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Department of Justice

FOR RELEASE AT 8 P.M.
FRIDAY, DECEMBER 9, 1960

THE FRANK IRVINE LECTURE

BY

HONORABLE WILLIAM P. ROGERS
ATTORNEY GENERAL OF THE UNITED STATES

The Cornell Law School
Ithaca, New York

Friday, December 9, 1960

It is a great privilege to be asked to give this lecture honoring the memory of a distinguished Dean of Cornell Law School, Judge Frank Irvine. Mrs. Rogers and I are always glad for any plausible excuse to visit Cornell -- but to be here on an outstanding occasion such as this is particularly heart warming. If those who are responsible for the invitation had in mind that it might be nice to have a Cornellian who is also the Attorney General deliver this lecture then I congratulate you -- not on your decision -- but on your sense of timing.

Tonight I want to talk about improvement in the administration of justice in our country and, in that connection, about the Department of Justice which it has been my privilege to head for the last three years. The Department has been described, probably accurately, as the largest law office in the world. Not because of its size, but rather because of recent events, I am planning to work in the future in a somewhat smaller office.

However, for almost eight years I have worked in the largest law office in the world. As a result of that experience I have the highest regard and respect for its work and for the career people who have so ably dedicated themselves to making the administration of justice one of our nation's proudest heritages.

What is the role of the Attorney General? If you were to look to the Congressional enactments for some guidance you might well arrive at an erroneous impression. The basic Act of 1870 provides

simply that "there shall be at the seat of government an executive department to be known as the Department of Justice, and an Attorney General, who shall be the head thereof." Immediately thereafter the law provides for a Solicitor General and a number of Assistant Attorneys General who, it specifies, shall be "learned in the law." Without commenting on this statutory aberration I would merely point out that there is never any undue delay in filling the office -- learned or not!

What is the main function of the Department? It is to act as the lawyer for the United States. However, over the years with the growth of our government it has assumed many other important related tasks. Also, with this growth each department of government has, for practical -- and sometimes for not so practical -- reasons, developed large legal staffs of their own to carry on their day to day operation. Today the Department of Justice has about 30,000 employees, only 1700 of whom are engaged in the practice of law, and these 1700 legal positions in the Department are less than one-fourth of the approximately 7,600 in the Executive Branch of the Government.

These figures might lead to the conclusion that the legal function of the Department is relatively unimportant. Of course, this would be a false conclusion. Its work plays a vital role in the administration of justice throughout the country.

However, before I discuss that role I want to explain why out of 30,000 people in the Department there are only about 1700 in

attorney positions. Most of the remainder of the personnel are employed in the three bureaus in the Department -- the Federal Bureau of Investigation, the Bureau of Prisons, and the Immigration and Naturalization Service. These bureaus perform work closely related to the practice of law.

The Federal Bureau of Investigation, consisting of about 14,000 employees, is the principal investigative agency of the federal government. It has come to be the most respected investigative agency in the world. This is due, in large measure, to one man -- its Director, J. Edgar Hoover. Sporadically professional iconoclasts attempt to becloud this public respect, but they have been uniformly unsuccessful. Thus it is that the first appointment a new Attorney General usually makes -- because by law he names the Director -- is to name Mr. Hoover. The new President-elect broke all records in this respect and named him before the Attorney General.

This recalls the story of one of my predecessors who tried to get into the Department of Justice building on a holiday. He was stopped by a guard who wanted to see his building pass. Not having one with him he explained to the guard that he was the Attorney General, to which the guard replied: "I wouldn't care if you were J. Edgar Hoover, himself, you can't get into this building without a pass."

Actually the fact that Mr. Hoover and the Federal Bureau of Investigation are held in such high esteem causes other complications

for the Attorney General. For example, every time a serious crime which receives national attention is committed there are hundreds of requests to have the FBI investigate it. Many persons fail to recognize that only about one crime out of ten is a violation of federal law. The fact that a crime may be particularly revolting or has attracted nation wide attention does not alter this jurisdictional fact.

If the jurisdiction were substantially enlarged the FBI would have to be increased in size. Very few people realize that there are only 6,000 special agents in the FBI for the entire country. By comparison, New York City has four times as many policemen and Chicago about twice as many. Although it is relatively small, the Department and Mr. Hoover have consistently opposed extending the jurisdiction of the FBI because the creation of a national police force is abhorrent to our federal-state system.

The Federal Bureau of Prisons is headed by its very able Director, James V. Bennett, who has served over 30 years in the Department. He says that the Bureau of Prisons is constantly growing and expanding because it has FBI agents, prosecutors and judges as talent scouts. It employs approximately 5,400 people, and there are 37 penal institutions in the federal system -- ranging from Alcatraz to the National Training School for Boys. The Bureau is responsible for the detention and rehabilitation of over 23,000 federal prisoners serving average sentences of about 30 months. Both its Director and

its operations are well known and are highly regarded in every part of the free world. An Attorney General quickly discovers that the day to day supervision of the Bureau's heavy responsibilities is best left in the qualified hands of Mr. Bennett and his able assistants.

This is not to say that he does not bring us problems. Last week, for example, he brought to my attention the case of a prisoner, who, after conviction of a security fraud, had been elected mayor of a small community. Under law, this prisoner would have to take the oath of office as mayor in a public ceremony before a local magistrate by a certain date to qualify. The Director asked me to decide if the prisoner should be permitted to leave the federal prison for this purpose. He also wanted to know, if the prisoner were to be sworn in as mayor, whether we should provide him with a frock coat to go with his striped trousers.

And another of his inmates, imprisoned for embezzlement, had invested some of his ill-gotten gains in an Irish Sweep Stakes ticket. Within the last month he was notified that he won and received a \$140,000 check. I was asked what should be done with the check.

In each of these cases, because I have had a wealth of administrative experience, I wisely delegated the authority to make the decision to Mr. Bennett.

The Immigration and Naturalization Service consists of 6,800 people. To give merely a glimpse of the scope of this operation, there are about 160,000,000 inspections of persons seeking admission

to the United States each year at 265 ports of entry. In 1959, the resident alien population of the United States increased by 260,000 new arrivals which included 66,000 refugees, orphans, and other victims of world conditions.

One new arrival to the United States recently was a 20 year old boy who came into this country illegally from Brazil. He stowed away in a DC-6 airplane on a ledge about 18 inches wide located above where the nose wheel of the plane retracts. The flight took about 26 hours and covered 5,000 miles, at 18,000 feet. He was deported by the Immigration Service. About six weeks later he repeated the trip in the same space -- this time on another airline. The case has a happy ending because subsequently he was legally admitted to the United States and is now waiting to become a citizen.

Apart from decisions which must be made on a day to day basis if individual hardships are not to occur, the Service is constantly faced with new and perplexing problems. In the past it included such things as the wetback invasion in which millions of Mexicans illegally entered the United States across the Mexican border and the settlement of 32,000 Hungarian refugees; today it relates to Cuba and the activities of anti-Castro forces in Florida and the Gulf areas.

The dramatic improvement in the Immigration Service during the last eight years is due in large measure to the effective and conscientious work of its Commissioner, Joseph M. Swing.

Turning now to the legal work of the Department which plays such a vital role in the administration of justice, it should be noted that although it is supervised at the seat of government it is nation wide in its operation. It is carried on in each federal court in the 91 districts of the United States by the United States Attorneys and their assistants who reside in the district.

With a few exceptions the Department thus conducts or controls all the litigation involving the United States. In addition, upon request the Attorney General gives legal opinions to other members of the Cabinet which, by tradition at least, have a binding effect on the Executive Branch of the government. Then, too, the Attorney General advises the President on legal matters.

In this connection, in a recent will contest the United States got title to a document on condition that it should "go to the White House in Washington to be deposited in the Lincoln Room." It was my pleasant duty to deliver this document to the President for that purpose. It was a copy of the Gettysburg Address in Lincoln's handwriting. Although there are five copies in his handwriting which are known to exist, this one is unique because it was titled, dated and signed by Lincoln.

Without burdening you with a detailed breakdown of the workload of the Department or its organization, I want to cite just a few illustrations which may give you a better idea of the scope and

variety of our work.

Referring solely to cases in court, the Department handles about 30,000 criminal cases and 25,000 civil cases each year. A partial breakdown shows that in 1959, for example, the Civil Division in 4,200 cases recovered judgments totalling 53 million dollars. Cases handled by the Department involve every conceivable kind of problem. To refer to a few which have recently received public attention, there are the first cases under the new Civil Rights Statute; the antitrust case in Philadelphia involving rigged bids in government contracts involving more than a billion dollars -- incidentally, this was the largest case of its kind in the history of the antitrust laws; cases arising out of the tragic collision of two commercial airplanes in the Grand Canyon; the Taft-Hartley injunction in the steel strike; and the Abel case involving a Russian spy ring which was affirmed by the Supreme Court.

There are, of course, hundreds of important cases which received little or no national attention. You have probably read about the rash of fake bomb reports involving airplane flights. Since April thirty-nine persons have been charged with making such reports. Strangely, many do not involve anonymous reports. For example, in one case a young college graduate boarded a flight from Los Angeles to New York and when the stewardess suggested he place his suitcase under his seat he told her, "I'd better not put it under the seat because there is a bomb in it." Later he repeated this comment. He pled

guilty and was sentenced to a year and a \$1,000 fine, sentence, suspended on condition that he pay \$10 a month to a charity of his own choosing.

To cite another illustration, the United States owns about 34% of the entire land area of the country, and this gives rise to many interesting legal questions. Recently it was called to our attention that because of extensive oil drillings in Long Beach, California, by private oil companies the Long Beach Navy Yard, one of our largest naval installations, had been sinking at the rate of about a foot a year. We brought an action against these oil companies to correct this condition because of the very real possibility that if it continued the whole Navy Yard might sink into the sea. Having spent the war in the Navy, I cheerfully approved this lawsuit because I was appalled at the thought of what the Air Force would say if a Navy Yard were sunk in peacetime!

It is clear from the broad sweep of our work and from the fact that we participate in more than one-half of all cases in the federal courts that the Department of Justice has a responsibility of considerable magnitude in the administration of justice in our country. All of us in the Department have diligently tried to set the highest standards in the performance of that responsibility -- and I believe we have.

Looking to the future -- and there must be further improvement in our profession all across the board -- my experience suggests that when lawyers consider how to improve the administration of justice we are inclined to focus too little attention on the word "administration."

The reason may be that the word itself has a dull connotation. Certainly, when you say a man is a good administrator it conjures up a picture of a person who is able and diligent but who, in the current jargon, lacks any great sense of purpose. Maybe we should use some other word such as "activist" to describe one who has high ideals and who can put them into effect. Or possibly we should coin a new word to describe such a man. For example, you could call him "idealistrator". In any event, it seems clear to me that our system of justice must be greatly improved if it is to meet our growing needs.

For several years we have been working in the field of civil rights. I am proud that in the Department we conceived and drafted the only two civil rights statutes enacted in 90 years. The constitutionality of the basic statute has been upheld by the Supreme Court. I feel sure that these two statutes will become landmarks of progress. And I am proud, too, of the very substantial and effective work of the Department in advancing the cause of human rights in public education, voting, elimination of segregation in public places, and in many other ways.

One of the things that has impressed me, though, in dealing with the subject is that many persons seem to be satisfied to discuss the problems involved in broad, moral terms and to end the matter there with vociferous finality, as if accomplishment were a mere detail if your heart is pure.

After I became Attorney General we had the problem of getting the Negro children into the Little Rock school as the order of the court required without, we hoped, further use of troops. There was no question about the fact that the order of the court had to be carried out -- but how? One of the ideas that was seriously advanced by several prominent persons was that the whole thing would be simple if the President of the United States would take a strong stand by going to Little Rock and leading the children into the school. I talked to one or two of those who were advancing this idea and pointed out that this might work the first day, but asked how it would work after that. In other words, how many days did they think the President should do this -- and if, after the President left, the children were then denied entrance to the school, as was likely, didn't they think that the result would be most unfortunate? Furthermore, would not other state officials in other communities wanting maximum publicity for their stand on segregation be tempted to challenge the President to carry out the order of the court in their community? Of course, it became clear on reflection that the idea was not a good one.

In the field of civil rights, as in many other fields, what must be done is reasonably clear. How to do it and getting it done is something else again.

Of course, there are many facets to the problem of improving the administration of justice. Tonight I want to talk about three of them.

The most important factor in improving the administration of justice, as in any other field for that matter, is personnel -- selecting the best qualified people. The new Attorney General, for example, will have the problem, not of putting his own people into policy-making positions because that is expected and desirable in our two-party system, but rather in getting the right people to fill jobs. Great pressures build up to put square pegs in round holes. The determination and strength to resist the pressures that inevitably develop is one of the most unappreciated aspects of public life.

It is too soon for me to tell you about some of our experiences in resisting pressures -- and by the time it is appropriate I probably will have forgotten them -- but what happened to Charles Evans Hughes when he became Governor is typical. He was accosted by a friend who told him that he wanted to become Commissioner of Insurance. The Governor pointed out that he had had no experience in the field and that if he received the appointment people would know that he got it merely on the ground of friendship. "Well," he said, "Governor, do you mean that you refuse to appoint me to this job because I am a friend of yours?" Governor Hughes replied, "Yes, Jim, that is right." He looked the Governor straight in the eye and said, "From now on, Governor, that shouldn't bother you one damn bit."

Although I am proud of the qualifications of the top lawyers in the Department this may not be an appropriate time in this lecture to

comment about them. I will say merely that not one of them applied for a job -- each one was sought out by us because of his special qualifications. And it is generally acknowledged by those who know about the work of the Department that the Deputy Attorney General, the Solicitor General, and each one of the Assistant Attorneys General has performed his duties with great distinction and devotion to the public good.

I do want to comment briefly about the Attorney General's Honor Program -- and to make a recommendation concerning it. As some of you know, this program was initiated in 1953 with a two-fold purpose: first, to provide the Department with the services of top-flight young lawyers with the expectation that some of them would elect to make a career of government service and, at the same time, to provide them with an opportunity for active practice in trial and appellate courts that they would not be able to find elsewhere. The program is wholly non-partisan. Selections are based on merit alone, and almost 90% of those appointed stood in the top 10% of their classes.

A total of 350 select graduates from 76 law schools located in 40 states have been recruited. We are currently in the process of recruiting approximately 70 to meet the needs of the Department for the next year. Of those recruited to date almost 50% are still with the Department although, as contemplated, many of the early recruits have moved on into private practice.

This program has provided the Department each year with some of the ablest young legal talent in the country. Its success has exceeded our most optimistic expectations. I shall urge as strongly as I can to the new Administration the continuance of this program.

The recruitment of young lawyers of ability, of course, is only one aspect of the problem. To function efficiently, the Department must have in senior career positions mature lawyers of experience and recognized competence. This, I am pleased to say, is the case today.

Any fair appraisal of the opportunities afforded to lawyers who choose government as a career, however, will show that the present system is deficient in several respects. For example, the present spread between the starting salary for a man just out of law school and the top salary to which a career lawyer can aspire is only about \$8,500. I believe that we need to develop a career service which provides greater incentives for self-improvement in terms of professional status and tenure. In effect, we need to confer on the career government lawyer better salaries and the type of prestige enjoyed by foreign service officers in the Department of State.

The second facet of improving the administration of justice that I want to discuss is the importance of establishing and adhering to uniform procedures. But, you may ask, why is that important? It is

important because it is essential to the impartial administration of justice. It is one of the main reasons why our federal courts are held in such high public esteem.

It was the lack of such procedures -- or at least a failure to follow such procedures -- that resulted in the recent criticism of some of the independent agencies. It was lack of such procedures that caused, in part at least, so much criticism of the Tax Division in 1951 and 1952 and of the Board of Parole.

To say the administration of justice should be without favoritism seems elementary. Possibly that is why the subject is often neglected and its importance not fully appreciated. To make certain that everyone is treated equally requires constant attention and a determination that there shall be no exceptions.

This is not to say that people are venal -- it is merely because it is so easy for one to convince himself that rules are meant to apply to persons with unworthy causes -- and the cause of your friend, or your friend's friend, or your political ally is a worthy cause.

To illustrate what I mean let me refer to tax fraud cases. A fair number of tax fraud cases each year involve prominent civic leaders of impeccable reputations who have never been in difficulty with the law before. Often they turn to their influential friends for help.

A procedure of long standing in the Department, after tax cases have been referred for prosecution from the Internal Revenue Service, has been to afford any prospective defendant the opportunity to discuss his case. Prior to 1953, a practice developed which led to serious abuses in this procedure. In some instances, particularly when sought under proper auspices, it was not unusual to have repeated conferences. Sometimes cases which had been referred to the United States Attorneys for prosecution would be recalled to Washington for an additional conference. This procedure caused not only long delay, but serious suspicions and worse.

We adopted a policy and have adhered to it of granting only one conference. At that conference the tax payer may be accompanied by anyone he cares to bring and the Department is represented by several career people. Once the decision is made to prosecute no further conferences are granted. Thereafter, the United States Attorney handles the negotiations, hears any new pleas by counsel for the defendant, and disposes of the case in regular fashion.

This procedure was resented by some at first as arbitrary. One very highly placed public official vowed, and, in fact, attempted, to have me removed from office because we adhered strictly to the rule in a case he was interested in and refused to confer with him about it.

Cornell Law School has every reason to be proud of Assistant Attorney General Charles Rice who has been so instrumental in helping the Tax Division reestablish a reputation for effectiveness and for absolute impartiality in the prosecution of the tax cases.

Although I have been speaking of the tax field, of course, favoritism in any field is resented by the public. To illustrate this point I recall a letter which the President referred to me a while back from a young boy; and this is exactly what it said:

"Dear Mr. President:

I would like to know if the laws makes
school teachers get drafted in the service. If
they do I know one who has not been. His
name is _____ and he is 26 years old.

Thank you. "

Not only in tax cases and selective service, but in the parole field, if the procedures which are followed in deciding whether a man should be released from jail are not uniform it is axiomatic that trouble follows.

The Federal Board of Parole is a part of the Department of Justice, but we have treated it as a quasi-judicial body. Fair and humane procedures have been established to provide each prisoner with the same type of hearing. However, no one may intercede in behalf of a prisoner

unless it is in writing and made an official part of the file or in a proceeding of record before the Board.

Recently the Chairman of the Board of Parole reported:

"It has been a real source of strength to me, as Chairman of the Board for the past three and one-half years, to know that the Board could make its decisions free of any political pressure. Further, I have always appreciated the fact that the Attorney General has never discussed the merits of any case during my term of office on the Board. "

Earlier I referred to the recent investigations of the regulatory agencies. Some of the problems which they have would have been solved if they had adhered to uniform rules in contested matters. You may recall that in the so-called Channel 10 Case the FCC had before it four applications for that Miami TV channel. It developed that three of the four applicants, unwilling to rest their cases on the official record, had dispatched personal friends to plead their cases with one of the Commissioners, each, ostensibly, to offset the pressures of the other.

When these facts were developed the Department of Justice, at the request of the Circuit Court of Appeals, intervened before the Commission to help establish a proper rule of conduct in these cases. The rule which we proposed is that any applicant for a TV station who communicates directly or indirectly with any Commissioner on an ex-parte basis would be permanently disqualified. If, on appeal, the courts

support this principle I believe it will do more to foster confidence in the integrity of the administrative proceeding than any laws that could be devised.

The last phase in improving the administration of justice that I want to mention briefly is efficiency.

I believe it is going to be necessary for our profession to take a good hard look at whether we are developing efficient methods to keep pace with the times. In the Department we have deportation cases which have been in litigation for eight or nine years. The ten years or more involved in the Chessman Case in California was commented upon critically in many areas of the world. In some of our courts it takes three or four years to get a case tried.

There are many reasons for the delay in the administration of justice in our courts and many solutions have been offered. We have held two national conferences on this subject and considerable progress has been made. However, much remains to be done.

In the Department during this administration we have conducted a drive to reduce the backlog of cases. Although the volume of work has greatly increased and we have the same number of people we have decreased the backlog of cases by 35%.

The federal courts, too, have increased their efficiency. In the selection of federal judges we have sought younger, vigorous men

who recognized the need to eliminate delay.

On one occasion, however, when I was in the middle of what I thought was a successful drive to alert the public to the need for more judges and more efficiency in the courts I had a lawyer approach me on the subject of his becoming a federal judge. I asked him why a man with such a large and successful practice would want to give all that up. He thought a moment, and then said, "To be perfectly frank, I'm tired." The gentleman got a high mark for frankness -- but he flunked his "attitude" test.

Actually, as this incident suggests, efficiency in some measure, depends on a person's frame of mind. Most people of average ability can get things done if they constantly keep their eye on the target.

Parenthetically, you may be interested to know that when we took office about 82% of the federal judges were listed as Democrats before their appointment -- and about 18% Republican. Now the ratio is almost exactly 50-50.

For some time I have advanced the theory that the two major parties agree that the ratio never exceed certain informally agreed upon limits, such as 60-40. If this happened, I believe it would be in the public interest.

I would like to say, too, that the federal judges which we recommended to the President and who were nominated have all been approved with enthusiasm by the American Bar Association. In its

report this year it expressed its appreciation "for the progress which has been made toward the highest standards in judicial appointments."

I heartily recommend that the new Attorney General continue the excellent working relationship which the Department has had with the American Bar Association as there is no more effective way to improve the administration of justice than to select highly qualified federal judges.

I would leave with you this thought -- because we live in a nation which so greatly appreciates the value of law and order we are the most fortunate people in the world today. However, the very principles upon which our law and order are based and which have made us the leader of the free world are under challenge. Nothing is watched more closely than the processes of our legal system. This is because, as Daniel Webster observed many years ago: "Justice is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together."

Those of us in the legal profession must reconsider the significance of our responsibilities as "officers of the court." Today because of our world position, our responsibilities are even broader. When we participate in the administration of justice we are, in a very real sense, "officers of our country." It is in that spirit that our profession must approach the task of securing for all peoples the benefits of liberty under law.