

ORIGINAL

ADDRESS

OF

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

BEFORE

THE ASSOCIATION OF AMERICAN LAW SCHOOLS

Atlanta, Georgia
December 28, 1977

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12:30 P.M.
DECEMBER 28, 1977

ATLANTA, GEORGIA

P R O C E E D I N G S

1
2 ATTORNEY GENERAL BELL: Ladies and gentlemen,
3 distinguished personages at the head table:

.. 4 I want to thank Dean Pye for the warm introduc-
5 tion and welcome you to Atlanta. You happen to be in the
6 place of my residence, when I'm not off doing something else
7 in some other place.

8 It's good to see so many old friends here today.
9 And particularly the large number of you, who I would classify
10 as not only friends of mine but as friends of the judicial
11 administration, people that I've known over the last eight or
12 ten years as we've gone about the nation, trying to improve
13 the administration of justice in our country.

14 I hold a post of high visibility in the government,
15 and I'm not going to talk about that today, except to say that
16 a lot of people have asked me how I like being Attorney
17 General, and it's not something you can answer, really. It's
18 an unusual job and --

19 [Laughter.]

20 I always like to give the answer John Kennedy gave,
21 when they asked him how he liked being President, and he said,
22 "Well, it was probably a good job when Coolidge had it!"

23 [Laughter.]

24 I've been reading the history of the Department of
25 Justice, written in 1937 by Attorney General Homer Cummings

1 and Professor Carl McFarland, who is now at the University of
2 Virginia. And I thought how different the Justice Department
3 today is from the Justice Department in 1937, and, of course,
4 how different in 1937 from fifty years before that time.
5 It is quite a different place now from what it was, and not
6 the least of the difference is caused by the events of recent
7 years in Washington, which were not totally satisfactory to
8 the American people.

9 Which brings me to an event that occurred not long
10 ago, when I was trying to fly to Atlanta, and there was a storm
11 over the Atlanta Airport and we had to land at Chattanooga,
12 Tennessee. And the people on the plane became quite friendly,
13 because we'd been in the air for some hours. And a woman
14 came up to me and said she had visited one of our friends who
15 is in prison in Alabama, who formerly had something to do with
16 the Department of Justice --

17 [Laughter.]

18 What great sympathy she had for him; and,
19 as she departed, she said to me: "I certainly hope you will
20 not have to go to the penitentiary!"

21 [Laughter.]

22 And that was the low point of my --

23 [Laughter.]

24 -- tenure as Attorney General.

I was giving an interview this morning to a reporter

1 from a large metropolitan newspaper -- he's here now, I suppose,
2 at the meeting -- and he asked me a lot of questions, because
3 it's the end, nearing the end of my first year as Attorney
4 General. He asked, as other people have, what I thought I had
5 accomplished, and what was the greatest accomplishment.

6 I don't admit to having accomplished anything, but
7 I suppose, if I had to say, that the greatest thing that has
8 been accomplished, if I was pinned down, I would say that
9 there's a change in atmosphere and attitude in convincing the
10 American people that the Department of Justice is their
11 Department of Justice, and it's an open place; that we are
12 dedicated to enhancing our form of government as a government
13 under law, and that I have done my best to establish the
14 Attorney General's office as a place of independence, where
15 I'm the lawyer for the President and all of the heads of the
16 parts of the government, but, most of all, the lawyer for
17 the American people. And wherever I go and whatever I do,
18 when I'm called on to act, I act according to law, and expect
19 all others to do likewise.

20 And I have been able to make that point clear
21 throughout the time I've been there, and I don't see any signs
22 of the attitude changing. I think it's very good indeed.
23 I think this was a good time to do that, because we've been
24 through some days where things were otherwise.

25 So I would say that the change in the atmosphere and

1 the attitude has been the best thing that I've been able to do.

2 I want to say a word about the President, because
3 I think you're entitled to have my views and my feelings
4 about what has been accomplished in the first year of the
5 Carter Administration.

6 And I'll just be brief about this,
7 recent days it's been written a lot of times, but I may have
8 been among the first that said this. Our government was in
9 bad need of refurbishment at the beginning of this year.
10 We had been through some hard times in the past two decades,
11 beginning with the Civil Rights Revolution, where we had to
12 make things right that were wrong, and that became a great
13 issue. Then we fell into the Vietnamese War, and that
14 divided the country badly. And then we went through the
15 Watergate.

16 So we went through almost twenty years where very
17 little attention was paid to the ordinary workings of the
18 government, from the standpoint of having in mind that we
19 must constantly improve the government. Democracy is never
20 ended, it's inherent in democracy that you have to improve
21 all the time. And that's also true in the form of government
22 that we have under a democracy. And we had not paid enough
23 attention to our government, in that, when we got there, the
24 President tried to -- he's a very bright man, and energetic,
25 and he knew of all these problems -- he tried to attack all the

1 problems at the same time. This gave Congress more than it
2 can digest -- I'd have to say that Congress cannot digest a
3 great deal at any given time.

4 [Laughter.]

5 It also confused the American people, because maybe
6 the media can't digest as much as should have been digested.
7 And it made it appear that we had just too many things going
8 on at the same time.

9 Now, the other side of that coin is: should we have
10 put off some of these problems? Should we have said, "Well,
11 we won't deal with that this year, we'll wait until next year"?
12 And then we'd have one category we might even wait until the
13 fourth year before we address those problems.

14 I think not. I think the American people are
15 entitled to have us address all of the problems that we found,
16 and that's what's been done.

17 That's not all bad, because I believe by the end of
18 next year, in '78, you will see that a lot of these problems
19 will have not only been met, but they will have been resolved.
20 And I think that that's normal. I don't think you can do
21 anything in a ponderous form of government, that we have, in a
22 short time. If I had ever believed that, I don't believe it
23 any longer; I've changed my mind since I've been in Washington.

24 But I think that by the end of next year you will
25 see a lot of these problems resolved, and that includes a lot

1 of problems that I found in the Department of Justice.
2 We've got our own agenda, our own separate set of problems,
3 and I think that we have come to grips with most of those.

4 Now, my prepared text that I'm going to use today,
5 you'll recognize as having a lot to do with judicial
6 administration, and I want to give Professor Dan Meador
7 credit for most everything that I'm going to say, because
8 you will recognize a lot of the thoughts and the words are
9 things that he believes in, and things that he's doing every
10 day in the Office for Improvements in Administration of Justice.

11 He, as you know, has lost his sight, but nothing
12 has happened to his fine mind. And he's doing a wonderful job
13 in improving the administration of justice and the delivery
14 of justice in our country.

15 Dean Pound, in an address to the American Bar, which
16 we often speak of, some seventy years ago, first outlined the
17 new directions and needs in the field of judicial administra-
18 tion. His classic address was commemorated last year at the
19 National Conference on the Causes of the Popular Dissatisfaction
20 with the Administration of Justice, in St. Paul. Many of you
21 were there, I was privileged to be a part of that group. And
22 then later served as the Chairman of the followup Task Force,
23 which was appointed by the American Bar and the Chief Justice
24 to focus on the things that were recommended at St. Paul, and
25 to make recommendations as to implementation.

1 Before I talk about some of our activities in
2 reaching the mandate of the Pound Conference and the mandate
3 of the followup task force, I would like to reflect on the
4 very positive development of the relatively new and evolving
5 field of judicial administration in this country.

6 When Arthur Vanderbilt and Judge Parker developed
7 the first Standards of Judicial Administration in the late
8 1930's, they were pioneers; it has little interest among
9 lawyers or academics in court organization and structure,
10 selection and removal of judges, or improving criminal and
11 civil procedure.

12 There were some fortunate exceptions to this
13 situation in the early years, such as the writing and
14 adoption of the Federal Rules of Civil Procedure; but, for
15 the most part, judicial administration, if it was thought of
16 at all, was regarded as dealing with such arcane subjects
17 as organizing the Office of the Clerk of the Court, and if
18 my own legal training is representative, among law school
19 faculties, the subject of judicial administration was never
20 accorded a significant place in the legal curriculum.

21 In the seventy years since Dean Pound's address,
22 our conception of the functioning of the system of justice
23 in our country has changed dramatically. Many of Dean
24 Pound's projections have proved to be quite accurate.

25 Through increasing activism by the courts, the

1 increasing desire of citizens to seek resolution of their
2 disputes in the courts, and legislative actions that have
3 increased in number and scope of governmental programs, as
4 well as the increase in the scope of the jurisdiction of the
5 courts, new pressures have fallen upon the justice system,
6 and especially the courts.

7 These pressures have created serious problems,
8 which critically affect the delivery of justice.

9 I welcome the growing awareness of the bar and of
10 the law schools, that the protection of substantive rights
11 is intimately linked to the significant problems of court
12 organization, court operations, and court procedures.

13 Some of the problems in the federal system, of
14 case backlog, delay and expense, will be eased when new
15 legislation is passed, increasing the number of federal judges
16 and courts. But clearly the size and nature of the problems
17 in our justice system today cannot be met solely by increasing
18 the number of judges. There is an urgent need to explore
19 new forms for adjudication of various types of disputes,
20 and to develop new and improved procedures for dealing with
21 increasingly complex cases.

22 To meet this challenge, one of my first acts as
23 Attorney General was to create the Office for Improvements
24 in the Administration of Justice. And I'd like to say here that
25 I think it was ironic that I found this vacancy there. There

1 was an Assistant Attorney Generalship at the Justice
2 Department which was not being used. It had been the
3 Assistant Attorney Generalship for Internal Security.

4 [Laughter.]

5 That office has run on hard times, and --

6 [Laughter.]

7 So I was able to take that same office and set up
8 this new department, and persuade Dan Meador to take a two-
9 year leave of absence from the University of Virginia Law
10 School to head up the new office.

11 The office has a broad mandate to develop, among
12 other things, alternative procedures for dispute resolutions,
13 to review and devise procedures for the selection of judicial
14 personnel -- the Executive Order for the Circuit Selection

Commission was prepared by Dan and his staff, and they are
monitored by that office, to see if we can improve the way it's being
16 done. -- to design and prepare better and more effective
17 court structures and procedures in civil and criminal litiga-
18 tions.

19 The office has a comprehensive two-year agenda, on
20 which it has already made substantial progress. For example,
21 legislation has been written and introduced in the Congress
22 to expand the civil and criminal jurisdiction of the United
23 States Magistrates. It passed the Senate, is pending in the
24 House.
25

1 To introduce compulsory, non-binding arbitration
2 in the federal courts -- and we have two Districts now where
3 they are getting ready to start, on an experimental basis,
4 with arbitration. And we're looking for another one.

5 To restructure diversity jurisdiction -- we're
6 making some progress in that regard.

7 To establish a minor dispute resolution resource
8 center, with a seed money grant program to the States.

9 The office has also designed a program to establish
10 neighborhood justice centers in three cities -- and, of
11 course, you know, one is here in Atlanta. I understand you
12 talked about it this morning.

13 The office is in the course of drafting a bill to
14 revise and improve class action procedures. I think the
15 approach they are taking is imaginative and may break us out
16 of the class-action syndrome that we've been in for so long.

17 Other measures we have developed or are now
18 developing, which bear on improving the administration of
19 justice, include a comprehensive revision of the Federal
20 Criminal Code, where we're working with Senator Kennedy, and
21 we were working with the late Senator McClellan, and Chairman
22 Rodino and Subcommittee Chairman Mann. I hope that that
23 legislation is going to be out of the Senate in the early
24 part of 1978, and I hope it will be out of the House by
25 early summer. The House subcommittee has already had some

1 sessions to define and identify the areas where they want to
2 have public hearings, and I think the public hearings will
3 start in late January.

4 Another effort is in legislation to provide, for
5 the first time, judicial screening in warrant procedures
6 prior to the authorization of any electronic surveillance
7 relating to foreign intelligence matters. You may wonder
8 why we need that legislation. Now I sign off on those
9 matters, as the Attorney General. I would like to have one
10 layer of authority imposed above the Attorney General, where
11 a judge authorizes a warrant. This is not absolutely
12 necessary, but if the American people are to have confidence
13 in our intelligence apparatus or system, I think it's going
14 to be necessary to bring the courts into the process.
15 The American people trust the courts, and it would not be any
16 hardship on me to sign off, as I now sign off, it would send
17 the matter then to the courts on a petition and get a court
18 order. And we are making some progress with that legislation.

19 We are studying legislation to shift attorney's
20 fees in civil cases. We have an amendment to the Federal
21 Tort Claims Act, which we are actively pursuing, so that the
22 government will assume the defense if the suit is against
23 federal officials. This is a morale problem in the government.
24 It's also a logistical problem, because a lot of these cases
25 end up with multi-defendants, and we get at cross purposes

1 trying to represent different defendants or different defendant
2 agencies, and we end up having to get outside counsel. And
3 I saw, shortly after I became Attorney General, a new law
4 in effect where, when someone sues a drug manufacturer for
5 tort damages, because of the swine flu shot, Congress
6 conveniently arranged that the United States is substituted
7 as a party defendant to the drug manufacturer.

8 After signing a few of those, I had a stroke of
9 genius and thought, Isn't it strange that we wouldn't give
10 an FBI agent the same protection we'll give a drug
11 manufacturer? So I'm asking that we get equal treatment
12 with the drug houses.

13 [Laughter.]

14 I hope that we'll be able to do that; it will
15 certainly facilitate the defense of these cases.

16 We are studying discovery, along with many other groups
17 the federal judicial center, the litigation section of the ABA,
18 the Pound Conference Committee of the American Conference of
19 Trial Lawyers. One of the great problems we have
20 in court procedure today is in discovery, and we are, I hope,
21 going to make some early progress. I know the Litigation
22 Section has finished their recommendations, and the American
23 College Committee will be meeting in January. Leo's committee,
24 I suppose, will be coming up with something soon, and Dan
25 Meador's group will be coming up with something soon, and we

1 will be pressing Judge Tuttle's Committee on Civil Rules
2 to bring all of this to an end through an amendment to the
3 Rules, hopefully within not more than a year.

4 All of these proposals, and others

5 we will be developing, constitute a coordinated,
6 integrated program to bring about fundamental improvements
7 in the justice system.

8 These will not be final solutions for all time, but,
9 by addressing our severe temporary problems, they will, if
10 implemented, give us a far better system of justice than we
11 now have to deal with current realities.

12 I believe that the Department of Justice can and
13 should provide strong leadership in this area of judicial
14 administration. And that is what we are attempting to do.

15 I had the idea, when I became Attorney General,
16 that I had the duty to offer leadership on the federal level,
17 State and local level, in the area of delivery of justice.
18 I don't have any authority in the State and local level, but
19 I can help, through the LEAA and hopefully -- in the
20 reconstituted LEAA, I hope that we'll be able to reconstitute
21 it -- I can act by giving leadership; I've been meeting
22 regularly with the State Attorneys General, a lot of local
23 court officials, and working very closely with all groups
24 who have an interest in judicial administration.

25 I perceive that to be a duty of the Attorney General,

1 and I have tried to carry that out.

2 In that connection, it is vitally important that
3 the law schools of the country devote time and skill in the
4 classrooms and research efforts to these problems. Because,
5 as I think back to the Pound Conference in St. Paul last
6 year, and the report of our followup Task Force, I am struck
7 by the importance that conferees and the members of the
8 Task Force assign to the role of lawyers in meeting the
9 challenges identified at the Conference.

10 We tried to place a responsibility on the lawyers.
11 One of the special responsibilities of lawyers is imposed
12 by Canon 8 of the Code of Professional Responsibility, which
13 is, to quote, "assist in improving the legal system."
14 That's the duty of every lawyer.

15 In addition, Chief Justice Burger, in his keynote
16 address at the meeting, stated that lawyers must fulfill
17 their historic function to help assure the orderly evolution
18 of the many changes that must accompany improvements in the
19 delivery of justice in this country.

20 Of course, lawyers are not the only one with important
21 contributions to make. We must look to all fields for
22 inspiration and assistance. But we must begin to graduate
23 generations of lawyers who understand the importance of
24 judicial administration and its relation to the substance of
25 the law and to substantive rights.

1 We also welcome the assistance and input of law
2 faculties to our work in the Department. I know Dan Meador
3 sent a letter to all of the law school deans last summer
4 about the possibility of law professors spending a year or
5 even a semester in Washington on a visiting basis, working
6 directly with his office.

7 Research is another major area of interest to the
8 Department of Justice, as it relates to judicial administra-
9 tion and other aspects of improvement in the justice system.
10 Dan Meador's office administers the new Federal Justice
11 Research Program, which, for the first time, provides the
12 Attorney General with discretionary research funds that can
13 be used for the study of the federal justice system.

14 I know that you realize, but I'll repeat, that we
15 cannot use LEAA funds on federal justice. We cannot use
16 LEAA funds on civil justice, even on the State level. That
17 money is restricted to the areas of criminal law; so we
18 needed some funds, some additional funds, to study federal
19 justice. And Congress has been kind enough to make an
20 appropriation for that purpose.

21 We have identified a number of important areas for
22 research, such as sentencing reform and arbitration, and we
23 will look to this program to provide much of the directed
24 research about the federal system that is now lacking in both
25 civil and criminal matters.

1 Closely related to this effort is our decision to
2 proceed with the creation of a Bureau of Justice Statistics.
3 I know that I don't have to remind you that the American people
4 are skeptical of our statistical system, on all levels, and
5 in all areas. But I think that if there's any agency or
6 department of the government that's to be trusted, it ought
7 to be the Department of Justice. And to be worthy of that
8 trust, we ought to have accurate statistics.

9 So we announced that we are thinking about creating
10 a Bureau of Justice Statistics, and I must say that we had
11 more favorable editorials over the nation about that one
12 thing than anything that's happened at the Department of
13 Justice this year; which I think confirms the fact that
14 there is a felt need for accurate statistics.

15 I find it also in the Congress.

16 I had a good deal of trouble convincing the House that the
17 court statistics were correct, on which they were basing the
18 need for more federal judges. The Senate used the Court
19 Administrative Office statistics, and we got over into the
20 House and they just said they didn't understand the
21 statistics. They didn't say they didn't believe them, but
22 they had some doubt about them.

23 So we can't operate on that basis. We've got to
24 have statistics that will carry the whole credibility. The
25 system has got to be such that the people will say, yes, these

1 are correct.

2 So that's something we need, and we're going forward
3 with that.

4 Once this Bureau of Statistics is established,
5 and I hope to put it in the new Justice Bureau, whatever we
6 end up calling the LEAA -- I hope we can call it something
7 on the order of the National Institute of Justice, it will
8 still do the grants; but we'll have the statistics in it, and
9 we'll have the research and development in it.

10 But however that comes out, we've got to have a
11 Bureau of Statistics.

12 I hope, once we get that, that we can begin to
13 measure the criminal and civil justice problems with a high
14 degree of confidence, and that we will be able to direct
15 our justice system resources at the federal level better than
16 we have in the past.

17 In addition, as many of you know, the Department of
18 Justice has been working on proposals to reorganize LEAA --
19 I've told you enough about that, because I don't know if
20 we're going to get anywhere with it, it just depends on the
21 view that the Congress takes. At the present sitting, I hope
22 that we can do most of it under the reorganization plan,
23 rather than by the long road that I described the legislative
24 process as being.

25 Not all that needs to be done can be done under the

1 reorganization, there will have to be some legislation, and
2 of course some of the things can be done purely by administra-
3 tive order. But I think that you will be pleased, as law
4 deans and as law teachers, with the concept that we have
5 developed in the Justice Department on how to reorganize the
6 LEAA.

7 The Office of Management and Budget is studying the
8 same thing, and their study is probably more important than
9 ours, because they have the authority to move functions from
10 other parts of the government over into the -- whatever the
11 result of the LEAA is. All we can do is do it internally,
12 within the Justice Department. And I'm hoping they are
13 going to finish their study maybe by the end of January, and
14 we'll be able to go forward at that time. We'll still have
15 the juvenile justice programs, the prosecutorial efforts,
16 the prison efforts, all of that will still be in whatever
17 this agency works out to be, but we'll be able to take the
18 fat out.

19 There are some 415 planning agencies
20 scattered over the United States that we are financing, and
21 we are glad to have all those agencies, we just want the
22 States and local governments to pay for all that they want.

23 [Laughter.]

24 And we're going to help by putting up fifty percent
25 of the money on a matching basis. And I think that this is
going to result in a lot of this money going to the needs that

1 are out there that we ought to be meeting. All the grant
2 money will be a hundred percent grant money for whatever the
3 project is.

4 I'd like to close now with a few additional thoughts
5 on the role of law schools in the training of lawyers.

6 One of the dominant effects of legal education
7 has been the leadership of great scholars and the inspiration
8 of their work in shaping many fields of legal doctrines.
9 I'm sure that many of you at the end of a semester's teaching
10 have had your performance evaluated by your students.

11 One possible apocryphal anecdote about the late
12 Dean Prosser was the evaluation turned in by one student.

13 Now, this is some of Dan's doings -- I know all of
14 you know this story, but I'll tell it anyway.

15 One student said, "Dean Prosser. Major weakness:
16 thinks he is God."

17 [Laughter.]

18 "Major strength: He is God!"

19 [Laughter.]

20 Dean Prosser, of course, was only of the major
21 figures in the development of law and in the teaching of
22 law. Yet I would like to think that this respect and
23 dedication today can encompass not only the traditional
24 fields of legal training, but the important field of judicial
25 administration.

1 As I have noted, lawyers face a particular respon-
2 sibility in this area. We look to you, representing the
3 law schools and the future of legal training in our nation,
4 to help us meet this responsibility.

5 Thank you.

6 [Applause.]

7 [Whereupon, the address was concluded.]

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