



Department of Justice

FOR RELEASE UPON DELIVERY

ADDRESS

OF

THE HONORABLE GRIFFIN B. BELL

ATTORNEY GENERAL OF THE UNITED STATES

BEFORE

THE UNIVERSITY CLUB

NEW YORK, NEW YORK
WEDNESDAY, DECEMBER 14, 1977
7:45 P.M.

In December 1886, another Georgian spoke to a similar audience only a few blocks from here. I refer to Henry Grady, then the 35-year-old editor of The Atlanta Constitution.

Grady became a hero to many Southerners -- for much the same reason that many Southerners viewed President Carter's election as a unification of the region with the rest of the nation. Grady's 1886 speech was called "The New South" and was delivered to an audience of New York business leaders whose numbers included General Sherman. Contemporaneous accounts called the speech electric. Grady was viewed as a new leader, and indeed he was.

Grady began his address that night with a story about an old preacher whose Sunday text had been discovered in advance by a group of mischievous boys. They glued together the pertinent pages of the Bible. The next morning the preacher read on the bottom of one page: "When Noah was one hundred and twenty years old he took himself a wife who was" -- then turning the page -- "140 cubits long, 40 cubits wide, built of gopher wood, and covered with pitch inside and out."

The preacher was understandably puzzled. He read it again, verified it, and then said: "My friends, this is the first time I ever met this in the Bible, but I accept it as an evidence of the assertion that we are fearfully and wonderfully made." Grady concluded that if he could get his audience to hold such faith that night, he could proceed cheerfully to the task he otherwise approached with a sense of consternation.

Henry Grady told another story that day in 1886. He wanted to tell General Sherman, who was in his audience, that people in Grady's part of the country considered the General an able man, but some thought he was a bit careless with fire.

It was clear to all who heard Grady's powerful message that the time for an economic and political union between North and South had arrived, that as a Southerner he saw nothing inconsistent about being an American and a Southerner, that establishing a status for liberated slaves depended on full and exact justice, and that the South desired to become an agricultural, industrial, and financial partner with the rest of the country.

Grady died only a few years later, but the South has been fulfilling his prophecy. I begin tonight with this story, not so much as a Southerner speaking to an important New York audience, but because I want to discuss what I believe are goals, interests, and values which, as Attorney General, and as a member of the Cabinet, I share with you.

I begin with a brief review of our President's first eleven months.

In ancient Greece -- where the ideas that lie at the core of our democratic government were taking shape 2,500 years ago -- there was a maxim that "the measure of man is what he does with power." Our own country's experience confirms that maxim, and we can measure President Carter accordingly.

He found Washington in need of repair. Our Federal establishment has been consumed for almost 20 years by three all-dominating issues: the civil rights revolution of the 60s, the Vietnamese war, and Watergate. Insufficient attention had been paid to the condition of government itself.

There were and are many accumulated problems. President Carter has faced those problems and is coming to grips with them. He has not taken a public relations approach for quick or contrived victories. Rather, he has directed his attention and his intelligence and his powers of moral leadership to all problems, no matter how difficult.

This approach offers few immediate rewards. Nevertheless, the welfare of America is involved, and it is not a time for one to flinch. It is not a time to apportion the problems on an annual basis, with some being delayed until next year and the next and the next.

The American people have a right to expect no less than what has been the President's approach. In my view, as a citizen with close proximity to the scene, President Carter has done with the power of the presidency in his first year just what should have been done.

I am encouraged by the progress that has been made to date. It is progress only in the sense that solutions are in process. We will begin to see results in 1978. Our constitutional system operates in a ponderous fashion, and the solutions which have been offered must be debated in the Congress. I look forward to a strong 1978.

My basic goal as Attorney General has been to restore the confidence of the American people in their Department of Justice.

I began with two concepts. The first was that the Attorney General has the duty to offer national leadership in our total system of justice -- federal, state, and local; criminal and civil. I have made every effort to do this. Our goal has been and is to make "equal justice under law" a living and meaningful promise, with justice available to all on a prompt and inexpensive basis. I am encouraged by the progress to date toward that goal.

We are working closely with the Senate and the House on a number of important measures in this area. We expect the passage next year of a new Federal Criminal Code -- the most comprehensive revision of our federal criminal law in the nation's history.

We have proposed legislation to expand the authority of United States magistrates and legislation reforming diversity jurisdiction.

We are trying to identify the most appropriate forum for prompt and effective redress of disputes. In that

connection, we have developed proposals for alternative means of dispute resolution. One specific proposal would authorize an experiment with compulsory but non-binding arbitration in selected types of federal civil cases.

One important step is to improve the conduct of litigation. We have been working with the organized bar, various interested groups, and Congress toward changes that will make the discovery process less expensive, faster, and, as a result, more efficient. We are seeking a system of effective sanctions against parties who abuse the discovery process. And we are developing effective rules to limit the scope of discovery to materials relevant to the issues raised in the action, rather than to the "general matter" as is now the case. We are also working on some revision of the class action procedure.

This pretrial discovery approach is very much in line with what your Second Circuit Court of Appeals is sponsoring under the able leadership of Judge Irving R. Kaufman. He has appointed a group of jurists, lawyers, and lay persons to resolve problems with discovery procedure. The problem also has the attention of the Litigation Section of the American Bar, the American College of Trial Lawyers and the Federal Judicial Center. My own Office for Improvements in the Administration of Justice is pulling these groups together to gain needed changes in the Federal Rules of Civil Procedure.

The second concept with which I began as Attorney General was that the Department of Justice is the Department in which every American has a vested interest. If the Department of Justice is not to be trusted, what Department is?

I knew that the Justice Department had to be a place of openness; and we insist on its being open. We make all information available that can be made available within the strictures of law and ethics. We meet with any group which wishes to meet. I work closely with the media and have never made a statement off the record.

We insist, of course, on absolute integrity. We expect the highest standards of professionalism on the part of all of our employees.

We also expect restraint in the use of power, for we know that power is often abused. My rule is that the best use of power is not to use it at all except when absolutely necessary, and then to use it sparingly.

We teach fundamental fairness in the sense that there are levels to be reached in dealing with American citizens which go beyond due process in terms of decency and civility.

Operating on these principles, we investigate and prosecute crimes, we defend the government in civil suits, and we bring civil suits on behalf of the government. In addition, we give legal opinions to the President and other high government officials and even to Congress when requested. In short, we are the lawyers for the nation.

The President is charged with faithfully executing the laws, and in that capacity I am his agent. I am also

his agent for foreign intelligence matters. But as I perceive the office of Attorney General, I am in the end the lawyer for the American people, and that is the way it should be.

It is a challenging job and one to which I am fully devoted. My hope is that we will refurbish the Department of Justice -- putting people and systems in place with the result that the Department will function in an efficient and capable manner and will in every word and deed symbolize the rule of law in our country.

Our assignments are broad. One significant responsibility is enforcement of the antitrust laws. We are charged with the responsibility of keeping the marketplace open and unfettered by collusion, conspiracy, or monopoly.

The effective enforcement of the antitrust laws has become complex. These cases are among the most difficult and time-consuming of all litigation. The ability of the government to effectuate an adequate antitrust policy has been questioned.

It is my belief that the antitrust laws are intended to be pro-business as well as pro-consumer. But there are problems in enforcement, and perhaps even some aspects of the substantive law, which need examination.

Because of these concerns, I asked the President to establish an antitrust study commission, the first since the

Brownell Commission during the Eisenhower Administration. The commission will recommend ways to simplify and expedite complex antitrust litigation. Neither the individual litigants nor our court system can continue to afford the costs of the extended trials that increasingly put more value on stamina and the deep purse than on the merits of the case.

The commission also will study the present exemptions and immunities from the antitrust laws. It may be that our enterprise system should not continue half-free and half-regulated. At the least, the reasons for exemptions or immunities ought to be re-examined.

Another current major concern is that the realities of foreign competition should be considered in the enforcement of the antitrust laws. American businesses may be denied access to the markets of some foreign countries. They also confront in our own country competition subsidized by foreign governments. This gives rise to the view that permitting mergers and other responsive transactions, which would ordinarily be deemed to be anticompetitive, may sometimes seem like sensible countermeasures.

We know that the reality in some countries is government subsidization of business to ensure full employment. Nevertheless, several points should be made. First, the antitrust laws are, in their present form,

flexible enough to permit mergers and joint ventures when these transactions serve important purposes and when there are no alternatives that would be less anticompetitive.

Moreover, the Antitrust Division is committed to reviewing particular proposed transactions and to stating its enforcement intentions in advance. In other words, in its enforcement of the antitrust laws, the Department of Justice is willing to give advance notice of its views -- a service of which surprisingly few businessmen take advantage.

In these reviews, the Department is often asked to consider the contention that some exigency supports a proposal. One argument frequently made is that one or another of the participants to the proposal is a failing company or has a failing division. When this contention is well supported, it receives serious consideration. Our review procedure focuses on business realities, and business should feel free to come to the Department with proposals.

Another point is that structural changes in the organization of this country's industry, as the result of mergers and joint ventures, are the most serious and among the least reversible of consequences that could result from unfair foreign competition. Provisions in our antidumping law already prohibit sales in this country by foreign producers below cost. It may be, as is proving to be the case in the steel industry, that a better job can be done in administering these laws.

Additionally, if these antidumping laws are unsuccessful in dealing with the problem, temporary restrictions -- such as tariffs or quotas -- could presumably be introduced as the next step. While these measures could cause some problems for consumers and contribute to inflation, it is a remedy which must be assessed. The cartelization of our own domestic industry through a series of defensive mergers or otherwise would be an extreme consequence, and to be avoided if possible.

Aside from the impact of sales by foreign producers in our own country, a larger question is posed by the other part of international trade -- our role abroad. As Americans, we are fond of holding ourselves out as a "free trade" nation. But the idea of "free trade" implies competition between producers who are comparably disciplined by market forces.

In fact, our businesses are denied access to at least some foreign markets. Some foreign economic systems are increasingly politicized. Equity must be a part of the international trade equation. If efforts to open up foreign markets to American businessmen fail, it will then be time to ask whether the antitrust laws ought to be relaxed.

We are not unaware of the spectre of industry subsidized by foreign government destroying its American competition, and with dire consequences to the American

consumer and job-seeker. The answer at present is two-fold: (1) there are other available remedies, and (2) the spectre has not been reached.

This has been a recitation of some of our problems. My hope is that as national leaders we will have a renewed vision of the goals, interests, and values of the American people. I think that these are just what Tolstoy had in mind in speaking to a group of Russian tribesmen about Abraham Lincoln following his assassination. No person, Tolstoy said, "could endure in history as being great unless that greatness was rooted in four precepts: humanity, truth, justice, and pity."

In order to deal effectively with the many hard issues facing our country, it will be well to have, in Adlai Stevenson's phrase, both warm hearts and cool heads. It is in that context and spirit that I greet you tonight.

#