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MR. KERRY. MR. PRESIDENT, I HAVE BEEN DEEPLY CONCERNED BY THIS ADMINISTRATION'S EFFORTS TO UNDERMINE THE RIGHT OF ALL CITIZENS TO THE EFFECTIVE ASSISTANCE OF COUNSEL, WHICH IS GUARANTEED BY THE SIXTH AMENDMENT TO THE CONSTITUTION. THIS IS A PROBLEM OF CONCERN NOT ONLY TO THE LEGAL COMMUNITY, BUT TO ALL AMERICANS WHO VALUE OUR CONSTITUTIONAL PROTECTIONS.

I RECENTLY DELIVERED THE KEYNOTE ADDRESS AT A NATIONAL CONFERENCE HELD AT HARVARD LAW SCHOOL, FOCUSING ON THIS IMPORTANT ISSUE. I ASK PERMISSION THAT THE TEXT OF MY REMARKS BE PRINTED IN THE RECORD.

THE TEXT FOLLOWS:

SENATOR JOHN KERRY: KEYNOTE ADDRESS, CONFERENCE ON DEFENDING THE RIGHT TO COUNSEL

I AM DELIGHTED TO BE HERE TODAY. AS A FORMER PROSECUTOR AND FORMER CRIMINAL DEFENSE LAWYER, IT IS A PLEASURE TO BE ABLE TO PARTICIPATE IN THIS FORUM WITH A GROUP OF SUCH DISTINGUISHED COLLEAGUES.

THE TOPIC OF THIS CONFERENCE, DEFENDING THE RIGHT TO COUNSEL, IS BOTH TIMELY AND IMPORTANT. I AM REMINDED OF WILLIAM SHAKESPEARE'S PLAY, HENRY VI, PART II, IN WHICH HE HAS ONE OF THE VILLAINS BOAST THAT WHEN THE REBELLION SUCCEEDS, "THE FIRST THING WE DO, LET'S KILL ALL THE LAWYERS." SOME PEOPLE THINK THAT IS WHAT THE REAGAN ADMINISTRATION IS TRYING TO DO TODAY. PERHAPS IT WOULD BE WORTH REMEMBERING THAT IN THE SHAKESPEARE PLAY, THE IDEA OF KILLING THE LAWYERS WAS SUGGESTED AS A MEANS OF PRODUCING ANARCHY, NOT AS A WAY OF SOLVING SOCIETY'S PROBLEMS.

HOWEVER, TO PARAPHRASE ANOTHER QUOTE FROM SHAKESPEARE, I COME HERE TO PRAISE LAWYERS, NOT TO BURY THEM. I COME TO PRAISE ALL OF YOU FOR THE EFFORTS THAT YOU ARE MAKING TO DEFEND THE RIGHT TO COUNSEL, AND TO PLEDGE MY SUPPORT AND SOLIDARITY WITH THOSE EFFORTS.

UNFORTUNATELY, NOT EVERYONE IN THE CURRENT ADMINISTRATION AGREES WITH THIS POINT OF VIEW. TODAY, THE RIGHT TO "EFFECTIVE ASSISTANCE OF COUNSEL", GUARANTEED BY THE SIXTH AMENDMENT TO THE CONSTITUTION, IS UNDER ATTACK AS NEVER BEFORE. EXAMPLES OF THESE ATTACKS ARE ALL AROUND US, AND ALL OF YOU ARE FAMILIAR WITH THEM. THE WEAPONS USED IN THESE ASSAULTS ON THE RIGHT TO COUNSEL INCLUDE SUBPOENAS ISSUED TO LAWYERS WHICH ORDER THEM TO PROVIDE TESTIMONY AND DOCUMENTS CONTAINING INCRIMINATING EVIDENCE AGAINST THEIR CLIENTS TO THE GRAND JURY. THEY INCLUDE SEARCH WARRANTS PERMITTING GOVERNMENT OFFICIALS TO RAID ATTORNEY FILES IN THE SEARCH FOR INCRIMINATING EVIDENCE AGAINST THEIR CLIENTS. WE HAVE SEEN THE USE OF SPIES AND ELECTRONIC SURVEILLANCE TO DISCOVER THE CONTENTS OF ATTORNEY-CLIENT MEETINGS AND CONVERSATIONS. THE JUSTICE DEPARTMENT HAS USED THE RECENTLY ENACTED CRIMINAL FORFEITURE STATUTE TO SEIZE ATTORNEY'S FEES. AND, MOST DANGEROUS OF ALL, THIS ADMINISTRATION HAS BEGUN TO PROSECUTE ATTORNEYS FOR NOTHING MORE THAN THE VIGOROUS DEFENSE OF THEIR CLIENTS.

THESE PERNICIOUS TACTICS SERVE SEVERAL OBJECTIVES OF THIS ADMINISTRATION. ONE OF THE PRINCIPAL OBJECTIVES IS THE DESTRUCTION OF THE ATTORNEY-CLIENT PRIVILEGE, WHICH IS THE OLDEST PRIVILEGE AT COMMON LAW. THEY HAVE ATTEMPTED TO UNDERMINE THE CONFIDENTIALITY OF ATTORNEY-CLIENT CONVERSATIONS AND CORRESPONDENCE. THESE TACTICS HAD THE EFFECT OF CREATING A "CHILLING EFFECT" ON CLIENT DISCLOSURES TO LAWYERS, AND OF

TURNING LAWYER AND CLIENT AGAINST EACH OTHER BY CREATING CONFLICTS WITHIN THE ATTORNEY-CLIENT RELATIONSHIP; AND DIRECTLY THREATENING ATTORNEYS WITH THE DEPRIVATION OF THEIR LIVELIHOOD, OR EVEN WITH JAIL.

IF THERE ARE THOSE WHO BELIEVE THAT THESE ARE ONLY IDLE THREATS, CONSIDER THE CASE OF A COURAGEOUS BOSTON ATTORNEY, BARRY WILSON. MR. WILSON, A MEMBER IN GOOD STANDING OF THE MASSACHUSETTS AND BOSTON BAR ASSOCIATIONS, SPENT APPROXIMATELY 4 MONTHS OF LAST YEAR IN THE FEDERAL CORRECTIONAL INSTITUTION IN DANBURY, CT. HIS CRIME? VIGOROUS DEFENSE OF HIS CLIENT, AND OF HIS CLIENT'S SIXTH AMENDMENT RIGHT TO COUNSEL.

ACTUALLY, MR. WILSON WAS NEVER CONVICTED OF ANY CRIME. HE WAS SENT TO JAIL FOR REFUSING TO ANSWER THE QUESTIONS OF A FEDERAL GRAND JURY IN RHODE ISLAND THAT WAS INVESTIGATING HIS CLIENT'S ALLEGED ROLE IN A DRUG-SMUGGLING OPERATION. THE U.S. ATTORNEY FOR RHODE ISLAND CLAIMED THAT THE COMMUNICATIONS BETWEEN MR. WILSON AND HIS CLIENT CAME UNDER THE SO-CALLED CRIME-FRAUD EXCEPTION AND THEREFORE WERE NOT PRIVILEGED. MR. WILSON ARGUED THAT TO DISCLOSE CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATIONS WOULD VIOLATE HIS CLIENT'S CONSTITUTIONAL RIGHTS, AND THE ATTORNEY-CLIENT PRIVILEGE. IT WOULD ALSO HAVE HAD THE NOT-SO-INCIDENTAL EFFECT OF DESTROYING MR. WILSON'S ABILITY TO EARN A LIVING AS A CRIMINAL DEFENSE LAWYER. IT SEEMS THAT THE JUSTICE DEPARTMENT HAS SYSTEMATICALLY SINGLED OUT THE MOST EFFECTIVE CRIMINAL DEFENSE ATTORNEYS FOR SPECIAL ATTENTION IN THIS REGARD.

BARRY WILSON HAD THE COURAGE OF HIS CONVICTIONS, AND WAS WILLING TO GO TO JAIL FOR THEM. BUT HIS EXAMPLE SERVES AS A CHILLING REMINDER TO THE LEGAL COMMUNITY OF WHAT CAN HAPPEN WHEN THE POWER OF THE JUSTICE DEPARTMENT IS NOT HELD IN CHECK.

THESE ASSAULTS ON THE CRIMINAL DEFENSE BAR ARE JUST PART OF THE BROADER BACKGROUND OF THIS JUSTICE DEPARTMENT UNDER THE REAGAN ADMINISTRATION. THEY ARE PART OF A LARGER DISRESPECT FOR THE VERY PROCESS OF LAW CONTAINED IN THE CONSTITUTION, AND DATING BACK TO THE ENGLISH COMMON LAW. THIS ADMINISTRATION HAS ATTACKED THE VERY FOUNDATIONS OF THE ATTORNEY-CLIENT PRIVILEGE. THREE HUNDRED YEARS OF LAW HAVE DEVELOPED THE IMPORTANCE OF THIS PRIVILEGE. COUNTLESS LAW REVIEW ARTICLES HAVE BEEN WRITTEN ABOUT IT, AND THE SUPREME COURT HAS AFFIRMED ITS IMPORTANCE MANY TIMES. BUT UNDER "REAGAN JUSTICE", THIS PRIVILEGE HAS BEGUN TO ERODE.

IN THE NAME OF FIGHTING CRIME, THIS ADMINISTRATION HAS PLACED THE CONSTITUTION IN A SECONDARY POSITION. THE SHORT-TERM REWARDS OF THIS STRATEGY ARE TEMPTING, BUT THE LONG-TERM IMPLICATIONS ARE ENORMOUSLY DESTRUCTIVE.

THE BASIC DILEMMA INHERENT IN THIS DEBATE WAS STATED SUCCINCTLY BY SENIOR CIRCUIT JUDGE DAVID L. BAZELON IN A LAW REVIEW ARTICLE IN 1981, ENTITLED: "THE MORALITY OF THE CRIMINAL LAW". JUDGE BAZELON, FOCUSING ON THE REAGAN ADMINISTRATION'S EFFORTS TO COMBAT CRIME BY ERODING THE PROTECTIONS OF THE FOURTH, FIFTH, AND SIXTH AMENDMENTS, POSED THE QUESTION: "MUST WE COMPROMISE THE MOST BASIC VALUES OF OUR DEMOCRATIC SOCIETY IN OUR DESPERATION TO FIGHT CRIME?" HIS ANSWER, AND MINE, IS NO.

AS JUDGE ELBERT TUTTLE HAS WRITTEN: "THE ONLY WAY THE LAW HAS PROGRESSED FROM THE DAYS OF THE RACK, THE SCREW, AND THE WHEEL IS THE DEVELOPMENT OF MORAL CONCEPTS." THESE MORAL CONCEPTS INCLUDE THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL, AND THE PROTECTION OF THE ATTORNEY-CLIENT PRIVILEGE.

UNDER OUR JUDICIAL SYSTEM, ACCUSED PERSONS ARE GUARANTEED THE RIGHT TO HAVE COUNSEL, BECAUSE THIS IS A RIGHT UPON WHICH ALL OTHER RIGHTS IN THE BILL OF RIGHTS DEPEND. IT WOULD BE FUNDAMENTALLY INCONSISTENT WITH THE SIXTH AMENDMENT IF THE GOVERNMENT COULD CONVERT THIS BASIC RIGHT INTO A LEGAL MINEFIELD WHICH, INSTEAD OF PROTECTING THE CLIENT, WOULD BECOME THE SOURCE OF HIS DESTRUCTION. SURELY THIS WAS NOT THE INTENT OF THE FRAMERS OF THE CONSTITUTION.

IN THE PAST 5 YEARS, SINCE PRESIDENT REAGAN TOOK OFFICE, THERE HAVE BEEN AN ENORMOUS NUMBER OF CASES REPORTED AROUND THE COUNTRY WHERE PROSECUTORS WERE SEEKING

INFORMATION FROM LAWYERS ABOUT THEIR CLIENTS. ATTORNEYS WHO HAVE RESEARCHED THIS ISSUE HAVE FOUND THAT 10 YEARS AGO, THERE WERE VERY FEW OF THESE TYPE OF CASES REPORTED; 15 YEARS AGO, THEY COULD BE COUNTED ON THE FINGERS OF ONE HAND. BUT TODAY, THEY ARE BECOMING COMMONPLACE.

THERE IS A MOVEMENT BY THE GOVERNMENT TODAY TO GO TO ATTORNEYS AS ONE OF THE FIRST SOURCES OF INFORMATION ABOUT THEIR CLIENTS, INSTEAD OF THE LAST. AFTER ALL, ATTORNEYS ARE AN EASY MARK. THEY ARE BOUND BY ETHICAL STANDARDS, COMPELLED TO TELL THE TRUTH, AND THEY KNOW A LOT.

THE REAGAN JUSTICE DEPARTMENT QUICKLY REALIZED THAT ATTORNEYS WERE A VALUABLE SOURCE OF INFORMATION ABOUT THEIR CLIENTS. AND THE ADMINISTRATION HAS BEEN VERY CLEVER IN STARTING THEIR EROSION OF THE ATTORNEY-CLIENT PRIVILEGE BY TRYING TO GET INFORMATION ON CLIENT FEES. FEES, AFTER ALL, ARE A DISCRETE CORNER OF THE PRIVILEGE. SOME MAY ASK, "WHAT IS THE HARM IN REQUIRING AN ATTORNEY TO REPORT INFORMATION ABOUT FEES PAID BY CLIENTS? COULDN'T THIS INFORMATION BE USEFUL TO LAW ENFORCEMENT OFFICIALS IN DETECTING CRIMINAL ACTIVITY?" BUT THE ANSWER IS NOT SO SIMPLE. PERHAPS THERE ARE TIMES WHEN IT IS APPROPRIATE TO REQUIRE REPORTING OF INFORMATION ABOUT FEES. BUT WHERE DO YOU DRAW THE LINE? AS ALL OF YOU KNOW, IT IS NOT SO EASY TO DRAW A "BRIGHT LINE" BETWEEN PROTECTED AND UNPROTECTED INFORMATION.

IN SOME CASES, INFORMATION ABOUT CLIENTS' FEES MAY TEND TO INCRIMINATE THE CLIENT. BUT THE CLIENT HAS A RIGHT TO BELIEVE THAT HIS INTERESTS AND THE ATTORNEY'S ARE ONE AND THE SAME FOR THE PURPOSES OF REPRESENTATION. THAT CLIENT SHOULD NOT BE FORCED TO CHOOSE BETWEEN HIS RIGHTS UNDER THE FIFTH AMENDMENT, OR HIS RIGHT TO COUNSEL UNDER THE SIXTH AMENDMENT. HE SHOULD NOT HAVE TO CHOOSE BETWEEN GIVING UP HIS ATTORNEY, OR HIS RIGHT AGAINST SELF-INCRIMINATION.

AND ONCE WE START DOWN THIS SLIPPERY SLOPE, WHERE DO WE STOP? WHEN WE START ALLOWING OUR CONSTITUTIONAL PROTECTIONS AND COMMON-LAW TRADITIONS TO ERODE, IT IS DIFFICULT TO SEE WHERE THAT PROCESS WILL END.

I FEAR THAT WHAT WE HAVE SEEN SO FAR IS ONLY THE TIP OF THE ICEBERG. AS MANY OF YOU KNOW, THE U.S. ATTORNEY FOR MASSACHUSETTS HAS RECENTLY FILED SUIT TO ENJOIN A RULE PROMULGATED BY THE SUPREME JUDICIAL COURT OF MASSACHUSETTS WHICH WOULD PROTECT ATTORNEYS AGAINST ARBITRARY SUBPOENAS TO A GRAND JURY WITHOUT PRIOR JUDICIAL APPROVAL. IN THE COURSE OF THAT PROCEEDING, THE U.S. ATTORNEY FILED AN AFFIDAVIT INDICATING THAT, LAST YEAR, HE FILED 50 SUBPOENAS TO ATTORNEYS. OF THESE, ONLY THREE WERE CHALLENGED BY MOTIONS TO QUASH, AND ONLY THESE THREE RECEIVED JUDICIAL ATTENTION. WHAT THIS MAY INDICATE IS THAT MANY ATTORNEYS ARE SUCCUMBING TO THIS FORM OF INTIMIDATION, AND ARE NOT VIGOROUSLY PROTECTING THEIR CLIENTS' CONFIDENCES.

IN FACT, THESE SUBPOENAS AND OTHER FORMS OF INTIMIDATION HAVE A PROFOUND EFFECT ON HOW ATTORNEYS MUST THINK WHEN THEY REPRESENT A CLIENT. AN ATTORNEY MUST ASK HIMSELF OR HERSELF, "AM I PROTECTING MYSELF?" INSTEAD OF FOCUSING ON THE INTERESTS OF THE CLIENT. THE TIME, ENERGY, ATTENTION, AND RESOURCES OF THE ATTORNEY ARE DIVERTED FROM THE REPRESENTATION OF THE CLIENT TO SELF-PROTECTION BY THE ATTORNEY, TO THE DETRIMENT OF BOTH ATTORNEY AND CLIENT.

SOME OF THE COURTS HAVE ALSO CONTRIBUTED TO THIS PROCESS OR EROSION. IN A RECENT CASE HERE IN THE FIRST CIRCUIT, UNITED STATES V. KING, A GOVERNMENT AGENT WORKING FOR THE FBI WAS PLANTED IN THE COURTROOM WITH A HIDDEN MICROPHONE, WHICH HE ACTUALLY PLACED BETWEEN THE DEFENSE ATTORNEY AND HIS CLIENT. HE ALSO TOOK A BUGGING DEVICE INTO THE COURTHOUSE LOCKUP TO RECORD CONVERSATIONS BETWEEN THE ATTORNEY AND HIS CLIENT.

THE COURT RULED THAT THE ATTORNEY HAD NOT SHOWN ANY CONCRETE EVIDENCE OF PREJUDICE TO HIS CASE AS A RESULT OF THESE ACTIONS, AND SAID THAT THE LAW WOULD NOT PROVIDE A REMEDY UNLESS SUCH A SHOWING WAS MADE. THIS RULING IN EFFECT GIVES THE GREEN LIGHT TO PROSECUTORS TO ENGAGE IN WIRETAPPING AND BUGGING OF OPPOSING COUNSEL. FOR THE

U.S. GOVERNMENT TO EMPLOY THESE KIND OF TACTICS BRINGS TO MIND AN EARLIER CHAPTER IN OUR HISTORY, ONE THAT MANY OF US HOPED HAD BEEN PERMANENTLY CLOSED -- THE ERA OF RICHARD NIXON, JOHN MITCHELL, AND WATERGATE.

AT PRESENT, THESE TACTICS HAVE BEEN EMPLOYED PRIMARILY AGAINST ATTORNEYS IN CASES INVOLVING DRUGS, ORGANIZED CRIME, OF POLITICALLY UNPOPULAR DEFENDANTS. BUT IT APPEARS THAT PROSECUTORS ARE NOW COMING TO VIEW BUGGINGS, INFORMANTS, SUBPOENAS, FREE SEIZURES, AND JAIL SENTENCES AS WEAPONS IN THEIR ARSENAL TO BE USED AGAINST ANY ATTORNEY WHO HAS THE TEMERITY TO REPRESENT A DEFENDANT IN A CIMINAL CASE. THESE TACTICS ARE MORE REMINISCENT OF THOSE USED AGAINST DEFENSE LAWYERS IN CERTAIN TOTALITRIAN COUNTRIES, THAN ANYTHING IN THE AMERICAN TRADITION.

MORE THAN 170 YEARS AFTER THE ADOPTION OF THE SIXTH AMENDMENT, THE SUPREME COURT'S LANDMARK DECISION IN GIDEON V. WAINWRIGHT BREATHED LIFE INTO THE RIGHT TO COUNSEL BY ASSURING REPRESENTATION FOR INDIGENTS IN STATE TRIALS. THE GIDEON DECISION IN 1963 WAS A GREAT STEP FORWARD TOWARD THE GOAL OF EQUAL JUSTICE FOR ALL IN AMERICA. BUT TODAY, UNDER "REAGAN JUSTICE", WE ARE SEEING STEPS IN THE OTHER DIRECTION.

CRIMINAL DEFENSE ATTORNEY JOHN WALL, A FORMER FEDERAL PROSECUTOR, HAS COMMENTED THAT "FOR 200 YEARS IN THIS COUNTRY WE HAVE MADE SOME JUDGMENTS. YOU GET 'EM FAIR. YOU DON'T USE THE RACK TO GET CONFESSIONS, YOU DON'T CALL A PRIEST TO TESTIFY AGAINST A PENITENT, AND YOU DON'T CALL LAWYERS TO TESTIFY AGAINST THEIR CLIENTS."

BUT THE REAGAN ADMINISTRATION IS TRYING TO CHANGE THE RULES. THEY HAVE DEMONSTRATED IN MANY WAYS THEIR DISREGARD FOR THE TRADITIONS OF AN INDEPENDENT JUDICIARY, A STRONG PRIVATE BAR, AND FOR THE ROLE OF GOVERNMENT IN ASSURING EQUAL RIGHTS FOR ALL AMERICANS. THEY HAVE EVEN TRIED REDEFINE THE MEANING OF THE CONSTITUTION OF THE UNITED STATES.

RECENTLY, ATTORNEY GENERAL EDWIN MEESE CALLED FOR A JURISPRUDENCE OF "ORIGINAL INTENTION". WHAT MR. MEESE MEANT BY THIS, APPARENTLY, WAS THE JUDGES AND SUPREME COURT JUSTICES SHOULD DECIDE CONSITUTIONAL QUESTIONS ON THE BASIS OF THE "ORIGINAL INTENTION" OF THE FOUNDING FATHERS, RATHER THAN ON THE BASIS OF THEIR OWN VIEW AND OPINIONS. ON THE FACE OF IT, THIS IS A PROPOSITION TO WHICH NO ONE COULD OBJECT. BUT LIKE SO MANY OF THE PRONOUNCEMENTS EMANATING FROM THIS ADMINISTRATION, THIS ONE CONTAINS MORE THAT A SMALL ELEMENT OF "DOUBLESPEAK".

THE TRUTH IS, AS HISTORIAN HENRY STEELE COMMAGER HAS POINTED OUT, THAT THE FOUNDING FATHERS WERE WISE ENOUGH TO REALIZE THAT THEY COULD NOT FORESEE EVERY EVENTUALITY, AND WERE FARSIGHTED ENOUGH TO COUCH THEIR INTENTIONS IN TERMS WHICH WOULD BE OPEN TO FUTURE INTERPRETATION. THE FOUNDING FATHERS UNDERSTOOD THAT IT WOULD BE IMPOSSIBLE TO FORESEE ALL OF THE POSSIBLE CONTINGENCIES THAT MIGHT ARISE IN THE FUTURE, AND, IN THEIR WISDOM, THEY WROTE IN GENERAL TERMS WHICH WOULD GIVE GUIDANCE TO FUTURE GENERATIONS OF LAWMAKERS WITHOUT SHACKLING THEM TO THE 18TH CENTURY.

FOR AN ATTORNEY GENERAL TODAY TO PRESUME THAT HE UNDERSTANDS THE "ORIGINAL INTENTION" OF THE FOUNDING FATHERS BETTER THAN THE GENERATIONS OF LAWMAKERS, JUSTICES, AND CONSTITUTIONAL SCHOLARS WHO HAVE COME BEFORE HIM IS INDEED, AS JUSTICE WILLIAM BRENNAN PUT IT, "ARROGANCE CLOAKED AS HUMILITY".

IT DOES NOT REQUIRE A GREAT CONSTITUTIONAL SCHOLAR, THOUGH, TO DISCERN THE "ORIGINAL INTENTION" BEHIND SUCH PHRASES AS "EQUAL JUSTICE UNDER LAW", "EFFECTIVE ASSISTANCE OF COUNSEL", OR "LIBERTY AND JUSTICE FOR ALL". SURELY THESE ELOQUENT PHRASES SPEAK FOR THEMSELVES. IF THEY MEAN ANYTHING, THEY MUST MEAN THAT ALL OF OUR CITIZENS MUST HAVE EQUAL ACCESS TO OUR SYSTEM OF JUSTICE.

THIS ADMINISTRATION HAS REPEATEDLY TRIED TO DENY THAT ACCESS BY DENYING THE RIGHT TO COUNSEL TO THOSE WHO ARE WEAK OR POLITICALLY UNPOPULAR. ONE MEANS BY WHICH THEY HAVE TRIED TO ACHIEVE THIS OBJECTIVE IS BY ATTEMPTING TO ELIMINATE THE LEGAL SERVICES CORPORATION. THEY HAVE REPEATEDLY PROPOSED TO ELIMINATE ALL FUNDING FOR THAT

ORGANIZATION. FAILING THAT, THEY HAVE APPOINTED MEMBERS TO THE BOARD OF LSC WHO HAVE ADVOCATED CRIPPLING CUTS AND MAJOR CHANGES IN THE SERVICES PROVIDED, WHICH WOULD SERIOUSLY DAMAGE THE ABILITY OF LSC TO PROVIDE LEGAL SERVICES TO THE POOR.

THEY HAVE ALSO ADOPTED A NEW TACTIC -- CONDUCTING RAIDS ON LEGAL AID OFFICES AROUND THE COUNTRY. THESE RAIDS HAVE INCLUDED WHOLESAL RIFLING OF CONFIDENTIAL FILES, RESULTING IN VIOLATIONS OF THE ATTORNEY-CLIENT PRIVILEGE. THEY ARE VERY SIMILAR, IN FACT, TO SOME OF THE RAIDS WHICH HAVE BEEN CONDUCTED AGAINST CRIMINAL DEFENSE ATTORNEYS.

THE PURPOSE OF THE RAIDS ON LEGAL AID OFFICES IS OSTENSIBLY TO CONDUCT "AUDITS" AND "MONITORING" OF LEGAL AID LAWYERS. BUT THE REAL PURPOSE OF THESE RAIDS IS THE SAME AS THE PURPOSE BEHIND THE HARASSMENT TACTICS DIRECTED AT THE CRIMINAL DEFENSE BAR. THAT PURPOSE IS INTIMIDATION, AND DESTRUCTION OF THE ATTORNEY-CLIENT RELATIONSHIP.

THIS ADMINISTRATION HAS ATTEMPTED TO STACK THE DECK IN THEIR FAVOR IN MANY WAYS. PERHAPS THE MOST INSIDIOUS ARE THEIR ATTEMPTS TO HAND-PICK A FEDERAL JUDICIARY WHICH WILL GUARANTEE, IN ADVANCE, THE RESULTS WHICH MR. MEESE AND COMPANY WISH TO ACHIEVE.

I HAVE BEEN DEEPLY CONCERNED BY THIS ADMINISTRATION'S APPROACH TO JUDICIAL NOMINATIONS. PRESIDENT REAGAN SEEMS TO BE DETERMINED TO LEAVE AS HIS LEGACY A JUDICIARY COMPOSED OF FEDERAL JUDGES WHO SHARE HIS CONSERVATIVE VIEWS. BUT WHAT KIND OF LEGACY WILL IT BE? IN HIS FIRST 5 YEARS, PRESIDENT REAGAN MADE 224 APPOINTMENTS TO THE FEDERAL JUDICIARY. OF THESE, ONLY 13 WERE MEMBERS OF MINORITY GROUPS, AND ONLY 19 WERE WOMEN. BY CONTRAST, PRESIDENT CARTER APPOINTED 40 WOMEN, AND 55 MINORITY JUDGES, DURING HIS 4 YEARS IN OFFICE, OUT OF A TOTAL OF 258 APPOINTMENTS. THE FACT IS, PRESIDENT REAGAN'S RECORD ON JUDICIAL APPOINTMENTAL IS A DISGRACE.

THROUGHOUT TWO CENTURIES, OUR FEDERAL JUDICIARY HAS BEEN A MODEL INSTITUTION, ONE WHICH HAS INSISTED ON THE HIGHEST STANDARDS OF CONDUCT BY OUR PUBLIC SERVANTS AND OFFICIALS, AND WHICH HAS SURVIVED WITH UNDIMINISHED RESPECT.

TODAY, I FEAR THAT THIS INSTITUTION IS THREATENED IN A WAY THAT WE HAVE NOT SEEN BEFORE. THE THREAT ENDANGERS THE FUNDAMENTAL INTEGRITY OF OUR JUDICIARY, AND THUS THE QUALITY OF OUR ENTIRE SYSTEM OF JUSTICE. IT RISKS UNDERMINING THE RESPECT THAT WE HAVE ALWAYS MAINTAINED FOR OUR JUDICIARY, AND EVEN THE BALANCE OF POWERS AS SET FORTH IN OUR CONSTITUTION.

THIS THREAT IS THAT OF THE APPOINTMENT OF A JUDICIARY WHICH IS NOT INDEPENDENT, BUT NARROWLY IDEOLOGICAL, THROUGH THE SYSTEMATIC TARGETING OF ANY JUDICIAL NOMINEE WHO DOES NOT MEET THE RIGID REQUIREMENTS OF LITMUS TESTS IMPOSED BY THE FAR RIGHT.

WE ARE SEEING ATTEMPTS TO PREJUDICE JUSTICE ITSELF THROUGH THE EXCLUSION OF ANY CANDIDATE FOR A JUDGESHIP IN THE FEDERAL COURTS WHO DOES NOT COMMIT HIMSELF OR HERSELF TO THE NARROW POLITICAL BELIEFS OF THE RIGHT WING OF ONE OF OUR NATION'S TWO POLITICAL PARTIES. I AM SORRY TO NOTE THAT THERE ARE SOME OF MY COLLEAGUES IN THE U.S. SENATE WHO HAVE BEEN AT THE FOREFRONT OF THIS EFFORT TO MOLD THE JUDICIARY. I AM EVEN SORRIER TO NOTE THAT THEIR EFFORTS ARE SUPPORTED BY THE ATTORNEY GENERAL, AND THE PRESIDENT OF THE UNITED STATES.

OUR JUDICIARY IS TOO IMPORTANT TO PERMIT ANYONE TO COMPROMISE ITS INDEPENDENCE OR INTEGRITY, YET THAT COULD WELL BE THE RESULT OF THESE CURRENT EFFORTS. IN MY VIEW, THE ADVICE-AND-CONSENT ROLE OF THE U.S. SENATE IS TOO IMPORTANT TO BE ABDICATED. WE NEED TO PAY CLOSER ATTENTION TO JUDICIAL NOMINEES FROM HERE ON. IF IT TAKES MORE TIME, IT TAKES MORE TIME. BUT IT WILL BE TIME WELL SPENT. THIS NATION CANNOT AFFORD TO GIVE A BLANK CHECK TO THE EXTREMISTS OF ONE PARTY, TO HAND OVER TO THEM THE ABILITY TO SHAPE THE NATURE OF OUR JUDICIARY WELL INTO THE NEXT CENTURY.

FORTUNATELY FOR ALL OF US, THERE ARE STILL SOME VOICES OF REASON AND RESTRAINT TO GIVE US GUIDANCE ON THESE DIFFICULT ISSUES. AND, AS USUAL, THE STATE OF MASSACHUSETTS IS LEADING THE REST OF THE NATION IN PROGRESSIVE THOUGHT. AS I MENTIONED EARLIER, THE

SUPREME JUDICIAL COURT OF MASSACHUSETTS HAS RECENTLY PROMULGATED A RULE WHICH REQUIRES PRIOR JUDICIAL APPROVAL BEFORE A PROSECUTOR CAN ISSUE A SUBPOENA AGAINST A LAWYER FOR INFORMATION ABOUT A CLIENT. THIS RULE IS A DIRECT RESPONSE TO THE ABUSES OF THE REAGAN-MEESE JUSTICE DEPARTMENT. AND NEEDLESS TO SAY, THE JUSTICE DEPARTMENT HAS FILED SUIT TO TRY TO ENJOIN THE MASSACHUSETTS RULE, AND PREVENT IT FROM BECOMING A MODEL FOR OTHER JURISDICTIONS.

BUT OTHER STATES WOULD DO WELL TO EMULATE THE EXAMPLE OF MASSACHUSETTS. THE AMERICAN BAR ASSOCIATION HAS NOW RECOMMENDED THE ADOPTION ON A NATIONAL BASIS OF A RULE LIKE THE ONE FIRST ADOPTED BY THE MASSACHUSETTS BAR.

UNDER THE NEW RULE IN MASSACHUSETTS, ALL PROSECUTORS WOULD BE REQUIRED TO OBTAIN A RULING FROM A JUDGE INDICATING THAT THE INFORMATION THEY SEEK IS NOT PRIVILEGED AND IS NECESSARY TO THE INVESTIGATION. IN MASSACHUSETTS, ISSUING A SUBPOENA TO A LAWYER WITHOUT PRIOR JUDICIAL APPROVAL IS NOW OFFICIALLY WHAT IT IS IN FACT -- AN UNETHICAL PRACTICE.

LET ME EMPHASIZE THAT THIS RULE IS NOT AN IMPEDIMENT TO AGGRESSIVE, EFFECTIVE PROSECUTION. BUT IT DOES PREVENT THE ABUSE OF SUBPOENA POWER BY THE PROSECUTION.

IT MIGHT BE APPROPRIATE AT THIS POINT FOR ME TO MENTION THAT I WAS ONCE A PROSECUTOR IN MASSACHUSETTS MYSELF. FOR SEVERAL YEARS, I WAS THE FIRST ASSISTANT DISTRICT ATTORNEY OF MIDDLESEX COUNTY, THE LARGEST COUNTY IN MASSACHUSETTS. I WAS IN CHARGE OF THE ADMINISTRATION OF THE DISTRICT ATTORNEY'S OFFICE, AND I AM VERY PROUD OF WHAT WE WERE ABLE TO ACHIEVE. I LED AN INVESTIGATION AND SUCCESSFUL PROSECUTION OF ORGANIZED CRIME IN MASSACHUSETTS. WE ALSO STARTED A RAPE COUNSELING PROGRAM, A VICTIM-WITNESS ASSISTANCE PROGRAM, AN ORGANIZED CRIME UNIT, AND A WHITE-COLLAR CRIME UNIT. AND WE WERE ABLE TO DRAMATICALLY CUT DOWN ON THE BACKLOG OF CRIMINAL CASES.

AS A PROSECUTOR, I WON MY SHARE OF CASES, AND I PUT MY SHARE OF CRIMINALS BEHIND BARS. BUT I DID IT FAIRLY. I PLAYED BY THE RULES. I DIDN'T FIND IT NECESSARY TO WIRETAP THE DEFENSE COUNSEL, TO SUBPOENA OPPOSING COUNSEL AND TRY TO TURN THEM INTO GOVERNMENT INFORMANTS AGAINST THEIR CLIENTS, OR TO SEIZE THEIR HARD-EARNED LEGAL FEES. I DIDN'T FIND IT NECESSARY TO THROW AN OPPOSING LAWYER IN JAIL IN ORDER TO WIN A CASE AGAINST HIS CLIENT. WE NEVER EVEN CONSIDERED THOSE KIND OF UNDERHANDED TACTICS. AND LET ME ADD THAT WE WERE ABLE TO FIGHT CRIME EFFECTIVELY WITHOUT USING THOSE KIND OF TACTICS.

I'VE ALSO SEEN IT FROM THE OTHER SIDE, AS A CRIMINAL DEFENSE LAWYER. WHEN I WAS IN PRIVATE PRACTICE, I ONCE REPRESENTED A MAN WHO HAD BEEN WRONGLY CHARGED WITH MURDER, AND WAS ABLE TO GET HIM FREED. I KNOW FROM FIRST-HAND EXPERIENCE WHAT ATTORNEY GENERAL MEESE DOES NOT -- THAT NOT ALL THOSE ACCUSED OF CRIMES ARE IN FACT GUILTY OF COMMITTING THOSE CRIMES. WHEN I WAS A CRIMINAL DEFENSE LAWYER, I FOUGHT JUST AS HARD FOR MY CLIENTS AS I FOUGHT TO GET CONVICTIONS WHEN I WAS A PROSECUTOR. THAT'S WHAT OUR ADVERSARY SYSTEM OF JUSTICE IS ALL ABOUT -- EACH SIDE VIGOROUSLY REPRESENTS THEIR CLIENT TO THE BEST OF THEIR ABILITIES.

BECAUSE I'VE SEEN IT FROM BOTH SIDES, I THINK I UNDERSTAND THE NATURE OF OUR ADVERSARY SYSTEM. AND I KNOW, AS YOU DO, THAT THE GREATEST DANGER TO OUR SYSTEM OF JUSTICE IS TO CHANGE THE RULES, AS THIS ADMINISTRATION IS TRYING TO DO -- TO STACK THE DECK IN FAVOR OF ONE SIDE AND AGAINST THE OTHER. THAT'S NOT JUSTICE, AND THAT'S NOT THE AMERICAN WAY.

AT THE SAME TIME, LET ME MAKE IT CLEAR THAT I AM IN NO WAY DEFENDING THOSE LAWYERS WHO DO CROSS OVER THE LINE AND KNOWINGLY BECOME INVOLVED IN CRIMINAL ACTIVITIES. I AM NOT NAIVE ENOUGH TO THINK THAT THERE ARE NOT SOME LAWYERS WHO WILL TURN A BLIND EYE TO THEIR CLIENTS' INVOLVEMENT IN DRUG DEALS, OR ORGANIZED CRIME. SOME MAY EVEN BE ACTIVELY INVOLVED IN CRIMINAL CONSPIRACIES. I AM NOT AN APOLOGIST FOR THOSE LAWYERS, NOR SHOULD YOU BE. PERHAPS THERE ARE TIMES WHEN WE SHOULD REQUIRE LAWYERS TO DISCLOSE THE SOURCES OF THEIR FEES, WHEN THERE IS STRONG INDICATION THAT CRIMINAL

ACTIVITY IS INVOLVED. I AM AN ADVOCATE OF STRONG AND EFFECTIVE ACTION AGAINST CRIME. AND I THINK WE NEED TO RECOGNIZE THAT THE AMERICAN PUBLIC FEELS THE SAME WAY.

PART OF THE REASON WHY THE PUBLIC SUPPORTS PRESIDENT REAGAN IS THAT THEY PERCEIVE HIM AS BEING TOUGH ON CRIME. THERE IS A FEELING THAT COURTS HAVE BEEN MORE CONCERNED WITH THE RIGHTS OF CRIMINALS THAN WITH THE RIGHTS OF VICTIMS. WE NEED TO CHANGE THAT. WE NEED TO TAKE TOUGH ACTION AGAINST STREET CRIME, ORGANIZED CRIME, AND WHITE-COLLAR CRIME. BUT WE ALSO NEED TO PRESERVE OUR CONSTITUTIONAL PROTECTIONS AGAINST THOSE WHO WOULD DO AWAY WITH THEM IN THE NAME OF FIGHTING CRIME. THE AMERICAN PEOPLE ELECTED RONALD REAGAN, BUT THEY DID NOT GIVE HIM A MANDATE TO MAKE CLINT EASTWOOD THE ATTORNEY GENERAL, OR TO APPOINT RAMBO TO THE SUPREME COURT.

THERE IS NO DOUBT THAT, UNDER THIS ADMINISTRATION, THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL IS ENDANGERED IN A WAY THAT WE HAVE NOT SEEN BEFORE. AND WITH IT, OUR ADVERSARY SYSTEM OF JUSTICE IS IN JEOPARDY. IT MAY BE THAT THIS IS A PROBLEM WHICH NEEDS TO BE ADDRESSED BY FEDERAL LEGISLATION. THE HOUSE JUDICIARY COMMITTEE HAS ALREADY HELD HEARINGS ON FEE FORFEITURES AND RELATED ISSUES, AND THE SENATE JUDICIARY COMMITTEE WILL FOLLOW IN THE NEAR FUTURE. WHILE I AM NOT A MEMBER OF THE SENATE JUDICIARY COMMITTEE, I WILL FOLLOW THOSE HEARINGS WITH GREAT PERSONAL INTEREST. AS A FORMER PROSECUTOR AND CRIMINAL DEFENSE LAWYER, I WILL ASK THE CHAIRMAN OF THE COMMITTEE FOR PERMISSION TO TESTIFY PERSONALLY BEFORE THE JUDICIARY COMMITTEE ABOUT THE THREAT TO THE RIGHT TO COUNSEL, AND TO THE ADVERSARY SYSTEM ITSELF, WHICH IS BEING CREATED BY THIS ADMINISTRATION'S EFFORTS. AND IF THOSE HEARINGS SHOW A NEED FOR LEGISLATION ON THE FEDERAL LEVEL, LET ME ASSURE YOU THAT I WILL BE THE FIRST TO INTRODUCE IT, AND TO FIGHT FOR IT.

AS A U.S. SENATOR, I INTEND TO CONTINUE TO STAND UP FOR THE INDIVIDUAL CIVIL LIBERTIES, FOR THE RIGHT TO COUNSEL AND FOR THE CONSTITUTIONAL RIGHTS OF ALL AMERICANS. I WILL CONTINUE TO FIGHT FOR AN INDEPENDENT JUDICIARY, AND FOR A STRONG AND INDEPENDENT PRIVATE BAR. I AM GOING TO FIGHT FOR THESE THINGS BECAUSE I CARE DEEPLY ABOUT THESE ISSUES. I HAVE BEEN OUT THERE IN THE TRENCHES WITH ALL OF YOU. I HAVE SEEN THE CRIMINAL JUSTICE SYSTEM FROM BOTH SIDES, AND I KNOW HOW IT'S SUPPOSED TO WORK. AND THAT'S THE WAY I WANT TO SEE IT WORK -- WITH FULL, FAIR, AND VIGOROUS ADOVCACY, ON BOTH SIDES.

ULTIMATELY, IT COMES DOWN TO ALL OF USE. MEN AND WOMEN OF CONSCIENCE, LIKE YOURSELVES, HAVE AN OBLIGATION TO FIGHT FOR THE THINGS THAT WE BELIEVE IN. IF WE WANT THE SYSTEM TO WORK, WE HAVE TO MAKE IT WORK. EACH AND EVERY ONE OF US HAS A ROLE TO PLAY IN THAT STRUGGLE. AND IF AT TIMES WE GET DISCOURAGED, AND FEEL THAT WE ARE FIGHTING AGAINST THE ODDS, WE WOULD DO WELL TO RECALL THE WORDS OF A GREAT AMERICAN JURIST, JUDGE LEARNED HAND:

"LIBERTY LIES IN THE HEARTS OF MEN AND WOMEN. WHEN IT DIES THERE, NO CONSTITUTION, NO LAW, NO COURT CAN SAVE IT."
THANK YOU.