



Department of Justice

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ADDRESS BY

ATTORNEY GENERAL ROBERT F. KENNEDY

FOURTH JUDICIAL CIRCUIT CONFERENCE

ROANOKE, VIRGINIA

JUNE 30, 1962

Judge Sobeloff, I am very happy for the opportunity to be here this morning and I want to say how grateful I am to you for permitting me to speak today rather than Thursday so that I could complete a visit to a number of United States Attorneys offices.

I am particularly happy to meet with the judges and attorneys of the Fourth Circuit because this circuit has contributed as much as any other in the history of our country to our heritage of liberty.

Eighteen of the fifty-six signers of the Declaration of Independence came from the Colonies that now comprise your Circuit. Most were jurists or lawyers.

The Mecklenburg Declaration in North Carolina proclaimed liberty before July 4, 1776.

And the Bill of Rights, drafted by George Mason and passed by the Virginia Legislature, antedated the first Ten Amendments to the Federal Constitution by some fifteen years.

The men who came from your states -- Jefferson, Madison, Marshall, Chase, Pinkney -- played leading roles in creating the democracy which has served us so well for almost two centuries.

And through the years your bench and bar have given the nation leaders who have protected and extended the rights established by the Founding Fathers.

I would like to talk with you today about my impressions of the Department of Justice since becoming Attorney General and about some matters which have been of considerable concern to us in the last twelve months.

Despite the separation of powers you must have more than a passing interest in the Department of Justice and its client the Federal Government.

In the District Courts the Federal Government is party to more than one-third of the total number of cases filed throughout the country. The proportion in the Fourth Circuit is about the same.

During the Fiscal Year 1961 the Department filed 50,634 cases in the Federal District Courts and 1,519 in the Courts of Appeals. In addition the Department was a party to a substantial number of cases in the Supreme Court, the Court of Claims, the Customs Court, the Indian Claims Commission and other special tribunals.

So all of you here have a great interest in how the Department handles this very large volume of litigation; how efficiently we do our job; and how fairly we meet our responsibility to see that justice is done.

In addition to dealing daily with the work in the Department of Justice in Washington, I have visited twenty-one cities including several this past week and met in those areas with more than sixty of the ninety-one United States Attorneys.

Let me say that from these visits and from my experiences in Washington, I am extremely impressed with the caliber of our United States Attorneys, the Assistant Attorneys, investigators and our other career employees.

For the most part these men and women are highly intelligent, loyal and dedicated. I must tell you I found it is a most rewarding experience to serve with them.

And this applies also to the Federal Bureau of Investigation, the Bureau of Prisons and the Immigration and Naturalization Service. Each of these three agencies within the Department of Justice is being administered in an extremely competent, efficient manner.

The type of service which J. Edgar Hoover and Jim Bennett, the Director of the Bureau of Prisons, have given to this country is unique and outstanding. Their careers are somewhat parallel in the fact that both have taken Federal Agencies and completely overhauled them and made them models to be followed not only in the United States but all around the world.

The new commissioner of Immigration, Raymond Farrell, has made an excellent beginning and in every contact that I have had with the career employees of the Immigration Service I have been impressed with their dedication and loyalty.

I would also say a word about the Assistant Attorneys General. We are extremely fortunate to have them in the Government. All of them have had active experience in private law practice and one, Lee Loevinger, head of Antitrust Division, was a member of the Supreme Court of the State of Minnesota. All are men of vigor, high intelligence and are devoted to the law. All are sons of lawyers, incidentally.

In a very real sense what amounts to a career service for lawyers has developed within the Department in Washington. A number of attorneys holding very responsible positions in the Department have been with the

Government for from twenty to thirty years. They are men dedicated to Government service. The fact that they have been continued in office through successive changes of administration -- both Republican and Democratic -- is a tribute to their professional competence.

Unfortunately we do not have the same tradition in the offices of our United States Attorneys. Partly this is a matter of salary and partly a matter of practice. I think it would be helpful if we could retain more career Attorneys in these offices.

We are striving to make Government service more attractive and certainly an important factor in this effort is the recognition of ability and integrity.

Ray Farrell, a long-time employee for the Immigration and Naturalization Service was made Commissioner last January in recognition of his outstanding record.

The recent appointment of Oscar Davis as a Judge of the Court of Claims is another example. Judge Davis served as a Government Attorney for more than twenty years and was Assistant to the Solicitor General when he was elevated to the Court.

I recall that just before he was sworn in he told how proud he was to have served as a Government lawyer.

"I always felt that I was in the main stream of history," Judge Davis said, "and I always felt that I was doing something worthwhile and making a contribution to my country and my fellow men."

That is one side of the story. The other side is that the Department has an average annual turnover of attorneys of close to seventeen percent. This is due almost entirely to salary problems.

United States Attorneys are paid from \$12,000 to \$20,000. And their Assistants from \$6,000 to \$15,000. We can compete with private law firms for the first two or three years after graduation from law school. But by the fourth year a young lawyer can get paid at least \$1,000 more in private practice. And what is most harmful are the lack of financial prospects for his future.

Of the thousand lawyers in the Department of Justice in Washington only forty-two are legally entitled to be paid as much as \$16,000 and all of them are in supervisory positions. This is not a very bright prospect for an intelligent, hard working young attorney who plans to raise a family and send his children to college or maybe even to law school.

So it is difficult to retain the highly competent and experienced trial and appellate lawyers needed for the conduct of Government business. I regard this as the most serious problem facing the Department. We have fought to get greater freedom from Civil Service salary restrictions and we have sought authorization to pay a limited number of our top lawyers salaries up

to \$19,000. So far we have not been successful, but we will keep trying.

I do not mean to suggest that we can be competitive with the top salaries paid attorneys in private practice. There are other compensations to Government service, as Judge Davis so aptly put it.

But it is a little unrealistic to expect able attorneys to continue at salaries below \$15,000 with no prospects for improvement -- having responsibility for cases involving matters of great public importance and millions of dollars and facing lawyers who receive two or three times or four times as much money. They might as individuals be willing to make the sacrifice, but it is too much to ask for their families nor is it really being fair to their children. So this is a great problem.

There are several specific matters of government litigation which I also want to bring to your attention.

In criminal cases a problem which, particularly in the past year, has caused us considerable concern is the matter of jury selection.

Twenty years ago the Supreme Court reminded us, in the Glasser case, that:

"Tendencies, no matter how slight, toward the selection of jurors by any method other than a process which will insure a trial by a representative group are undermining processes weakening the institution of jury trial, and should be sturdily resisted."

Last year in the Southern District of Florida it was held that the selection of jurors exclusively from the lists of registered voters, and in the case of women, from the registered women voters who had volunteered for jury service in state courts, failed to provide a panel which was a fair cross section of the community.

This case has touched off a series of motions in cases in various parts of the country challenging the method of jury panel selection.

More recently, in the Northern District of Indiana, the Government acquiesced in a motion challenging the array while the selection of the petit jury was in progress. The reason was the discovery that ninety-five percent of the jurors' names had been taken from the membership lists of the Parent-Teachers Association, thus excluding bachelors, spinsters, and childless parents, as well as those whose children are no longer in school.

While we recognize that responsibility for administering the jury system rests with the judiciary, our increasing concern over the number of cases which have revealed inadequacies or potential inadequacies in the method of jury selection has led us twice within the past year to conduct surveys in each district of how the jury panels were selected.

In addition, we have placed great reliance upon the report of the Judicial Conference Committee on the operation of the jury system. It was prepared after lengthy surveys throughout the judicial districts and detailed analyses of the results. It was approved by the Judicial Conference in September 1960.

Nevertheless, we do not yet have a satisfactory picture of the methods actually employed in each division within each Judicial District. In presenting certain significant cases to grand juries or in preparing for trial, we have on occasion, consulted with the United States Attorney and the bench and have received assurances that the statutory requirements were being followed. Later we discovered that the method of selection was at least open to serious challenge.

It is for these reasons that I think all of us, bench and bar alike, have a most serious responsibility to assure that the method of jury selection, as well as the determination of the qualifications of jurors, conforms in every respect to law.

The Department of Justice has urged the adoption of a statute fixing ultimate responsibility over the jury commissioner. A bill approved by the Judicial Conference was sponsored in the Eighty-Sixth Congress, and an identical bill is now before the present Congress. It would provide that in the performance of all duties of his office, the jury commissioner shall act subject to the instructions of the Chief Judge of the District.

The importance of a properly functioning jury system to our American concept of equal justice cannot be overemphasized; neither can its effectiveness be weakened by a failure -- whether innocently or through laxity, ignorance, indifference, local prejudice, or reluctance to depart from established habits -- to apply the statutes and case law which govern that system. The injury which results, if I may quote from the Supreme Court in the Ballard case,

"Is not limited to the defendant. There is injury to the jury system, to the law as an institution, to the community, and to the democratic ideal reflected in the processes of our courts."

Another problem which has concerned us in a number of criminal cases is whether the defendants' rights to a fair trial and the peoples right to the prompt administration of justice have been prejudiced by newspaper articles, or radio or television reporting.

Just within the last nine months the prosecution of two major underworld figures received setbacks because of this problem.

In January the Court of Appeals for the Seventh Circuit reversed the conviction of Anthony Accardo of Chicago for willfully making false income tax returns. The reversal was based in part on the effect newspaper stories published before and during the trial had on the jury. The Court of Appeals

held that the defendants' right to a fair trial had been inadequately protected because of newspaper articles and the trial judge had not admonished the jurors each day to disregard the reports.

Last November a major figure in organized crime -- Trigger Mike Coppola was on trial for income tax evasion in Miami. After three days, Coppola moved for a mistrial because of newspaper and television reporting. The Department of Justice did not object. Inquiry had developed that two of the jurors -- contrary to the Judge's instructions had read the newspaper accounts of the trial in which Coppola was described as a mobster and a "Trigger Man." Further, a copy of one of the newspapers containing such a description of the defendant had been found in the jury room. The important trial had to be discontinued.

Sometime later I might add Coppola pleaded guilty to one count of the indictment and is now in prison.

The legal profession, the judiciary and the press are confronted with a difficult situation. It involves balancing the rights of a free press with its "instant communications" and the need to preserve defendants' right to an unprejudiced jury. The advent of television had complicated the problem.

I want to assure you that we are doing everything in our power to meet our responsibilities in this area. We are tightening our procedures and we are working with the other government agencies to protect the defendants' rights and the Government's rights in every respect.

I think that newspapers, radio and television stations have a responsibility. They need to use some discretion and restraint. The solution will not be found by limiting the freedom of the press, but certainly it is time that the news media use some candid self-examination regarding its reporting and coverage of criminal cases.

We have a number of other problems but I have focused my attention today on just a few. We seek to handle the complex business of Government litigation with justice, efficiency, firmness and dispatch. We hope to make progress in reducing the backlog of cases which is still far too large in a number of districts.

I know that you are just as concerned about the effectiveness and vitality of our work and the backlogs and undue delays as we are. So I solicit your help, your cooperation and most importantly your suggestions. And I wish to assure you that my office, the offices of the Assistant Attorneys General and the United States Attorneys are at your service.

On my recent trip around the world the importance of what we do at home -- how we conduct ourselves was brought to my attention again and again. Our military strength is the primary reason that many nations remain free, but it was very apparent that we cannot remain the leaders of the Free World and win the cold war with military strength alone.

We are being judged all around the globe by what we do much more than what we say. The Declaration of Independence and the Constitution and the great speeches of men like Jefferson, Lincoln and Woodrow Wilson are well known and are beacons for all men and women who cherish freedom, but if five or six million of our citizens cannot find jobs, or if organized crime is able to grow and spread corruption and if a large number of our citizens are treated as inferiors we can hardly convince the people of the developing nations that ours is a way of life worth following.

And what we in this room do in fulfilling our responsibilities to provide a fair administration of justice has its effect not just here in the Fourth Circuit, but all around the world.

The rule of law -- fairly and equitably administered -- is what separates our system from one of dictatorship and tyranny where an individual not law and charity controls life and death.

Thomas Jefferson, in his first Inaugural Address, listed the great principles which were the hallmark of the American Revolution.

It is interesting to note that he listed peace, commerce and honest friendship with all nations but that he emphasized "equal and exact justice to all men . . . and freedom of person under the protection of habeas corpus and trial by jury impartially selected."

These principles, said Jefferson, should be the creed of our political faith and he said:

"And should we wander from them in moments of error or alarm let us hasten to retrace our steps and to regain the road which alone leads to peace, liberty and safety."

Today, this is our responsibility -- yours and mine.

I thank you.