

AG Speech To Immigration Judges Endangers Due Process

By **Kevin Curnin**

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Attorney General Jeff Sessions recently addressed 44 immigration judges newly hired by the U.S. Department of Justice. Speaking at their training session on Sept. 10, the most powerful lawyer in the country told the judges all they needed to know about judging: Do it my way. Furthermore, Sessions warned, beware of immigration lawyers, for they "work every day — like water seeping through an earthen dam — to get around the plain words" of the Immigration and Nationality Act.



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Speaking to the new judges as if they are now part of his special club, Sessions fallaciously warned that immigration lawyers do not have a duty to "uphold the integrity" of the law. According to Sessions, "That's our duty."

Sessions' real message was plain: We made you judges not to apply law to facts neutrally, but to help this administration deal with an immigration problem. So much for impartial justice, our legal system's bedrock. While immigration judges are administrative hires within the Department of Justice, they are still autonomous judges who must impartially apply the law. It is plainly wrong for the AG to attempt to directly influence any judge to follow the administration's political script rather than his or her own judgment on a case-by-case basis.

A clever lawyer, Sessions baited his audience with the red herring of open borders. Open borders, he warned, are anathema to "a great and prosperous nation." In other words, denying asylum claims, for example, helps preserve our way of life.

We don't have open borders. We have the Immigration and Nationality Act. But, Sessions insinuated to the new recruits: Whose act is it? Our AG seems to think it belongs to the Department of Justice. And by extension Sessions wants his judges to feel a common cause. The act, he says, governs "our work." He talks about "our officers" and "our judges." This is the closed-clan approach to justice: What's ours is ours and bar the door against anyone else. Join me, says the boss to his new hires.

A morality play needs a foil, and for Sessions that's the lawyers. He casts immigration lawyers as outsiders not to be trusted. In his metaphor of water eroding a dam, immigration lawyers are the enemy of the "moral" and "decent" legal system Sessions describes. Taking his rhetoric higher, he told the new judges to be on guard for lawyers making "blatantly fake claims." The echo of "fake news" cannot be lost on anyone, including Sessions' own boss. As with the Republican party's unfounded[1][2] claims about fraudulent votes justifying exclusionary voter ID laws, Sessions offered no evidence to support his allegation of "fake claims," because, as with voting, there is none.

Fake claims would be a breach of a lawyer's duty as an officer of the court. Sessions cast dangerous false aspersions at honorable and selfless legions of lawyers who tirelessly

donate their services to protect the rights of immigrants — a service which makes the system itself better. My firm, Stroock & Stroock & Lavan LLP, has handled pro bono immigration cases for many years. Thousands of lawyers and hundreds of law firms across the country do the same.

As immediate past president of the Association of Pro Bono Counsel, whose members manage millions of hours of pro bono legal services annually at the law firms across the country — many of those hours in immigration court — I can attest to the integrity of their work and their deep respect for the letter and spirit of the law, including the INA.

Ironically, Sessions worried about "violence to the rule of law."

But it is Sessions who does violence.

It is he who presided over the administration's amoral "zero tolerance" policy, which violated due process^[3] to tear thousands of families apart. In further defiance of due process, several hundred children are still in detention without their parents.

Despite his frequent references to morality and occasional citation to the Bible, all of the unnecessary and unlawful mayhem is of no concern to Sessions. On the contrary, by lauding the "deterrent effect" of kids in cages, he made it plain to the new judges that fairness need not get in their way.

This is not the first time the attorney general has muddied respect for the rule of law in order to exert the administration's political will and undermine due process. Last year, he threatened to impose a quota on already overworked immigration judges, with the idea that if they were forced to work even faster, there would be even more denials. This year, he assigned an appeal to himself, and eagerly went beyond what the case required in an attempt to rewrite settled law, mostly in dicta, to make it infinitely harder for domestic violence and gang violence victims to be awarded asylum. Last month, it was reported that his Justice Department was sidelining an immigration judge whose rulings were perceived as critical of current policy. The judge presides in Philadelphia, but the chilling effect could be felt across the country.

The immigration judges union is doing its best to insulate members from Sessions' improper pressure tactics. Recently, the president of the union said "We just find it really troubling and problematic that the AG just does not seem to appreciate the distinction that we have as immigration judges from the rest of the department." That distinction rests upon the duty to impartially apply the law to the facts of each case, rather than render decisions influenced by the improper animus of the attorney general.

Our immigration system is broken. Congress has repeatedly failed to fix it. Sessions is within his authority to enforce the laws zealously. But he exceeds his authority and does real harm when he sacrifices due process to political process, for political gain.

For all this administration's faults, perhaps the most dangerous is its spiteful disregard for the rule of law. For truly, it is the rule of law that holds us together as a nation. Without respect for the basic principles that have enlightened our democracy since its birth and

carried us through its darkest moments, we could fall apart. It could happen here.

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[1] Huseman, J (2018, June 19) How The Case For Voter Fraud Was Tested – And Utterly Failed *ProPublica*. Retrieved from <https://www.propublica.org/article/kris-kobach-voter-fraud-kansas-trial>

[2] Tackett, M and Wines, M (2018, Jan. 3) Trump Disbands Commission on Voter Fraud *The New York Times*. Retrieved from <https://www.nytimes.com/2018/01/03/us/politics/trump-voter-fraud-commission.html>

[3] MS. L. v. U.S. Immigration and Customs Enforcement (ICE), 310 F.Supp.3d 1133 (S.D. Cal. 2018)