# Department of Justice

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"THE FEDERAL COURTS IN OUR SOCIETY"

ADDRESS

BY

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A detached observer of our national scene might conclude that we are a nation preoccupied with material things. It could conceivably be thought that our creative talents and the collective drive of our people have been directed toward scientific and mechanical advances, to the exclusion of social betterment. Such a view would be grievously in error.

I should like to speak today of the growth of the federal judiciary, its influence upon the life of our people, and the special position of the courts and its members in a maturing and, we fondly hope, a more advanced civilization.

The history of the federal judiciary gives evidence of a people devoted to an abiding faith in the supremacy of law over brute force. The role of the federal courts in striving for a more civilized society looms large in this government of the people, by the people, and for the people. Yet, the period of gestation for the federal judiciary was painfully slow.

It has been almost 168 years since passage of the First Judiciary Act. The development of the federal court system into its present structure partook of many of the historical events of our nation. As more territory opened, as litigation increased, and as distance and travel ate into the time available for trial and circuit work, the need for additional federal courts and increased jurisdiction became apparent.

The continuing expansion of the country kept impairing the ability of the early judicial organization to cope effectively with its business. This was so even though, speaking in the broadest of terms, the district courts were largely the admiralty courts of the country, while to the circuit courts were allotted cases resting on diversity of citizenship.

A limited appellate jurisdiction over the district courts also was conferred upon the circuit courts. However, in practice the district and circuit courts were two nisi prius courts dealing with different items of litigation.

The appellate jurisdiction of the Supreme Court was fed by two streams, one running from the lower federal courts, the other from the state courts.

It was not until 1891 that Congress took action with a view to the needs of the federal judicial system as a whole. The story of the intervening years is one of near-unanimous recognition of the inadequacy of the judicial system, of interminable debates about remedies, and of long-delayed and meager action. The growth of the country and the patchwork extensions of federal jurisdiction placed increasing strain upon the courts.

The period from 1870 to 1891 probably represents the nadir of federal judicial administration. At the opening of that period, the lower courts and the Supreme Court were already swamped with more than they could do. Then, in the Judiciary Act of March 3, 1875, Congress followed the Federalists of 1801 in expanding the statutory grant of jurisdiction almost to the full extent of the Constitutional authorization. It gave the federal courts the vast range of power which had lain dormant in the Constitution since 1789. Both diversity and federal question jurisdiction were conferred in the language of the Constitution, limited only by a requirement of jurisdictional amount. These and other extensions of federal trial jurisdiction unloosed a flood of litigation utterly beyond the existing capacity of the courts to handle. The courts became the powerful and primary reliances for vindicating every right given by the Constitution,

the laws, and treaties of the United States. Yet, this development in the federal judiciary, which in retrospect seems revolutionary, received hardly a contemporary comment.

The chronically-deepening crisis reached the point of universal acknowledgment. But action was paralyzed by seemingly irreconcilable differences about remedies. One school of thought, with its voting strength in the Senate and its support in the East, sought the answer by adding to the capacity of the courts to dispose of business. The other, with its voting strength in the House and support in the South and West, looked to restrictions upon jurisdiction. Both remedies were eventually adopted.

In the Evarts Act--the Circuit Court of Appeals Act of 1891--the Congress at length met the need for a structural change. Intermediate courts of appeal were established and a sharp restriction of double review as of right was imposed. Except for the abortive Federalist Act of 1801, this was the first structural modification in the federal judicial system since its creation a hundred years before.

The Evarts Act fixed the outline of the contemporary scheme of federal appellate review. However, in deference to the traditionalists, the old circuit courts were not abolished, although their appellate jurisdiction over the district courts was removed. This did not satisfy the extremists who still thought of the pioneer days when the Justices were active on circuit and thus, supposedly, kept the common touch.

The framers of the Act of 1891 satisfied an essential requirement of the federal judicial business through the establishment of intermediate appellate courts. But great judiciary acts, unlike great works of

literature, are not written for all time. The years following have seen increasingly greater improvements and new adjuncts to the system. The Judicial Code of 1911 eliminated the two sets of trial courts and, in the Act of February 13, 1925, the most recent major reform of appellate jurisdication, the provisions for direct review were sharply narrowed.

These references exclude, of course, many intervening Acts as well as significant reforms more recently accomplished. The Act of September 14, 1922, for example, laid the foundation for a comprehensive attack upon the whole problem of judicial administration. This resulted in the creation of the conference of the senior circuit judges, later renamed the Judicial Conference of the United States. On this foundation, the Act of August 7, 1939, built the present organization for the administration of the United States courts. The Act of 1939 was later codified and altered in minor respects by the Revised Judicial Code in 1948.

The vast change in the jurisdiction vested in the lower federal courts becomes quickly and strikingly apparent upon a simple look. Any recent Federal Reporter will show cases running the full gamut from "agriculture" to "workmen's compensation". In these cases will be found many of the dramatic incidents of our national life.

We can quickly recall many cases which placed the federal courts in the public eye. Treason trials, for example, which have exposed those aiming at the nation's jugular vein. The pullman strike as a reflection of economic unrest, issues bearing upon freedom of religion and of the press, and those vexing controversies concerning censorship, sedition, and the many other areas in which the courts have controlled dangerous currents of action.

In recent years we observed, once again, the reassertion by the judiciary of their responsibility for curbing excesses in the assumption of power by a President. The steel seizure case will long stand and will be frequently cited as another in a long list of examples wherein the federal courts brought our system of Constitutional government into proper balance.

Controversies of this general character have done much to affirm the integrity and independence of the judiciary so brilliantly launched by the great Marshall.

Respect for the courts also has been engendered by other actions. In keeping with the axiom "Physician heal thyself", the courts have made notable progress in the procedural facets of their operations. The federal rules of procedure were proven so successful that many state courts have borrowed, with great benefit, these fine measures. The current drive to clean up backlogs shows much progress and will reestablish in the minds of the general public their faltering faith in trying to obtain reasonably prompt trials and dispositions of cases. Much also has been done in other important aspects of judicial administration. The expanded and more intensive use of pre-trial conferences and other techniques to avoid unnecessary impediments to a speedy and efficient trial are having beneficial effect. These and other measures which reflect the imagination and the will to accommodate the ever-increasing burdens of litigation offer the best answer to the critics of our system of judicial administration.

Recognition of existing and continuing ailments and the determination to overcome their corrosive effects also forbids complacency. One large and complex problem comes to mind as an example of the great tasks which

rest unsolved. Litigation is too expensive. In ever-increasing measure those who seek to vindicate their asserted rights in the courts find the cost prohibitive. This is not a problem of and for the bench alone. Indeed, the primary cause may well be entrenched in other quarters. Nevertheless, when the total bill is beyond the capacity of the ordinary litigant, this, too, is justice denied.

But it is not my purpose to catalog the vexing and unsolved problems which still lie before us. The gains of yesterday will serve as a continuing spur toward the conquests of tomorrow. In this endeavor, all the members of our calling will contribute such gifts and force as each has to offer. Through such collective effort and by the necessary concerted drive the nobility of the legal science will be preserved.

These are problems in terms of the machinery of the law. But what of the human factor?

Judges have long been viewed by the lay public as draped, impersonal figures who move from one point to another without those characteristics which denote them as fellow members of the human race. It is unfortunate that more of our people do not know of the many warm and noble acts of judges. Consider their encouragement to young lawyers, for example. If a new member of the bar has done well, judges are frequently heard to say: "That argument of yours was first rate!"

In the heat of a trial, tempers may flare. Or, upon oral argument, the lawyer may feel that he has been badgered and quizzed beyond the needs of the case. The gracious word, the pat on the back, the assurance that, to paraphrase Shakespeare, "lawyers strive mightily but eat and drink as friends," uplift the soul.

A custom of long standing of our host circuit, the Fourth Circuit Court of Appeals, deserves special mention. It is the practice of the members of the Court to come down from the bench and greet, with warm handshake, every attorney appearing before the bench. Veteran attorneys tell me that even after a quarter-century or more of practice in courts throughout the country, this gracious custom stands out in their memory. It creates a bond between the lawyer and the court and gives to professional life a lasting warmth. Yet this in no way intrudes upon the separateness of advocacy and juristic action.

Recent events in our domestic life sharply have brought home to our people in all walks of life the far-reaching power of the federal judiciary. This is particularly so as to the United States district courts. They deal with the vital interests of personal, industrial and national life of this vast community. For many, its judgments are completely dispositive of controversies. We have, then, a centering of authority of the highest degree resulting from our principle of separation of powers, a wide sweep of jurisdiction embracing the many facets of our complex economic, political, social, and industrial life, and the intimate relationship between those judging and those being judged which the law, as a binding force, imposes upon society.

The courts carry these heavy burdens with a dedication and faithfulness to their own special trust. They are discharging their responsibilities in the rich fulfilment of a group devoted to a tenacious faith in the supremacy of law and order as the need and right of man. This is done within the bounds of authority and confidence wisely placed in one of the three great co-ordinate branches of the Republic.

It is perhaps unfair to expect more than this from our judiciary. Yet there is still another large area of necessity which must command the attention of judges no less-and in a sense more--than is expected of other groups of our citizens. I refer to the field of international law.

The need and the responsibility in this regard was well put by Judge Parker in his informative and thought-provoking presentation at The Twelfth Annual Benjamin N. Cardozo Lecture in 1953. He brought home our place in the affairs of the world with the observation that "We in the United States had as well realize that the leadership of a civilization which was Great Britain's task for a hundred years, has devolved upon us."

Because we are the strongest nation in the free world and as such are in a position of great responsibility, we must apply the same moral standards in our dealings with other peoples of the world that we apply in dealings among our own people.

Fortunately our national leaders have been and are conscious of this. Recently our nation did just that in dealing with the Middle East crisis.

For many months the eyes of the free world have been focused on the Middle East and on Washington. As a result of armed conflict, the Suez Canal was blocked. The free world was sharply divided on the proper course of action.

Many factors might have dictated that we seek an easy way out of this dilemma. There were persuasive arguments made that the United States should take no definite stand since some of our friends and allies were deeply involved in the dispute.

Never has the position of leadership which this Nation has been called upon to assume been put to a more severe test than during this crisis.

Never have these principles been more steadfastly adhered to than by the President of the United States, with the support of members of Congress and many national leaders of both political parties.

On the day after Britain and France joined Israel in the armed attack on Egypt, the President reported to the American people on the situation in the Middle East. He said:

> We believe these actions to have been taken in error. For we do not accept the use of force as a wise or proper instrument for the settlement of international disputes.
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> There can be no peace--without law. And there can be no law--if we were to invoke one code of international conduct for those who oppose--and another for our friends.

In meeting this initial crisis in the Middle East the President courageously applied the great moral concepts of our domestic legal system in our dealings with other nations.

If there is to be complete understanding of the need for a system of law to regulate the conduct of nations, and so to prevent recourse to arms, certainly those devoted to the science of the law have a special and, indeed, extraordinary obligation to discharge. And within this group which has made the law its calling, judges and lawyers occupy a special place.

They have demonstrated the wisdom and courage necessary to bring the problems of our people into wise accommodation with the needs of government.

An acceptable solution must originate with those with a passion for justice and a sympathy for humanity. It could best come from those who understand from their own intimate experiences and breadth of view that

world order must be based on law for the same reasons that law has been a restraining and constructive force at home. Self-preservation requires it; civilization can not exist without it.

Whether that contribution should be directed to the formulation of substantive principles, of better mechanisms, or of more acceptable forums, or of all of the parts of the total structure, I would not presume to suggest. What I am really probing for is to stir greater interest among a class of fellow citizens who have the capacity for a great and lasting contribution to world order. Notwithstanding the heavy burdens of your busy days, I hope that you will add yet another obligation--a compelling necessity to search for that road which leads to everlasting peace among all men.

And groups such as this--a conference of those dedicated to the furtherance of the great and respected traditions of the bench and bar, give hope for a more enlightened future.