



Department of Justice

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ADDRESS

BY

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ATTORNEY GENERAL OF THE UNITED STATES

BEFORE THE

PHOENIX EXECUTIVES COUNCIL

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During the Christmas holidays I took the time to read the history of the Justice Department entitled "Federal Justice." It was written in 1936 by former Attorney General Homer Cummings and his special assistant, Carl McFarland. It covers the office of Attorney General from 1789, and the Department of Justice from 1870, when it was created, through 1936.

It is a story of history repeating itself. Many of the things in controversy today have been great issues in the past. Even the IBM case has a short life, only nine years to date, compared to the litigation that ensued over the telephone patents. That litigation lasted for 30 years. More correctly, the litigation covered just 15 years and it took an additional 15 years to find an Attorney General who had the courage to dismiss it, given the fact that the government lost. Several of the Attorneys General during this period sought the advice of Congress, hoping for some sharing of responsibility, but they were never able to raise a response.

The first Attorney General was Edmund Randolph. The office of Attorney General was created in the First Congress,

1789. Randolph had served as an aide to General Washington and as an Attorney General of Virginia. He was a close friend of President Washington, as well as his lawyer -- but in that day, far from Watergate, no one suggested that he was disqualified by virtue of being a friend or, as some would say, a crony.

In those days the Attorney General was paid only about half of the salary of the Secretary of State and Treasury and was not expected to work full time. He spent most of his time in private practice. Over the years it was thought that private practice would sharpen one's intellect and improve one's legal ability so as to enable the rendition of more efficient service to the government, or so said Senator Rowan of Kentucky in 1830.

Many of the great cases of the day, the Dartmouth College case, Gibbons v. Ogden, Chisholm v. Georgia, were private cases but were argued by Attorneys General in their capacity as private counsel.

In 1853 the salary of the Attorney General was finally equalized with that of other members of the Cabinet, and the private practice of law was no longer permitted.

Even in the early days of the Republic, there were those in public life who objected to the loss of privacy. For example, Attorney General Evarts, who served immediately after the Civil War, resigned and in so doing stated, "I shall return to my business of farming and lawing and leave to the newspaper correspondents the conduct of affairs."

During this history of the Department of Justice, there were a total of 55 Attorneys General. They served an average of 2.6 years, some serving less than a year and one as long as 11 years. Some were brilliant, some hardly up to the office. One was described, in a contradiction of terms, as being a "fat-brained, good-hearted, sensible old man."

Even in the early days of the Republic there were comments on public officials who did not socialize to the degree thought proper by Washington society. Harper's Weekly in the late 1850s wrote of President Buchanan's Attorney General, Jeremiah Black, "... though you never meet the Attorney General at a ball or a soiree you can find him all day in the Supreme Court and nearly all night at his office."

One feels the history of our nation when viewing the portraits of the past Attorneys General which hang in the main Department building. There were two from Georgia -- Berrien and Ackerman. I naturally have moved them to the fifth floor near my office.

In the Attorney General's Conference Room, I have the portraits of Tom Clark and Robert Kennedy, two friends. I also have the portrait of Justice Robert Jackson in the Conference Room. I have him there because he was a great Justice of the Supreme Court, a great Attorney General, and the last Attorney General who did not go to law school in the formal sense. It has been said that he is there because he was the last Baptist to be Attorney General -- before January, 1977, that is.

I have had the portrait of Lincoln's second Attorney General, James Speed of Kentucky, moved to the Conference Room. I feel an affinity to Speed. He was a Southerner who had a difficult time being confirmed by the Senate. Some thought that his place of birth made him suspect.

Until the James Speed portrait was moved in, Justice Harlan Fiske Stone's portrait hung in the Conference room. He now hangs just outside the office door. As Attorney General in 1924, Justice Stone appointed J. Edgar Hoover as Director of the Federal Bureau of Investigation, the first Director of the Bureau to be confirmed by the Senate. I felt it appropriate that his portrait stay close by during our search for a new FBI Director to remind me of the high standards set for the FBI.

Part of the Bureau's lore is that oft-quoted, although perhaps apocryphal, conversation in the Attorney General's office in 1924. Stone offered Hoover the job. Hoover reportedly said, "I'll take the job, Mr. Stone, on certain conditions."

"What are they?" the Attorney General asked.

"The Bureau must be divorced from politics and not be a catch-all for political hacks. Appointments must be based on merit. Second, promotions will be made on proved ability and the Bureau will be responsible only to the Attorney General," Hoover replied.

Stone was delighted with the terms and said, "I wouldn't give it to you under any other conditions. That's all. Good day."

I think it is more than coincidence that our new director, Judge William Webster, was careful to exact similar terms.

I hope that you and all members of the public will visit the Justice Department and look at some of the portraits, as well as the many WPA murals. These murals were the product of the WPA artist project of the Great Depression. We have begun to prepare a booklet depicting the portraits and murals. We also hope to find someone to bring the history of the Department up to date.

Let me say a few words about where I think we are at the Department in terms of accomplishments and problems as we begin 1978.

I perceive a change of attitude on the part of the American people. I believe that we are reaching the end of the Watergate syndrome. I believe that the confidence of the American people has been restored in their government at least to the extent that they are now willing to give those in government an opportunity to perform as public servants in the traditional sense. When I say traditional sense, I mean traditional in that all Americans, including public officials, have been presumed to be honest and the burden of proof is on those contending otherwise. We have been through a low period where the burden was shifted in the eyes of too many of our citizens. I believe that we are nearing the end of a period of healing in our country and that we can go forward in a spirit of civility toward each other and toward those who perform in positions of leadership in our government. No one in particular can claim credit for this shift. The American people shift as they please, but I do recognize it and we must assure that their confidence is enhanced.

As to the Department of Justice itself, it must be as independent as possible. It cannot be completely

independent because the Attorney General serves as the agent of the President in carrying out the constitutional duty of the President faithfully to execute the laws. It is necessary, however, for the Attorney General to have a full measure of independence if we are to hew as carefully to the law as possible. It is the Attorney General who is responsible through the Office of Legal Counsel for rendering the more substantial legal opinions to the President and other high government officials. It is the Attorney General, acting through the Solicitor General, who sets the tone and thread of the law through the appellate process.

We must take care not to balkanize the legal position of the government. This means that the more substantial legal opinions must be rendered from one source. We must also maintain a centralized litigating capacity. That capacity is now largely in the Department of Justice.

It was this balkanization of the litigating capacity that led to the creation of the Department of Justice in 1870. The litigating capacity and the lawyers were scattered through the various departments of the government at that time and it was impossible for the government to speak with one legal voice in court or, for that matter, out of court.

We are now faced with an effort on the part of some agencies to have their own litigating capacity. This is a repetition of history, and we are fighting and intend to continue fighting such efforts. It is one thing to be a government dedicated to law. It is quite another to be a government of many parts, each part following its own view of the law, with one part in conflict with other parts. It is the difference between a system of law and a nonsystem.

In 1977 we endeavored to give national leadership in improving the administration of justice, including both criminal and civil justice. We concentrated on improving the delivery of justice in the hope of making "equal justice under law" a meaningful promise in the sense that justice will be available to all on a prompt and inexpensive basis. We are working closely with the Senate and House on a number of important measures in this area. It was for this purpose that we created the Office for Improvements in the Administration of Justice. We have high hopes for 1978. It may be a vintage year for those who want our justice system to be as responsive as possible.

I might add here that Arizona's two senators have been immense help in moving legislation important to the Justice Department.

Senator DeConcini is chairman of the Subcommittee for Improvements in Judicial Machinery. In that position, he was very instrumental in the passage by the Senate of a measure to increase the jurisdiction of U.S. Magistrates, with the aim of relieving the caseload of federal district courts. We expect the House to complete action on this legislation soon. Senator DeConcini will hold hearings soon on other matters vital to our efforts to improve the administration of justice. I appreciate his support.

Senator Goldwater, as vice chairman of the Select Committee on Intelligence, is a key cosponsor of a bill that would provide a comprehensive legislative charter for the government's intelligence agencies and establish limits of authority for those agencies. His committee has completed work on and has approved legislation to put foreign intelligence electronic surveillance under a judicial warrant system. Both these matters are of critical importance if the American people are to have continued confidence in our intelligence apparatus and our system of government.

The great problems of 1978 will lie in the area of legislation having to do with resolving the problems of undocumented aliens, in completing and implementing a program to reduce crime, in completing the reorganization of LEAA, and in finishing the legislative efforts begun in 1977.

In closing, I urge that we maintain our perspective of justice. Our justice system is not perfect. It will never be. It is like a democracy. It is the nature of a democracy never to be complete. Thus we strive to improve rather than to maintain the status quo. This adds a dimension of idealism to democracy, and this is true as to justice. Problems sometimes appear larger than reality, but as Americans, a litigious lot, each of us has a feel for equal justice under law and we are able to discern any short-fall from equality. It is our nature to demand the best in a justice system. That is our pledge for 1978.

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