

ORIGINAL

UNITED STATES OF AMERICA

DEPARTMENT OF JUSTICE

ADDRESS

OF

THE HONORABLE GRIFFIN B. BELL

ATTORNEY GENERAL OF THE UNITED STATES

BEFORE THE

UTAH STATE BAR ASSOCIATION

Salt Lake City, Utah
January 19, 1979

Pages 1 thru 22

Hoover Reporting Co., Inc.
320 Massachusetts Avenue, N.E.
Washington, D.C. 20002
546-6666

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INTRODUCTION BY JAMES JARDINE

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2 MR. JARDINE: It is my pleasure to be here today.

3 Before I introduce our speaker, I would just like to say a

4 word about the two staff members that are traveling with him.

5 It was always my view that staff didn't get enough credit or

6 recognition and I just would like to say that both Mike, who

7 is counsel for the Attorney General, and Terry, who is Special

8 Assistant to the Attorney General and director of the Public

9 Information Office, render great service to our country. And

10 I am really appreciative that they would come on this trip.

11 This will really be a difficult introduction for me

12 because I am sure that I won't be able to say all that I feel.

13 Nevertheless, I would like to tell you about the Attorney

14 General of the United States.

15 It was my great opportunity to work on his staff for

16 thirteen months, and I really feel that during that period I

17 came to know intimately a man of as great a stature as I shall

18 ever know.

19 Attorney General Bell was raised in Georgia, born in

20 Americus, which is 9 miles from Plains. He became a very

21 prominent trial lawyer in Georgia, serving as managing partner

22 of King and Spalding and as an honorary aide to the Governor

23 of Georgia before being appointed to the Fifth Circuit in 1961,

24 where he served as a judge of that court for fourteen and a half

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years, during what may have been the most tumultuous and significant period any court of appeals has ever had in the history of our country.

He resigned at the end of that period to return to private practice at King and Spalding and was there only a short period of time before he was asked to be Attorney General by President Carter.

I would just like to tell you two or three things about him that I think are very revealing about the kind of man Judge Bell is.

When I first went back to work on his staff, the second day we took an airplane trip to go to a speech he was going to make in West Virginia; it gave me the chance to ask him a question that I had always wanted to know the answer to, which was why he had resigned from the Federal Court.

He said that there were two reasons. One was that after the excitement of the '60s, he found himself getting bored reading habeas corpus petitions. That tells you something about the vigor of his mind.

The other thing was that he had been on the bench about fourteen and a half years when this was happening and if he served fifteen years then his pension would vest, and he felt that if he stayed on fifteen years he then could not in good conscience resign. So he resigned just a few months

1 before then, losing completely his own personal pension, which
2 I think tells you the kind of integrity he has.

3 One other story, I think, will tell you something
4 about him. President Carter made a campaign promise to insti-
5 tutionalize an independent Attorney General, attempting to
6 stagger the term and do some other things that would give him
7 complete independence from the President.

8 After the Carter Administration came into office,
9 it was determined that that could not be done constitutionally.
10 In the course of those discussions, an aide at the White
11 House who works intimately with the Justice Department, ob-
12 served that it wasn't necessary in this case because Judge
13 Bell was too independent as it was.

14 I would like to conclude by reading two things.
15 One is a quotation from the Congressional Record, from
16 Senator James Eastland, who just retired as Chairman of the
17 Judiciary Committee. He said, "I have been in the Senate
18 during the times of a great number of Attorneys General, and
19 I want to say this of Judge Griffin Bell. He is an honorable
20 man. He is the best Attorney General that I have known in
21 35 years in the Senate of the United States. I wish we had
22 had more men like him in the past."

23 And the other quotation is from one of my favorite
24 pieces of literature, and I've always thought this described
25 Judge Bell, and I am going to substitute his name in it.

1 "Judge Bell is a man of an angel's wit and singular
2 learning. I know not his fellow. For where is the man of
3 that gentleness, lowliness and affability, and as time re-
4 quireth a man of marvelous mirth and pastimes and sometimes of
5 a sad gravity? A man for all seasons."

6 It is my pleasure to introduce the Attorney General
7 of the United States, Griffin B. Bell.
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1 ATTORNEY GENERAL BELL: Thank you, very much.
2 Chief Justice Crockett, Chief Judge Anderson,
3 other distinguished judges, fellow lawyers, ladies and
4 gentlemen:

5 I want to thank Jim Jardine for the warm introduc-
6 tion. I warned him before he got up that he might be prose-
7 cuted for lying. But while he was speaking something else
8 crossed my mind. I think I am going to give him a part-time
9 job to go around the country introducing me.

10 I had a hard time getting here. It took 13 hours
11 on United Air Lines. It took longer actually than it did to
12 get from Los Angeles to Australia last summer when I went
13 there. This morning I thought about the fact that I finally
14 did make it. It reminded me of the great motto of the Post
15 Office Department, "Neither rain, nor sleet, nor snow, nor
16 dark of night will stay the carrier from his appointed rounds."
17 I told Jim Jardine I'd like to get that quote and I might
18 use it today. He checked with the Post Office and they said
19 they no longer use it. In fact, they said they had taken it
20 out of the manual. So, of course, we are not surprised in
21 view of the way it operates. Which tells you a lot about
22 some of the other agencies in Washington.

23 I am glad to be in the State of Senator Garn and
24 Senator Hatch. Senator Garn serves on Senate Select
25 Committee on Intelligence. I have a lot to do with the

1 foreign intelligence, so I deal with him. I deal a great deal
2 with Senator Hatch, who is a member of the Judiciary Committee.
3 So I know both of your Senators well and am appreciative for
4 the service they do for their country and also, of course, for
5 the State. They both have been fine friends to me since I
6 have been Attorney General.

7 It is a pleasure to attend the Mid-Winter Meeting of
8 the State Bar of Utah. I don't know how many states I have
9 been in since I have been Attorney General, but probably
10 around thirty. This is the first time I have been to Utah,
11 so I'm glad to have the opportunity to come. I have not been
12 in Salt Lake City since 1960. I came through here going to
13 San Francisco on the Union Pacific train -- as I recall it.
14 Maybe I am wrong about the railroad, but I was in Glacier
15 National Park and then we went to some dude ranch and I told
16 the people I was with I was leaving because I spent twenty-
17 five years getting away from a place like a dude ranch. So
18 I got on the train and came through here and I don't know why
19 but we were here several hours, so I got a cab and rode around
20 the looked at Salt Lake City and it still looks as beautiful
21 as it did then. During that length of time there has been
22 great deterioration in some of the cities of our nation and
23 you ought to take great pride that yours has not deteriorated
24 but seems, if anything, to have improved.

25 I try wherever I go to relate the state that I am in

1 to Georgia, because I have such a great affinity for my native
2 state. I know that we have done a lot of great things for
3 other states, like sending the second president of Texas to
4 Texas and a few things like that. But Jim Jardine did some
5 research for me and we found that the Second Territorial Governor
6 of Utah was from Georgia. His name was Cummin and he succeeded
7 Brigham Young, which got him off to a bad start. The second
8 thing that went wrong, he had to be brought in by something
9 that's not revered here, I understand, something called --
10 a group called Johnson's Army. But he apparently did a fine
11 job, stayed here for three years, and history records that
12 when he left many people in Utah regretted seeing him leave.

13 He was perhaps like the story they tell about the
14 first territorial governor of Nevada

15 who
16 wrote back to Washington and said, "This is no place for a
17 Christian -- and I did not remain one long."

18 Anyway, Governor Cummin returned to his native
19 state, enlisted in the Confederate Army, which we still call
20 the War of Nothern Aggression in Georgia, and had a successful
21 military career.

22 I did not get a chance to check, but within ten or
23 fifteen years after the Civil War ended, we had a Governor by
24 the name of Cummin, but his name was Joe Cummin -- could have
25 been a son of this man. At any rate, that gives us some

1 connection between Georgia and Utah and is a good way to start
2 the speech that I want to make.

3 Next Friday I will have been Attorney General two
4 years. I was sworn in on January 26, 1977. Some of you may
5 recall that I was the last person to be sworn in. My appoint-
6 ment was not received with great glee in Washinton. I was
7 before the Judiciary Committee for some days in a hearing.
8 But I want to give a report, brief report on what we have
9 been able to do during this period of two years.

10 The Justice Department must concern itself with
11 more than investigation, prosecution and representation of
12 the Government in court. It must also exhibit a continuing
13 concern with justice in the judicial system as a whole. I
14 don't think that we have ever really fully assumed this
15 responsibility. So I created an office called the Office for
16 Improvements in the Administration of Justice, and brought a
17 renowned professor from the University of Virginia Law School,
18 ~~Professor Dan Meador~~ in and made him Assistant Attorney General
19 in charge of that office.

20 I let him recruit his own people. He's got twenty-
21 one good people working for him. They are what we call our
22 "think tank." That office has developed a comprehensive
23 program to address the major ills bestting the justice system,
24 including increasing access of all Americans to justice and
25 speeding up litigation while reducing its cost.

1 For example, they are currently engaged in projects
2 to study and recommend changes in the scope of discovery and
3 class action rules in the Federal courts. They had some
4 things that they devised last year which were not enacted by
5 the Congress, but which we hope will be enacted this time.
6 One thing they have been able to do is create some model
7 neighborhood justice centers. They are really models for
8 state courts to use, state governments to use. We have three,
9 one in Atlanta, one in Kansas City and one in Los Angeles.
10 These centers are designed as low-cost alternatives to the
11 courts for resolving every day disputes fairly and expeditious-
12 ly. Community residents are trained as mediators, arbitrators
13 for minor disputes.

14 We are very proud of these centers. When run cor-
15 rectly, they can take a lot of pressure off of our court
16 system. In fact, the one in Atlanta receives about half the
17 cases from the courts. The court sees something that really
18 ought not to be in court and they send the people out to the
19 neighborhood justice center and they handle the matter there.
20 That has not been done as much in Kansas City and Los Angeles
21 but it seems to be the wave of the future.

22 Another significant contribution to improving the
23 justice system is training of trial lawyers. When I arrived
24 at the Justice Department, I learned that -- well, I already
25 knew it really -- they had an Advocacy Institute, because I

1 went there once and lectured as an appellate judge. It was
2 established in 1973 to train Justice Department trial lawyers.
3 It was just a basic course, really covered only three days,
4 and 200 lawyers a year.

5 We have been trying to expand that. Beginning next
6 month, we will go to a three-week course, two weeks and then
7 about six months thereafter the lawyer will return for another
8 week. It is modeled after the National Institute of Trial
9 Advocacy course. We will train 600 lawyers a year. Many of
10 these lawyers will leave the Government and go into the pri-
11 vate sector, so although we are spending public money train-
12 ing them, and if we can keep half we will be lucky, hopefully
13 the day will come when we can keep more than half -- many of
14 them will go out into the private sector and become great
15 additions to the trial bar wherever they go.

16 In addition to this basic three-week course, we will
17 have some special courses, as we do now, on federal subjects,
18 such as program fraud, public corruption, those sort of cases
19 where you need some brief special training.

20 Another item on our agenda is our work in foreign
21 counterintelligence and domestic security investigations.
22 As Attorney General, I am the President's agent, under the
23 Constitution, in faithfully executing the laws. You know,
24 there is nothing in the Constitution about an Attorney General
25 and the only person charged under the Constitution, or in the

1 Constitution, with faithfully executing the laws is the
2 President. So, in a sense, I am his agent. He delegates to
3 the Attorney General certain of these responsibilities which
4 are his.

5 Among those delegations are certain duties con-
6 nected with foreign intelligence, counterintelligence. We
7 have made a considerable improvement, I think, in our foreign
8 intelligence system. We have a new intelligence Executive
9 Order. I might say here a lot of this started under
10 President Ford. Attorney General Levi did a fine job in
11 this area and we have been building on what they started.
12 We have a new Executive Order that expands the one President
13 Ford had promulgated and that order is working well.

14 We were able to get Congress to pass something
15 called the Foreign Intelligence Surveillance Act, something
16 that had been introduced by President Ford and Attorney
17 General Levi and it was not passed. We got it passed this
18 time and we are in the process of setting up something called
19 the Foreign Intelligence Special Court. There will be seven
20 federal district judges designated by the Chief Justice for
21 this duty. There will be three judges designated as appeals
22 -- Constitutional Court of Appeals -- in case we need to go
23 to the court of appeals.

24 These judges will issue ex parte orders in intelli-
25 gence matters where they think the facts warrant the issuance

1 of the order, and that would be determined by the standard
2 that is set in this law that was passed. The way those
3 things happen now I am the last person to sign off.

4 We have been through a time in our country where
5 there is a great distrust of the Government and, like President
6 Ford and Attorney General Levi, President Carter and I agreed
7 that by bringing the court in as the last person to review
8 the order would enhance the confidence of the American
9 people in the intelligence system. So that's what we have
10 done and hopefully within 60 days we will have this special
11 court in operation. I met with the Chief Justice and we have
12 some people working on the procedures that we will follow and
13 the regulations that we will need.

14 We will then in this Congress address a need for
15 charters, that would be the charter for the FBI and domestic
16 law enforcement for the FBI and counterintelligence for the
17 CIA, NSA, all the agencies that are using foreign intelligence,
18 plus law enforcement. They will all end up with a charter.
19 This is necessary to cause the public to have confidence in
20 these agencies. It is also necessary to protect the people
21 who work in these agencies. They are frequently sued. We
22 call on them to do dangerous work and sometimes they can't be
23 certain that they even have authority to do what they are
24 called on to do, because the law now is very broad as written.
25 I think this will improve the morale amongst the personnel in

1 these agencies. So it may lead to a system where we aren't
 2 all sued so much trying to do our duty. I have been sued
 3 more than 300 times since I became Attorney General. I expect
 4 to spend some part of the rest of my life answering inter-
 5 rogatories, preparing for depositions, and I don't know of
 6 anything I haven't done that wasn't done as a part of my job.
 7 I am sued for damages, and there wouldn't be enough money if
 8 we sold the gold in Fort Knox to pay all the ad damem claims
 9 that have been made against me.

10 Hopefully, out of a morass , really, by the time we
 11 get through these charters and an amendment to the Federal
 12 Tort Claims Act, where we can substitute the United States
 13 as a party defendant for Government people like me, when we
 14 are sued, that we will finally get the intelligence system
 15 and the law enforcement system in our country to where it is
 16 running as it should run and as it is capable of running.

17 Now, the next thing we are doing right now that is
 18 of great importance is appointing 152 new federal judges,
 19 plus filling the vacancies that have occurred. I think we
 20 have filled 64 or 65 vacancies in two years. There will be
 21 152 new judges and then there will be some other vacancies.
 22 I would estimate that by the end of 1979 we will have filled
 23 about 250 judgeships and that will be about a third of the
 24 federal judges in the country. That means that the filling
 25 of these vacancies is an awesome responsibility. It is

1 something that I think about every day, usually more than
2 once a day, because I am the broker between the Senators and
3 the President, between the Commissions and the President. I
4 have to make a recommendation to the President, usually. I
5 take it as a great responsibility because I have been a
6 lawyer and a judge and I feel if anything goes wrong with
7 the system that American lawyers and judges will hold me
8 responsible as much as they will be holding the President
9 responsible. So I am planning on doing my best to see that
10 we continue to have a good federal judiciary.

11 We have four bills pending in the Congress that
12 I've said were written by the Office for Improvements in the
13 Administration of Justice, which we hope to pass. One would
14 expand the power and jurisdiction of the federal magistrate.
15 Some of the smaller cases could be tried by the magistrates.
16 It sets up another level of courts, actually, but on the
17 bottom it is modeled after the idea in the Standards for
18 Judicial Administration which was based on a five-year study
19 by the American Bar. I happened to have been a member of
20 that commission. Each court system ought to have judicial
21 officers to do part of the work that trial judges of general
22 jurisdiction do.

23 We have a bill to provide for informal arbitration.
24 Arbitration would be compulsory in some types of cases, but
25 it would not be binding. You could return to the court and

1 take your rightful place on the docket and still have your
2 regular trial if you are dissatisfied. We are modeling it after
3 the Ohio arbitration system which is a system devised by
4 the Supreme Court of Ohio. It is only in operation in two
5 cities, but they draw three lawyers names at random off a
6 list that the clerk of the court keeps, send these cases to
7 these lawyers, pay them a very nominal fee for handling them
8 -- of course, the lawyers have to furnish the courtroom --
9 they are really adjunct judges and an adjunct courtroom. But
10 the amazing thing about this system is that 95% of the cases
11 end with the arbitrators. I don't know how it would come out
12 in a federal court, but we have the Northern District of
13 California, the Eastern District of Pennsylvania and the
14 District of Connecticut right now experimenting with a system
15 like this, and we are finding a very high finality rate.
16 This is one way to unclog the courts, one way to afford a
17 judicial forum to litigants at a low cost, and with some
18 degree of expedition.

19 We are still supporting some move to abolish the
20 diversity jurisdiction -- or our position last year was to
21 abolish it only for the resident. Our view is that the
22 citizen of a state -- it is reasonable to require a citizen
23 of a state to go to their own court system to litigate. If
24 you are a non-resident, maybe you ought to have an option
25 between state and federal courts. We were not able to prevail

1 last year. The American Bar fought us, American Trial Lawyers
2 Association fought us and we passed -- a bill was passed in
3 the House to eliminate all diversity jurisdiction. We fought
4 in the Senate just to eliminate jurisdiction for the non-
5 resident.

6 This year now there is a great move on to do away
7 with it altogether. I don't know if we can ever get back to
8 the position we were in where it would just do away with part
9 of it. We will just have to see how that goes.

10 Then we are sponsoring a bill to take away all
11 mandatory jurisdiction in the Supreme Court, make all of that
12 jurisdiction discretionary. We must do something to help the
13 Supreme Court to have as many cases as they can handle. The
14 alternative is going to be to have the Supreme Court sit in
15 panels, which would not be a good thing in my judgment, or
16 to create some court in between the Supreme Court and the
17 courts of appeals. I am against that because I don't think
18 we ought to have another place for people to go to appeal.
19 We have an appellate over-kill in this country now, in my
20 judgment, and setting up another appellate court level would
21 just exacerbate that and I consider that to be a problem.

22 Now, the last thing I want to mention is some-
23 thing Jim alluded to in his introduction, and that is our
24 effort to make the Justice Department into a neutral zone
25 in the Government, make it nonpartisan. The foreign

1 intelligence and counterintelligence apparatus in our country
2 has always been nonpartisan. There have been times in our
3 history where our foreign policy was nonpartisan. But if
4 there is anything in the Government that ought to be non-
5 partisan, it ought to be the Department of Justice. There
6 ought never to be any political considerations there, no one
7 there ought to be concerned with what party someone is in,
8 and certainly the agency that administers the Equal Protection
9 of the law clause of the Constitution ought to be able to
10 operate in an independent fashion.

11 The President asked me to make it as independent
12 as possible. I announced not long ago that we had done that,
13 we've now carried that out. We have set up a system where
14 the Assistant Attorney Generals in charge of the litigating
15 divisions or the U.S. attorneys, are the decision-makers
16 about what to do in a lawsuit, anti trust, prosecution,
17 whatever. I can overrule them, and I will overrule them in
18 cases, or the Deputy can do it, and he will sometime. But if
19 we do overrule them, we will make it public. We will say that
20 we have overruled them. I did that in the LTV-Likes anti-
21 trust merger. I overruled the Antitrust Division, but I
22 announced that I had done it and why.

23 If somebody in a political office or even outside
24 of a political office makes an approach on the Assistant
25 Attorney General about a case that is the slightest bit

1 improper, they are to tell that person to get in touch with
2 me, no matter how high the person is that might have made the
3 approach, or to the Deputy Attorney General, and we will deal
4 with the problem. The Assistant Attorney General is not to
5 have anything to say to him at all. That is our system. We
6 copied it to some extent on what happened in England in 1924
7 when the Ramsay MacDonald government fell. There was a high
8 political office holder there under prosecution, about to be
9 prosecuted, and the rumor got out that members of the cabinet
10 talked with the attorney general about the case. He denied it.
11 But the British have such a great respect for the law that
12 the government actually fell, the Ramsay MacDonald government,
13 and not since 1924 has the attorney general of England and
14 Wales, one office, had anything to do with the prosecution of
15 a high public official. It is handled by the highest civil
16 servant in the department, called the Director of Prosecutions.
17 He reports and tells the Attorney General what's happening,
18 what he is about to do, but the Attorney General will never
19 have anything to do with it.

20 I don't want to go that far. I want to be in a
21 position where I can give direction, even to the point of
22 overruling, but we are committed to make that public when it
23 happens. That's one thing that President Carter instructed
24 me to do that has been done. I am very proud of that, and I
25 do not believe, given the propensity of public officials to

1 avoid controversy, that anyone will change that rule for a
2 long time to come. If a successor should come in and try to
3 change it, I think it will become public knowledge right away
4 and the American people will have to decide if they want to
5 let the Justice Department go back to being what it was, a
6 place with some political overtones or aspects. I hope I
7 won't live long enough to see it go back, myself.

8 I think I can say on behalf of the lawyers at the
9 Justice Department that we are working hard, we are following
10 the same standards, canons of ethics, that lawyers in the
11 private bar follow. We are trying to be just as professional
12 as lawyers in the private bar, private sector, and that we
13 are representing clients just as you do. Our clients are the
14 agencies, usually, but we are lawyers representing clients.
15 I've tried to impress the lawyers in the Justice Department
16 with that. It is true we work for the Government, but we
17 are still lawyers and we are very much like lawyers in the
18 private sector.

19 Jim Jardine called my attention to something that
20 happened when Sir Edward Coke was Attorney General. He left
21 that job and became Lord Chief Justice. He and some other
22 judges, twelve of them all told, defied King James about a
23 matter. The King called them in and they all had to kneel
24 and all had to promise that they would never defy him again
25 about a decision in a case. He told them to make a decision

1 they didn't want to make. They all agreed except Lord Cooke,
2 and Lord Coke said that when such a case should come before
3 him, he would do that which should be fit for a judge to do.
4 That's as far as he would go. And that's the way I hope all
5 the lawyers are at the Justice Department. Whatever happens,
6 comes before us, I want each lawyer to be governed by the
7 standard that he or she will always do what should be fit for
8 a lawyer to do. And we all know what that standard is. Any
9 of us who have practiced law very long know that.

10 I want to close with a story that I told when I was
11 sworn in. I was sworn in in the Great Hall of the Department
12 of Justice. As I said, I was late being sworn in and so I
13 had a swearing in where I was the only person being sworn in,
14 as distinguished from most of the other Cabinet officers who
15 are sworn in in a group at the White House.

16 The President was there. Chief Justice Burger swore
17 me in, and I closed my little acceptance address by telling a
18 story that I witnessed about Supreme Court Justice Blackmun.
19 It has been two years, and I hope we have been able to carry
20 this out. We were out in Aspen, Colorado, at one of these
21 seminars several years ago with the Blackmuns, Justice and
22 Mrs. Blackmun and some other people, and one evening we were
23 invited to someone's home and they had some small children.
24 Justice Blackmun, those of you who know him know he is a very
25 kindly man, and I saw him sitting on a footstool talking to a

1 little boy. I just happened to see that. Later on this little
2 boy's mother said that night when she put him to bed he said
3 he met the nicest man tonight. She said, "Who was it?" He
4 said, "I don't know, but I think he was the Government."

5 And that's what I said two years ago that we would
6 try to run the Justice Department in the same way, that we
7 would do what we ought to do; we would do it in a courteous
8 manner; we would deal with the American people as if we worked
9 for the American people, and that when we finished I hope
10 people would think of us as that young boy thought of Justice
11 Blackmun, that he was a nice man and he thought he was the
12 Government.

13 Thank you.
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