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(McNally/Simon)
September 12, 1989, 6:00 p.m.
Draft Two (B:AG)

PRESIDENTIAL REMARKS: 200TH ANNIV. OF THE ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE
FRIDAY, SEPTEMBER 22, 1989 -- 9:00 A.M.

Good morning. And thank you all. And thanks especially to my friend Dick Thornburgh, for those kind words and for the outstanding he is doing for this Department, and for America.

All of America's history is traced from austere beginnings, from the spare and difficult lives of the first colonists, to the hardships of the revolutionary army, to a small and meagerly funded federal government.

The American adventure started down the path of history with little in the way of any concrete resources: Too few funds. Too little manpower. Too many dangers. And too little assurance of success. It's been quite a journey.

Today, Dick Thornburgh may think his efforts are plagued by budget complications. George Washington's Attorney General didn't have any budget complications. He simply wasn't given any budget. [[PAUSE]]

And for years Congress never criticized our A.G.'s about conflicts of interest. Until 1853, Congress paid the A.G. a lower salary because he was expected to make most of his money from private practice. Extend that plan to all 4,000 lawyers here and the problem today would be the budget surplus. [PAUSE]

In fact, the early A.G.'s often did not even live in the capital, but did business at home by mail, only coming in

toappear before the Supreme Court. In 1814, President Madison insisted that Attorney General William Pinkney move from Baltimore to Washington as a condition of his continued employment. Pinkney refused and resigned. It's a good thing he never saw the new financial disclosure forms. [[PAUSE]]

Things didn't really begin booming at Justice until 1818, when Congress voted to double the size of the A.G.'s office -- by giving him money to hire his first clerk. [[PAUSE]]

Four years later, Congress relented and also gave the two of them an actual office in which to work. [[PAUSE]] In another milestone about twenty years after that, Congress set aside some money so that the office could get its first law books. [PAUSE]

Austere beginnings, yes. But part of the genius of America is that, well, we've never really minded having the odds that way. Again and again, we've succeeded against the odds because the one element that's never been lacking is what the world has come to know as the American spirit.

The American spirit means initiative. Commitment. Hard work. Fairness. And it means faith -- faith in God, faith in our ideals, and faith that, no matter the challenge or the difficulties, justice will prevail in the end.

And it is justice that we celebrate today -- equal justice for all Americans.

Every President since Washington has depended on his A.G.'s counsel when the big decisions had to be made. Andrew Johnson's A.G., James Speed, lived up to his name by writing the shortest

A.G.'s Opinion on record, authorizing Lincoln's assassins to be tried by a military court. It contained just 28 words -- and might serve as a model for clarity of writing.

A generation later, President Taft, a former S.G., went to the other extreme. During the pure food laws debate on the legal definition of "whiskey," the Justice Department produced a brief numbering 1,242 pages. Taft read it in its entirety -- a presidential record I hope never to break. [[PAUSE]] Taft didn't resolve the debate until after the A.G. and the Secretary of Agriculture spent two days at the White House consumed in oral argument. And this was 50 years before "Tastes great" -- "Less Filling."

Presidents have particularly turned to their Attorney Generals in times of crisis. It was Robert Johnson's legal justification of the "bases for destroyers" deal that enabled FDR to rush 50 surplus warships to Churchill at a critical time in the Battle for the Atlantic. In 1957, William Rogers advised Ike on his constitutional authority to send federal troops to enforce court-ordered desegregation in Little Rock, Arkansas.

These were bold and effective steps, and a tradition of which you can all be proud. The destroyers helped preserve America's freedom. And the desegregation effort helped this nation to honor its promise of equality for all men and women.

The A.G. today continues the honorable tradition of serving as "America's lawyer." Today, the Justice Department stands at the forefront of protecting American's rights and of ensuring

fairness throughout society. In matters of business and antitrust, environment and civil rights -- matters which strike at the very core of our sense of right in a nation of free men and women -- your 200 year history stands as a testament to America's spirit, and to the continuing pursuit of a dream.

The great jurist Benjamin Cardozo said: "The process of justice is never finished, but reproduces itself, generation after generation, in ever-changing forms, and today, as in the past, it calls for the bravest and the best."

These days more than ever, we're relying on the bravest and the best throughout this Department -- the Marshals, FBI, DEA, and the Bureau of Prisons, in addition to our A.U.S.A.'s and others in the Criminal Division -- to lead the war against the scourge of cocaine and the violent crime it spawns.

In fighting this battle, you know you have my interest and support, and the support of the American people.

You've seen our support in the anti-crime bill we sent to Congress in May. It sends a clear, unmistakable and tough message -- that those who bring blood and thunder to our streets will be brought to justice. I said it on television earlier this month, and I want to emphasize it here today:

We're changing the rules. Criminals have got to learn that if they sell drugs, they <u>will</u> be caught. And once caught, they <u>will</u> be prosecuted. And once convicted, they <u>will</u> do time.

We're counting on you to get this message out, to make it work in practice. And we're prepared to match rhetoric with

resources, backing you up with a plan that calls for more agents and more prosecutors -- the largest increase in A.U.S.A.'s in history -- and that will almost double the capacity of federal prisons.

We are in this battle for the long haul; we have joined this war for the duration. I have great respect for the leadership of the Attorney General and the Department of Justice in waging this battle, and for the professionalism and commitment that you on the front lines have brought to this effort.

As we stand here today, commemorating 200 years of the Office of the Attorney General, we should look back with pride on the justice we have achieved as a nation. From modest beginnings you stand today as a powerful force for justice in America, and as a powerful example for justice in the world.

I salute this great office, its rich heritage, and all the fine men and women who serve justice under its leadership today. You are indeed the "bravest and the best."

Congratulations on this anniversary. Godspeed you in your service. And God bless the United States.

# # #

Robert F. Kennedy:
Thirteen Days

"Those hours in the Cabinet Room . . ."

THOSE HOURS in the Cabinet Room that Saturday afternoon in October could never be erased from the minds of any of us. We saw as never before the meaning and responsibility involved in the power of the United States, the power of the President, the responsibility we had to people around the globe who had never heard of us, who had never heard of our country or the men sitting in that room determining their fate, making a decision which would influence whether they would live or die.

We won't attack tomorrow, the President said. We shall try again.

The State Department submitted a draft of a letter for response from President Kennedy to Khrushchev. It answered the arguments made in Khrushchev's latest letter, maintaining that we could not remove the missiles from Turkey and that no trade could be made.

I disagreed with the content and tenor of the letter. I suggested, and was supported by Ted Sorensen and others, that we ignore the latest Khrushchev letter

and respond to his earlier letter's proposal, as refined in the offer made to John Scali, that the Soviet missiles and offensive weapons would be removed from Cuba under UN inspection and verification if, on its side, the United States would agree with the rest of the Western Hemisphere not to invade Cuba.

There were arguments back and forth. There were sharp disagreements. Everyone was tense; some were already near exhaustion; all were weighted down with concern and worry. President Kennedy was by far the calmest. Finally, when we almost seemed unable to communicate with one another, he suggested with a note of some exasperation that—inasmuch as I felt so strongly that the State Department's various efforts to respond were not satisfactory—Ted Sorensen and I should leave the meeting and go into his office and compose an alternative response, so he could then decide between the two. The two of us left and, sitting in the President's office, wrote a draft. Forty-five minutes later, we took it to him and to the whole group. He worked on it, refined it, had it typed, and signed it.

It accepted Khrushchev's "offer":

"Dear Mr. Chairman:

"I have read your letter of October 26th with great care and welcomed the statement of your desire to seek a prompt solution to the problem. The first thing

down U-2s, we would have to react — but not necessarily at once. Again he insisted that the Russians be given time to consider what they were doing before action and counteraction became irrevocable. There remained the Khrushchev letters, and the Executive Committee turned to them again with bafflement and something close to despair. It was noted that Defense Minister Rodion Malinovsky had mentioned Cuba and Turkey together as early as Tuesday, and that *Red Star,* the army paper, had coupled them again on Friday. Could the military have taken over in Moscow? Rusk called in Scali and asked him to find out anything he could from his Soviet contact. Scali, fearful that he had been used to deceive his own country, upbraided Fomin, accusing him of a double cross. The Russian said miserably that there must have been a cable delay, that the Embassy was waiting word from Khrushchev at any moment. Scali brought this report immediately to the President and the Executive Committee at the White House (where Pierre Salinger nearly had heart failure when, in the midst of the rigorous security precautions of the week, he suddenly saw the ABC reporter sitting at the door of the President's inner office).

In the meantime a new crisis: another U-2 on a routine air-sampling mission from Alaska to the North Pole had gone off course and was over the Soviet Union; it had already attracted the attention of Soviet fighters and was radioing Alaska for help. Would the Russians view this as a final reconnaissance in preparation for nuclear attack? What if they decided to strike first? Roger Hilsman brought the frightening news to the President. There was a moment of absolute grimness. Then Kennedy, with a brief laugh, said, "There is always some so-and-so who doesn't get the word." (The plane returned safely; but perhaps Khrushchev did interpret the flight exactly as Hilsman feared; perhaps this too, along with the invasion force massing in Florida and an unauthorized statement on Friday by the State Department press officer threatening "further action" if work continued on the bases, reinforced his determination to bring the crisis to an end.)

Later that afternoon the Executive Committee met again. Robert Kennedy now came up with a thought of breathtaking simplicity and ingenuity: why not ignore the second Khrushchev message and reply to the first? forget Saturday and concentrate on Friday? This

suggestion may, indeed, have been more relevant than anyone could have known. For, as Henry Pachter has argued,* the so-called second letter, from internal evidence, appears to have been initiated as the immediate follow-on of Khrushchev's reply to U Thant; it began with a reference to Kennedy's reply to U Thant on Thursday and took no note of events on Friday. Moreover, its institutional tone suggested that it was written in the Foreign Office. Might it not have been drafted in Moscow on Thursday and Friday with an eye to Saturday morning release in New York? Then the so-called first letter, which reflected the movement of events well beyond the U Thant proposal and which was clearly written by Khrushchev himself, may well have been composed late Friday night (Moscow time) and transmitted immediately to Kennedy while the 'second' letter was deep in the bureaucratic pipelines. Knowing heads of state and foreign office bureaucracies, one could take anything as possible.

At any rate, on October 27 Kennedy now wrote Khrushchev, "I have read your letter of October 26th with great care and welcomed the statement of your desire to seek a prompt solution." As soon as work stopped on the missile bases and the offensive weapons were rendered inoperable under UN supervision, Kennedy continued, he would be ready to negotiate a settlement along the lines Khrushchev had proposed. Then, in a sentence profoundly expressive of his desire to retrieve something out of crisis, he added: "If your letter signifies that you are prepared to discuss a detente affecting NATO and the Warsaw Pact, we are quite prepared to consider with our allies any useful proposals."

And so the message shot inscrutably into the night. Robert Kennedy carried a copy that evening to the Soviet Ambassador, saying grimly that, unless we received assurances in twenty-four hours, the United States would take military action by Tuesday. No one knew which Khrushchev letter superseded the other; no one knew whether Khrushchev was even still in power. "We all agreed in the end," Robert Kennedy said afterward, "that if the Russians were ready to go to nuclear war over Cuba, they were ready to go to nuclear war, and that was that. So we might as well have the show-

* In his brilliant essay on the missile crisis *Collision Course* (New York, 1963), 67–68.

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September 12, 1989, 6:00 p.m.
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U.S. DEPARTMENT OF JUSTICE
FRIDAY, SEPTEMBER 22, 1989 -- 9:00 A.M.

Dave Runkle 633-2107

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The DoJ: its history & functions
James Easby-Smith 1904 p. 6

Today, Dick Thornburgh may think his efforts are plagued by budget complications. George Washington's Attorney General didn't have any budget complications. He simply wasn't given any budget. [[PAUSE]]

Easby-Smith p. 15 & p. 5

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Easby-Smith p. 8

In fact, the early A.G.'s often did not even live in the capital, but did business at home by mail, only coming in

toappear before the Supreme Court. In 1814, President Madison insisted that Attorney General William Pinkney move from Baltimore to Washington as a condition of his continued employment. Pinkney refused and resigned. It's a good thing he never saw the new financial disclosure forms. [[PAUSE]]

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A.G.'s Opinion on record, authorizing Lincoln's assassins to be tried by a military court. It contained just 28 words -- and might serve as a model for clarity of writing.

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These were bold and effective steps, and a tradition of which you can all be proud. The destroyers helped preserve America's freedom. And the desegregation effort helped this nation to honor its promise of equality for all men and women.

The A.G. today continues the honorable tradition of serving as "America's lawyer." Today, the Justice Department stands at the forefront of protecting American's rights and of ensuring

fairness throughout society. In matters of business and antitrust, environment and civil rights -- matters which strike at the very core of our sense of right in a nation of free men and women -- your 200 year history stands as a testament to America's spirit, and to the continuing pursuit of a dream.

The great jurist Benjamin Cardozo said: "The process of justice is never finished, but reproduces itself, generation after generation, in ever-changing forms, and today, as in the past, it calls for the bravest and the best."

These days more than ever, we're relying on the bravest and the best throughout this Department -- the Marshals, FBI, DEA, and the Bureau of Prisons, in addition to our A.U.S.A.'s and others in the Criminal Division -- to lead the war against the scourge of cocaine and the violent crime it spawns.

In fighting this battle, you know you have my interest and support, and the support of the American people.

You've seen our support in the anti-crime bill we sent to Congress in ~~May~~ June. It sends a clear, unmistakable and tough message -- that those who bring blood and thunder to our streets will be brought to justice. I said it on television earlier this month, and I want to emphasize it here today:

We're changing the rules. Criminals have got to learn that if they sell drugs, they <u>will</u> be caught. And once caught, they <u>will</u> be prosecuted. And once convicted, they <u>will</u> do time.

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resources, backing you up with a plan that calls for more agents and more prosecutors -- the largest increase in A.U.S.A.'s in history -- and that will ~~almost double~~ boost the capacity of federal prisons. by almost 80 %.

Exec. Office US Atty. 633-1020 5-15-89 fact sheet.

We are in this battle for the long haul; we have joined this war for the duration. I have great respect for the leadership of the Attorney General and the Department of Justice in waging this battle, and for the professionalism and commitment that you on the front lines have brought to this effort.

As we stand here today, commemorating 200 years of the Office of the Attorney General, we should look back with pride on the justice we have achieved as a nation. From modest beginnings you stand today as a powerful force for justice in America, and as a powerful example for justice in the world.

I salute this great office, its rich heritage, and all the fine men and women who serve justice under its leadership today. You are indeed the "bravest and the best."

Congratulations on this anniversary. Godspeed you in your service. And God bless the United States.

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(McNally/Simon)
September 11, 1989, 6:00 p.m.
Draft One (B:AG)

PRESIDENTIAL REMARKS: 200TH ANNIV. OF THE ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE
WASHINGTON, D.C.
FRIDAY, SEPTEMBER 22, 1989

Good morning. And thank you -- thank you all. And thanks especially to my friend Dick Thornburgh, for those kind words and for the outstanding job he is doing for this Department, and for America. And I'm also honored to be sharing the platform today with William French Smith, _____, and _____...

All of America's history is traced from austere beginnings, from the spare and difficult lives of the first colonists, to the hardships of the revolutionary army, to a small and meagerly funded federal government.

The American adventure started down the path of history with little in the way of any concrete resources: Too few funds. Too little manpower. Too many dangers. And too little assurance of success. It's been quite a journey.

Today, Dick Thornburgh's life is plagued by budget complications. The first Attorney General didn't have any budget complications. He simply wasn't given any budget. [[PAUSE]]

And for years Congress never criticized our A.G.'s about conflicts of interest. Congress paid them a lower salary because they were expected to make most of their money from private practice. Extend that plan to all 4,000 lawyers here and the problem today would be the budget surplus. [[PAUSE]]

In fact, the early A.G.'s often did not even live in the capital, but did business at home by mail, only coming in to appear before the Supreme Court. In 1814, President Madison insisted that Attorney General William Pinkney move from Baltimore to Washington as a condition of his continued employment. Pinkney refused and resigned. It's a good thing he never saw the new financial disclosure forms. [[PAUSE]]

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Four years later, they relented and also gave the two of them an office in which to work. [[PAUSE]] In another milestone about twenty years after that, Congress set aside some money so that the office could get its first law books. [[PAUSE]]

As with any lawyer, you can understand why these early A.G's would be reluctant to give up private practice. Mark Twain had just finished speaking at a banquet when a future Attorney General, the lawyer William Everts, stood up with his hands in his pockets and remarked: "Does it not seem unusual to this gathering that a professional humorist should really appear funny?"

Twain got up and responded in his habitual drawl: "Does it not also appear strange to this assembly that a lawyer should have his hands in his own pockets?" [[PAUSE]]

Because he had no department, the A.G. ranked dead last, below all other cabinet members, until just over a century ago,

when Congress permanently fixed his rank as 4th. Dick -- whatever cabinet rivalries you may face -- just be glad they're not still expecting you to fetch the coffee. [[PAUSE]]

Austere beginnings, yes. But part of the genius of America is that, well, we've never really minded having the odds that way. Again and again, we've succeeded against the odds because the one element that's never been lacking is what the world has come to know as the American spirit.

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And it is justice that we celebrate today -- equal justice for all Americans -- as reflected in 200 years of success of the Office of the Attorney General of the United States.

Every President since Washington has depended on his Attorney General in times of crisis. It was Robert Johnson's legal justification of the "bases for destroyers" deal that enabled FDR to rush 50 surplus warships to Churchill at a critical time in the battle for the Atlantic. In 1957, William Rogers advised Ike on his constitutional authority to send federal troops to enforce court-ordered desegregation in Little Rock, Arkansas.

These were bold and effective steps, and a tradition of which you can all be proud. The destroyers deal helped preserve

America's freedom. And the de-segregation effort helped this nation to honor its promise of equality for all men and women.

The A.G. today continues the honorable tradition of serving as "America's lawyer." From its austere beginnings, the Office of the Attorney General has grown to lead a virtual army of 54,000 employees.

They say there were two events that caused this astounding growth in federal lawyers. The first was our victory in World War II, and the mantle of leadership we've worn for nearly half a century as the world's largest economy and most powerful nation. And the other was the invention of the Xerox machine. [[PAUSE]]

Not that every lawyer is necessarily verbose. Andrew Johnson's A.G., James Speed, lived up to his name by writing the shortest A.G.'s Opinion on record, authorizing Lincoln's assassins to be tried by a military court. It contained just 28 words -- and might serve as a model for clarity of writing.

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Congratulations on this anniversary. Godspeed you in your service. And God bless the United States.

# # #

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All of America's history is traced from austere beginnings: from the spare and difficult lives of the first colonists, to the limited materials and hardship of the revolutionary army, to a small and meagerly funded federal government. From nearly every point of embarkation of American endeavor and enterprise we have started on the path of history with very little in the way of the concrete resources that such journey's demand: too few funds, too little manpower, too many dangers, and too little assurance for success. (1)

But still we have succeeded because, despite the austerity and shortcomings of so many of America's beginnings, the one element that has never been lacking in our travels is what the world has come to know as the American spirit.

A spirit that embodies initiative, commitment, hard work, and an unflagging hope, faith and confidence that we will succeed in the attainment of our goals -- and ultimately in the achievement of our ideals -- no matter the size of the challenge, the number of difficulties, or the length of the struggle.

But most importantly is our desire for justice - equal justice - for all Americans.

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And that, really, is what we celebrate today -- as it is reflected in the 200 years of success of the Office of the United States Attorney General. (2) (3)

From beginnings so austere that our first Attorney General paid all office expenses out of his own pocket, this nation's commitment to justice started with an idea and an ideal which has carried it forward through our history and which, as much as any other factor, continues to shape its efforts today. (4-8)

A commitment to the idea that for a society to prosper, justice is key. And a commitment to the ideal that for this society, and for our hopes of achieving the grand constitutional principles upon which our independence rests, justice must and will prevail now and forever, for every man, woman and child who call themselves Americans.

Lofty goals for such a meager start. But look where it has brought us.

The Justice Department of this nation stands at the forefront of protecting American's rights and of ensuring fairness throughout society. In matters of business and

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antitrust, in matters of civil rights, in matters of the environment -- in matters which strike at the very core of our sense of right and equity in a nation of free men and women -- the Justice Department, and the two hundred year history of the Office of the Attorney General, stands as testament to American's spirit, and pursuit of a dream.

But as past achievements have not come without long-waged fights, neither is the present free from great and long-term struggles as crime and the actions of those who do not share in the ideals of this nation continue to threaten our peace and security...and continue to test our commitment and spirit.

Two of the biggest challenges are, of course, the difficult and deadly battles we are waging against the pandemic scourge of drugs and the national wave of violent crime it has precipitated.

But as we have risen to meet and surmount the challenges of the past, so too will rise to them now -- with the commitment of the American people, the Department of Justice, the Attorney General and this entire Administration.

Commitment that is seen in the anti-crime bill, a bill I have submitted to the Congress, which sends a clear, unmistakable and tough message and says to those who spread

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murder and mayhem that violent crime and the illegal use of weapons will be punished and punished severely -- not just as a temporary legal policy, but as a permanent national principle of justice.

And commitment that is seen in our efforts against drugs nationally, and internationally, as we attack every facet of the drug trade from the drug lords of South America, to foreign money launderers, to the dealers on the streets who deliver addiction, despair and death to young people across this land -- attacks on this criminal enterprise which are not designed simply to ease the scourge of drug abuse but which are determined to eliminate it completely.

As we stand here today, commemorating 200 years of the Office of the Attorney General, we should look back with pride on the justice we have achieved as a nation. Often with little more than the simple force of our national will, we have built step after step of a staircase that has taken us ever-higher in our journey towards an our ideal of justice.

But as we commemorate our past, so too do we re-commit ourselves to the future and to the work that remains to be done in meeting the challenges to justice. (AG) (10)

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From austere beginnings we stand today as a force for justice in America and the world -- a great and rich force which derives its wealth from those great and committed Americans of the past who dared to pursue a dream of justice; and from the those same Americans of today who continue to build on that dream.

That is the American spirit -- as it has been in the past, as it is today, and as it will continue on into the future.

Thank you and God bless you.

(McNally/Simon)
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Draft One (B:AG)

PRESIDENTIAL REMARKS: 200TH ANNIV. OF THE ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE
WASHINGTON, D.C.
FRIDAY, SEPTEMBER 22, 1989

Good morning. And thank you -- thank you all. And thanks especially to my friend Dick Thornburgh, for those kind words and for the outstanding job he is doing for this Department, and for America. And I'm also honored to be sharing the platform today with William French Smith, _____, and _____...

All of America's history is traced from austere beginnings, from the spare and difficult lives of the first colonists, to the hardships of the revolutionary army, to a small and meagerly funded federal government.

The American adventure started down the path of history with little in the way of any concrete resources: Too few funds. Too little manpower. Too many dangers. And too little assurance of success. It's been quite a journey.

Today, Dick Thornburgh's life is plagued by budget complications. The first Attorney General didn't have any budget complications. He simply wasn't given any budget. [[PAUSE]]

And for years Congress never criticized our A.G.'s about conflicts of interest. Congress paid them a lower salary because they were expected to make most of their money from private practice. Extend that plan to all 4,000 ~~of your~~ lawyers here, and the ~~new~~ problem ~~here~~ today would be the budget surplus. [[PAUSE]]

In fact, the early A.G.'s often did not even live in the capital, but did business at home by mail, only coming in to appear before the Supreme Court. In 1814, President Madison insisted that Attorney General William Pinkney move from Baltimore to Washington as a condition of his continued employment. Pinkney refused and resigned. It's a good thing he never saw the new financial disclosure forms. [[PAUSE]]

Things didn't ~~actually~~ really begin booming at Justice until 1818, when Congress voted to double the size of the A.G.'s office -- by ~~permitting~~ providing funds for his first ~~one~~ clerk. [[PAUSE]]

Four years later, they relented and also gave the two of them an office in which to work. [[PAUSE]] In another milestone about twenty years after that, Congress set aside some money so that the office could get its first law books. [[PAUSE]]

TWAIN

Because he had no department, the A.G. ranked dead last, below all other cabinet members, until just over a century ago, when Congress permanently fixed his rank as 4th. Dick -- just be glad they don't still expect you to fetch the coffee. [[PAUSE]]

whatever cabinet rivalries you may face

Austere beginnings, yes. But part of the genius of America is that, well, we've never really minded having the odds that way. Again and again, we've succeeded against the odds because the one element that's never been lacking is what the world has come to know as the American spirit.

The American spirit means initiative. Commitment. Hard work. Fairness. And it means faith -- faith in God, faith in

our ideals, and faith that, no matter the challenge or the difficulties, justice will prevail in the end.

And it is justice that we celebrate today -- equal justice for all Americans -- as reflected in 200 years of success of the Office of the Attorney General of the United States.

This nation's commitment to justice started with an idea and an ideal which has carried it through our history and which, as much as any other factor, continues to shape its efforts today.

A commitment to the idea that, for a society to prosper, justice is key. And a commitment to the ideal that for this society, and for our hopes of achieving the grand constitutional principles upon which our independence rests, justice must and will prevail for every man, woman and child who call themselves Americans.

Lofty goals for such a meager start. But look where it has brought us.

From its austere beginnings, the Office of the Attorney General has grown to lead a virtual army of 54,000 employees. They say there are two reasons for this astounding growth in federal lawyers. The first reason is our victory in World War II, and the mantle of leadership we've worn for nearly half a century as the world's largest economy and most powerful nation. And the other is the invention of the Xerox machine. [[PAUSE]]

Today, the Justice Department stands at the forefront of protecting American's rights and of ensuring fairness throughout society. In matters of business and antitrust, environment and

civil rights -- matters which strike at the very core of our sense of right in a nation of free men and women -- your 200 year history stands as a testament to America's spirit, and to the continuing pursuit of a dream.

The great jurist Benjamin Cardozo said: "The process of justice is never finished, but reproduces itself, generation after generation, in ever-changing forms, and today, as in the past, it calls for the bravest and the best."

These days more than ever, we're relying on the bravest and the best throughout this Department -- the Marshals, FBI, DEA, and the Bureau of Prisons, in addition to our A.U.S.A.'s and others in the Criminal Division -- to lead the war against the scourge of cocaine and the violent crime it spawns.

In fighting this battle, you know you have my interest and support, and the support of the American people.

You've seen our support in the anti-crime bill we sent to Congress in May. It sends a clear, unmistakable and tough message -- that those who bring blood and thunder to our streets will be brought to justice. I said it on television earlier this month, and I want to emphasize it here today:

We're changing the rules. Criminals have got to learn that if they sell drugs, they <u>will</u> be caught. And once caught, they <u>will</u> be prosecuted. And once convicted, they <u>will</u> do time.

We're counting on you to get this message out, to make it work in practice. And we're prepared to match rhetoric with resources, backing you up with a plan that calls for more agents

and more prosecutors -- the largest increase in A.U.S.A.'s in history -- and that will almost double the capacity of federal prisons.

We are in this battle for the long haul; we have joined this war for the duration. I have great respect for the leadership of the Attorney General and the Department of Justice in waging this battle, and for the professionalism and commitment that you on the front lines have brought to this effort.

As we stand here today, commemorating 200 years of the Office of the Attorney General, we should look back with pride on the justice we have achieved as a nation. From austere beginnings you stand today as a powerful force for justice in America, and as a powerful example for justice in the world.

I salute this great office, its rich heritage, and all the fine men and women who serve justice under its leadership today. You are indeed the "bravest and the best."

Congratulations on this anniversary. Godspeed you in your service. And God bless the United States.

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. . . yet there are certain great principles of justice, whose authority is universally acknowledged, . . .

—MARSHALL, John, in *Fletcher* v. *Peck*, 10 U.S. (6 Cranch) 87, 133 (1810).

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Why should there not be a patient confidence in the ultimate justice of the people? Is there any better or equal hope in the world?

—LINCOLN, Abraham, First Inaugural.

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After the day of glory and decoration the Queen's Counsel put away their regalia for rare and special occasions and settle down to the much modified magnificence of their working robes, silk gowns over cut-away coat, small wig, plain linen "bands" at the throat. As a scheme of decoration all this is very effective, but it is more than that. Its solemnity has a social significance. It is a constant reminder that the administration of justice is not just another business deal but is the highest function of the State with a continuity and a responsibility which flows in a living stream from generation to generation.

—COWPER, Francis, "London Letter," *The New York Law Journal*, May 21, 1962, p. 4, cols. 5–6.

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The place of justice is an hallowed place; and therefore not only the bench, but the footpace and precincts and purprise thereof ought to be preserved without scandal and corruption.

—BACON, Francis, *Essay: Of Judicature, The Essays of Lord Bacon, Including His Moral and Historical Works* (London, New York: Frederick Warne and Co., 1888), p. 99.

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If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice.

—HAND, Learned, "Thou Shalt Not Ration Justice," address before the Legal Aid Society of New York, Feb. 16, 1951, 9 Brief Case, No. 4, p. 5 (1951).

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Regardless of your theological views, or lack of them, as a lawyer, a quest for justice should be your own private approach to religion. As a lawyer, it ought to hurt for the law to reach what seems an unjust

result. When this happens, it should serve as a stimulus for you to exert yourself to change and correct the law. The perfection of the law ought to be your goal.

—WILSON, Will R., "A Knight in Shiny Blue Serge: Advice to Young Lawyers," 40 ABAJ 686 (August, 1954), p. 687.

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The process of justice is never finished, but reproduces itself, generation after generation, in ever-changing forms, and today, as in the past, it calls for the bravest and the best.

—CARDOZO, Benjamin N., "Law and Literature," in *Selected Writings of Benjamin Nathan Cardozo*, The Choice of Tycho Brahe, edited by Margaret E. Hall (New York: Fallon Publications, 1947), p. 417.

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To no one will we sell, to no one will we refuse or delay, right or justice.

—*Magna Carta*, ch. 40 (1215).

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From bottom to top, Southern justice is white. This fact shadows the Negro's every activity from driving a car to engaging in sexual intercourse; from borrowing money to suing for personal injury; from seeking police protection to defending against criminal charges. To Southern Negroes, the courthouse is not a citadel of justice. Instead, says Harvard Psychiatrist Robert Coles, who recently completed a six-year study of Southern racial attitudes, the courthouse is "the symbol of where the policemen, the sheriffs, the judges, the juries, the voting registrar, the registrar of deeds and the whole structure of society is weighted against Negroes. They are afraid of this building." Segregated justice, adds a Southern Regional Council report, "provokes desperation among Negroes and shakes their faith in democracy."

—Essay, "Breaching the White Wall of Southern Justice." *Time* Magazine, April 15, 1966, p. 46.

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The justice of the law is, therefore, a "statistical" justice, an average justice, a kind of rationed goods preserving all from want but sufficient for no one.

—SILBERG, Moshe, Associate Justice, Supreme Court of Israel, "Law and Morals in Jewish Jurisprudence," 75 Harv. L. Rev. 306, 316 (1961).

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THE DEPARTMENT OF JUSTICE

ITS HISTORY AND FUNCTIONS

BY

JAMES S. EASBY-SMITH

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THE DEPARTMENT OF JUSTICE; ITS HISTORY AND FUNCTIONS.

CHAPTER I.

THE ATTORNEY-GENERAL'S OFFICE.

The Department of Justice was not created and organized until 1870, but the office of Attorney-General was one of the four cabinet offices, so-called, which were created in 1789, and around this office grew up a legal department which was known until 1870 as the Attorney-General's Office.

The First Congress of the United States met at New York on March 4, 1789, and its first session was devoted entirely to the enactment of laws to provide the machinery for the permanent federal government contemplated by the Constitution; the most important of which were a revenue law, a law for registering and clearing vessels and for regulating the coasting trade; the laws establishing the army and the executive departments; and the famous Judiciary Act. The Department of Foreign Affairs, with a Secretary of Foreign Affairs (which designations were, by the act of September 15th of the same year, changed to Department of State and Secretary of State) was created by the act of July 27, 1789; the War Department, with a Secretary, by the act of August 7th; and the Treasury Department, with a Secretary, by the act of September 2d of the same year.

The Third Article of the Constitution provided that: "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish"—etc. A bill

to carry into effect these constitutional provisions by establishing the judicial courts of the United States was passed by Congress and received the President's approval on September 24, 1789. This law, known as the Judiciary Act, provided for a Supreme Court to consist of a Chief Justice and five Associate Justices; divided the United States into thirteen districts and three circuits; created the circuit and district courts and defined and prescribed their jurisdiction and procedure; provided for the appointment of United States district attorneys and marshals; and finally created the office of Attorney-General and prescribed his duties in the following concluding paragraph:

"And there shall also be appointed a meet person, learned in the law, to act as attorney-general for the United States, who shall be sworn or affirmed to a faithful execution of his office; whose duty it shall be to prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned, and to give his advice and opinion upon questions of law when required by the President of the United States, or when requested by the heads of any of the departments, touching any matters that may concern their departments, and shall receive such compensation for his services as shall by law be provided."

Thus was the office of Attorney-General created, and thus the duties of the office defined. Among the many defects of the law, which soon became apparent but were not remedied for many years, was the failure to give the Attorney-General any control or supervision of the district attorneys or of suits affecting the United States in the inferior courts. Nor was any sort of an establishment provided for the transaction of his business, either in the way of quarters or clerical assistance.

The office was the fourth cabinet office in the order of creation, the offices of Postmaster-General, Secretary of the Navy, Secretary of the Interior, Secretary of Agriculture and Secretary of Commerce and Labor being subsequently created in the order named. But not being at the head of a depart-

ment until the creation of the Department of Justice in 1870, the Attorney-General was ranked below all the other cabinet officers until his proper rank as fourth in the Cabinet was restored by the act of January 19, 1886, which provides, in case of the removal, death, resignation or inability both of the President and Vice-President, that the duties of the office of President shall be performed by one or the other of the cabinet officers in the order named in the act.

Congress had fixed the annual salaries of the heads of the departments as follows: for the Secretaries of State and the Treasury $3,500 each, for the Secretary of War $3,000; but by the act of September 23, 1789, the salary of the Attorney-General was fixed at $1,500. The Senate had provided $2,000, but this was reduced by the House of Representatives. The action of Congress in providing this very small salary was due to the arguments that the duties of the Attorney-General would be very light, that he could and would engage in private practice, and that the prestige of the office would be so great that it would be well worth the while of any lawyer to accept the office with only a nominal compensation.

On September 26, 1789, the President appointed Edmund Randolph of Virginia Attorney-General. Washington had declared that he preferred Randolph as Attorney-General to any person with whom he was acquainted, and it is probable that he was better fitted than any of his contemporaries for the task of organizing the legal department of the new government. He had been Attorney-General of Virginia and a member of the Constitutional Convention, and had taken a leading part in that body in the discussions concerning the judiciary provisions of the Constitution.

Randolph arrived in New York, then the seat of government, in February, 1790. At its first two sessions there was no business before the Supreme Court, but there was an abundance for the Attorney-General, and from the very beginning his duties were arduous and physically laborious. As the first Attorney-General he had to shape his own office,

adapt the constitutional provisions and the Judiciary Act to their work, study out and decide the vexatious questions relating to the line of demarkation between the jurisdiction of the federal and state governments and their respective courts, and constantly give opinions and advice both written and oral to the President and to the heads of the departments, concerning internal affairs; and to the Secretary of State upon questions of international law arising out of the unsettled relations with foreign governments following the War of the Revolution.

In addition to this he was obliged to perform all the physical labor of the office, for Congress had failed to provide for him clerical assistance, and he had not even a single clerk.

The President formed of the heads of the three departments and the Attorney-General an advisory council, subsequently known as the Cabinet; and during both his administrations sought to divide the cabinet officers equally between the two opposing political parties.

In December, 1790, the seat of government was removed from New York to Philadelphia where it remained until 1800. The Supreme Court met for the February term 1791 in Philadelphia, and for ten years held its sessions in the South Chamber, upstairs, of the old City Hall; but no office was provided for the Attorney-General.

In March, 1791, Congress increased the salary of the Attorney-General to $1,900 which was maintained until 1797, when it was increased to $2,000. In December of the same year Randolph wrote a long letter addressed to the President, containing important recommendations concerning the office of Attorney-General. He advised that the Attorney-General be authorized to represent the Government in the inferior courts as well as in the Supreme Court; that he be given control and supervision of the district attorneys; and he pointed out the urgent necessity for a clerk. Washington transmitted this letter to Congress in a special message, and the committee to whom it was referred investigated the questions and re-

ported favorably upon all the recommendations of the Attorney-General. Despite the letter of Randolph, the message of Washington and the favorable report of the committee, Congress took no action. Twenty-seven years elapsed before any allowance was made for clerk hire, and seventy before the Attorney-General was given supervision and control of district attorneys.

From this time the work of the Supreme Court increased, and the amount of work performed by Randolph was prodigious, and indeed almost incredible.

In December, 1793, Jefferson retired as Secretary of State, and Randolph was appointed in his place, assuming the duties of the office on January 2, 1794.

William Bradford of Pennsylvania was selected by Washington to succeed Randolph, and was commissioned on January 27, 1794. Nothing of importance occurred during his administration of the office except the "Whiskey Insurrection" in western Pennsylvania. Bradford was sent by Washington as one of the commissioners to investigate the insurrection. He reported that the laws could not be enforced by the civil authorities, and advised that military force be used. His advice was followed and the insurrection was quickly stamped out.

Bradford died after a very brief illness in August, 1795; and Washington tendered the office to John Marshall, but he declined it because he could not afford to abandon his private law practice. Washington then, on December 10, 1795, appointed Charles Lee of Virginia. Lee served to the end of Washington's second administration, and was retained by John Adams, serving almost to the end of the latter's administration. During Lee's occupancy of the office the salary was twice increased, to $2,600 in 1797 and to $3,000 in 1799. In December, 1800, the seat of government was removed from Philadelphia to Washington, but Lee served only a short time after this, retiring to become one of the circuit judges in February, 1801.

Theophilus Parsons of Massachusetts was nominated on February 18, 1801, as Attorney-General in place of Lee, and the nomination was confirmed by the Senate; but no commission was issued, as he declined to accept the office. His name is sometimes erroneously included in the list of the Attorneys-General.

In Washington the departments were housed in brick and wooden buildings grouped about the President's house on the sites now occupied by the Treasury, State, War and Navy buildings. No quarters were provided for the Attorney-General, and he was expected to furnish his own quarters, fuel, stationery and clerk. For this reason the Attorneys-General after Lee and until 1814 did not reside permanently in Washington, but remained at their homes and transmitted their advice and opinions by mail, going to Washington only when it became necessary to appear before the Supreme Court.

When Jefferson became President on March 4, 1801, he appointed Levi Lincoln of Massachusetts Attorney-General, and he served until the end of Jefferson's first administration, when he resigned.

On March 2, 1805, Jefferson nominated Robert Smith, then Secretary of the Navy, as Attorney-General, and Jacob Crowninshield as Secretary of the Navy. Both nominations were confirmed and commissions were issued, but Crowninshield refused to accept the office of Secretary of the Navy and Smith continued to occupy that office, never qualifying as Attorney-General nor performing any of the duties of the office. His name is frequently erroneously included in the list of the Attorneys-General. The office remained vacant until August, 1805, when Jefferson appointed John Breckinridge of Kentucky, who served until his death in December, 1806. Cæsar Rodney of Delaware was selected by Jefferson to succeed Breckinridge. He was appointed on January 7, 1807, and was retained by Madison, serving until December, 1811. It was during Rodney's term of office that Aaron Burr was prosecuted for treason. Rodney directed all the pre-

liminaries of the prosecution, and appeared in the circuit court at Richmond and personally conducted and argued the cases, being assisted by George Hay, district attorney for Virginia, William Wirt, afterwards Attorney-General, and other counsel.

Madison selected as Rodney's successor William Pinkney of Maryland, and he was commissioned on December 11, 1811. Pinkney lived in Baltimore, and like his predecessors after Lee declined, in spite of the President's request, to reside permanently in Washington. Finally Madison insisted that he should do so, and Pinkney thereupon resigned in 1814.

On February 10, 1814, Madison appointed as Pinkney's successor Richard Rush of Pennsylvania, one of the conditions of the appointment being that Rush reside in Washington. President Madison, in his eighth annual message, called the attention of Congress to the condition of the office of Attorney-General. He related at great length the hardships which resulted from the failure of Congress to provide a suitable salary, office quarters, clerical assistance, and so forth; and called attention to the necessity for a reorganization of the office and the extension of its powers and duties. He earnestly recommended the establishment of a new department, the increase of the Attorney-General's salary, a provision for offices, clerical assistance, and other necessities. But the appeal fell on deaf ears. Congress did nothing. Rush was retained by Monroe until September, 1817, when he made him Minister to England.

William Wirt of Virginia was appointed Attorney-General by President Monroe on November 13, 1817, and served throughout the administrations of Monroe and John Quincy Adams, retiring on March 3, 1829, after serving more than eleven years, much longer than any Attorney-General before or since.

Upon the fly-leaf of the earliest record book of the Department of Justice appears the following interesting entry in Wirt's own handwriting—as clear today as when it was written:

"ATTORNEY-GENERAL'S OFFICE,
"13 Novr. 1817.

"Finding on my appointment, this day, no book, documents, or papers of any kind to inform me of what has been done by any one of my predecessors, since the establishment of the Federal Government, and feeling very strongly the inconvenience, both to the nation and myself, from this omission, I have determined to remedy it, so far as depends on myself, and to keep a regular record of every official opinion which I shall give while I hold this office, for the use of my successor.

"To make the arrangement as perfect as I can I have prevailed on the heads of Departments to furnish me with copies of all the documents on which I shall be consulted and which will be found filed and numbered, to correspond with the numbers in the margin prefixed to each opinion. A copious index to this book is also given, with reference, under various heads, to each case, for the greater facility of using the book.

"WM. WIRT."

This book was faithfully kept by Mr. Wirt in accordance with his plan, the earlier entries all being in his own handwriting.

President Monroe and Mr. Wirt continued to urge upon Congress the necessity for a clerk, and Congress at last, in 1818, provided $1,000 for the employment of one clerk and $500 for office rooms, stationery and other incidental expenses. In 1819 the salary of the Attorney-General was raised to $3,500 and at the same time the salaries of the Secretaries of State, Treasury, War and Navy were fixed at $6,000 and that of the Postmaster-General at $4,000.

In 1822 the Attorney-General was furnished with his first official quarters, a room on the second floor of the old War Department building, west of the President's house, which was retained until 1839 when better quarters were provided in the central portion of the Treasury building. Mr. Wirt's

administration covered the so-called era of good feeling, and there was little out of the ordinary that occurred during this time. But he did more to put the office of Atttorney-General on a firm business basis than any other of its occupants.

On March 9, 1829, President Jackson appointed as Wirt's successor John McPherson Berrien of Georgia. In his annual messages to Congress President Jackson repeated the recommendations of many of his predecessors concerning the office of Attorney-General. But Congress instead of carrying out the President's recommendations and increasing the powers and duties of the Attorney-General, created, in 1830, the office of Solicitor of the Treasury, giving to that officer control of civil suits in which the Government was interested. The law was of advantage to the Attorney-General in one way, for it made him the legal adviser of the Solicitor and gave him for this duty $500 a year, thus increasing his salary to $4,000.

Berrien resigned July 20, 1831, and on the same day Jackson appointed as his successor Roger Brooke Taney, at that time Attorney-General of Maryland and afterwards Chief Justice of the United States. Taney was one of Jackson's closest advisers, and took a prominent part in the nullification controversy and in the questions concerning the United States Bank. When Jackson removed Secretary Duane of the Treasury for refusing to obey his instructions in the bank matter Taney very reluctantly retired from the office of Attorney-General and became Secretary of the Treasury in September, 1833. The duties of this office were distasteful to Taney and he soon retired to private practice in Baltimore.

The office of Attorney-General remained vacant until November 15, 1833, when President Jackson appointed Benjamin Franklin Butler of New York. He was retained by President Van Buren and served until September 1, 1838, when he resigned and Felix Grundy of Tennessee was appointed. He served until December 1, 1839, when he resigned. It was during his term that the office was removed to its

second home, in the Treasury building. In August, 1839, the Attorney-General with his clerk, messenger and library, moved into rooms on the second floor of the Fifteenth street front of this building, and remained there for about sixteen years.

On January 11, 1840, Henry Dilworth Gilpin of Pennsylvania was appointed Attorney-General, and served until the end of President Van Buren's administration in 1841. During this year he prepared "The Opinions of the Attorneys-General of the United States from the Beginning of the Government to 1841," which was transmitted by the President to Congress and printed as a House Document.

In 1840 Congress appropriated $1,000 for books for the Attorney-General. The books purchased by Attorney-General Gilpin, together with those which had been purchased with $500 appropriated in 1831, formed the nucleus of the present library of the Department of Justice.

On March 5, 1841, President William Henry Harrison appointed John Jordan Crittenden of Kentucky Attorney-General, but he served only a few months, retiring soon after President Harrison's death; and on September 13, 1841, President Tyler appointed Hugh Swinton Legaré of South Carolina.

On September 11, 1841, Congress, by a joint resolution, made it the duty of the Attorney-General to examine into the titles of the lands or sites which had been purchased or should thereafter be purchased by the United States for governmental purposes.

On June 20, 1843, Attorney-General Legaré died suddenly, and on July 1st following the President appointed John Nelson of Maryland Attorney-General. He served until the end of Tyler's administration. On March 6, 1845, President Polk appointed John Young Mason of Virginia Attorney-General.

In his first annual message President Polk strongly urged upon Congress the necessity of creating a legal department with the Attorney-General at its head, and of placing him on

the same footing with the heads of the other executive departments. But his recommendations met the fate of the many that had gone before. Congress read them and did nothing.

On September 9, 1846, Mr. Mason retired from the office of Attorney-General to become Secretary of the Navy, and in his place Nathan Clifford of Maine was appointed on October 17, 1846. He served less than eighteen months and was succeeded on June 20, 1848, by Isaac Toucey of Connecticut who served less than nine months, until the close of President's Polk administration. On March 8, 1849, President Taylor appointed Reverdy Johnson of Maryland Attorney-General. He resigned on July 20, 1850, shortly after President Taylor's death.

The Act of Congress of February 22, 1849, provided that the Attorney-General should cause to be made and provided for his office a seal "with such device as the President of the United States shall approve." The exact time of the approval by the President and adoption by the Attorney-General of a seal is in doubt. For many years a tradition has prevailed in the Department that the seal was devised and the motto chosen by Attorney-General Black, but this is clearly erroneous, for Mr. Black did not become Attorney-General until March 6, 1857, and Attorney-General Cushing in a report to the President dated March 8, 1854, said that the Attorney-General's office "has an official seal, and all copies of records authenticated by certificate under this are declared to be evidence equally with the original record or paper." It is possible that the tradition is correct to the extent that Mr. Black added the motto to the seal which had been adopted by one of his predecessors. Unfortunately there is no correspondence nor other record in the Department files, or elsewhere so far as has been discovered, showing even the approximate date of the approval by the President and adoption by the Attorney-General, of the seal. It is probable that very soon after the passage of the law Attorney-General

Johnson devised the seal and President Taylor approved it. The seal as adopted and used by the Attorney-General consisted of the United States shield, with stars (improperly) on the chief, from it an eagle rising, with outstretched wings, bearing in the right talon an olive branch, in the left arrows, beneath which, in a semi-circle was the motto: *Qui Pro Domina Justitia Sequitur*, and in an outer circle: *Attorney-General's Office*; being, in fact, identical with the present seal of the Department (adopted in 1872) except that in the latter the words: *Department of Justice* appear in the outer circle in place of *Attorney-General's Office*. It is stated that the motto was suggested to the deviser of the seal by the following passage in Coke's Institute, Part 3, folio 79: "And I well remember when the Lord Treasurer Burleigh told Queen Elizabeth, Madam, here is your Attorney-General (I being sent for) *qui pro domina regina sequitur*, she said she would have the records altered; for it should be *attornatus generalis qui pro domina veritate sequitur.*"

It is supposed that Lord Burleigh quoted the phrase from a Latin legal form then used in making up pleadings in cases conducted by the Attorney-General for the Crown. The deviser of the seal substituted *justitia* for *regina* or *veritate*. Its construction is hopeless: its translation has baffled more than one good Latin scholar. In view of its origin it may be rendered, (referring to the Attorney-General): "Who sues for the Lady Justice." Another translation, equally correct, is: "Who follows Justice for mistress."

About 1850 the preliminary and advisory work upon applications for executive clemency, which up to that time had been transacted by the Secretary of State and the Attorney-General jointly (all the papers and records being kept in the Department of State) was transferred by the President's order to the Attorney-General, and since that time this work has been transacted through the Attorney-General's office.

On July 20, 1850, President Fillmore appointed as Attorney-General John Jordan Crittenden of Kentucky, who had held the office under President William Henry Harrison. In 1851 the Attorney-General's salary was increased to $6,000 and during the same year was begun the official publication of the opinions of the Attorneys-General. At this time two clerks and one messenger were employed in the Attorney-General's office. In 1853 Congress at last complied with the requests of the several Presidents who had recommended that the Attorney-General be placed on an equal footing with the other cabinet officers, and fixed the compensation of the Attorney-General and the other cabinet officers at $8,000, at which figure it has remained to the present time.

On March 7, 1853, President Pierce appointed Caleb Cushing of Massachusetts Attorney-General. He was the first Attorney-General since Wirt to serve through an entire administration of four years. The most noteworthy event of his administration affecting the office of Attorney-General and the judiciary was the rendering by him of two important reports—one upon the judiciary and one upon the legal department of the Government. These reports are monumental as historical documents. They were written in 1853 and '54, and transmitted by the President to Congress. The report upon the judiciary consists of a complete history of the judiciary from the adoption of the Constitution, and contains recommendations for the modification and enlargement of the entire judicial system. It paved the way to the subsequent readjustment of the circuit court, and contained the first suggestion of the establishment of an intermediate

appellate court which was carried into effect in 1891 by the creation of the circuit courts of appeals.

His report on the legal department of the Government was no less important. He reviewed the history of the office of Attorney-General from the beginning, and made recommendations, all of which finally—though many not for a long time—were carried into effect. The report was in many respects a repetition of the recommendations of his predecessors—from Randolph down—but many of the suggestions were original with Cushing.

About this time the Treasury building became overcrowded and the office of the Attorney-General was removed to its third home, in the old yellow brick building on the southeast corner of Fifteenth and F streets—the site now occupied by the Corcoran building—and remained there until 1861, when upon the completion of the south wing of the Treasury the Attorney-General was given a suite of rooms on the first floor there.

In the appropriation act of March 3, 1855, the allowance for the Attorney-General's office was materially increased and the office force was also increased to seven clerks, a messenger, and a general superintendent.

When Buchanan became President he appointed Jeremiah Sullivan Black of Pennsylvania Attorney-General, and he served until December, 1860, when he became Secretary of State, and Edwin McMasters Stanton of Ohio was made Attorney-General. On March 5, 1861, Edward Bates of Missouri succeeded Stanton as Attorney-General. In 1859 the office of Assistant Attorney-General was created with a salary of $3,000, and in 1861 Congress finally carried out the recommendation which had been made by Randolph seventy years before, and repeated by many of his successors, and gave the Attorney-General control of the district attorneys. During the war there was little legislation affecting the office of Attorney-General, but during the latter sixties the duties and powers of the office were largely increased.

Attorney-General Bates resigned in September, 1864, and for several months Titian J. Coffey, Assistant Attorney-General, was acting Attorney-General by special direction of the President. On December 1, 1864, the President appointed Joseph Holt of Kentucky Attorney-General, but he declined to accept the office. His name is sometimes erroneously included in the list of the Attorneys-General.

On December 2, 1864, James Speed of Kentucky was appointed Attorney-General. In 1865 the salary of the Assistant Attorney-General was increased to $3,500, and the offices of chief clerk, pardon clerk and opinion clerk were created. Mr. Speed was retained by President Johnson but resigned on July 17, 1866, and was succeeded by Henry Stanbery of Ohio. Mr. Stanbery resigned in March, 1868, in order to serve as one of President Johnson's counsel in the impeachment proceedings. The President held the office open for Mr. Stanbery, (directing Orville H. Browning, Secretary of the Interior, to act as Attorney-General *ad interim*), and after his acquittal renominated Stanbery. But the Senate rejected the nomination and the President then appointed William Maxwell Evarts of New York, who also had been one of his counsel in the impeachment proceedings.

The act of March 2, 1867, provided that the Attorney-General and the other cabinet officers should hold their respective offices for and during the term of the President by whom they were appointed, and for one month thereafter. Until the passage of this law there had been no fixed tenure of office for a cabinet officer.

In December, 1867, Attorney-General Stanbery made important recommendations concerning the reorganization of his office, some of which were carried into effect almost immediately, and others in 1870 when the Department of Justice was established. By the act of June 25, 1868, it was made the duty of the Attorney-General and his assistants to take charge for the United States of cases in the Court of Claims, and two assistants were provided with salaries of $4,000 each.

President Grant in March, 1869, appointed Ebenezer Rockwood Hoar Attorney-General. The plan for the modification of the judiciary suggested by Cushing in 1854 was partially adopted in 1869 when Congress provided for the appointment of a circuit judge in each of the nine circuits. On June 23, 1870, Attorney-General Hoar resigned because of his disapproval of President Grant's policy in regard to the San Domingo treaty. He was the last Attorney-General of the old regime, and went out with the old order of things; for the day before his resignation took effect the President approved the act whereby the Attorney-General's office as an executive department ceased to exist and the Department of Justice was established in its place.

CHAPTER II.

THE DEPARTMENT OF JUSTICE.

The growth of the Office of Attorney-General, both in its functions and in its personnel, had been so great during the first eighty years of the existence of the federal government that at the end of that period it was in reality what it had always been in theory, one of the executive departments of the Government. There was needed a law to give it organization, a name and a home. The Forty-first Congress, heeding in part the recommendations of the many Attorneys-General and Presidents, gave it organization and a name, but failed to provide a home; and enacted the law of June 22, 1870, entitled "An Act to Establish the Department of Justice."

This law provided that the Attorney-General should be the head of the Department, with duties, salary and tenure of office as already fixed by law. It created the office of Solicitor-General, with salary of $7,500, and provided that he should exercise all the powers of Attorney-General in case of a vacancy in that office, or during the absence or disability of the Attorney-General. It provided for two Assistant Attorneys-General with salaries at the rate of $5,000 per annum. It placed under the supervision of the Attorney-General the law officers of the other departments, such as the Solicitor of the Treasury and the Solicitor of Internal Revenue; provided that any questions except those involving construction of the Constitution might be referred by the Attorney-General to his assistants or subordinates, and that their opinions, approved by him, should have the same force and effect as his own; that the Attorney-General and his Department should have control of all criminal prosecutions and civil suits in which the United States are interested; that the Attorney-General might require the Solicitor-General or any other officer of the Department to conduct and argue

any case in which the United States might be interested, in the Supreme Court, the Court of Claims, or in any federal or state court. The Attorney-General was given supervision and control of district attorneys and all other counsel employed on behalf of the United States, and of the accounts of district attorneys, marshals, clerks, and other officers of the federal courts. There were many minor provisions concerning the organization of the Department. The act was mainly a re-enactment of the various laws already in effect, although some laws were repealed, and some powers which had been lodged in other departments were transferred to the new department. The only office of importance created was that of Solicitor-General.

Attorney-General Hoar retired on the day this law took effect, and was succeeded by Amos Tappan Akerman of Georgia, who immediately took steps towards organizing the new department.

At this time the Attorney-General and his immediate staff had quarters in the south wing of the Treasury building, the Solicitor-General and one of the Assistant Attorneys-General with their clerical forces were quartered in the Hooe building on F street near Fourteenth, one Assistant Attorney-General and the Court of Claims occupied rooms in the basement of the Capitol, and the other officers were scattered among the various departments to which they were regularly attached. In the matter of being housed the Department was in about the same condition it is today. In 1871 the Attorney-General leased for ten years the second, third and fourth floors of the Freedmen's Bank building, on Pennsylvania Avenue opposite the Treasury, and all the Department force was removed to this building except the Assistant Attorney-General in charge of cases before the Court of Claims. He with his office force remained at the Capitol. In 1872 the fifth floor of the bank building was secured; and in 1882, after the ten year lease had expired, Congress passed a law providing for the purchase of the building for the Department of Justice. The building was purchased for $250,000 on

June 1, 1882, and the Court of Claims and the Assistant Attorney-General who had been at the Capitol were removed to the Department building. For the first time since the creation of the office of Attorney-General the legal department of the Government had a home of its own. The Department remained in this building until 1899, when Congress passed an act, reciting that "the building now occupied by the Department of Justice is too small for its purpose, is unsafe, over-crowded, and dangerously over-loaded, and has been pronounced unsafe after examination by the proper officials of the Treasury Department." One million dollars was appropriated for the erection of a new building. As soon after the approval of this act as quarters could be secured the old building was abandoned and demolished. It was impossible to secure any one building to accommodate all the officers of the Department. The Attorney-General and his personal staff are in the building on K street between Vermont Avenue and Fifteenth Street formerly known as the Baltic Hotel, the library is half a mile away in the old Corcoran Art Gallery, and the other officers are scattered about in five separate buildings, none of them originally intended for office purposes. In the meantime it was found that a building to accommodate the Department could not be erected for a million dollars, and Congress instead of appropriating more has repealed the original law. Although the Department owns the site for a building there seems little prospect of its having a building of its own for very many years. And all the time the Government is paying an enormous rent bill, and the Attorney-General and his subordinates are handicapped by lack of proper facilities for the transaction of business and by the separation of the various offices and bureaus of the Department.

The period from 1870 to 1880 was one of great growth for the Department, but was devoid of any event of striking importance or interest. The first Solicitor-General, Benjamin Helm Bristow, of Kentucky, was appointed by President

Grant, on October 11, 1870. On January 10, 1871, Congress began the long series of enactments, whereby the control and supervision of United States prisons and prisoners has been vested in the Attorney-General. By the Act of February 25, 1871, an additional Assistant Attorney-General was provided, and was assigned to the Interior Department; and the act of June 8, 1872, provided for the appointment of an Assistant Attorney-General for the Post-Office Department.

On January 10, 1872, Attorney-General Akerman resigned, and George Henry Williams, of Oregon, was appointed in his place, and on November 15, 1872, Solicitor-General Bristow resigned and was succeeded by Samuel F. Phillips, of North Carolina.

In 1873, the famous "Credit Mobilier" suits were tried. On December 4, 1874, Attorney-General Williams issued a temporary order, making the working hours in the Department of Justice from 9 until 4. Before this time, the hours had been 9 to 3. This order was made permanent on December 1, 1875, and remained in effect until the executive order of January 8, 1904, by which the working hours in all the Departments were fixed from 9 until 4:30.

Attorney-General Williams retired on May 15, 1875, and was succeeded by Edwards Pierrepont, of New York. It was during his administration, that the investigation of the notorious "Whiskey Ring" was begun, and the prosecutions conducted. He was succeeded in May, 1876, by Alphonso Taft, of Ohio, who served less than ten months. On March 12, 1877, President Hayes appointed Charles Devens, of Massachusetts, Attorney-General. He was succeeded on March 7, 1881, by Wayne MacVeagh, of Pennsylvania, who retired shortly after the death of President Garfield. Under him were begun the prosecutions in the famous "Star Route" cases, and the case against Guiteau, the assassin of President Garfield, which prosecutions were continued by Attorney-General Benjamin Harris Brewster, who succeeded Mr. MacVeagh on January 2, 1882. On March 3, 1883, the so-called "Bowman Act" was passed. This law provided for the

transfer of certain claims from Congress and the departments to the Court of Claims; and towards the end of Mr. Brewster's term of office, Congress passed an act to provide for the ascertainment and payment of claims of American citizens for French spoliations. Both these laws largely increased the work of the Department. Mr. Brewster was succeeded on March 6, 1885, by Augustus Hill Garland, of Arkansas, and on May 1, 1885, John Goode, of Virginia, was appointed Solicitor-General in place of Mr. Phillips.

The so-called "Tucker Act," of March 3, 1887, giving the circuit and district courts of the United States concurrent jurisdiction with the Court of Claims, greatly increased the work of the Department.

On July 30, 1886, George Augustus Jenks, of Pennsylvania, succeeded Mr. Goode as Solicitor-General.

President Benjamin Harrison appointed as Attorney-General on March 5, 1889, William H. H. Miller, of Indiana, and as Solicitor-General, on May 29, 1889, Orlow W. Chapman, of New York. On February 15, 1890, William H. Taft, of Ohio, succeeded Mr. Chapman as Solicitor-General. On July 2, 1890, the so-called "Sherman Anti-Trust Law" was enacted. On March 3, 1891, the circuit courts of appeals were created, and an act of the same date created a court of private land claims. On the same date was approved the act providing for the adjudication of claims arising from Indian depredations. This provided for an additional Assistant Attorney-General, and greatly increased the work of the Department. On March 21, 1892, Charles H. Aldrich, of Illinois became Solicitor-General in place of Mr. Taft.

When Mr. Cleveland became President the second time, he appointed as Attorney-General, Richard Olney, of Massachusetts, and Lawrence Maxwell, Jr., of Ohio, Solicitor-General. The so-called Dockery law of July 31, 1894, provided for the examination in the Department of Justice of the accounts of officers of the United States courts. Under this law the Division of Accounts of the Department of

Justice was organized. This law materially increased the duties and the number of employees of the Department. On February 6, 1895, Holmes Conrad, of Virginia, succeeded Mr. Maxwell as Solicitor-General. The most important event during Mr. Olney's administration of the office, from the standpoint of the enforcement of law and order, was the settlement of the great Pullman strike of 1894.

On June 7, 1895, Mr. Olney retired from the office of Attorney-General to become Secretary of State; and on the following day, Judson Harmon, of Ohio, was appointed Attorney-General. He was succeeded on March 5, 1897, by Joseph McKenna, of California, who served less than one year. On July 1, 1897, John Kelvey Richards, of Ohio, was appointed Solicitor-General.

On January 25, 1898, Attorney-General McKenna became an Associate Justice of the Supreme Court of the United States, and was succeeded by John William Griggs, of New Jersey. During his three years in the office, Mr. Griggs was largely engaged with the many important and difficult questions arising out of the Spanish War and its results. He also practically concluded the long pending suits with the Pacific railroads.

By the act of March 2, 1901, a commission was provided to carry into effect the treaty between the United States and Spain. This law provided for another Assistant Attorney-General.

Attorney-General Griggs retired on March 29, 1901, and was succeeded on April 5, 1901, by Philander Chase Knox, of Pennsylvania.

The act of February 14, 1902, made an appropriation for defraying the necessary expenses in the conduct of insular and Territorial matters, and the appropriation for this purpose has become permanent. Under this appropriation a new and important bureau, known as the Insular and Territorial Bureau, was established in the Department.

The Fifty-seventh Congress passed several laws augument-

ing the interstate commerce and anti-trust laws, and during Mr. Knox's administration of the office, many important suits have been won for the Government under these laws, the principal ones being the cases known as the Beef Trust cases, the Grain Rebate cases, and the Northern Securities or Merger case.

The deficiency appropriation act approved March 3, 1903, created the office of Assistant to the Attorney-General, with compensation at the rate of $7,000 per annum, and also provided for an additional Assistant Attorney-General. On March 17, 1903, William A. Day, of the District of Columbia, was appointed to the office of Assistant to the Attorney-General, and was placed in charge, under the Attorney-General, of all suits under the interstate commerce and anti-trust laws. On March 16, 1903, Henry Martyn Hoyt, of Pennsylvania, succeeded Mr. Richards as Solicitor-General.

The latest register of the Department shows that there are now employed in the various offices and bureaus of the Department proper, in Washington, about two hundred and sixty officers and employees, and in the various districts throughout the United States, subject to the jurisdiction of the Department, nearly thirteen hundred field officers and employees. Besides the Attorney-General, Solicitor-General and Assistant to the Attorney-General, there are eight Assistant Attorneys-General, and one Special Assistant Attorney-General.

The enormous volume of business which is now transacted by and through the Department is shown in the annual report of the Attorney-General to Congress, dated December 5, 1903.

On June 8, 1904, Mr. Knox was appointed United States Senator from Pennsylvania and shortly afterwards announced his intention of retiring from the office of Attorney-General on June 30th, and President Roosevelt selected as his successor William Henry Moody, of Massachusetts, at that time Secretary of the Navy.

* written the day after Randolph was commissioned as the 1st A.G.

BARTOLOMEO VANZETTI, in a statement on the death sentences imposed on him and Nicola Sacco for the 1920 killing of a paymaster, April 9, 1927.

50 The administration of justice is the firmest pillar of government.

GEORGE WASHINGTON, in a letter to Edmund Randolph, September 27, 1789. *

51 There is no happiness, there is no liberty, there is no enjoyment of life, unless a man can say, when he rises in the morning, I shall be subject to the decision of no unwise judge today.

DANIEL WEBSTER, in a speech in New York City, March 10, 1831.

52 Justice, sir, is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together.

DANIEL WEBSTER, in a funeral address for Joseph Story, September 12, 1845.

53 Judging from the main portions of the history of the world, so far, justice is always in jeopardy.

WALT WHITMAN, *Democratic Vistas,* 1870.

54 The hope of all who suffer,
The dread of all who wrong.

JOHN GREENLEAF WHITTIER, characterizing the Union cause in the Civil War, in "The Mantle of St. John De Matha," 1865.

55 Justice has nothing to do with expediency. Justice has nothing to do with any temporary standard whatever. It is rooted and grounded in the fundamental instincts of humanity.

WOODROW WILSON, in a speech in Washington, D.C., February 26, 1916.

127. KANSAS

1 Ad astra per aspera. (To the stars through difficulties.)

State motto.

2 Happy is the man who wakens to find he has wandered from Kansas only in a dream.

Attributed to Foster Dwight Coburn, 1881.

3 First in Freedom, First in Wheat.

Kansas slogan, quoted in Dwight D. Eisenhower, *Eisenhower Speaks,* 1948.

4 The roosters lay eggs in Kansas.
The roosters lay eggs as big as beer kegs.
And the hair grows on their legs in Kansas.

Popular song, c.1880.

5 Raise less corn and more *Hell.*

Advice to the farmers of Kansas, attributed to Mary Elizabeth (mistakenly called Mary Ellen) Lease, but possibly "coined by a hostile reporter," according to Roger Butterfield, in *The American Past,* 1957.

6 To understand why people say "Dear old Kansas!" is to understand that Kansas is no mere geographical expression, but a state of mind, a religion, and a philosophy in one.

CARL LOTUS BECKER, "Kansas," 1910.

7 There is no monument under heaven on which I would rather have my name inscribed than on this goodly state of Kansas.

HENRY WARD BEECHER, in a speech at Emporia, Kansas, 1883.

8 Kansas, in sum, is one of our finest states and lives a sane, peaceful, and prosperous life.

PEARL S. BUCK, *America,* 1971.

9 Kansas is the navel of the nation. Diagonals drawn from Duluth to Galveston, from Washington to San Francisco, from Tallahassee to Olympia, from Sacramento to Augusta, intersect it in its center.

JOHN JAMES INGALLS, in a speech in the U.S. Senate, c.1885.

10 We preferred the comparatively simple but more intelligent life of Kansas to Washington. There are some intelligent people in Washington. More of 'em in Kansas.

ALFRED M. "ALF" LANDON, speaking of his decision not to run for the Senate after his defeat

Juries fairly chosen from different walks of life bring into the jury box a variety of different experiences, feelings, intuitions, and habits. Such juries may reach completely different conclusions than would be reached by specialists in any single field including specialists in the military field. On many occasions, fully known to the Founders of this country, jurors—plain people—have manfully stood up in defense of liberty against the importunities of judges and despite prevailing hysteria and prejudices. The acquittal of William Penn is an illustrious example. Unfortunately, instances could also be cited where jurors have themselves betrayed the cause of justice by verdicts based on prejudice or pressures. In such circumstances independent trial judges and independent appellate judges have a most important place under our constitutional plan since they have power to set aside convictions.

—BLACK, Hugo L., in *Toth* v. *Quarles,* 350 U.S. 11, 18–19 (1955).

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Few would be so narrow or provincial as to maintain that a fair and enlightened system of justice would be impossible without them.

—CARDOZO, Benjamin N., in *Palko* v. *Connecticut,* 302 U.S. 319, 325 (1937).

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A jury verdict is a quotient of the prejudices of twelve people.

—GRUBB, Kenneth P., "False Fears", Volume 26 *Insurance Counsel Journal* (No. 4, October, 1959), p. 480.

° ° °

JUSTICE

Justice is indiscriminately due to all, without regard to numbers, wealth, or rank.

—JAY, John, *Georgia* v. *Brailsford,* 3 U.S. (3 Dall.) 483, 484 (1794).

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. . . "justice turned bottom side up."

—JACKSON, Robert H., in *Anti-Fascist Committee* v. *McGrath,* 341 U.S. 123, 186 (1951).

° ° °

Justice, sir, is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together. Wherever her temple stands, and so long as it is duly honored, there is a foundation for social security, general happiness, and the improvement, and

progress of our race. And whoever labors on this edifice, with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures, or contributes to raise its august dome still higher in the skies, connects himself in name, and fame, and character, with that which is and must be as durable as the frame of human society.

—WEBSTER, Daniel, in *Life and Letters of Joseph Story* (William W. Story, ed., Boston: Charles C. Little and James Brown, 1851), Volume II, p. 624.

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The most odious of all oppressions are those which mask as justice.

—JACKSON, Robert H., in *Krulewitch* v. *United States,* 336 U.S. 440, 458 (1949).

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Justice, I think, is the tolerable accommodation of the conflicting interests of society, and I don't believe there is any royal road to attain such accommodations concretely.

—HAND, Learned, *Life Magazine,* Nov. 4, 1946, pp. 122–25.

° ° °

But justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true.

—CARDOZO, Benjamin N. in *Snyder* v. *Commonwealth of Massachusetts,* 291 U.S. 97, 122 (1934).

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. . . a long line of cases shows that it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. . . . Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice.

—HEWART, Lord, *Rex* v. *Sussex Justices* [1924], 1 K.B. 256, 259.

° ° °

. . . so venerable, so majestic is this living temple of justice, this immemorial yet ever freshly growing fabric of our common law, that the least of us is proud who may point to so much as one stone thereof and say the work of my hands is here.

—POUND, Roscoe, "Award to Dean Pound," 26 A.B.A.J., 800, 801 (1940).

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KNOX, Philander Chase (1853–1921), *US lawyer and political leader. He was attorney general (1901–04) and secretary of state (1909–13).*

1 In 1903 Theodore Roosevelt acquired the Panama Canal Zone. Though proud of his achievement, he knew that not all citizens approved of it. Philander Knox, his attorney general, was a corporation lawyer, and it was to him that Roosevelt went for a defense of his action. Knox is said to have replied, "Oh, Mr. President, do not let so great an achievement suffer from any taint of legality."

KNOX, Ronald (1888–1957), *British Roman Catholic priest and author. A convert to Catholicism at the age of twenty-nine, he became Roman Catholic chaplain at Oxford University in 1926. He is best known for his modern translation of the Vulgate, his books relating the history of his conversion (such as* A Spiritual Aeneid, *1918), and his detective stories.*

As a boy of four, Knox suffered quite seriously from insomnia. Asked by a friend of the family how he managed to occupy himself during his sleepless nights, he answered, "I lie awake and think about the past."

Compare ALDOUS HUXLEY 1.

2 (Knox taught for seven years at St. Edmund's College, a Roman Catholic boys' school in Hertfordshire. He did not receive a very promising impression of the place on his first visit in February 1918.)

"He was taken for a walk by one of the priests on the staff, and as they went down the avenue of bare chestnuts, his companion felt moved to remark: 'Come on ye buds, bust. There's a fine line for a *Punch* poem.'

"Ronald appeared to be a little depressed by this sally. They walked for an hour through dismal lanes and footpaths, talking of general matters. Ronald seemed preoccupied. At length they returned in chill twilight up the avenue. Ronald then said: 'Come on ye buds, bust./ You really must/ And show this unfortunate newcomer/ How beautiful this place can be in summer.' "

3 (While Knox was teaching Latin at St. Edmund's, there was an official inspection of the school by representatives of an examining board.)

"One of the inspectors proved to be his old friend Mr. Thomas Higham of Trinity. The meeting was a complete surprise to both of them. Ronald was taking his form in *Aeneid.* He gave no sign of recognition, but quietly said: 'Pay no attention to this gentleman. He's stone deaf.' Mr. Higham played up, sat blankly cupping his hand on his ear while a boy construed, then rose, said, 'I have not been able to hear anything you have said, but I perceive by the intelligent look on your faces that you have fully mastered the text,' and left them."

4 Knox was engaged in a theological discussion with scientist John Scott Haldane. "In a universe containing millions of planets," reasoned Haldane, "is it not inevitable that life should appear on at least one of them?"

"Sir," replied Knox, "if Scotland Yard found a body in your cabin trunk, would you tell them: 'There are millions of trunks in the world—surely one of them must contain a body?' I think they would still want to know who put it there."

5 Traveling by train from Oxford to London one morning, Knox opened his copy of *The Times* and turned straight to the crossword puzzle, reputed to be the most difficult in the world. One of his fellow passengers, noticing that the priest had been staring at the puzzle for several minutes without filling in any of the answers, offered to lend him a pencil. "No, thanks," replied Knox, looking up with a smile. "Just finished."

6 (Watched over by devoted friends, Knox died of cancer of the liver.)

"For three days he lay in a coma, but once Lady Eldon saw a stir of consciousness and asked whether he would like her to read to him from his own [translation of the] New Testament. He answered very faintly, but distinctly: 'No,' and then after a long pause in which he seemed to have lapsed again into unconsciousness, there came from the deathbed, just audibly, in the idiom of his youth: 'Awfully jolly of you to suggest it, though.'

"They were his last words."

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the President and heads of departments, it is noteworthy that the Attorney General assumed thereby a role touching the policy-making functions of government only where legal opinions given executive officers might influence policy decisions.

Moreover, the law, in effect, perpetuated the colonial system of county attorneys and of deputy attorneys general by providing, in addition to the Attorney General, additional district attorneys for the United States in the lower courts to prosecute "all delinquents for crimes and offenses cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned." This provision meant that the real law enforcement power rested in lesser officials over whom the Attorney General, in theory the government's top lawyer, had virtually no control.

Although the act of 1789 did not assign to the Attorney General the obligation to act as lawyer for the legislative branch, Congress for some years looked upon the Attorney General as its *de facto* counsel. Feeling their way through the law-making process, and not always sure that the legislation they were considering was legal or constitutional in form or purpose, the legislators asked the Attorney General for his opinion upon all manner of bills and procedures, particularly in regard to their constitutionality. There were many skilled lawyers in the Senate and House who had participated in drafting the Constitution, but they continued to seek the advice of the Attorney General even while exercising the prerogative of disagreeing with his opinions. Over the first thirty years of the Office of Attorney General's existence, requests from Capitol Hill for advice became so numerous that they constituted a large part of the Attorney General's regular work. Incumbents found this situation irksome, but none did anything definite about it until 1819, when William Wirt, the ninth Attorney General, put a stop to it.

Years of Frugality

Having created the Office of Attorney General and an embryonic system of law enforcement, Congress proceeded for most of the next 100 years to practice frugality, if not parsimony, in the matter of funds. At first, the salary of the Attorney General was fixed at $1,500 per year, and he was given no funds for office rent, clerk hire, stationery, postage, candles, oil for his lamps, or coal for his stove. Any expenses involved in the operation of the office were paid for out of his own pocket. Requests for salary increases, office help, and office facilities were transmitted from one Attorney General after another to Congress by Presidents, but the legislature was slow to respond. Reasons of economy probably predominated. However, the fear of strengthening sinews that might be flexed to menace states' and individuals' rights and liberties was often reflected in Congressional debates. A less than lavish increase in salary to $1,900 was granted in 1791, and a more substantial advance to $3,000 was forthcoming in 1799. Still, there was no appropriation for clerk or contingent expenses. Congress loosened the purse strings a little more in 1819, when the salary was raised to $3,500, with an allowance of $1,000 for a clerk and a contingent fund of $500 for stationery, stamps, fuel, and "a boy to attend to menial duties." The office ran on that basis for more than ten years, until, in 1831, the salary became $4,000, with $500 for contingencies, $733 for an office, and $500 for books—the first appropriation for what was to become, eventually, a splendid library. In 1840 and again in 1850, Congress appropriated more money for law books. And, in 1850, at the same time the salary of the Attorney General was increased to $6,000, Congress also granted an additional clerk. Even so, after sixty years' existence, the nation's chief law office still had a staff of only four—the Attorney General, two clerks, and a

messenger. When Caleb Cushing became Attorney General in 1853, he found the work of the office so far behind that he appealed to President Franklin Pierce for help and received Presidential authorization to employ three temporary clerks. Soon afterward, Congress authorized four permanent clerks, and record-keeping finally became current and efficient.

Although Presidents and Attorneys General had often recommended legal assistants for the office, Congress did not adopt any such recommendations until Jeremiah S. Black became Attorney General, succeeding Cushing. Black was deluged with California land cases and other litigation. In 1858, heeding his pleas for help, Congress authorized two legal assistants. The Office of Attorney General finally became more than a one-man job as far as the exercise of its legal functions was concerned.

By 1861, the U.S. Government had four chief law officers. They were the Attorney General, an assistant attorney general, the solicitor of the Court of Claims, and the solicitor of the Treasury Department. At that, the solicitors were not under direct control of the Attorney General—although he was obligated to handle much of the litigation that arose out of their offices. Business grew so heavy while the authorized staff stayed so small that it became necessary to employ outside counsels to represent the U.S. Government, and, between 1861 and 1867, fees of these outside counselors cost $475,190. When Congress took note of what seemed such large expenditures to handle the nation's law business, it appointed the Joint Committee on Retrenchments to study the situation. Out of this study came a resolution by Representative William Lawrence of Ohio to consolidate all law offices in one department. Although not new, this proposal strongly appealed to those congressmen interested in governmental economy. However, the appeal was not strong enough to procure passage of the resolution, and it was not until several years later that the basic proposal was enacted into law.

From the beginning, Presidents were aware that the low salary paid the Attorney General made it difficult to attract high-grade men to the office. They baited the hook with the lure of remunerative private practice. George Washington was the first to make use of that enticement.

President Washington wanted Edmund Randolph, who had been his aide in the Revolutionary War and was his personal attorney, as the first Attorney General. Randolph was burdened with heavy financial obligations and was reluctant to accept, but Washington pointed out that the office would "confer pre-eminence" upon the incumbent and accord him a "decided preference of professional employment." Randolph took the bait and the job. During his tenure, he substantially augmented his income by representing private clients. Twenty-two of his successors followed his example, some of them appearing as counsel in the most noted cases of their times. Caleb Cushing was the first to abandon private practice and devote all of his time to the government's legal business.

Cushing was also the first Attorney General to reside full time in the national capital. There was no requirement that the Attorney General live at the seat of government but only that he be present while the Supreme Court was in session. That gave incumbents ample time to devote to personal affairs and private law offices. Wirt, for instance, maintained an office in Baltimore during his entire incumbency and William Pinckney, President Madison's Attorney General, threatened to resign when the President proposed in 1814 that a law be passed requiring the Attorney General to "keep his office at the seat of government during the session of Congress." The law was not passed, but when Pinckney resigned for other reasons, Madison extracted a pledge from Richard Rush, his successor, to live in the capital at least while Congress was sitting. Between Rush and Cushing there were fourteen incumbents who lived in Washington only part of the time.

As has been related, the jurisdiction and duties of the Attorney General were sketchily defined in the Judiciary Act of 1789. One of the earliest legislative measures to increase the duties of the office was to put Randolph on the Patent Board with the secretaries of State and War, and that action was followed by making him a member of the Sinking Fund Commission. As the years went on, Congress and custom added piecemeal to the Attorney General's responsibilities and tasks, such as prosecuting and defending all suits in the Court of Claims in which the United States was involved and inquiring into the status of all funds held in trust by the United States for Indian tribes. The chores given the Attorney General were increasingly numerous and varied, but Congress steadfastly continued to withhold approval of proposals to give him control over all the government's legal business.

As early as Randolph's day, thoughts of some officials and legislators turned toward making the Office of Attorney General into a unified law office, the head of which would have control of all officers and activities concerned with the administration of justice. Indeed, that was one of the proposals made by Randolph when he was asked to suggest improvements in the 1789 Judiciary Act, and President Washington included it in the proposals to amend the Act that he sent to Congress. But no action was taken.

Proposals for a Department of Law

The first proposal to create a department of law was sent to Congress by President Andrew Jackson with his annual message of 1829. In 1820, Congress had provided that the President designate an official of the Treasury Department to direct proceedings to recover money or property due the United States. The district attorneys were to take orders from that official. By 1828, the Treasury was supervising more

than 3,000 lawsuits. Jackson thought the Treasury was not doing the job very well and that it should not be the Treasury's job, anyway. He therefore recommended that these duties be transferred to the Attorney General, at the same time asking that all criminal proceedings involving violations of federal law, which were then conducted by the district attorneys over whom the Attorney General exercised little or no control, be placed under supervision of the nation's chief law officer.

The Senate Judiciary Committee brought in a bill embodying the main points of President Jackson's proposals, but Daniel Webster, then one of the most powerful men in the Senate and hence in the nation, said that to place these functions in the Office of Attorney General would be to make the Attorney General a fractional monstrosity "a half accountant, a half lawyer, a half clerk, a half everything and not much of anything." As a substitute, Webster, still reflecting earlier fears of a strong law enforcement agency, proposed a home department to handle the Patent Office, certain functions of the Treasury, and other items of the Jackson program. A compromise was worked out, which created a solicitor of the Treasury who would advise with the Attorney General but who would instruct the district attorneys, marshals, and clerks of the lower courts in all matters and proceedings in which the United States was concerned. President Jackson renewed his proposals in a second message, saying that it would be in the public interest to give the Attorney General superintendence over the law officers and legal interests of the government. Congress ignored the message.

In 1845, President James K. Polk recommended creation of a law department. Congress tabled his proposals.

By 1851, the Department of Interior had been established, and Alexander H. H. Stuart was Secretary. Convinced that his department was performing duties that properly belonged in the hands of the Attorney General, Stuart was next

to suggest the formal creation of a department that would perform all law enforcement functions and conduct all legal business of the government. Again, there was no legislative action.

Three years later, the Committee on Retrenchment and Reform, brought in its bill to establish a department of law. The measure was debated, but no action was taken. From then on, however, legislative skirmishing continued, and, at various times, Congress took steps that pointed toward eventual creation of a unified legal department. It acceded to requests of several departments to establish their own legal sections and created the solicitor and naval judge advocate general, the solicitor for the War Department, Post Office solicitor, solicitor for the State Department, an assistant solicitor for the Treasury, and a solicitor of Internal Revenue. As each of these proposals came before it, Congress was told that it would be impossible for the Attorney General to perform legal work for the entire government and that unless these offices were created, the department would have to resort to the expensive device of employing special counsel. Senator Lyman Trumbull, of Illinois, opposed these measures, stating that he did not believe it was "in harmony with the organization of our system of government to have an Attorney General's office" in each department of government. If that were to be done, he asserted, "we might as well abolish the Attorney General's Department." He contended that the Attorney General's office should be an independent department that would construe the laws for all departments, secure uniformity of administration, and eliminate "difficulty, expense and uncertainty."

Congressional interest in the establishment of a coordinated agency for administration and enforcement of federal laws was building up. In 1867, Attorney General Henry Stanbery, asked for his opinion as to what might be done to bring about a more efficient and economical operation of the

deral legal machinery, advised that it would be to the adntage of public service if the various law officers attached other departments were transferred to the Office of Attorey General, "so that it may be made the Law Department of e Government, and thereby secure uniformity of decision, superintendence, and of official responsibility." In both e Senate and House, appropriate committees kept the subct under advisement and, after three-quarters of a century, e legislative processes were moving toward definite action establish that which the founders had feared—a centraled agency to administer a growing body of federal law.

During these years before the establishment of the Departent of Justice, twenty-nine men occupied the Office of Atrney General (one man served twice, under different Presients, so that there were thirty appointments in all). The art played by one Attorney General after another in the ffairs of the nation before and through the Civil War is evealed in the biographies of some of the outstanding men ho filled the post during the first eighty-one years.

UTSTANDING ATTORNEYS GENERAL, 1789–1870

Edmund Randolph, who reluctantly accepted appointent as the first Attorney General, came to the post with a istinguished record of public service. He had been an aide-e-camp to General Washington, a member of the Continenal Congress, the state of Virginia's first attorney general an office he assumed in 1776 at the age of twenty-three, and, ke his father in the colony of Virginia, held for ten years), nd governor of Virginia. As a member of the Virginia Conention of 1776, which advised the Continental Congress to eclare independence, he had presented to the Constitutional Convention the Virginia Plan, a formula for a federal nion that he had helped George Mason draft.

Two issues were paramount in Washington's Administra-

tion. One was the maintenance of neutrality in wars between other nations; the other, the advisability of creating a national bank. Attorney General Randolph advised Washington to proclaim a national policy of neutrality, and, in collaboration with Chief Justice John Jay, drew up a proclamation that, when issued by Washington, became the policy of neutrality to which the United States adhered for more than a century. Although he was on the side of Alexander Hamilton in favoring a strong federal government, Randolph was apprehensive that Hamilton's pet project, a national bank, would vitiate the system of checks and balances that was a peculiar virtue of the federal government. So, as a matter of policy, but also of constitutional interpretation, he advised Washington that Congress lacked constitutional power to incorporate a bank. (Thomas Jefferson, then Secretary of State, was also opposed to the bank proposal but, when Congress passed the law incorporating it, Jefferson advised Washington to sign the bill unless he was clearly convinced it was unconstitutional. Washington signed it, and thereafter the bank was a controversial issue in American politics until President Andrew Jackson killed it.)

After he had been Attorney General two years and had formulated his ideas on what the functions of the office should be and how it should operate, Randolph submitted to President Washington three basic recommendations. They were that the Attorney General be authorized to represent the federal government in lower courts as well as the Supreme Court, be given control of the U.S. district attorneys, and be authorized to hire a clerk. Washington transmitted these suggestions, and others, to Congress but no action was taken at that time.

Randolph was appointed Secretary of State in December, 1793, when Jefferson left that office. William Bradford, of Pennsylvania, was then appointed Attorney General. Bradford served only four months.

Charles Lee, the third Attorney General, would have scuttled the young nation's neutrality policy, but Washington did not follow his advice. Controversies had arisen between France, which was at war with England, and the new American Government, and Charles Maurice de Talleyrand suggested that matters might be adjusted more readily if the United States contributed $250,000 to the French treasury. Lee, a fiery Virginian, was outraged. He proposed a declaration of war, an embargo on French shipping, revocation of the exequaturs of French consuls, the opening of American ports to British privateers, and the arming of American merchant ships. Owing to Washington's prudence and policies, Lee's *de jure* war never became *de facto* and ended when, in 1800, a treaty of peace and friendship was negotiated with France. Lee continued to serve as Attorney General under John Adams until 1801, when he was succeeded by Levi Lincoln, of Massachusetts, a Jefferson appointee who held the post until 1805.

Jefferson also appointed the fifth occupant of the office, John Breckenridge, of Kentucky, who served a little over a year, and the sixth, Caesar Rodney, of Delaware.

Rodney did not have a distinguished record as Attorney General, but, in other capacities, stamped his name firmly on the annals of his times. During the first two years he served in Congress as a representative from Delaware, he was one of the House managers in the impeachment trials of Judge John J. Pickering, of the U.S. District Court for New Hampshire, and Associate Justice Samuel Chase, the only Supreme Court Justice ever tried on a bill of impeachment. A dozen years later Rodney was again elected to Congress on a platform opposing extension of slavery into the territories. After serving a year of that term, he was elected by the Delaware legislature to fill a vacancy in the U.S. Senate, and, a year later, left the Senate to become minister to Argentina. Rodney already had served as a member of a commission

appointed by President James Monroe to survey the political situation of South American republics, and the commission's report was a factor in the subsequent enunciation of the Monroe Doctrine.

William Pinckney, of Maryland, who followed Rodney as the seventh Attorney General, was one of the most eloquent men of his time. He never wrote his speeches but could pour forth classical oratory whether arguing in the Supreme Court or debating in the Senate. Arguing in the high court in the case of the *Nereide,* involving neutrality violations during the War of 1812, Pinckney scorned the contentions of his opponents and declaimed:

> Can a neutral surround himself "with all the pomp and circumstance of war?" The idea of our opponents exhibits a discordia rerum—an incongruous mixture of discordant attributes; a centaur-like figure—half man, half ship, a phantasmic form, bearing in one hand the spear of Achilles, in the other the olive branch of Minerva; the frown of defiance on her brow, and the smile of conciliation on her lip, entwining the olive branch of peace around the thunderbolt of Jupiter, and hurling it, thus disguised, indiscriminately at friends and foes.

Chief Justice John Marshall praised Pinckney's skill in painting a portrait "exhibiting this vessel and her freighter as forming a single figure, composed of the most discordant materials of peace and war," but said it "required the exercise of that cold investigating faculty which ought always to belong to those who sit on this bench to discover its only imperfection; its want of resemblance." Nonetheless, Marshall called him "the greatest man I have ever seen in a court of justice."

Not as Attorney General but in private practice, Pinckney was a busy lawyer before the Supreme Court, appearing as counsel in seventy-two cases. Elected to the Senate in December, 1819, he remained a Senator until his death in February,

1822, and was known as a foremost interpreter of the Constitution.

Richard Rush, son of Benjamin Rush, the famous physician, and himself a man who was to play an important part in American history as a diplomat, was the eighth Attorney General. The Pennsylvanian's principal contribution in that office was to edit the *Laws of the United States* covering the years 1789 to 1815, published in five volumes as the Bioren and Duance Edition, Philadelphia, 1815.

William Wirt, of Virginia, who followed Rush, held the Office of Attorney General from November 13, 1817, to March 3, 1829—more than eleven years. No other incumbent has served in the post that long. During his tenure, he did more to increase its prestige and define its functions and authority than any of his predecessors.

The day Wirt took office he sought the records of those predecessors; he was astounded to find there weren't any. On the fly-leaf of the earliest record book of the Office of Attorney General this inscription appears in Wirt's handwriting:

> Attorney General's Office,
> 13, Novr. 1817.
>
> Finding on my appointment, this day, no book, document or papers of any kind to inform me of what has been done by any one of my predecessors, since the establishment of the Federal Government, and feeling strongly the inconvenience, both to the nation and myself, from this omission, I have determined to remedy it, so far as depends upon myself, and to keep a regular record of every official opinion I shall give while I hold this office, for the use of my successor.
>
> To make the arrangements as perfect as I can I have prevailed upon the heads of Departments to furnish me with copies of all documents on which I shall be consulted and which will be found, filed and numbered, to correspond with the numbers in the margin prefixed to each opinion. A copius index to this

book is also given, with reference, under various heads, to each case for greater facility in using this book.

Wm. Wirt.

Wirt's hand-kept records became the nucleus of a vast system that now makes use of every modern mechanical device to preserve official documents and correspondence.

Wirt, a Latin scholar, when traveling carried a pocket edition of Horace. He was also an author and his *Sketches of the Life and Character of Patrick Henry* was published in 1817, shortly before he became Attorney General. In private practice, Wirt participated in several of the most famous trials of his day. In the treason trial of Aaron Burr, he was counsel for the government. With Daniel Webster and William Pinckney, he was on the winning side in *McCulloch* v. *Maryland* in which the Supreme Court upheld the power of Congress to charter a national bank; in *Trustees of Dartmouth College* v. *Woodward,* in which the issue was whether the legislature of New Hampshire could change the name to Dartmouth University and alter its charter, he represented the legislature and Webster the college. Webster won.

Wirt's most important contribution as Attorney General was to construe the law under which the office was established and relate his activities to the statute. Two months after he took office, he sent to President Monroe a historic letter, now in the Archives of the United States, in which he defined the duties of the Attorney General and his obligations to other branches of the government. The gist of what he called "republican orthodoxy", was that in a government of laws it was important that "the influence of every office should be confined within the strict limits prescribed for it by law." Since the Judiciary Act of 1789 required that the Attorney General should "give his advice and opinion upon questions of law when required by the President of the United States, or when requested by the heads of any of the

departments, touching upon any matters that may concern their departments," Wirt decided to operate within the confines of that law. Thus, he ceased giving opinions to Congress and restricted opinion to heads of departments strictly to matters of law, becoming the first Attorney General to lay down a policy his successors, with few deviations, have followed.

Although he restricted his opinion-giving function, Wirt wrote plenty of opinions. They filled 500 pages of the first volume of *Official Opinions of the Attorney General;* none of his predecessors had more than eight pages in the 1,471-page volume. Wirt's opinions ranged over a wide field of subjects: for example, he advised the Secretary of the Navy on methods of distributing prize money from the Lake Erie victory in the War of 1812, gave opinions to President Monroe and his cabinet on questions of neutrality arising from revolutions against Portuguese and Spanish rule in Latin America, and dealt with the vexing problem of the sale of public lands to private companies and the litigation that arose out of it.

As the 1828 elections approached and it became evident that Andrew Jackson would be the next President, the question arose whether Cabinet officers were required to resign. Monroe believed that all should resign except the Attorney General. He wrote to Wirt: "Your duties are different. The President has less connection with them, and less responsibility for them." However, Wirt resigned, and the only record of his participation in politics thereafter was his nomination, in 1832, as the Anti-Masonic Party's candidate for President. He received Vermont's electoral vote.

Roger Brooke Taney, the eleventh Attorney General, was involved in events that shaped the United States, but not especially as Attorney General. His most important participation was as Secretary of the Treasury and as Chief Justice of the United States. As Attorney General, however, he sup-

ported President Jackson, implacable foe of the Bank of the United States, and drafted Jackson's veto message of the bill to recharter it. In the message, Taney disagreed with the argument that the Supreme Court's ruling in *McCulloch* v. *Maryland* settled the question of constitutionality of the bank and said that the authority of the Court must not be permitted "to control the Congress or the Executive when acting in their legislative capacities, but only have such influence as the force of their reasoning may deserve."

On January 15, 1835, Jackson sent to the Senate the nomination of Taney for associate justice of the Supreme Court. The Senate, still angry over Taney's position on the bank bill, refused confirmation. Later that year, however, an election removed enough of the Jackson-Taney foes so that when, on December 28, 1835, the President nominated Taney to be Chief Justice succeeding John Marshall, the nomination was confirmed. Taney remained Chief Justice until 1864.

The nine men who followed Taney in the Office of Attorney General were, in many cases, very distinguished—but more for their activities before or after they took the post, or for their private activities while occupying the office, than for what they contributed in the position. (Their names, along with those of all the Attorneys General from 1799–1967 are listed in Appendix II.)

John Jordan Crittenden, of Kentucky, served both as fifteenth and twenty-second Attorney General. During his second term, he advised President Millard Fillmore that a revised Fugitive Slave Act did not conflict with the constitutional guarantee of habeas corpus.

The twenty-first Attorney General, Reverdy Johnson, of Maryland, was one of the most unusual men to occupy the office. His services as Attorney General were not noteworthy, but his other activities during a national career stamped him as a foremost lawyer, diplomat, and citizen. His national career began in 1845 when Maryland sent him to the United

States Senate. He left the Senate in 1849 to become Attorney General and resigned in 1850 upon the death of President Zachary Taylor. As an attorney, Johnson took part in many cases involving constitutional issues. One was the Dred Scott case in which he was of counsel for the defense. He was a Southern sympathizer, but regarded secession as treason. As a member of the Maryland House of Delegates, he worked hard to keep his state from withdrawing from the Union. And, during the Civil War, he approved Lincoln's suspension of habeas corpus, although it applied most rigidly to his fellow Marylanders. After he left public office, he defended many Southerners charged with disloyalty to the Union and was attorney for several defendants in the Ku Klux Klan trials in South Carolina.

In 1863, Crittenden (serving his second term) was succeeded by Caleb Cushing, of Massachusetts. In Essex County, Cushing had grown up at home in a distinguished company that included Rufus Choate, Nathaniel Hawthorne, William Lloyd Garrison, and John Greenleaf Whittier. His legal education consisted of a year at Harvard Law School and intermittent study in the office of a Newburyport attorney. He was admitted to the Massachusetts bar in 1821, and his political career began in 1834 with his election to Congress. He served four consecutive terms until 1843, when he was appointed United States Commissioner to China by President John Tyler. When President James K. Polk declared war on Mexico on May 13, 1846, Cushing, an enthusiastic supporter of the conflict, spent $12,000 to raise and equip a regiment, of which he was named colonel. Before the war ended, in 1848, he had risen to the rank of brigadier general. Five years later, in March, 1853, he became Attorney General and an outstanding figure in the Cabinet of President Franklin Pierce.

Ambitious and versatile, Cushing reached out for new duties and was never appalled by an avalanche of work. He was careful to confine his official activities to the administration

of justice, but he brought into the Office of Attorney General functions that had been performed by other government agencies, such as the accounts of the federal judiciary, which had been kept in the Department of Interior, and the issuance of commissions to law officers, which had been done by the Department of State. He also took over from the State Department (where they had been dealt with since George Washington's Administration) the handling of pardons and petitions for executive clemency.

Cushing sent President Pierce two reports in which he outlined his conception of the duties of the Attorney General and suggested modification and enlargement of the entire judicial system. Cushing believed that his office should conduct the legal business of the United States and, to that end, recommended that the Attorney General have charge of all litigation in the lower courts that involved the interests of the federal government. His chief recommendation for the judiciary was that the system be enlarged by the establishment of intermediate courts of appeal. President Pierce sent these reports to Congress. But, sixty-five years after the passage of the Judiciary Act, the legislators were still reluctant to expand the authority of the Attorney General and did not act upon them.

Cushing was called upon to give more official opinions than any of his predecessors. His judgments filled three volumes of the early *Opinions of the Attorney General.*

The dark cloud of secession was looming on the national horizon when Jeremiah Sullivan Black, of Pennsylvania, became the twenty-fourth Attorney General, and his most significant opinion advised President James Buchanan on his powers to deal with states threatening to withdraw from the Union. Black told Buchanan that, in their respective spheres, the federal and state governments were supreme, and each was powerless to go beyond the limits set by the Constitution. He advised that if a state should declare its independence, the President could not recognize that independence or absolve the state from its federal obligations. The Constitution, Black declared, did not give the federal government power to make war on a state, and to attempt to do so would amount to expulsion from the Union, but the federal government might lawfully repel direct aggression on its property. It might not, Black asserted, carry on an offensive war to punish the people of a state for the political misdeeds of their government.

Foes called Black the author of "Buchanan's secessionist doctrine," and when Buchanan nominated him to be an associate justice of the Supreme Court, the Senate rejected him. Following his term as Attorney General, Black resumed the practice of law in York, Pennsylvania.

The term of Edwin McMasters Stanton, of Ohio, who followed Black, lasted only seventy-two days—the shortest of any incumbent before or since. He was appointed December 20, 1860 by President Buchanan and resigned March 3, 1861, when Lincoln became President. Lincoln named him Secretary of War, and he filled that post during the Civil War and into the Administration of Andrew Johnson.

Edward Bates, of Missouri, was a candidate for President in the convention that nominated Lincoln. Lincoln appointed him Attorney General, and he remained in that office until November 24, 1864. Bates, a Virginian by birth, and anxious to avoid war with the South, advised Lincoln not to send provisions to Fort Sumter because he believed that to do so would make war inevitable. He thought the South could be subjugated by closing its ports.

During the war, Marylanders rioted to prevent the passage of Union troops through Baltimore. Many were arrested and held in military custody. When Chief Justice Taney issued writs of habeas corpus, Lincoln refused to honor them. On the advice of Attorney General Bates, who told him his power arose out of his obligation to suppress

insurrection, Lincoln suspended habeas corpus, and Congress upheld the suspension as a wartime measure. Bates consistently opposed extension of military jurisdiction into fields of civilian authority. He gave Secretary of State William H. Seward an opinion that freemen of color, if born in the United States, were citizens—something of a modification of the Dred Scott doctrine.

James Speed of Kentucky, followed Bates and held over, after the assassination of Lincoln, into the Administration of Andrew Johnson. He wrote many opinions, including the shortest on record—twenty-eight words—relating to the trial of Lincoln's assassins. It read:

> SIR: I am of the opinion that the persons charged with the murder of the President of the United States can rightfully be tried by a military court.

Speed also gave an opinion that the treason trial of Jefferson Davis, President of the Confederate States, must be in civilian courts. (Davis was indicted but not tried and, on Christmas Day, 1868, President Buchanan pardoned him and all who had participated in the Confederacy.)

Henry Stanbery, of Ohio, the twenty-eighth Attorney General, resigned to become an attorney for President Johnson in his impeachment trial. After the trial, Johnson sought to reappoint him, but the Senate rejected the nomination. The Senate also refused confirmation when the President nominated him as an associate justice of the Supreme Court.

William M. Evarts, of New York, one of the most distinguished lawyers of his day, had a brief tenure as Attorney General unmarked by any distinctive accomplishments. He was succeeded by Ebenezer Rockwood Hoar, of Massachusetts, the last man to hold the office of Attorney General before it became the Department of Justice.

Hoar was another who failed of confirmation when President Grant named him to the Supreme Court, largely because

he insisted that a number of new federal judgeships be filled on the basis of character and fitness, not for political reasons, thereby earning the enmity of patronage-minded Senators.

"A PREPONDERANCE OF LAWYERS"

Gideon Welles, Secretary of the Navy in the Cabinet of President Andrew Johnson, so acutely disliked William M. Evarts, the New York lawyer who was Attorney General for eight months from July, 1868, to March, 1869, that he believed lawyers in government generally were a nuisance.

"It is unfortunate for the country," Welles wrote in his diary, "that there is such a preponderance of lawyers in our public councils. Their technical training and extensive, absorbing practice unfit them to be statesmen."

The record shows this to have been an unfair judgment, not only of Evarts, but of thousands of disciples of the law who have served their government with honor and distinction. Although his tenure as Attorney General was brief, Evarts was Secretary of State for four years, counsel in the Geneva arbitration case of 1871–72, a delegate to the Paris Monetary Conference in 1885, and a U.S. Senator, elected in 1891. As a lawyer, he was principal counsel for President Johnson in his impeachment trial, a government attorney in the treason trial of Jefferson Davis, and chief counsel for the Republican Party in the Hayes-Tilden Presidential election dispute. All told, he was one of the most distinguished men of the nineteenth century.

In a government of laws, it is logical that lawyers should participate in enacting, administering, and interpreting the laws. (Today, roughly two-thirds of the members of the U.S. Senate and many members of the House are lawyers, and lawyers predominate, as a rule, in Cabinet posts and administrative agencies.)

Appointment to the Supreme Court is, of course, the high-

arrested. Palmer was both praised and denounced for those raids and other anti-Radical activities, but he was a pioneer in enforcement of laws pertaining to internal security.

Expanding Responsibilities, 1924–45

Gradually, as the Department of Justice itself evolved, the duties of the Attorney General multiplied. Some of the achievements of a sampling of men who held the post in the 1920's and 1930's reflect certain of the changes.

Thus, Harlan Stone, later to become Chief Justice of the United States, during his period as Attorney General (a position to which the distinguished New York lawyer and dean of Columbia Law School had been appointed by Calvin Coolidge) reorganized the Federal Bureau of Investigation and chose J. Edgar Hoover to head it.

William DeWitt Mitchell of Minnesota, who was solicitor general in the Coolidge Administration and was elevated to the Attorney Generalship by President Herbert Hoover, followed Wirt's historic precept by refusing to give the Senate an opinion regarding proposed railroad mergers, but he advised the President that proposed legislation authorizing Congress to make final decision on tax refunds of more than $20,000 would be an unconstitutional transfer to the legislative branch of a function of the executive branch. Enforcement of Prohibition was a burdensome duty of Mitchell's term and reorganization of the federal prison system one of his accomplishments.

Homer Stillé Cummings, of Connecticut, the fifty-fifth Attorney General, took office March 4, 1933, as Franklin D. Roosevelt became President. The nation was in economic distress, and repeal of Prohibition had brought new problems of law enforcement. Cummings was Roosevelt's legal adviser in the banking crisis and throughout the recovery program that changed traditional patterns of the country's economy

and brought a new era in labor relations. He argued successfully in the Supreme Court the so-called Gold Clause cases that absolved the government of obligation to redeem its securities in gold. Cummings proposed, and Congress enacted, a series of laws widening the federal government's power to combat the criminal elements that became bold when the dry laws were repealed. Cummings found the record-keeping operations of the Department in disarray, and he modernized the system Wirt had begun and brought it up to date.

Frank Murphy, of Michigan, who followed Cummings, was an energetic foe of official wrong-doing. He prosecuted corrupt political machines in Missouri and Louisiana and indicted U.S. District Judge Martin Manton in New York for "selling justice." During the year he served before President Roosevelt elevated him to the Supreme Court, Murphy set up a civil rights section, the first such unit in the Department of Justice.

Robert H. Jackson, of New York, who also went to the Supreme Court, served as general counsel of the Bureau of Internal Revenue, assistant attorney general in charge of the Tax and Antitrust Divisions, and solicitor general before becoming Attorney General. When he took office, the United States was moving toward deeper involvement in World War II; one of his most notable opinions was that President Roosevelt's deal with the British to exchange fifty over-age destroyers for offshore naval and air bases in the Atlantic did not exceed the President's constitutional powers.

Francis Biddle, of Pennsylvania, the fifty-eighth Attorney General and a direct descendant of Edmund Randolph, the first, was solicitor general and had won fifteen of the sixteen cases he argued in the Supreme Court when Roosevelt appointed him Attorney General. He was the wartime law enforcement officer and, immediately after Pearl Harbor, ordered the internment of aliens who were citizens of the Axis

powers. When eight Nazi saboteurs were captured and tried before a military commission in 1942, Biddle directed the prosecution and argued successfully in the Supreme Court in opposition to their petitions for habeas corpus. Six of the eight were executed, one sentenced to life imprisonment, and the other to thirty years.

From Clark to Clark, 1945–67

Thomas Campbell Clark, of Texas, followed Biddle. He had been coordinator of Alien Enemy Control of the Western Defense Command and chief of the Civilian Staff for Japanese Relocation in 1942, and, before becoming Attorney General, he had served as head, first of the Antitrust Division and then of the Criminal Division of the Department.

President Harry S. Truman appointed Tom Clark, as he prefers to be called, to the Supreme Court in August, 1949, and named a Senator from Rhode Island, J. Howard McGrath, to the post of Attorney General.

In the early days of the Truman Administration, there was much talk of scandal and corruption in Washington. Truman ordered a government-wide investigation under the supervision of the Department of Justice, but he brought in Newbold Morris, a silk-stocking New York lawyer, to conduct it. This action on the President's part outraged McGrath, a former solicitor general—especially when Morris announced that the Justice Department would be the first target of the investigation. Truman settled the ensuing and bitter McGrath-Morris feud by dismissing both men. Afterward, a House Judiciary subcommittee inquired into the operations of the Department and found some things to criticize, but produced no general condemnation of McGrath's official conduct.

Internal security, civil rights, and organized crime and racketeering were national problems when Herbert Brownell, Jr., became the sixty-second Attorney General.

Brownell, a Nebraskan turned New Yorker, instituted proceedings under the Internal Security Act of 1950 to compel the Communist Party to register with the Attorney General as a Soviet-dominated organization; added some 200 other groups classified as totalitarian, Fascist, or Communist to the list of organizations required to register as Communist fronts, and set up an Internal Security Division in the Department to prosecute violations of the internal security laws. After the school segregation cases were decided by the Supreme Court in 1954, the first lawsuits to implement those judgments were filed by Brownell. He also intensified the Department's drive on crime, and several notorious racketeers were sent to jail while he held office. Departmental antitrust policies were studied and redefined and a vigorous program of enforcement instituted during his incumbency.

William Pierce Rogers, Brownell's deputy attorney general succeeded to the top job when Brownell resigned in November, 1957. Under Attorney General Rogers, the Civil Rights Division was established in 1958, and suits to enforce provisions of the Civil Rights acts, especially those pertaining to voting rights, were instituted in Southern states. Rogers advised President Eisenhower about his constitutional authority to send troops to Little Rock, Arkansas, to enforce compliance with school desegregation orders of the federal courts and assigned an assistant attorney general to counsel troop commanders and civilian officials on the legal phases of the Little Rock operation. Rogers also strengthened the Organized Crime and Racketeering Section of the Criminal Division and directed investigation and prosecution of the overlords of crime, some of whom were aliens and subsequently deported. During Rogers' term, the FBI tracked down several spies—the most important being Rudolph Abel, a Soviet agent, who was convicted and given a thirty-year prison sentence. In the antitrust field, indictments were obtained against General Electric Company, Westing-

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Edmund Randolph—Trail Blazer

By JAMES S. EASBY-SMITH
Past President, Bar Association of the District of Columbia

Edmund Jennings Randolph, the first Attorney General of the United States, was an aristocrat in the best sense of that term. By ancestry and breeding, by mental and physical endowments, by intellectual accomplishments, by high character and purity of life and personal conduct, and by unfaltering moral courage, he was, as he deserved to be, a leader among men, particularly in his chosen profession.

The son of John and Ariana (Jennings) Randolph, both names being indicative of those strong strains of blood that have coursed through the veins of so many able Americans to this day, he was born at Williamsburg, Virginia, August 10, 1753. He came of a long line of distinguished lawyers both in England and Virginia, and grew to manhood while his father was the King's Attorney General for Virginia, his grandfather, Sir John Randolph, the only Virginian ever knighted, having held the same office. He was graduated from William and Mary College at the age of nineteen, then studied law and began practice in 1773. He was aide-de-camp to Washington in 1775 and the next year was the youngest member of the Virginia Convention of '76. The prominent part he there achieved led to his election, notwithstanding his youth, as Attorney General of Virginia and Mayor of Williamsburg. In 1779 he was elected a member of the Continental Congress but resigned because his duties as Attorney General required his presence at home; but was reelected and served till 1782 when he again resigned. In 1786 he was elected Governor of Virginia, and the same year was a delegate to the famous Annapolis Convention, the precursor of the Constitutional Convention of Philadelphia.

In 1787 while still governor he was elected a member of the Constitutional Convention where he was one of the most prominent members, taking a leading part in the discussions concerning the judiciary provisions of the Constitution and in the drafting of those provisions.

He was an intense federalist and was sharply accused of attempting to deprive the States of all their powers. Because

he did not approve some of its features he refused to sign the Constitution; but he strongly urged its ratification by Virginia, taking a course opposite to that of Patrick Henry who fought and voted against ratification by the Virginia Convention on account of his opposition to its taxing provisions and, principally, because of the failure of the Constitution to limit the tenure of President to a definite term or terms, arguing that this might lead to dictatorship.

When Randolph returned to Virginia he became a member of the Assembly where he was occupied, to the exclusion of almost everything else, in the preparation and codification of the laws of Virginia.

This, in brief, is a sketch of the man whom Washington urged to come into his cabinet as the first counsellor, the first adviser, to break "his way without assistance into a subject full of difficulty and replete with danger," to interpret and expound new and untried laws for a government which was then little more than an experiment.

Of course he was greatly aided by the logic of events; for he himself had drafted the judiciary features of the Constitution, and the Judiciary Act was founded on Virginia law. But that he performed his duties without a single mistake, that he wrote opinions and secured decisions in the Supreme Court which are today cited as the highest authority, and that he shaped, without precedent to guide him, the legal branch of the Government, are proof, if there were no other, that he was one of the many great lawyers that the English speaking peoples have produced. And that he performed these same duties with a loyalty to his country and to his chief that sacrificed ease and comfort and the opportunity of amassing wealth; that never shrank from supporting or opposing either Alexander Hamilton, his antithesis in origin and training but his equal in intellectual endowment, or Thomas Jefferson, his fellow Virginian but political antagonist, as he believed either the one or the other was right or wrong; that ignored personal abuse and quietly accepted an amendment to the Constitution which was aimed at him and nullified one of his greatest victories in the Supreme Court; that knew neither party reward nor the fear of popular clamor

—all this clearly shows him to have been one of the purest of the patriots who were raised up in defense of American liberty.

Randolph was commissioned Attorney General September 26, 1789, and entered upon the duties of the office February 2nd, 1790. In December of 1793 he retired from that office to succeed Jefferson as Secretary of State. He resigned this office August 19th, 1795, after he had lost the confidence of Washington as a result of a plot of certain other members of the cabinet to charge, without truth, and to attempt to prove, that he had engaged in an intrigue with the French Minister.

His service, both as Attorney General and as Secretary of State, was particularly brilliant. After returning to private life he practiced law until a short time before his death, September 12, 1813.

The most notable incident in his private career was his successful defense of Aaron Burr in the treason trial of 1807 wherein Randolph was opposed by William Wirt, one of his distinguished successors, who led for the prosecution.

So much for a brief life of Randolph. Now for a glimpse at the legal history of his time.

The first Congress of the United States met at New York on March 4th, 1789, and its first session continued to September 29th of the same year. This session was devoted entirely to the enactment of laws to provide the machinery for the permanent Federal Government contemplated by the Constitution; the most important of which were a tax law, a law for registering and clearing vessels and for regulating the coasting trade, the laws establishing the army and the executive departments, and the famous Judiciary Act. The Department of Foreign Affairs, with a Secretary of Foreign Affairs (which designations were changed by the Act of September 15th, of the same year, to Department of State and Secretary of State) was created by the Act of July 27th, 1789, the War Department with a Secretary of War by the Act of August 7th, and the Treasury Department with a Secretary by the Act of September 2nd.

The third Article of the Constitution provided that: "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish," etc. As early as

June 12th Richard Henry Lee reported a bill to carry into effect these constitutional provisions by establishing the judicial courts of the United States; but the bill was debated at such length that it did not finally pass both houses of the Congress and receive the President's approval until September 24th. This Act provided for a Supreme Court to consist of a Chief Justice and five Associate Justices; divided the United States into thirteen districts and three circuits; created the circuit and district courts and defined and prescribed their jurisdiction and procedure; provided for the appointment of United States district attorneys and marshals; and finally created the office of Attorney General and prescribed his duties in the following concluding paragraph:

> "And there shall also be appointed a meet person, learned in the law, to act as attorney-general for the United States, who shall be sworn or affirmed to a faithful execution of his office; whose duty it shall be to prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned, and to give his advice and opinion upon questions of law when required by the President of the United States, or when requested by the heads of any of the departments, touching any matter that may concern their departments, and shall receive such compensation for his services as shall by law be provided."

Thus was the office of Attorney General created and thus the duties of the office defined. Among the many defects of the law, which soon became apparent but were not remedied for many years, was the failure to give the Attorney General any control or supervision of district attorneys or of suits affecting the United States in the inferior courts. Nor was any sort of an establishment provided for the transaction of his business, either in the way of quarters or clerical assistance.

The office was the fourth cabinet office in the order of creation, the offices of Post-Master General, Secretary of the Navy, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce and Secretary of Labor being subsequently created in the order named. But not being at the head of a department until the creation of the Department of Justice in 1870 the Attorney General was ranked below all the other cabinet officers until his proper rank as fourth in the cabinet was restored by the Act of January 19th, 1886, which provides, in case of the removal, death, resignation or inability of both the Presi-

dent and Vice President, that the duties of the office of President shall be performed by one or the other of the cabinet officers in the order named in the Act.

The Congress had fixed the annual salaries of the heads of the departments as follows: State and Treasury $3500, War $3000; but by the Act of September 23rd, 1789, the salary of the Attorney General was fixed at $1500. The Senate had provided $2000 but this amount was reduced by the House. This was not done, as has sometimes been stated, because the House desired to punish Randolph's federalism, for the law was passed before the Judiciary Act and three days before Washington nominated Randolph.

But the meanness of the Congress in providing this ridiculously small salary, especially as compared with those of the other cabinet officers, was due to the arguments that the duties of the Attorney General would be very light, that he could engage in private practice, and that the prestige of the office would be so great that it would be well worth the while of any lawyer to accept the office with only a nominal compensation.

The signature of the President to the Judiciary Act was hardly dry when he sent to the Senate, together with his nominations for Chief Justice and Associated Justices of the Supreme Court, the name of Edmund Randolph of Virginia for Attorney General. The appointment was promptly confirmed and Randolph's commission was issued on September 26th, and was sent to him by Washington in a letter dated September 27th urging him to accept the appointment. In this letter Washington said: "The salary of this office appears to have been fixed at what it is from a belief that the station would confer preeminence on its possessor, and procure for him a decided preference of professional employment."

Washington had known Randolph from boyhood and had declared that he preferred him as Attorney General to any person with whom he was acquainted. Indeed, after what we have seen about Randolph, it is difficult to imagine anyone better fitted for an office than Randolph was for the Attorney Generalship of the new constitutional government.

On October 8th Randolph replied to Washington accepting the appointment but stating that his duties in the Virginia As-

sembly were so important that he could not leave immediately, and hoped to be in New York by the middle of January. On February 2nd, 1790, Randolph, who had arrived in New York, presented himself before the Supreme Court where his commission was read and the oath of office administered. The Supreme Court promulgated rules and then adjourned. It met again for the August term but there being no business immediately adjourned. These two short sessions were held in the upper room of the old Exchange in New York.

But if there was no business for the Supreme Court there was an abundance for the Attorney General and from the very beginning his duties were arduous and physically laborious. As the first Attorney General he had not only to shape his own office, adapt the constitutional provisions and the Judiciary Act to their work, study out and decide upon the vexatious questions relating to the line of demarcation between the jurisdiction of the federal and state governments and their respective courts, and constantly give opinions and advice, both written and oral, to the President and to the heads of the departments, concerning internal affairs, but he was also obliged to advise the Secretary of State upon the questions of international law arising out of the unsettled relations with foreign governments following the War of the Revolution. In addition to this, no provision having been made for clerical assistance, he was obliged to perform all the physical labor connected with his office. In a letter written during the first year of his service he says:

> "I am a sort of mongrel between the State and the United States; called an officer of some rank under the latter, and yet thrust out to get a livelihood in the former—perhaps in a petty mayor's or county court. . . . I am ready to be confined to the federal service—how extensive soever; though, by the way, I do more in that way with my own hands than one of the Departments with its clerks."

It has been stated erroneously in some works of presumably good authority that the Attorney General was not a member of the cabinet until 1814. This is a mistake, for from the beginning the Attorney General has been a member of the cabinet, frequently the most important and influential. The cabinet of the President has no legal entity as such, no duties,

rights or privileges beyond those which attach to the position of each member as the head of his department. The President is not obliged to ask for the advice of his cabinet or to be governed by it, or to be controlled in his actions by its vote on any question. George Mason, in his Notes on the Constitution, said:

> "The President has no constitutional council, (a thing unknown in any safe and regular government). He will therefore be unsupported by proper information and advice, and will be directed by minions or favorites; or he will become a tool to the Senate; or a Council of State will grow out of the principal officers of the great departments—the worst and most dangerous of all ingredients for such a Council in a free country."

In confirmation of a portion of this partly prophetic declaration of Mason, Washington did, almost immediately, form an advisory council of the heads of the three departments and the Attorney General. During both his administrations he endeavored to divide these offices between the two opposing political parties, Hamilton and Randolph representing the federalists and Jefferson and Knox the republicans or democrats, in the first cabinet. Washington was, at first, generally governed or influenced by the opinion of the majority of his cabinet, even against his own judgment. Sometimes he followed the advice of one against the others. Finally he came to rely almost wholly upon the advice of Randolph against all the others, even Hamilton, whose last victory was the approval by the President of his bank scheme. The United States Bank was created by the Acts of February 25th and March 3rd, 1791. Before their passage Randolph wrote a long and important opinion in which he argued against the constitutionality of the acts; which finally received their death blow at the hands of President Jackson and of Roger Taney, one of Randolph's greatest successors.

As stated above, this was Hamilton's last victory over Randolph, beside whom, in questions of law, he was a pigmy; and Randolph soon acquired a position of mastery in the government councils until finally, as a result of a most despicable intrigue and conspiracy on the part of other members of the cabinet, he lost the confidence of Washington and retired from the office of Secretary of State in August of 1795. So great did the influence of Randolph become at one time that Jefferson, then Sec-

retary of State, wrote to Madison: "The government is now directed solely by Randolph."

On July 20th, 1790, Randolph had rendered to the President an important opinion on the question of the delivery of fugitives from justice from one State to another. This and many other important opinions of the early Attorneys General are not, unfortunately, published in the official series of opinions of the Attorney General.

The Act of August 12th, 1790 (and subsequent laws) made the Attorney General a member of the Sinking Fund Commission, and very materially augmented his labors. At this time Randolph was burdened not only with his many duties, but he found it impossible to live on the meagre salary provided by the Congress. In a letter to an intimate friend, from which an extract has already been quoted, he wrote: "With every frugality, almost bordering on meanness, I cannot live upon it as it now stands." Before he moved to New York with his family he was compelled to mortgage his Virginia home to secure the means of making the change. In New York he was obliged to pay $250 per annum for a small seven room cottage in the suburbs, and found other living expenses proportionally high.

By the Act of July 16th, 1790, the seat of government was changed to Philadelphia, there to remain from December, 1790, to December, 1800, then to be removed to the District of Columbia. This change necessitated additional expense which Randolph endeavored to eke out by taking three young men to tutor in Philadelphia, one of them his nephew, John Randolph of Roanoke, another Lawrence Washington, the President's nephew.

Early in December, 1790, the House of Representatives, by resolution, requested the Attorney General to report such matters, relative to the administration of justice under the authority of the United States, as might require to be remedied, and such provisions in the respective cases as he should deem advisable. Although no part of his duty Randolph on December 27, 1790, transmitted to the house a report covering more than fifteen folio pages in small type in "American State Papers." In this report the whole judiciary system is ably and exhaustively discussed, and though his recommendations were not immediately

carried into effect yet many of the changes recommended by him were made, years afterwards.

The Supreme Court met for the February term 1791 in Philadelphia, and for ten years held its sessions in the South Chamber, upstairs, of the old City Hall, at Fifth and Chestnut streets. Congress had not provided any office for the Attorney General but it is probable that Randolph had at least desk room in the Supreme Court quarters.

The Congress at last began to be proud of the success of the Attorney General, to appreciate his ability, and to realize the extent and importance of his labors; and on March 3rd, 1791, voted an additional sum of $400 to him, thus increasing his salary to $1900; which was maintained until 1797, when, on March 2nd, the salary was increased to $2000.

At February term, 1791, of the Supreme Court, there appeared a case of an individual against a State, namely Vanstorphorst v. The State of Maryland (2 Dall. 401). This was the first case in which the Supreme Court took any action and was the occasion of the first appearance before the court of the Attorney General except to present his commission and move admissions to the bar. On motion of Randolph the State was ordered to plead. At the August term, 1791, in this case "the Attorney General (Randolph) moved on behalf of the plaintiffs that a commission should issue to examine witnesses in Holland; to which the opposing counsel assented, although the commissioners were not named. But—by the Court—We will not award the commission until the commissioners are named. This being done the commission was granted."

During 1791 the Attorney General rendered a number of important opinions in opposition to some of the plans of the Secretary of the Treasury concerning the public debt and the United States Bank; and several important opinions upon ques-

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tions of international law; and December 26th, 1791, he addressed the following letter to the President:

"Sir: The office which I have the honor of holding under the United States, has presented, in the course of its execution, some defects which, I trust, will not be deemed unworthy of a remedy. If, however, they were only personally inconvenient, I should certainly forbear to trouble you with a recital of them; but while I consider them injurious to the public service, I can not satisfy myself of the propriety of withholding them from you.

"Many instances have occurred in which the heads of the Departments have requested that suits should be prosecuted in different States under my direction. It has always been my inclination to conform to their wishes; but the want of a fixed relation between the attorneys of the districts and the Attorney General, has rendered it impossible for me to take charge of matters on which I was not authorized to give instructions.

"From the same source it may frequently arise that the United States may be deeply affected by various proceedings in the inferior courts, which no appeal can rectify. The peculiar duty of the Attorney General calls upon him to watch over these cases; and being in the eye of the world, responsible for the final issue, and to offer his advice at the earliest stage of any business; and indeed, until repeated adjudications shall have settled a clear line of partition between the federal and State courts, his best exertions can not be too often repeated, to oppose the danger of a schism. For this purpose the attorneys for the districts ought, I conceive, to be under an obligation to transmit to him a state of every case in which the harmony of the two jurisdictions may be hazarded, and to communicate to him those topics on which the subjects of foreign nations may complain in the administration of justice.

"Perhaps, too, in the review which the President takes of the affairs of the Union at the opening of each session of Congress, the judicial department will be comprehended. But the Attorney General, who ought to be able to represent the true situation of it, must be forever incompetent to the task, until he may officially, and with the right of expecting an answer, propound his inquiries to the district attorneys.

"I might extend this enumeration much further; but I will only add, that the opinions which the Attorney General gives are many in number and often lengthy. From this consideration, united with the foregoing, the reasonableness of allowing him a transcribing clerk will, I hope, be obvious.

"Permit me, Sir, to request you to forward to Congress the subject of this letter, in the manner most agreeable to yourself. I have taken the liberty of addressing it to you, not with an idea of thus obtaining your sanction, but from an impression that the

application of an executive officer for the reform of his office ought not, of his own accord, to be laid before the legislature.

"I have the honor, Sir, to be, with the most respectful attachment, your most obedient servant,

"EDMUND RANDOLPH.

"To the President of the United States."

The President on December 28, 1791, sent the following special message to Congress:

"United States, December 28, 1791.

"Gentlemen of the Senate and of the House of Representatives:

"I lay before you, for your consideration, the copy of a letter which I have received from the Attorney General of the United States.

"GEO. WASHINGTON."

On January 18th, 1792, Mr. Lawrence, from the House Committee, submitted a favorable report recommending legislation to carry into effect all Randolph's recommendation, and a provision for employing a clerk.

Despite the letter of the Attorney General, the message of the President and the favorable report of the House Committee, the Congress took no action. Twenty-seven years elapsed before any allowance was made for a clerk and seventy before the Attorney General was given supervision over district attorneys.

The business of the Supreme Court was now increasing. At the August term, 1791, the Attorney General appeared for the defendants in the case of The State of Georgia v. Brailsford et al. (3 Dall. 1). At the August term, 1792, he applied for a mandamus to the Circuit Court for the District of Pennsylvania to proceed in the case of William Hayburn who had applied for a pension under the Act of March 23rd, 1792. The court expressed its doubt of the right of the Attorney General to make this application *ex officio,* and directed him to state the principles on which his right to make the application should be supported. "The Attorney General thereupon entered into an elaborate description of the powers and duties of the office." Of this, unfortunately, there is no trace except its mention by the Supreme Court reporter. The court then consented to hear his argument, and took the matter under advisement, finally denying the motion on the ground that the Congress had no right to

assign to the judiciary any but judicial duties, and that the pension law requiring the United States Circuit Courts to act as referees in pension cases was therefore unconstitutional.

The Congress immediately provided relief of another nature for pensioners.

Some time after this Randolph writing to Washington concerning the Supreme Court and its progress, said: "It is much to be regretted that the judiciary, in spite of their apparent firmness in annulling the pension law, are not what some time hence they will be—a resource against the infractions of the Constitution on the one hand, and a steady asserter of federal rights on the other."

In October, 1792, the Attorney General, by order of the President, attended the Circuit Court of Yorktown, Pennsylvania, and was paid $54 for his expenses.

The first case of very great importance to come before the Supreme Court was that of Chisholm (a citizen of South Carolina) against the State of Georgia (2 Dall. 419). The Attorney General appeared for the plaintiff, and upon the refusal of Georgia to appear or plead, he moved that unless Georgia entered her appearance at the next term judgment be entered by default. Georgia refused to recognize the jurisdiction of the court. Randolph made a brilliant argument in support of his motion and the Supreme Court sustained all his contentions, holding that under the second section of Article III of the Constitution a State might be sued by an individual citizen of any other State, and in such suit judgment might be entered in default of an appearance. The argument of Randolph and the decision of the court brought down upon both a shower of abuse from the anti-federalists throughout the whole country, and in answer to popular clamor the Congress, on December 2nd, 1793, adopted the Eleventh Amendment to the Constitution, which was subsequently ratified:

> "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by Citizens or Subjects of any Foreign State."

So the first great victory of the Attorney General was a barren one. Ninety years afterwards the same old question was

threshed out again in the Supreme Court in Louisiana v. Jumel (107 U. S. 711).

In April, 1793, the Attorney General was required to give opinions upon the propriety of the arrest of certain Americans accused of violating international law and the treaty with Great Britain by enlisting on a French privateer equipped at Charleston within American jurisdiction. He advised their prosecution, and although a jury acquitted the only defendant brought to trial, Randolph's opinion was a correct exposition of the law and furnished an important precedent.

In May of the same year he wrote an important opinion on the British demand for restitution of a prize on the high seas by a French privateer also fitted out at Charleston. All the members of the cabinet were invited to offer opinions on the subject, but Washington preferred that of Randolph, who, after an elaborate argument, advised that the British demand be denied.

This was the beginning of the long fight in which the United States was involved with Great Britain on the one hand and France on the other. Randolph alone of the cabinet officers was friendly to France, and counselled resistance to British demands. His advice during this early period was wise, and it is now easy to perceive that but for the destruction of his usefulness, after he became Secretary of State, by a conspiracy of other members of the cabinet, the trouble with France never would have occurred, the Jay-Greenville treaty with Great Britain, with its humiliating concessions, would not have been ratified, and the War of 1812 probably would have been avoided.

It may not be out of place here to state briefly that Randolph, after he became Secretary of State and while the ratification of the Jay-Greenville Treaty was pending, was accused of engaging in a corrupt intrigue with the French Minister, Fauchet (a creature of Robespierre and a man of little character), to further French interests at the expense of the British. The charge was based upon the contents of a dispatch of Fauchet to his government, captured by a British vessel, and transmitted through the British Minister at Washington to the pro-British members of the Cabinet and by them communicated to Washington. On its face it raised a suspicion against Randolph, which would have

been swept away by other dispatches also captured and in the hands of the British Minister, the contents of which were well known to the members of the Cabinet who were opposed to Randolph, and suppressed by them. Washington's suspicions against Randolph were communicated to him in such a manner that he immediately and indignantly resigned the Secretaryship of State (August 19, 1795) and prepared and published a vindication of himself. The whole subject is ably and exhaustively treated in Dr. Moncure D. Conway's *Omitted Chapters of History Disclosed in the Life and Papers of Edmund Randolph*, an admirable work and a noble and complete vindication of one of the grandest characters of America.

In addition to his other duties the Attorney General was required, in the latter part of 1793, to prepare the President's message to the Congress. As it had to deal chiefly with foreign affairs it ought to have been prepared by the Secretary of State, but Jefferson was unwilling to assume the responsibility.

Shortly afterwards Jefferson retired from the Cabinet and Randolph was appointed Secretary of State, assuming the duties of that office January 2nd, 1794, leaving the office of Attorney General vacant.

But his work was accomplished.

He had clearly established and marked out the duties and prerogatives of the office of Attorney General, he had safely directed the Government through its first critical years, he had seen the Supreme Court and the Circuit and District Courts organized and properly started and had estabished such precedents as to

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make it easy for his successors to walk in the path which he had blazed in the virgin forest of government and jurisprudence.

It is not any function of this paper to narrate the career of Edmund Randolph as Secretary of State or to follow him into private life, to which he retired, to practice law, when he left the State Department. But one incident of his private practice is so integral a part of American history and so pregnant with the impartial administration of American justice that it cannot properly be omitted—that is, Randolph's defense of Aaron Burr.

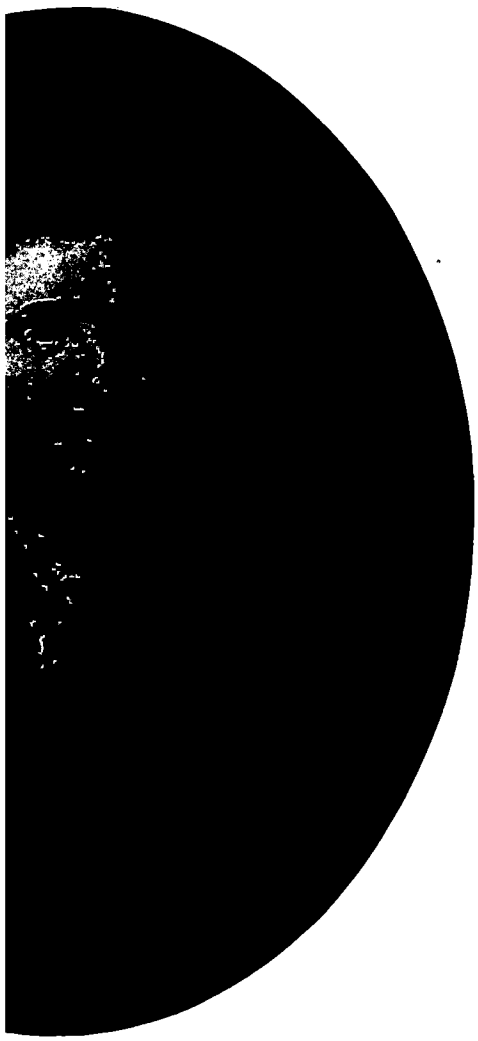
It was during Attorney General Rodney's term of office that Burr was prosecuted for treason. All the power of Jefferson, then President, and his administration, was directed towards securing the conviction of Jefferson's arch enemy. It was the determination of Jefferson to this end that brought to a culmination the bitter personal and political antagonisms between him and the great Chief Justice of the United States—John Marshall.

Rodney directed all the preliminaries of the prosecution, appeared in the United States Circuit Court at Richmond and personally conducted and argued the case, being assisted by George Hay, United States Attorney for the district of Virginia, the eminent William Wirt of Maryland, afterwards Attorney General, and other able counsel. As is well known, Jefferson used every means in his power to arouse the entire country against Burr and to procure his conviction and execution. Chief Justice Marshall "went on circuit" to Richmond to preside at the trial and to see that justice was done. Rodney, Wirt and Hay prosecuted and Burr was defended by Randolph and John Wickham. The result—acquittal on all charges of treason and misdemeanor.

What a scene this trial presented, the most famous in the annals of American criminal jurisprudence! A former Vice President of the United States on trial for his life, charged with treason; the great Chief Justice presiding; and Rodney and Wirt, present and future Attorneys General, pitted against Randolph, former Attorney General; all the chief actors including the defendant himself, who took part in the arguments, being among the greatest lawyers of their day. It was fortunate for Burr that Marshall was there to expound the law and rule on the admis-

sibility of testimony. Wirt, speaking afterwards of the trial, said: "Marshall has stepped in between Burr and death." And Burr, facing one of the many tragedies of his tragic life, from the fatal duel with Hamilton through the narrow failure of election to the Presidency to the mysterious loss at sea of his only and darling daughter, Theodosia! It would take a Sophocles to envision and relate them.

TERMINAL NOTE: The writer of the foregoing paper has not deemed it necessary to encumber the text or margins with references to authorities for the statements of fact therein. Suffice it to say that, generally, they are garnered from various histories of the United States and of the Colonies, particularly Virginia, from *The Federalist* and other published accounts of the proceedings of the Constitutional Convention, from the *Journals of Congress* (Continental), from the *Annals of Congress*, from *The Congressional Globe* and *The Congressional Record*, from *The Life and Writings of Washington* and also of *Jefferson*, from the Supreme Court Reports, from unpublished records and documents in the archives of the Department of Justice, and last, but not least, from that spendid work of Dr. Moncure D. Conway, *Omitted Chapters of History Disclosed in the Life and Papers of Edmund Randolph*, one of the outstanding examples of the finest in American biographical literature; which the writer heartily commends to all those who desire to know more of Randolph and of the early history and development of American federal jurisprudence.



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FEDERAL JUSTICE

Chapters in the History of Justice and the Federal Executive

BY

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AND

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SPECIAL ASSISTANT TO THE ATTORNEY GENERAL
OF THE UNITED STATES

NEW YORK
THE MACMILLAN COMPANY
1937

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for judicial office and of officers
including district attorneys and
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29, 66; 1934, 15; 1935, 17.
1921, 122–128; 1923, 68; 1934, 15;

Origin and Development of the Office
70 Cong. 2 Sess.

tion for the whole department are supervised by separate officers who function between the Attorney General and the Assistant Attorneys General. There is no single officer, however, to correlate and relieve the Attorney General of the supervision of countless matters of investigation and trial work of the department, though Attorney General Bonaparte once proposed that there be a "Chief Counsel" in the department.[39]

With a change of administration, and more particularly a change of the political party in power, the Attorney General and his principal assistants change. The President's wishes are generally respected in the appointment of the Attorney General. In the field, the rule of senatorial courtesy gives individual Senators great powers in the selection of district attorneys and marshals, an effective veto which imports local politics into the administration of federal justice.[40]

Yet there has been an effort to avoid partisan administration. "The office I hold," said Attorney General Bates, "is not properly *political,* but strictly *legal;* and it is my duty, above all other ministers of State, to uphold the Law, and to resist all encroachments, from whatever quarter, of mere will and power." President Cleveland in 1886 issued an order prohibiting political activity to all in the federal service, and Attorney General Garland directed federal law officers to comply with its requirements. "Office holders are the agents of the people—not their masters," said the President. "Not only is their time and labor due to the government but they should scrupulously avoid in their political action as well as in the discharge of their official duty, offending by a display of obtrusive partisanship." The Attorneys General and the Presidents have continued, to a greater or lesser extent, to enforce the rule that, by the force of his

[39] With the growing demands of the federal legal system the Attorneys General will undoubtedly find it necessary to free themselves of *direct* supervision over trials and investigations. In addition to the Solicitor General for the Supreme Court and appellate matters generally, the Assistant Solicitor General to prepare opinions for the Attorney General, and an Assistant Attorney General to have charge of personnel and administration, there might also be a Counsel General as chief counsel to supervise all the trial and investigative work of law enforcement. The "divisions" charged with particular fields of public law might be placed under permanent non-political Assistants to the Attorney General. Four major officers might thus replace the present nine.

[40] Kennedy, *op. cit.,* II, 221–222; see, for example, the stalemate over the appointment of a district attorney for Wisconsin, letters exchanged between La Follette and Wickersham, Jan. 17 and 19, Feb. 11 and 14, and May 30, 1911, Pers. Files, Wis.; National Commission on Law Observance and Enforcement, *Report on Prosecution,* 9.

General the duty of giving opinions
ıim by the President and heads of
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ferson wrote James Madison that
:ected by Randolph," [78] he was not
›inions as Attorney General. The
'iduals or other officers of govern-
on questions of law, but he also
›olicy and discretion. His official
ıeir councils the Attorney General,
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ıizes that the President may require
any of the executive departments;
: the time of Washington, for the
›rney General and the Secretaries
: deliberation.[79] So President Lin-
l Bates' opinion whether it was
"This is not a question of lawful
, "but of prudence and patriotism
a political matter as were so many
sident Lincoln to his cabinet. "As
ed Bates, "I do not presumptuously

all the people the President must
side the cabinet. There are many
r constant pressure of extreme fac-
ıte men," said Lincoln's Attorney
of his *amiable weakness,* commit

Stat. 162, Sec. 14, June 22, 1870, and see
[78] Conway, *op. cit.,* 140.
330; Bates to Stanbery *re* West Virginia
ds.; *Welles Diary, op. cit.,* I, 205, and II,

him beforehand to their ends, so as to bar all future deliberation." [81] Others have been even less charitable toward their Presidents.

Curious in another way was President Taft's order setting up a presidential court to determine the much mooted question under the pure food laws, "What is whiskey?" Solicitor General Bowers was directed to act as a virtual master in chancery to hear the evidence. After taking testimony for two weeks and hearing arguments for two days more, he submitted a report to the President. He found the definition laid down by Attorney General Bonaparte too narrow, though he did not fully accept the broad definition which the distillers had urged. They, in true judicial form, filed exceptions to the Solicitor General's conclusions.

Summoning the Attorney General and the Secretary of Agriculture to sit with him, the President then heard arguments by distinguished counsel for two days. "I want to say that it is not usual for the President, I think, to give hearings of this sort," he said in opening the proceedings at the White House, "but this is in deference to a former experience." After the arguments, he read the 1242 pages of testimony taken by the Solicitor General and wrote an opinion in the approved judicial manner, extending the definition of whiskey beyond that recommended by Bowers. "This opinion will be certified to the Secretary of the Treasury, the Secretary of Agriculture, and the Secretary of Commerce and Labor to prepare the regulation in accordance herewith, under the pure-food law," he concluded.[82]

Generally speaking, however, since the creation of the Department of Justice in 1870, the Attorneys General have come to avoid the ups and downs of the "cabinet council" and, except when directed otherwise, have confined themselves to the administration of justice and the rendition of opinions on questions of law.[83] All executive orders and proclamations prepared by the several officers and agencies of the federal government to be signed by the President are referred to the Attorney General for recommendations as to form and compliance with law—covering matters which range from intra-govern-

[81] *Bates Diary, op. cit.,* 280.
[82] Hearings, *The Meaning of the Term "Whiskey"* (1909), 1243, 1266; *Food and Drugs Act Decisions* (1914), 818, 831.
[83] See Dyer, *op. cit.,* 102–103.

Policy Act (1970), which established general guidelines for environmental protection, the Interior Department has been drawn increasingly into environmental protection. All of these measures have involved the Interior Department in an increasingly central role in regulating the quality of life for Americans.

Internally, the Interior Department recognized the centrality of public resource management. In 1964, for instance, the department discontinued its annual reports and began instead a series called the Interior Conservation Yearbook. These volumes highlight the efforts and accomplishments in the management of natural resources. Thus, from a department of the great miscellany, the Interior Department has evolved into a department of natural resources.

FOR ADDITIONAL INFORMATION: The major sources for the history of the Interior Department include a number of readily available published items. The serious student will want to read the *Annual Reports of the Secretaries of the Interior* and the *Conservation Yearbooks* which succeeded them. Especially useful is the summary of Interior Department history in No. ll: *America 200: The Legacy of Our Lands* (1976). Perhaps the best source materials for Interior secretaries through the administration of Stewart Udall will be found in Eugene P. Trani's *The Secretaries of the Interior, 1849-1969* (1975). The early history of the department is covered in Norman Olaf Forness's, "The Origins and Early History of the United States Department of the Interior" (Ph.D. Dissertation, Pennsylvania State University, 1964); developments in the nineteenth century will be found in Thomas G. Alexander's *A Clash of Interests: Interior Department and Mountain West, 1863-1896* (1977). The study of public land policy is best begun with Paul W. Gates and Robert W. Swenson's *History of Public Land Law Development* (1969), which provides a good introduction to the conservation movement as well.

THOMAS G. ALEXANDER

DEPARTMENT OF JUSTICE. The Department of Justice was not created until 1870, but its direct predecessor, the Office of the Attorney General, was established by the Judiciary Act of 1789. The act provided for the appointment by the President of a

> person, learned in the law, to act as attorney general of the United States, . . . to prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned, and to give his advice and opinion upon questions of law when required by the President of the United States, or when requested by the heads of any of the departments, touching any matters that may concern their departments.

Edmund Randolph, a friend and lawyer for President Washington, was appointed as the first Attorney General and served until 1794.

Unlike the duties of the other members of the first Cabinet, the powers and responsibilities of the Attorney General were vague and for many years the job was considered as only part-time. Much of the work was providing legal counsel to members of the executive branch of the new federal government and to Congress as it wrote legislation. Until William Wirt became Attorney General

in 1817, that practice continued, and the position remained anomalous. Wirt's predecessors had tried important cases in the courts, offered sanguine advice on foreign policies, and participated sporadically in Cabinet meetings, but Wirt discovered no set of records or book of opinions from the previous attorneys general. Wirt set up an opinions and records system, obtained an office and clerk, and limited the number and scope of opinions coming from the Attorney General. Wirt resigned after the election of Andrew Jackson, but having served more than a decade, he established the office as the law department for the executive branch of the federal government.

Between Wirt's tenure and the passage of the bill creating the Department of Justice in 1870, efforts were made to increase the duties, appropriations, and prestige of the Office of the Attorney General in the face of a general hesitance by Congress to establish another full department. Caleb Cushing, who served as Attorney General from 1854 to 1857, acquired functions from the Departments of Interior* and State* which included the commissions of law officers, the accounts of the federal courts, and the processing of pardons and petitions for executive clemency. The acquisition of more functions increased the movement for an official law department, but the bills introduced to that end before the Civil War were never made into law.

The legal and political issues that the attorneys general dealt with during the antebellum period included the national banks, the distribution of public lands, and slavery. In 1819, the national bank issue came before the Supreme Court, and Attorney General Wirt appeared for the United States with the counsel for McCulloch in *McCulloch* v. *Maryland*. The second Attorney General for President Andrew Jackson was Roger Taney, who was on the opposite side of the bank question from his predecessor Wirt. He wrote two opinions for Jackson, stating that the President could fire the recalcitrant Secretary of the Treasury, William Duane, who would not withdraw federal funds from the national bank. In the second (and his last) opinion as Attorney General, Taney stated that the Secretary of the Treasury could in fact put federal funds into depositories other than the Bank of the United States. Taney's successors, Benjamin Butler and John Nelson, continued the fight against the national bank through Jackson's administration.

In the distribution of public lands by the federal government, the role of the attorneys general was as litigant for the government in dealing with the claims of people to land in the Louisiana, Florida, and California territories. Large land frauds were common, and the litigation was difficult for the U.S. attorneys, attorneys general, and solicitors of the Treasury who shared responsibility for defending the government land. Many cases reached the Supreme Court, particularly the huge land claims, and, as the government attorneys used the Mexican archives and fought to adjudicate the settlements fairly, the battles for land increased with the federal government not gaining much popularity from the original claimants, settlers, and land companies. By 1870, most of the California and other claims were settled.

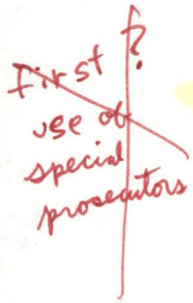
first AG to truly organize the files of the office

also longest-serving A.G.

The legal problems about slavery at the federal level were not unimportant, but the attorneys general for the most part attempted to avoid involvement in them. The slave trade, the fate of blacks captured on the high seas, and fugitive slaves in the North were the major slave issues which the attorneys general faced in the antebellum period. No clear policies were followed, and delay and court efforts on behalf of the institution of slavery were the primary legal directions of the federal government. Edward Bates and James Speed were the two Civil War attorneys general, and, though they did not set great policies during the national crisis, they did handle questions of military versus civil rule, disloyal activities, and confiscation of property at sea and on land. The writ of habeas corpus cases were the most important civil cases, and the Supreme Court decided *ex parte Milligan* in favor of the defendant after the end of the war. Reconstruction presented an extremely difficult period for the U.S. attorneys in the South who with the Army attempted to enforce the Reconstruction laws. There were prosecutions to stop the violence against the blacks in the South, but, as the Supreme Court overruled the Civil Rights Acts and prosecution of election frauds became almost impossible, the attorneys general and Department of Justice joined the rapprochement between the North and the South.

The Department of Justice Act, passed in June 1870, created the department beginning in July of that year, with the Attorney General retaining his former duties and the Solicitor General being his principal assistant. The solicitor of the Treasury, as well as the law officers of the State* and Navy* departments and the Bureau of Internal Revenue, were transferred to the new department. In the 1870 act and later legislation, the Department of Justice was authorized to supervise all U.S. attorneys and other law officers of the federal government, to facilitate the business of the courts, to provide for federal prison facilities, to control immigration and administer naturalizations, to advise on paroles, and to investigate federal crimes. These responsibilities and the increasing number of crimes brought under federal responsibility greatly increased the size and amount of work for the Department of Justice throughout its history.

Amos Akerman, a Republican from Georgia and appointee of President Ulysses S. Grant, was the first Attorney General to direct the new department. The new act solidified the politically powerful patronage system in which the Attorney General processed the appointments of federal judges, U.S. attorneys, and marshals. The attorneys general worked with presidents and senators in those appointments, but nonetheless the Attorney General could be a major political figure in an administration. The conflict between administering justice and managing a political system often strained the balance between the two. Akerman issued opinions on payment of interest for the federal railroad construction loans and extension of railroad lines that raised the ire of the railroad companies and caused President Grant's request for his resignation. Late in the next year, 1872, the Credit Mobilier scandal revelations forced the new Attorney General to appoint two "special prosecutors" within the department. That prosecution was unsuccessful, but the merging of party politics and the Department of Justice



historically has been a major problem for some presidential administrations—most notably manifested in the resignations under fire of Attorneys General Harry Daugherty and John Mitchell.

The West provided a number of seemingly insurmountable legal problems for the department. The distances were great, prosecutions difficult, and Congress appropriated minimal funds to police the sparsely settled territories. The courts functioned in many places in primitive fashion and surroundings. The fee system for compensating local, federal law officers was an evil that favored many petty legal actions and left many federal attorneys and marshals underpaid. The system was finally abolished in 1897. Protecting the national wealth on federal lands, particularly timber, was an almost impossible task for Department of Justice attorneys. Lumber and railroad interests were politically powerful and locally popular, so that prosecutions for illegal cuttings were seldom successful. Later in the early twentieth century when conservation of natural resources became a more popular issue, the department was somewhat more successful, but political pressures and long legal battles made enforcement of weak conservation laws formidable.

The passage of the Sherman Anti-Trust Act in 1890 produced some of the most publicized prosecutions by the department in the early twentieth century. During the first decade of its existence, the law had minimal effects on the growth of corporations, but after the assassination of President William McKinley, President Theodore Roosevelt and Attorney General Philander C. Knox moved to prosecute five major antitrust cases. The two most important were the *Northern Securities* and *Swift* cases, which the government won by narrow margins. Later victories in civil cases against Standard Oil and American Tobacco were frustrated by the consent decrees agreed to by the attorneys general and the legal machinations by the corporations to establish greater control of industries and markets. Prosecutions and regulation of monopolies after World War I have been sporadic, but the Anti-Trust Division of the department continues to monitor the growth of corporations and sometimes does prosecute effectively to stop mergers.

World War I brought new and onerous tasks to the department, beginning with the prosecutions of neutrality violations. Merchant ships were the most prominent offenders, and they thrust upon the department difficult enforcement questions. The department asked Congress for more specific laws, but war was declared before any new neutrality laws could be passed. New laws against sabotage and sedition were passed during the war. U.S. attorneys oversaw the registration of enemy aliens, assisted in the draft, and instigated the "slacker" raids. The department had a bureaucratic fight between its relatively new Bureau of Investigation and the Departments of State and Treasury* over jurisdiction for investigations and prosecutions of internal espionage and sedition. Attorney General Thomas Gregory won most of that battle because of the popularity of the department's American Protective League. The league was a volunteer organization, which began gathering information on neutrality violations. Later, it became part of the department's campaign against pro-German sedition that

was minor in scope, and then even later in the Red Scare investigations and prosecutions directed towards leftists and radicals. Attorney General A. Mitchell Palmer's raids on meetings and headquarters of leftist organizations in 1919 and 1920 netted more than two thousand people, and several hundred aliens were deported. The raids were the last of a number of efforts by the department during and after the war that fomented or followed the domestic hysteria against Germans and radicals and that resulted in the abridgement of civil rights for aliens and citizens in the United States.

During the 1920s, prohibition was not a major Department of Justice responsibility, and the department avoided jurisdiction in the prosecution of lynchings. The Teapot Dome scandals during the Harding Administration involved Attorney General Daugherty, who was charged with taking bribes for failing to prosecute violators of prohibition and embezzlers in the Veterans Bureau. The close of the decade saw the creation of the Wickersham Commission to survey crime in the nation and its connections with prohibition. The commission report detailed the extent of crime in the United States but opposed repeal of the Prohibition Amendment.

The administration of Franklin D. Roosevelt reversed the long policy of the federal government seeking injunctive relief against labor organizations during strikes. The Wagner Act, passed in 1935, upheld labor's right to organize and bargain collectively. Homer Cummings, the Attorney General during the New Deal, was the President's legal adviser for much of the New Deal legislation, and he argued several of the cases before the Supreme Court that decided the fate of the New Deal laws.

World War II did not bring with it the anti-German and anti-radical hysteria of the previous world war. Francis Biddle, as Attorney General during the war, opposed in vain the incarceration of Japanese citizens on the West Coast and stopped the Federal Bureau of Investigation's (FBI's) Custodial Detention program. He personally directed the prosecution of eight Nazi saboteurs and successfully argued against their petitions for habeas corpus in the Supreme Court.

The major postwar issues for the Department of Justice were internal security, organized crime, and civil rights. The Cold War stimulated a second Red Scare in the United States, with the Department of Justice working with congressional committees and other executive branch agencies to find subversive activities and prosecute suspected Communists. Alger Hiss, Julius and Ethel Rosenburg, Judith Coplon, Valentine Gubitchev, Rudolf Abel, and others were all arrested and prosecuted under the Smith Act of 1940, the McCarran Act of 1950, or for perjury. Charles Chaplin was denied reentry to the United States, and Robert Oppenheimer lost his security clearance because they were associated at one time with left-wing organizations. As the Communist party in the United States dwindled into insignificance in the 1950s and the perceived internal security threat lessened, the department prosecuted fewer internal security cases each year.

Since the 1930s when prohibition and organized crime were connected and

seen as a federal concern, the Department of Justice has directed resources for combatting the activities of organized crime. Certain special efforts have attracted greater attention to the investigations and prosecutions during periods of political pressure and publicity to thwart organized crime. After the Kefauver hearing on the Mafia in the 1950s, Attorney General William Rogers set up a Special Group on Organized Crime to coordinate federal law enforcement agencies in the campaign on organized crime. The group met opposition from J. Edgar Hoover (FBI), who denied the existence of an organized criminal element in the United States, and the bureaucratic reluctance of other agencies to cooperate.

Robert Kennedy, when he became Attorney General in 1961, made the campaign against organized crime his number-one priority. He used special groups of lawyers and investigators in the department and approved extraordinary investigative techniques to break organized crime. The best known campaign was directed against James Hoffa, Teamsters Union president, who was convicted in 1967 of jury tampering. Later, President Richard M. Nixon had two laws passed to give the Department of Justice and other federal agencies more power in combatting crime.

In the school desegregation cases, lynchings, peonage, and other civil rights issues in the 1930s and 1940s, the Department of Justice did little, declaring that most of the issues were not within federal jurisdiction. After *Brown* v. *Board of Education* (1954), the Civil Rights Division of the department was established to enforce federal court integration decrees and the civil rights laws passed, beginning in 1957. During the Dwight D. Eisenhower and John F. Kennedy administrations, the Department of Justice attempted to work with state and local officials to integrate schools and assure the voting rights of blacks in the South. The strategy was to avoid use of federal troops and to make local authorities responsible for keeping the peace, while attempting to have the civil rights laws enforced. The policy broke down a number of times in Little Rock, Oxford, Selma, and other places when lives were threatened and lost, and federalized troops had to be mobilized. By 1965, the FBI and Justice Department lawyers were a major presence in the South. Violence lessened, and blacks in large numbers began to vote and become part of the political process.

The Watergate break-in and ensuing scandals again brought the dilemma between enforcing the law and being a political entity directly to the Department of Justice. Three attorneys general resigned during the crisis for different reasons. John Mitchell and Richard Kleindienst resigned under fire, and Mitchell was convicted of conspiracy, obstruction of justice, and perjury. Kleindienst pleaded guilty to a misdemeanor charge for withholding information. Eliot Richardson resigned as Attorney General because he would not fire Archibald Cox, the Watergate special prosecutor, when ordered to by President Nixon. Since Watergate, attorneys general have tried to depoliticize the Department of Justice, but the dilemma remains.

President Jimmy Carter successfully withstood the opposition of civil rights leaders in selecting Griffin Bell as Attorney General. Bell, a Georgian and Carter

friend, was confirmed in 1977 despite the charge that his record as a federal Court of Appeals judge had been unfavorable toward school desegregation. The usual problems continued under Bell, with major attention going each year to questions of anti-trust and school integration, in addition to alleged Federal Bureau of Investigation wiretapping and letter-opening (1977), investigation of Korean businessmen for influence peddling in trade in the United States (1978), food-stamp probes (1979), and cases in 1980 including the reopening of the John F. Kennedy murder investigation.

William French Smith, of Los Angeles, President Ronald Reagan's personal lawyer, succeeded Bell in 1981 as Attorney General. Old issues returned to dot the list of Justice actions, especially pertaining to school desegregation and voting rights. Newer but yet vexing were cases of federal tax fraud against the controversial cult leader the Reverend Sun Myong Moon and his aides in 1982 and abortion cases in Akron the same year. In 1981, the flood of alien refugees arriving in the United States by boat from Cuba and Haiti aroused great concern without satisfactory answers.

FOR ADDITIONAL INFORMATION: The one history of the Department of Justice was published in 1937: Homer Cummings and Carl McFarland, *Federal Justice: Chapters in the History of Justice and the Federal Executive* (1937). A Brookings Institution study of the department was published in 1967: Luther A. Huston, *The Department of Justice* (1967). The most intensive study of a single Attorney General is Victor S. Navasky, *Kennedy Justice* (1971). There are many other memoirs and biographies of other attorneys general.

R. MICHAEL McREYNOLDS

DEPARTMENT OF LABOR. The United States Department of Labor is basically a "people" agency whose function is to see that there is a job for every American who wants work, to ensure that the job provides a safe and healthy work environment, and to assist individuals when they are unemployed or are unable to work. With these goals and concerns, the department has helped develop many social programs, but not without stirring controversy and debate.

The Secretary of Labor is a member of the President's Cabinet and is the President's primary adviser on labor matters. The Under Secretary is his chief deputy, and he is supported by assistant secretaries (in program areas), the solicitor (or general counsel), and the commissioner of labor statistics. Through its major programs, the department helps people find and train for jobs; provides assistance to workers who lose their jobs because of foreign import competition; and administers the Unemployment Insurance program which provides some security to those out of work. It monitors the workplace in an effort to upgrade conditions in health and safety, as well as in the more traditional concerns for wages and hours. It also seeks to assure every worker the opportunity to bargain collectively through responsible unions and to advance free of discrimination on the basis of race, sex, religion, age, national origin, or handicap.

These concerns and activities have made the department part of the various

alone. The secrecy with which the grand jury operates, originally based on the need to prevent the escape of offenders, increases the potential for abuse of the system by the government and makes difficult the redress of any wrong done by irresponsible witnesses or the grand jury itself. Critics also charge that in turbulent times some prosecutors employ grand juries to obtain politically useful information and to harass politically unpopular citizens when in fact there is no indication that a crime has been committed.

Trends. Criticisms have led to proposals for procedural modifications, particularly with reference to right to counsel and cross-examination. Because of U.S. constitutional limitations, the American course during the later 20th century has tended toward modification and reform rather that the abolition of the grand jury, as occurred in England in 1933.

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Further Reading: Simon, R., *The Jury: Its Role in American Society* (Lexington Bks. 1980); Wishman, S., *Anatomy of a Jury: The System on Trial* (Times Bks. 1986).

JUS GENTIUM, yo͞os gen′tē-əm, a term used by the ancient Romans to describe the actual common practice of mankind. It was the law universally adopted by men and thus broader than *jus civile*, which applied only to the Romans. It was somewhat like *jus naturae* but differed from it in being only presumptively reasonable instead of absolutely fundamental and unchangeable. In other words, *jus gentium* was legal usage prevailing everywhere, while *jus naturae* was the ideal law, which might not exist.

RICHARD L. HIRSHBERG, *Attorney at Law*

JUS NATURAE, yo͞os na-to͞o′rē, a theory of jurisprudence that originated with the philosophers of ancient Greece, who sought to discover the basis of law and the relationship of law to justice. See NATURAL LAW.

JUSSIEU, zhü-syû′, **Antoine-Laurent de** (1748–1836), French botanist, who was perhaps the most distinguished member of the great dynasty of de Jussieus who dominated French botany from about 1710 to 1860. He established as never before the idea of a natural classification of plants and translated that idea into concrete families, which, although revised and much expanded, still provide the basic framework for botanical taxonomy.

Jussieu was born in Lyons on April 12, 1748. He devoted his career to the systematic collection and organization of the enormous botanical resources of the French crown and republic. As professor of botany at the National Museum of Natural History (1793–1836) he was responsible for the extraordinary development of the herbarium. Admitting the convenience but emphasizing the limits of an artificial classification based on one or a few distinctive characters, Jussieu built his natural classification upon identification and careful assessment of certain traits (for example, seed leaves and position of floral parts) that appeared to remain relatively constant within various groups and were therefore deemed to be highly important. Often numerous such traits were used, and thus Jussieu was able to define with great accuracy the limits of his families. He died in Paris on Sept. 17, 1836.

WILLIAM COLEMAN, *University of Wisconsin*

JUSTICE, DEPARTMENT OF, an executive department of the United States government, headed by the attorney general. This cabinet officer, established by the Judiciary Act of Sept. 24, 1789, is the chief legal officer of the federal government. The department itself was established and placed under the attorney general on June 22, 1870.

In 1789 the attorney general and one clerk composed the staff. Today the department represents the largest law firm in the world, with its 54,000 employees including more than 4,200 lawyers. In 1819 the attorney general was first provided office space. In 1861 permanent quarters were established. And finally, in 1934 the department occupied its own building, an entire city block in Washington, D.C.

A principal function of the Department of Justice is to represent the United States in court. The day-to-day office "lawyering" in the federal government, such as providing legal advice or negotiating contracts, is handled by the various executive departments or agencies. But when litigation arises, the Justice Department assumes the task.

Administrative Organization. The *attorney general* is the overall supervisor and director of the Department of Justice. The *Federal Bureau of Investigation*, reporting directly to the attorney general, is the U.S. government's primary law-enforcement agency and is principally concerned with the detection and prevention of crime. The *solicitor general*, also reporting directly to the attorney general, is responsible for all litigation in the U.S. Supreme Court to which the federal government is a party.

The *associate attorney general* is responsible for: the Criminal Division, which provides central control for criminal prosecutions and the executive offices for all U.S. attorneys; the Immigration and Naturalization Service, responsible for enforcement of naturalization, immigration, and alien laws; the Bureau of Prisons; the U.S. Parole Commission; the Pardon Attorney; the U.S. Marshal's Service; and the Board of Immigration Appeal.

The *deputy attorney general* is responsible for: the Antitrust Division; the Civil Division, which is lawyer to more than 100 federal agencies and commissions, individual employees acting in their official capacities, and Congress; the Civil Rights Division, which enforces laws against discrimination; the Land and Natural Resources Division; the Tax Division; the Office of Justice Assistance; Research and Statistics; the Community Relations Service; the U.S. Trustees; and the Foreign Claims Settlement Commission.

Staff sections serving the attorney general directly are the Office of Legal Policy, Office of Legal Counsel, Office of Professional Responsibility, and Office of Intelligence Policy and Review.

Each of these divisions, offices, and services is divided into numerous sections, depending on the nature and purpose of its activities.

Principal Functions. The Department of Justice is the legal counsel for the American people. It affects the everyday life of all citizens through detection and prevention of crime, enforcement of the civil and criminal laws enacted by Congress, regulation of aliens and immigrants, prohibition of the abuse or illegal use of controlled drugs, protection of the American economy from

monopolistic and unfair business practices, security of civil rights, application of the internal revenue laws to assure the proper payment of taxes, and assistance to communities in the reduction of racial-ethnic tensions.

The *Criminal Division's* 14 sections include responsibility for such areas as organized crime and racketeering, fraud, public integrity, internal security, narcotics and dangerous drugs, and enforcement operations.

Enforcement of the federal criminal law rests chiefly on the *U.S. attorneys'* offices serving the judicial districts of the U.S. district courts throughout U.S. territory. Thousands of assistant U.S. attorneys and support personnel assist the U.S. attorneys in preparing and arguing the vast majority of federal cases. The criminal cases include fraud, organized crime and racketeering, narcotics and dangerous drugs, and hunting and fishing violations. Civil cases involve taxes, personal injury and death claims based on negligent or intentional torts of federal employees, and antitrust violations.

Crime prevention, detection, and enforcement are further enhanced in the federal jurisdiction by the *Bureau of Prisons'* operation of federal correctional facilities, community treatment centers or halfway houses, and the *Federal Prisons Industries*, a self-sustaining government corporation providing work experience and learning opportunities for federal prison inmates. The bureau aids state and local corrections personnel in technical assistance and training.

The *Immigration and Naturalization Service* encompasses the prevention of illegal entry of persons into the United States, apprehending and expelling illegal aliens, encouraging and facilitating the naturalization of applicants into citizenship, and adjudicating benefits available to persons under the immigration and nationality laws.

The *Drug Enforcement Administration* is the primary narcotics-enforcement agency in the United States. As one of the largest regulatory bodies in the federal government, it regulates the country's entire controlled substances industry. As the leading agency in developing overall federal drug-enforcement strategy, programs, planning, and evaluation, it operates worldwide.

The *Antitrust Division* enforces federal antitrust laws to prevent restraint of trade and monopolies so that business competition may be open and free. The production, manufacturing, transportation, distribution, and marketing operations of all American businesses and industries are the concern of this division. Price-fixing, conspiracies among competitors, boycotts, anticompetitive mergers, and other restraints of trade are targeted for investigation, negotiation, and litigation. While Washington, D.C., is the headquarters for this division, field offices are located in Atlanta, Chicago, Cleveland, Dallas, Los Angeles, New York, Philadelphia, and San Francisco.

The *Civil Rights Division*, established by the Civil Rights Act of 1957, enforces federal laws and executive orders relating to the prohibition of discrimination of persons on account of race, religion, and natural origin in employment, education, housing, credit, voting, public accommodations and facilities, and federally assisted programs. To a lesser extent, it also is authorized to prevent discrimination on the basis of sex, age, and handicap.

Consent decrees resolve a large number of the division's cases. Defendants are required to implement comprehensive affirmative-action programs to guarantee the housing rights of minorities. Most of these cases charge racial discrimination, but a few allege discrimination against women. The division has been especially active seeking to prohibit state and local law-enforcement officials from violating the federal civil rights of individuals.

The *Tax Division's* primary missions are to help the Internal Revenue Service collect federal revenue, to prevent willful deception by taxpayers through criminal prosecutions, and to establish uniform legal principles of taxation. In the latter mission, the division must coordinate its litigating policies with Internal Revenue Service administrative policies and the Treasury Department's tax legislation concerns. The Tax Division and Criminal Division work closely in criminal tax cases involving persons and activities associated with organized crime.

The *Community Relations Service* helps citizens settle race-related differences voluntarily rather than through the courts or acts of street violence. Illegal alien problems, police-minority group tension, anti-Indian hostility, and antidiscrimination compliance disputes are among the areas being pursued by this service.

The *Justice Management Division*, established in 1980, seeks to improve the administration and management of the department through its several offices of controller, personnel and administration, and litigation and management systems.

The *U.S. Marshal's Service* operates through its witness security, prisoner support, prisoner transportation, and special operations divisions.

The *Civil Division*, established in 1868, is one of the department's oldest divisions. Claims against the federal government represent a major portion of the department's legal work. This division has three branches.

The *Tort Branch* handles lawsuits brought under the Federal Tort Claims Act, wherein persons injured by tortious acts of federal employees can sue for damages. The branch also deals with workers' compensation claims by federal employees; ship collision and Jones Act lawsuits; and recovery of damages for vessel-caused pollution of navigable waters.

The *Commerical Branch* deals with contract actions; cases arising under grants, subsidies, or insurance matters undertaken by the federal government; foreclosures, bankruptcies, and renegotiations; and patent and copyright infringement suits. Also included are civil frauds, bribery and antikickback cases, collection of civil fines and penalties, and judgment enforcement.

The *Federal Program Branch* defends the propriety and legality of federal programs. It initiates legal action to enforce these programs, defends the validity of statutes and regulations challenged under the Constitution, and litigates matters involving Freedom of Information, Privacy, or Sunshine Act cases.

Because the department makes recommendations to the federal judiciary, it significantly influences America's constitutional government.

See also ATTORNEY GENERAL; FEDERAL BUREAU OF INVESTIGATION.

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