Department of Justice

ADDRESS

OF

THE HONORABLE GRIFFIN B. BELL

ATTORNEY GENERAL OF THE UNITED STATES

BEFORE THE

UTAH STATE BAR ASSOCIATION

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It is a pleasure for me to meet with you in the mid-winter meetings of the Utah State Bar. In the two years since my appointment as Attorney General, I have spoken to a number of state bars throughout the country, although this is my first opportunity to visit Utah.

Prior to my coming on this trip, I did some checking into Utah history. President Carter has, in good humor, labelled me an "amateur historian" for some other research I did. My research revealed that one of my fellow Georgians had played a prominent role in Utah's early history. In 1851, President Millard Fillmore signed the organic act which made Utah a territory, and he appointed Brigham Young as the first territorial governor. Governor Young served in that position for seven years until James Buchanan became President. After Buchanan's election in 1856, he determined to replace Brigham Young in an effort to assert federal supremacy over the Mormons in Utah. Thus, in 1857 President Buchanan appointed Alfred Cumming of Georgia to succeed Brigham Young as territorial governor. In order to secure Cumming's arrival and administration, Buchanan ordered a military force to accompany Cumming to Utah, which force became known in Utah lore as "Johnson's Army."

I could not learn how or why Cumming was selected by Buchanan to be Governor of Utah, although for many years Georgia has produced men and women of ability and distinction. I do know that Cumming's lot was not an enviable one. He was succeeding Brigham Young, who I presume was a fairly popular politician in the State. He had to secure his administration and be accompanied to his post by a "foreign army." And he was charged with appointing the federal officers in a state not anxious to have such positions filled. I must confess that when I first arrived in Washington, I felt about as welcome there as Cumming must have felt in Utah.

Cumming went on to serve as Utah's territorial Governor for three years, resigning as Governor in 1861 to leave for his native Georgia to fight for the Confederacy, or what we like to call the "War of Northern Aggression." The historians report Cumming's administration to have been a very successful one. They tell us that Cumming provided wise, firm,and patient administration, "pouring oil on Utah's troubled waters" and that his departure was "regretted by many Utahns."

I like to think that some modern Georgians also are rendering "wise, firm and patient" government service these days in Washington.

Today I would like to report to you on the work and progress of the Justice Department in the past two years. I am now nearing the end of my second year as Attorney General. It is an appropriate time for me to make an accounting to the Nation of the important things we feel we have accomplished to date, and what we hope to do in the future.

My review will cover a few broad areas. The first item on my agenda today is what we have accomplished for 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 justice and the judicial system as a whole. My first step was to create the Office for Improvements in the Administration of Justice. This office 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. For instance, this office is currently engaged in projects to study and recommend changes in the scope of discovery and class action rules of the federal courts.

Some proposals came close to being enacted by the last Congress, and in a few minutes I want to tell you about our legislative priorities in the new Congress.

One accomplishment has been to establish three pilot Neighborhood Justice Centers -- in Atlanta, Kansas City and Los Angeles. These Centers are designed as low-cost alternatives to the courts for resolving every-day disputes fairly and expeditiously. Community residents are specially trained to serve as mediators and arbitrators for minor disputes arising within the community.

I am proud of these Centers. When run correctly, they can take a lot of 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.

Let me recount to you the type of dispute which these Centers resolve. In one case, a long-standing dispute existed between the adults of two neighboring families, stemming from problems that arose when the children and grandchildren of both families had been playing together. The strained relations escalated into name calling, complaints to the police, harassing phone calls, two attempted hit-and-run incidents, and finally a major brawl between the families involving a piece of lead pipe, a pool cue, and a rifle. A mediation session was conducted by three mediators involving 12 disputants and lasting six and one-half hours. As a result, one of the families has decided to move, and both families have agreed not to bother each other until the move is completed. For this kind of case, a Neighborhood Center is a much more effective and efficient forum than a formal court.

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

When I arrived at the Department, I learned that an Advocacy Institute had been established in 1973 to train young government lawyers. But it had never increased its offerings beyond a basic course or its volume much above 200 attorneys per

year. I took a personal interest in the Advocacy Institute, and by the end of 1978 we tripled the number of young attorneys who took the basic advocacy course -- reaching the record number of 660. Of these, 418 were Assistant U.S. Attorneys and 242 were young attorneys from our litigating divisions. In addition, the Advocacy Institute conducted 16 separate 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.

We have received overwhelming praise for the Institute's programs and have therefore laid the plans for substantial curriculum expansion of the basic trial course in 1979.

Our basic trial course is only one week in length now, but we will now expand it to three weeks in length.

We also plan to continue giving advanced courses for our attorneys. These courses will help assure us that the Government's lawyers are as competent and as well-trained as any lawyers they will face from the private sector, thereby guaranteeing that the public interest will be fairly and firmly represented.

I might add that the turnover of the Department's attorneys is, as should be expected, substantial. In allocating these resources to train our lawyers -- which is a very small item in our Department's budget -- we are investing in the future of the legal profession as as whole. What we teach our young lawyers will, in turn, be taught by them when they enter private practice. In this way, we hope to improve trial advocacy in the bar generally.

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

As Attorney General, I am the President's agent in faithfully executing the laws and, by his delegation, I have had responsibility for holding the intelligence community to the rule of law. With President Carter'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 activities.

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.

These guidelines and procedures will, I believe, strengthen our intelligence agencies. Their net effect will be to clarify and define for the intelligence agencies their roles and responsibilities, thus eliminating most of the confusion and impediment which the revelations and criticisms of the past few years have brought. I believe that our intelligence community will be able to perform in the future its critical functions effectively and efficiently while honoring our rule of law.

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

Now that the wiretap bill has been enacted, the great need in the foreign intelligence field is legislative charters for the various agencies which deal in foreign intelligence and counter-intelligence. These agencies -- such as the FBI and the CIA, among others -- have come in for heavy criticism because of some of their past activities. But we also learned that Congress and the Executive Branch had failed in their duties to give these 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 remedy this oversight by establishing clear charters outlining the authority and mission of each agency, and by setting standards and procedures to guide their

activities within those charters. It may take more than a year to settle the many questions on this vast new frontier. President Carter and I are firmly committed to sticking with the task and working closely with Congress until it is done.

Secondly, 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.

It is also an historic opportunity for President Carter to establish firmly the tradition of open, merit-oriented judicial selection, which we have been building over the past two years, and to take great strides in making the federal judiciary better reflect the great diversity in the composition of the bar and the population as a whole. 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.

We also have great hopes that many innovations developed by the Office for Improvements in the Administration of Justice will be enacted into law in the next Congress.

Four of these proposals have been fashioned into a priority package for quick introduction in this Congress -- and, we hope, quick action thereafter.

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. The historical basis for permitting these claims to be heard in federal court -- presumed prejudice towards citizens of one state by the courts of another -- is now extremely doubtful. Nor would moving these cases to state courts create an undue burden on any state court. This proposed reform makes sense for both the federal and 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. This proposal is a good illustration of how the federal government can profit from the experience of the state courts in their use of innovative techniques. Our legislation is modeled on arbitration plans successfully

employed in several states. The bill would allow federal district courts to adopt a procedure requiring the submission to arbitration of tort and contract cases involving less than $100,000. Three federal district courts, including the Northern District of California, are now testing the process under local rules. 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 otherwise could be 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 eliminate obligatory appeals except in three-judge cases. This step has been proposed for many years. No known opposition to it has been identified. 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.

The support of the bar for these proposals is important. I hope that you will inform yourself about them and assist us in bringing about these improvements in our justice system.

The final category, and perhaps the most important, is what we have done to improve the Justice Department as an institution.

When the President asked me to take this job, we agreed that my first priority should be to continue the effort begun by President Ford and Attorney General 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.

Despite Attorney General Levi's fine unpolitical stewardship, there remained in Washington in January of 1977 a suspicion that every major Department decision was influenced if not motivated by partisan political considerations. The leakers in the Department, and some others outside it, exacerbated this syndrome.

The most important aspect of restoring public trust has been to institutionalize the independence of the Department from the politics of government. This process is still going on -- but a couple of major steps have already been announced which future Attorneys General will have a hard time changing.

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, 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 are thus able to 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. To assure that this process works, the Associate Attorney General, the Deputy Attorney General, and I will reduce to writing our reasons for overruling any Assistant Attorney General or U.S. Attorney in any case -- and will announce those reasons publicly, unless not possible for due process or privacy reasons, so that we can be held publicly accountable.

By these means we seek to provide our attorneys in the Justice Department with an atmosphere of integrity and impartiality. We hope that the conduct of all our attorneys will be guided by conscience and duty. The kind of professional ethic we seek is illustrated by an event in the life of Sir Edward Coke, Attorney

General of Great Britain under Elizabeth, and Lord Chief Justice of King's Bench under James. King James had learned that in one particular case the petitioners were arguing that he had no right to grant a certain benefice. James sent word to Coke to halt proceedings in the case until he could confer with the judges about the matter. In defiance Coke immediately proceeded with the case the next day, after which he gathered the other twelve judges and convinced them to sign a letter to the King stating that they could not by their oath confer with him on a case prior to its disposition. Soon thereafter, James summoned that group of judges to Whitehall, where before 17 of his Privy Council, he redressed them and tore up their letter in front of them. The judges all fell to their knees craving humble pardon. Then, James asked each judge individually whether he would in the future honor a request from the King to confer on a case before its disposition. Each in turn answered that he would, until it came round to Coke. Still on his knees, Coke said that when such case should come, he would do that which should be fit for a Judge to do. (The Lion and the Throne, pp. 370-74). Coke's example of independent integrity has inspired lawyers for over three hundred years. We expect within the Justice Department in each case, no matter its size or the parties or interests involved, that each lawyer will always do that which should be fit for a lawyer to do.

In all of the programs I have described today, our sole interest is in improving the justice system and in elevating the quality of justice for all Americans. By this we may sustain the confidence of our people in this most important of our public institutions.

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 and interest in the lawyer-client relationship, particularly the adversary aspect of it, and our public duty. We must take care to keep our eye firmly fixed on the public duty.

I would like to conclude with a story I have told to the Justice Department lawyers which illustrates, I believe, the way we want our country to be and the way we want the Justice Department and our legal system to operate. Justice and Mrs. Blackmun and my wife and I were in Aspen with a group several summers ago, and we were invited one evening to a home where they had some small children. There was a six-year old boy there by the name of Matthew. Justice Blackmun sat down on a footstool and talked with Matthew for a little while and just visited with him. Later that night, Matthew was getting into bed after saying his prayers, and said to his mother, "I met the nicest man tonight."

She said, "Who was he?"

He said, "I don't know his name, but I think he was the government."

I hope that is what people will say of us in the Justice Department, that we are nice people, that we do our work well, and that we do represent the government in the best possible way.

Thank you.