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UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE

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

BEFORE
DEPARTMENT OF JUSTICE LAWYERS

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

11:00 AM

WEDNESDAY
SEPTEMBER 6, 1978

P R O C E E D I N G S

1
2 ATTORNEY GENERAL BELL: We have a special guest
3 this morning that I want to present: the Honorable Peter
4 Durack, Attorney General of Australia. He's a Member of
5 the Senate -- as you know, they have a parliamentary form
6 of government in Australia, so he performs a dual task; he
7 serves in the Senate, and also as Attorney General.

8 I recently visited him in Australia, and he's been
9 here for several days on a visit, and also carrying on some
10 antitrust negotiations with the Department. It's a great
11 pleasure to have him with us.

12 Senator Durack.

13 I also have asked Deputy Attorney General Civiletti
14 and Associate Attorney General Egan to sit with us today;
15 that doesn't mean that they're going to have to answer all
16 the questions, but I wanted them to sit up here, and Judge
17 McCree, the Solicitor General, is out of town. He's deliver-
18 ing a eulogy today at Wayne State University, a special
19 matter, and he's not able to be here, otherwise he'd be
20 sitting up here with us also.

21 I want to speak to you this morning for a few
22 minutes on something that I might entitle: "Independence of
23 the Department of Justice," something we've been working on
24 almost 20 months, trying to articulate a position for the
25 Justice Department that will constitute the Department into

HD 1 a neutral zone in the Government, because the law has to be
2 neutral, and in our form of government there are things that
3 are non-partisan, and one is the law and one is foreign
4 intelligence, and I suppose at times, foreign policy is non-
5 partisan.

6 But certainly, in our area, the two things we deal
7 in -- the foreign intelligence, counterintelligence, and
8 the general administration of the law, we must be neutral,
9 so I have -- I choose to speak from a prepared text, because
10 it's an important subject and something that I hope will be
11 left here for years to come as a good statement of our posi-
12 tion.

13 I've spoken here from time to time on issues of
14 significance to the Department and the administration of
15 justice. Today I would like to discuss our role as lawyers
16 for the Government.

17 I believe that our primary mission is to serve the
18 Government as professionals, to exercise our independent judg-
19 ment and to do our duty as we see it. But the partisan activ-
20 ities of some Attorneys General in this century, combined with
21 the unfortunate legacy of Watergate, have given rise to an
22 understandable public concern that some decisions at Justice
23 may be the products of favor, or pressure, or politics.

24 The residue of recent history is more the perception
25 of improper influence than the reality. Before I became

HD 1 Attorney General, I believed this concern to be exaggerated.
2 After some 20 months at Justice, I now know it to be unfounded.

3 I believe that we in the Department are faithful to
4 a high standard of professionalism. I know from personal
5 observation that the lawyers at Justice are fiercely profess-
6 ional, steadfastly independent in their legal judgment, regard-
7 less of outside pressures or controversy.

8 Despite that reality, however, the public concern
9 persists. The President, as a candidate, was deeply troubled
10 by it. As you know, he promised an independent Attorney
11 General and Justice Department. At the time, and even after
12 becoming President, he gave some thought to making the
13 Attorney General independent of the President, since White
14 House influences on the Justice Department -- real and suspec-
15 ted -- had contributed greatly to the public concern.

16 The President has done all that he can do, given
17 our Constitution, to make the Attorney General independent.
18 In sum, this campaign pledge has been carried out. The
19 President is charged by the Constitution with the duty to,
20 quote:

21 "...take care that the laws be faithfully
22 executed."

23 -- close quote. That's his responsibility, and it's his
24 right and his duty.

25 He and he alone is ultimately accountable to the

1 people for his performance of this duty, but the President
2 has delegated certain responsibilities to the Attorney
3 General, in the first instance. The Attorney General must
4 discharge his functions with a high sense of public duty
5 and with the customary ethical accountability of any lawyer
6 to the courts.

7 But in a Constitutional sense, the Attorney General
8 remains responsible to the President, and the President to
9 the public. Although true institutional independence is
10 therefore impossible, the President is best served if the
11 Attorney General and the lawyers who assist him are free to
12 exercise their professional judgments.

13 Just as important, they must be perceived by the
14 American people as being free to do so.

15 The President retains the power and the duty to
16 accept or reject the Attorney General's judgments. There
17 will and must always be free access and easy but confidential
18 communications between the President and the Attorney General.
19 That is the case now. The course best calculated, however,
20 to inspire public confidence in the faithful execution of
21 the laws is for the President to allow the Attorney General
22 freedom from undue influence, in the first instance, to
23 accept the Attorney General's judgment in specific cases,
24 and to remove him if his judgments seem wrong.

25 I know that President Carter agrees with that

NHD 1 statement, and both the President and I continue to search
2 for more realistic ways to minimize the chance that improper
3 influence may be brought to bear on the Department, and to
4 reduce the public's concern.

5 I have come to believe that the task requires three
6 things. First, we must establish Department procedures and
7 principles that will insure, to the extent possible, that
8 improper considerations will not enter into our legal judg-
9 ments.

10 Second: the public must know of and have confidence
11 in these procedures and principles.

12 Third: we must insure that lawyers in the
13 Department are persons of good judgment and integrity.

14 Since I believe that this last requirement is
15 already met, I will address the first two. As I speak, I
16 realize that what I say is not novel, in all respects; some
17 of the procedures I will prescribe have been followed in the
18 past, and some of the principles are established. I dwell
19 on them now, however, both to emphasize the Department's
20 current policy and to let the public know of the steps that
21 have been taken to insure that justice is administered fairly.

22 I will deal first with the Department's litiga-
23 tion role, as a prosecutor and as a civil litigant.

24 The primary responsibility for exercising these
25 functions has been assigned by regulations to the various

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Assistant Attorneys General in the Department. I consider it their responsibility to make decisions concerning the prosecution, filing and defense of such cases. In the process of reaching any decision, an Assistant Attorney General may consult with the Deputy Attorney General, or the Associate Attorney General, or with me, but it is the Assistant Attorney General's responsibility to reach a decision in the first instance.

The Assistant Attorneys General must be insulated from influences that should not affect decisions in particular criminal or civil cases.

Thus, all communications about particular cases, from Members of Congress or their staffs, or members of the White House staff, should be referred to my office, or the offices of the Deputy or the Associate Attorney General. It will be our job to screen these communications to insure that any improper attempts to influence a decision do not reach the Assistant Attorney General. Any relevant information or legal argument will, of course, be passed on.

By singling out certain persons whose communications should be screened, I do not mean to suggest that those persons are especially prone to attempt to exercise improper influence. But the problem is that their positions of power create a potential for unintentional influence upon a decision, although often they give rise to the appearance of improper

1 influence.

2 In exempting from this screening procedure Cabinet
3 Officers, State officials, political party officials, recog-
4 nized, quote: "interest groups" close quote, and the like,
5 I do not mean to imply that they may never try to exercise
6 improper influence, but the potential for improper influence
7 or questionable appearances and communications from such
8 persons is not so great as to require that their communica-
9 tions be screened.

10 I do expect the Assistant Attorneys General to be
11 alert for perceived improper communications from whatever
12 source, and to report them to the Deputy, the Associate, or
13 me.

14 The most important or sensitive decisions of the
15 Assistant Attorneys General may be reviewed by the Deputy
16 Attorney General, or the Associate Attorney General, or by
17 the Attorney General. If, however, the Deputy or the
18 Associate, or I, reach a decision contrary to that of the
19 Assistant Attorney General, that action and the reasons for
20 it will be reduced to writing.

21 If law enforcement considerations or the rights of
22 persons or organizations under investigation or prosecution
23 do not prevent it, these differences will be publicly dis-
24 closed. The formal statement of my reasons for approving
25 the LTV-Lykes merger is one example of such a public announce-

1 ment.

2 It should be clear that these procedures reflect
3 certain principles that must govern outside contacts with
4 respect to the Department's cases. It is not at all improper
5 for persons outside the Department, whether or not they are
6 in positions of power, to attempt to influence our general
7 policies concerning the investigation and prosecution of
8 crime and the enforcement of civil statutes.

9 We welcome criticism and advice. In my judgment,
10 however, it is improper for any Member of Congress, any member
11 of the White House staff, or anyone else, to attempt to
12 influence anyone in the Justice Department with respect to
13 a particular litigation decision, except by legal argument
14 or the provision of relevant facts. This principle is essen-
15 tial to our proper function, because litigation decisions
16 are frequently discretionary.

17 The ultimate criterion is that they be fair. We
18 at Justice are not infallible, but the awesome responsibil-
19 ity for wielding our power fairly is ours alone. Criticism
20 after the fact is perfectly proper. Criticism before the fact
21 must be channeled so that fairness is not cheated, and
22 Justice is served.

23 Our notions of fairness must not change from case
24 to case; they must not be influenced by partisanship, or the
25 privileged social, political or interest-group position of

1 either the individuals involved in particular cases, or those
2 who may seek to intervene against them or on their behalf.

3 To implement these procedures, I have asked the
4 Assistant Attorneys General to refer to the Associate Attorney
5 General, the Deputy Attorney General or to me any relevant
6 Congressional or White House communications prior to particu-
7 lar litigation decisions. This will include especially any
8 communication whatever that seems even marginally improper.

9 And as an additional measure to help spot potential
10 trouble, each Assistant Attorney General should report to
11 the Deputy Attorney General or the Associate Attorney General
12 all communications, press inquiries excluded, about specific
13 cases by persons other than those involved in the litigation.

14 I acknowledge that this set of procedures will seem
15 unduly restrictive to some of our colleagues in Government.
16 But I believe that these restrictions are a small price, and
17 a necessary one, for restoring and maintaining public confi-
18 dence in the Department of Justice. Some may argue that we
19 have over-reacted by including even the smallest and least
20 important cases in our procedure for insulation from influence;
21 but to those Americans whose lives and property are involved,
22 these cases are neither small nor unimportant.

23 This Department can not prescribe one rule for
24 the most notorious defendants and the largest corporations
25 and another less stringent rule for the average American.

1 That would be neither fair nor just. Nor are we walling
2 ourselves off from legitimate communications. What we are
3 doing is routing these communications so they can be respons-
4 ibly screened. The only disadvantage involved is that communi-
5 cations may be misdirected.

6 These costs are substantially outweighed by the
7 benefits of renewed confidence in the integrity of the
8 Department's decisions. We can not quantify benefits, but
9 all of us know, intuitively, that the confidence of our citi-
10 zens in our Government and its justice system is beyond value.

11 This brings me to the counseling function centered
12 in the Office of Legal Counsel. In discharging this function,
13 our obligation is to the law as we understand it in the
14 exercise of our best professional judgment. We must, of
15 course, consult with the Department or agency that has
16 requested our opinion, and those agencies directly affected
17 by the opinion, and it is perfectly proper for us to consult
18 with anyone on legal questions.

19 What must be avoided, in fact and in appearance,
20 is pressure from any source that is intended to influence
21 our legal judgment. The Assistant Attorney General for the
22 Office of Legal Counsel should report directly to me any
23 communication that, in his view, constitute attempts to
24 exert such pressure. And I might say that Mr. Harmon is very
25 good about watching those sorts of things.

1 Recent events, including the direction of the
2 President that we become independent, have given us an oppor-
3 tunity to strengthen the independence of this Department. I
4 am reminded of the English experience: as you may know, the
5 English Attorney General is independent, by tradition. This
6 tradition was greatly strengthened after an incident in the
7 1920's.

8 At that time it was believed by many that the
9 English Attorney General had yielded to pressures brought on
10 him by some of his colleagues in the Cabinet, in deciding
11 not to prosecute a certain case. Whether that was true is
12 still debated. But the mere suspicion precipitated the
13 downfall of the government. Since that time the independence
14 of the English Attorney General and the impropriety of any-
15 one attempting to influence his decisions have assumed the
16 status of a Constitutional rule.

17 Any violation of that rule in Great Britain today
18 would result either in the dismissal of the Attorney General,
19 or the fall of the government.

20 What happened in this country during the Watergate
21 period may roughly parallel the fall of the English govern-
22 ment in the 1920's. Out of these unfortunate events we, like
23 the English of 50 years ago, may now be in the position to
24 establish firmly the tradition that the Attorney General and
25 the lawyers under him must be free from outside interference

D 1 in reaching professional judgments on legal matters.

2 We must do everything that we can, in our time, to
3 help establish and reinforce such a tradition. I firmly
4 believe that the procedures and principles I have prescribed
5 are a long, important step toward that crucial goal.

6 In the ultimate sense, a viable Government must
7 rest on neutral principles. The law is perhaps the best
8 example of such a principle, and the Department of Justice
9 is the acknowledged guardian and keeper of the law. It
10 follows necessarily that the Department must be recognized
11 by all citizens as a neutral zone, in which neither favor
12 nor pressure nor politics is permitted to influence the admin-
13 istration of the law.

14 This Department is such a neutral zone now, and
15 with the help of all of you, it will remain so.

16 Thank you.

17 (General applause)

18 ATTORNEY GENERAL BELL: We've got another half-
19 hour, so I'll be glad to take questions and see what we can
20 do with the questions.

21 Last time we met we had a good deal of discussion
22 about the Library. We've had a special study made, and a
23 number of improvements have been made in the short-range,
24 and I've asked the PIO to publish the improvements in the
25 next issue of the Justice News, and I might say that in addi-

1 tion to that, there are some long-range things going on, and
2 I guess that could be published, too.

3 Professor Meador and his group have done a good
4 job on that; I announce that so that you want to -- maybe we
5 won't get into in too much detail today, although I don't
6 object to taking questions on it.

7 Yes, sir?

8 (Inaudible question)

9 ATTORNEY GENERAL BELL: We live with that every day,
10 and I suppose I'm sued more than anyone else. I've even been
11 sued for damages because I wire tapped a man named Truong, in
12 the Humphrey -Truong case; some of his friends who called
13 him on the phone have sued me for damages, so I'm not a
14 stranger to this.

15 We worked out a rule that if your activity was in
16 the scope of your employment, we'll defend you. If it hap-
17 pens to be multiple defendants, and we have to get outside
18 lawyers, we'll get outside lawyers for some of the defendants
19 and we'll defend the ones we can. But you'll be defended.

20 Now, there is no provision that I know of to indem-
21 nify you in the event there is an award of damages -- you're
22 cast in damages. But I would have to say that our lawyers
23 are so good that there is very little likelihood of you pay-
24 ing any damages.

25 (General laughter)

THD 1 But we'll defend you. And if we can ever get our
2 Federal Tort Claims Act Amendment through the Congress -- if
3 we can get some serious attention to that, we would do for
4 the lawyers of the Department of Justice, and for the agents
5 of DEA and the FBI what we already do for drug manufacturers,
6 who make swine flu serum, and that is, we will substitute
7 the United States as a party defendant, and defend the
8 United States. Some day we'll get that done. I'm sorry we
9 didn't get it done in this Congress; Congress has not
10 adjourned, but the day is near.

11 I haven't given up altogether, but surely -- surely
12 that's such a just approach that we'll get it done eventually.

13 (Change tape, side #2)

14 ATTORNEY GENERAL BELL: I think that's a very good
15 suggestion, and I occasionally get a letter from someone --
16 I'm glad to get letters -- and I occasionally meet with
17 people who want to meet that want to discuss something priv-
18 ately. I'll be glad to do anything that would assist in
19 bringing problems to the surface.

20 I've long believed that the greatest basis for good
21 morale is to let people have their say about things that
22 bother them. It would be the finest thing that could
23 happen to the Department of Justice if everyone would feel
24 completely free to voice objections -- about anything, and
25 that's my attitude about it, so I'll be glad to

1 -- maybe you think if we met by Divisions, we'd do better.

2 We probably would have the same problems there:
3 people would not want to speak up. But I'd like to emphasize
4 to you that we do have an open Department
5 of Justice, and you can communicate with me without fear of
6 retribution, without fear at all. I want to know what your
7 problems are; that's my job.

8 You know, I don't make much contribution to the
9 Department; Attorneys General come in and out, most of you
10 stay here forever.

11 So what can I do to help? That's the only reason
12 I'm here. If I didn't think I was making some
13 contribution, I would have already left, but I don't think
14 I'm making as great a contribution as I could make, because
15 I don't know all the problems. I don't know all the concerns
16 that you have; I don't get all the suggestions that you have
17 to make the Department better, make the law fairer.

18 So I would like to hear from you. In addition to
19 whatever suggestions you have, just get in touch with me,
20 and you can -- Mike Kelly? Where's Mike? He's Counsel to
21 the Attorney General; you get him and then he'll -- you might
22 be screened; don't get upset about that, because we get a
23 lot of calls and we get a great deal of mail, but Mike is
24 Counsel to the Attorney General.

25 And the same that I'm saying goes for Mr. Civiletti,

D 1 Mr. Egan; they're anxious to talk to you about your problems.
2 They're here for the same reason I am; we're just -- we're
3 passing through and we're trying to make the place better.
4 Make the system work in a more efficient manner.

5 So get in touch with them also. Judge McCree, and
6 the heads of all the -- all the Assistant Attorneys General
7 have the same attitude. At least I -- well, I know they do.
8 I started to say "I hope so;" I know they do. I don't hope
9 it; I know they do. Okay?

10 (Inaudible question)

11 ATTORNEY GENERAL BELL: Well, if you feel -- well,
12 this is too complex to answer just in one answer, but there
13 might be cases that come up where you think the person has
14 done something wrong and ought to respond in damages. I
15 don't know just what you'd do under those circumstances;
16 you can decline to take the case.

17 Ordinarily, a murderer gets a lawyer in our country,
18 and you wouldn't have this same qualm about defending a
19 murderer if the court appointed you.

20 Is your problem that you think you're representing
21 the United States rather than this employee? You know, I've
22 never gotten an answer in my lifetime -- 31 years as a lawyer
23 -- to how I can be compelled to defend a -- or, how I have
24 a duty to defend a person who's committed a heinous crime,
25 we'll say murder or rape, yet I do that. I mean, I have done

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1 it; I was appointed to do it and I did it.

2 (Inaudible question)

3 ATTORNEY GENERAL BELL: It is. If you come to the
4 point where you think it's not to the person you're represent-
5 ing, you ought to get off the case. And you ought to leave
6 to others the problem of disciplining that employee; whoever
7 the superior is to that employee ought to see that the
8 employee is made to pay for wrongdoing.

9 But if you're defending him for damages, then
10 you're just a lawyer defending him for damages.

11 Now, if you think that he owes something, then
12 you ought to take it up with -- in the chain of command, so
13 we can confess judgment, or settle the case. We've had
14 cases I've seen where we should confess judgment; it doesn't
15 mean that we'll be obstinate if we think we're wrong. It's
16 just like if you represented somebody in the private sector,
17 and you know you owe something, then see about paying it.

18 But the trouble in our law, it's so technical
19 sometimes that you can win a case on a motion, as you say,
20 or on a procedural ground, and maybe you're left with an
21 uncomfortable feeling that you've won a case that you should
22 not have won. That's another ethical quandary that I've
23 never known the answer to.

24 Are you supposed to lie down and say: "Well, I
25 know I can get this person thrown out of court here, but

1 should I?" Or "Am I employed to win or just be an Arbiter

2 It's an adversary process, and we don't ever know
3 the answers to those sorts of things. It comes up on a case
4 by case basis, but we are going to have to learn more about
5 representing Government employees, particularly where they've
6 done something wrong, maybe, and we're going to have to
7 systematize our method of doing that.

8 We seem to be in a growth area, a growth time;
9 we are learning how to try foreign intelligence cases, for
10 example, more so than we ever have, and problems that are present
11 ted. We are having to learn to live with the rules for dis-
12 covery in civil suits, where intelligence is involved, and
13 we are learning how to do that.

14 We are having more and more suits against the
15 Government employees, and we're going to have to learn how
16 to handle those.

17 But you have asked a very good question, and one
18 that I have spent a lot of time on since I've been here, and
19 one that Barbara Babcock and her staff have spent an infin-
20 ite amount of time on, and we'll have to be giving more time
21 to it, rather than less.

22 Well, I'm glad everyone is so happy. Don't have
23 any questions? Here's a question.

24 (Inaudible question)

25 ATTORNEY GENERAL BELL: Well, that's a --

1 (General laughter)

2 ATTORNEY GENERAL BELL: I'm hard-put to answer that
3 question, because as you know, I have a -- from the beginning
4 favored the appointment of U. S. Attorneys by the Attorney
5 General; even then you could say: well, the Attorney General
6 is politically appointed.

7 And the answer to that is that you can't take poli-
8 tics out of the political system. You have to have somebody
9 to run the shop, somebody's got to be in charge, and that's
10 why we have elections.

11 But you ought, to the extent possible, take the
12 politics out. And the only thing you can say about the U.S.
13 Attorneys being politically appointed, they are recommended
14 by the Senators in most instances. The Senators could say:

15 "Well, we are just as non-political as you
16 are."

17 There's no answer to this. I've told you the story
18 of going in one U.S. Attorney's office and he had a picture
19 of a Senator on the wall; didn't have my picture.

20 (General laughter)

21 Didn't have the President's picture; only had the
22 one Senator, who happened to be the only Democratic Senator
23 from the State. It struck me as rather odd.

24 But I read every word in the FBI's files on these
25 people, before they are appointed, before they are nominated,

WHD 1 and to the best of my belief, and I do believe this, these
2 lawyers that have been appointed U. S. Attorneys over the
3 country during this Administration, and I'm sure this would
4 be true in other Administrations, are good lawyers and they
5 are professionals in their views, and if you're a good law-
6 yer, if you're ethical, I think there's a presumption that
7 you're going to do your duty and that you're going to do it
8 in a professional way, that you're going to follow these
9 same rules that I've just outlined.

10 Of course, the U. S. Attorneys are under these
11 rules just as much as anyone else. And they will -- this will
12 be distributed to them. But I think they are -- in spite of
13 the looks of the system, it works pretty well, and the
14 reason it does is because lawyers, individually and as a
15 group, are members of an honored profession.

16 We are professionals; we are ethical, and if we
17 aren't, we ought not to be lawyers. We ought to get out of
18 the profession or we ought to be put out. But so long as
19 we are professionals, and follow the ethics -- canons of
20 ethics that professionalism requires, I don't think there's
21 much danger now or any problem.

22 But there is a perception problem; that's the main
23 problem. How is it perceived?

24 I'll be glad not to be Attorney General so I'll
25 never have to answer that question again!

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Okay? Have a good fall.

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(Whereupon the address was concluded.)

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