

Attorney General Thornburgh speech: "Rule of Law in USSR," National Association of Women Judges, Washington, D.C., November 10, 1989 (24:02)

>> Introduction: Dick Thornburgh is the attorney general of the United States. He became the 76th attorney general on August 12, 1988, after a unanimous confirmation by the Senate. From '87 to '88, he served as director of the Institute of Politics at Harvard's John F. Kennedy School of Government. While he was at the School of Government, he started a special program on women in politics to make sure that women had their proper place in government. He was a 2-term governor of the state of Pennsylvania. He was elected in '78, re-elected in '82, and named by fellow governors in a 1986 Newsweek poll as one of the nation's most effective big-state governors. We know why he was effective. The reason he was effective was because he appointed an unprecedented number of women to various positions...

[Laughter and applause]

He also appointed more women judges than any other governor in the history of Pennsylvania..

[Applause]

He has a long history of service in prosecution with the U.S. Attorney's office, and one of the things that he has focused on a great deal is a crackdown on crime. He has also established a program in the state of Pennsylvania, special programs to assist crime victims, including a Victims' Bill of Rights and funding of rape, crisis, and domestic-violence centers -- topics of great importance to us. I've also learned while talking to him during this luncheon that he is an incredibly nice person. I'd like you to give him a round of applause.

[Applause]

>> Thornburgh: Thank you. Thank you very much, Julie, for such a warm introduction and for giving me the opportunity to be here and visit with you during this exciting five days of examination of issues that are crucial not just to those of you who serve on the bench, but to our entire system for the administration of justice. I know, like much of you, I suppose, you get a little nervous when people get up to introduce you. You wonder what they're going to say. It couldn't be worse than what happened to me back in my home state of Pennsylvania, where an eager toastmaster came to the

phone and breathlessly intoned, "I know you all want to hear the latest dope from Washington, so here's the attorney general."

[Laughter]

I want to congratulate you on your 10th anniversary and in the growth of this organization from some 125 members 10 years ago to over 800 today. That bespeaks the importance of the work that you are doing and the importance for those of us involved in the administration of justice to work with you to ensure that quality women are available for consideration and appointment and election to the bench across this nation. This year is also a birthday here for the office of attorney general. It was the Judiciary Act of 1789 that created the office that I hold, and we had a 200th birthday party not long ago, where all of my living predecessors came back to share with President Bush in the observance of this 200th milestone. And during the course of the proceedings, which were addressed by a number of distinguished persons, I think the consensus was the star of the show was Herbert Brownell. At age 85, he had served as President Eisenhower's attorney general. And Herb, during the course of his observations about the office of attorney general, characterized it in words that elicit a very sympathetic response from those of us who held this office. He said, in effect, you don't make many friends as attorney general. You're either suing someone or indicting someone, or you're advising your fellow Cabinet members that their favorite plans and programs are illegal, immoral, or fattening.

[Laughter]

Or you're annoying the members of the press and your colleagues on the Hill because you won't share with them all the juicy details of pending criminal investigations. And he quoted from a British attorney general, who had served until recently, in his autobiography, by saying any attorney general who is popular is simply not doing his job. Well, I can attest to the fact that that probably is the case, but I can also tell you it's a magnificent opportunity for those of us who have spent our life in the law. I'm a repeat offender at the Department of Justice, having been there in the Ford administration, and it's a great thrill and privilege for me to return to an institution for which I have so much respect and affection.

The role of the attorney general, as you can imagine, has changed a great deal in that 200 years. Edmund Randolph, the first attorney general, was, I think, what could fairly be called a crony of President George Washington. When he came to the Cabinet,

he was paid at a rate about half the other members of the Cabinet because he was able to maintain a private practice on the side. This was obviously before the advent of the ethics statutes and the independent counsel and all those -- In fact, it's said that Washington was only able to induce him to become attorney general of the United States by telling him, "It's not gonna hurt your practice if you're attorney general."

[Laughter]

But there are some things that haven't changed in the course of the development of the office, and I'd like to take a little bit of time today to talk to those of you who are judges and who have chosen a career in the judiciary about the role of the attorney general and the Department of Justice in the area of judicial appointments. It's a major responsibility of ours. It is an even greater responsibility of the president's and one that he takes very seriously. As you know, the Constitution gives the president the right to appoint members of the federal judiciary "with the advice and consent of the Senate." Some of you here serve through that process. Others of you in due course, no doubt, will have an interest in that process, and I thought it might be useful to tell you precisely how in this administration this kind of procedure goes forward.

Our job essentially in the Department of Justice, as I see it, and I think the president assigns us, is to produce a pool of suitable nominations for the president to carry out his Constitutional responsibilities. And that means, first of all, accumulating lists of those persons who are interested or recommended from the senators, whose advice and consent is constitutionally necessary for judges to become members of the federal judiciary. And practices of senators vary. Some utilize selection panels. Some utilize a bar association group. But the senators' expression of interest is a signal to the Department and the White House that is very clearly read. In some cases where there is not a senator of the president's party, we reach out to other political leaders and especially to other groups that may have recommendations to make. The outreach in this administration is particularly broad because of the president's instruction to us to seek prospective nominees from nontraditional groups, and that means to us groups that have been traditionally unrepresented in the federal judiciary -- blacks, Hispanics, women, persons with disabilities. And this is a role that I'm comfortable with, in view of the fact that during my 8 years as governor, we carried forth a similar process in Pennsylvania, and one that I think is deserving of your interest and support.

One of the reasons that I wanted to be here today particularly was to encourage those of you who are active among women judges and women lawyers and in the profession to stimulate interest in seeking avenues toward this appointment. We are interested in having qualified women available to recommend for judicial appointments, and we will give a full and complete hearing to those who are interested and hope to be able to reach out to those who might not be interested initially either on the bench now or in the profession. You might ask, "Well, if you're interested, what do you do? What kind of a 'full and complete hearing' do you give to those persons who are interested in judicial positions?" Our role in the Department of Justice, as I indicated, is to take that pool of recommended applicants and then fine-tune it for action by the president. The fine-tuning involves obviously a review of written opinions of judges who are already on the bench and writings and other kinds of expressions -- speeches, newspapers articles, and the like -- of those who are practicing lawyers. Then those persons who have been recommended are interviewed by top management in the Department of Justice to get a sense of what their background and interest is in serving in the federal judiciary, and we interact with the recommending parties, most usually the senators, and with the White House in finally developing a set of recommendations for the president.

We also use the Standing Judiciary Committee of the American Bar Association, which examines the suitability from the point of view of judicial temperament and qualification to serve on the bench. That process was a little contentious in recent years. But by sitting down with the people who are in charge of the ABA Standing Committee work, I believe that we've now reached a point where we're able to utilize their particular insights through members of the Bar who are contemporaries of persons who have been recommended, and their ratings of judicial nominees are valued very highly.

But the ultimate bottom line of this process is that we make recommendations to the president. It won't surprise you to learn that this president, like every other president before him, makes about 90% or 95% of his appointments from members of his party. I don't think anyone expects a president or other executive to choose strangers or enemies to serve on the bench. But while this is often misunderstood, I think it is a natural concomitant of the process that we have in our country today. It is noteworthy, I think, in looking at the figures to observe that about half of the women who sit in the federal judiciary today were appointed during the last 8 years. And that means that there is a crescendo, an increasing number of women who are being considered for judicial

appointment, and I can assure you of the president's continued interest in seeing that process go forward and those numbers increase. It is designed to give us a judiciary that is representative, that does not turn its back on any opportunity to draw on the talent that exists throughout this country, and one that I think we will pay special attention to because of its importance.

It's interesting to reflect on the importance of having qualified persons in the judiciary, people who are committed to the rule of law and to the principles that this country has come to stand for. Nowhere was this more apparent than in the last couple of weeks during a trip that I made to the Soviet Union to discuss, at their invitation, the rule of law and human rights. The mere fact that those two items were on the agenda speaks volumes about the nature of the change that's taking place in that country. And I note that you have a strong international flavor to your program this week. And it seems to me that in this time of tumultuous change, it is extremely important that we continue to emphasize the attributes of our system that embody the commitment to the rule of law.

Chairman Gorbachev is the first Soviet leader to be legally trained since Lenin. And his observation and desire expressed in the course of the perestroika process to create what he called a law-based state -- what we would call the rule of law -- is not without significance. And in addition to the initiatives that have been forthcoming with regard to arms reduction and international changes, this change that's taking place with regard to the status of the rule of law in the Soviet Union is startling, indeed. During our trip, we met with all of the top leaders in law enforcement and the administration of justice and discussed with them in great detail those concepts of our system which we felt were of particular use to them in establishing a state based on the rule of law. We reviewed in detail our Bill of Rights, the right of free speech, the right of a free press, the right to worship, and the right to assemble and to seek redress for grievances. The whole notion of due process of law, rights of counsel, rights against unlawful search and seizure, the great writ of habeas corpus, all the things that are part of the everyday work of our legal system, sometimes perhaps taken for granted, but which are alien in a system which has been the soul of repression and the fount of arbitrary action against individuals throughout most of this century. We also discussed with them the notion of separation of powers -- that is, in particular, the existence of an independent judiciary. And the concept of federalism -- that is, the relationship between the central authority in our country and the states and local

governments which many of you serve in and represent today. And we also discussed, oddly enough, the 2-party system and what it meant to have truly contested elections and how that competition for the allegiance of the voter can produce the kinds of results that embody what our system stands for.

But in all of these discussions, we kept coming back more than anything else to the need for an independent judiciary, a quality judiciary, a judiciary that could dispense evenhanded justice and apply the rule of law. Such does not exist in the Soviet Union today. The judiciary is viewed as a instrument of the Party and was consciously designed as such during the formative days of the Marxist-Leninist regime. The phenomenon of telephone justice, where Party leaders transmit their wishes with regard to the outcome of particular cases directly to judges, has reduced the influence of the judiciary to being merely just one more aspect of the central control that the Party exerts in the Soviet system. It's not any wonder that those attracted to the judiciary in the Soviet Union are of lesser caliber and command lesser status and prestige within their system. It's noteworthy, indeed, that the average pay of a Soviet judge is below the average pay of a Soviet citizen. The average wage in the Soviet Union today is 237 rubles a month. The average pay for a judge is 180 rubles a month. Obviously if a rule of law is to be engrafted onto the system, and clearly there's great doubt as to whether this is possible -- certainly in the short run -- that rule of law must be accompanied by a great increase in the status and role of judges within the Soviet Union. And there are proposals before the Supreme Soviet, which we visited and watched in session, debating incidentally property rights -- who can own property and what they can do with it. That doesn't sound like Marxist-Leninist doctrine I've ever heard. But the proposals now before the Supreme Soviet call for -- get this -- a 100% pay increase for judges.

[Laughter and applause]

I had to take an oath that I wouldn't mention that before my friends in the federal judiciary.

[Laughter]

[Clears throat]

The formalizing as a criminal offense of the interference by party leaders in judicial proceedings -- and this is a truly extraordinary step, one that was adverted to in our closing press conference by my counterpart, the Minister of Justice Veniamin Yakovlev, who was asked about this phenomenon of party influence,

and he rose to the occasion. In very vehement terms, he said it not only is improper but would be a criminal offense under the legislation that is now pending before the Supreme Soviet. They have also, interestingly enough, come up with -- I think they're learning a little bit about this process of Democratizatsia, as they call it. The pay increase is to be funded out of an increase in user fees.

[Laughter]

It now costs 30 kopecks to file a civil proceeding. This fee was established back in the 1920s, and they propose to increase it from 30 kopecks to 1 ruble, which would produce a kitty of 20 million rubles which can be used to fund the pay increase. So there's a little bit of real thinking going on here as well as philosophical debate. And in particular, a much-improved system of selection and training for judges to make the position of judge mean something, to ensure that those persons who are skilled and trained adequately in the law become candidates for judicial posts.

I had the opportunity to speak at Moscow State University Law School, and the students there looked very much like students at the law schools that I've spoken to in this country. In speaking with their faculty afterwards about this problem of the lack of prestige and status for judges and, by implication, for lawyers, as I left, I said to the law school faculty, "I would leave you with only one wish, and that is that your law students, like law students in the United States, would hold as their highest goal to become a judge." And if that's the case, and if this next generation of leaders is nurtured in that direction, and if the aspirations that are expressed in the pending legislation and in the words, indeed, of the party's and country's leadership to truly create a system where the rule of law is in effect, you will someday enjoy, as I do, the opportunity to exchange views with this mammoth country -- 280 million people stretching over 11 time zones -- just as you have enjoyed during your sessions this week the opportunity to deal with other judges from other countries where the rule of law is in effect and where the rule of law governs.

I mention this not just as a personal reminiscence from a recent trip, but as a reminder to all of us how very precious the system that our founding fathers created for the administration of justice is to this nation and how dependent upon the rule of law and the integrity of the process and the respect it commands in this country, how vital that is to every other area in which we

have achieved or aspired to preeminence. This country is a government of laws and not of men or women, but it requires good men and women to make it happen. And I congratulate those of you who occupy the very important position of judge, whether it be at the local, state, or federal level, on your achievements, on the role models you have provided for the next generation of women who are ascending to prominence in this country, and for your devotion to that very important concept of the rule of law, which marks the difference between freedom and democracy and tyranny in this world today. And the challenges that we face, we are reminded, even this morning with the changes in Bulgaria and with the apparent intention to tear down that Berlin Wall, that the challenges that leadership in the rule of law impose upon all of us will be great and exciting, indeed. Thank you for giving me your time.

[Applause]