

REMARKS OF SENATOR BOB DOLE
SOUTHWESTERN UNIVERSITY
SCHOOL OF LAW
COMMENCEMENT ADDRESS
LOS ANGELES, CALIFORNIA
SUNDAY, MAY 21, 1978

I KNOW YOU ARE ALL ANXIOUS TO BEGIN STUDYING THIS AFTERNOON FOR THE CALIFORNIA BAR EXAMINATION. SO I'LL KEEP MY REMARKS RELATIVELY BRIEF.

YOU, THE CLASS OF 1978 AT SOUTHWESTERN LAW SCHOOL, HAVE JUST ABOUT MADE IT. YOU'VE SUFFERED THROUGH TORTURES OF THE SOCRATIC METHOD. YOU'VE READ COUNTLESS CASES AND BRIEFS AND HORNBOOKS.

AND I IMAGINE ONE OR TWO OF YOU HAVE CHECKED A GILBERT'S NOW AND THEN. AND AFTER A CLOSE ENCOUNTER WITH THE BOARD OF BAR EXAMINERS THIS SUMMER, YOU'LL BE SET TO ENTER A DIFFERENT SEGMENT OF AMERICAN SOCIETY.

-2-

YOU WILL SOON BE LAWYERS. AND THAT FACT WILL COLOR OTHERS OPINIONS OF YOU FROM THIS POINT FORWARD. ATTORNEY, BARRISTER, LAWYER, COUNSELOR -- THOSE LABELS WILL FOLLOW YOU THE REST OF YOUR LIFE AND YOUR MEMBERSHIP IN THE LEGAL COMMUNITY WILL BE A PART OF THE REPUTATION WHICH PRECEEDS ALL LAWYERS -- THOSE PRACTICING TODAY, THOSE WHO FOLLOW YOU AT SOUTHWESTERN, THOSE WHO ARE PREPARING FOR THE LSAT THIS SUMMER, AND YOUNGSTERS STILL IN THE PRIMARY GRADES FASCINATED WITH PERRY MASON RERUNS ON TELEVISION.

IT SHOULD NOT COME AS NEWS TO YOU THAT THE REPUTATION OF OUR PROFESSION HAS BEEN TARNISHED, OUR DEEDS VIEWED CYNICALLY BY TOO MANY, OUR COMMITMENT TO A SOCIETY OF EQUAL JUSTICE QUESTIONED BY MEN AND WOMEN IN HIGH OFFICE AND BY AN UNCOMFORTABLY LARGE NUMBER OF OUR FELLOW CITIZENS.

-3-

PUBLICS' PERCEPTION OF LAWYERS

THE PUBLIC PERCEPTION OF LAWYERS AS A CLASS IS BOTH SCHIZOPHRENIC AND PARADOXICAL. WHILE MANY HAVE A GENERAL DISTRUST OF LAWYERS, MOST HAVE GREAT FAITH IN THEIR OWN ATTORNEY. TOGETHER WITH THE GENERAL FEELING THAT LAWYERS ARE VEXATIOUS, LITIGIOUS, AND MASTERS OF ALL WORDS SLIPPERY AND INEXACT, OUR IMAGE IS GLORIFIED, SOMETIMES BEYOND RECOGNITION, IN THE PUBLIC MEDIA. WE ARE VARIOUSLY DESCRIBED AS DEFENDERS OF CONSTITUTIONAL RIGHTS, EXPLOITERS OF TECHNICALITIES, ZEALOUS ADVOCATES FOR THE DOWNTRODDEN, AND HIRED MOUTHPIECES FOR BIG BUSINESS. AND ALL OF THESE CHARACTERIZATIONS BEAR SOME RELATIONSHIP TO THE TRUTH. ALL HAVE FOUNDATION IN REALITY BECAUSE OF THE WIDE VARIETY OF PRACTITIONERS WITHIN THE LEGAL COMMUNITY.

-4-

NEGATIVE IMAGE

UNFORTUNATELY, THE COMPONENTS OF OUR IMAGE MOST WIDELY DISCUSSED TODAY ARE THE NEGATIVE ONES. CERTAINLY IT IS NOT DIFFICULT TO IMAGINE WHY THE PUBLIC VIEWS OUR PROFESSION WITH SUSPICION AND APPREHENSION. NOR IS IT DIFFICULT TO UNDERSTAND WHY WE MAKE SUCH EXCELLENT FODDER FOR POLITICIANS IN SEARCH OF POPULAR WHIPPING BOYS. WE ARE SEEN AS RATHER MYSTERIOUS SEMANTIC SORCERERS, FABRICATORS OF THE SLIPPERY PHRASE AND DISPOILERS OF COMMON SENSE ENGLISH. BUT THE MAIN REASON FOR THE SUSPICION AND APPREHENSION OF LAWYERS IS THE FACT THAT PEOPLE FIND THEMSELVES IN OUR COUNSEL DURING TIMES OF DISTRESS AND TROUBLE, AND ALMOST ALWAYS AGAINST THEIR WILL.

BUT WHERE WOULD OUR COUNTRY BE -- INDEED, WHERE WOULD CIVILIZATION BE -- WITHOUT LAWYERS?

-5-

WOULD THE ANCIENT NATION OF SUMER BE REMEMBERED TODAY WERE IT NOT FOR THE HAMMURABI CODE? THINK HOW PERVASIVE IS THE LAW OF MOSES WHICH ESTABLISHED THE EQUALITY OF MEN UNDER LAW. WHAT OF THE ROMAN CODE, WHICH STILL TODAY, LONG AFTER THE FINAL DECLINE OF A ONCE POWERFUL EMPIRE, PERVADES EUROPEAN JURISPRUDENCE? AND IF THE FRENCH PREFER TO FORGET ABOUT WATERLOO AND NAPOLEON'S MILITARY GLORIES TURN SOUR, THEY STILL SHOW GREAT PRIDE IN THE NAPOLEONIC CODE. AND LEST WE FORGET, THE FIRST ACT OF OUR FOUNDING FATHERS, UPON THE BIRTH OF OUR NATION, WAS TO ESTABLISH THE RIGHTS OF AMERICAN CITIZENS UNDER LAW.

MORE THAN ANY OTHER FACET OF THE GOVERNING FORCES OF SOCIETY, LAW, BY RECOGNIZING CHANGING VALUES AND REACTING TO THEM, HAS CONTRIBUTED TO THE EVOLUTION OF IDEAS, TO CHANGES IN ATTITUDES, AND TO THE MARCH OF CIVILIZATION.

-6-

DOING THE JOB RIGHT

THROUGHOUT TIME, THE LEGAL PROFESSION HAS BEEN ONLY AS GOOD AS ITS COMPONENT PARTS. AND THAT MAXIM IS EVERY BIT AS VALID TODAY AS IT WAS WHEN THE FIRST LAWYER PLIED HIS TRADE. SO EACH MAN AND WOMAN IN SOUTHWESTERN'S CLASS OF 1978 HAS THE OPPORTUNITY -- INDEED, THE MORAL RESPONSIBILITY -- TO CONTRIBUTE TO THE UPLIFTING OF THE GENERAL STANDARDS AND LEVEL OF CONFIDENCE IN THE LEGAL COMMUNITY. AND IF I MIGHT BE SO BOLD AS TO OFFER ONE STANDARD BY WHICH YOU CAN JUDGE YOUR SUCCESS, YOUR COMMITMENT TO A SOCIETY OF LAW, IT IS THIS: YOU SHOULD PRACTICE IN SUCH A WAY THAT IF ALL LAWYERS MODELED THEMSELVES AFTER YOU, THERE WOULD BE LESS NEED FOR LEGAL SERVICES. YOUR PRACTICE SHOULD MINIMIZE THE SORT OF VEXATIOUS ENTANGLEMENT WHICH PEOPLE RESENT MOST ABOUT THE LAW AND LAWYERS.

-7-

THIS IS EASIER SAID THAN DONE. IT MEANS DRAFTING CLEAR, PRECISE CONTRACTS THAT WILL NOT BE THE SUBJECT OF FUTURE LITIGATION. IT MEANS PREPARING WILLS AND TRUSTS THAT CLEARLY STATE THE INTENTION OF THE TESTATOR AND PROTECT HIS WISHES FROM LEGAL ATTACK LATER ON. IT MEANS PROVIDING TAX ADVICE THAT KEEPS YOUR CLIENTS AWAY FROM EMBARRASSING DISPUTES WITH THE IRS. IT MEANS DISCOURAGING UNNECESSARY, HARRASSING LITIGATION.

BY DOING YOUR JOBS RIGHT THE FIRST TIME, AND BY REFUSING TO ENCOURAGE LITIGATION, WE CAN SPARE LAYMEN THE ANGUISH OF EXPENSIVE FRUSTRATING, LEGAL DISPUTES. BY GUARDING AGAINST LEGAL PROBLEMS, WE CAN HELP PEOPLE AVOID A CONSIDERABLE AMOUNT OF THE UNPLEASANTNESS AND COMPLICATIONS WHICH CHARACTERIZE THE CONTACT MOST AMERICANS HAVE WITH MEMBERS OF OUR PROFESSION.

-8-

JUST AS WE NEED MORE PREVENTIVE HEALTH CARE, AS LAWYERS WE MUST DEDICATE OURSELVES TO RENDERING SERVICES WHICH WILL REDUCE THE NEED FOR LEGAL "CURES".

OF COURSE, THE ONLY IRONCLAD RULE OF LAW IS THAT THERE IS ALWAYS AND EXCEPTION.

BY FAILING TO FILE SUITS ASSERTING THE CIVIL RIGHTS OF INDIVIDUAL AMERICANS, BY REFUSING TO REPRESENT CLIENTS ON A PRO BORO BASIS, AND BY FAILING TO REPRESENT CLIENTS ZEALOUSLY WITHIN THE BOUNDS OF THE LAW, WE CAN LESSEN THE AMOUNT OF LITIGATION IN THIS COUNTRY. THAT IS NOT WHAT I HAVE IN MIND.

FOR INSTANCE, IT IS FAR SIMPLER TO FAIL TO ASSERT A CONSTITUTIONAL PRINCIPLE THAN TO ASSERT IT LOUDLY. BUT OUR SYSTEM AND OUR CONSTITUTION WOULD BE POORLY SERVED BY SUCH SILENCE. FORTUNATELY, THIS HAS NOT BEEN THE CASE.

-9-

WHEN CHALLENGED, THE LAW HAS PROVEN THAT IT CAN CHANGE NOT ONLY ITS TRADITIONAL ROLE BUT ITS BASIC FUNCTION BY PRECIPITATING THE ADVANCING TIDE -- INDEED, BY MAKING WAVES AND OVERTURNING THE VESSELS OF PREJUDICE AND CONVENTION.

LEGAL PROFESSION IN FOREFRONT

IT IS NOT AN OVERSTATEMENT TO DECLARE THAT THE LEGAL PROFESSION HAS BEEN IN THE FOREFRONT OF THE BATTLE FOR CIVIL RIGHTS, FOR FREEDOM OF RELIGION, FOR THE RIGHTS OF THE POOR, FOR FREEDOM OF THE PRESS, FOR JUSTICE IN CRIMINAL PROSECUTIONS.

WE HAVE ADVANCED THE RULE OF LAW, THE PRINCIPLES OF DEMOCRACY, IN NUMEROUS LANDMARK DECISIONS: BAKER V. CARR, CANTWELL V. CONNECTICUT, SHELLEY V. KRAEMER, GIDEON V. WAINWRIGHT. THE LAW AND THE LAWYERS AND JUDGES WHO IMPLEMENT IT ARE A POWER TO BE RECKONED WITH, A FACT THIS NATION SHOULD BE GRATEFUL FOR AND PROUD OF. FOR THE MOST PART, THAT POWER HAS BEEN USED WISELY, TO PROTECT OUR CITIZENS AGAINST THE EXCESSES OF THE STATE.

-10-

PERHAPS IN NO OTHER NATION OF THE WORLD HAS THE LAW FILLED ITS ROLE OF PROTECTING THE RIGHTS OF ITS CITIZENS AND UPHOLDING THE TERMS OF ITS CONSTITUTION TO THE DEGREE ACHIEVED IN THE UNITED STATES.

ORLOV TRIAL

THE YURI ORLOV "TRIAL" JUST CONCLUDED IN THE SOVIET UNION, IS A TIMELY ILLUSTRATION OF THE FATE THAT BEFALLS CITIZENS IN A NATION WHERE THE LAW BECOMES A MOCKERY, WHERE LAWYERS ARE NOT FREE TO RIGOROUSLY REPRESENT THEIR CLIENTS. MR. ORLOV, IN PRISON FOR THE PAST FIFTEEN MONTHS, WAS DENIED THE RIGHT TO CALL WITNESSES IN HIS OWN BEHALF, WAS DENIED THE REPRESENTATION OF HIS CHOICE. THE DENIAL OF BASIC RIGHTS THROUGH A SEVEN YEAR PRISON SENTENCE IS HIS PUNISHMENT FOR ORGANIZING A GROUP TO MONITOR BREACHES OF FUNDAMENTAL HUMAN RIGHTS MANDATED BY THE HELSINKI AGREEMENT.

-11-

LAW AND HUMAN RIGHTS

RECENTLY, HERE IN LOS ANGELES, PRESIDENT CARTER COMPARED THE PER CAPITA NUMBER OF LAWYERS IN THIS COUNTRY TO THAT OF JAPAN, WEST GERMANY, AND ENGLAND. HIS CONCLUSION WAS THAT SINCE WE HAD MORE LAWYERS, WE WERE WORSE OFF. UNFORTUNATELY, HIS ANALYSIS DID NOT EXTEND TO COUNTRIES WITH LESS ACTIVE LEGAL COMMUNITIES LIKE THE U.S.S.R.

IT HAS TAKEN THE WORK OF THE INTERNATIONAL COMMUNITY, REPRESENTED BY THE HELSINKI COMMISSION OF WHICH I AM PRIVILEGED TO SERVE, TO INTERVENE ON BEHALF OF THE CITIZENS OF ALL NATIONS IN THE WORLD WHERE THE DENIAL OF HUMAN RIGHTS IS A FACT OF LIFE, AND WHERE THE LAW EXERCISES NO POWER. IT HAS BEEN WRITTEN OF THE KREMLIN THAT IT IS "DETERMINED TO AVOID HAVING ITS CITIZENS KNOW AND ACT UPON THEIR RIGHTS". IT IS ONLY AT THE INSISTENCE OF THE

-12-

INTERNATIONAL COMMUNITY THAT THE SOVIETS ACCEPTED, IN RETURN FOR ECONOMIC COOPERATION, THE SEVENTH PRINCIPLE OF THE HELSINKI AGREEMENT, NAMELY "RESPECT FOR HUMAN RIGHTS AND FUNDAMENTAL FREEDOM OF THOUGHT, CONSCIENCE, RELIGION, OR BELIEF".

CLEARLY, AMERICA, BY DEMONSTRATING HER RESPECT FOR THE LAW, HAS EARNED THE RIGHT TO ASSUME LEADERSHIP IN THE FIELD OF HUMAN RIGHTS. WE MUST CONTINUE IN THAT ROLE AND EVERY ASPECT OF OUR FOREIGN POLICY MUST REITERATE OUR COMMITMENT TO THE PRINCIPLE OF FREEDOM.

LAW AND LEGISLATION

CLEARLY, LAWYERS IN PRIVATE PRACTICE CANNOT BE THE SOLE GUARANTORS OF OUR LIBERTY. BUT TO THE DEGREE THAT WE INFLUENCE PUBLIC POLICY, LAWYERS, BOTH IN AND OUT OF GOVERNMENT SHOULD REMEMBER THAT GOVERNMENT, BY ITS VERY NATURE CREATES LEGAL PROBLEMS AND FORCES MORE AND MORE CITIZENS TO COURT TO ASSERT THEIR RIGHTS.

-13-

SINCE LAWYERS UNDERSTAND BEST THE PROBLEMS CAUSED BY TOO MUCH GOVERNMENT, IT IS OUR RESPONSIBILITY TO REDUCE THE RESULTING AMOUNT OF LEGAL WORK BY OPPOSING LEGISLATION AND REGULATIONS WHICH WILL CREATE NEEDLESS LEGAL PAPER SHUFFLING.

I'VE RUN ACROSS MANY PEOPLE THROUGHOUT OUR NATION WHO SUSPECT THAT LAWYER/LEGISLATORS LIKE MYSELF ARE IN CAHOOTS WITH OTHER LAWYERS AND THAT WE PASS BILLS PRIMARILY TO KEEP OUR FRIENDS PROSPEROUS AT THE EXPENSE OF THE AVERAGE MAN AND WOMAN. WHILE I CAN ASSURE YOU THAT THERE IS NOT BROAD BASED CONSPIRACY ALONG THESE LINES, I MUST ADMIT THAT LAWYERS HAVE NOT DONE ENOUGH TO SIMPLIFY THE LAW.

-14-

LAWYERS HAVE DUTY

I BELIEVE THAT LAWYERS HAVE A DUTY IN THE REALM OF PUBLIC POLICY TO LIMIT THE TREND TOWARDS MORE GOVERNMENT AND MORE REGULATION. BUT WE CAN'T DO THIS ALONE. THAT'S WHY PRESIDENT CARTER'S REMARKS BEFORE THE LOS ANGELES BAR ASSOCIATION TROUBLED ME. I UNDERSTAND THE POLITICS OF THE SPEECH. I KNOW THAT THERE ARE MANY MORE MEMBERS OF THE GENERAL PUBLIC THAN ATTORNEYS.

BUT I BELIEVE THE PRESIDENT'S COMMENTS WERE OVERBOARD. NONE OF US WOULD DISAGREE THAT THERE ARE SOME BAD APPLES WITHIN OUR PROFESSION. UNDOUBTEDLY, THE SAME COULD BE SAID OF TEACHERS, BUSINESSMEN, AND LABOR UNION LEADERS OR WHATEVER. IF THAT WAS THE PRESIDENT'S POINT, IT ISN'T VERY ILLUMINATING. IF HIS POINT WAS THAT ALL LAWYERS, OR MOST LAWYERS, ARE A POX ON SOCIETY, THEN I BELIEVE HE IS WRONG.

-15-

I WOULD RATHER SEE THE PRESIDENT FOCUS ON STREAMLINING THE LEGAL SYSTEM BY REDUCING THE INTOLERABLE AMOUNT OF GOVERNMENT PAPER SHUFFLING. MANY LAWYERS TODAY SPEND TOO MUCH OF THEIR TIME GRAPPLING WITH UNNECESSARY FEDERAL REGULATION AND FILLING OUT LONG, COMPLICATED FORMS FOR CLIENTS. MUCH OF THE INCREASE IN THE NEED FOR LEGAL SERVICES IS A DIRECT RESULT OF GOVERNMENT. I THINK THE PRESIDENT CAN MAKE A CONTRIBUTION BY DOING EVERYTHING WITHIN HIS POWER AS CHIEF EXECUTIVE TO DIMINISH THE AMOUNT OF PAPERWORK AND RED TAPE WHICH RESULTS IN SO MUCH LEGAL BUSYWORK.

AND LAWYERS CAN HELP THE PRESIDENT IN THIS FIGHT. BY DOING OUR JOBS WELL AND BY WORKING WITH GOVERNMENT OFFICIALS TO SIMPLIFY THE LAW, WE CAN LIMIT THE NEGATIVE IMPRESSION OF ATTORNEYS AS THE BENEFICIARIES OF COMPLICATED GOVERNMENT.

-16-

BY THE SAME TOKEN, WE MUST NOT HESITATE TO CHALLENGE GOVERNMENT WHEN IT STEPS BEYOND THE BOUNDS OF REASONABLENESS. CERTAINLY, GOVERNMENT OPERATES MORE SMOOTHLY WHEN LAWYERS REFUSE TO CHALLENGE IT. BUSINESS OPERATES MORE SMOOTHLY WHEN NO ONE CHALLENGES ITS METHODS. AND ANYBODY'S LIFE WILL BE EASIER WHEN NO ATTORNEY WILL ASSERT THE RIGHT OF AN ADVERSARY. HOWEVER, THE HIGHEST CALLING IN A FREE SOCIETY ISN'T MAKING THE TRAINS RUN ON TIME OR MAKING SURE THAT GOVERNMENT AND BUSINESS OPERATE SMOOTHLY.

RATHER, THE LAWYERS HIGHEST CALLING IN A FREE SOCIETY IS THE PROTECTION OF LEGAL RIGHTS OF INDIVIDUAL AMERICANS, THE DEFENSE OF OUR CONSTITUTION, AND THE PROTECTION OF OUR SYSTEM OF LAW. SO LET US CONCEDE FREELY THAT OUR PRESENCE ADDS TO LITIGATION, AND SOMETIMES COMPLICATES SOCIETY AS IT PROTECTS THE LEGAL RIGHTS OF OUR PEOPLE.

-17-

BUT LET US ALSO KEEP IN MIND THAT FEW OTHER PROFESSIONS HOLD SUCH GREAT OPPORTUNITIES FOR HELPING PEOPLE. THERE IS NO OTHER COURSE OF INSTRUCTION WHICH CAN PREPARE YOU FOR SUCH A WIDE VARIETY OF OPPORTUNITY. CERTAINLY, I CAN LOOK BACK ON MY LEGAL TRAINING AND MY EXPERIENCES AT THE BAR AS COUNTY ATTORNEY OF RUSSELL COUNTY, KANSAS WITH A GREAT DEAL OF SATISFACTION. THAT CAREER, AND THE BASIS IT PROVIDED FOR MY CAREER AS A LEGISLATOR, IS A CHOICE THAT I HAVE NEVER REGRETTED. NO DOUBT, AFTER YOU HAVE PRACTICED, OR UTILIZED YOUR LEGAL EDUCATION IN ANY OF A VARIETY OF WAYS, YOU WILL FEEL THE SAME WAY. AND IF YOU EVER FIND YOURSELF DELIVERING A LAW SCHOOL COMMENCEMENT ADDRESS, I KNOW THAT YOU WILL BE ABLE TO LOOK BACK UPON YOUR LEGAL EDUCATION AND UPON YOUR CAREER WITH A GREAT SENSE OF SATISFACTION, DISAPPOINTED ONLY BECAUSE THERE SEEMS TO BE NO WAY TO ADEQUATELY EXPRESS YOUR SENSE OF FULFILLMENT IN WORDS ADEQUATE FOR THE OCCASION.

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