Department of Justice

ADDRESS

OF

THE HONORABLE GRIFFIN B. BELL

ATTORNEY GENERAL OF THE UNITED STATES

BEFORE

THE LAWYERS' ASSOCIATION OF ST. LOUIS

THE BAR ASSOCIATION OF METROPOLITAN ST. LOUIS

THE MOUND CITY BAR ASSOCIATION

THE ST. LOUIS COUNTY BAR ASSOCIATION

THE WOMEN LAWYERS' ASSOCIATION

THURSDAY, DECEMBER 14, 1978
7:30 P.M.
BRECKENRIDGE PAVILLION HOTEL
ST. LOUIS, MISSOURI

When I became Attorney General, I discovered several controversial pieces of unfinished business at the Justice Department such as the investigations of FBI break-ins and alleged South Korean bribery on Capitol Hill. These early issues are mostly behind us now, and in the last few months I have been able to devote most of my time to development of long-range reforms of importance to the entire justice system.

As I approach the end of my second year as Attorney General, it is an appropriate time for me to make an accounting to my fellow lawyers of the important things we feel we have accomplished to date, and what we hope to do in the future.

When the President asked me to take this job, we agreed that my first priority should be to continue the effort begun by Edward Levi to extract the Justice Department from the Watergate era.

The Department's management and day-to-day operations suffered because of the preoccupation with Watergate. It also experienced a severe decline in prestige and public trust -- and acquired a taint of political partisanship.

For example, when I came to Washington in January of 1977, I found a lingering suspicion that every major Department decision was influenced by partisan political considerations.

I read stories, for example, charging that the investigation of South Korea's influence-buying on Capitol Hill would be quashed now that a Democratic administration had arrived. I was astounded to find that there really wasn't much of an investigation to speak of -- only a few lawyers looking into all the allegations. I created an investigative team and pushed them to get to the bottom of those allegations. We did that. Some persons were prosecuted, some were disciplined and many were cleared. But it took almost a year to stop speculation that the investigation would be "quashed" on political grounds.

The fact that it finally did stop indicates that our efforts to restore a public perception of the Department's integrity were meeting with some success. One of my first acts in that effort was a speech early last year to all Department lawyers in which I urged them to act as professionals in all matters, regardless of the political consequences.

The most important aspect of restoring public trust has been to institutionalize the independence of the Department from politics. I have taken a "hands-off" attitude toward all non-Justice Department-related matters in the administration. Neither the President nor I consider it appropriate for the Attorney General to act as a political advisor to the President.

Further, as I announced on my last visit to St. Louis, I have moved to insulate the line attorneys and litigating division chiefs and others at the Department from political pressure. I have done that by insisting that any contacts about the merits of specific cases from either the White House or the Congress must come through my office, or that of the Deputy or the Associate.

We can thus screen out and absorb the pressure inherent in such contacts, while the Assistant Attorneys General and their staff lawyers can determine the merits of cases without regard to political considerations.

The second item on my current agenda is improving the system of justice.

The Justice Department must concern itself with more than investigation, prosecution, and representation of the government in criminal and civil cases. It must also exhibit a continuing concern with the justice and judicial system as a whole. My first step was to create the Office for Improvements in the Administration of Justice. This in-house "think tank" is developing a comprehensive program to address the major ills besetting the justice system -- including increasing the access of all Americans to justice and speeding up litigation while reducing its cost.

One of the Office's accomplishments may be known to Missouri lawyers. Working with various organizations, we were able to establish last year three pilot Neighborhood Justice Centers, including one in Kansas City. People can take their minor disputes to the Centers and get them resolved through mediation or arbitration. If the Centers are run correctly, they can take pressure off our court system and resolve many disputes more quickly and less expensively -- and with less acrimony and frustration than usually result from litigation.

Another significant contribution to improving the justice system is the training of trial lawyers.

I have taken a personal interest in the Advocacy Institute of the Department (perhaps prompted by the Chief Justice) and by this year we tripled the number of government attorneys who took the basic advocacy course. In addition, the Advocacy Institute conducted 16 advanced courses that trained more than 1,000 lawyers in the Department. These specialized courses covered such diverse federal subjects as program fraud, surface mining, and public corruption.

In 1979 we plan a substantial expansion of the basic trial course. It will be tripled in length. The first part will cover not only "nuts and bolts" subjects, but also videotaped workshops. A follow-up course will perfect advocacy skills and examine advanced problems of modern federal practice.

These courses will help assure us that the Government's lawyers are as competent and as well-trained as any they will face from the private sector, guaranteeing that the public interest will be effectively represented.

My third agenda item concerns our work in foreign counter-intelligence and domestic security investigations.

We have built on the foundation left by Attorney General Levi in establishing guidelines to regulate the FBI's investigations in these areas. In general terms, the guidelines prohibit using an expansive "intelligence-gathering" rationale to investigate domestic political groups alleged to be involved in terrorism. Instead, standard criminal law enforcement procedures are used -- including a requirement that a warrant be obtained from a judge if electronic surveillance is employed. The guidelines provide safeguards to ensure that Americans are not being targeted for investigation on the basis of legitimate activities which are protected by the First Amendment. In addition, a set of classified guidelines regulates the FBI's counterespionage operations. We are continually revising and expanding those guidelines as we gain practical experience with them.

As Attorney General, I am the President's agent in faithfully executing the laws and, by his delegation, I have had responsibility for ensuring that the intelligence community

adheres to the rule of law. We have learned that we can do so while improving our intelligence capacity.

With the President's strong support and with excellent cooperation from Congress, we have pointed the way toward several significant improvements in the safeguarding of our intelligence activities.

The first major achievement was realized last January when President Carter signed a new intelligence Executive Order which restructured the intelligence community, outlined the responsibilities of the heads of intelligence agencies and set forth restrictions on intelligence activities through a system of Attorney General guidelines. This new Executive Order is the cornerstone of our efforts to construct better systems for intelligence activitie

Another major initiative toward protecting civil liberties in the intelligence field is the Foreign Intelligence Surveillance Act, frequently referred to as the "wiretap bill." This Act was designed in close consultation between the Administration and the Congress and was signed into law in October after two years of hard work. The bill ensures for the first time that the safeguards of a statutory procedure are extended to all electronic surveillance in the United States conducted for intelligence purposes and that all electronic surveillance which affects the rights of Americans will be conducted under a judicial warrant.

I want to turn now to my fourth agenda item -- some of the things we hope to do in the coming months with the new Congress.

Now that the wiretap bill has been enacted, the great need in the foreign intelligence field is for legislative charters to give the intelligence agencies some guidance as to their actual authority and appropriate missions. An intense, cooperative effort between the Legislative and Executive branches is now underway to design workable charter legislation.

In the area of judicial selection, we are facing the monumental task of filling as quickly as possible the 152 new federal judgeships created by the recent Congress. This is an awesome responsibility -- one which will demand and deserve a large percentage of my time for several months. The President and I are conferring regularly about this effort, and I am talking to Senators and others around the country on a daily basis. I am publicly committed to trying to have 80 percent of these new judges confirmed by next April 1. The country has waited more than eight years for their appearance and we do not intend to hold up their service.

Another move to get a quick start out of the gate in the new Congress is that we have fashioned four innovative proposals for improving the administration of justice into a priority package for introduction when Congress reconvenes in January.

The first bill would enlarge the civil and criminal jurisdiction of federal magistrates. It can have a significant impact on speeding up the delivery of justice, especially in districts which currently have large case backlogs.

A second bill would curtail the exercise of diversity jurisdiction in the federal courts. Too many cases involving state law issues are now being litigated in federal courts when they would be more properly and more efficiently disposed of in state courts.

A third priority measure is our proposal to introduce the use of arbitration in the federal courts for certain types of civil cases involving money damages only. Our legislation is modeled on arbitration plans successfully employed in several states. It is already clear that both litigants and the courts are profiting from the procedure. Cases going to arbitration are being resolved faster than they could be otherwise and at less expense to the parties.

The final priority bill is a proposal to convert the Supreme Court's appellate jurisdiction almost entirely to a certiorari basis. This bill would permit the Supreme Court to exercise greater control over its own docket, and it would eliminate the artificial distinction between discretionary review and review of right.

The enactment of these four bills would be one of the largest steps ever taken by one Congress to improve the functioning of the federal judiciary. This step is necessary if we are to avoid having to return to Congress within a few years to ask for still more judges.

In all of the programs I have described today, our sole interest is in improving the justice system and elevating the quality of justice for all Americans.

We want your thoughts on every aspect of our efforts. We want your cooperation in working for the public interest. As lawyers we know that there is some tension always between our professional duty as advocates and advisers in particular lawyer-client relationships, on the one hand, and our public duty, on the other hand.

The Code of Professional Responsibility makes this point clearly in Canon 8:

> "A lawyer should assist in improving the legal system.... By reason of education and experience, lawyers are especially qualified to recognize deficiencies in the legal system and to initiate corrective measures therein. Thus, they should participate in proposals and support legislation and programs to improve the system without regard to the general interests and desires of clients and former clients."

As the canons of ethics stress, a lawyer must identify the capacity in which he is commenting on proposals. In other words,

lawyers should make it clear when they are acting on behalf of clients in a personal capacity, or on behalf of the public interest. When purporting to act on behalf of the public, a lawyer should espouse only that which he conscientiously believes to be in the public interest.

Above all, we must take care to keep our eyes firmly fixed on our duty to the public.

# # #