



THE UNITED STATES
DEPARTMENT *of* JUSTICE

U.S. DEPARTMENT *of* JUSTICE | 950 Pennsylvania Avenue, NW Washington, DC 20530-0001

**Deputy Attorney General Rod J. Rosenstein Delivers Remarks at the Bar Association of Montgomery County's Law Day Celebration
Rockville, MD**

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Friday, May 4, 2018

Remarks as prepared for delivery.

Thank you, Chief Judge Barbera, for the kind introduction. You are an inspiration for all Maryland lawyers. We deeply appreciate your exemplary leadership of our state judicial system.

I am very grateful for the opportunity to spend this time with so many friends and colleagues. My parents raised me in Montgomery County, Pennsylvania. My wife and I raised our children in Montgomery County, Maryland. Both were named for Richard Montgomery, an American patriot killed in action in 1775, while serving as a general during the Revolutionary War. A few years ago, I took my daughters on a road trip to Montreal, and we visited the spot where Montgomery died. His final orders were recorded as follows: "Come on, my good soldiers, your General calls upon you to come on."

As you know, I have been working in our nation's capital for the past year. There's no place like home! But do not believe everything you read in the news or see on television. Almost every day is a great day in my job. It is a tremendous honor for me to serve in the Trump Administration and to assist Attorney General Jeff Sessions in leading the 115,000 men and women who compose the United States Department of Justice. We are accomplishing great things for America, and that is what really matters. Just yesterday, I met with the President and the Attorney General at the White House to discuss some of the important progress we are making to keep America safe.

Today, I am elated to be with you to celebrate Law Day. The rule of law is definitely worth the time to celebrate. More importantly, it is worth the effort to sustain.

President Eisenhower first designated Law Day on May 1st, 1958. Three years later, Congress passed a resolution codifying it.

Congress stated that Law Day "is a special day of celebration by the people of the United States ... in appreciation of their liberties and ... rededication to the ideals of equality and justice under the law." The resolution goes on to recognize that "cultivation of the respect for law ... is so vital to the democratic way of life."

On Monday, President Trump issued a Law Day Proclamation. The President said, "Law Day recognizes that we govern ourselves in accordance with the rule of law rather [than] ... the

whims of an elite few or the dictates of collective will. Through law, we have ensured liberty.” The point is that we do not achieve justice by polling the opinion of any person or group. We achieve justice through a process that seeks objective truth based upon credible and admissible evidence.

Each year, the American Bar Association suggests a theme for Law Day events. This year’s theme is one I particularly value — the separation of powers.

During my confirmation hearing last year, my daughters were studying American government at a high school not far from here. The hearing was a valuable illustration for them about the appropriate role of the constitutional separation of powers. Some of the senators expressed skepticism and concern about the executive branch, as you would expect, but almost all of the senators were respectful.

Each of the three branches of our government has a distinct but vital role to play in upholding the rule of law. The legislative branch enacts the laws. The executive branch enforces the laws. The judiciary interprets the laws. If you have children, as I do, you may be familiar with the Schoolhouse Rock jingle. But they chose to analogize our thoughtful system of checks and balances to a three-ring circus.

Of course, it is not that simple in practice. The interplay among the branches is incredibly complex, and our Constitution contemplates numerous checks and balances.

In the executive branch, we take an oath. We pledge to support and defend the Constitution of the United States against all enemies, foreign and domestic. We promise to bear true faith and allegiance to the same. We attest that we take this obligation freely, without any mental reservation or purpose of evasion. And we commit to well and faithfully execute the duties of the office, so help me God.

Faithfully enforcing the law is not about following a simple set of instructions. As the great champion of the law Robert H. Jackson put it, “law enforcement is not automatic.” Enforcing the law requires discretion and judgment.

When carrying out our enforcement duties, the executive branch is required to enforce the law as written by the legislature, and as interpreted by the judiciary.

I spent one year in the judicial branch, as a law clerk to D.C. Circuit Judge Douglas Ginsburg. Since then, I have worked in the executive branch.

It is a great honor to serve the Department of Justice. When you enter the courtyard of the Main Justice building, you pass beneath a depiction of the scales of justice and an inscription that reads, “Privilegium Obligatio.” It means that when you accept a privilege, you incur an obligation.

Prosecutors exercise considerable discretion. A legal opinion by former Seventh Circuit Judge Richard Posner put it this way: “The Department of Justice wields enormous power over

people's lives, much of it beyond judicial or political review. With power comes responsibility, moral if not legal, for its prudent and restrained exercise; and responsibility implies knowledge, experience and sound judgment, not just good faith."

The point is made more concisely in a remark attributed to French Enlightenment philosopher Voltaire: "With great power comes great responsibility."

If that quote sounds familiar, it was also said by another legendary person – Spider-Man's Uncle Ben.

The point is that government officials who exercise discretion have a special obligation to make the right choice.

That requires experience, good judgment, and wisdom.

At the Department of Justice, our duty is in our name. Attorney General John Ashcroft famously said that we are the only cabinet department with a name that articulates a moral value.

Justice is not measured in the number of convictions secured. Our prosecutors and investigators learn from day one that their duty is to gather the facts, seek the truth, apply the law, and respect the policies and principles of the Department of Justice.

It is a bedrock principle, with very few exceptions, that we do not discuss investigations. The Department's longstanding practice of keeping information about our investigations confidential has often been the source of disagreement with Congress.

In 1941, Congressman Carl Vinson wrote a letter to Attorney General Robert Jackson. He requested FBI and DOJ reports made in connection with an investigation of labor disputes involving Navy contracts. Vinson's committee had oversight for such issues, which is why he wanted the documents.

Attorney General Jackson flatly refused the request. He did not compromise at all. Jackson explained that disclosing investigative reports would harm the national interest in a number of different ways.

First, it would "seriously prejudice law enforcement" by providing defense counsel with the government's confidential impressions of the case.

Second, disclosing certain investigative reports would give aid to our enemies and jeopardize our national security.

Third, investigative reports often contain information about witnesses and informants. Releasing the information could stifle the FBI's ability to obtain sources and could even put lives at risk.

The fourth reason is often overlooked. Jackson explained that handing over the documents could harm the reputations of innocent people. Being a subject of an investigation – or even a target –

is not the same as being guilty of a crime. The Department of Justice conducts many investigations that never see the light of day because there is insufficient evidence to support the allegations.

When we conclude an investigation without filing charges, we do not announce our findings. We are not the judge and jury. If we cannot prove our case beyond any reasonable doubt, there is no case.

When Attorney General Jackson responded to the Congress in 1941, he referenced case law, statements by prior Presidents, and letters from six other Attorneys General.

Jackson explained that declining to open the FBI's files to review by congressional members and staff is an "unpleasant duty," but it is in keeping with the separation of powers embodied in our constitutional system. To illustrate his point, Jackson quoted a Supreme Court opinion explaining that it is "essential to the successful working of this system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department."

We all work for the American people, and we need to be held accountable for mistakes and misconduct. That is one reason why our Department includes an Inspector General. The Inspector General was established to ensure accountability without eliminating confidentiality. The Inspector General's employees include sworn federal agents, attorneys, and other executive branch officers who have full access to Department files and personnel, but who are prohibited from making unauthorized disclosures.

Like the Deputy Attorney General, the Inspector General is accountable to the President. Within the next few weeks, I anticipate that our Inspector General will complete a comprehensive, fair and nonpartisan report that answers many questions about how the Department of Justice handled a high-profile investigation during the last presidential campaign. We will learn from it, and our Department will do better in the future.

Congressional oversight is important. Congress must be able to hold hearings, conduct inquiries, and require reports so that it knows the laws are being faithfully executed and the money it appropriates is being properly spent. But oversight is not intended to eliminate the line between executive branch authority and legislative branch authority.

Our Constitution has provided us with the most stable and resilient legal system on Earth. According to the World Bank, the average constitution has a lifespan of about 19 years. Ours has lasted more than 12 times that—and it has endured through the most dynamic period of change in human history. It has served a big and diverse Union from the horse-and-buggy age to the space age to the digital age. No other Constitution has achieved that.

Our Bill of Rights, containing the first ten amendments, is often regarded as the pride of American government. But the Constitution originally had no Bill of Rights. The issue was considered during the Constitutional Convention in Philadelphia in 1787, but the Constitution

was ratified without it.

The Framers were more concerned about our government's structure than a written guarantee of rights, because a written guarantee is only as powerful as the system in place to protect it. Our constitutional structure, and the separation of powers embodied in that structure, represents our government's defining feature.

Justice Scalia explained that “it is those other humdrum provisions—the structural, mechanistic portions of the Constitution that pit, in James Madison’s words, ‘ambition against ambition,’ and make it impossible for any element of government to obtain unchecked power—that convert the Bill of Rights from a paper assurance to a living guarantee.”

The Founders dispersed power both horizontally and vertically. The three branches of the federal government check one another. The states and the federal government check one another. And the people check both the federal and the state governments.

Separation of powers can be frustrating. Prosecutors are sometimes disappointed when the judicial branch acquits someone it thought was guilty of a crime. But that is part of the genius of our system. Prosecutors collect evidence and decide whether it establishes a crime that warrants prosecution. We do not determine guilt.

I know that judges and legislators are sometimes frustrated by executive branch decisions, such as prosecutorial charging decisions.

The push and pull among and between the branches is bipartisan. It exists regardless of which party is in power. Justice Scalia explained that Americans should “learn to love the separation of powers,” even though it frequently leads to controversy. That tension – the power of each branch to say no – is one of the things that protects liberty.

Each of us has a role to play in protecting this unique and indispensable feature of our constitutional order.

Ultimately, in our system, sovereignty rests in the people. When “We the People” established the Constitution, it was a relatively novel concept. And “We the People” remain responsible for protecting it.

Our system of government is not self-executing. It relies on wisdom and self-restraint. In a democratic republic, liberty is protected by cultural norms as well as by constitutional text.

Lawyers and judges bear great responsibility for implementing and explaining those principles. The further we get from the founding generation, the less we appreciate how much everything depends on people rather than paper.

Abraham Lincoln believed that the best way to ensure the survival of our “edifice of liberty and equal rights” is to enshrine reverence for the rule of law in the hearts of the citizens.

“Let reverence for the laws,” he implored, “be breathed by every American mother ... let it be taught in schools, in seminaries, and in colleges; let it be written in Primers, spelling books, and in Almanacs — let it be preached from the pulpit, proclaimed in legislative halls, and enforced in courts of justice.”

And, Lincoln concluded, “let it become the political religion of the nation; and let the old and the young, the rich and the poor, the grave and the gay of all sexes and tongues, and colors and conditions” keep the rule of law.

We are privileged to live in a country that is governed by the rule of law. It is easy to take for granted. I am thankful for Law Day and events like this because they provide us with an opportunity to reflect on the genius of the American Constitution.

Thank you.

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