HIRING MEMO TO ATTORNEYS GENERAL-ELECT

To: Attorneys General-Elect

From: James E. Tierney (Attorney General of Maine (1980 to 1990) and Director of the National State Attorney General Program at Columbia Law School (http://www.stateag.org)

Re: Recruitment and Retention within the offices of the state attorneys general

Date: November 20, 2008

In these difficult fiscal times, it is essential that attorneys general hire and retain the very best lawyers. Not the best that you "hear" about. Not the best of those "sent." Not the best of those whose resumes are on file. Not the ones who helped on a campaign. But the very best. Everything that follows in this memo is an extension of that fundamental principle.

# 1. Selection of a Chief Deputy

The choice of the person who will be the Chief Deputy sends a message to your staff and the state's legal community. It is the most important personnel decision.

Other than the attorney general, the Chief Deputy is the individual who is most important to the success of the Department of Attorney General. In addition to being a good administrator and an excellent lawyer, the attorney general must also have complete confidence in the Chief Deputy's judgment. Because the decision must be made early in a new administration, it is often a very difficult choice.

Although it is difficult to give advice on a decision that is so personal, observations of over 200 attorneys general for over twenty five years has convinced me that an attorney general should select a Chief Deputy who is different from themselves. In other words, the most successful Chief Deputies are those who provide a 'brake' on the preexisting instincts of the attorney general. A Chief Deputy must be able to say "no" to the attorney general.

If the attorney general is someone who lacks traditional legal experience, then the Chief Deputy should be someone who legal credentials are of the highest caliber. If the attorney general is superb litigator, then the Chief Deputy should be a calm, non-litigious problem solver.

If the attorney general has never managed anything and/or has little or no knowledge of state government, then the Chief Deputy should be someone who has management experience and a sense of how the State House really operates.

While the decision is important, it isn't permanent. As a further historical note, many new attorneys general find that their first choice "doesn't work out" and those changes are most often made within a year or two of taking office.

#2 Chief of Staff: Although in small offices the Chief Deputy also plays the role of Chief of Staff, many offices have someone in the “front office” that is responsible for advocating for the agenda of the attorney general. Often someone with long standing political ties to the attorney general who may not even be an attorney, this individual often supervises non-legal initiatives, legislative relations, scheduling and media requests. All of these functions are vital to the success of any attorney general, but great care must be taken by the attorney general and the Chief Deputy to keep “politics” out of the office especially in the area of hiring, retention and litigation management. Any experienced attorney general reports that there is a natural tension between the duties of the Chief Deputy and the Chief of Staff, and the importance of a good relationship between the two cannot be overstated.
#3. Hiring and retaining lawyers must be a high priority of the attorney general.
When I visit the offices of state attorneys general, every lawyer I meet starts their conversation by telling me the name of the state attorney general who hired them. They never forget the final interview that they have with the attorney general who shakes their hand and offers them a position as a public lawyer.

This is true in every state. The personal involvement of the attorney general is critical to recruitment and retention. Completely delegating the hiring of staff to lower level employees is a huge mistake. Nothing is more important than the quality of the staff within the office. It is far more important for a new attorney general and the Chief Deputy to pay attention to hiring and retaining staff than to the media inquiry of the day.

When hiring is not a priority for the attorney general - when he or she isn't willing to make the crucial call to nail down a hire or keep an excellent lawyer from leaving - then it is very difficult to attract and retain the very best. Once the attorney general has committed himself or herself to this effort, the rest is up to the leadership of the office.

#4. Low salaries are not an excuse. Although tight budgets and cutbacks are about to be a reality, a new attorney general should never let the relatively low salaries of their staff stop them from seeking the very finest professionals. If the new attorney general inspires the staff with a vision for justice, then he or she will retain and attract the very best. The citizens deserve nothing less.

#5. The "graying" of the offices of state attorney general will result in significant turnover of career staff. The aging of the "baby boomers" is creating a significant number of retirements in attorney general offices. A new attorney general may inadvertently prompt unwanted retirements unless care is taken to place a value on institutional history. These retirements create both dangers and opportunities and should receive attention.

#6. Hiring Laterals - The Flight From Private Practice. New attorneys general are often surprised at the number of experienced lawyers who are anxious to join the Department of Attorney General. As a result, most new hires in attorney general offices arrive with a number of years of experience. While this is generally a good development, several caveats are in order.

First, all legal experience is not good experience. The mores of private practice can create an attitude that is not conducive to the culture of your office. Second, some experienced lawyers want to go into government for the "security" found in regular hours, health benefits and a state pension. While these are valuable recruiting tools - especially in the down market that currently exists - it is important that the office of attorney general be seen as a vibrant and exciting office where everyone works long and hard. Third, the availability of experienced lawyers often makes it difficult to hire the young lawyer coming out of school or from a clerkship.

I believe that there should always be room for new lawyers to become government lawyers. They add energy and freshness to offices. Their enthusiasm often makes up for their lack of experience and they have the capacity to challenge existing staff that may have become complacent. Their presence provides skilled lawyers the opportunity to mentor those entering our profession which often re-energizes the experienced lawyer who have forgotten the honor of public law.

#7. Recruitment and Retention is Everyone's Business. It is not easy to implement a quality hiring program. It takes time and effort. Although it may seem easier to allow each bureau to screen its own applicants, that approach tends to perpetuate a culture within that section of the office that does not reflect your views. It is far better to create a single gathering point for resumes and then be sure that the entire staff is involved.

It takes the great lawyers to recruit and retain the great lawyers. Because the best lawyers on your staff are always very busy, they might initially resist being involved in hiring. You should emulate the practice of private law firms who always use their best lawyers in recruitment efforts. This is absolutely essential in order to increase the diversity of the
office. In short, because every office is held hostage to its weakest employee, everyone has a stake in the recruitment and retention of the men and women who will make up the Department.

#8. Recruiting the Best Lawyers is a network effort. It is impossible to find the best lawyers without an extensive network of support from the bar and the judiciary of the state. The leadership of the office must "let the word go forth" that the Department is an exciting place that is seeking to hire only the finest lawyers.

#9. Where to Look for the Best Lawyers. The best place to look for the best lawyers is at those places where the best lawyers are already working or studying, e.g. the best lawyers already in the office, the best prosecutor offices, the best law firms, and the best students who are in law school, the best public interest organizations, the best judges, and the best governmental agencies. An attorney general who is serious about creating a diverse office must be willing to do the hard personal work to make that happen.

By developing a network, sometimes led by senior private sector lawyers who were once assistant attorneys general, a new attorney general will be pleased at the quality of those who want to work in its Department. A new attorney general cannot wait for the salaries to increase. A new attorney general and his or her staff must begin now and keep at it.

It will happen. Judges will refer their best clerks. Non-profits and District Attorneys will watch their best leave. Law school Deans and public interest offices from around the country will refer their finest for summer interns, and faculty members will get interested in attorney general cases and offer to lend a hand.

#10. Hiring lawyers is a national effort. As the graduate of the state university law school in the state where I was attorney general, I admire and respect the graduates of in-state institutions. That being said, the practice of law is global and your recruitment efforts must reflect that fact. Every year I speak at national law schools about the excitement of working for a state attorney general. And every year bright students at these schools, many of whom are interested in returning to their home states, ask me about whether they should work for an attorney general.

#11 Summer Intern Programs: Bluntly speaking, state attorneys general who do not have summer programs for interns are never able to compete for the best. Top graduates have many options and will work for an attorney general after their clerkships only if they have had a successful summer experience. Because an increasing number of law schools now pay for public interest internships, these interns can be "free" to the budget. The best applicants also want to see in advance whether or not an office is a good place to work. They also want to know if the office has systematic continuing education and a meaningful orientation for new hires.

Each state attorney general should develop a regional and national plan for recruitment. Each state should find ways to hire within a "cycle" that allows competition for the best applicants. This may mean making hiring decisions from between 6 to 9 months before the person is actually sworn in. This is never easy as it requires juggling "slots" and fighting the personnel system, but with the high number or projected retirements in many states, I know from personal experience that it is possible.

#12. The best lawyers want to work in good jobs. Any new hire realizes that they will have to "start at the bottom," but that does not mean that they must work in the worst jobs in the Department. It simply means that they have the chance to do interesting work with a reasonable chance for advancement. It is therefore important that those lawyers who do the "face-to-face" recruitment with young lawyers make it clear that the Department is an exciting and flexible institution with a non-bureaucratic view. In short, you should not become the victim of your own bureaucracy.

#13. The best lawyer is the lawyer who is the right fit. (Or why every assistant attorney general need not be the brightest bulb in the closet.)

A great lawyer isn't great if he or she is in the wrong slot.

Let me tell you about the kind of mistake that I made while attorney general. I hired "Mark" who was fresh from a successful law school career and a clerkship on the Fifth Circuit. “Mark” was brilliant and was initially very happy to be
with us. I assigned him to an entry level position representing Maine’s Department of Corrections. Several weeks later, “Mark” appeared at my door to inform me that he thought “many of these post conviction cases had real merit.” Reminding “Mark” that here in the attorney generals office “it is our job to keep them in,” I sent him back to work. Because “Mark” continued in informing us that these cases had merit, he ultimately had to leave our office. The good news is that he went on to a very successful career as a defense attorney and was the President of the Maine Civil Liberties Union. Although a fine lawyer, “Mark” was not the right lawyer for that slot. The mistake was mine.

**#14. The best lawyers are not necessarily the best litigators.** The most important attribute of a lawyer is good judgment. Far too often, technical legal skills are rewarded without regard to whether those skills are used wisely. Lawyers who can effectively litigate a case are often characterized as "better" than lawyers who cannot, but my experience is that outstanding litigators are often prone to create battles when none are necessary. As you evaluate the staff, it is important to not value litigation skills over problem solving skills. Recruitment efforts of the Department should not ignore the non-litigation qualities of those who make up the staff.

**Conclusion:**

I hope that my experience will assist newly elected attorneys general in their effort to retain and attract the very best individuals. The stakes are high and the rewards are great in carrying on the great tradition of the Office of State Attorney General.