



Department of Justice

ADDRESS

OF

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

BEFORE THE

SECOND CIRCUIT JUDICIAL CONFERENCE

MONDAY, MAY 28, 1979
8:00 P.M.
BUCK HILL FALLS, PENNSYLVANIA

It is a double pleasure to be here tonight. First, to be able to share with you a few thoughts about the Department of Justice. And, second, to have the opportunity to introduce our distinguished main speaker.

I would like to begin with one brief comment about the Second Circuit itself--to compliment Judge Kaufman and his colleagues for disposing of more cases than were filed in each of the five years ending last June.

Statistics for the current 12-month period are not yet complete and I understand there is some trepidation over whether the string will continue for a sixth straight year.

But I am confident this remarkable achievement will continue. And all of us, both within your Circuit and without, are grateful for your unflagging dedication and service.

In looking at your conference program, I noticed that one major discussion topic was how to improve the quality of trial advocacy. It is a concern we share.

No system of justice can work properly or do justice, without well trained advocates with a high sense of professional responsibility. I continue to devote much time and energy to improving the Justice Department's lawyers on both scores.

Our main vehicle is the advocacy training program, which has been greatly expanded and improved during the past year.

We now conduct three-week courses in trial advocacy. The first two weeks of each course in either civil or criminal trial advocacy consists of instruction in case analysis, discovery, opening statements and summations, and direct and cross-examination.

It all culminates in two days of mock trial in which all students participate as counsel. The third week of training is held several months after the first two, after students have had some "real world" experience to enable them to deal in the course with more sophisticated questions of trial tactics.

I have also become concerned about an area of possible unfairness in the government's legal relations with the public.

The Department, at my direction, is examining the possibility of legislation to deal with the problem of unfounded suits or agency actions by the government. Under the proposal, the government would be liable for attorneys' fees if it acts in a manner that is "arbitrary, frivolous, unreasonable, or groundless."

In the same vein, we are looking at the often neglected Rule 11 of the Federal Rules of Civil Procedure, which says: "The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his know-

ledge, information, and belief, there is good ground to support it; and that it is not interposed for delay."

It is my impression that Rule 11 is often violated by lawyers. This violates the principle of fundamental fairness: fairness to the client, fairness to the opposing party, and, as importantly, fairness to the legal system.

The Rule 11 problem -- or lack of a Rule 11 as is the case in criminal cases and appeals -- prompted me to develop a policy that will bind all lawyers within the Justice Department. If we find a knowing violation of the Rule 11 concept in the trial or appellate courts, we will take appropriate action against the attorney, as well as confess error or take such other judicial disposition as may appear proper.

There is a need for fundamental fairness in criminal prosecutions. Our new policy is to ensure that no indictment is recommended by a federal prosecutor unless the evidence presented to a grand jury would at least be likely to produce a conviction. We will not go forward, absent highly unusual circumstances, where we have only enough evidence to withstand a motion to dismiss the prosecution at the close of what would be the government's case at trial.

Through these approaches, I am giving notice to the entire government that we will adhere to the principle of fundamental fairness in our dealings with the courts and the public.

In announcing these policies, I do not mean to imply that government attorneys have been unprofessional in the past. The taking of a groundless position by our lawyers is a rare event. Indeed, a high sense of professionalism exists among our lawyers. But it must be even higher, and I am pleased to announce tonight that I am creating a seminar on professional ethics for attorneys in the Department of Justice.

I and the top officials at Justice will make up the first class.

In addition, we will distribute to all new Justice attorneys upon their hiring a copy of the Code of Professional Responsibility. New attorneys will be asked to sign a statement that they have read and understand the canons of professional ethics and will abide by them.

This modest program is intended to augment our program of advocacy training and will further enhance the Department of Justice as a place where lawyers set an example for their colleagues throughout the nation.

One of the most encouraging things is that the Justice Department is not alone in these and other efforts to improve its operations. We receive significant help from the judiciary, the Bar, and the Congress. And no one in the Congress has been of greater assistance to us and the justice system than our main speaker tonight.

Senator Kennedy has distinguished himself in the Senate -- as his family has distinguished itself for decades in the service of our country.

I have been with the Kennedy family a long time. I knew President Kennedy well and had something to do with his election. And I knew Robert Kennedy well.

When I made a Law Day speech recently at the University of Georgia, I recalled accompanying Robert Kennedy when he delivered a courageous Law Day address there in 1961.

Many of his comments about the rule of law and rule of reason were directed toward the South, but one comment that also stands out in my mind was directed toward the nation:

"All of us might wish at times that we lived in a more tranquil world, but we don't. And if our times are difficult and perplexing, so are they challenging and filled with opportunity."

His words have relevance-- and reassurance -- for us all these years later.

I am honored to be able to introduce Senator Kennedy to you tonight. He has been a friend of mine for many years. And he has continued to be a friend since I have been in Washington. As Attorney General, I work with him very closely. I did in the last Congress when he was the ranking Democrat. Now, as

Chairman of the Committee -- perhaps the most important committee in the Senate -- I get along well with him.

We share similar views -- and particularly in the area of judicial reform. It has been a great pleasure for me to work with him.

He is a strong leader, a great Senator, a charismatic personality, and his motives are of the highest.