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CROSS PURPOSES AT THE JUSTICE DEPARTMENT

President Reagan announced his support of prayer in public schools on May 6 before a large gathering of conservative and religious leaders in the Rose Garden. While those assembled were lavishing praise on the President for this forthright decision, the battle was going on behind closed doors over the wording of the President's proposal.

The Justice Department fought hard to water down the text favored by the Rose Garden attendees. Within two hours of the President's announcement, Justice issued a memorandum opposing all attempts to remedy the Supreme Court's anti-prayer decision except by the long and difficult route of a constitutional amendment.

Some observers in Washington think that the Justice Department is pretending that Jimmy Carter is still President. Others say bluntly that Justice is trying to undermine the President.

Crime is surely one of America's most serious problems and most potent political issues. Yet, a year and a half after Reagan's inauguration, the department with jurisdiction over crime has not scored a single legislative success.

No plan or policy has been developed to deal with critical problems such as crime and judicial activism. The Justice Department has frittered away its time in battles with conservatives, most of which Justice lost.

First, Justice waged an effort against a conservative proposal to give Congress a veto over unreasonable agency rules and regulations. Despite the Justice Department's strenuous efforts, the legislative veto was approved by the Senate.

Then, Justice prepared a memorandum opposing legislation by Senator James McClure (R-Idaho) to curb some of the most egregious abuses by the Bureau of Alcohol, Tobacco and Firearms. The White House endorsed the McClure bill instead of the Justice Department position.

The Justice Department chose the criminal code recodification bill as its chief legislative priority. The bill was almost identical to the Carter Administration proposal and was substantially the same bill backed in previous years by Senator Ted Kennedy.

Conservatives and religious leaders waged a fullscale legislative campaign to defeat this criminal code recodification because it would have resulted in a general lowering of sentences for non-business crimes (such as sex crimes and obscenity). The Senate repudiated Justice on this bill when it refused, by a vote of 45 to 46, to cut off debate on the question of whether even to consider the criminal code proposal.

The principal problem at Justice is staffing. A recent count showed that 80% of all Deputy Assistant Attorneys General employed at the end of the Carter Administration are still on the job.

The Carter holdovers are experienced bureaucratic "in-fighters." Attorney General William French Smith and his small corps of "country club" lawyers have been unable to assert the President's program or priorities. Smith is regarded as a pleasant lawyer who is over his head at the Justice Department.

With effective staffing, the Justice Department could make up for personnel deficiencies elsewhere in the government. If the Attorney General were a leader with a clear vision of Ronald Reagan's purposes, the Department could be the spearhead of the Reagan Administration instead of a monkey wrench in the machinery.

The courageous action of Deputy Assistant Attorney General Robert D'Agostino in saving the life of a spinal bifida infant in Robinson, Illinois, in the face of parental attempts to withhold medical treatment, demonstrates this point. Sometimes it looks as though he is a lonely Reaganaut lawyer in the entire Department.

The personnel deficiencies at Justice are impeding conservative initiatives by other departments and even by the President himself. A prime example is the way Justice has kept up a running attack on all Congressional attempts to limit the jurisdiction of the federal courts in sensitive areas where the courts have no business "legislating" (such as busing, prayer, and abortion).

William French Smith was appointed to his job on the basis of a longtime personal friendship with Ronald Reagan. Because of that friendship, the Attorney General should now be willing to put the needs of the President ahead of his own and step aside for a tough lawyer who is equal to the challenge.