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Department of Justice

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ADDRESS

BY

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Before the

TWENTY-FIFTH ANNIVERSARY CELEBRATION
SECURITIES AND EXCHANGE COMMISSION

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Thursday, October 8, 1959

I appreciate very much being invited to join in this ceremony to celebrate the Twenty-fifth Anniversary of the Securities and Exchange Commission. It is a particular pleasure because its purpose is to give recognition to an outstanding success -- so often only failure attracts attention. I am highly honored to be here because, as I understand it, everyone else here tonight except Mr. Harris is or has been associated directly or indirectly with the SEC at one time or another. Because we are not able to share in the credit we are the only reliable speakers on the program. Every other speaker is a card carrying member of the SEC. We are wholly objective. To be sure that I was merely objective -- rather than objectionable -- before inviting me the Chairman made a discreet investigation about my attitude. His investigation proved to be accurate. It is my unequivocal opinion that the work of the SEC has been a magnificent achievement.

On behalf of the Administration and, I am sure, the American public, I extend sincere congratulations to you on the completion of twenty-five years of successful, effective and impartial regulation in the field of security investments.

Speaking in the middle 1930's, Justice Douglas, then a member of the SEC, said that the total number of stockholders in this country had increased "tenfold" since 1900 and that the greatest change was the spread of this ownership "among people of small incomes." This was, of course, a most significant development. Yet, in 1933, new issues of corporate stock amounted to only about 400 million dollars annually,

and the value of all stock listed on the Exchange was only about 34 billion dollars.

Last year, almost 10 billion dollars of new stock -- more than 25 times as much -- was registered with the Commission, and almost 350 billion dollars worth is now listed on the Exchanges. Almost 12 1/2 million individuals own a stock interest in America's future, and these are not marginal or hedged accounts.

In this phenomenal growth, SEC has played an important role. As rulemaker, policeman and court on the financial "beat", it has provided investor confidence in the integrity and honesty of our capital markets. Without such confidence our nation could not have prospered and grown. The financing of industry, the underwriting of pension plans, the security of insurance policies, and the endowment of universities -- all of these and much more depend in the last analysis upon public confidence and participation in stock ownership. In building and maintaining this confidence so vital to the health of a free economy you can be justly proud of the part you have played.

The agency has reached that point in its life where it is accepted and respected by the industry it regulates, and opposition to its basic tenets has long since disappeared. This makes your life more pleasant, but there is no reason to suppose that your duties will be any less demanding. As you are well aware, there is much to be done in the years ahead. There is little doubt in my mind that during the

next 25 years there will be a rate of progress and growth in this country much greater than the last 25 years.

And, of course, even today you have many problems. I have been concerned, as you have, about the recent upsurge of frauds on the consumer and investor public. The activities of these "white collar bandits", hiding behind a cloak of respectability, are no less a ~~menace~~ menace to the welfare of our country than the bank robber who plys his illicit trade with gun in hand. It is most heartening to me and to all law enforcement officials to see the excellent results of the Commission's intensified enforcement program against stock swindlers.

May I use this occasion to express my appreciation for the close and harmonious relationship which we in the Department enjoy with the Commission. United States Attorneys uniformly report on the invaluable aid given by Commission investigators and attorneys in the field and in your General Counsel's office, not only in the investigation, but also in the preparation of these difficult cases for grand jury presentation and trial. I am confident that this close personal cooperation in the accelerated enforcement program against fraudulent offenders will produce excellent results in this drive against stock swindlers who prey on the investor public.

What about the future? That the SEC will play a vital and expanding role in the future economy of our country I have no doubt.

I am confident that as new problems arise and as thousands of new investors and new businesses appear, the SEC will successfully protect the public interest with the same resourcefulness, fairness, and integrity it has always shown.

But what about the role of administrative agencies generally? The entire field of administrative law and of government regulation may require a searching re-examination of some of the premises on which we have based our conclusions. There have been many recent suggestions as to how coordinated and effective policy determination, planning, speed or processing, and fairness of adjudication might better be achieved. This is neither the time nor the place to give any extended consideration to such suggestions. There is much in them, certainly, that merits study. Permit me to make four brief comments.

I.

Administrative law must not in the years ahead develop blindly and haphazardly. In fashioning new administrative policies, we must recognize that each agency has different functions and purposes. In formulating modifications we must not ignore the lessons our experience of the last fifty years has so painfully taught us. Neither should our attitude be warped or distorted by old doctrines which ignore new social needs.

As you know, some regulatory agencies sprang into being to meet what was felt were inadequacies in free market operations. If

such an assumption were valid when the agencies were created, is it true today? Or, to the extent free markets can work to serve the public interest, would it be better to let market pressures -- rather than governmental regulation--mold some of these economic decisions. There is room, I believe, for this sort of inquiry.

II.

There are, of course, obvious limits to what the government by administrative regulation or otherwise, is able to do or should do to control public morals. Public disclosures as to some television quiz shows point up the problem. Integrity and character are products of a whole society, not of law enforcement or government regulation.

It is difficult to imagine the greed and cynicism which prompts a few people deliberately and willfully to exploit the public trust. We adults do a lot of worrying about juvenile delinquents -- but there were no juveniles responsible for these scandals. Yet there were undoubtedly millions of young people who watched -- with admiration for the learning of the contestants -- and who now must be doing a lot of wondering.

Certainly there should be full accountability and thereafter every effort made by the government and by the networks to safeguard against this or any other such public deception in the future. In the final analysis, though, no one should forget that the public mores rest with all the people.

III.

Steps must be taken to eliminate excessive delay in administrative proceedings. Justice delayed is justice denied whether the forum is an agency or a court. The final administrative decision, long delayed, may be based upon outmoded facts and assumptions. The American economy is changing and moving forward with dramatic swiftness. Administrative regulation of business, therefore, without sacrificing procedural safeguards, must be made to move with sufficient speed to meet the needs of the time.

In this respect, the experience gained in handling protracted court litigation may be relevant. Might not greater application, for instance, of the Federal pre-trial practice help in the process of orderly and prompt administrative adjudication?

IV.

Agency rules must constantly be re-evaluated to be sure that they guarantee full opportunity to be heard, fairness to all parties and that the resulting decision will be determined solely on the merits, free of bias or improper influence. There should be in every instance the same public confidence in the integrity and fairness of administrative proceedings as court proceedings now enjoy.

In all of these efforts, I am convinced it is the agencies themselves which should carry the brunt of shaping policies to meet their own particular circumstances. Many are presently engaged in this major work. And, here I want to single out the SEC for the fine progress you have made.

There can be no doubt that the administrative process is an indispensable adjunct to modern government. The SEC has played a major and pioneering role in providing safeguards against excesses in our system while at the same time giving maximum recognition to private initiative. It would be most unfortunate indeed if such a success story were blurred by any current criticism in other areas. In the hope that the success of the SEC will be fully understood and appreciated by the American people, I salute you for 25 years of outstanding public achievement.