Department of Justice

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ADDRESS

BY

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BEFORE

MERCER UNIVERSITY LAW SCHOOL

12 NOON

FRIDAY,
MAY 5, 1978

MACON, GEORGIA

I am pleased today to be here. As you must know, this is my favorite law school. When I was a student here, I helped organize Law Day observances before Law Day became a national practice. My belief in the importance of Law Day is rooted in my deep and abiding respect for our system of law in the United States, and the success of our radical legal experiment of more than 200 years ago which has brought us today the unparalleled freedom and order we enjoy in this country. It is this we honor -- not our lawyers or our law schools, but the system of law which we all serve.

My feelings for Mercer are also deep and abiding. Any lawyer must look back on his law school training as a pivotal period in his life. It is true of me. I am of Scottish descent and thus I am reminded that in Boswell's, Life of Dr. Johnson, it was said that: "Much can be made of a Scotsman if he can be caught young." This law school caught me when I was young.

I am also pleased to be with you today on the occasion of the dedication of the new law school facility. Churchill once observed about the construction of the Houses of Parliament that "we shape our buildings and afterwards our buildings shape us." This building will, in the years to come, contribute to the shaping of many men and women.

Since my appointment I have been studying the history of the Justice Department. I quickly learned that Georgia had only two other Attorneys General, John Berrien appointed in 1829 by President Jackson, and Amos Akerman. General Akerman was appointed by President Grant in 1870. This was a rather remarkable appointment, since Akerman had served in the Confederate Army. However, he had been a conciliatory factor after the War in Georgia, and had been appointed United States Attorney for Georgia in 1869. The Senate confirmed his appointment, even though he refused to take the test oath, and his disabilities had to be removed by Congress before he would assume office.

His appointment as Attorney General in 1870 is historically significant for several reasons. First, he presided over the formation of the Justice Department under the 1870 Act. Up until then, we had an Attorney General but there was no Department of Justice. In addition, he obtained an appropriation of $50,000 for investigations. In this sense, it was Akerman who fathered the present FBI, though some historians have sought to give credit for this to President Theodore Roosevelt and Attorney General Bonaparte.

Attorney General Akerman only served as Attorney General for one and one-half years. Akerman became embroiled in a fight with the Secretary of the Interior and railroad magnates Gould and Huntington when he opposed the granting of certain

additional lands to the transcontinental railroad companies. Akerman held firm to his convictions on this matter. Those opposing Akerman brought heavy pressure to bear on President Grant who, on December 13, 1871, sent the following letter, which I shall read in part:

> "Circumstances convince me that a change in the office you now hold is desirable, considering the best interests of the government, and I therefore ask your resignation. In doing so, however, I wish to express my appreciation of the zeal, integrity, and industry you have shown in the performance of all of your duties, and the confidence I feel personally by tendering to you the Florida Judgeship, now vacant, or that of Texas. Should any foreign mission at my disposal without a removal for the purpose of making a vacancy, better suit your tastes, I would gladly testify my appreciation in that way. My personal regard for you is such that I could not bring myself to saying what I say here any other way than through the medium of a letter. Nothing but a consideration for public sentiment could induce me to indite this. With great respect, Your obedient servant, U. S. Grant."

Akerman, a man of backbone, resigned, and was replaced by one friendly to the railroad interests. Akerman declined the offers of other public service, including a federal judgeship, and returned to Cartersville, Georgia, where he actively practiced law until his death some ten years later.

I sometimes have the feeling that General Akerman set a good example of standing up, and I am proud of his example.

Last Monday, this country observed Law Day with the theme of "The Law: Your Access to Justice." As many of you know, I have for many years been deeply committed to and involved in improving the administration of justice. I would like to talk for a few minutes about this theme, and its meaning to us as lawyers and as Americans.

One of the highest priorities of the Department of Justice is to strengthen the Nation's justice systems and to improve the delivery of justice to all citizens. The keystone of this policy is to assure, for all Americans, access to effective justice. In order for that goal to be realized, forums must be available to all citizens to resolve legal disputes promptly, fairly, and at a reasonable cost.

Over the last decade, the American people have turned to the courts in greatly increasing numbers to seek resolution of a wide variety of disputes.

Fortunately, on the federal court level, this problem has been recognized and addressed. Recently, the Senate and the House of Representatives have enacted bills that would substantially increase the number of federal judges in both the district courts and the courts of appeals. This bill currently is in conference between the two houses, and I expect that a final version soon will be sent to the President for his action. We support this increase in judges, and we are looking forward to the relief that it will provide litigants. In addition, the bill, as now drafted, states the interest of the Congress in having the President nominate judges on the basis of merit. Merit selection of judges is a goal of this Administration, and we believe that we have a duty to ensure that new judges who are appointed are representative of all interests in our society and that they are selected on a merit basis.

Other steps are being taken to ease what one judge has described as "the mad rush to the federal courts." The Department of Justice has proposed legislation that would eliminate from the federal courts those diversity of citizenship cases filed by a person in a federal court located in a state of which he or she is a citizen. Certainly we have reached the point where a citizen should rely on the courts of his or her state rather than having the option of going to the federal courts on non-constitutional questions.

The Chief Justices of the state Supreme Courts have indicated the willingness and ability of the courts in their states to accommodate the return of these cases.

As a concomitant of this change in jurisdiction, we support legislation to place in the federal courts all cases which arise under the Constitution or laws of the United States where a citizen desires to utilize the federal forum.

Access to justice requires not only accessible forums, but also effective and prompt means of resolving disputes at reasonable cost. Thus, an important part of our program is the development of procedural reforms. A major Department proposal would help to alleviate the caseload pressure in the federal courts by expanding the authority of the United States Magistrates. This proposal, which has already passed the Senate, will relieve federal judges of many time-consuming duties and will enable many cases before the federal courts to be heard more expeditiously. With necessary procedural safeguards for the parties, magistrates would be assigned a wider variety of functions and be allowed to hear cases at the mutual consent of the parties.

Another promising proposal that we have advanced is the use of mandatory, but non-binding, arbitration of selected civil cases in the federal courts. Compulsory, non-binding arbitration of civil court cases has been utilized by several states with good results. The state records demonstrate the value of trying a comparable system in the federal courts.

The Congress currently is considering legislation proposed by the Department which would provide for a series of experiments in federal district courts of such an arbitration system. Meanwhile the Department is working with the federal judiciary on pilot projects in three federal district courts under local court rules modeled after the proposed legislation. Under this approach, selected types of civil suits are referred to arbitrators qualified by the court for a non-binding arbitration procedure. This approach holds much promise for a simplified, inexpensive but satisfactory method of resolving many disputes.

We are also developing a number of proposals to deal with other procedural problems. One area of special interest is class actions brought under Rule 23(b)(3) of the Federal Rules of Civil Procedure, especially those cases in which the alleged unlawful conduct affects many persons with relatively small monetary claims. These cases often involve small individual claims for only a few dollars in damages, but when viewed in the aggregate, they can amount to millions of dollars.

We soon will send to the Congress our proposal in this area which has been under development for many months, with full consultation with the many persons interested in class action reforms. The Judicial Conference of the United States recently

approved a statutory approach to class action reform, the approach used in our proposal, rather than a change in the current rule using the rule-making authority. We are submitting our proposal at this time so that public debate in this important area can proceed.

The extensive, and sometimes unprecedented use of pretrial discovery also has received our attention. When I left private practice in 1961 to go on the bench, the familiar statement of a trial lawyer was that "I will be on trial." When I returned to practice in 1976, it had changed to "I will be on discovery." To that I would add the statement of Judge Aldisert, a federal circuit judge: "The average litigant is over-discovered, over-interrogatoried, and over-deposed. As a result, he is over-charged, overexposed, and over-wrought."

The American Bar Association also recognizes these problems and they have done an excellent job recently in developing some proposed solutions. We support many of their suggestions which would narrow the scope of permissible discovery and reduce unnecessary expenses that accompany the discovery process. In addition, within the Department of Justice we are giving this problem further study in order to develop whatever additional solutions and proposals are necessary.

While I have talked primarily about improvements in the federal courts, we should also look at the needs and abilities of the state courts.

Federal aid to the state courts remains a priority for this Administration, and is being considered as an integral part of our review of the future of the Law Enforcement Assistance Administration. The state and local courts, of course, deal with a volume of legal business that is many times that of the federal courts. In recognition of this, our new Office for Improvements in the Administration of Justice has commissioned a comprehensive study on federalism and the courts. The objectives of the study are to review the current status of the relationships between the federal government and the state courts and to identify areas in which these relationships could be improved through legislative or administrative changes.

One of the principle philosophies of our programs to improve access to justice is to provide alternatives to court resolution of certain types of disputes.

We are realizing that access to justice does not require the traditional access to a court for all cases. President Carter spoke yesterday to the Los Angeles County

Bar Association, a group which is conducting one of three federally-funded experiments in alternative means of dispute resolution known as Neighborhood Justice Centers. These experiments will be an alternative to the local courts for settlement of many types of disputes -- including family, housing, neighborhood, and consumer problems -- through mediation and arbitration. These Centers, LEAA sponsored, recently have begun operation in Atlanta and Kansas City, as well as Los Angeles, and they will be evaluated carefully so that the experience gained in the experiment can be made available to all states and localities.

The policy behind federal funding of innovative alternatives for dispute resolution is receiving Congressional attention as well. The Department is working closely with the Senate on legislation that would create a dispute resolution program in the Department of Justice. The bill is intended to fulfill two appropriate and important roles for the federal government. One is to gather together from all of the states information on minor dispute resolution processes, to make that information available to each state, and to conduct research and demonstration projects.

Because this area, alternatives for dispute resolution and a better method for court resolution of small disputes, has been identified as one of pressing national

importance, it is fitting for the federal government to provide seed money for experimentation, research and development in private sector forums, for improved state and local courts.

These programs and proposals which I have outlined are some of the efforts being made by the Justice Department and the Congress to improve the access to justice for the American people. Judge Learned Hand once remarked, while speaking to the Legal Aid Society of New York, that "[i]f we are to keep our democracy, there must be one commandment: thou shalt not ration justice." Our goal is and must be, to deliver justice to all as effectively and equitably as possible.

Law Day affords an opportunity to assess the progress that has been made toward this goal. As Attorney General, I pledge to you the continuing commitment of the Department of Justice to achieve a truly accessible system of law and justice.

Thank you.