



Department of Justice

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ADDRESS

BY

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BEFORE

THE JOINT MEETING OF THE
WEST VIRGINIA BAR ASSOCIATION AND THE
WEST VIRGINIA CHAMBER OF COMMERCE

11:00 A.M.
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THE GREENBRIER
WHITE SULPHUR SPRINGS, WEST VIRGINIA

I am honored to have this opportunity to address simultaneously two distinguished organizations -- the West Virginia Bar Association and the West Virginia Chamber of Commerce.

Since I frequently speak to legal groups, I also welcome the chance to discuss aspects of the law with an audience that includes a large number of non-lawyers.

The legal profession deals daily with an array of complex issues that relate to the workings of government and the justice system. To those who are not attorneys, many of the issues must often seem arcane and bewildering.

But it would be a grave error to believe even for a moment that the general public should be excluded from a voice in the justice problems that affect them so profoundly. Let me cite one example of what I mean.

For several years, controversies have swirled around the Federal Bureau of Investigation. That the FBI is exceptionally important to the well-being of our society is a conviction shared by the President and Congress. Both have taken steps to make certain that the FBI continues to be the world's finest investigative agency.

The President recently announced the selection of Federal District Judge Frank M. Johnson, Jr., to be the FBI's new director. Judge Johnson is a man of uncommon skill and conscience and will serve with distinction. He will replace

Director Clarence Kelley in January, 1978. Director Kelley has done an outstanding job as director in a difficult period of transition. He has, however, asked to retire on January 1, 1978.

Congress has worked diligently in recent years to create new procedures designed to prevent the recurrence of old problems at the FBI. One of the most significant steps was setting the term of the FBI director at 10 years. Senator Robert C. Byrd of West Virginia was the architect of that provision, and he deserves the nation's thanks.

By its nature, the post of FBI director contains enormous power -- and the potential, even under the best of circumstances, for abuse. No person, therefore, should hold the job too long. At the same time, it is essential, as Senator Byrd once said, to have a stated term in order to "stabilize the office of the FBI director from political influence."

I pointed out at my confirmation hearing last January that a President has the power to remove an FBI director. I also said that I supported the Congressional intention to prevent removal of an FBI director for political reasons.

The 10-year term wisely exceeds the two-term limitation for presidents. It also provides enough time for an FBI director to conceive and carry out needed improvements. We are fortunate that Judge Johnson has agreed to serve a full 10-year term as FBI director.

Let me mention here a significant new concern in Federal law enforcement and intelligence agencies -- the growing number of civil damage suits against government employees for actions taken in the course of their duties.

There are a number of reasons for the increase in such suits, and there are many factors to be considered by the government. But let me point now to only one concern -- the possible reluctance of Federal employees to perform vital work because they fear they might be sued for damages, and as a result lose their life savings or homes.

A fair solution must be fashioned. We will shortly propose amendments to the Tort Claims Act that would substitute the Federal government as sole defendant in suits against employees for actions taken in the course of their duties.

I stress that these proposed amendments would still allow the government to hold employees accountable for their deeds and still leave them subject to disciplinary action or criminal prosecution.

Let me return now to general matters relating to justice that also affect lawyer and non-lawyer alike. One of the most striking is the growing crisis in our courts.

Much of the public is grimly aware that huge caseloads have engulfed the courts, resulting in delays and growing costs. These obstacles always impede justice to some extent, and sometimes deny it completely.

Many observers feel that procedures are now so complex and costly that, as one article put it, "justice too often has been priced out of reach of the average individual."

There are a number of reasons for the growing court congestion. Courts are called upon to settle many new types of disputes. And there is a growing public willingness to sue, although in some ways this factor is not all that new. Before the Revolution, Sir Edmund Burke told Parliament that Americans were a litigious lot and had purchased more copies of Blackstone's Commentaries on the Law than had been sold in all of England. But as we see now, those early tendencies have come almost to full bloom.

In addition, many needed reforms should have been started years ago. When I became Attorney General in January, I felt one of my chief responsibilities was to fashion programs to enhance the delivery of justice at every level of government.

A central part of this effort is the improvement of the courts. We are helping to develop specific projects toward that end. We hope to also be a catalyst for innovations in state and local courts, and we plan to provide some funds for promising programs.

The court-related efforts are being developed by the Office for Improvements in the Administration of Justice, a new office I created shortly after coming to the Justice Department.

There is not adequate time today to discuss all of the new projects relating to the courts, but I would like to mention a few of the more important.

It is essential to increase access to the judicial process. At the same time, delays and costs must be reduced.

A bill has been introduced to significantly broaden the jurisdiction of federal magistrates. The bill, co-authored by your Senator Byrd, has been passed by the Senate and is pending in the House. It would permit magistrates to hear large numbers of civil and criminal cases now handled by federal district judges.

The new procedures will result in swifter decision-making and lower costs for litigants, thus more often placing justice within reach of the less affluent.

At the same time, the burden of district judges may be reduced by up to 16,000 cases a year, thus freeing the judges to devote more time to litigation that requires their special skills.

We also hope to achieve caseload reduction through a companion measure to authorize arbitration on a test basis for certain types of civil cases.

The current proposal was given to me this week and legislation will be introduced shortly.

On the basis of experience in several states, we feel that many cases present relatively simple factual issues that

could be adequately resolved by an arbitration panel -- and resolved more rapidly than in the courts.

The bill would probably propose an arbitration system on a four-year test basis in five to eight Federal court districts. I emphasize that the parties would retain the right to a court trial if dissatisfied with the arbitration result.

We also are beginning an ambitious effort to provide new forums -- called Neighborhood Justice Centers -- for dispute resolution at the local level. They will be faster, more accessible, and less expensive than the courts.

With the aid of Justice Department funds, the first three centers will open on an experimental basis late this fall in Los Angeles, Atlanta, and Kansas City, Missouri. We hope these Centers, if successful, will be duplicated in scores of communities throughout the nation.

The Centers will offer mediation and arbitration services to settle a wide variety of disputes, if both parties agree to participate. Problems beyond the center's capabilities will be referred to courts or public agencies.

We believe that these centers can be a major step in bringing justice much closer to the people, including the poor and disadvantaged.

It is not enough, however, to try to fashion solutions to problems that have grown to massive dimensions. We must have machinery that will enable us to prevent a great many difficulties from developing in the first place -- or, at least, to let us plan in advance to cope with them.

One such step now under study would be creation of a Federal Justice Council. It would propose and develop programs to improve the federal courts and their related functions. In addition, the Council would seek to facilitate coordination of court-related activities among the three branches of government.

Although we have reached no final conclusion, one possibility is for the Council to be composed of the Vice President, the Attorney General, and the chairmen and ranking members of the Senate and House Judiciary Committees. We would hope that the Chief Justice and perhaps one other member of the Federal judiciary would agree to be included.

In the days ahead, I plan to discuss the Council proposals with Vice President Mondale. I also plan to meet with Senators Eastland and Thurmond, and Congressman Rodino and Congressman McClory.

In studying the Council concept, we are greatly indebted to Chief Justice Burger. The idea for a Council is really his. He has proposed it several times in the past and has provided a great deal of insight into how it might work. It is an idea whose time is long overdue.

If the concept comes to fruition, the Council could be created by informal agreement by those included, and could hold its first meeting as early as the coming fall.

The Justice Department is also conducting a detailed study on possible ways to predict the impact that new legislation will have on the Federal courts. We are not

suggesting that bills be abandoned simply because they would create more work for the courts. But it could be useful to know if a bill were going to add thousands of new cases to the docket.

With such warning, the courts would be able to plan for the expected increase. With more facts in hand, Congress might be able to consider measures more judiciously and could plan machinery for handling the expected new cases.

The need for advance planning is clearly shown by even a cursory glance at caseloads. Civil filings in the Federal courts increased by 120 percent between 1960 and 1976.

Our study of judicial impact statements is looking at two basic areas: what should go into the impact statements, and who should prepare them.

As part of our study, we have already developed one such statement, and the results were released at a Congressional hearing earlier this week. It concerned a legislative proposal relating to the Veterans Administration.

At present, the courts are precluded from reviewing most of the VA's final decisions in claims cases. The proposed bill, S.364, would allow court review of these VA decisions.

While taking no position at this time on the merits of the bill, we have closely studied the potential impact on the courts of just this one provision.

Based on an examination of VA decisions during the past year, our study estimates that the changed procedure might result in the appeal of 4,600 VA claims denials to the Federal district courts. Those new filings would increase the total number of district court civil cases by 3.4 percent.

To look at it another way, these new cases could require, at a minimum, the equivalent of full-time work by eight judges. Other new resources would also be required, including other court personnel, attorneys, and support staffs.

Our study did not measure the potential impact of other parts of the bill, which would revise certain VA regulations. But our limited measurement makes it apparent that the impact of legislation on the courts is a matter deserving serious consideration. I am pleased we have been able to at last begin work in this problem area which has been pointed to time and time again by the Chief Justice.

We need reliable, comprehensive statistics to carry out this and other important efforts. But instead of a central statistics agency, we now have 54 sets of statistics produced by 17 parts of the Justice Department -- and these separate efforts still don't provide all of the material we need.

This shortcoming will be resolved soon. A few days ago, I authorized creation of a Bureau of Justice Statistics to gather and analyze both criminal and civil justice statistics, at both the Federal and state levels. Sound programs can be built only on hard facts, and we intend to have the facts.

As I mentioned earlier, we have far too many court-related projects and studies to be discussed in one reasonably brief talk. Suffice it to say that our efforts are aimed at overall improvement of the delivery of justice at all levels.

At the same time, let me stress that we are seeking more than efficiency. Everything we do must rest on a foundation of principles that relate to people -- principles that must be adhered to rigidly. Let me tell you briefly what they are.

First, the Department of Justice must be totally professional, ethical, and honest.

Second, we must be absolutely fair in all of our actions.

Third, we must be as open with the public as the law allows.

And fourth, we must always use restraint, and guard against any arbitrary abuse of the enormous power entrusted to us by the people.

By following all of those principles, we can contribute to a better and safer society.

We seek progress under the rule of law. We seek to perfect our legal system so it provides justice for all. We need your help.