

ORIGINAL

UNITED STATES OF AMERICA

DEPARTMENT OF JUSTICE

AN ADDRESS BY

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

BEFORE THE

ANNUAL JUDICIAL CONFERENCE

OF THE

JUDICIAL SECTION OF THE STATE BAR OF TEXAS

THURSDAY, SEPTEMBER 28, 1978

12:00 NOON

ARLINGTON, TEXAS

P R O C E E D I N G S

1
2 ATTORNEY GENERAL BELL: Your Honors, ladies and
3 gentlemen:

4 First of all I want to thank Gib Gail, a person
5 I've known for a long time, for the warm introduction. He
6 said I didn't have an accent; you may find -- you may think
7 I do when I've finished, because it's quite different from a
8 Texas accent, and he's mentioned that I grew up in Americus,
9 Georgia.

10 I'll tell you where Americus is, and it'll give
11 you some idea how I happen to be Attorney General. It's
12 nine miles from Plains. It's the County seat of Sumter County,
13 and Plains is just a village, and the President used to think
14 he was going to the big city when he came to Americus.

15 There is a very close connection, as many of you
16 know, between Texas and Georgia. The second President of the
17 Republic of Texas was from Columbus, Georgia, Maribeu
18 Bonaparte Lamar, and if you go to Columbus, Georgia, today and read the
19 Columbus newspaper, they still have on the masthead:

20 "Founded by Maribeu B. Lamar."

21 He came out here during the Texas -- joined the
22 fight for independence.

23 We had a Governor -- you had a Governor by the
24 name of Colquit in 1910 or '11 who was also born in Georgia
25 and moved out here, and he knew that Joanna Troutman, a 16

1 year old girl, had designed the Texas Lone Star Flag; that
2 was a historical fact that was known here and in Georgia,
3 and he had her remains moved to the capital, in Austin, and
4 you can see her tomb there now.

5 And if you pass through a little place called
6 Knoxville, Georgia, you'll see a historical marker that tells
7 about the company of Georgia soldiers passing there enroute
8 to Texas, and she presented them with this Lone Star Flag.

9 We also had many people who came to Texas from
10 Georgia in a period of -- following a conflict where the
11 North had invaded the South --

12 (General laughter)

13 and we had people seeking other places to go, for various
14 reasons -- some just ahead of the sheriff, but they came
15 here, including some of my own relatives and later joined
16 the GTT Society, "Going to Texas."

17 They say in Georgia, though, about all those people
18 who left -- and there were thousands of them, that it improved
19 both States!

20 (General laughter)

21 I'm glad to appear before so many Judges; Judges
22 are very important in my life. As the Attorney General, we
23 have more lawsuits than any other organization in this
24 country. That's said; it may be that some insurance company
25 has got more than we have, but we have plenty of lawsuits,

1 I'll tell you that.

2 I have, myself, been in some unusual cases,
3 although I'm supposed to be an administrator. I lost a case
4 that I didn't think I could lose; otherwise I would not have
5 argued it in the Supreme Court. I have 3,800 lawyers; I
6 could have sent any one of them over there to argue it, but
7 after I read the briefs in the Snail Darter Case, I said:

8 "There's no way to lose this case."

9 But I did lose it; I represented the Dam!

10 (General laughter)

11 Going from the ridiculous to the sublime, I guess
12 maybe the most important case I've been in since I've been
13 Attorney General was the prosecution of what we call "The
14 Spy Case;" a person working for the State Department was
15 stealing documents, giving them to persons from North Vietnam,
16 and we prosecuted them, and that's the first case of that
17 kind that has been prosecuted in this country in a long time,
18 and we were able to get convictions, and the case is on
19 appeal now.

20 The Snepp case, where a CIA agent -- former agent,
21 printed a book; we brought a suit there for breach of con-
22 tract. Everybody said we were interfering with his First
23 Amendment rights, but he signed a contract saying he wouldn't
24 print anything or publish anything unless he let the CIA
25 look at it, and he didn't do that.

1 So we've prevailed there so far; the Judge took a
2 dim view of a person doing that, and ordered him to forfeit
3 all the profits he had made to the Court. And that's on
4 appeal.

5 I suppose the worst case I'm in is where I'm in
6 contempt. That's at least the most uncomfortable case I'm
7 in.

8 I was on an airplane going from Washington to
9 Atlanta, one day, and there was a storm, and we finally
10 landed in Tennessee, and there was a woman on the plane --
11 everyone got to know each other; we'd been in the air a
12 good while, and a woman came up to me and said she'd been
13 down to Montgomery, Alabama, to see a person who was one of
14 my predecessors in office, who was not at liberty now!

15 And I told her I thought it was a fine gesture on
16 her part, and we chatted, and as she turned to leave, she
17 said to me:

18 "I certainly hope you will not have to go to
19 prison!"

20 So I told my wife about it; I thought it was reasonably
21 funny, and my wife took a very dim view of just the comment.

22 So when I was cited for contempt in New York, and
23 appealed and the Second Circuit Court of Appeals stayed the
24 order, I told my wife -- phoned my wife to tell her, thinking
25 she'd feel good, and she started crying. She said:

1 "I'm so happy; ever since you've been in this
2 contempt trial, I've been thinking about what that
3 woman from Alabama told you on the airplane."

4 Another reason it's good to be appearing before
5 Judges is that I don't have to defend Chief Justice Burger
6 and President Carter. When I appear before lawyers, I'm
7 always put on the defense. They want to know if I agree with
8 the Chief Justice, about 50 percent of the trial lawyers
9 being incompetent, and I always say no, I don't agree with
10 him; I don't know what percentage is incompetent!

11 (General laughter; applause)

12 And they always want to know if I helped the
13 President write his speech that he made to the Los Angeles
14 Bar, and I tell them no, and then they say:

15 "Well, did you see it in advance?"

16 and I did see it in advance and I always have to admit that.
17 I saw it in advance, and he invited me to go to Los Angeles
18 with him. And unfortunately -- I always put the word "unfor-
19 tunately" in case he hears about this, I had another engage-
20 ment.

21 I'll tell you one more thing about the President's
22 speech about the lawyers. Director Kelley, of the FBI, was
23 preparing to retire, and they had a dinner for him in
24 Washington; they had a number of speakers: the Chief Justice
25 spoke, I spoke, various other ones, and then this Congressman

1 came from Kansas City to speak. He described himself -- I
2 don't know if he was pulling our leg or not, but he said
3 that before he'd got elected to Congress, he was a used car
4 dealer, and he said he was very proud of that; it was a wonder-
5 ful profession. He said there were 27 lawyers mixed up in
6 Watergate, and not one used-car dealer!

7 (General laughter)

8 Well, in a more serious vein, I want to talk to
9 you for just a few minutes about the Department of Justice.
10 I perceive the Office of Attorney General as being one where
11 the Attorney General ought to offer some national leadership
12 in the courts -- operation of the courts and in the delivery
13 of justice generally, civil or criminal.

14 We have three levels of Government under our sys-
15 tem of Federalism, and somebody has to sort of put it toge-
16 ther sometimes, so I started out trying to do that, and I
17 started by saying: well, the first thing we ought to do is
18 see what we can do to improve the Federal Courts. We had not
19 had any new Judges in six or seven years, at that time, so
20 we needed some more Judges.

21 But one day the President asked me if I thought
22 every lawyer in the United States would eventually be a
23 Federal Judge. He said he can't understand why we have to
24 have so many Federal Judges, so I said:

25 "Well, there's other things we could do, but

1 we have not had any new Federal Judges created in so
2 long, and the Congress is just constantly adding juris-
3 dictions, that we've got to have some Judges now, but
4 I'll try to work out something so that maybe this will
5 stabilize the number for the future."

6 So we have now gotten that bill out of the Conference
7 Committee, and it has not been passed by the House or Senate,
8 but I think it will be. We settled the big argument, which
9 was what to do with the Fifth Circuit, and that leaves, then,
10 what are we going to do to keep from constantly increasing
11 the sizes of Federal Courts?

12 So we have a bill that's passed the Senate, it's
13 now reached the Speaker's calendar, which means it'll be voted
14 on before Congress adjourns, to expand the power of Magis-
15 trates. The Federal Courts have gotten to the shape where
16 every case is a big case; the Federal Rules of Civil Procedure
17 caused that, to a large extent. You can delay a case, make
18 it as complicated as you want to if you understand how to
19 do it in the Federal system.

20 It wouldn't do any good to give the Magistrates
21 the power to try these smaller cases, unless you're going to
22 have a different set of Rules. I asked the Chief
23 Justice last year if he would have a committee draw up a set
24 of Rules which would be much simpler, for use in the Magis-
25 trates' Courts, and they have done that. He told me last week

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that they had about completed the rules. We will have the Magistrates Bill enacted into law, I feel, by the middle of October, or certainly no later than the 1st of November.

Then we'll have these new Rules, and many cases can be tried by Magistrates, and we can get more Magistrates certainly easier than we can get Federal Judges, because the Court Administrative offices can simply add Magistrates as they are needed.

Then the other thing that would reduce the cost of litigation, save the Court from being overburdened is some system of arbitration. We've studied the arbitration system that is in use in Ohio. Chief Justice O'Neil who many of you know, and has just recently passed away -- a great misfortune to the judicial process, I think, because he was such a good person. He was so experienced: he'd been in Government, he'd been Attorney General, and been Chief Justice.

They had this arbitration system there they used in Cincinnati and Cleveland that was created by rule of the Supreme Court, the system, and they can put it in wherever they think it's needed, in a town. They make up a roster of lawyers, and you select three names and you give these three lawyers three cases, this is the way they do it, and they have to go on to arbitrate, and if you're dissatisfied, you can come back to the court and take your same place on

1 the docket that you were when you were sent out to arbitra-
2 tion. It's compulsory arbitration, but it's non-binding
3 arbitration.

4 They tried it first just having one lawyer as an
5 arbiter; very few people ended a case. They'd come back to
6 court. When they put three lawyers on, they got a finality
7 rate of 90 percent or more; sometimes, in one city or the
8 other that we studied, 95 percent. People were satisfied
9 just to get an informal hearing of that sort, and they
10 were getting a lot of civil cases disposed of in that manner.

11 Now, we're trying that and we're doing it on an
12 experimental basis; I got the Chief Justice to let the Court
13 Administrative Office make some funds available to try it
14 now in three Federal Districts: the Northern District for
15 California, the Eastern District of Pennsylvania, and the
16 District of Connecticut. There's only one District in
17 Connecticut.

18 And it's working very well. Working so well in
19 fact that next January, when Congress convenes, I expect to
20 ask that a bill be introduced to make this a statutory power,
21 to have informal arbitration on this basis.

22 It's a great thing that the lawyers can do for
23 their profession, because they serve as adjunct judges, in
24 these cases. They're paid only a modest amount --\$50 is all
25 they're going to get paid, for only getting one case.

1 Also, the lawyer's office is an adjunct court-
2 house, and the question -- the key, is going to be what cases
3 should you send out to arbitrations of this sort.

4 I think that holds more promise for the court
5 system than anything we're doing. The Magistrates are going
6 to be a help; arbitration is going to be a great help, I
7 believe.

8 We have been trying to get the Congress to move
9 the diversity cases out of the Federal Courts, where the
10 citizen of a State brings suit. We think the citizen ought
11 to look to the State Court, that a citizen of the State
12 of Texas ought to look to the Texas Court; he ought not
13 to have an option as between two court systems.

14 I think we could get this passed if we could get
15 it voted on. It's in the Judiciary Committee in the Senate.
16 A much broader bill has passed the House already. Last week
17 one Senator, as a Senator can do, moved it over a week. Any
18 Senator can move a bill over one week. It can only be moved
19 one time.

20 Yesterday they had a Committee meeting, and the
21 same Senator began to filibuster. In Washington, in the
22 history of the Republic, they've never known of a Senator
23 to filibuster in Committee. This Senator brought in Moore's
24 Federal Practice and began to read it, and they all couldn't
25 vote. I don't know if we'll ever get a vote on it or not;

1 it makes you wonder about the legislative process.

2 Here's a bill that's passed the House; I think
3 it will pass the Senate, and even if it didn't pass, I'd
4 like to get a vote on it so we'd know what to do if we're
5 not going to move that number of cases out of the Federal
6 Court.

7 So I don't know where we're going to end up on
8 that. That would be the other thing, the other leg on the
9 stool that would keep us from having to keep adding more
10 Federal Judges.

11 Now we've had -- one thing we've been trying to
12 do is help the Supreme Court, and that was to remove their
13 mandatory jurisdiction, let everything go over there on peti-
14 tions for writs of certiorari.

15 This was a non-controversial bill, we thought, but
16 one of the Senators conceived the idea of adding an amendment
17 to it saying that no Federal Court could hear a prayer case.
18 There couldn't be anything more controversial than that, so
19 we've had to just back off that. You know, if Congress gets
20 to arguing about prayer, there's no telling how long we'd
21 be there.

22 So we've just backed off that.

23 Now, we've done one thing that is going to add work
24 to the court system, but not a great deal. Since before
25 World War II, every President has exercised the power to

1 engage in foreign intelligence -- sometimes called "National
2 Security." It's a Constitutional power, but there have
3 always been people who said the President really didn't have
4 that power. I'm being sued now, for example, for something
5 that I allowed in the foreign intelligence field.

6 President Ford and Attorney General Levi decided
7 the way to solve the problem was to let the court system
8 into the process, instead of the President delegating to
9 the Attorney General the power to do these things, or the
10 President in some instances doing them himself, go to court
11 and get an order. So Congress has just passed
12 something called the Foreign Intelligence Surveillance Act.

13 There'll be some Judges assigned to special duty
14 where I can go and get court orders when I need them, and
15 they'll be handled in camera, and there will be a Special
16 Court of Appeals that will be set up at the designation of the
17 Chief Justice. There will be seven Judges designated --
18 District Judges, and three or four on the Court of Appeals,
19 and they'll stay there for some time. It's just part-time
20 duty; they'd still be doing other things, but I would know
21 where to go to get these orders when I needed.

22 This is going to be a great help to the nation,
23 because the people trust the Judges and the courts more than
24 they do the other two branches of the Government, and it will
25 give confidence to the American people. They'll have confidence

1 in our system, that we not only have a strong and sound
2 foreign intelligence system, but it's being managed or oper-
3 ated in a way where we're not depriving American citizens
4 of their rights.

5 So I'm proud that we were able to get that through;
6 as I say, it was started by President Ford and Attorney
7 General Levi , but the foreign intelligence is nonpartisan.
8 I've heard any hint of partisanship in this area of the
9 Government.

10 Now, one bill that we've spent a lot of time on
11 was the Criminal Code; we were going to recodify the Criminal
12 Code. I wish I could get all those days back that I spent
13 on that, because it's not going to pass. In fact,
14 it apparently won't even get out of the Subcommittee in
15 the House.

16 It passed the Senate. The Senate spent a lot of
17 time on it, but the House is not ready for any such project
18 as this. It's a big project, but I never would have thought
19 they'd have had trouble with it, because they passed OSHA.
20 A House that could pass OSHA ought to be able to pass some-
21 thing that's only half as long as OSHA, but they're not
22 going to be able to do it. That's gone.

23 Now, the next thing I want to mention is what
24 we're doing at the Department of Justice to make it into a
25 "neutral" zone. I take the same view about the Department

1 of Justice as I do about the foreign intelligence; it has
2 to be nonpartisan. A system of law that doesn't operate on
3 neutral principles is not a system. It's a non-system, and
4 everyone in our country, steeped as we are in equal protec-
5 tion of the law, expects the Department of Justice to be
6 neutral.

7 The President asked me to be the Attorney General --
8 and by the way, I was not seeking the job; I was in charge
9 of finding an attorney general. A lot of people think I
10 did such a poor job that I forced the President to appoint
11 me, but that is not true.

12 He asked me to try to make the Attorney General
13 into an independent office, as distinguished from being in
14 the Cabinet. I was not able to do that because the
15 Constitution vests only in the
16 President the duty to faithfully execute the laws. There
17 is nothing in the Constitution about an Attorney General;
18 it's only in the President.

19 So what I have done is, after watching the system
20 work for a long time -- about 18 months, I finally decided
21 there was a way to make it into really a neutral zone in
22 the Government, where it'd be absolutely nonpartisan, in the
23 sense here that you'd keep all politics out of it,
24 as to cases.

25 Now, the way we've done it, I've had Professor

1 Meador, who came in -- I brought in from the University of
2 Virginia Law School, who's a great expert on court systems.
3 He lived in England for a year so he could write a book on
4 the English court system.

5 I had him study the Attorney General's Office in
6 England. We found an amazing thing: in 1924, the Attorney
7 General was accused of having been subjected to pressure
8 with respect to a prosecution by someone else in the Cabinet.
9 It was the Ramsay MacDonald government, and the government
10 fell. They have such a high regard for the law in England
11 that the government fell, and they had to hold new elections
12 over that one thing.

13 Since then, since 1924, if there's a person of a
14 certain political office in Parliament, that kind of politi-
15 cal office, is being prosecuted, it's handled by the Director
16 of Prosecutions, who's a civil servant. He tells the
17 Attorney General about it, keeps him informed, but the
18 Attorney General never has anything to do with it.

19 Well, I've changed that around a little bit, and
20 we just put this system in. I announced it to the lawyers
21 about two weeks ago. We leave the original decision on the
22 cases to the heads of the litigating Divisions, and the U. S.
23 Attorneys.

24 And if we change, if I overrule them,
25 or the Deputy Attorney General or the Associate Attorney

1 General overrules them, we will make that public, the fact
2 that we did overrule them; unless it interferes with some-
3 one's rights, we'll give the reasons why we overruled them.
4 This is important to do this because it raises the morale of
5 these people, No. 1, but No. 2, they are the people, the
6 heads of the criminal division , they know more about that
7 than I do, ordinarily, and I don't have time to do that.

8 But it looks terrible if I'm to say:

9 "I'm overruling you; prosecute somebody, or
10 drop this case."

11 .. Rumors would get out that something is wrong, you
12 know, about something like that, so I overruled the Anti-
13 trust Division -- this is where I got the idea from, and I
14 allowed the merger of LTV and Lykes, these two corporations.
15 The Antitrust Division had ruled that they could not merge.

16 I overruled them, but I issued a statement saying
17 that I'd overruled them, and I gave the reasons why I over-
18 ruled them. Now, that's the way we're going to do it.

19 In addition to that, if anyone from the White House
20 or from the Congress contacts anyone in one of these litigat-
21 ing divisions or U.S. Attorneys' offices, about a case -- I
22 don't mean a normal inquiry, but something that would act
23 like you had some interest in it or you're bringing a message
24 about somebody's not being treated right, or those sorts of
25 things -- they have ways of saying things, and that has to

1 be reported immediately to the Attorney General, Associate
2 Attorney General or the Deputy Attorney General. One of us
3 has to know about it immediately.

4 Now, if it's some other group -- Cabinet officer,
5 we'll say, Governor, or interest group -- interest groups are
6 great now to contact people, that has to be reported after
7 the fact. They don't have to report it immediately, but
8 they can just write up a memorandum and send it to us and
9 go ahead and do what they want to do.

10 But all this is spelled out, and we think it's
11 going to work well. It's a little different from the British
12 system, but it's going to make the Department of Justice,
13 I think, as independent as it's possible to make it, and
14 it's going to allow the American people, once this is known,
15 to have a feeling that their Department of Justice is a
16 neutral place, and that there is no partisanship there, and
17 that everything is handled without fear or favor.

18 Now, the last thing -- this has to do with the
19 State courts. We've been engaged in trying to allocate cer-
20 tain types of cases as between the State and Federal systems.
21 I've been working with the FBI and I've been working with
22 U. S. Attorneys, and I've been suggesting to U. S. Attorneys
23 everywhere to get with the State prosecutors, to see what
24 we can do about who ought to handle certain kinds of bank
25 robberies, or bank thefts.

1 For example, there are some kinds of cases that
2 ought to be in the State courts, and there are maybe a few
3 where they're in a State or nature, or that sort of thing,
4 that maybe ought to be in the Federal Courts.

5 I haven't been able to get that exactly on the
6 track, but we're working on it. It's going to probably
7 require that the FBI, once they make a case, work up a case,
8 that they begin to go into the State with some cases and
9 in the Federal courts with some cases. They're not used to
10 doing this; they've done it on occasion but not as a regular
11 thing.

12 It'll take us a little while longer to get that
13 worked out. I haven't even really got it worked out well
14 yet between the U.S. Attorneys and the FBI, much less between
15 my people and the State people.

16 But that is something that is under this national
17 leadership that we need to do. We need to have more, better
18 cooperation; we need to meet. My U. S. Attorneys and the
19 State prosecutors need to meet on a regular basis. It's not
20 so much the Judges meeting, but it's the people that bring
21 the cases into your courts that ought to be doing the meet-
22 ing.

23 So we're working on that, and you'll find, as the
24 days go by, that we'll have that in much better shape than
25 it's in now. There are some rough edges in it, but there

1 were so many things to do at the Department of Justice when
2 I got there. I'm getting to them all, but you can't do every-
3 thing in a week or a month, and now that we've made some of
4 the major things, gotten some of the major problems out of
5 the way, we're beginning to do some of the smaller things
6 like these things, working between the State prosecutors and
7 Federal prosecutors.

8 I think we're making progress at the Department of
9 Justice, and I'm not a long-term person there, but I promised
10 the President that I'd go in there and do my best to organ-
11 ize it and see that it was operated on an open, professional
12 and ethical basis, and once I can tell him I can do that,
13 he might release me.

14 But I haven't quite got that done yet, so I'm not
15 announcing today that I'm leaving. Thank you.

25