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Extemporaneous Reflections of a Working Attorney General

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EXTEMPORANEOUS REFLECTIONS OF A WORKING ATTORNEY GENERAL.*

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Many of my old friends still refer to me as "Judge" but I learned after taking the office of Attorney General in January of 1959 that the deputies and the assistants refer to the head of the office as "General." Apparently the Attorney General, the Solicitor General, the Surgeon General, the Surveyor General and the Postmaster General are all referred to as "General." Now, as one who served in the Army as a private, I must say that I find this very pleasant. The only time it caused me any great embarrassment was at a dinner last year when the host was introducing me to the various guests and upon coming to one very imposing-looking gentleman, he said: "General Mosk, meet Omar Bradley."

Service in a public law office has many compensating factors other than financial; it is a challenging type of work and one which I hope some of the leading law students will find intriguing. The Attorney General of California has an office that dates back to the earliest days of our State. It was established in 1849. The first Attorney General of California was a man named Edward J. C. Kewen. In those days, the Attorney General could not only have his public function but he was allowed to have a private practice as well. This, incidentally, still prevails in some Attorney Generals' offices in the United States.

Since those days of 1849, the Attorney General's office has grown considerably, and is constantly increasing in size, in function, and I hope, in importance. Since I have been Attorney General—during the period from January of 1959—the population in California has increased by seven hundred eighty-five thousand people, which alone would comprise a city of considerable size. This means we have that many more problems, that many more difficulties in which people may find themselves, and as a result, much more litigation. We service all of the branches of state government. Like Gaul, my office is divided into three parts. I have an office in Sacramento, one in San Francisco, and one in Los Angeles. We render legal advice to the Governor, to all of the constitutional officers and to some eighty-five different boards and commissions. Many of these opinions that we render to various boards and commissions are rather dull and prosaic but every once in a while we get one that gives us a little lift and a challenge in a different sort of way. We had one of those last year when an assemblyman from one county asked us for an opinion on the validity of a regulation adopted by the housing agency in his community. It seems that this housing authority adopted a rule that no unwed mothers could live in that housing project. If any woman became an unwed mother after she was already a tenant, she would be ousted. The assemblyman asked for our views on whether this was a valid rule of the housing authority, so we studied the statute that created it and found that the agency was authorized to provide decent housing. We wrote an opinion, pointing out that the adjective "decent" modified the noun "housing" and not the people who occupied the housing. Therefore, the rule was invalid. This ruling has, I might add, made me very popular with the unwed mothers of California.

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** Attorney General of the State of California.

The War on Crime

In addition to rendering opinions, it is our function to resist appeals taken from criminal convictions in all of the fifty-eight counties. After a defendant has been convicted in Superior Court and takes his appeal to the District Court of Appeal, our office takes over the case at this point and we resist the appeal, however high it may go. At the present time, we actually have four cases pending in the United States Supreme Court. I must say that we are rather proud of the record our office makes in handling appeals; we have obtained affirmances in ninety percent of them. Last year the figures reflected six hundred and sixty-five affirmances and seventy-six reversals.

We also have a full criminal investigatory agency as part of our Department of Justice. The Criminal Identification and Investigation Bureau has the largest collection of fingerprints, the largest collection of blood sample types and the largest number of M.O. cards west of the F.B.I. Incidentally, this M. O. card system is rather interesting. This means *modus operandi* and it involves filing crimes by the manner in which the offenses take place. Law enforcement people know that if a burglar commits a series of offenses with one technique, it is likely that he will continually use that pattern. If a certain series of offenses is committed in a community, the law enforcement people describe the manner in which it was committed and we can immediately go to our M. O. files and pull out a group of suspects who use that type of operation. This is, of course, of immediate assistance to the law enforcement officers of that community. We also make investigations for some of the counties which lack the facilities and scientific equipment to undertake their own. These investigations have broken a number of important cases such as the Motherwell case in Sierra County last year.

We have also undertaken investigations into such activities as the Irish Sweepstakes, and I hasten to point out that the sale of these tickets is as much a crime under California law as bookmaking. We conducted an investigation last year into the subject of boxing and wrestling in California and came to the conclusion that is no surprise to most people; that wrestling is a form of entertainment and not a sport. We also have the Bureau of Criminal Statistics in our agency that keeps a record of criminal trends to determine whether it is up or down and in what parts of the State there are marked changes. We found, for example, that last year crime was up in California by some seventeen percent over the previous year. At the same time, we found no indication that there is any organized crime in California in the sense that there is in many Eastern and Midwestern communities where they have syndicates and racketeering of an organized nature. I made that statement not so long ago and one newspaper ran an editorial afterward saying they didn't think it made much difference. The editor said: "If my home is burglarized, it doesn't matter much to me whether it's burglarized by a member of a gang or by a local home-grown variety of burglar; my loss is the same in either case." But I think the point that he missed is that when you have organized crime, you have connivance with officialdom. In other words, organized crime can exist only if there is an alliance with law enforcement. This is something that California has been happily without—we have no indication whatever that there is this kind of an unholy accord between law enforcement and crime in any of the fifty-eight counties in our State. So much for the general picture, which is a very hasty one, of the nature of our office and its fundamental organization.

Business Frauds

One phase of our work that is becoming of increasing significance, I believe, is our activity in the field of regulation to prevent business fraud. Within the past few months you've seen a good deal in the press, I'm sure, about the ten percenters. These business firms offered investors a ten percent assured return. Their advertising, I think, was rather skillful. The word "assured." was used and I'm sure that most people reading it—the uninformed and the unsophisticated investors—believed that the word read "insured," and thought that they had the same kind of guarantees that one has in the case of a deposit with a federal or state bank or a savings and loan association. As a result, some twenty thousand persons invested over seventy million dollars with these firms which sold them second trust deeds and second mortgages, in some instances, on unimproved property that had not even been subdivided. So long as property values continued to rise, they were able to pay their ten percent regularly; but as was inevitable, as soon as there was the slightest recession, they were the first to go under. As a result, today, all ten of the largest ten percenters in the State of California are in one form of receivership or another. We have found that somewhere between one and one-half and three million dollars have actually been misappropriated and, in some instances, embezzled by those in charge of some of these firms. As *amicus curiae,* we have intervened in the federal proceedings on behalf of the investors. Their plight was most serious and unfortunate; not only had they lost or apparently lost the value of their trust deeds or a substantial portion of it, but many were induced to expend further sums to "protect their interests." We received letters by the hundreds from investors saying: What do we do now? We've lost our money and now they want us to send more money. We thought this was unfortunate and perhaps unfair and therefore I appointed one of my assistants to devote full time to appearing in these bankruptcy and receivership proceedings as *amicus curiae* to try to protect their interests. I'm happy to say that this week we were able to secure the release of some eighty-five hundred trust deeds out of receivership to be distributed to the investors in a particular company. Whether the trust deeds are worth the full value of what they paid for them, however, remains to be seen. This is one rather important phase of our current work in the business frauds section. Another is in the matter of long-term service contracts.

We found in the past few years a series of companies being formed, particularly in the field of health services, gymnasium services and dance studios that would sign people to long-term service contracts. We actually found one instance where a woman had signed a lifetime contract for dance lessons amounting to some twenty-five thousand dollars. These companies will incorporate in some of the smaller communities, particularly, and sponsor a high-powered campaign for high cost membership contracts. They seek as high a down payment as possible and then take a note for the balance, which is immediately assigned to a collection agency. Then, after the company has exhausted all of the possibilities in a particular community, they close their doors; perhaps go into bankruptcy or just evaporate. Meanwhile, the people find that there is no place to get the services for which they contracted while they are still being pressed by the collection agency for the balance of the payments on their notes. I certainly do not intend to reflect on the many legitimate and properly functioning health and dance studios who are as anxious as anyone to have these practices curtailed. We have advocated before the current session of the legislature a measure that would limit

the term of service contracts of this sort and put a maximum or ceiling upon the amount of the down payment they could demand. We thought that these arrangements ought to be on a pay-as-you-go basis but we could not get a legislative committee to agree. As a result, the current bill that appears on its way toward passage prohibits any service contracts that run for longer than one year or for which the payment exacted in advance is more than five hundred dollars.

Anti-Trust Activities

The third area in which we have become increasingly interested in recent years is the anti-trust field. It may surprise some of you to learn, as it surprised me when I first became Attorney General, that we have on the books in California, a State anti-trust law, known as the Cartwright Act. It was adopted in 1907 and prohibits much of the same illegal conduct in business that is covered in the interstate field by the Sherman and the Clayton Acts. The anti-trust subject has received increasing attention from the public in recent months as a result of the electrical manufacturers case in Philadelphia. As an aftermath there will be, of course, many civil suits brought against electrical manufacturers who sold equipment to utilities in the State of California, but our emphasis in this field has been directed primarily toward assuring that there will be fair, open, free and competitive bidding on public contracts. It is my belief that when the public spends any money for the construction of buildings or highways, or for the purchase of equipment and supplies for state or local institutions, the public and the taxpayers are entitled to have open and competitive bidding so that they will get the lowest possible price that can be obtained for what they are about to purchase. For this reason, whenever we find examples of rigged bidding on public contracts, we immediately go into action. In this regard, we have filed suits in such fields as optical goods, tile manufacturing, chlorine manufacturing, bleachers for public schools and aluminum ware.

We have brought suit against real estate associations for requiring their members to adhere to a six percent fee for the sale of real property. That is an interesting arrangement which is largely misunderstood by real estate brokers themselves. We have no objection to a six percent fee being charged by a real estate broker nor any other fee but we feel that it must be subject to negotiation between seller and broker, and that the association has no right to insist that a broker must charge a fixed fee or suffer some penalty or disability if he declines to do so. In one of the instances where we brought suit, the real estate association maintained a multiple listing operation and provided that any broker who refused to adhere to a six percent fee would be barred from the services rendered by their listing operation. We say that imposing a penalty or disability upon one who refuses to adhere to a certain price structure is violating the State Cartwright Act.

All facilities and equipment for the public schools must be acquired by open bidding. There have been instances where proprietors have come together at meetings and agreed not to compete against each other for these bids. There was enough business to go around and so they arbitrarily agreed, "You take school A and you take school B and I'll take school C and we won't bid against each other. In that way we'll be able to keep the price up and not have any competitive bidding." This is a very neat arrangement, but it happens to be illegal. Under the Cartwright Act, we are able to proceed in any one of three ways. We can seek a restraining order, *i.e.*, an injunction to prevent them from continuing the illegal operation; secondly, we can bring civil suit for damages on the theory that the state is a con-

sumer and therefore seeks compensation for damages; finally, we can bring a criminal proceeding. I'm happy to say that we have not found it necessary during the past two years to bring any criminal proceedings. I don't feel that we ought to be punitive in this field, but we must seek to persuade the businesses by legal process to refrain from continuing their improper practices. As the result of our activities in this field, I am happy to report (perhaps some people might not be as happy to hear it) that we have filed in the past two years, more suits under the Cartwright Act than were filed in all of the other years that this Act has been on the State statute books.

Another phase of our interest in business activities lies in the area of charitable trusts. We are the only agency authorized under law to examine charitable trusts to ascertain whether the trustee is complying with the purposes of the trust. All charitable trusts must be registered with the Attorney General's office and they must file an annual accounting. We have people who examine these accounts just to make sure that the money is being expended for the purpose for which the trust was created, and, in some instances, to make certain that money *is* expended. At the present time, we have some twenty-four hundred and forty-one trusts registered with our office and the value of these trusts amounts to over a billion and a half dollars. In the past year, we were obliged to bring suits in only three cases alleging improper management, but these cases involved approximately one hundred and fifty thousand dollars.

Diploma Mills

Diploma mills have attracted the attention of our office. You may be surprised to learn that you are wasting your time by going to Santa Clara to get a degree because you can go to a fine institute by the name of Pacific Oxford University and buy an imposing Ph.D. for about five thousand dollars. Or you can get degrees of Master of Bible Interpretation or of Doctor of Psychonomy from any of these "institutions." In this regard, we have been authorized and given appropriate funds by the legislature to enforce the laws of California which establish the standards for granting degrees. Our men find this a rather interesting phase. There have been instances where our investigators have been offered some of these fancy degrees for a fee. One of them was told just a few weeks ago that he could get a Doctor of Psyconomy degree merely by undertaking a short course of instruction and then writing a thesis. He was given some papers to read from time to time and then, after a couple of months, he went back and inquired, "Isn't it time to prepare my thesis?" He was told, "Oh, don't bother doing it, here's an old one, just take it and copy it in vour own handwriting." He did that, brought it back and was presented with a very impressive diploma—at which time he put the handcuffs on and the prosecution began.

Probate Reciprocity

We also have the responsibility to interest ourselves in probate cases where there is a likelihood of a failure of any proper heirs to appear, in the hope that we can have this money escheat to the state and thus cut down the taxes that all of us have to pay. One phase of this work involves situations where the legatees are residents of countries behind the Iron Curtain. In California we have a law that requires reciprocity so that a foreigner may take property under a California probate decree only if he lives in a country which would grant reciprocal rights to a Californian as an heir to an estate in that country. This often presents problems concerning nations that are behind the Iron Curtain. It seems that in many instances

they are able to make out a *prima facie* case of reciprocity. Nevertheless we battle away to try and prove otherwise in order to have the bequest fail and the money escheat to California. We prevailed in a case the other day involving Czechoslovakia. This was quite an important case and both sides presented every variety of expert testimony to buttress their respective points of view. The California court ruled that there was no reciprocity with Czechoslovakia. In cases involving Soviet Russia, Yugoslavia and Poland, we have not fared so well. In most instances, they have been able to establish to the satisfaction of the court, if not to ours, that there is reciprocity.

Intra Governmental Conflicts

We have been concerned with some interesting litigation involving conflicts between governmental departments. We had a little tiff with the legislature in the area of constitutional law a year or so ago, when the legislature in passing its budget for the Department of Education wrote in a prohibition against the Department of Education purchasing a particular textbook. It seems that while the budget was being considered, one legislator held aloft a geography book and proclaimed: "This book which is used in the fifth or the sixth grade is nothing but a lot of hogwash." He proceeded to convince all of his fellow legislators that it was "hogwash" and so when they adopted the budget for that year it appropriated many thousands of dollars to the State Department of Education, provided that no part of this would be spent for the purchase of the named textbook. Well the Department of Education wanted to buy that book and they asked us for our opinion. We told them to go ahead and to buy it, since we believed this was an invalid restiction upon the executive branch of the government. When they placed the order, however, the Department of Finance refused to pay for it because of the legislature's prohibition. We wound up with a very interesting conflict, one that went to the Supreme Court, with one department of the state government suing another department of the state government: the Department of Education versus the Department of Finance. The complicating situation is that both of them are our clients, and so we found ourselves technically, in any event, on both sides of that litigation. Since this would be impractical, we took the side of the Department of Education and sought a writ of mandate to compel the Department of Finance to pay for the books. We let the Department of Finance go out and hire private counsel to take care of their point of view. We won the case unanimously in the Supreme Court, but there were some fairly close arguments involved. The position of the Department of Finance was that the legislature, under our system of government, controls the purse-strings and since the legislature has a right to appropriate funds for the executive branch of the government, it has a right to tell the executive branch how these funds shall be spent and, conversely, how they shall not be spent. The counter-argument which we thought was the better one and with which the Supreme Court agreed, was that while it is true that the legislature does not have to appropriate one single dollar for the textbooks, once it does, it does not have a right to infringe upon the discretion of the executive branch in ascertaining what books it shall purchase. We believe that argument is more consistent with the theory of separation of the three branches of our government.

Those, in brief, are some of the problems which confront the office of the Attorney General. We have many more that I could discuss, such as the Aid to Needy Children Program and the inevitable conflict between those who believe that this is a useful program for the benefit of needy children

and those who believe that many abuses take place in the program in the various counties of our state.

Narcotics Problems in California

I would like to close with a very brief discussion of the narcotics problem because that is one which has received a good deal of attention in the press lately and one that is, of course, before the legislature at the present time. In the past year, our Bureau of Criminal Statistics made a survey of every person who was charged with a narcotic offense during the twelve-month period. We sought to ascertain what sort of people these offenders were. The Bureau found out that there were fourteen thousand arrests made last year on narcotics charges in the fifty-eight counties of California. Seventy-two percent of those arrested were men; eighty-seven percent were under forty years of age. This suggests either that narcotics is a young man's offense or, if you use narcotics, you do not live to be over forty; it must be one or the other. Thirty percent of the users had a previous narcotics record, which is a very high indication of recidivism, and eighty-three percent, we found, had a previous record of arrest, suggesting that we have to revise our thinking in one regard. Many people believe that one becomes a narcotics addict and then turns to crime to support his habit. These statistics suggest, however, that one is anti-social and has a tendency toward criminality and then becomes introduced to and a user of narcotics.

There has been a great deal of emphasis during the current session of the legislature on penalties, and I think that the penalty structure can and should be modified to an extent. I believe the current bill that is on its way through the legislature, proposed by Senator Regan, the chairman of the Senate Judiciary Committee, is a good bill on penalties, but I do not think that is the complete answer to the problem. We have to attack it from many phases at the same time. I think we also need a treatment facility and our office has suggested a bill that would establish such a facility at the abandoned Naval Air Station at Corona in Southern California. We need a federal hospital in California for the treatment of narcotics addicts and we need a statute through Congress that would authorize federal hospitals to accept persons on commitment from state courts and to hold them involuntarily. I also think we need some modification of the Cahan Rule, which bars from admission in California courts, evidence obtained by unlawful search and seizure. Now I am not one of those who believe that the Cahan Rule is wrong; indeed, I think it is a good rule. It is a basic principle that law enforcement officers do not themselves have the right to violate the law while they are enforcing the law. I think that principle is sound, but I believe that it can be modified to the extent of permitting inspection of motor vehicles by law enforcement authorities—taking the motor vehicle outside its protection. When you stop and think about it, you realize that a motor vehicle has to be licensed by the State before it can be operated and the operator has to be licensed by the State before he can drive on streets and highways paid for by the people. It seems to me, therefore, that it would be perfectly proper to write into law an implied consent by anyone operating a motor vehicle for the inspection of that vehicle at any time by law enforcement authorities. When you realize that the motor vehicle is the principal weapon of the criminal (a criminal who isn't on wheels does not have a chance), it seems to me that if we can take the automobile out of the protection of the Cahan Rule we will be giving law enforcement the tool that it needs to fight the narcotics traffic without doing any violence to the Rule itself. I am apprehensive that

one of these days somebody is going to be driving a car in a perfectly normal and proper manner down an uncongested street in the middle of the daytime and an officer is going to stop that car without any reasonable or probable cause; and he is going to search the trunk of that car and find a body in it. Under the present sope of the Cahan Rule, this driver might very well go free since the fruits of that illegal search might never be received in evidence. This would emphasize, I think, one of the basic fallacies of the Rule from the point of view of the law enforcement officer.

I think, further, that in the narcotics field we need an intelligent program of education. We need greater assistance by the Federal Government to aid Mexico in the enforcement of narcotics problems south of the border, at the origin of narcotics traffic. We need a White House conference on narcotics (I am convinced the President will call one this year) and, finally, I think we need an intelligent program of research. We have research into all the other ills of mankind these days but there is none, or very little that I am aware of, being undertaken into the causes of narcotics addiction. I am convinced that medical science will find the answer one of these days but it can do so only if we have some research undertaken. That, in capsule form, is what I believe may be a well-rounded narcotics program which does not place all of the emphasis upon custody and upon long term confinement.

I would like to tell you many other things that we are undertaking in the office. Many would be self-serving declarations, but I think at this point I ought to terminate my formal comments and open the meeting to questions, if the Dean and the rest of you would like. I'll be glad to answer any questions that any of you may have in mind. Those I cannot answer, I promise to evade. Thank you.