

ORIGINAL

REMARKS

OF

THE HONORABLE GRIFFIN B. BELL
ATTORNEY GENERAL OF THE UNITED STATES

AT

THE DISTRICT JUDGES ASSOCIATION LUNCHEON

New Orleans, Louisiana
April 26, 1978

Pages 1 thru 19

Hoover Reporting Co., Inc.
320 Massachusetts Avenue, N.E.
Washington, D.C. 20002
546-6666

Minks

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

REMARKS
OF
THE HONORABLE GRIFFIN B. BELL
ATTORNEY GENERAL OF THE UNITED STATES
AT
THE DISTRICT JUDGES ASSOCIATION LUNCHEON

WEDNESDAY, APRIL 26, 1978

New Orleans, Louisiana

P R O C E E D I N G S

1
2 ATTORNEY GENERAL BELL: Murray, I thank you very
3 much for the introduction. It's good to see so many old
4 friends again. I know you've got a lot to do businesswise,
5 although Murray invited me to speak, I won't wear out my
6 welcome, I'll speak just briefly, and let you get on with more
7 important activities.

8 About ten days ago the President summoned the
9 Cabinet to Camp David for a period of taking stock, and
10 assessing what we were doing, how well we were doing it, what
11 we could do better. That was a good thing to do, because we
12 have been there 15 months, and if we don't know our jobs by
13 now we ought to leave. Or if we're not prepared to carry out
14 the President's policies, we ought to go somewhere else so we
15 can get some policies of our own to push.

16 We also -- I had already started, but I think we're
17 all now having to assess our own Departments; and I'm doing that,
18 I'm in the process of doing it, assessing all the
19 programs we've been trying to carry out, where they are, whether
20 they are going anywhere or not. And I'm also thinking more of
21 our mission, what is the mission of the Department of Justice.

22 There's two or three things I want to talk to you
23 about, that I will be doing, or am doing, in which you'll
24 have a special interest.

The first one is that since George Washington's time,

1 when he appointed 13 United States Attorneys, there's never
2 been a time in the history of the republic when the Attorney
3 General really knew much about what goes on in the U. S.
4 Attorneys' offices; people may claim to the
5 contrary, but it's simply not so. And since I've been there,
6 I've heard some unusual things about what goes on in U. S.
7 Attorney's offices over the country.

8 I'm going to see that the Executive Office for U.S.
9 Attorneys, which now is really a service office, has a better
10 liaison with the United States Attorneys, and see if I can't
11 have a closer relationship to them.

12 In addition to that, I'm going to greatly expand
13 the Trial Advocacy Institute, where many of you have been and
14 lectured, I'm going to pattern it after the National Institute
15 for Trial Advocacy, which is operated out in Boulder, where
16 you have to take a 30-day course. I hope to move into some-
17 thing like that. It may be we'd have to get it in parts, but
18 eventually could get the same kind of certificate that you
19 get out there.

20 Well, to do all of this in the Executive Office of
21 U.S. Attorneys requires some upgrading and I've gotten an
22 extra slot for an Assistant Attorney General; I'm trying to
23 recruit somebody to come in and head that office. I really
24 need someone who has prosecutorial experience, and also has
25 a bent for teaching. Because I think the Trial Advocacy

1 program is going to be my answer to the Chief Justice, about
2 the low quality or lack of quality, substantial lack of it
3 in the trial bar.

4 You can help a lot in both these areas, whether the
5 U.S. Attorney is doing a good job as an institution, and
6 whether the lawyers in the U. S. Attorney's offices are doing
7 a good job when they appear before you.

8 I would like to get letters from you from time to
9 time. I've heard from some of you, but I'd like to hear from
10 more of you about this particular subject matter.

11 QUESTION: Would it be in confidence?

12 ATTORNEY GENERAL BELL: In confidence; absolutely.

13 And the next thing that I want to mention, that you
14 have a particular interest in, is the intelligence system, the
15 intelligence apparatus of our country. Our programs are non-
16 partisan. There has never been the slightest political over-
17 tones at all to anything we do in that area. We run the
18 counterintelligence operations through the FBI; we run some
19 positive intelligence there. Most of the positive intelligence
20 is in the Defense Department and the CIA. I'm the lawyer for
21 those operations, as well as for the FBI.

22 We are pushing a bill that Attorney General Levi and
23 President Ford first introduced, to establish something called
24 the Foreign Intelligence Surveillance Act.
25 We will go to district judges to get court orders in foreign

1 intelligence activities. That's never been done, since about
2 1936 when the World War II started heating up and Roosevelt
3 was President, we first began to get into the foreign intelli-
4 gence system; but at that time it was all under the FBI, the
5 FBI had people all over the world, the Free World. And later
6 we had the OSS and later the CIA. We've never gone to court
7 to get any kind of a court order in foreign intelligence.
8 Neither Title III nor Rule 41 lend themselves to foreign
9 intelligence.

10 If we get this Act passed, and it did pass, as I
11 said, yesterday at 95 to 1 in the Senate; it's being marked up
12 in the House now. There will be a few judges selected by the
13 Chief Justice who will be assigned this duty on a rotating
14 basis. I don't know where they will be located, whether we'll
15 just try to use some in the Washington area, or whether he'll
16 call some in; I don't know how he'll do it. But we'll become
17 more accustomed to doing things in camera. Most all these
18 things will have to be considered in camera. You're talking
19 about intelligence matters that can't be publicized. So we're
20 going to have a lot of learning to do. I'm going to have to
21 work closely with the Chief Justice until we get set up; then
22 I'll have to be working with some of you, on how we do it.

23 The way it now, happens, the Secretary of
24 State or whoever starts these procedures goes through the FBI,
25 and the FBI Director signs off and then it comes to me and I

1 sign off. The district judge would be one more sign off.

2 will give the intelligence system and
3 the intelligence community the imprimatur of the federal
4 courts, and that will be a very substantial thing. The
5 intelligence operation that we have in this country is too
6 important to be constantly shot at, sniped at, distrusted;
7 and I think --and this is a complement to the Judiciary-- that
8 you will add the element of trust that sometimes now seems to
9 be missing.

10 I expect this legislation to be finally enacted
11 during this year.

12 And then another thing I think you're interested in,
13 because you have the -- you deal a lot with the FBI and the
14 Drug Enforcement Administration, I foresee that we are heading in a
15 direction that the head of the FBI is going to become something
16 like the Director of Central Intelligence; Admiral Turner, for
17 example, is Director of Central Intelligence and head of the
18 CIA. I don't think we can have so many investigative agencies
19 in the government, all under separate heads. I think the
20 time will come where we're going to have to start bringing
21 some together.

22 The FBI is an exempt service. You can't very well
23 put civil service investigators in with the exempt service;
24 and it's not really necessary to put them together, if you
25 had them under the same head.

1 We also have a great overlap in training programs
2 for these law enforcement officers. We've got
3 some being trained out at Brunswick, at Glenco; we've got
4 some being trained at Quantico, the FBI; we have the drug
5 people being trained in Washington. Glenco is not able to
6 handle all the border patrol, for example, that we need to
7 have trained right now. They are not able to give marshals
8 the full training. We contract with the State
9 of California and the State of Mississippi to get some of the
10 training done for the marshals. So all that needs to be
11 pulled together and consolidated.

12 And I would suspect that we're heading in that
13 direction. And I say that -- "suspect" is all I can say, --
14 because I've learned a lot since I've been in Washington; I've
15 learned that every Committee in the Congress has an agency
16 that it has a vested interest in. And when you start talking
17 about moving one agency over into another agency and
18 consolidating them, it's like the story, whoever said, "it may
19 work in practice but it will never work in theory."

20 [Laughter.]

21 ATTORNEY GENERAL BELL: And the block is that the
22 Committee doesn't want to give up this, they say, "Well, this
23 is in such-and-such committee, and it will be over in another
24 committee." And that's just the way it is. You can't get
these things done as fast as you think. They all look good on

1 paper. So I don't know how long it will take us to do that.

2 But it's like an idea whose time has come, and we
3 can't keep putting it off forever.

4 Then the last thing I thought I'd mention to you is
5 the great confrontation that goes on between the different
6 parts of the government and how it sometimes manifests itself
7 at the Justice Department.

8 I never said very much about it, but you remember
9 back in the Bakke case what a furor was going on, every
10 agency in the government wanted to write the brief, and it
11 finally gets down to: who speaks for the government?

12 So we got by that period. I finally told the
13 Solicitor General to get the head of the Civil Rights Division,
14 and lock themselves up in a room and write the brief, and not
15 to come out any more until they got through with the brief.

16 And after that several groups at the White House,
17 and various places, took credit for telling us what to put
18 in the brief -- which didn't make me feel too good.

19 So, you probably saw the other day, where I argued
20 the case called the snail darter at the Supreme Court. The
21 great conflict between the Tellico Dam and the
22 Snail Darter. Well, the
23 fact that I argued it didn't have a whole lot to do with the
snail darter or the Tellico Dam. There was much disagreement
in the Executive Branch over which way to go. The TVA wanted

1 to go with the dam, Congress wanted to go with the dam, because
2 they had been appropriating money for it, even after the snail
3 darter had been discovered. But there were several other
4 groups that wanted to go with the snail darter. And that
5 started one of these debates over which way the Justice
6 Department ought to go. And I thought that it was important
7 enough, given the circumstances, that maybe I ought to argue
8 the case, to make the point that the Attorney General is the
9 legal voice of the government.

10 We listen to what people say. Judge McCree is really
11 the one in charge of this. We listen to what they all say.
12 But we finally have to come down and take a position.

13 Of course, if the President wanted to take a different
14 position, we would listen to what he had to say, because he,
15 under the Constitution, has the duty to faithfully execute
16 the laws; I don't have it, I'm his agent. But the President
17 has not shown any signs of wanting to practice law, since I've
18 been there. So I hope he's not -- I don't have any reason to
19 believe that he is.

20 But in this snail darter case, there's a custom that
21 began during the Eisenhower Administration, of filing something
22 that they call a split brief -- everyone around Washington
23 knows about this policy. And that is, when some agency says,
24 "I just don't agree with the Justice Department about this,
and I think you ought to include our views in the brief." So

1 we were asked in this case to do that. And we filed an
2 appendix to the brief, in which we set out the position of the
3 Department of Interior. When I was arguing the case, Mr.
4 Justice Powell asked me why we did that.

5 He said, he hoped it was not, as set out, "I think this is an
6 unfriendly question," and I said, "No, it's very friendly.
7 I was hoping somebody would ask me about that."

8 So I explained the policy, and how hard it is, in the
9 government today, as big as the government is, as many parts
10 as we have in the government and the great number of interest
11 groups that are represented in the government, it's very
12 difficult to speak with one voice. And maybe the Supreme
13 Court will think some about this policy they have, where you
14 can give two views.

15 It is true that under some statutes some parts of
16 the government can go to the Court on their own. They can go
17 to the Supreme Court, as Mr. Justice White reminded me when I
18 was arguing the case. But it's another thing that needs to be
19 rethought. We're just living in a time where we're having
20 to rethink all of our processes of government, and this is
21 particularly true in the law and in the Department of Justice.

22 I guess, in a way, it's a bad time to be Attorney
23 General, but in another way it's a good time, because people
are willing to re-examine positions, and I think that most
everyone I see is receptive to the idea of making things better.

1 Let's just take stock, are we doing it right, or is there
2 some better way to do it?

3 Those are four things that I thought you might
4 have some interest in, because, in a way, being as you're
5 running the courts, you'll come to see those things. And I
6 want to repeat again how much I'd like to hear from you.
7 I have some thoughts myself about things, but the Justice
8 Department is a big place, and if we're going to make it
9 better, I've got to have communication with people who see the
10 Justice Department in action, who deal with the Justice
11 Department.

12 Thank you very much.

13 QUESTION: Could I ask the Attorney General a
14 question?

15 ATTORNEY GENERAL BELL: Yes.

16 QUESTION: You will recall, at the last
17 Judicial Conference I think I made some mention about this,
18 we got a directive from the Administrative Office that it was
19 a criminal offense for a federal judge to write a letter to a
20 Member of Congress or, I guess, to the Executive Department
21 that had any kind of appearance of lobbying.

22 Now, are any of us going to be indicted if we
23 write you a letter?

24 [Laughter.]

25 ATTORNEY GENERAL BELL: No; I think I've rendered a

1 legal opinion to the contrary of that view. .

2 My own view is that the statute would violate the First
3 Amendment. Even a federal judge has a right
4 "to assemble and petition for grievances."

5 [Laughter; applause.]

6 ATTORNEY GENERAL BELL: [sotto voce] If there are
7 any other questions, I'll answer; otherwise I'll go.

8 THE MODERATOR: [sotto voce] Well, wait a minute.

9 [To the audience:] Judge Bell said that if there
10 were any other questions, intelligent or otherwise, that he'd
11 be pleased to answer them.

12 QUESTION: I think there's one thing, General Bell,
13 that might concern all of us, and you might care to make some
14 comment about it. It seems that more and more judges are
15 being sued these days, and it falls upon the U. S. Attorneys
16 to represent them. Do you have a comment about that?

17 If we render an adverse decision, well, you get sued.

18 ATTORNEY GENERAL BELL: Yes, and I'm sued almost
19 every day.

20 They say one of the worst things about being Attorney
21 General is that it absorbs a great portion of your time for
22 many years thereafter, in the lawsuits that you're involved in.

23 I have a bill pending in the Senate and House that
I'm really putting great effort in. It's an amendment to the
Federal Tort Claims Act, and we're going to substitute the

1 United States as a party defendant for any federal employee
2 that's sued. That would include judges. This would really
3 make the government better. You can't believe what a burden
4 it is on the FBI agents to be sued in civil suits. A lot of
5 them carry their own liability insurance policies now, and
6 paying out of their pockets. And where I got onto this idea,
7 when I first became Attorney General, the Civil Division kept
8 bringing me papers to sign substituting the United States as
9 a party defendant for drug manufacturers, who manufactured
10 the swine flu serum. That's in the statute, that they would
11 substitute.

12 There's another statute where you substitute the
13 United States as party defendant for doctors, I believe it's
14 in the Health Service, anybody sued. There are two or three
15 special things of that sort.

16 So it occurred to me that everybody ought to get as
17 good a treatment as the drug houses, drug manufacturers. I
18 don't know of any reason for the government treating them any
19 better than they treat me. So I'm pushing that, and I'm having
20 some success. Both the subcommittees that have it in the
21 House and the Senate wanted to be certain that there would be
22 some way that the public could be assured that if there was a
23 judgment rendered against a government employee for misconduct
24 of some sort, negligence, whatever, that there might be some-
thing done about it, by the agency involved, that the person

1 just wouldn't get off scot-free, the government pays the
2 damages and nothing could be done to the employee. We're
3 negotiating that. In fact, I was working early this morning
4 on what we think is a final draft on that, and I hope something
5 will be done. But it's a very big problem.

--tentious

6 We are becoming more and more (inaudible), because,
7 as a judge, you have a good deal more immunity than the rest of
8 us. But, nevertheless, you spend so much money in court.

9 I just had something happen to me that was
10 astounding, I thought. I really thought I had done a great
11 thing. I worked pretty near, well, about eight or ten months
12 on the spy case; we finally caught these spies. And they're
13 being prosecuted in Alexandria. And the judge had to make a
14 ruling on the admissibility of some of the evidence. And I'm
15 being sued in the District of Columbia by the spies, for
16 violating their civil liberties in some way.

17 So this is an unusual time we're living in, and I
18 can't just say, "Well, that's terrible; they can't sue me."
19 They can sue me. And I've got to run through until we get to
20 the point where we can get it out of court.

21 So, this is all unusual, but it's going on. If we
22 can get this law passed, we'll be in a lot better shape than
23 we're in now.

24 THE MODERATOR: Judge Bell, thank you very much for
sharing your thoughts and experiences with us, and being with

1 us today. We're very grateful for your attendance, and by
2 your presence here.

3 As you know, as well as anyone in the room, this
4 Association, at the request of Chief Judge Brown, and yourself,
5 endeavored to consummate a project which we have very loosely
6 called Operation Panama. Some 17 judges seated out here have
7 participated in this program, in what is akin to the old
8 Berlin Airlift sort of thing, to keep the court going. It's
9 all been under the direction and cooperation of our Chief.

10 We have, in the last nine months, 17 judges have made
11 20 trips to the Canal Zone, to keep that court going.

12 Some of the side benefits that flowed from that was
13 that we got -- the Fifth Circuit judges have gotten well known
14 in the Canal Zone.

15 Well, from the Canal Zone, brought by special courier,
16 Norman Rutger, last Thursday, we have obtained a little gift
17 for you that we'd like to present to you at this time. This
18 came from Gamboa Prison in the Canal Zone, especially made
19 for the Attorney General of the United States, and I'm going to
20 present it to you at this time.

21 [Presentation made.]

22 THE MODERATOR: Just tear into it, you can't hurt it
23 in any way. But this is from -- a little gesture of our
24 esteem and appreciation and affection for you.

25 This is inscribed, "Attorney General Griffin Bell

1 from the District Judges Association, Fifth Circuit, 1978."
2 A little gesture of our appreciation.

3 ATTORNEY GENERAL BELL: Thank you very much. Does
4 the gavel go with it?

5 THE MODERATOR: The gavel goes with it.

6 [Applause.]

7 ATTORNEY GENERAL BELL: Well, thank you very much.

8 I don't know when I'll ever have use for a gavel
9 again, but maybe I can defend myself with it.

10 [Laughter.]

11 THE MODERATOR: And just so that our Chief Judge, who
12 has been so helpful and so cooperative with this Association,
13 not only this year but throughout the history of the
14 Association, will not feel in any way slighted; we have
15 obtained, your officers and the others involved have obtained
16 a similar gift for Judge Brown.

17 [Presentation made.]

18 [Applause.]

19 CHIEF JUDGE BROWN: This probably is the hangman's
20 noose!

21 [Laughter.]

22 CHIEF JUDGE BROWN: Oh, that's beautiful. Look at
23 that. I do have a use for this, and, Griffin, you know better
than I do, that the place where I really need it is in an
en banc or a council meeting.

1 If you -- I'm sure the Cabinet, the President's
2 Cabinet doesn't resemble the Fifth Circuit Council meeting
3 or en banc conference, does it?

4 ATTORNEY GENERAL BELL: Sometimes.

5 CHIEF JUDGE BROWN: Sometimes.

6 [Laughter.]

7 CHIEF JUDGE BROWN: Well, thank you so much.

8 I'm glad to be -- you didn't ask me to speak, did
9 you?

10 THE MODERATOR: I did indeed. You're here and --

11 CHIEF JUDGE BROWN: Well, I've got to do that.

12 Some of you knew Joe Rolf, who was a great maritime
13 lawyer and who was my mentor; and he said, "John Brown never
14 used one word where two would do".

15 Terrible, isn't it?

16 ATTORNEY GENERAL BELL: I thought it was three.

17 [Laughter.]

18 CHIEF JUDGE BROWN: I want to say two things. I
19 just think the District Judges Association of the Fifth
20 Circuit is a wonderful institution.

21 Now, the Chief Justice, he's all mixed up about a
22 lot of things. One of them is calling magistrates a judge,
23 calling a bankruptcy referee a judge, and to put a robe on
24 him, My God, he just can't sleep at night! And he talks
25 about the Judges Union, because district judges associations

1 have been a kind of a judges union in some circuits.

2 I said, "You've got these people all wrong. They're
3 a very effective thing in our mutual efforts in the Fifth
4 Circuit." And I just think it's just a tremendous thing
5 that you have this meeting and you are effective, and I've
6 been talking to Tom Stagg, he's going to tell you -- we're
7 going to learn more about it today; doing very constructive
8 things.

9 So I'm just very proud.

10 Now, I didn't slight this luncheon, I'll tell you
11 that. I did tell Larry that I would be late, because I had a
12 couple of emergency calls, plus an opportunity to sit there,
13 while waiting, and have a dry martini on the rocks --

14 [Laughter.]

15 CHIEF JUDGE BROWN: Bill Spann has been down here,
16 as you know, and we were talking to him the other night, and
17 he says, "Don't you get tired of English peas?" Well, it's
18 all changed. He makes 65 speeches a year. And he says, "I
19 used to love broccoli, but I can't stand it any more, because
20 they've substituted broccoli for English peas".

21 ATTORNEY GENERAL BELL: [sotto voce] Must be
22 cheaper.

23 CHIEF JUDGE BROWN: And I didn't know -- did you have
24 English peas today?

25 VOICES: No, broccoli.

1 CHIEF JUDGE BROWN: Broccoli. I knew it!

2 [Laughter.]

3 CHIEF JUDGE BROWN: Well, I just think this
4 organization is wonderful, and I think, Griffin, they're going
5 to pass some resolutions that either do away with the Court
6 of Appeals or censure it for ever having done anything effective
7 in relationship to district judges; and I'd better get out of
8 here!

9 THE MODERATOR: Thank you.

10 [Applause.]

11 ATTORNEY GENERAL BELL: I'm going to leave on this
12 note: Years ago when we were down here, at a conference I
13 guess, over at the Royal Orleans, and Pete Morgan was a district
14 judge and I was a circuit judge, and we were old friends and
15 we were together. Joe Estes saw us together, and he called
16 Pete off and he said, "I notice you're with Griffin Ball a
17 lot," and he said, "Yeah, I am; we're friends."

18 He said, "You couldn't possibly be friends, don't
19 you know that a circuit judge is the natural enemy of the
20 district judge?"

21 [Laughter.]

22 THE MODERATOR: Thank you. Thank you very much.

23 [Applause.]

24 [Whereupon, the luncheon was concluded.]

- - -