

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

BEFORE
THE VERMONT BAR ASSOCIATION

Lake Placid, New York
September 9, 1978

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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

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P R O C E E D I N G S

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2 ATTORNEY GENERAL BELL: Jefferson said that if he had
3 to take a choice between no government or no free press, that
4 he'd take the free press, and let the government go. We're
5 approaching that time, I think, in some days.

6 The press is constantly on the lookout for a new
7 Watergate. Everyone is under heavy suspicion, strongly sus-
8 pected of, at any moment, setting off a new Watergate, and
9 it's difficult to really function in an atmosphere of that
10 kind, particularly for someone like me who doesn't care to
11 be in Washington.

12 I went because the President asked me, and I do
13 the best I can to help the President, carry out the functions
14 that I was assigned, and also to do what I can to -- with
15 the lawyers and make the Department of Justice better, and
16 cause the people to have more confidence in the Department
17 of Justice.

18 One of the more frustrating things about being in
19 Washington is the fact that the Congress is trying to manage
20 the Government. There are 535 people in the Congress, and
21 each one seems to have some desire to manage Government. Now,
22 just recently, GSA has been running an investigation of
23 people stealing from the Government; they have their own
24 investigators and auditors.

25 I've loaned them three lawyers to help them, and

1 they've announced that it's the largest investigation that
2 has ever taken place in the history of the Republic. Senators
3 have been announcing -- that have something to do with the
4 GSA -- that there's a great conflict between the Justice
5 Department and the GSA, and that we're not doing our jobs.

6 That's the first I knew of it; I met
7 with the GSA people a number of times, given them everything
8 they want, but it occurred to me that maybe the Senate was
9 going to -- maybe these Senators wanted to manage the investi-
10 gation. I'm going to meet with them on Monday, ask them to
11 let me do it since I'm the only one under the law that's
12 assigned that task, and perhaps I'll be able to get it done.

13 This is in the Senate; there are people in the
14 Senate that I have no connection with. I'm only under 18
15 Committees -- Subcommittees of the Congress and 11 full
16 Committees. I only report to 29 groups! And this is another
17 group that I'm dealing with on this.

18 I thought I'd bring you a little of the atmosphere
19 of Washington so in case some of you are called there to
20 serve, you'd know what you're getting into.

21 There are a lot of good things, though, about being
22 Attorney General. They're not all bad. There's great
23 challenge, great opportunity to restore the confidence of the
24 people in the law -- as a neutral force. There's opportunity
25 to cause the confidence of the people to be maintained in the

1 law and in the court system of our country, and in the equal
2 protection clause that under our system everyone is treated
3 the same before the law.

4 Those are the good sides of it, and I would say that
5 on balance, the good side outweighs the bad side.

6 The bad side would almost go away
7 if there was some way we could reduce the number of people
8 in Government -- the number of people in Congress,
9 the size of the Executive Department. All of that
10 exacerbates the problem of handling any one problem, because
11 there's too many people that get involved in it that it's
12 difficult to do anything other than to arrive at some sort
13 of a-- Washington never speaks of compromise; it's "consensus."

14 You have to learn a lot of new language once you
15 get there.

16 One of my first and foremost concerns as Attorney
17 General has been to make --the Department of Justice as inde-
18 pendent and as professional as possible. I would like to
19 discuss with you this morning some of the difficulties we
20 face and how we are working to resolve them, and to indicate
21 to you the directions we perceive for the future.

22 To appreciate the nature of our task, it is import-
23 ant to understand something about the background of the
24 Department's problems.

25 The first Attorney General was appointed in 1789;

1 his duties were few and sharply defined. He was legal advis-
2 or to the President and other Executive officers, and he
3 represented the Government in court, and incidentally, it
4 was only a part-time job. George Washington at that time
5 was able to select his own lawyer, Edmund Randolph, who had
6 been Chief of Staff in the Army and was then Attorney General
7 of Virginia, and no one complained about him being a crony
8 of George Washington.

9 He was selected on the merit system --

10 (General laughter)

11 -- but it seemed to work well.

12 There was not even a Department of Justice until
13 1870. This part-time Attorney General lasted until about
14 1835, and it became a full-time job, and finally in 1870,
15 the Department of Justice was created.

16 Now, by way of contrast to what Edmund
17 Randolph and his successors have done, today there are 55,000
18 employees of the Department of Justice; only 3,800 are lawyers,
19 and half of those lawyers are in U. S. Attorney's offices
20 scattered over the nation. The other half are in Washington.

21 We have the FBI -- over 20,000 people, Drug
22 Enforcement Administration with 4,000; the Immigration Service
23 has about 10,000. We have the Federal Prisons System and the
24 LEAA; we have a unit of people who screen nominees for
25 Federal Judges and U.S. Attorneys, U.S. Marshals.

1 So it's a very complex place, and if you've never
2 been a manager -- and I never managed anything other than a
3 law firm -- you wonder if you can ever get control over any
4 unit of Government this large, and make some effort at manag-
5 ing it, bringing in good management principles.

6 So that's been an interesting venture for me, at
7 my age, to get into something like that. I was in the Army,
8 and I don't know why I know anything about management, but
9 it seems to me it's just common sense.

10 We have been able to restructure the top management,
11 and I think we've made a good deal of progress. The heart
12 of the Justice Department is prosecuting, handling civil
13 litigation, counseling -- rendering legal opinions to the
14 President, and the other top people in the Government who
15 seek our opinions.

16 Incidentally, most every agency in the Government
17 now has their own General Counsel; fewer and fewer people
18 ask us for opinions, because our opinion is binding. The
19 only person that must use the Office of Legal Counsel is the
20 President, and the Attorney General. I have to get my opin-
21 ions from there; I don't have any other Counsel that I could
22 turn to.

23 These are -- as I say, that's the heart of the
24 Department. In these roles, the Attorney General necessarily
25 wields enormous power over all Americans, and it's important

1 to have a close rein over how we exercise that power.

2 More than 40 years ago, Attorney General Robert
3 Jackson, who lived in this area of New York, had something
4 to say about the prosecutors. As you know, he later was on
5 the Supreme Court, a brilliant jurist and a fine judge. He
6 was a great Attorney General.

7 He said the prosecutor has more control over life,
8 liberty and reputation than any other person in America.

9 "While the prosecutor, at his best, is one of
10 the most beneficent forces in our society, when he acts
11 from malice or other base motives, he is one of the
12 worst. The citizens' safety lies in the prosecutor who
13 tempers zeal with human kindness, who seeks truth and
14 not victims, who serves the law and not fractional
15 purposes, and who approaches his task with humility."

16 Attorneys General in the Department of Justice tra-
17 ditionally have exercised their power with fealty to Jackson's
18 principles. I think that's true today in the Department.

19 Unfortunately, however, the partisan activities of
20 some Attorneys General in this century, combined with the
21 legacy of Watergate, have given rise to an understandable
22 public concern that some decisions of the Justice Department
23 may be the products of favor, or pressure or politics.

24 The President, as a candidate, was deeply troubled
25 by this public perception, and as you know, he promised an

1 independent Attorney General, an independent Justice Depart-
2 ment. At that time, and even after becoming President, he
3 gave some thought to making the Attorney General independent
4 of the President, since White House influences on the Justice
5 Department -- real and suspected -- had contributed greatly
6 to the public concerns.

7 The President has now done all that he can, given
8 our Constitution, to make the Attorney General independent.
9 He's charged -- the President is charged by the Constitution,
10 with the duty to, quote:

11 "...take care that the laws be faithfully
12 executed..."

13 close quote.

14 He and he alone is accountable ultimately to the
15 American people for his performance of this duty, his consti-
16 tutional duty. So you just can't say you're going to have an
17 independent Attorney General doing these same things, because
18 there's no Attorney General in the Constitution. He's not
19 mentioned in the Constitution; it's the President who has
20 this duty.

21 But the President can delegate, and he has delegated
22 certain responsibilities to the Attorney General, in the
23 first instance. The Attorney General must discharge his func-
24 tions with a high sense of public duty and with the customary
25 ethical accountability of any lawyer to the courts. But in

1 a constitutional sense, the Attorney General remains respons-
2 ible to the President, to the President and the public.

3 Although true institutional independence is there-
4 fore impossible, the President is best served if the Attorney
5 General and the lawyers who assist him are free to exercise
6 their professional judgments.

7 Just as important, they must be perceived by the
8 American people as being free to do so. The President retains
9 the power and the duty to accept or reject the Attorney
10 General's judgments. There will, and must always be, free
11 access and easy but confidential communication between the
12 President and the Attorney General.

13 That is the case now. The course best calculated
14 to inspire public confidence in the faithful execution of
15 the laws, however, is for the President to allow the Attorney
16 General freedom from undue influence, to accept the Attorney
17 General's judgment in specific cases, and to remove the
18 Attorney General if his judgments seem wrong.

19 I know that President Carter agrees with this
20 statement. I might say here that what I have been doing has
21 really not been so difficult, because I have been building on
22 something Attorney General Levi started under President Ford.

23 He began to rebuild the Justice Department, make
24 it independent, do just the very things that I have been
25 doing. I've followed on; he had about two years and two

1 months there at the Department, Attorney General Levi and I
2 came in and succeeded him, and I've been doing the same
3 things in some other areas -- foreign intelligence, for
4 example, that Attorney General Levi had started.

5 Both President Carter and I continue to search for
6 more realistic ways to minimize the chance that improper
7 influence may be brought to bear on the Department, and to
8 reduce the public's concern.

9 I have come to believe that the task requires three
10 things. First, we must establish proper procedures and prin-
11 ciples that will insure, to the extent possible, that improper
12 considerations will not enter into any legal judgments.

13 Second: the public must know of and have confidence
14 in these procedures and principles.

15 Third: we must insure that the lawyers in the
16 Department are persons with good judgment and integrity.

17 I believe that this last requirement has been met.
18 I know from personal observation that lawyers in the Justice
19 Department are faithful to a high standard of professionalism,
20 and are steadfast and independent in their legal judgments,
21 regardless of outside procedures or controversies.

22 Earlier this week, I spoke to an open meeting of all
23 lawyers in the Department, and set forth the procedures and
24 principles which I now believe necessary to protect our
25 legal judgments from even the appearance of improper influence.

1 Bill Gray was there, in our Department; he was the
2 head of the Executive Office of U. S. Attorneys, a very
3 responsible position; he wanted to come back to his native
4 State to be the U. S. Attorney, and your gain was our loss,
5 but I'm sure Bill has been to many meetings in the Great
6 Hall at the Justice Department. We can get several hundred
7 people in there -- it's our ceremonial place.

8 That's where we had this meeting this week with the
9 lawyers, and what I said there and what I'm getting ready to
10 say to you now has been widely disseminated by the media, and
11 received favorable editorial treatment, and I think it shows
12 that the American people long to have a Department of Justice
13 as accountable as this Department ought to be.

14 Now, here are the things I said, these two princi-
15 ples: the primary responsibility for exercising the
16 Department's function as a prosecutor and as a civil litigant,
17 has been assigned by regulations to the various Assistant
18 Attorneys General in the Department. That's the persons in
19 charge of the Civil Division, Criminal Division, Civil Rights
20 and --

21 It is their responsibility to make decisions concern-
22 ing the prosecution, filing and defense of such cases. In
23 the process of reaching any decision, an Assistant Attorney
24 General may consult with the Deputy Attorney General or the
25 Associate Attorney General, or with me -- there are three of

1 us. But it is the Assistant Attorney General's responsibil-
2 ity to reach the decision in the first instance.

3 The Assistant Attorney General must be insulated
4 from influences that should not affect decisions, in particu-
5 lar cases, criminal or civil.

6 Thus, all communications about particular cases
7 from Members of Congress or their staffs, or members of the
8 White House staff, are to be referred to my office, or the
9 offices of the Deputy or Associate Attorneys General. It is
10 our job to screen these communications and assure that any
11 improper attempt to influence a decision does not reach an
12 Assistant Attorney General.

13 Any relevant information or legal argument is, of
14 course, passed on.

15 Singling out these persons whose communications are
16 to be screened does not mean that they are especially prone
17 to attempt to exercise improper influence. The problem is
18 that their positions of power create a potential for uninten-
19 tional influence upon a decision, or, more often, may give
20 rise to the broad appearance of improper influence.

21 Cabinet officers, State officials, political party
22 officials, recognized interest groups -- so-called interest
23 groups and the like, are exempt from this screening procedure,
24 but this does not mean that they may never try to exercise
25 improper influence. The potential for improper influence or

1 questionable appearances in communications from such persons,
2 however, is not so great as to require that their communica-
3 tions be screened.

4 The Assistant Attorneys General have been instructed
5 to be alert for perceived improper communications from any
6 source whatever, and to report them to their superiors.

7 As an additional measure to help spot potential
8 troubles, I've directed each Assistant Attorney General to
9 report to the Deputy or the Associate Attorney General all
10 communications about specific cases by persons -- excluding
11 the press -- other than those involved in the litigations.
12 This includes especially any communication that seems even
13 marginally improper.

14 In addition to these measures, I have promised that
15 the Deputy, the Associate, and I will reduce to writing our
16 reasons for overruling any litigation or prosecution decision
17 of an Assistant Attorney General. If possible, those reasons
18 will be made public. I recently did exactly that when I
19 overruled the Antitrust Division and permitted the merger
20 of LTV and Lykes, and made a public statement of the reasons
21 why -- as to the fact that I had overruled the Antitrust
22 Division and the reasons why I overruled them.

23 These procedures reflect the principle that governs
24 outside contacts with respect to the Department's cases.
25 Simply put, that principle is that it is improper for any

1 Member of Congress, any member of the White House staff, or
2 anyone else, to attempt to influence anyone in the Justice
3 Department with respect to a particular litigation decision,
4 except by legal argument or the provision of relevant facts.

5 This principle is essential to the proper function
6 of the Justice Department, because litigation decisions are
7 discretionary. The ultimate criteria is that they be fair;
8 we at the Justice Department are not infallible, but the
9 responsibility for wielding our power fairly is ours alone.
10 Our notions of fairness must not change from case to case;
11 we must not be influenced by partisanship, or privileged
12 social, political or interest-group positions either of the
13 individuals involved in a particular case or those who may
14 seek to intervene against them or on their behalf.

15 I believe that these restrictions are a small price
16 and a necessary one for supporting and maintaining public
17 confidence in the Department of Justice. The only disadvan-
18 tage involved is that communication may be less direct, but
19 these costs are substantially outweighed by the benefits of
20 renewed confidence in the integrity of the Justice Department's
21 decisions.

22 We can not quantify benefits, but everyone knows
23 intuitively that the confidence of our citizens in our
24 Government and its justice system is beyond value. Regula-
25 tions and rules -- even the ones I have just discussed -- can

1 on occasion prove fragile.

2 It may be that the most powerful influences on the
3 side of what is lawful and right could be custom and tradi-
4 tion. Recent events, including the direction by the President
5 that the Attorney General be independent, have given us the
6 opportunity to strengthen the tradition of independence for
7 the Justice Department, and we have done so.

8 I am reminded of the English experience. As you
9 may know, the English Attorney General is independent by
10 tradition. This tradition was greatly strengthened after an
11 incident in the 1920's; at that time it was believed that the
12 English Attorney General had yielded to pressures brought
13 upon him by some of his colleagues in the Cabinet in deciding
14 not to prosecute a certain case. That was the McDonald
15 government.

16 In -- whether that was true is still debated, but
17 the mere suspicion precipitated the downfall of the govern-
18 ment.

19 Since that time, the independence of the English
20 Attorney General, and the impropriety of anyone's attempting
21 to influence his decisions, have assumed the status of Consti-
22 tutional rule, though it's just a tradition. No one would
23 dare try to influence the Attorney General today.

24 By the way, rather than having special prosecutors
25 -- wanting to have a special prosecutor for every case, what

1 they do in England is, they have a career official in the
2 Attorney General's office, who is called the Director of the
3 Prosecution, and if a government official is involved, the
4 Attorney General knows about it -- it's reported to him, but
5 he does not make the decision. This career person, the
6 Director of Prosecutions, makes the decision.

7 Professor Daniel Meador, who is a distinguished
8 law professor from the University of Virginia, is working with
9 us now at the Department of Justice. He is an expert on the
10 British court system -- he lived there for a year several
11 years ago, and wrote a book about the British court system.
12 I've had him studying this problem, because it occurred to me,
13 since I've been Attorney General and since I've seen how many
14 controversies we have going at the same time, that we would
15 probably have to employ a lot of lawyers as special prosecu-
16 tors, and staff them.

17 But it would be one of the most unusual things that
18 this country has seen, to have five special prosecutors work-
19 ing at the same time. It would -- the press would have to
20 employ extra reporters just to keep them going to cover that.
21 And I'm beginning to have some misgivings about this.

22 It may be we ought to go over to something like
23 this British system, where you have a career public official
24 who makes the decisions. It's known that he would make it,
25 in advance -- not that he doesn't talk to people above him,

1 but it would stop at a certain point if it involved political
2 figures.

3 At any rate, getting back to this British rule,
4 if someone today had tried to pressure the Attorney General
5 there about a case, you'd either dismiss the Attorney General
6 or the government would fall. That's what happened before
7 and I'm advised that that would still happen.

8 Now, interestingly enough, what happened in this
9 country during the Watergate period was roughly parallel to
10 the fall of the English government in the 1920's. I believe
11 we, like the English 50 years ago, may now be in a position
12 to establish firmly the tradition that the Attorney General
13 and the lawyers under him must be free from outside interfer-
14 ences in reaching professional judgments on legal matters.

15 I hope to do everything that I can, in my time,
16 to help establish and reinforce such a tradition. That's the
17 reason -- one of the reasons I had the meeting in Washington
18 this week with the lawyers was to articulate this tradition.

19 In the ultimate sense, a viable government must
20 rest on mutual principles. The law is perhaps the best
21 example of such a principle, and the Department of Justice
22 is the acknowledged guardian and keeper of the law.

23 It follows necessarily that the Department must be
24 recognized by all the citizens as a neutral zone in which
25 neither favor nor prejudice nor politics is permitted to

1 influence the administration of the law.

2 The Department of Justice is such a neutral zone
3 now, and all citizens should pray that it remains so.

4 Thank you very much.

5 (General applause)

6 (End of recorded remarks.)

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