



Department of Justice

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ADDRESS

BY

THE HONORABLE GRIFFIN B. BELL
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BEFORE

THE NATIONAL BAR ASSOCIATION JUDICIAL COUNCIL LUNCHEON

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As lawyers and judges, each of us cannot help but be aware of the growing crisis in our courts.

The public is increasingly aware of the huge caseloads that have engulfed the courts. Citizens see greater delays and mounting costs, two factors that surely erode justice and often deny it.

"Fresh justice," said Sir Francis Bacon, "is the sweetest." But what Bacon did not say is that stale justice is often no justice at all.

Growing news media interest in court problems has led to in-depth coverage. There appears to be a large, interested audience.

U.S. News and World Report, for example, recently concluded that "court procedures have become so complex and the accompanying delays so costly that justice too often has been priced out of reach of the average individual."

The magazine said it takes four years for certain cases to come to trial in some states, and waits of a year for trial and two years for appeal decisions were not uncommon in Federal courts. As judges and lawyers, we know this.

Reasons for the logjam are not hard to find. Courts are called upon to settle many new types of disputes. And that development is coupled with a growing public willingness -- indeed, almost eagerness -- to sue.

This latter factor is not, of course, really 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.

Those early tendencies have come almost to full bloom. State and Federal court caseloads have grown to astonishing levels. Past efforts to alleviate the problems have been inadequate.

When I became Attorney General six months ago, I was determined to fashion projects to help improve the delivery of justice at all levels.

Court improvements are central to this effort. From my nearly 15 years as a Federal appeals court judge and from other work in the law, I am convinced that substantial changes are needed -- and needed now.

Most justice responsibilities rest with state and local governments. This was underscored by a recent study showing that they provided 87 per cent of the Nation's total criminal justice costs in Fiscal 1975.

But the Federal government still has major responsibilities. We can help develop improvements in the Federal courts. We can be a catalyst for innovations and we can provide some financial support.

One of my first steps after being sworn in as Attorney General was formation of the Office for Improvements in the Administration of Justice. Its reform programs can have a major impact on the Nation's justice system.

Time precludes a discussion of all our court-related projects, but I want to mention a few that can significantly

improve procedures and reduce caseloads.

The Senate recently passed and sent to the House a bill to broaden the authority of Federal magistrates.

For the first time, magistrates would decide civil cases, if the court and the parties agreed. If authorized by the court, magistrates would hear all petty offenses and would try misdemeanors if the defendant consented.

This new system might reduce the burden of District Court judges by as many as 16,000 cases a year. In addition, the new procedures for faster, less costly dispute resolution would put justice within the reach of many less affluent persons.

We will soon propose legislation to authorize an experiment with compulsory but non-binding arbitration in certain types of Federal civil cases.

Either party could reject the decision and go to court, but we believe there would be a high finality rate. In one state system we studied, the finality rate was 95 percent.

Participation would be at the option of the District Courts, which would select the arbitrators. We feel caseloads for judges could be reduced substantially.

Another Department bill would also have a significant impact on caseloads by limiting diversity jurisdiction. It would preclude a plaintiff from invoking diversity jurisdiction in his or her own state. This one step might reduce District Court filings by as much as 10 percent.

The proposed revision of the Federal criminal code, in which the Justice Department has played a major role, would enhance court efficiency in two ways.

First, confusing and contradictory laws would be eliminated. This would result in a framework that is much more clear, efficient, and fair.

Second, sentencing guidelines, which are unprecedented in Federal law, would be created. The guidelines would save judges' time and reduce sentence disparities that now exist. The concept of equal protection would be enhanced.

More than 30 statutes now give priorities on Federal Court calendars to a bewildering array of civil cases. We have prepared a bill to repeal all such provisions, except for habeas corpus matters. Courts would then be freer to establish their own priorities.

The Department is studying ways to improve class action procedures. We are building in part on the work of the Task Force created by the American Bar Association to implement the recommendations of the Pound Conference.

The Task Force felt class actions are a valuable tool. But it also noted that critics feel some are "so complex as to be beyond the power of judicial tribunals to adjudicate on any rational basis."

We plan to recommend improved class action procedures and are studying possible alternatives for handling mass grievances.

I am now reviewing another Department study calling for creation of a Federal Justice Council that would develop and propose programs to improve courts and related functions.

One possibility is that the Council would be composed of the Vice President, the Chief Justice, a judge to be selected by the Judicial Conference, the Attorney General, and the chairmen and ranking members of the Senate and House Judiciary Committees.

We also may propose that an impact statement be required for Federal legislation relating to the courts. Such a requirement would be a significant step. For example, one provision of a 1976 tax bill might trigger 30,000 new Federal court cases.

In our efforts to assist states, we have a new program, which I announced last week, to establish Neighborhood Justice Centers in Los Angeles, Atlanta, and Kansas City, Missouri.

The centers will be an alternative to the local courts for settlement of many types of disputes -- including family, housing, neighborhood, and consumer problems -- through mediation and arbitration.

They will offer prompt, inexpensive access to the justice system for many persons who might never get their day in court because of high costs or long delays.

We hope the centers, if successful, can be duplicated by scores of communities. They have the potential to be of immense benefit to large numbers of persons, including the poor, who now feel they have no access to the processes of justice.

Court improvement programs cannot overlook the quality and quantity of Federal judges.

Shortly after taking office, President Carter established the Circuit Judge Nominating Commission to propose the most qualified persons for the Federal Circuit Courts of Appeals.

We have urged Senators to adopt merit selection procedures in every state for district court vacancies and have strongly supported more District and Appeals judgeships.

In addition, the Department has supported legislation creating much needed additional Federal judgeships.

A major factor in judicial selection is professional evaluation of each candidate.

The American Bar Association now provides evaluations for the Justice Department and the Judiciary Committees. At my confirmation hearing I said this process should be broadened to include the National Bar Association.

I am pleased an agreement has been reached by the Justice Department and the National Bar Association. Your

leadership has agreed to help us in the evaluation process. We look forward to receiving what I know will be significant contributions from you.

Making meaningful contributions really sums up everything I have been discussing today. Though there may be professional differences on specific topics, as lawyers our major aspirations should coincide with those of the American people. We seek a better, safer society under the rule of law.

The report of the Pound Task Force summed it up this way: "The ultimate goal is to make it possible for our system to provide justice for all."