

REMARKS OF IRVIN B. NATHAN
ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA
FIFTH ANNUAL JUDGE THOMAS A. FLANNERY LECTURE

November 14, 2013

Good afternoon:

Thanks, Judge Friedman, for that kind introduction and to Roger Zuckerman and the Judge Thomas A. Flannery Lecture Committee for inviting me to speak at this prestigious event. It is an honor to speak in a lecture series named for Judge Flannery, who spent most of his professional career in public service and who was known, both as a prosecutor and as a distinguished trial judge in this Courthouse, for his fairness, decency and civility.

I am also delighted to be the undercard for my friend and former Department of Justice colleague, Mary Jo White. It looks like the Committee decided to select public servants who are vertically challenged, but whatever criterion they used, I am pleased to be on the bill with her. She is bringing the same zeal, energy, commitment and excellence to her role as Chairman of the SEC that she did so successfully as US Attorney in the Southern District of New York.

Of course, our District of Columbia Office of the Attorney General focuses on local issues, but we do have the opportunity on occasion to coordinate with and support our federal counterparts. In an area where Chairwoman White now toils,

I was pleased to join several state AGs and the Department of Justice earlier this year in parallel lawsuits against Standard & Poor's for misrepresenting the independence of their securities ratings prior to the dramatic near-collapse of our credit and housing markets. This took some courage for us as S&P also rates the bonds that DC issues. We also coordinated and jointly filed with the Department of Justice in this court an antitrust consumer action to enjoin the merger between American Airlines and US Air so as to help keep the market for our local airport at Reagan National competitive, which as you know, was settled this week on terms that will bring more competition and hopefully better service to National. As you may have seen recently in the newspapers, there are other possible interactions with the federal government, but this is probably not the forum to discuss them.

For the last three years, I have had the privilege of serving as Attorney General for the District – building on the progress made by some of the extraordinary lawyers from our community who have held this position before me like Chuck Ruff, John Payton, John Ferren, Judy Rogers and Bob Spagnoletti and other excellent lawyers. A little known fact is that one of my distant predecessors as Corporation Counsel was Barrett Prettyman Sr., for whom this Courthouse is named. I was appointed by Mayor Gray, who has fully lived up to his commitment to allow our office to function independently and in a completely non-political fashion.

As you know, in 2010 the City Council, based on then existing circumstances, passed legislation making this office elective, setting the first election “after January 1, 2014.” A referendum followed in which the voters endorsed an elected AG. Recently, as the Council wrestled with the contours of the office going forward as well as the lack of any announced candidates, a number of its members had second thoughts about whether it was such a good idea and whether the city was ready for an elected AG and a majority decided to postpone the election until 2018.

In response to an inquiry from the Council, I opined that it had the authority to postpone the election because the statute says the first election will be after January 1, 2014 and left certain implementation matters to the Council . I also suggested that it would be imprudent to postpone it because the language on the referendum ballot represented that if passed the first election would be in 2014. Whether the election goes forward in April, 2014 is now in the hands of this court as a result of a suit challenging the Council’s authority to postpone. We are expecting a decision imminently. Whatever the outcome, it demonstrates the intimate connection between our office, the city government and this Court.

The next attorney general, whether elected or appointed, will have the pleasure that I now have of working with a talented, dedicated, and professional

group of attorneys and support staff. The District government and our residents are fortunate to have their services. These hard-working public servants consistently produce excellent results while working under difficult circumstances. They carry enormous caseloads and do not enjoy the resources , compensation or working conditions that many of our adversaries in the private bar take for granted.

The mission of OAG is to serve as the District's chief legal officer, to provide legal advice to the District agencies and to conduct the District's legal business. We represent the District in virtually all civil litigation; we prosecute all juvenile crimes and certain adult misdemeanor offenses; we protect abused and neglected children; handle civil commitments against those suffering from mental illness; we pursue child support payments from non-custodial parents; and we represent the District in a variety of administrative hearings. In addition, we are responsible for issuing formal legal opinions to the Executive Office of the Mayor, the D.C. Council, and agencies; for reviewing proposed legislation and regulations; for drafting contracts and handling the legal aspects of the city's commercial affairs; and for supervising lawyers working in the general counsel offices of 30 agencies. In all, our office supervises the legal work of almost 400 attorneys and slightly fewer of administrative staff. As you can imagine, this carries with it some challenges.

One of these challenges has been dealing with major class action consent decree cases filed in this Courthouse that have over the past four decades resulted in placing several of the District government's basic functions under federal court supervision. In my view and the Mayor's, this is not how Home Rule should work. Working closely with the affected agencies and stakeholders, we have made major progress in resolving these cases. We were able to end federal oversight of the Department of Mental Health in a 37-year-old lawsuit handled by Judge Hogan. We also obtained dismissal of a case resolved expertly by Judge Friedman where there had been 17 years of federal court supervision over the District's special-education transportation program and special education payments. We continue to work productively with the agencies in other longstanding systemic reform cases to meet the terms and conditions of court orders that eventually, hopefully, will permit the termination of court oversight. In this connection, I urge the judges in these cases to consider the objectivity of plaintiffs' attorneys and special masters who have reaped millions of dollars in fees from the District over the years in keeping these cases alive.

In addition to our considerable successes in defending the city and prosecuting crimes within our jurisdiction, I am particularly proud of the work we have done to move public integrity issues forward in the District. We brought the first suit ever by the District against a sitting member of the City Council. Our

investigation determined that he had misappropriated for his personal benefit over \$400,000 intended for youth baseball. Our suit resulted in a settlement, some restitution and led ultimately to his felony conviction by the U.S. Attorney's office and his resignation from the Council. More recently we sued the top managers of a public charter school for a scam in which they were able to divert for their benefit millions of public dollars intended for special needs students. We have already obtained a receiver appointed to control the funds of the school and protect the interests of the students. I am likewise proud of the legal policy work that we have done at the Mayor's direction on ethics which has led to the creation of the Board on Ethics and Government Accountability, led ably by former AG Bob Spagnoletti.

Let me turn briefly to other key priorities for the future.

I want to continue to build on the solid work of my predecessors to develop and maintain a first-class legal office for the District of Columbia. This has included training, recruiting, mentoring and consulting with attorneys on specific matters. We are very grateful to the several judges of the four courts where our attorneys appear who have volunteered their time and shared their insights in an effort to improve the effectiveness of our lawyers.

We have succeeded in recruiting a significant number of outstanding lawyers with proven track records, who, like Judge Flannery, have extensive

experience in both the private sector and prior government service. These recruits, along with the many long-serving excellent lawyers who were already with OAG when I arrived, have been instrumental in communicating and demonstrating our high ideals and helping upgrade the quality of our work, while maintaining a sense of healthy institutional continuity. I am committed to continue to build up the morale and capacity of the office. I am proud that they know I have their back when they are unfairly attacked but will take appropriate disciplinary action when necessary.

To augment our capacity and to help mitigate the pressing caseloads of our attorneys, we have actively pursued an expansion of the OAG's pro bono attorney support from the local private bar. We are very grateful to the generosity of the private bar, whose donation of services has resulted in litigation successes for the District and irreplaceable courtroom experience for associates and young partners of law firms. We welcome more help from the private bar and continuing to find ways to supplement our staffing and resources without added costs to the taxpayers. In this regard, we need Congressional authorization to hire contingent fee lawyers to work for the District in labor-intensive matters where the District could reap large financial rewards. Virtually every city and state in the country have and utilize this authority.

We are also completing the second year of the Charles Ruff Fellowship program. We have secured commitments from area law schools -- including Georgetown, George Washington, and the University of the District of Columbia and now American University -- to fund, on a matching basis, the salaries of recent law school graduates with outstanding records who are committed to public service to work in the office for a year. We are getting some of the best and the brightest law school graduates as we reinforce the importance to new lawyers of serving the community and representing and improving the government.

Finally, we have placed great emphasis on ensuring the independence of the Office of the Attorney General -- especially when it comes to the provision of legal advice. In rendering opinions on the law, OAG must be -- and must be perceived as being -- independent, non-political, and non-partisan. Our office has not shied away from difficult or controversial matters, rendering opinions totally free from politics. This practice was put to a test this year as we were asked to opine on a measure submitted to voters that would give the District budget autonomy from Congress, an objective that is shared by the overwhelming majority of the District's residents and shared by the Mayor and me. But we had to conclude on the merits that the measure violated the Home Rule Charter and the federal Anti-Deficiency Act. As politically unpopular and personally painful as that was, I believe an Attorney General's office committed to the law had no other choice.

We also had to do our best to fend off a determined effort by the City Council to engage in civil disobedience during the recent shutdown by the federal government. I am pleased to report that the Mayor stood with me on this issue, and fortunately we found a way to finesse it with reserve funds that were able to carry us through, just barely, until the shutdown ended.

These are just some of our major areas of activity and focus. In sum, OAG is headed in a sound direction, manned by solid professionals. Whether led by an appointed or an elected Attorney General, I am confident that, with the continued support of the District's legal community and policy-makers, the office will be able to continue to represent zealously and effectively the interests of the District and its citizens in the best traditions of Judge Flannery.

Thank you .