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Keynote Address

Louis Freeh

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KEYNOTE ADDRESS

*Hon. Louis Freeh**

MR. FREEH: It is a pleasure to be here, wonderful to see so many of my friends, and particularly delightful to see many of the students of this great school.

I think it is appropriate and fitting that the seminar today is in tribute to Bill Tandy, an extraordinary man, an extraordinary public servant, someone well known to probably half the people in this room.

I thought I would just talk a little bit about Bill Tandy's background first, both personal and professional, then express some of my thoughts on today's symposium topic; that is, the changing role of the federal prosecutor in today's world.

Bill was born in Brooklyn. At about three years of age, when his father died, his mother took him back to her family in Ireland. While there, however, the poverty of his immediate family and their friends resulted in him becoming, in effect, an orphan. Ultimately, he was found wandering, living on the streets, and he was taken by the authorities to St. Michael's Orphanage, to which he remained very close throughout his life.

After spending several years at St. Michael's, he returned to the United States to join his family here. After starting high school, he left to go to work in order to support his family. He finished his degree, finally, at night school, continuing to work for his family's support.

After high school, he began studies at Fordham College, but left shortly to enter the United States Army in World War II. Somewhat predictably, as was his character, he enlisted as a private, rose to a noncommissioned officer, and then was commissioned an officer.

After the war, he completed Fordham Law School, of which he was very proud. He practiced law for about eight years, mostly in East Harlem, which then was a very tough place to practice law. He had wonderful stories that he shared over the years about some of the clients there, many of whom came back as defendants in the U.S. Attorney's Office during his tenure.

* Director, Federal Bureau of Investigation.

He joined the U.S. Attorney's Office in 1957. A year later, he was made the Chief of the Narcotics Unit, which was then, and is now, an extremely busy unit. He was remarkably innovative in his approach to investigations. He organized the first federal, state, and local task force. He helped to set up the New York State Special Prosecutor's Office. He served as the Chief of the Organized Crime State Task Force, which remains an entity today.

I first met Bill at the U.S. Attorney's Office in 1976, when Bob Fiske became the U.S. Attorney for the Southern District of New York. I was an FBI Special Agent at the time, and I'm sorry that I cannot describe totally the circumstances of my first meeting or my first conversation with Bill. A lot of the great Bill Tandy stories have to be told very carefully.

But I met him when I was a very young FBI agent, and I was immediately impressed with him. We were working on a group of organized crime cases that Bob Fiske later prosecuted. I was amazed that Bill knew all these wiseguys — and not just by reading about them. From his early private practice, as well as his prosecutorial experiences, he knew their nicknames, their hang-outs, and an amazing amount of biographical information about them. It was a classic example of his magnificent personality that blended street smarts, compassion, and shrewdness, with the strongest integrity, hard work and the ability to discern between right and wrong. This last, I believe, was one of his great virtues as a prosecutor.

In a sense, he was more typical of the people who investigate cases than prosecute them, as he did so ably in the U.S. Attorney's Office. He had great currency with agents. Just today, in fact, a New York agent said to me, "Gee, I remember him. He always used to talk to us. He always used to share stories with us, and was very, very kind and caring to the investigators."

Bill Tandy stories are legendary, and luckily, thanks to Bob Fiske and Kevin Duffy, I can tell you a few good ones.

One of the best ones, I think, illuminates his investigative ability. This particular incident occurred during the course of an organized crime investigation. The FBI was unable to identify the people who were speaking in an incriminating manner on a wiretap. We had the conversations, certainly good evidence, but we did not know who was speaking at specific critical points.

For example, in the course of one incriminating statement, one of the speakers in the wiretap discussed Judge Weinfeld, a distinguished judge in the Southern District of New York, saying, "Oh

yeah, Eddie Weinfeld, he walks his dog every morning before he goes to work.”

When the subjects were later arrested, Bill brought them up to his office. A young Assistant U.S. Attorney, who was present to assist and observe, noted that Bill and the subjects were acquainted. They knew each other from Pleasant Avenue or thereabouts, so they just engaged in some pleasant colloquy — no Miranda rights were read. Then Bill steered the conversation to Ed Weinfeld. And Louis Pacelli said, “Oh yeah, Eddie Weinfeld, he walks his dog every morning before he goes to work.”

Bill’s ability to try cases, which he did throughout his tenure, was also outstanding. One of the last cases he tried involved a group of terrorists who were involved in a plot to take hostage the Yugoslavian Ambassador to the United Nations. At the trial, a prominent defense attorney attacked the testimony of an FBI agent during the summation — which rarely occurs during the criminal procedures, as we know. He called the FBI witness a “professional witness”; that was the term he used. Bill continued to sit at the counsel table. The defense attorney went on, “You know what a professional witness is, ladies and gentlemen. He does not quite tell an outright lie, but it is not a truth either. It is a shading, an embellishment, which is not patently false, but clearly can phase a misleading impression.”

Without making an objection, Bill heard out the rest of the summation. When it came to his rebuttal, however, Bill stood up, looked at the defense attorney, and said, “Ladies and gentlemen, you have just heard a professional summation.”

Beyond Bill’s investigative and trial ability, of course, there was also his appellate ability. Kevin Duffy tells a great story about an especially difficult and tumultuous narcotics case that Bill had prosecuted — and during which the judge had made certain rulings at Bill’s initiation.

When the case was convicted and the appeal was being prosecuted, the attorney assigned to the appeal — a very young Kevin Duffy¹ — looked at the record and concluded properly that Bill had gotten the district judge to do something that clearly he was not empowered to do, and this was the major issue on the appeal.

Bill’s response? He instructed then-Assistant U.S. Attorney Duffy, “Hey look, I won in district court. It is your problem now.”

1. United States District Judge, Southern District of New York.

The case was affirmed, and Kevin noted that it was the last time he was actually affirmed.

The combination of Bill's dedication and service consistently influenced and served as a model to everyone in the U.S. Attorney's Office, particularly young attorneys there.

When I became a young Assistant U.S. Attorney, Bill was one of the people in the office that my contemporaries and I sought out for counsel and guidance, in both difficult and routine matters, in matters that required experience, judgment, and honesty. He was always a great source for legal advice, and for moral support and instruction.

He had different ways of instructing, but the message was often the same: how to be a good prosecutor, an honest prosecutor, someone who represents all of the ideals and all of the liberties that are so concomitant with the official discharge of duties, whether you are an investigator or an Assistant U.S. Attorney.

Of his many awards, he was given one award by an Attorney General that cited his "extraordinary service and his spirit." To me, the "spirit" part of that commendation really embodies what he did to inspire a couple generations of prosecutors.

He had enormous respect across the courts and across the defense bar. People who dealt with him trusted him implicitly; and his word was contract and bond with respect to the reliance that people put on him.

Let me turn now briefly to consider the topic of your symposium: how the role of prosecutors and certainly investigators, has changed over the years, not just during Bill's tenure, but during an even shorter period of time. In sum, the expansion of jurisdiction and authorities; technical changes in collecting information and evidence, and prosecuting it; changes in criminal procedures and Sentencing Guidelines — all of these things have impacted immensely on the investigation and prosecution of offenses on behalf of the United States.

One aspect of that I wanted to highlight concerns the impact of international jurisdiction and involvement, which is now fairly routine in the prosecution of complex cases.

Whether it is the World Trade Center bombing case, the return of terrorist Kir Amal Kasi to the U.S., or Pan Am 103 — which still remains outstanding as a prosecution — the involvement of federal agencies, and particularly U.S. Attorneys and Assistant U.S. Attorneys in complex international matters has really, in my view, dramatically changed the responsibilities, obligations, and challenges

given to prosecutors and people who work on behalf of the Department of Justice. And this is true not just in the terms of substantive violations, but also in the need to pursue leads and evidence and witnesses, whether by extradition or deposition, outside of the United States.

When I was prosecuting a case back in the 1980s, we had occasion during the case to notice the deposition of several witnesses in Switzerland. At that time this was such a remarkable event that we went to get precedents and guidance from the Department of Justice — which we did from time to time in New York — and there was very little precedence on conducting extraterritorial depositions in criminal justice matters. Now, that routine is so regularized that it almost happens as a matter of course.

When I was an agent in New York, if we had a lead outside of the United States — say to check a bank record in Liechtenstein — it was a momentous event. Now we routinely dispatch not just investigators but Assistant U.S. Attorneys to every corner of the world where we have substantive jurisdiction. Today the FBI is responsible for about seventy-eight violations that have extraterritorial jurisdiction and implications.

Also, the technical changes in the world have facilitated international crime and their investigations. The telecommunications revolution has had an enormous impact as criminals use computers and cyberspace to break the law. We had a case recently where a subject in St. Petersburg, Russia used a laptop computer to break into a New York City bank and move several millions of dollars around before he was detected. He never left his living room in St. Petersburg.

We had another case recently where a subject in Sweden used a laptop computer to break into 911 systems in northern Florida. He shut them down for several hours at a time, and it required an enormous amount of work to trace the shut-down back to him. Computer intrusions are becoming increasingly common into Department of Defense systems, into universities and hospitals, and into corporations, where spies target trade secrets.

These are truly monumental changes. The computer itself is causing a revolutionary change not just for commerce and education but also for criminal justice. Criminals who use computers during the planning and commission of crimes are testing our competence in terms of our ability to investigate them, accumulate information, retrieve it and analyze it. And how we conduct investigations on computer media tests the boundaries of privacy

rights and data protection. The European Union, as you know, now has significant data protection statutes that run directly against the current authorities and access to information in the United States. As it grows into a huge international economic force, there will be significant legal and privacy issues that have to be addressed.

Law enforcement falls in the middle of that. We need to work very closely with our counterparts overseas, which was not the case even a short time ago. But now the paradigm has changed because crime has globalized. Organized crime in Russia directly impacts on New York City, Florida and California. In fact, on a fairly routine basis now, officers, as well as prosecutors, come from Russia to work cases involving subjects who are Russian-based but are committing crimes in both Russia and the United States, as well as many other places. Russian police officers are riding around in cars with our agents because they can identify subjects who they know but we do not. We have them testifying in our Grand Jury. We have their prosecutors here working out mutual legal assistance treaty matters. And this is just one example of one country.

The work of the Department of Justice in the area of international relations and mutual assistance to prosecutors has just exploded over the last couple of years, almost eclipsing some of the procedures and protocols we used even a short time ago. This work constitutes perhaps one of the most dramatic changes in terms of the role of prosecutors. We now designate U.S. prosecutors — state, local and federal — to go overseas to conduct investigations. Sometimes they are authorized by the host sovereign to actually submit court documents and appear in proceedings in those countries. The converse is also becoming more routine here in the United States.

I think that trend is going to continue, and I think the globalization of economies, and criminal activities, and particularly the globalization of terrorist activities, will require investigators and prosecutors in different countries to assist each other under treaty protocols and other types of arrangements, and to maintain their respective interests, and in many cases the totally integrated objectives in terms of public safety, counter-terrorism and economic security. It's a challenging area because it deals with sovereignties, implicates treaties and raises notions of nationalism. And yet, as the world becomes so much smaller — I mean much smaller than when Bill Tandy became an Assistant U.S. Attorney — we have

requirements in terms of carrying out our authorities that are vastly different, at least on the international front.

This notion was recently articulated to me by two different Prime Ministers on different occasions. Both in describing the criminal problems in their countries, by their own description, implicated more than their own nation's sovereignty. These issues are transnational; they do not recognize borders, and are not confined to groups of individuals who stay in the same place and perform the same activities.

Many countries, particularly in East Europe, are reeling under the impact of new forms of crime, and they are not prepared to deal with them. When I met with President Havel of the Czech Republic, he said, somewhat ironically: "When we constituted the first democratic government in the Czech Republic, the first thing we did is we took away all the police powers. We took away their ability to do undercover operations, to conduct electronic surveillance. We were very proud of that. Because of the history of tyranny, at least as imposed by the police, we felt very good about the fact that we had taken all these powers away."

He continued, "But now, we have organized crime groups of immense power. They walk into and out of our border with impunity. They have tools and methods and resources that we do not have. So now I am going to give the police back all those powers, and maybe some additional ones."

President Havel was, of course, articulating the balance that has to be constantly struck in all democratic nations, giving law enforcement the ability to do its job, and protect public safety; but also delicately and carefully balancing those powers against the obligation to protect civil and human rights.

Many countries in East Europe are doing that well, but some are not. Even in our own country — as we get into more complex environments in terms of substantive authority and procedures, tools and techniques for law enforcement — we have to constantly keep that balance in mind.

Overall then, I would say that the role of investigators and prosecutors is certainly changing, and in dramatic ways. But some of the basic principles of what prosecutors do, and are charged with doing, and what they are held to in terms of accountability, these really remain the same. Bill Tandy would certainly agree, and I think he represents a good model for current and future prosecutors to emulate.

