

ORIGINAL

ADDRESS/
QUESTION AND ANSWER

BY

THE HONORABLE GRIFFIN B. BELL

ATTORNEY GENERAL OF THE UNITED STATES

with

DEPARTMENT OF JUSTICE ATTORNEYS

Washington, D.C.
December 19, 1977

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Hoover Reporting Co., Inc.
320 Massachusetts Avenue, N.E.
Washington, D.C. 20002
546-6666

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Department of Justice

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4:00 P.M.
MONDAY, DECEMBER 19, 1977

THE GREAT HALL
U.S. DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

P R O C E E D I N G S

ATTORNEY GENERAL BELL: Good afternoon. Glad to see all of you.

I'm going to make about a ten-minute speech, and then I'm going to answer questions for as long as you want to ask questions, provided we can finish by five o'clock.

[Laughter.]

ATTORNEY GENERAL BELL: These are some things that I've been thinking about in recent days and that I think might be of some interest to you and to all of us.

We generally divide European history into three parts: Ancient history covers the period 2000 B.C. to about 500 A.D.; Medieval history covers the next thousand years up until the time Columbus discovered America; and then the period of Modern history started. Modern history is open-ended at this point.

I suspect that in the distant future historians will decide that we began a new historical period -- post-modern, if you please -- about the beginning of World War II, when the technological explosion or revolution hit full stride. We had been moving into the technological period on a gradual basis for some 75 years at that point -- given the discovery of electricity, the telephone, telegraph and radio, the automobile and the airplanes.

But it was not until World War II that we entered

what is truly the electronic age. The transistor, the computer, data retrieval, the laser beam, space exploration, and even the Xerox machine have all contributed to a society which was already changing at a fast pace because of being mobile. Our nation has experienced one of the greatest shifts in population -- rural to urban -- in all of recorded history.

Now, what is the role of the lawyer in such a changed environment? More particularly, what is the role of the government lawyer? This is a question that we must ponder.

I read an example of how our country moves in a historical context. The house where Thomas Jefferson wrote the Declaration of Independence in Philadelphia in 1776, at Seventh and Market Streets, was torn down in 1883 to make space for a bank. The bank was torn down in 1932, and replaced by a hot-dog stand. In 1963, Congress approved the purchase of the site and constructed a replica of the Graff House -- which was the house, G-r-a-f-f, which was the name of the house where the Declaration was written -- for us to see as the site where the Declaration of Independence was written. These events demonstrate an abysmal lack of interest in our history, which has lasted for almost 200 years.

But I use this example to make the point that, as lawyers for the government, we cannot engage in such leisure

1 or disregard. The justice system and the delivery of justice
2 in our country cannot wait. We are a privileged group, if
3 not a chosen group, because we are ministers of justice. The
4 public suffers us through a licensing system, with the expecta-
5 tion that we will respond in the public interest. As lawyers
6 for the government, we are obligated at least twofold to
7 respond in the public interest.

8 In responding, we must have in mind the great changes
9 which have been wrought in our country, and directly in the
10 administration of justice, by this technological explosion
11 of the last three decades. I will not repeat the plight of
12 the courts or of those who bring disputes to the courts. My
13 views on court reform and litigation reform have been oft-
14 repeated during the course of this year.

15 Today I want to emphasize the duty of the government
16 lawyer to be innovative and imaginative, wherever you have the
17 opportunity, in order that we can all assist in improving the
18 administration of justice in our country. You will each do
19 this in your own way, but it will mainly be a response based
20 on attitude. We can all help if we want to help, and this is
21 the attitude which I ask you to adopt.

22 This will be in addition to those things which I've
23 already mentioned to you this year. You will recall that I
24 asked that you be professional in every word and deed -- true
25 professionals. It is the pride and excellence which are so

much a part of professionalism that should set us apart as lawyers for the United States and for the people of the United States.

I want to congratulate you on your professionalism. I have seen only a few instances of departure from the high standards of professionalism during the time that I have been here.

I asked that you perform at all times with absolute integrity. I expected that you would. I have not been disappointed.

I asked that you be fair in your dealings with others. Fairness includes due process, but it also includes being civil to others. Some of you prosecute; some of you defend civil suits; some of you bring civil suits against others. Many of you appear in court. A high level of fairness and civility is necessary as you deal with defendants or plaintiffs or their counsel or the courts. I believe that most of you have been doing better in this regard. Our attitude should be that of government servants -- that is, servants of the people rather than that of being agents for the government. This would help us to have some humility as we carry out our daily tasks.

The last thing I asked of you was that you be careful not to abuse your power. I asked that no one -- I said that no one of us had a roving commission to go about making

1 our nation over in our own image. We must never forget that
2 our nation was founded to assure the rights of the individual
3 citizen as against the government.

4 There is a fine line between law and policy.
5 Sometimes law and policy overlap. I have detected a very few
6 instances of the law being subjugated in an effort to achieve
7 a policy end. We must take care to avoid this kind of
8 conduct. We administer the law in a government of laws. We
9 are not policy makers, except perhaps where there is no con-
10 flict between law and policy. Where there is a conflict,
11 the law must take precedence, and I ask you to have this in
12 mind when matters are presented to you for decision.

13 I am very proud of the job that you're doing, and
14 that you have done during this year. As I have stated to you
15 before, the Attorney General is not important. We must have
16 an Attorney General under law -- under the law, under the
17 statute -- because someone must be in charge; but the Attorney
18 General can do nothing except through you.

19 We have many projects under way, including much
20 legislation. We are trying to protect our litigating role
21 and to increase our litigating capacity. We have a good team
22 operation going, and I believe that 1978 will be a great year,
23 a year in which we will be able to take much pride over what
24 is accomplished.

25 Our government operates in a ponderous fashion, and

1 it is virtually impossible to develop a program over a period
2 as short as one year. The question remains whether we can do
3 so in a two-year period. I believe that we can.

4 I want to take this opportunity to thank the media
5 for their valuable assistance. The men and women who cover
6 the Justice Department on a regular and even on an intermit-
7 tent basis have greatly assisted us in projecting our
8 program of openness, our effort to restore the confidence of
9 the American people in the Department, and to make it clear
10 that we are lawyers for the American people and that we in-
11 tend to uphold the rule of law.

12 There are times when we may appear to falter, but
13 it is difficult to always maintain perspective. We have a
14 democracy and it is the nature of a democracy never to be
15 completed; and thus we strive to improve rather than to
16 maintain the status quo. This adds a dimension of idealism
17 to government, and results in an appearance of problems larger
18 than the reality in some instances.

19 I thank you, one and all, for your devotion to duty,
20 for the fine service you are rendering to your country; and
21 I wish for you and the members of your family a happy holiday
22 season and a satisfying New Year.

23 Thank you.

24 [Applause.]

25 ATTORNEY GENERAL BELL: And in giving you those kind

1 words, I will now take the questions.

2 Better send for the man from the Print Shop!

3 [Laughter.] [Scattered applause.]

4 ATTORNEY GENERAL BELL: Could you go to the mike?

5 QUESTION: I would like to ask you two questions
6 about security. Since the rape that occurred in this building
7 last spring, there has been a lot of concern among people
8 about staying after hours; I personally sometimes am concerned,
9 because it's so deserted here at night, occasionally.

10 I realize that there is a policy of increasing
11 openness in federal buildings, but I would like you, first, to
12 comment on what you see the balance should be between having
13 an open building and having increased security; and, second,
14 I would like to know how you feel about having additional
15 resources devoted to security.

16 ATTORNEY GENERAL BELL: Well, I favor an open
17 building. But, having said that, I also favor security; and
18 I would prefer to increase security. And I did not know that
19 the problem still existed, and I will see about it.

20 At the last meeting, the general meeting, somebody
21 wanted to open the Tenth Street doors in the evenings, and
22 we've done that, which would keep you from having to walk
23 completely around the building.

24 Is Kevin here?

25 MR. ROONEY: Yes, I'm here.

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ATTORNEY GENERAL BELL: Yes. Kevin Rooney is the Assistant Attorney General in charge of Administration, and it's his responsibility to see that we have enough security in the building; so I charge you now, Kevin --

[Laughter.]

ATTORNEY GENERAL BELL: -- to see if that's done. I mean, if we need more people, we'll get more people.

MR. ROONEY: We have increased the security, Judge, and we are talking with GSA to provide some increased coverage by the guard service, which is contracted for by GSA. But we --

ATTORNEY GENERAL BELL: We can get them --

MR. ROONEY: -- have added additional locks, that type of thing, and we have a roving patrol now.

ATTORNEY GENERAL BELL: Well, we can get GSA to give us what we need, and it's up to us to not only have a secure building, but we've got to make people believe that it's secure. And I'm certain that some people here would not think it was secure after -- given the events of this year.

So we'll see about that. I'm glad you asked about that.

Yes, right here.

QUESTION: Judge, I've been a little concerned this past year with the affirmative action program that's going on in the Department. I may be in a minority of women, but I'm

1 unalterably opposed to promoting people because of racial
2 or sexual characteristics, and I --

3 [Applause.]

4 QUESTION: -- and I believe I speak for some women.
5 I know that I have some female friends who feel the same; we
6 feel our promotions are not worth what they used to be under
7 the old system, where merit was the rule. Apparently, this
8 establishment of this new committee puts a greater bearing on
9 sexual or racial characteristics in promotions; and, even if
10 it does not, there certainly has been concomitant problem
11 among my fellow lawyers who are males, white males, who feel
12 that somehow they are being impeded in promotion, and I think
13 to some extent they are correct.

14 When my boss must begin his promotions, defining
15 the sex and the race of the individual being promoted, there
16 is certainly coercion being used to promote people who
17 perhaps, under a merit system, would not be promoted because
18 the Department wants to increase its statistics.

19 ATTORNEY GENERAL BELL: Well now, I'd be alarmed if
20 I thought that we were doing it just to increase -- improve
21 the statistics.

22 --As I understand affirmative action -- and I may not
23 understand it, but I think I do --

24 [Laughter.]

25 ATTORNEY GENERAL BELL: -- it's remedial in nature.

1 But the merit system exists. If someone is given a promotion
2 because they are in a group that has suffered discrimina-
3 tion, they can only get the promotion if it appears that they
4 can do the work, the same work that anybody else could do.
5 In other words, merit does not go out of it, you just get the
6 chance.

7 Now, if somebody is being promoted where they do not
8 have the merit, then that's wrong, we're doing wrong. I have
9 not heard of that. I've heard complaints about the, just the
10 nature of the program, that you give the groups who have been
11 discriminated against, you give them the first shot. But if
12 it goes beyond that, then that gets away from the merit
13 system, and I have not heard -- I have never seen any law that
14 required that. I never heard of anybody doing it.

15 So -- and I don't think our committee is doing it;
16 but I'll be glad to -- I know there's a lot of -- some unrest
17 about this. I will make it my business, not later than the
18 early part of January, to meet with the committee and be certain
19 that we are complying with the law and that we're being fair,
20 given the problem, that we're trying to bring everybody up to
21 being equal Americans. That's what we're really trying to do.
22 Be certain that everybody has an equal opportunity; and some
23 people, in the years gone by, you know, did not receive an
24 equal opportunity. And we will some day get to the point where
25 we are all equal, and then we won't have this problem any

1 longer.

2 I can't see that it will go on forever; but while
3 it's going on, I know that it is causing some dissatisfaction.

4 I will look at it myself.

5 I've talked to
6 the committee from time to time, the co-chairman, I've talked
7 to Mr. Egan about it, and I'll take another look at it.

8 A personal look.

9 In the back.

10 QUESTION: Judge Bell, you spoke in your remarks
11 about increasing professionalism and increasing the number of
12 cases that the attorneys can handle in the Department. I
13 think one of the biggest problems that attorneys have expressed,
14 in talking to them, is that the administrative support
15 services given the attorneys in the Department are very poor,
16 I think, in general.

17 Specifically, we have virtually --

18 [Applause.]

19 QUESTION: Though many divisions are spread out
20 in two or three buildings, we have practically no messenger
21 service which can get a paper from one building to another in
22 less than a day. Our Xerox facilities are inadequate. And,
23 specifically, in this regard, I understand that a policy
24 decision has been made not to put any more Xerox machines in
25 the library, which means that Fed Seconds are constantly
being removed to attorney's offices for careful study of a

1 case; before oral argument, large numbers of Fed Seconds and
2 Fed Supps have to be taken away to a Xerox machine, maybe
3 half a block away to be Xeroxed, so that the attorney can
4 read them the night before.

5 At the Chief Counsel's Library at IRS, they have
6 about six Xerox machines there, so that books don't have to
7 be taken out. They can be Xeroxed right there.

8 And I think that this is an inefficient use of money
9 to have people taking out books rather than simply Xeroxing
10 what they need and leaving the books there.

11 One other point would be the secretarial services.
12 I don't think we hire at a high enough level here, because
13 we have a very specialized secretarial need here, and it
14 requires secretaries of high competence. This, I think, is a
15 gnawing problem in the division, and it seriously cuts down
16 the number and the quality of the cases that can be litigated.

17 ATTORNEY GENERAL BELL: Those are good comments, and
18 [Applause.]

19 ATTORNEY GENERAL BELL: Those are good comments, and
20 I would like to respond to them.

21 Some months ago I learned that the FBI gets their
22 furniture from the IRS, second-hand.

23 [Laughter.]

24 ATTORNEY GENERAL BELL: So maybe we can get some
25 second-hand Xerox machines from the IRS.

1 I don't know how we got in the shape we're in. I
2 don't know how we got in thirty buildings. But I'm doing my
3 best to alleviate some of these problems. I hate
4 to always say that I find a lot of problems here. But the
5 truth is that there were a lot of problems.

6 Now, somebody should have been worrying about the
7 buildings and getting better space a long time ago. You can't
8 get a building in a month or six months or -- you're talking
9 more in the range of five or six years when you deal with GSA
10 about a building. But we --

11 [Laughter.]

12 ATTORNEY GENERAL BELL: That would be a new building.
13 We're trying to get even some of the old buildings, already
14 built, if we can get those that are better than the ones we're
15 in.

16 I'm sure the same problem runs all the way through
17 the Department, from the hardware standpoint.

18 Now, the problem about personnel is a lot more
19 complicated. I'm going to tell you something that some of
20 you -- probably a few know; but I didn't believe when I first
21 found out about it. You know, I made a speech about bureaucracy.
22 And I keep adding chapters.

23 [Laughter.]

24 ATTORNEY GENERAL BELL: And when I had to appeal
25 our budget, the day before I had the hearing before the

1 President, I learned that, except for hardware,

2 there's no incentive not to spend money in this sense:
3 you're not given a sum of money and told to operate as
4 efficiently as possible with that sum of money. You're given
5 numbers of people. And, as near as I can tell, a GS-2 and a
6 GS-15 are fungible.

7 [Laughter.]

8 ATTORNEY GENERAL BELL: That's the way the
9 government operates. And it was the first time I ever under-
10 stood why I could not get you to hire paralegals. I'd been here
11 almost a year, and I never could get anybody to be enthusiastic
12 over having paralegals.

13 Well, in a law firm you're trying to make money, and
14 clients are worried about what you charge them, and you have to
15 render service in the most efficient way. That means that you
16 have work for senior partners, middle partners, junior
17 partners, associates and paralegals. And if there's paralegal
18 work, the paralegals are supposed to do it.

19 Now, we don't do that. We have very few paralegals in
20 the Department of Justice. And why should we, if we can get
21 three 15's instead of three 2's, or three 6's? Then, once we
22 get those 15's or 12's or whatever they are, for lawyers, a
23 vicious circle starts. Then you don't have the support people.
24 And that's sort of, I think, where we are. I'm just learning
25 about this. And I'm going to devote a lot of my time in the

early part of the year to seeing what we can do about having
a sufficient number of lawyers, sufficient
number of paralegals, sufficient secretarial staff, I mean
good secretaries, and a clerical staff. Xerox machines,
typewriters, modern typewriters, everything we need.

This is a big law firm. And I've had something to
do with a law firm, about running a -- managing a law firm;
but I never got into one this large!

[Laughter.]

ATTORNEY GENERAL BELL: And I never had to deal with
the government!

[Laughter.]

ATTORNEY GENERAL BELL: And it's not that simple.
But I pledge to you, if you'll give me a little more time,
I believe I can get something done
about these things; but it's not going to just happen overnight.
Because it didn't get like this overnight. And it's going to
take a while to work out of it.

But if we don't work out of it, it won't be because
we didn't try, No. 1; and, two, because we didn't know about
it. I know about it, you've been telling me about it.

[Laughter.]

ATTORNEY GENERAL BELL: And I'm going to do something
about it. I believe that I can. I don't know, this has been
some year for me, as you can imagine, there's a lot to learn

here. Somebody ought to write a handbook or a primer on how to be Attorney General.

[Laughter.]

ATTORNEY GENERAL BELL: But I was never able to find one.

[Laughter.]

QUESTION: I want to tell you about another problem involving support services for attorneys, and that involves the library.

In general, the services it provides are minimal. They seem to view their job as custodial, that is, simply collecting books and keeping them in the room, as opposed to providing services.

Specifically, for example, the preparation of legislative histories, the library here has a very small collection of them. It has only the major federal statutes that we enforce. Those statutes are not indexed. It doesn't have others that are general interest statutes, for example the Federal Rules of Evidence. It has no staff to prepare legislative histories in the main library, and it cannot obtain legislative histories of any major statutes it doesn't have from other libraries; their policy is not to loan them out.

The result is that attorneys here have to spend an inordinate amount of their own time preparing legislative

1 histories, which ought to be prepared one time for all by a
2 library which has adequate services.

3 ATTORNEY GENERAL BELL: This is a Department wide
4 problem. Do we have a Chief Librarian?

5 All right. I'm going to assign Professor Meador
6 right now to this project, to upgrade our library service:
7 assess it, and we'll do whatever is necessary. We can't
8 practice law without a library, so we might as well face that
9 now.

10 We might get by without a Xerox machine, but we've
11 got to have a library.

12 [Applause.]

13 ATTORNEY GENERAL BELL: So we'll see about that.

14 Any others? Yes?

15 QUESTION: Judge Bell, one problem I've noticed
16 here, after being in the Department four to five years; is
17 that the career level tends to narrow as you come up in the
18 grade structure.

19 I think it would be very helpful, after a period
20 of a few years, if there was some way where you could get out
21 of your specialty area, say, if you were in criminal tax and
22 you wanted to get into civil work, or some reasonable way that
23 you could make a move within the Department. This seems to
24 be a very difficult, if not impossible, task at this point.
25 Maybe you could comment on that.

ATTORNEY GENERAL BELL: I'm aware of that, and it's a problem that plagues large law firms. You get a lawyer, get him or her assigned to a department, and they are in there three or four years, and they'd like to move; and it's often difficult to shift. That's why a lot of law firms start people out on a training basis, and let them work in three or four departments, to try to find the thing that they like best. And they are more apt to stay in that place, once they get in there.

Now, a lot of people come in the government just to stay a few years, and you'd probably stay longer if you could move. If you're in one place, just as you say, and you'd like to try something else, we need a system here where you can move. Maybe it should have an option, after two years, to have a chance to move into something else.

I don't think there would be that much moving, because you'd learn one position and you wouldn't be inclined to move somewhere else; but there would be some people that would do that, and I think probably we'd save some good people who ordinarily might leave if we'd do that. And I'll assign that to Mr. Egan right now, to look into that.

Because that's a meritorious complaint, and a good comment. I've seen that in the private sector; seen what a problem it is.

In fact, I've seen law firms lose good lawyers,

1 because they didn't want to ask to be moved, there's no
2 policy to allow movement, and they just would rather just go
3 and go somewhere else. So that's a wasted asset when that
4 happens to you.

5 Right.

6 QUESTION: Judge Bell, you made some comments about
7 the role of the government attorney earlier, and I'm interested
8 in pursuing that.

9 I'd like to know, first of all, what you view the
10 obligations of a government attorney, as opposed to an attorney
11 in private practice. And I guess more specifically, if, in
12 defending an action, we are involved in legal research, and
13 this legal research turns up, for example, a theory of law
14 which is not raised by the plaintiff in the case, or a case
15 which is not cited by the plaintiff; do we have any kind of
16 an obligation to discuss and to raise these issues, as
17 government attorneys?

18 ATTORNEY GENERAL BELL: I think you do. I don't
19 want to shock somebody, but I have a high duty concept of a
20 government lawyer. Justice Burger, vs. United States
21 decision says you're prosecuting, but
22 you're also representing the United States, and you're not
23 supposed to take advantage of anyone.

24 I don't think you ought to sit by and let a court
25 commit error. I think you have a duty to point out a case to

the court, even if the other side hasn't pointed it out.

I think that's something that a private lawyer might not do.

Now, that's debatable in the private sector. A lot of times a lot of lawyers in the private sector feel the same way I do; but certainly a government lawyer ought to.

The role of a government lawyer is quite unusual, I think. The Burger case teaches that. You're an officer of the court, but you're the chief litigant in the federal courts, the Department of Justice; and if the courts can't trust the Department of Justice lawyers, who could they trust?

And certainly you ought not to mislead the court in any way. You ought not to do, as we used to say -- the old lawyers said they practiced, when I was a young lawyer -- hide behind the pillar of justice and hit you over the head with a blackjack when you pass by.

[Laughter.]

ATTORNEY GENERAL BELL: A government lawyer can't do that.

You're just in a different role, and you've got to be doubly careful not to ever move against somebody in a suit, prosecution, or even a civil suit, where you're not right. Because you are the government. And, as I said in that little speech I made, our country was founded to take care of the individuals. That's what the Bill of Rights is about. That's what the Founding Fathers had in mind. They weren't trying to

side 2

1 build up any power for the government, or the agents of the
2 government. We are almost like trustees, as I see it, a
3 government lawyer. And if we'd think in those terms, we'd
4 really be professionals; we'd really be proud of the role that
5 we play.

6 Yes, sir?

7 QUESTION: Judge Bell, you made some comments in
8 terms of the professionalism of the attorneys within the
9 Department of Justice. What specifically is being done with
10 respect to training for new attorneys coming into the
11 Department?

12 I know, at one time, the Attorney General's
13 advocacy program was functional; I don't believe it's functional
14 now. But I do think there is a need for more training
15 programs, particularly for trial attorneys, in lieu of
16 comments by the Chief Justice and by the Chief Judges of
17 Appellate Courts about the poor level of training for trial
18 attorneys.

19 ATTORNEY GENERAL BELL: Yes. Our trial advocacy
20 program is not only functional, it's been greatly expanded.
21 We had, I think, 40 antitrust lawyers down there within the
22 last two or three weeks training; we never had an antitrust
23 training school before.

24 We are making it available to every litigating
25 section. Whereas, at one time, it was limited almost entirely

to the Assistant United States Attorneys from the U. S. Attorneys' offices, we are now spreading it into the Justice Department, and we can get more judges, more lawyers to come and lecture, and I think it's one of the great programs we have, and I would like to be known as the person who expanded it.

I don't like what the Chief Justice said; it's embarrassing to lawyers, because people look on lawyers -- I said GS-2's and GS-15's are fungible; they think that lawyers are fungible. Well, we are -- there are some lawyers who are good trial lawyers, good appellate lawyers, and others who could be if they could get a chance.

One thing that's hurt the law practice, that hurt the training process in the last ten years or so is we've gotten into these mammoth cases, and you spend all your time discovering and you never get to try a case. And we need to have some way where you not only can go take this advocacy institute program, that training, but we need to have some way that we can send you out to try some small cases.

Now, this is not only true in the government, this is true in the large law firms. In the firm I was in, this was a problem. We'd get these young lawyers in there, and they'd be around there three or four years and never get to try a case; always working, helping somebody else.

1 So we've already set up now to expand the Advocacy
2 Institute. We have expanded it. But we've got to go a step
3 further and figure out to get trial experience, appellate
4 experience. The U. S. Attorney's office in the Southern
5 District of New York is probably the best in this training
6 aspect, and they've got a real good system worked out, and
7 I'm going to get Bob Fiske to help us. I've also talked to
8 some lawyers in large law firms who are willing to give us
9 some advice. But, in the end, none of them are going to be
10 able to tell us how to get some cases to try, unless we just
11 deliberately say we're going to take maybe twenty lawyers a
12 year -- you couldn't get too many doing that, but we could
13 send them around to the U. S. Attorneys' offices and let them
14 try some cases. But we've got to do that.

15 If we're going to make the government lawyers --
16 lawyers for the government -- a proud service, where you will
17 make a career out of it, then we are obligated to give you the
18 right training. And we're going to do that.

19 And if you'll let somebody know what department
20 you're in, we'll see about that. I know that whoever you work
21 for will see about it.

22 QUESTION: On that topic
23 it seems to me that a large organization would have
24 an interchange program of lawyers from the field office
25 to the home office, back and forth. Specifically where you

.. 1 want to be , other attorneys in the Department.

.. 2
3 Are you
4 contemplating having career lawyers being sent to U. S.
5 Attorneys' offices for a two-year tour, or vice versa, so
6 that there could be an interchange of Department attorneys
7 and United States attorneys?

8 ATTORNEY GENERAL BELL: That's not as easy as it
9 seems. They hire these people locally in the U. S. Attorneys'
10 offices, most of whom would not come to Washington. So you
11 can't exchange. We could send you, but we couldn't get
12 somebody to come up here in your place.

13 And so that's one of the problems, you see, you
14 couldn't -- it would cost you the expense of moving and all
15 those things entailed. We have been talking about sending
16 some people out, though, for training; that may be what we'll
17 have to do finally, to get the training.

18 Another thing that we are looking into is sending
19 some lawyers to the National Institute for Trial Advocacy,
20 NITA, we call it. LEAA furnishes the money for them to run
21 that, and it's a very fine program. They run it at the
22 University of Colorado. I've been there, and spoken at the
23 graduation once several years ago; and actually my son went
24 there, as a young lawyer, after he graduated. And it's a fine
25 program. It lasts a month. And the teachers are the most
skillful trial lawyers and trial judges in the country. And

1 you work real hard, you know, like 12 or 14 hours
2 a day; but when you come away from there, you know a lot.

3 And we are now looking in to sending some lawyers
4 there. Now, bear in mind, we won't be able to send any large
5 number, but if we could send some every year, it would, I
6 think, improve the morale and give everyone some hope that we
7 are doing something about training. So we are looking into
8 that now.

9 But, mainly, we've got to run
10 our own program, if we're going to get it done. Now, it may
11 be that we could run something exactly like NITA, but we'd
12 have to run it, instead of a solid month like that, we might
13 have to run it in two or three parts, and you'd do some this
14 year, some next year, and some the next year.

15 But there is a lot to be done here at the Department
16 in the way of training, I can tell you that; and you've touched
17 on a sort of a nerve with me.

18 In the back.

19 QUESTION: [inaudible]

20 ATTORNEY GENERAL BELL: I can't hear you. Is there
21 not a mike back there?

22 —I know it's a long walk, but I don't know anything
23 else to do.

24 And somebody on that side might be getting ready.
25 Somebody stood up back there.

QUESTION: It's my observation that we have, based upon experience, the most skilled trial lawyers. And our training program ought to come out of this place, rather than these conferences. And if our people, who try most of the cases in the country, were put to work with the young lawyers, we'd achieve a better result.

ATTORNEY GENERAL BELL: You mean let each litigating section do it?

QUESTION: That's right.

ATTORNEY GENERAL BELL: Well, I have authorized at least one Assistant Attorney General in charge of a section to do that.

QUESTION: I've been to these Institutes, and I've never seen better lawyers in those Institutes than I see on a daily basis in this building.

ATTORNEY GENERAL BELL: You mean if we'd furnish our own instructors?

QUESTION: I think the most skillful trial lawyers in the country are right here in the Department of Justice. The question is using them.

ATTORNEY GENERAL BELL: Well, I have an open mind on it. I thank you for saying that. All I want to do is get some results, get some action, get some training going. That's my sole interest. And I've been around here nearly a year, and we haven't gotten much going. But I think we're

1 getting started.

2 Yes, sir?

3 QUESTION: At the last general meeting it was pointed
4 out to you that promotion for lawyers within the Department
5 is slower than it is at some other government agencies.

6 I'm wondering if you're taking any steps to insure
7 that promotions within the Department will be at least on a
8 par with other government agencies.

9 ATTORNEY GENERAL BELL: I have turned that over to
10 Mr. Rooney --

11 MR. ROONEY: That would be Mike Egan.

12 ATTORNEY GENERAL BELL: Mike Egan.

13 [Laughter.]

14 MR. EGAN: We have looked into that. I got a report
15 yesterday. The question was based on what would appear to be
16 a false premise, if you look at the government as a whole.
17 The Department of Justice is not behind in its promotion
18 policies on its grade level for lawyers, behind any other
19 department. Now, there may be some departments who have a
20 faster promotion policy than the Department. But, on the whole,
21 ours is about equal to or beyond -- above that of most
22 departments.

23 If you have some -- that's the best we've been able
24 to do from asking for information, getting it back, tabulating
25 it; it looks like ours is about as good. I think ours should

1 be better and faster, because I think we ought to have more
2 quality lawyers than anybody in the government. And I think
3 we do. And perhaps that means we ought to try to speed up
4 our scale, but I think -- and we will try to do that, as much
5 as we can within budgetary limitations.

6 But I think it's wrong that we are behind most
7 other government agencies, or a large number of other govern-
8 ment agencies. If I am wrong on that, I'd certainly like to
9 have the information to put me right.

10 QUESTION: I don't have specific information right
11 now that's equal to yours. I'm just wondering if, from your
12 answer, you mean that there won't be any significant change
13 in the promotion as it exists right now?

14 MR. EGAN: No, I didn't mean to indicate that.
15 I would like to promote those worthy of promotion very
16 quickly, and to demote those who are worthy of demotion,
17 with the same rapidity. If we could do that, we could keep
18 the financial situation in balance. But it's very difficult,
19 strictly within the number of lawyers we have in, you know,
20 going out and coming in, to push them all up. Judge Bell is
21 not totally correct when he says money doesn't have anything
22 to do with it, it's just bodies. We can't have all 15's,
23 16's and 17's, unfortunately.

24 QUESTION: Does that mean there will be a relaxation
25 of what seems to be fairly rigid timetable guidelines for

1 promotions?

2 MR. EGAN: Those timetable guidelines, which I re-
3 published recently, were designed to indicate that they were
4 not inflexible, that any particular exceptional circumstances
5 should be brought to my attention and I would certainly
6 consider them.

7 ATTORNEY GENERAL BELL: In the back.

8 QUESTION: First of all, Merry Christmas, Judge Bell.

9 ATTORNEY GENERAL BELL: Same to you.

10 QUESTION: With respect to affirmative action, you
11 sent out a memo some months ago to the Section Chiefs and to
12 other attorneys in the Justice Department, holding them
13 responsible for maintaining the quality of the profession and,
14 at the same time, making their staffs more representative of
15 the entire American community.

16 Could you comment on what progress has been made
17 with regard to that memo?

18 ATTORNEY GENERAL BELL: Bob, do you know the answer
19 to that? Or Mike?

20 Well, from the amount of grumbling we're having,
21 there must be some progress being made.

22 [Laughter.] [Applause.]

23 MR. EGAN: I'll second that line.

24 We have -- we certainly believe that the goal that
25 the Attorney General sought to achieve in that memorandum is

1 attainable, that we can maintain the quality of lawyering
2 throughout this Department and, at the same time, make it
3 more representative of the various sexes and races of people
4 within our society.

5 We are committed to that as a goal, and we think it
6 is achievable.

7 Our progress toward it has been steady, somewhat
8 slower than many of you would like, apparently somewhat faster
9 than some of you would like. But the employment review
10 committee is dedicated to the achievement or the maintenance
11 of quality lawyering within this Department as any other unit
12 in the entire Department. I can vouch for that.

13 I believe we have achieved more hiring of women and
14 minorities in the Department in the year that we have been
15 here, than has taken place in any other year, and I believe
16 we have done that without in any slightest degree lowering the
17 quality of the services which we render as lawyers.

18 ATTORNEY GENERAL BELL: But I will still look into
19 it. As I promised you I would.

20 Right.

21 QUESTION: Judge Bell, could you possibly explain
22 and comment on the request of the attorneys on the FBI Task
23 Force, for reassignment of their job?

24 ATTORNEY GENERAL BELL: Can I explain it?

25 QUESTION: Yes, sir.

ATTORNEY GENERAL BELL: Well, yes, I explained it the other day on television. The best I can explain it is they were dissatisfied with my conduct, and wanted to be relieved from the case unless I would agree to do what they wanted done. They told me, they gave me terms --

[Laughter.]

ATTORNEY GENERAL BELL: -- and that was it.

I've got some more lawyers on the case, and, you know, as long as I'm the Attorney General, I have to run it. It may not be run to suit you, and I might some day be replaced. But someone has to be in charge, and all the time I've been here, I've had a different idea about how to run those cases, and I was never able to really get it done my way -- and maybe I never will be able to. But I'm going to try.

And I don't blame the lawyers for leaving, because they -- you have that right, no one is in slavery. If they are not satisfied with my conduct, they ought to say so, and take whatever action they want to take. I don't feel bad about them leaving. I don't feel bad toward them. I'm sorry it came to that pass; but I suppose that will probably happen some other day. Unless the place gets completely out of hand here, and we break up into lots of parts, everybody doing whatever they want to do.

That just happened to be a case I had some interest

1 in, and it's the sort of thing that might eventually blow me
2 completely out of the water.

3 [Laughter.]

4 ATTORNEY GENERAL BELL: It's one that I take
5 interest in as a matter of self-preservation.

6 [Laughter.]

7 ATTORNEY GENERAL BELL: That's about all I can say
8 about it.

9 Anyone else?

10 Yes, sir?

11 QUESTION: Judge Bell, you mentioned in your address
12 the problem of the concept of Justice Department representa-
13 tion for the Executive Branches of the government. I believe
14 that that issue is as important as any before the Justice
15 Department today.

16 And I was wondering if you could briefly survey for
17 us your assessment of the severity of that problem, and where
18 you think we might end up in the coming year.

19 ATTORNEY GENERAL BELL: That's -- repeat the first
20 part of that question again.

21 QUESTION: I was referring to your speech, wherein
22 you mentioned the dispute over the representational authority -

23 ATTORNEY GENERAL BELL: Right.

24 QUESTION: -- for the other Executive Branches.

25 ATTORNEY GENERAL BELL: Right. Well, let me speak

1 to that a minute, because this is very important. There
2 have been some twenty bills this year where different agencies
3 tried to take the litigating capacity away from us. Now, we
4 are constantly opposing that.

5 A lot of the complaints are that we don't do a good
6 job, that we are arbitrary, that we don't act like lawyers
7 in the traditional sense. That's what they say over at the
8 Congress.

9 Now, my idea is, and there is very radical for
10 Washington, but I want to give you my idea. My idea is that
11 the two places in the government of the most integrity would
12 be the Office of Legal Counsel here at the Justice Department,
13 and the Solicitor General's Office. And then, at the inception,
14 any matter of importance in the government, where there is a
15 need for a legal opinion ought to be presented to the Office
16 of Legal Counsel.

17 Now, the fact is that the President has to do that,
18 and I have to do it. No one else has to do it. Now, some
19 do -- I don't mean to say that no one ever does. But to have
20 one thread of law and to be absolutely certain that we are
21 going by the law, we formed the law as a nation, it would
22 seem to me that all substantial matters ought to run through
23 the Office of Legal Counsel.

24 All right. Then the next thing is, you come to liti-
25 gate. Now, if every agency is going to have its own

litigators, what would the policy of the government as to the law be? Who would know? Think about being a judge, and sitting there, and you might have five different agencies, five consecutive days, all taking different positions. I don't see how you could say you had law, with a system like that.

So I'm very much opposed to anything but a centralized litigating capacity. Then when it comes to appeals, is the Solicitor General going to say who can appeal? Is he going to set the tone of the law, the thread of the law? Or is every agency going to take its own appeals?

And when you appear before the Supreme Court, and they want to know what the law -- what's the position of the government? Whether it's going to be one thing today and one tomorrow, or is it going to be whatever the Solicitor General says it is?

I just don't follow this. I don't know of any State that does anything like this, in State law. I've been -- I've had some experience with the federal law, both on the trial level and serving as a judge, and I can't see how we can have a system like that.

And what I would say, if we're going to do this, I would like to be able to say to the American people that you don't have a system of law, you have a non system; and that's what I intend to say if this fight keeps going on.

1 But I can guarantee you it's going on. And here's
2 what causes a lot of it: Every agency becomes the
3 constituents of a congressional committee. That's where the
4 problem starts. And that's a natural thing. I don't say
5 there's anything wrong with that. Certainly a congressional
6 committee that looks after X agency thinks a lot of that
7 agency, and they want them to be efficient. They are partners
8 in a sense. And if the agency goes to them and tells them,
9 "Our legal representation is no good, give us some lawyers of
10 our own -- besides these General Counsel and all these staff
11 lawyers we have now, who give us all our legal opinions,
12 give us the litigators," they will try to do that.

13 I think the trouble started when they started giving
14 every agency so many lawyers and a General Counsel to render
15 the legal opinions. That's Step 1. Then the next step is to
16 litigate. The next step is to take over the appellate process.

17 And that's just not a good system, and I don't --
18 as lawyers who are generally, we're government lawyers, we're
19 not agency lawyers, we're lawyers for the whole government,
20 I think it's our duty to stand up against that, if we think
21 it's wrong. And I do think it's wrong. And I hope you'll
22 join me in doing everything we can to keep it, at least main-
23 tain the status quo.

24 I would like to go back, but I certainly don't want
25 to lose more ground than we're losing. And I say that not as

1 a career person, but as a citizen and a lawyer, that this is
2 just not the way to do it. And that's about all I can say
3 on that today. Maybe I've said too much.

4 [Applause.]

5 ATTORNEY GENERAL BELL: But I add one thing.

6 That is, to keep down these complaints and to give me a good
7 case when I have to go to the Congress -- Pat Wald will have
8 to go, she does a lot of this fighting, too. Don't ever get
9 us in shape where we can't defend what we've done. Be good
10 lawyers. Give them good service. Listen to what they say.
11 You don't have to do what they say, because we are the ones
12 that have to decide that. We're the lawyers.

13 But listen to them, treat them like you'd treat a
14 client in the private sector; and if we do that, that's all
15 they can ask us to do.

16 Is that it?

17 One more.

18 QUESTION: I'd like to ask, as sort of a follow-up
19 on that last question, the business of the Solicitor General's
20 office. I can understand that it's important for us to have
21 a continuing on-going relationship with these agencies, but in
22 my fairly limited experience with the Department, in the Tax
23 Division, it has seemed that there have been a number of times
24 when appeals have been authorized, government appeals, not
25 because the Tax Division thinks it's a good idea but solely

1 because the IRS wants it, and because of an on-going rela-
2 tionship with the IRS. And, I mean, I can understand their
3 frustration of their wanting to appeal and our saying no.
4 But I've worked on a couple of cases where I'm not very happy
5 at all about our position, and where it seems like we're
6 doing it, you know, less on the merits of the case than on
7 keeping the IRS happy.

8 I mean, the IRS always wants to appeal. I mean,
9 they're serious --

10 [Laughter.] [Applause.]

11 QUESTION: If we lost below, we should appeal.

12 ATTORNEY GENERAL BELL: Well now, that's -- you see,
13 that's a judgment call. That's why we've got a Solicitor
14 General. That's why he has to stand up. He's got to have
15 backbone, and he's got to say, "No, we won't appeal this
16 case, because there's no merit in it." I couldn't face the
17 court, because I -- although this is an appeal, I follow Rule
18 11 of the Federal Rules of Civil Procedure, and when I sign
19 my name, I'm certifying that there is just ground for appeal."

20 That's what a good lawyer does, and I have to depend
21 on Judge McCree, and I have full confidence in him.

22 QUESTION: I've never, you know, seen a case that
23 we've appealed that I thought there was no merit to it. I
24 mean, I -- but I've seen cases where, you know, I see no way
25 that we're going to get it over clearly or will get anything

accomplished.

ATTORNEY GENERAL BELL: Thin. What we call thin cases.

[Laughter.]

ATTORNEY GENERAL BELL: Yes. That's what you mean.

QUESTION: Well, you know, I mean -- you know, we may have an argument, but it may be something that, you know, we lost the argument below, there's just no way we're going to get over a clearly erroneous rule, we're putting a bad precedent in Fed Second. And it's just not worth it.

ATTORNEY GENERAL BELL: Well, I'll tell you -- well, I think probably every lawyer that knows anything about the litigation process will have seen something like that, where you've said, "While the case is thin, I think we'll appeal because they put pressure on us." Somebody else said, appeal this case and we can settle it while it's on appeal; those old things, you know, that lawyers all know about.

But that's why you have to have such integrity in the Solicitor General's office. And it's why the Solicitor General will never be a hero. He'll never be a popular man. And I've got Judge McCree to pledge that he wouldn't run for any office here in the Justice Department.

[Laughter.]

ATTORNEY GENERAL BELL: During the time he's here.

1 Or an interagency office.

2 But those things are judgment calls, and there will
3 be a time when we won't have some that you may say, "I would
4 have made a different call." But if we trust our lawyers,
5 if we trust the Solicitor General's office, and if -- the
6 time that you're worried about something like that, go to see
7 Judge McCree, and he'll explain to you why he allowed the
8 appeal.

9 That's part of being open. If you've got some
10 complaint against me, I wish you'd tell me about it. I'd
11 be glad to hear about it. And you have a right to put your
12 complaint in, and you have a right to go see Judge McCree if
13 you think an appeal has been taken that shouldn't have been
14 taken.

15 We are all accountable, and we're accountable to you,
16 because you're the lawyers in the Department, and we've got a
17 high accountability to you. And I'm glad to be accountable,
18 and I'll be glad to explain -- and I know everyone here in
19 authority will be glad to meet with you and explain.

20 That's it.

21 QUESTION: Thank you.

22 ATTORNEY GENERAL BELL: All right. Merry Christmas.

23 [Applause.]

24 [Whereupon, the proceedings were concluded.]

25 - - -