which it uses to survive, to control, and seemingly to expand, despite any change in leadership in government under our constitutional system through the election process.

I recite some general bureaucratic principles drawn from my own experiences in Washington. For example, I was subjected to what we now call "the flooding principle" immediately upon assuming office. This principle operates on the basis of department heads flooding the new supervisor with long reports, more voluminous than can be absorbed, even if all could be read. This creates the facade of much work being done, and much

importance being given to what is being done.

A variation of the "flooding" principle is the "travel" principle. Keep the supervisor out of his or her office as much as possible. During my first few months as Attorney General I visited, on separate trips, Honolulu, Seattle, San Francisco, Los Angeles, and San Diego - and finally caught on to the fact that I was being scheduled out of office.

Another variation of this principle is to use the method of inducing an assumption of authority by burying some proposal in the midst of a long report. We can identify this as the "burying principle." Some contemplated action is buried in the report and will be undertaken unless one is fortunate enough to stop it.

Another great technique is the "leak principle." It operates in two ways. One, the new leader is embarrassed and confused by constant leaks concerning matters which have not come to his or her attention. This keeps one in the position of playing catch up, rather than being in charge. The most vicious use of the principle is to attempt to control one's conduct. A good example was in a case where I had authorized an indictment and someone in the Department had recommended other indictments. It is fair to say, I think, that some thought that I might not authorize the additional indictments,

and a story was thus promptly leaked that I would authorize the additional indictments. This was designed to put me in the position of appearing to change my mind rather than to make up my mind.

Another principle is known as a "cry politics" theory. If some member of Congress happens to inquire about a matter, it is easy for those immediately in charge of the matter to contend that there has been an effort to politicize and thus wrest control from the Attorney General or other person in charge. Ninety-nine percent of such inquiries are proper in a representative form of government such as ours and quite harmless.

One bureaucratic technique that interferes with management is to avoid making decisions, the "play it safe" principle. This works in two ways. The question can be sent up or bucked up for decision with the predictable result that it will be sent back for study. Or, it can be bucked down for study. In either event, decision-making can be avoided.

There is no discipline in the bureaucracy comparable to what might happen in the private sector for this kind of activity. Indeed, these techniques are rarely found in the private sector and are not readily recognizable to the newcomer to government.

We have no occupation as such today, but the entire nation -- not just the South -- is presently regulated by a force more pervasive and more powerful than all the Union armies of the Reconstruction. That force is the federal bureaucracy, which by laws and regulations, by orders and printed forms, and by a thousand other unseen methods subjects all of us to some degree of federal scrutiny and control.

If the Republic is to remain viable, we must find ways to curb, and then to reduce, this government by bureaucracy. We must return to government by directly accountable public officials -- local, state, and federal.

I would like to make a few modest suggestions which, hopefully, may assist in turning the tide. These suggestions are in the nature of refurbishment. They in no way undermine or even disparage our system. They are corrective in nature and are asserted under our duty as citizens to seek to improve the system. It is through such duty that we replenish our democracy under our constitutional system.

As a first step, I would amend the Constitution to provide one six-year term for the President. This is certainly not a new idea, having been originally proposed in Congress in 1826 and reintroduced some 160 times since then. It has been advocated by several Presidents. But it is an idea whose

time may have come. This change will enable a President to devote 100 percent of his or her attention to the office. No time would be spent in seeking reelection.

The current four year term is actually too short to achieve any of the major changes and improvements that a President should accomplish. The funding cycles are so long that it is well into a President's third year before his own program changes take effect. This leaves the bureaucracy in control.

Second, I would propose a complete review and reduction of the regulating and litigating authority of the independent federal agencies.

Third, I would place a severe restriction on the staffs allocated to the President, the Congress, and even the federal courts. More staff invariably means more time in which to evolve more ideas about how to increase government control over the lives of the American people. But at the same time we make this move, we as citizens must also lower our own expectations about government.

Fourth, I would urge strong support for President Carter's plans to reduce the volume, complexity, and cost of government regulations generally. As Attorney General, charged with enforcing the nation's laws, I have seen so much burden cast upon our citizens by the host of regulations. Federal regulations

currently in force cover about 60,000 printed pages with thousands more in interpretations and guidelines. They are often written in defiance of the English language. Many of these regulations have retarded our real economic growth, by impairing our efforts to improve the productivity of labor and capital. And the paperwork and compliance burden on the smaller American businesses is simply impossible, so that the net result is wholesale disobedience, which then breeds disrespect for the law generally.

And, fifth, we need to restore confidence and non-partisan support to some of the fundamental units of the federal government. It is interesting to note that three Cabinet officials were exempted by the President from attending some time ago a Democratic Party mini-convention in Memphis: the Secretary of Defense, the Secretary of State, and the Attorney General. That suggests to me that these officers and their departments have to be seen as non-partisan, charged to work under neutral principles of law and policy. There is no room in our federal system for the vagaries and viscissitudes of partisan politics in the conduct of our national defense or our foreign relations; in like fashion, the laws of our land must be enforced without fear or favor as to party affiliation.

I mention this last fact, not because it relates to my earlier observations about bureaucracy, but because these three arms of the Executive Branch are the guardians of our freedoms.

It is through their independence and professionalism that we American citizens have the liberties -- and even license -- to debate and discuss how our government is to be run. So in their strength lies the strength of the American people.

The bureaucracy did not grow into its present proportions without substantial assistance. One reason for its growth is that too many citizens ignored some of their basic citizenship obligations. They were too busy to take the time to get to know their government and become involved in every way possible in its operations. An essential fact to remember is that each of us has an obligation to render some measure of public service. Just as one owes his church a tithe of his material wealth, so does a citizen owe a tithe of his talents to the public good. It is our noblesse oblige. I commend the concept to you.

There are many complex factors to deal with in trying to successfully operate the Executive Branch of government. We must deal with the bureaucracy. We must deal with the Congress. And we must deal, each and every day, with the press. It is not a new consideration.

Shortly after the Civil War, Attorney General Evarts resigned and said: "I shall return to my business of farming and lawing and leave to the newspaper correspondents the conduct of affairs."

My media baptism in Washington was not gradual; in the "born again" context, it was "total immersion."

Washington, of course, is a media town. It's been written that we live under a government of men and women and morning newspapers. From my own experience, I know that on many days, after looking over the morning papers, my agenda is altered if not reset.

I fully understand that the press plays an important role in our society. The press, together with the Congress and public opinion, make up our society's system of official accountability. They are the means by which policy is examined and explained.

Reporters in a very real way represent the American public, and I try to answer their questions in that spirit. As a lawyer I have great respect for the adversary process as an instrument for getting as close to the truth as we can manage.

On the other side of the coin, though, there are some areas where we cannot give information.

I do not complain about reporters and their methods. Recent history has shown they would be derelict if they did not seek out leaks. On the other hand, there is a heavy responsibility in reviewing leaks. A judgment must be made as to credibility.

The leaker may have an ulterior motive and seeks to use the media. Often the leader has only partial information and the use of the information leads to mischief or even harm.

One recent Brookings Institute study said:

"Since information is a primary strategic resource in Washington, the passing of unauthorized messages outside channels often approaches an art form. There are routine leaks to build credit and keep channels open for when they are needed, positive leaks to promote something, negative leaks to discredit a person or policy, and counterleaks. There is even the daring reverse leak, an unauthorized release of information apparently for one reason but actually accomplishing the opposite."

The media is responsible if it carries false or inaccurate information. It is the fourth branch of government and has great power.

There is the need not only for greater accuracy but for a greater concern for accuracy. There is little criticism of the media by the media. It is the one safe zone of the four principal areas of our system. Our great First Amendment would not be harmed in the least if the media became accountable to the media.

Let me also mention a more personal observation concerning the press. A Washington reporter recently spent a great deal of time doing a detailed story on me and my work as Attorney General. The reporter told me the story was rejected by The New York Times because it wasn't critical enough.

The incident gives new substantiation to the comment by A.J. Liebling in the New Yorker Magazine many years ago that freedom of the press is limited to those who own one.

In closing, let me stress that I have really been discussing two related matters tonight -- how we can improve the government to better serve the people and how we can make certain that the great power of government is used properly.

I have often said that the wisest use of power is not to use it at all. But if such power must be used, use it sparingly. That is the prescription I would write for our federal government today, for the temptation of great power may otherwise be too great to resist.