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UNITED STATES OF AMERICA

DEPARTMENT OF JUSTICE

AN ADDRESS BY

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

BEFORE THE

CONFERENCE OF CHIEF JUSTICES

MONDAY, FEBRUARY 12, 1979

12:00 NOON

ATLANTA, GEORGIA

P R O C E E D I N G S

1
2 ATTORNEY GENERAL BELL: Chief Justice Nichols, other
3 Chief Justices, Judges, Justices, friends:

4 Nothing would warm a lawyer's heart more than to be
5 introduced by his own Chief Justice. I am reminded of the
6 days when I was on the Fifth Circuit, in the '60s, and it was
7 not too popular at that time to be a Federal Judge in the
8 South. If we were invited to speak, we always found another
9 Federal Judge to do the introducing -- the only safe way to
10 proceed.

11 Chief Justice Nichols and I have a warm friend,
12 Judge Lewis Morgan, who was on the District Court and then
13 on the Fifth Circuit, and I remember when he was going to be
14 nominated by President Kennedy in 1961 to be a District
15 Judge. His mother was living then, and she was from Mont-
16 gomery, Alabama. And she called her sister in Montgomery
17 and said;

18 "A great thing has happened to Lewis." --
19 Lewis Morgan.

20 "We are all so proud of him. He is going to
21 be appointed a Federal District Judge."

22 And his aunt in Montgomery said:

23 "Proud? We think he's bringing disgrace on
24 our family!"

25 (General laughter)

1 I want to talk to you briefly about some ideas I
2 have by way of an overview of the justice system today. And
3 before I get into that, I want to have a word or two to say
4 about money. I know that you all are interested in money
5 for new systems, and studies and what not.

6 I was over in the House of Delegates this morning,
7 and they told me yesterday that they were going to bring up
8 something called, let's see, they always have some new thing
9 that costs money. This is called the Center for Defense
10 Services, and it has to do with appointing lawyers in criminal
11 cases.

12 So, I told them that I thought that was wonderful
13 if the States would pay for it. The States have money; they
14 get \$3 billion a year just in revenue sharing. Every State
15 has a surplus. The Federal debt now is over \$800 billion,
16 and it won't be very long, at the rate we're going -- unless
17 we balance the budget -- before it'll hit a trillion dollars.
18 I would hate to be President when it hits a trillion dollars.
19 I would hate for it to be said of me, that I was President
20 when the national debt hit a trillion dollars.

21 So, I made a fine offer, I thought, to the House
22 of Delegates this morning. I told them that the Federal
23 Government is really expert in running things; that we have
24 demonstrated that over the years, and if the States would get
25 up the money, I'll see if I can't get the Federal Government

1 to run this new Center for them.

2 (General laughter)

3 And I made one other observation: If it turned out
4 the Justice Department could not manage it for the States, we
5 could get the Post Office to manage it.

6 (General laughter)

7 By the way, I was out in Salt Lake City recently.
8 It took me 13 hours to get there, because of the storms in
9 the Midwest, and I was over the next morning speaking to the
10 Utah Bar and meeting with my employees, U.S. Attorney and all
11 the other people from the Justice Department in that area.
12 We were in the Post Office building, and it struck me that I
13 might use in my speech at lunch that day the motto of the
14 Post Office:

15 "Neither rain, nor sleet, nor dark of night,
16 will stop the courier on his duly appointed rounds" --
17 whatever it is; I'd forgotten. I had one of my assistants
18 call the Post Office to get the motto. They didn't know what
19 it was. Made seven phone calls; never could find out the
20 motto.

21 (General laughter)

22 So I said:

23 "Make one more; ask them to look in the Manual.
24 Surely they have a Manual that would have the motto
25 in it."

1 They said:

2 "We have taken the motto out of the Manual."

3 So, I'm afraid that's the shape a lot of things are
4 in this country now. We've gotten away from our old ways,
5 and we're casting about trying to find new ways of doing
6 things.

7 Even in your group, I was talking to Chief Justice
8 Cameron up here about one of the programs he's interested in,
9 and I have some responsibility with LEAA; and I find we're
10 just sending money out in all directions. You've got some-
11 thing called the National Center for State Courts, which is
12 a fine organization; get many grants from the LEAA, largely
13 financed by the LEAA. You have the Appellate Judges Con-
14 ference of the A.B.A., who are running seminars, and recently
15 I had someone write me a letter complaining because I was
16 holding up the grants for that seminar program.

17 This Judge who wrote me happened to be a friend, and
18 said he understood I was holding it up because they'd been
19 having meetings in resort areas. I wrote him back and told
20 him that was true; I did that myself. I didn't think that
21 we could keep giving out Federal money for seminars which
22 were being held in places like Miami Beach, and other fine
23 resort areas. And he then told me they didn't think they'd
24 get anybody to go unless they went to a resort area.

25 Well, I can't stand up under that. You know,

1 Congress will call me over there and ask me about it, and
2 I'm the one that's going to catch it, so we just have to
3 stop some of those things.

4 Well, it turned out they hadn't been to a resort
5 area in two or three years, and the programs they run are
6 very good. I used to participate in them myself.

7 There are many other needs for money, but I think
8 that the State Court systems need to get into one operation:
9 go through the National Center, would be better, but if you're
10 going to have something else, we're going to have to cut down
11 on the number of avenues through which we'll be sending money.

12 The LEAA's budget has been cut to about \$500 million
13 in the upcoming budget. The number of employees, since I've
14 been there, have been reduced from about 900 to 600, and
15 they're going down another hundred in the new budget. But I
16 think that there'll be about as much money available on the
17 firing line as there has ever been, given the fact that we
18 no longer are going to spend any money on hardware. I think
19 the programs you're interested in will still be financed,
20 and that you'll be satisfied.

21 There is some feeling in the Congress that the
22 amount of money ought to be increased. Senator Kennedy, I
23 notice, has had some rather strong statements to make about
24 our budget. I was in the Appropriations Committee last week;
25 there wasn't no one there said anything to me about increasing,

1 but I wouldn't say it won't be increased.

2 I think that you'll be, as I say,
3 satisfied.

4 Now, in an overview of the justice system today,
5 from where I stand we are making some progress. A great deal
6 more can be made. From my standpoint, I've been very pleased
7 at the attitude of the State Prosecutors and the State Court
8 Systems, to the extent they've been cooperating in our effort
9 to reallocate responsibility. We had gotten the Federal
10 Courts filled with cases that should have been in the State
11 Courts, and I instructed all the -- first I met with all the
12 State Attorneys General, discussed the matter with them;
13 then I instructed all the U.S. Attorneys to start meeting
14 with local prosecutors to see who could best try various
15 types of cases, who should have the responsibility. And I
16 can report that that program is working very well.

17 We have had some complaints, not from the Courts,
18 but, say, from the banks because we have stopped the FBI
19 from handling all the bank robberies. A lot of bank robberies
20 are just like robbing a grocery store or something. The
21 people are caught in the next few hours, sometimes coming out
22 of the bank, but we had gotten in the habit where we had FBI
23 agents standing by all over the country just to handle what
24 is really a local crime.

25 At the same time, we have a lot of these white-

1 collar crime cases, computer frauds, or very complex cases
2 where we need the FBI agents working, and where we need to
3 have our prosecutors working. They are interstate in nature,
4 and it's in the public interest to have people assigned to
5 those cases who are really skilled, and we are trying to
6 furnish that to society, to the American people.

7 And all that's working out very well, and I know
8 that this has put some stress on the State Court systems and
9 on the State prosecutorial forces; and it would be fair and
10 just, I think, to see if we couldn't compensate for that to
11 the extent we are able to do so, because it has increased the
12 expenses of the States.

13 But the States -- I haven't had many complaints
14 about that, and it's well known that the States -- most
15 States are in good shape financially, and they can put up
16 more money themselves, and will. I've talked to our Governor
17 here, Mr. Chief Justice, and as you know he has a very good
18 attitude about these things, and is one of the Governors --
19 probably 25 or more in the country -- who recognize that
20 perhaps the Federal Government has been doing more than it
21 needed to, and that the States can do more.

22 Now, the other thing that we have done is try to
23 come up with some alternative means of handling matters in
24 courts. As you know, we're making a lot of progress with
25 the Neighborhood Justice Centers. They'll have to be taken

1 over, once they reach beyond the experimental stage, by the
2 States or by the counties, cities, as the case may be. We've
3 started three. The most successful one is the one here in
4 Atlanta, because they get over half the cases from the Court
5 system. The cases get in Court, and the Courts refer the
6 cases back out to the Neighborhood Justice Center, where
7 they're disposed of by mediation with no lawyers in the pro-
8 cess, whatsoever, not even working in the centers. They've
9 trained people from the neighborhood to come in and solve
10 these disputes between the people.

11 The one in Kansas City is doing pretty well. The
12 one in Los Angeles has not done well, but is being reorganized
13 and will be doing more. Just starting these three has had the
14 effect of causing 15 or 20 more to be started by States and
15 local government over the country. So, it's a movement that
16 seems to me to be taking off, and it's essentially a sub-
17 stitute of what we used to know as the Justice of the Peace
18 system in the rural areas. You have somewhere you can go to
19 solve a small dispute, without getting into the Court system
20 where everything seems to be complex. We seem to have lost
21 our ability to handle anything in a simple way; particularly
22 the Federal Courts have lost that ability.

23 We are, in the Federal Courts, trying to expand the
24 power of the Magistrates so that they can handle small cases,
25 and we're even getting up a different set of Rules for the

1 Magistrate Courts, once we get this legislation passed. That
2 is not an alternative means, except -- well, I guess it is
3 to some extent, in the Federal Courts.

4 The thing that I've been working on that has the
5 most promise, besides the Neighborhood Justice Centers, that
6 has real promise in substantial cases, is arbitration. We
7 have copied the Ohio system, that the Supreme Court of Ohio
8 devised, set up by Rule of Court; we've got that going now,
9 trying it in three District Courts: Philadelphia area, which
10 is Eastern District of Pennsylvania; District of Connecticut;
11 Northern District of California. And we are taking types of
12 cases, referring them out to lawyers who are selected from a
13 list -- lawyers are selected at random.

14 Three lawyers take a case, and they have an informal
15 disposition. That means that lawyers are adjunct Judges, and
16 one lawyer's office is a Courtroom, adjunct Courtroom. And
17 they make a disposition, and if the litigants are happy, they
18 quit; if not, they can come back and take their rightful
19 place on the docket.

20 In Ohio, where they tried this -- in two cities,
21 actually, Cincinnati and Cleveland -- they were getting a
22 finality rate of above 90 percent. I'm told that our
23 finality rate in these experiments is running almost that
24 high. That means that the case is filed, at a point when I
25 think the answer is filed, the case is automatically sent

1 out to these lawyers for arbitration. This has the potential,
2 I think, of being a very great thing. It'll cut down the
3 expense of litigating, it'll speed up disposition, and the
4 public will be well served. We hope to have a law passed
5 promptly, allowing the Federal Courts to do this. We're
6 doing it now by local rule, and probably could get by doing
7 it by local rule, but it's a far-reaching procedure and I
8 think it would be better to have a statute passed.

9 Now, the last -- that's reallocation, that was
10 between the State and Federal Courts -- alternative means, and
11 the third thing I want to mention to you is what to do about
12 the large number of frivolous cases that are in court.

13 There's one story about General Lee that I think of
14 often, in the time we're living in. It is said that after
15 the Civil War, a woman walked up to General Lee with a small
16 child in her arms and said:

17 "General, what can I do to make my son great?"

18 And he said:

19 "Teach him to deny himself."

20 We're living in a time when no one is denied, and
21 certainly not anyone is denied a chance to go to court, no
22 matter how frivolous a case may be; and this is nowhere more
23 true than in the Appellate Courts. I would estimate, based
24 on my experiences as a Federal Judge in the Fifth Circuit,
25 that there may have been as many as 20, and maybe as high as

1 30 percent of the cases, the appeals were frivolous. I think
2 you'd find this to be true in many places. It's particularly
3 true -- I guess it's caused by the fact that the only way you
4 can do anything about it, is to do something to the lawyers.
5 You can't stop the litigant from appealing.

6 In the old days, a lawyer wouldn't dare take a
7 frivolous appeal. Now, in these appointed criminal cases, if
8 the lawyer does not appeal -- everybody gets a free appeal --
9 if the lawyer does not appeal, he is apt to be sued. At
10 least he will have a grievance filed against him, in the
11 Bar Association, so the safe thing for a lawyer to do is
12 appeal. Now it seems to me to disparage, or denigrate the
13 judicial process, for anyone my age, who was born to have
14 great respect for the Courts -- I've been taught that all my
15 life -- to think that you could go into Court and file a
16 frivolous appeal.

17 There is a Rule, in the Federal Rules of Civil
18 Procedure, Rule 11, where you certify -- the lawyer has to
19 sign, certifying that whatever is said in a pleading is based
20 on probable cause. Now, if we had something like that on
21 appeals, we could cut down on appeals. And this is not a
22 small thing; this takes a substantial amount of Appellate
23 Court time in America today. And that's one area where we
24 have not -- it's a place where we can reap a rich harvest.
25 It's a field that we have not moved into, to the extent we

1 should. So I give you that as something to think about.
2 That's the third thing we can do to make the Courts more
3 efficient, make it possible to accommodate the case load of
4 meritorious cases. I've not met anyone who knows exactly
5 what to do about that, but I know in our country, if we
6 think about things, if we put our minds to problems, we
7 always come up with a solution; so that's one that we ought
8 to be thinking about.

9 It's a pleasure to be with you. I told Judge
10 Cameron I would save five to ten minutes to answer questions.
11 I know some of you will have questions; and the mere fact
12 that I said something about money, doesn't mean that you
13 can't ask questions about money. It's just -- I just wanted
14 to sort of alert you in advance that there's not a lot of
15 money floating around Washington these days, but there is
16 some. It's good to be with you.

17 SPEAKER: Thank you, Attorney General Griffin Bell,
18 and you're always welcome at any of our meetings. Do you
19 have any questions? That includes the press as well, if you
20 wish to ask any questions.

21 ATTORNEY GENERAL BELL: I had a press conference,
22 and they asked a good many there, this morning. Yes, sir?

23 SPEAKER: (Inaudible)

24 ATTORNEY GENERAL BELL: Yes, we have a rule like
25 that now, but it is seldom enforced, in the Federal Courts.

1 You can tax double cost, for taking a frivolous appeal, and
2 I think, at least in the Second Circuit, they think that you
3 can be imposed with Attorney fees. We have rules, but I
4 fear that we don't enforce the Rules we have.

5 Now, in the British system, they had one other
6 thing in criminal cases which is worth considering. You know,
7 you can hardly get bail on appeal in Great Britain. I don't
8 know about Scotland, but in England and Wales, we'll say. If
9 you take a frivolous appeal and you're out on -- I don't
10 understand exactly how it works, but you lose the time, the
11 days -- oh, well, you don't get credit for the days you were
12 in jail while you were taking your appeal. They dock you
13 for those days you were there. You don't get credit for it
14 on your sentence. That's a very real penalty there. But I
15 think there's no way that we're going to do that in this
16 country, so --

17 SPEAKER: Is the system still in existence, that
18 the Appellate Court could increase the punishment, or --

19 ATTORNEY GENERAL BELL: Well, that's just one way
20 they increase it. That's the way I'm talking about, about
21 giving you credit for those days; but here nearly everyone
22 in our country is out on bail during appeal, so you don't
23 have that. That would be tilting with a windmill, to get
24 off into that. There's got to be something better than that
25 thought of; but it is a problem. Yes, sir?

1 SPEAKER: Mr. Attorney General, you mentioned the
2 fact that the States have money, and they are receiving
3 money in the way of revenue sharing. Would you consider
4 assisting the Court systems, so that the Court systems would
5 have a definite share monies that go down in the way of
6 revenue sharing?

7 ATTORNEY GENERAL BELL: Well, I know that at one
8 time the LEAA had a system like that. You got an amendment
9 to the LEAA where you were supposed to get a certain per-
10 centage. Everyone was getting money earmarked. I don't
11 know that I'd be in favor of doing that. It seems to me
12 that is an intrusion on the State governments, for the
13 Federal Government to give money to the States and then say
14 you must give a certain percentage to the courts.

15 I know that would help you; and I don't say that
16 I wouldn't be in favor of that. I would have to think about
17 it. My view of Federalism may be a little too set, but I do
18 look at the States as being separate units of government, and
19 I hate to see the Federal Government tell them exactly what
20 to do with the money once they get it. I know that goes on,
21 but I'd have to think about that. I don't want to say I
22 wouldn't do it, but I'm not prepared to commit to it.

23 SPEAKER: Attorney General, what do you think the
24 future of LEAA is, at the present time?

25 ATTORNEY GENERAL BELL: I think it's going -- we're

1 going to pass LEAA, a reorganization bill, where we have a
2 Research and Development Division; a Bureau of Statistics,
3 which is badly needed in this country. I don't think we have
4 reliable statistics on hardly any subject in the justice
5 system. And I think we're going to have the grant program
6 just going on like it is. There are going to be the regular
7 grants, and then we'll have some earmarked for juvenile
8 justice.

9 Juvenile justice has got a life of its own in the
10 Congress; everyone wants to spend money on juvenile justice,
11 and we had -- I believe we have \$60 million now that we've
12 never been able to spend for juvenile justice. We had a -- I
13 think we had \$100 million allocated, and we just were not
14 able to find places to spend it. And so we've cut -- some of
15 the reduction this year in the budget was there. We cut from
16 \$100 million to \$50 million on juvenile justice.

17 But I can say this: Once we get it organized --
18 reorganized, and the public get the idea that the money's
19 being well-spent, that it's not all going to study bizarre
20 questions and buying up all sort of equipment that somebody
21 can think of -- some new equipment somebody can think up --
22 once the public gets confidence in the LEAA, that we'll get
23 all the money we want. I'm not worried about getting the
24 money; I'm more worried about getting a structure in place,
25 where you can be certain that the money's well-spent. And I

1 think we have that design now, and just as soon as we can
2 get it enacted into law, I think we'll be in good shape.

3 SPEAKER: Any other question? Again, Mr. Attorney
4 General, thank you very much. And you're welcome again.

5 (Applause)

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