

ORIGINAL

ADDRESS

OF

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

BEFORE

THE NATIONAL CONFERENCE OF METROPOLITAN COURTS

Atlanta, Georgia
October 27, 1978

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P R O C E E D I N G S

ATTORNEY GENERAL BELL: Thank you.

Judge Freyer, other distinguished judges, ladies and gentlemen:

I thank Jack Ethridge, a long-time friend, for the warm introduction -- is this mike working?

A VOICE: You have to get a little closer to it.

ATTORNEY GENERAL BELL: Yes.

It's a pleasure to be with you. I don't know of anyone I'd rather speak to than judges, given the situation I'm usually in as Attorney General.

[Laughter.]

ATTORNEY GENERAL BELL: As many of you know, I'm in contempt at this very moment, in New York.

[Laughter.]

ATTORNEY GENERAL BELL: So I never turn down an invitation to speak to judges.

[Laughter.]

ATTORNEY GENERAL BELL: I want to thank the First National Bank, Delta Airlines, and the Trust Company Bank for the lunch. The President signed the Ethics bill yesterday. And I won't have to report it because I think the lunch cost less than \$35.

[Laughter.]

ATTORNEY GENERAL BELL: I want to thank Ann Estes

from the Trust Company for giving me a golf ball last Sunday, worth a dollar and a quarter.

[Laughter.]

ATTORNEY GENERAL BELL: I lost it.

[Laughter.]

ATTORNEY GENERAL BELL: But I won't have to report that.

But I spoke in Fort Worth yesterday, and, much to my shock, they gave me a pair of cowboy boots. I'm told they are worth about \$200. It will cost more to fill out the forms than it will to keep the boots.

[Laughter.]

ATTORNEY GENERAL BELL: So I don't know just what decision I'll make about that. I may employ counsel to advise me about it.

I met the Chief Judge of Cook County Superior Court today. He said he has 316 judges in his court. After I marveled at that -- but the great thing about it was that I had always wanted to meet somebody who had more judges than the Los Angeles Superior Court.

[Laughter.]

ATTORNEY GENERAL BELL: Where, by last count, they were up around 200.

I salute the State court system, because, were it not for the State courts we would not have justice in this

country. Ninety-five percent of all cases are tried in the State courts; 95 percent of all law enforcement is at the hands of State law enforcement authorities. I'm very cognizant of that fact, and I knew it and I took that information to Washington with me, and I commenced a project to coordinate law enforcement activities in the delivery of justice with the States, between the Federal and the States.

I began meeting with the States Attorneys General, and we now meet every three months with an Executive Committee of that group. All of my 95 United States Attorneys are instructed to meet with the local prosecutors, to divide the cases as to which court could handle the cases best. And that's all working very well.

In addition to that, I've been coordinating our own efforts. When I got to Washington the FBI had their route that they followed, the drug people had theirs, and they never met, never worked together, and now they do. And they find that they can help each other, particularly the FBI can help the drug people, because a great amount of the crime in our country today involves paper, paper trails, and the FBI is very good at that. They have 8,000 Special Agents, and 800 of those Special Agents are auditors, accountants, and they understand computer technology, electronic systems that people use today in committing crime.

We work very well, very closely, from the FBI

standpoint, with local law enforcement people. We run the Quantico School for State Law Enforcement People. Each one of the 59 FBI offices in the country has an agent, at least one agent assigned to working with State law enforcement people. So the relationship is very close.

And so it's a particular pleasure for me to be able to speak to you today, because you are the people who run the large courts in our country. I haven't calculated what percentage of the 95 percent you have, but it's a very large portion of it.

And there are many things that the federal judges can learn from the large State courts. Some of the Federal courts are becoming very large now, particularly with the new Judgeship Bill that's just passed, where we're going to get 152 more judges. Just a little sample, a microcosm of what's happening is here in this city, in this Northern District of Georgia. They are jumping from six Federal judges to eleven, and I think eleven is the number on the Fulton Superior Court?

A VOICE: Yes.

ATTORNEY GENERAL BELL: And it hasn't been many years, ten, twelve years ago, that they were able to get by with two.

This seems to be the wave of the future. Although the President is not happy with it. And before he asked me

to be Attorney General, he had asked me one day what we could do to keep from adding so many Federal judges. And, after becoming Attorney General, I tried to do something about it. We had not had any new Federal judges in eight years, so I knew we had to get some additional number of judges. But we got up a program whereby we were going to expand the power of magistrates -- in some of your State court systems you call magistrates judicial officers; but whatever you want to call them, they are judges, and they need to handle cases by themselves.

So we had a bill in the Congress to get that passed, and I never found anyone who really objected to it. It passed the House and the Senate, but only in Washington could you have a situation where it never became law.

[Laughter.]

ATTORNEY GENERAL BELL: I had not believed anything like that could happen, but it did happen.

But we had another bill called the Diversity Bill, which was going to reduce some of the diversity jurisdiction. After the magistrates bill had passed the House -- the Senate, and went over to the House and passed the House, and they added the diversity to it as an amendment. When it got back to the Senate, they got in a Conference Committee and both bills died.

[Laughter.]

ATTORNEY GENERAL BELL: We are doing some other things, like the Neighborhood Justice Center here in Atlanta, that Jack is Chairman of the Board of, and it's doing great work. That's just an experiment we are running.

Probably the most exciting thing we're doing, and I'm sure this will become law in the next Congress, is to put in informal arbitration. We're trying a system that we copied from the State courts of Ohio -- actually the Supreme Court of Ohio got this system up. And they have informal arbitration before three lawyers selected at random, and they have a 95 percent finality rate when these cases are arbitrated. It's very inexpensive, very rapid, and it's a fine system.

We are now trying that in the Northern District of California, the Eastern District of Pennsylvania, and the District of Connecticut. It's working well, and we will be sponsoring a bill to allow Federal District Courts to use a system like that immediately upon the convening of the next Congress.

One way we've been able to do many of these new things at the Justice Department is because we've created a new department there called the Office for Improvements in the Administration of Justice. And I prevailed upon Professor Dan Meador at the University of Virginia Law School to come and head that department. He has about 20 people

who know a good deal about court administration, working for him, and I call it our "think tank", and they come up with some marvelous things. They are doing a lot of work now in the class action area, for example, trying to make class action more manageable than they are at this time. A lot of the State courts, some foreign countries even, are keeping up with what they are doing there with class actions.

One thing I've just started them working on is what to do with the tort law. This has not been announced before. I can't seem to get the attention of the lawyers about reducing jurisdiction in the Federal Courts, so I thought maybe we'd take a different approach. We might take some of the subject matter out of the courts and put it somewhere else. I expect this will get the attention of the lawyers, once they realize what's happening.

[Laughter.]

ATTORNEY GENERAL BELL: I have started them off studying hospital malpractice cases. In 1973 the cost of malpractice insurance for hospitals in this country was \$200 million. In 1977, it was \$1.2 billion. In four years it jumped one billion dollars. Just insurance premiums for hospitals.

Well, in my own country way, I have an idea that we could do better, that we might set up something like a Workmen's Compensation Board system, to handle these kinds of

claims. And it may be that the public would benefit, because everyone would be treated somewhat alike, rather than having the large verdicts in one case, nothing in another.

So I have them studying the whole area of tort law, what to do with the tort law, but the first thing they will study will be hospital malpractice cases, because it has a great deal to do with inflation in this country, it's an unfair system, in the sense that the results are different; and it's something that we ought to study.

Now, I think, as American citizens in addition to being judges, you have a great interest in your Department of Justice. When I got there, it was a revelation to me to see how large it was. We have 3800 lawyers; half the lawyers are in U. S. Attorney's offices over the country, the other half are there in the Department in Washington. But we have 55,000 people in the Department of Justice.

When George Washington appointed his lawyer, his own personal lawyer, Edmund Randolph, as Attorney General -- of course the Senate didn't object to that; no one objected that Washington had chosen his friend to be the Attorney General --

[Laughter.]

ATTORNEY GENERAL BELL: Randolph as a part-time worker. He practiced law and was Attorney General on the side. And that was true until 1835, when they finally

required the Attorney General to be a full-time officer and member of the Cabinet. It was not until 1870 that the Department of Justice was created, after the Civil War. It was created because every agency in the government had been able to get their own lawyers, and no one knew what position the government was taking in court; each department would take their own position.

Well, some of that goes on today, I might add.

[Laughter.]

ATTORNEY GENERAL BELL: But they finally decided that they would create a Department of Justice to centralize the lawyers in the government, and that was done. Three times since then they have had to do it over. When Taft was President, Wilson and Roosevelt, all at one time or another had Executive Orders issued bringing all litigating authority back in the Justice Department. It has a way of getting out.

We are going through that now. There's a number of agencies that are trying to get their own litigating authority, and I'm in a constant battle with them to try to keep it in the Justice Department.

Every agency in the government has its own general counsel, you don't have to go to the Justice Department to find out what the law is. The only people that have to use the Office of Legal Counsel at the Department of Justice is the President and me; we don't have the privilege of going

out and getting outside lawyers. All the other people can get their own lawyers to give them an opinion. And they are very wary about getting one from the Justice Department, because it's binding on them, if they get one from us.

There's a study going on now in the OMB about this whole problem, and I hope that we will make some progress early next year in deciding just who the lawyers for the United States are. I think it's badly needed.

The thing that I found probably in the worse shape than anything when I got to Washington was the morale of the Department of Justice, the lawyers, and the lack of confidence of the American people in the Department. It was generally thought that the Department of Justice had been politicized.

The President asked me, before he asked me to be Attorney General, once why the Department of Justice and the Attorney General could not be independent. He asked me if I would see what we could do about that. And, of course, the Attorney General -- it's impossible under the Constitution for the Attorney General to be absolutely independent, because the Attorney General is not mentioned in the Constitution. The Constitution charges the President with the duty to faithfully execute the laws. The President does that through the Attorney General.

What the President can do is select an Attorney General, allow the Attorney general to exercise his discretion;

and if the President is unhappy with the way the Attorney General does his job, he can ask him to resign. That's the way the system has to work.

I studied out the idea of making the Department of Justice itself as independent as possible, but you can't do that under the Constitution. So what we did, I had Professor Meador study the British system, he's an expert on the British system, he lived over there for a year once and wrote a book on the British court system particularly. And we found that in 1924 in England they had a "Watergate". The British have a high respect for the law, as you know, and there was an allegation that a member of the Cabinet tried to influence the prosecution by influencing the Attorney General of England and Wales -- that's the title of the Attorney General.

It was always denied, but the Ramsay MacDonald government fell on account of it. And since that time the British Attorney General has never handled a prosecution of a high government official. It stops at the high civil servant level, which is a person with the title, Director of Prosecutions. It stops there.

He reports to the Attorney General what's going on. I was with the Attorney General, incidentally, this summer up in New York at the ABA, and I was sitting in a room talking with him, and he got a message that they had indicted Jeremy Thorpe, who was the head of the Liberal Party

in England. He had nothing to do with the indictment, except it was just reported to him.

So we took that idea and tried to set up something that we think is a very good system. About a month ago I announced this in the Great Hall at the Department of Justice to about a thousand lawyers.

And here is our system, and it's working well so far: We have 95 U. S. Attorneys and we have six heads of the litigating divisions -- Criminal, Civil, Antitrust, Civil Rights, Lands, Tax. We are leaving all of the case discretion in the heads of those U. S. Attorney's offices or litigating divisions, subject to being overruled by the Attorney General or the Deputy Attorney General or the Associate Attorney General, as the case may be.

But if we overrule a decision made by one of these people, we will make it public. And if it will not deny due process or some other right to someone, we will give our reasons, we'll state our reasons publicly.

I had already done this once in an antitrust case, that you probably read about in the paper. I overruled the Antitrust Division and permitted the merger of LTV and Lykes, two companies heavy in the steel industry. I announced that I had overruled the Antitrust Division and I gave the reasons why.

That lets the American public judge me, as to whether

-- I'm accountable through the President, and if I've done wrong, then we will soon hear about it.

But, at least, if we change a decision of one of these operating levels, the public will know about it.

The other half of the plan we put in to insure independence and to make the Justice Department a neutral zone in the government was that if any person from the White House, or from the Congress, calls any head of one of these Divisions or the U. S. Attorney about a case, they refer the question, the inquiry, to me, or to the Deputy or the Associate Attorney General, and we respond. That insulates whoever is in charge of making this original decision.

If someone else contacts them about a case, they do respond, but they report it to me, that they have had an inquiry about the case.

Now, this is nothing like the press just asking about what has happened to a case, I don't mean that sort of an inquiry, but an inquiry that would be the least bit suspicious is reported to me.

So far this system is working well. I am very proud of it. I do a lot of work in the area of foreign intelligence, that's one of the main jobs that the Attorney General has, and I know how our system works, our foreign intelligence system really started just shortly before World War II, and it's run through several Administrations

since then, and it works well, and we are making it even better by a new law that we just had passed where we go to court and get a court order in camera, but a court order, before we engage in this kind of surveillance.

Well, the reason the foreign intelligence system has always worked so well is that it is non-partisan. No one would ever think of injecting politics into the foreign intelligence system.

Well, to my mind, the Department of Justice ought to be the same way. That no law is worthwhile that does not operate on neutral principles, and no Justice Department would be worthwhile to me unless it's neutral; that we make all decisions without fear or favor, and without regard to any political consideration whatsoever.

I hope that that will be one thing that I will leave at the Department when my days are over, and I think that it's set in place now in a way where it will almost have to be left; given the atmosphere in Washington, I don't know who would change it for a while. We might have another Ethics Bill, if we did, passed or something like that. But I don't think anybody would want to change it. I think it's a very sound system.

The last thing I want to say is Dean Rusk, who used to be the Secretary of State, lives in our State here, lives over at Athens, and teaches at the University of Georgia. He

makes a lot of speeches. But we are very proud of him in Georgia. He speaks in all the little towns in Georgia. And he never ends a speech without saying, without making some good remark about our country. And he always says that, he says, "When I speak, I want to say something good about our country."

And here's what I want to say to you: You're from all over the country. I travel all over the country. I spoke in New York day before yesterday -- night before last, really; in Fort Worth yesterday, here today, and I've talked to a lot of people. I talk to lawyers, judges, law enforcement officers, businessmen. And the spirit of our country is very good. Whatever has happened in recent years, we got crossed up on the Vietnamese war, the Watergate had people upset. We went through the whole Sixties in a Civil Rights revolution, which, to some extent, divided our country, and then drew it back together.

And I find that people are of good will now. And I don't hear near as much grumbling, I don't hear the fragmentation that we -- I don't see it -- that we once saw. And I think a lot of that has to do with the fact that people in the government, on all levels, State, Federal and local, are trying to do a better job. I know that in Washington we've got a good system of government, but it needed tuning. It was out of tune, to some extent. And we are engaged in

what I like to say is fine tuning the government. And I think that is going on at all levels, that people are paying more attention to the government, and it's causing all of us to do a better job.

It's a great pleasure to be with you.

Thank you.

[Applause.]

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