

ADDRESS

OF

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

BEFORE THE

NINTH CIRCUIT JUDICIAL CONFERENCE

Sun Valley, Idaho

Tuesday, July 24, 1979

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TUESDAY, JULY 24, 1979
12:15 p.m.
SUN VALLEY, IDAHO

P R O C E E D I N G S

1
2 ATTORNEY GENERAL BELL: Distinguished jurists,
3 friends, ladies and gentlemen: It is a great pleasure to be
4 in the Ninth Circuit again. I have had a number of strange
5 things happen to me since I became Attorney General. Last
6 week was unusual, but perhaps not the most unusual.

7 (Laughter.)

8 I was making a speech not long ago in a coastal area
9 of the country. Walking through the lobby of the hotel, a
10 woman stopped me and said, "I believe I've seen you before."
11 Of course you're on television, you know, and people remember
12 your face, can't remember your name. And I said, "Perhaps so."
13 And she said, "Are you a salesman from Ohio?"

14 (Laughter.)

15 Well, hopefully, after last week people will remember
16 me. Around Washington I'm known as the token
17 Georgian-- only one to leave the Administration.

18 (Laughter and Applause.)

19 Shortly after I arrived in Washington there was a
20 great hue and cry about so many people coming to the Carter
21 Administration from Georgia, and at the White House Press
22 conference one day Jody Powell was asked a question, "Who is
23 left in Georgia?" He said, "The smart ones."

24 (Laughter.)

25 I didn't know it at the time, but Jody was certainly

1 a prophet.

2 (Laughter.)

3
4 But I have learned a lot since I've been there, and
5 I am reminded of the story of the man being hanged, and just before
6 they pulled the slide on him, the hangman said to him, "Would you-
7 like to say anything before you are hanged?" And he said, "Yes,
8 I'd just like to say that this is going to be a powerful lesson
9 for me."

10 (Laughter.)

11 But it's not all bad. I went out to CBS last Friday
12 morning, to be on the morning show. There were a
13 number of workers there to move the equipment around and so
14 forth, and one of them said, "What are you going to talk about
15 this morning?" And I said, "I thought I'd talk about unemploy-
16 problems."

17 (Laughter.)

18 And this man said, "Yes," and he said, "it is bad in
19 alot of cities." I said, "True, but it's
20 terrible in the Cabinet right now."

21 (Laughter.)

22 But the Washington Post Friday afternoon carried a
23 column on the benefits that you get when you leave the Cabinet.
24 Among other things, we were advised that we could draw
25 unemployment benefits, so it warmed me to know that I
could at least have that.

1 I was in the Soviet Union recently, down in one of
2 the provinces called Uzbekistan, and those of
3 you who have been there know that Samarkand, an old city,
4 2500 years old, is located there, and Tamebrlane was once the
5 king of this area, and I went by his tomb and I saw something
6 written on the wall there that impressed me very much; and I
7 think it's -- I get some comfort out of it now. It's a line
8 went like this, "Happy is the man who rejects the world
9 before the world rejects him."

10 (Laughter and Applause.)

11 I want to talk to you a few minutes about the Depart-
12 ment of Justice, and give you a general report on some of the
13 things we have done there, and then say something about where
14 we stand on selecting Judges and what we are looking for in
15 Judges. I have been there, now, two and a half years. We
16 have been trying to improve the Justice Department, as well as
17 the administration of justice. I feel that there are some
18 things that are worth mentioning, so let me just list three or
19 four.

20 One is one that the Chief Justice alluded to, the
21 renewed commitment in the Department's professionalism, and
22 the steps taken to ensure the Department's independence, to
23 make the Department into a neutral zone in the Government. I
24 think we have done that, and I don't think it will change in
25 the foreseeable future.

1 but let me be precise as to who deserves the credit for these
2 improvements: First, the men and women of the Department,
3 many of the career people, who have heeded the call for
4 excellence; next, the officials who have provided leadership
5 and high examples of competence; and finally, President Ford
6 and Attorney General Levi, who began the process of pulling
7 the Department back from troubled times. It is not pos-
8 sible today to list all of the initiatives undertaken in the
9 past two and a half years, but as I said, some are, I think,
10 significant.

11 We have reordered our prosecutions, to fit into
12 our system of federalism. State and local prosecutors are
13 handling crimes of State and local nature. This has enabled
14 us to set new priorities in investigations and prosecutions,
15 taking only those matters of geographical and factual complexity.
16 The Office for Improvements in the Administration of Justice,
17 which we created shortly after going to Washington, has developed
18 a comprehensive program for improving our justice system
19 processes. A number of important legislative proposals are now
20 before Congress. You are familiar with most of them: One to
21 increase the civil and criminal jurisdiction of the Magistrates,
22 in an effort to reduce case backlogs and to speed the delivery
23 of justice; we propose a sharp curtailment in the exercise of
24 diversity jurisdiction, so that more cases can be heard in
25 the State courts, rather than the Federal courts; another bill

1 would authorize the use of arbitration in Federal courts for
2 certain types of civil cases, and as you know, we have an
3 experiment going on now in several Districts in the country,
4 one being in the Northern District of California. Proposals
5 also have been developed that would give the Supreme Court
6 greater control over its own docket, and to create a new inter-
7 mediate Court of Appeals by merging the Court of Claims
8 Court of Customs and Patent Appeals.

9 We have expended significant effort on revision and
10 reform of the Criminal Code, and there are now promising
11 signs that a new Code will eventually be enacted. Other major
12 programs are under development, including reform of class
13 action procedures, and a new national standard for -- it is
14 not new, but a national standard for resolving of medical
15 malpractice claims.

16 We have also had a major role in the development and
17 passage by Congress of the Foreign Intelligence Surveillance
18 Act, a landmark measure that protects civil liberties while
19 permitting the Government to carry out essential functions in
20 the area of foreign intelligence. It brings the Federal
21 courts into foreign intelligence for the first time, and a
22 new Foreign Intelligence Court has been constituted by the
23 Chief Justice, and I can tell you from firsthand experience
24 that the system is working well, very well indeed.

25 In the coming months, the attention of Congress and

1 the Administration will be focused on several other far-
2 reaching Justice Department proposals of enormous importance
3 to the country's future well-being. I refer to the Speedy
4 Trial Act amendments, to the "greymail" legislation, and to the
5 FBI charter.

6 We have proposed amendments to the Speedy Trial Act
7 of 1974, because of strong concern that the final time limita-
8 tions would force dismissal of a large number of cases. The
9 main objectives of the Act are strongly supported by the
10 Justice Department, but we feel that the time limits must be
11 balanced against the dismissal problem. Because of that, we
12 support a Senate-passed bill that postpones imposition of the
13 dismissal sanction for two years. I might say that I did not
14 favor that; I favored amending the Act now, but this was the
15 best we could do. In Congress, you learn quickly -- I mean
16 in Washington, you learn quickly that the rule is, as much as
17 possible, you can't always get what you want.

18 The House is now giving the matter its close attention
19 Eventually, I expect that the 100-day limit will be expanded to
20 as much as 180 days, because it is unrealistic -- it is an
21 unrealistic limit in many complex cases, particularly from the
22 defendant's standpoint.

23 Our legislation to resolve the "greymail" problem is
24 now before Congress. "Greymail" -- and in case that term --
25 to my knowledge, it has not reached the West -- is the practice

1 of a defense lawyer seeking to force disclosure of a national
2 security secret, in the hope that the Government will decide
3 instead to drop the prosecution. The use of those tactics are
4 a major problem for us today, but our legislation proposes a
5 solution that would be fair and proper. Hearings on this
6 legislation have been scheduled already by the House Intelli-
7 gence Committee.

8 I might add, something new in our country in the last
9 three or four years is the creation of the Senate Select
10 Committee on Foreign Intelligence and the House Select Committee
11 on Foreign Intelligence. The Justice Department today deals
12 with those two committees, just as in the past we have dealt
13 with the

14 Another of our priority undertakings has been the
15 development of the F.B.I. charter, a legal framework to
16 ensure oversight and proper controls and accountability. A
17 charter will be an additional guarantee that the law will be
18 upheld. It will protect the F.B.I. agents, and it will also
19 enhance public confidence in the F.B.I. The charter will
20 represent a contract between the F.B.I. and the people, and a
21 mutual agreement on what the F.B.I. will do, will not do, and
22 how it will conduct itself. The Administration plans to sub-
23 mit the draft charter to Congress shortly, and we look forward
24 to early hearings.

25 And here I would like to say that I am proud of the

1 fact that we have prosecuted more espionage cases than ever
2 before. These, and other cases, such as the Snepp case,
3 which tested the validity of the secrets contract that the
4 F.B.I. agents -- or C.I.A. agents must sign. Also the F.B.I.
5 agents who work in counter-intelligence. The F.B.I. informant
6 case that I was in, in New York. These cases, cases of this
7 type, have substantially boosted the morale of those who work
8 in the F.B.I. and in the C.I.A. These cases have also pro-
9 vided a legal basis for safeguarding our national security
10 interests, and causing intelligence agencies as well as
11 agents to have renewed confidence in us.

12 I can report that our foreign intelligence,
13 intelligence systems, are in sound condition again. As
14 Americans, we can take pride in these areas of our Government.

15 Another matter I want to discuss with you today con-
16 cerns two aspects of the Federal courts, current judicial
17 selection procedures, and the qualities we should seek in
18 selecting new Judges. When President Carter assumed office
19 there were nearly 500 Federal Judges, but he then was given a
20 historic responsibility when Congress enacted legislation
21 creating 152 new -- 152 new District and Circuit Judgeships.
22 Filling those positions has turned into one of the President's
23 most important duties. It means that he has the responsibility
24 for not only filling all vacancies caused by death or retire-
25 ment, but also for appointing 152 new Judges. In one four-year

1 term, President Carter will have appointed more Federal Judges
2 than any other President in the history of the Nation. In
3 fact, he will appoint about 40 percent of all the Judges on
4 the Federal bench. This is an awesome responsibility for a
5 President to have, and I am doing my best, and have done my
6 best, to assist him in carrying it out.

7 In the last Congress, 1977 and '78, President Carter
8 filled 66 vacancies on the Federal courts. Since January of
9 this year, he has sent 90 additional nominations to the Senate
10 47 have been confirmed, 12 yesterday -- that includes 12
11 yesterday. 42 are still pending in the Senate, and there are
12 56 other nominations in process. That means that the President
13 has signed off on the names, and we are having them checked
14 out by the F.B.I. prior to submitting their names to the
15 Congress, of those 56. This means that since January 1 of
16 this year, the President has approved 145 Judgeships, including
17 new Judgeships and vacancies. Candidates have yet to be
18 selected for 41 positions, but we are working on those. I
19 have an appointment Thursday morning with the President, at
20 9:00 o'clock, and I hope to get 12 to 14 approved then, which
21 will get us down below 30. When you get down in that level
22 you are down to about where you normally are at all times
23 There are always 20 to 30 vacancies on the Federal bench. The
24 Chief Justice has asked me a number of times why we --
25 (inaudible) many others view, why we can't cut that figure down

1 and speed up the process, and we have tried. And maybe we
2 have learned enough now to do it, but there are a
3 lot of delays, and a lot of reasons why it takes a while to get
4 people approved, confirmed.

5 Now a word about the kind of Judges we seek, or that
6 we ought to seek. We seek Judges of the highest quality, but
7 we also are in need of affirmative action to make certain a
8 substantial number of women and members of minority groups are
9 nominated to the Federal courts. And in this regard, we believe
10 that we have achieved a striking measure of success. When President
11 Carter took office, there were few women and minorities on the
12 Federal bench. He said he wanted to make the Federal courts
13 more representative of our population. Let me give you a
14 brief report on how things are changing:

15 In 1977 there were 4 women, 17 blacks, and 5 persons
16 with Spanish Surnames, on the District courts. Of the 117
17 persons nominated by President Carter to the District courts,
18 17 have been women, 12 black, and 4 with Spanish Surnames.
19 In 1977 the Circuit courts included -- I apologize for the
20 use of statistics, but I find that the press
21 distorts these statistics, so I thought I might put them
22 in one place for a change. In 1977 the Circuit courts included
23 1 woman, 2 blacks, and no one with a Spanish surname. The
24 President's 36 nominees include 8 women, 6 blacks, and 1
25 person with a Spanish surname.

1 In the time-consuming process of screening candidates
2 for the bench, I have also given a great deal of thought to the
3 qualities one should possess to be a Federal Judge. There are
4 many ways to evaluate lawyers, and I am talking about factors
5 that transcend the usual yardsticks. As a starting point, we
6 should consider insights offered nearly 150 years ago by Alexis
7 de Tocqueville, the French writer who came to the United States
8 in the 1830s to study our prison system, but who traveled for
9 two or three years extensively over our country, and went back
10 to France and wrote "Democracy in America". In that book he
11 said that, based on what he could learn about our form of
12 government, nearly every question of major importance would end
13 up in the courts. He went on to say -- it's something, though,
14 that is rarely accorded, although it seems to be coming right
15 famous to quote de Tocqueville -- he said that if our country
16 was to survive, that is, our form of government, if we were to
17 maintain the form of government that the founding fathers had
18 given us, we would need wise judges. So I would
19 say that the first qualification for one to be a Federal Judge,
20 or a Judge anywhere for that matter, is that he or she be a
21 wise person.

22 Judges must also be brave. If they lack bravery,
23 they have no business on a bench. Bravery is a given. There
24 are other qualities that are also vitally important, and I
25 require them of the lawyers in the Department of Justice. A

1 Judge must possess a high degree of professionalism. This
2 means not only basic ability, but ethics as well. You have to
3 be ethical, and you have to have a fine-tuned sense of ethics.
4 You have to possess absolute integrity, if you are going to be
5 a Judge, and of course we require this of our lawyers. And
6 then you must be civil, civil to other people. We have lost
7 some element of civility in our society. We often are not
8 civil to each other, but certainly Judges, above all others,
9 should be the essence of civility in all of their activities.
10 I suppose some people might put this under the heading of
11 judicial temperament, but I try to reduce it on down to just
12 plain civility, good manners.

13 I arrived at the next qualities for Judges in an
14 unusual way, from "The Life of Lincoln" by Sandburg. The
15 last -- a chapter in the last volume is entitled, "A Tree Is
16 Best Measured When It Is Down." It contains eulogies to
17 Lincoln after he was assassinated. One was by Leo Tolstoy,
18 the great Russian writer. Tolstoy was a contemporary of
19 Lincoln. Sandburg wrote that some Russian tribesmen, after
20 receiving the news of the assassination of President Lincoln,
21 had asked Tolstoy to tell them about Lincoln. And Tolstoy
22 replied that Lincoln was one of the greatest American
23 Presidents and one of the great men of all time, greater than
24 Washington, greater than Napoleon, greater than Alexander of
25 Macedonia. He said he was great, because everything he did

1 was rooted in four principles: The first was truth, and
2 certainly that has everything to do with our system of
3 justice; the second was justice, and that is the reason for
4 the existence of courts, for the existence of our legal system,
5 indeed, the reason to have an organized government; the third
6 was humanity, Tolstoy said Lincoln believed in humanity. You
7 should not be a Judge if you don't have a developed sense of
8 humanity. The fourth principle was pity; we would be in the
9 same shape, if we have a Judge who has no sense of pity, as we
10 would be in, if we had a Judge who had no sense of shame. It
11 would be a terrible state of affairs.

12 In sum, these are the qualities I believe a Judge
13 must have; to be wise and brave, to have a high degree of
14 professional skill, including ethical concepts; to have
15 absolute integrity; the habit of civility; to be dedicated to
16 truth, justice, humanity, and to possess a sense of pity. In
17 the final analysis, each Judge will be responsible for his or
18 her own actions, and his or her own performance. High
19 dedication must be commonplace if Judges are to be worthy of
20 the enormous trust and awesome power that they have been given.

21 In closing, let me say that it has been the rarest
22 of privileges to serve as your Attorney General. For 30 months,
23 I have lived on the cutting edge. The work has been hard, the
24 challenges have been great, and I have given these my best
25 effort. It is an experience that I will carry for all my days.

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8 It is a truism that all who leave the Department of
9 Justice, do so with a feeling of admiration and respect, even
10 love for it as one of our Nation's most valuable institutions,
11 and for those who labor there. I might say they are the --
12 when I was in the Marston affair, all the trouble I was in at
13 that time, and Herbert Brownell (S) called me on the telephone
14 from New York and said, "I want to see you." He came down to
15 the Justice Department and said, "I came down here to help
16 you." He said, "When I was Attorney General, I was in nearly
17 all the news." He said, "You have to expect crisis situations
18 here, and I just came down to see if there was anything I
19 could do to help you." I'll never forget that. That was one
20 Attorney General from another Administration, trying to help
21 the present Attorney General. I think that's sort of the
22 general feeling that people have, who ever have been in the
23 Justice Department.

24 So I leave the Justice Department with a hope and
25 prayer that the Department will hold to its pride, its
independence, its objectivity, and a high level of competence,

1 to the end that the American people will regard it, in the
2 words of a mariner, "Steady as she goes."

3 Thank you.

4 (Applause.)

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25