

ADDRESS

of

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ATTORNEY GENERAL OF THE UNITED STATES

before

THE MADISON, WISCONSIN, BAR ASSOCIATION

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MADISON, WISCONSIN

ATTORNEY GENERAL BELL: Mr. Chairman, Mr. Chief Justice, other Justices, Judges, distinguished guests, ladies and gentlemen, I want to thank my friend, Congressman Kastenmeier, for the warm introduction. The chairman has made two allusions to power. I want to tell you that there is no power in the Justice Department equal to the power that the No. 2 person on the House Judiciary Committee has. That has a good deal to do with me being over here.

[Laughter]

Congressman Kastenmeier and I have worked together on many, many projects in the almost two years I have been in Washington, all dedicated to improving the administration of justice and better securing the rights of all of our people in this country.

I did not really know until this afternoon that you were celebrating Constitution Day, so I had another speech. But I do want to say one word sort of as a salute to the Constitution. I have always thought that perhaps the greatest thing in our Constitution is a part of the Fourteenth Amendment--equal protection under law--and I have always said that if we had not had the Fourteenth Amendment we would have had to have some other amendment to guarantee equal protection. I don't think our country could really

function--certainly couldn't survive--unless we were dedicated to equality. And, as you know, the equal protection clause has been found in the due process clause of the Fifth Amendment to make the equal protection law apply to the federal government as well as to the state governments. So it is a great thing in our Constitution.

The other great thing, I think, in our Constitution--I'll just give you one or two ideas of my own philosophy--is the First Amendment, and as great as freedom of speech, freedom of press, freedom of religion are, as people in a democracy I suppose that our right to assemble and petition for our grievances has got to be worth a lot. If we didn't have that, we would have very little in the form of government that we have. That's a right that I call the right of the governed against the governors.

So I will just leave those two thoughts with you about the Constitution.

The song "On Wisconsin" I had heard before, but it probably has something to do with my youth when they taught me about the Civil War and about Sherman coming through Georgia, and a lot of Wisconsin soldiers down there. But Justice Potter Stewart's father once spoke at the Georgia bar meeting, and he said he hoped no one held it against him

because his father had been a 16-year-old soldier in Sherman's army when they marched from Atlanta to the sea. He said: I have made a careful check, and I find that he was the most careful man with matches in the entire army.

[Laughter]

We have a good time in Atlanta. One thing we claim about Atlanta is that we had the first slum clearance project in America when Sherman burned the city.

[Laughter]

We often--in fact, every year the legislature convenes in Georgia; the Atlanta constitution carries a statement that says no person's life or liberty or property is safe so long as the Georgia legislature is in session.

[Laughter]

And then on the last day of the session they carry that again. And somebody told me this morning, Congressman, that Mark Twain said that about our Congress--I never knew that before.

[Laughter]

Well, let me mention one other thing before I get into what I really want to say. Somebody said something about our new Pope. I saw Dr. Brzezinski on the television being interviewed about the new Pope, and Dr. Brzezinski

said that one of the things that impressed him very much was that he was a humble man, and we were laughing that Dr. Brzezinski would have seen that quality in him.

[Laughter]

So quickly.

I want to mention about the Lions Club--I have never been a member of the Lions Club, but I don't suppose that matters a great deal because President Carter was a member. He lived in Plains, Georgia, and they had a Lions Club there, and I believe he was a district governor--do you have district governors?

VOICE: Yes.

ATTORNEY GENERAL BELL: He was a district governor of the Lions Club.

We have just had a tumultuous close of the Congress, and I want to give you just a short report on that. Congress did pass a statute creating 152 new federal judgeships. Filling those places in an adequate manner will be a hard job.

One thing the House put in the bill, which the Senate agreed to, was that the President would set up a system of merit standards under which you would have more merit in the selection than you have now. I am always

reluctant to say that there is no merit in the selection of federal judges, because I was selected under the **old system**.

[Laughter]

I am hard put to say that it was not a **meritorious** system.

At any rate, we have drafted an **Executive Order** to the President, and, assuming he agrees to it, it **ought to** be out shortly--setting up some real standards for the selection of district judges. As you know, **shortly after** he became President, we set up standards for **the selection** of courts of appeal judges. So we will be **doing that**.

One of the things the President said to me when he asked me to be Attorney General was to try to work out a system where we would not constantly increase the number of federal judges. And, as you know, that's all we have **done** for many years now is just add to the number.

So, with the help of Congressman **Kastenmeier** and others, we worked up a four-part program. One was to **get** the extra judgeships now because they are needed--there **has** been an accumulation of workload over a period of **eight** years--so we are going to have to catch up. But we wanted to reduce the number of cases in the federal court, **make** some cases easier to handle, so we came up with a plan to do

away with the diversity jurisdiction. Under Congressman Kastenmeier's leadership, that passed the House. We were never able to get it through the Senate. In fact, we were never able to get a vote on it. The Senate is a strange place, and if you can get a vote some times you can win. But it's hard to get a vote; and we never got a vote.

We passed the magistrates bill in the Senate and the House. This expands the powers of magistrates and will enable us, I think, to separate the large cases and small cases, to some extent. So that the magistrates courts, operating under separate rules, will be able to expedite cases that can be handled in a less expensive manner, thereby helping the public.

That bill passed in the House and the Senate, and you would not believe that it is not the law, although it passed both places. It got tied up in this fight over diversity which was being led by the American Bar Association, and we lost on that. But I feel certain that we will get that early in the next session.

Then we are coming with a form of compulsory arbitration for certain types of cases, but non-binding arbitration. You leave the docket, you refer to three lawyers to hear your case--arbitrators--in an informal way. If you

are dissatisfied with the award, you can return to the court and take your same place on the docket. We copied a system that they use in Ohio, that the Supreme Court of Ohio set up--it works very well; they have about a 90 percent finality rate before the arbiters.

That has passed the Senate; we did not push it in the House, because we have three federal districts where we are doing this on an experimental basis, and we are anxious to get the results from those three districts--the District of Connecticut, the Eastern District of Pennsylvania, and the Northern District of California. So I think we will get that.

Now, those three things--the reduction in the diversity jurisdiction, expanded powers of magistrates, arbitration--coupled with getting the new judges--was our program, and I think that in the next Congress we will see the whole program put together.

Now, we lost on the Federal Criminal Code--got it through the Senate, but not the House. It's a very complex piece of legislation, and will have to be considered in the next Congress. Besides recodification, there's a new method of sentencing in the federal courts which is generally favored, as near as I can tell.

We had an institutions bill, we call **it, so that** the federal government can get into cases where **inmates in** mental institutions, prisoners, bring cases of such **magni-**tude that they are more than just a case; they are **almost** like class action cases--we were not able to get that through. It passed the House and died in the Senate, **ano-**ther bill that we were not able to get a vote on.

We have a bill to amend the Tort Claims **Act so** that when you sue the Attorney General, as happens **nearly** every day, or other government agents, the **government will** respond in damages if we have been negligent, and **we will** have a disciplinary proceeding against a government **agent** when one is warranted. That is **pending** in the House **and** the Senate; needs some more consideration--perhaps **some more** hearings.

One of the great things we **did** this time, **that the** Congress did, was to pass the Foreign Intelligence Surveil-
lance Act. Since before 1940, Presidents, a whole succes-
sion of Presidents in our country, have engaged in foreign
intelligence under what we call the constitutional power of
the President. There has always been some debate as to what
the extent of that power was; some people might think there
is no such power--but we have been doing that for all those

years.

President Ford and Attorney General Levi had the idea--and others in the Congress, including Congressman Kastenmeier--that it would be better to set up a statutory system for carrying on this foreign intelligence. We were not able to get it through the last Congress, but we did get it through this Congress, and we are going to have a special court, consisting of seven federal district judges who are appointed for years on this duty; you will come to Washington on a rotating basis and serve as a district judge, because this doesn't take that much time, but that's the way it will be set up. And then there will be three court of appeal judges designated in case of a need to appeal. It's a peculiar system. I will take the petition for electronic surveillance, a petition to engage in electronic surveillance, to the court; it will be done in camera, but I'll get a court order; it would be much as getting a warrant, except under a warrant, of course, in reasonable time, you have to notify the people you are surveilling.

This is going to take some doing to get this set up and in place, but I think the nation is stronger because of this law, and I think that our intelligence system will be stronger, and I think that people will have more

confidence in the system. I was a strong advocate of this because I believe that the people have more confidence in the courts than they do in the other two branches, and that if a court is in this process, the people will trust the government more than they do now. And it's very necessary to have some trust in this area of foreign intelligence.

One bill that passed was the Bank Records Privacy Act which gives every citizen some control over what the banks give out of your records; you have to get some notice and get a chance to be heard, in case you want to be heard. That was a good bill.

And then the ethics bill, of course, is something we have been debating since the Watergate, if not before. And there was a very strong ethics bill passed. We had a meeting today at the Justice Department and had one of our lawyers who had studied it give us a little talk on it. And that was the first time I realized just how stringent it was--and will be. But I think it's good for the country.

Now, having told you about those things, legislative matters, I want to tell you about something else that I think you will really have a great interest in. The Justice Department belongs to the people, and it is going through some hard days, and the President asked me to make it as

independent as possible. That is one of the things that he would like to accomplish.

And I started thinking about that even before I became Attorney General, how to make it independent. And I thought we could do it by executive order. You know, you can't have a completely independent Attorney General, because the Attorney General really has no power. Every power the Attorney General has is delegated by the President. The Constitution charges the President with the duty of faithfully executing the laws, and he delegates off to the Attorney General. So you can't be completely independent.

It took me a long time to work out this in my mind, how we ought to do it, but I got Professor Meador whom I brought in, a law professor at the University of Virginia, as an expert on the British legal system--he has written a book on it, lived over there for a year once. I got him to study the Attorney General system in England, and I found out some amazing things. One was that in 1924 it was alleged that a cabinet officer tried to influence the Attorney General in a prosecution. The English have such a high regard for law that the government fell--it was the Ramsay MacDonald government, and the government fell on account of just this allegation, which was denied.

Since that time there is no public official of a high rank that has ever been prosecuted by the Attorney General. The case rises no higher than the highest civil servant, who is called the Director of Prosecutions. When it gets to the Director of Prosecutions, he makes the final decision on the prosecution. I was with the Attorney General of England this summer in New York when they indicted Jeremy Thorpe, who was the head of the Liberal Party. He knew nothing about it except--or had nothing to do with it, he knew about it because the Director of Prosecutions had told him--he always advises these things, but he does not do it.

Taking that as a sort of a lesson, I put a system in that we are now--just about three weeks ago we had all the lawyers meet in the Great Hall at the Department--and our system is this. We have these litigating divisions--criminal, civil, civil rights, anti trust, lands, so forth--and our system is that the head of those litigating divisions, say the Assistant Attorney General for the Criminal Division, is the highest authority in making a prosecutorial judgment or handling a civil case (that would be the Civil Division) of various sorts. And here is the system: if the Attorney General or the Deputy Attorney General or the

Associate Attorney General--the Associate has some parts of the Department, the Deputy the other parts--if we overrule the head of the litigating division, we will have to make it public--that's the rule; and let the public judge us--and, unless it would invade the privacy of the defendant, we would also give reasons.

Now, I got on to that system because I overruled the Anti Trust Division not so long ago and allowed the merger of LTV and Lykes--we disagreed about the facts. But when I overruled them, I made it public and I gave the reasons why I overruled it, and then said that I had overruled them. And so the public and the Congress could judge me as to whether I did right or wrong in that.

Now, that's half of it: if we overrule, we have to make it public. And that system will be there a long time, I think; I don't think anybody will change that.

The other half of it is that if there is some approach made to any lawyer handling a case, and it is deemed to be improper, or even possibly improper, that has to be reported immediately to me. I have already had some things reported to me. Now, this word went out around Washington and there wasn't too much said, but it had a tremendous impact. People will be very careful about calling

you up about a case--and they should. There is nothing wrong with inquiring about a case--Congress has to do that, and the press does it every day. But I am talking about something more than that. As lawyers, we know when somebody has gone a little too far. That is the sort of thing that has to be reported.

I don't think there is going to be too many things reported, because as the system takes over, people will be much more careful about doing that.

Now, you might wonder why I am doing this. I said the President had asked me to make the Justice Department as independent as possible. But I got to thinking about the law; and you can't have good law and a good legal system unless it operates on neutral principles. And that is the way the Justice Department has to be. There are certain things in our government that are non-partisan, or bi-partisan, if you will--that are neutral. One is the foreign intelligence; I have never heard any squabble between Democrats and Republicans over the foreign intelligence. Sometimes in our history we have had that same kind of approach to foreign policy, usually in time of war when it happens, sometimes otherwise.

But certainly the Justice Department ought to be

a neutral place; every citizen ought to look to it as a place being operated with absolute neutrality. I think we have been able to do that.

Now, we need to let the system run awhile to be certain that we have the kinks out of it, but--perhaps when I leave that may be the best thing that I have done; it may last longer than anything I have done.

In closing, I want to tell you that it has been quite an experience for me to be in Washington. I never had been there--I mean, I had been there, but I never had any real experience in Washington. It's been a great challenge; it's been a rewarding experience--I think I learned a lot; I hope I made some contribution.

But I am often reminded of the story of the territorial governor who was sent to Nevada from Washington, and he wrote back and said that this is no place for a Christian --and I did not remain one long.

[Laughter and applause]

QUESTION: [Inaudible]

ATTORNEY GENERAL BELL: Right now? I think the ethics bill, to restore the confidence of the people in the government, is very important, and I think this Foreign Intelligence Surveillance Act is very important. One of

them strengthens our nation externally, and the other one strengthens our nation internally. People have to have trust in the government.

When I got to Washington I noticed that people lacked confidence in the government. Watergate was a bad period for our country, and losing the Vietnamese war was a bad period. And I got to thinking about what we have been through--we had been through the civil rights revolution, and for fifteen years, I guess, our country was issue-oriented. There was nobody worrying about the overall system; we were fighting these issues, trying to resolve issues.

And I think we have started now building back, and anything that we can do to restore the faith and the confidence of the people in their government is worth doing, and anything we can do to strengthen our nation in its relationship with the other nations of the world is worth doing.

And that is two things that we are doing.

We have very little legislation going on in civil rights right now; we are trying to adjust to what we had, we have already enacted--and the Civil Rights Division is doing a very great deal.

The institutions bill I mentioned is much needed, because--for example, if there is a suit against a state prison, it is brought by a prisoner and the judge can't get the resources to run a case--and finally you get into the case and notice there is a lot of things wrong with the prison. In most every case, we are asked, the Department of Justice, to come in as a friend of the court, sometimes we are allowed to intervene. The Fourth Circuit has just ruled that we cannot intervene.

But we really are the only people to have the resources to get into something like that--and I am not criticizing the state prisons, many of the federal prisons are bad also--there's going to have to be a lot of money spent in this country on prisons, we are going to have to face up to it.

But one thing I do, I have put a rule in that the Civil Rights department has to try to conciliate with the states in those kinds of cases before suit is brought. And that is working out very well indeed.

But that is a civil rights bill that will strengthen the system, for example.

Congressman Kastenmeier may want to add to what I have said; he may have some other things that he thinks are

important.

But those two, first two, are really important, in my judgment.

QUESTION: What do you see as the role of the FBI today in the federal government, and also their role tomorrow?

ATTORNEY GENERAL BELL: Well, their role today and tomorrow, I hope it's going to be the same. We put in what we call the quality-over-quantity program, and we are directing the FBI's resources now to five priorities. The first one is the foreign counter-intelligence, which they run; the second one includes four parts: public corruption, organized crime, white collar crime, drug trafficking-- those are the next four priorities; and after that you get to some of the other things, like bank robbery and the ordinary things.

[Laughter]

I say "ordinary things" in the sense that most all city-urban police departments have bank robbery squads. And we are trying to work out an arrangement, by taking a leadership position, with the state and local police and the state and local prosecutors, attorneys general and local prosecutors, that we divide the work. We are meeting now--every

U. S. Attorney is meeting and we are trying to get into some system where we don't have overlapping. We can't afford so much overlap in the country. And we want to have good law enforcement, we want to allocate the work as between these levels of government.

You know, we have a complicated form of government. Federalism is the most complicated form of government you could have, I guess; we have got three levels of government. So we have got to work it out better in some way than we have been doing in the past. And that is the role of the FBI, those things. And we have only 800 accountants out of 3,000 agents; we are going to have to get more accountants--and it's hard to find accountants--we are going to have to take other people who have high accounting aptitudes, run our own accounting school perhaps. There is a great deal of crime committed today through paper and computer--we are in the computer age. And if we don't know as much as the other side, we are in bad shape. And that is where we are trying to improve.

QUESTION: I would like to ask one question that seems to bother a lot of people, and that is how strong the drug problem is in our army, our navy, and all the other branches of our government, because every once in a while you

read this and that--money is being made in the billions; it's coming into this country from all over the world.

What do you think this government can do to stop that?

ATTORNEY GENERAL BELL: As you know, we have the Drug Enforcement Administration in the Department of Justice --that's 4,000 people in that agency. And they are gaining on the drug trafficking; they are making great progress in the heroin area. We have intercepted more marijuana in the first eight months of this year than had been intercepted in the last three years before that. That is coming in from Colombia principally.

I now have the FBI and the DEA working together on three task forces; one involves money, money, big money --and if DEA did not have the accountants and the paper trail experts to work on this particular investigation--and we are making a lot of progress in that--if we could take the money out of it, we would soon bring it under control; there are huge sums of money in it. And then, of course, we are only into heavy trafficking, you understand; we have nothing to do with the local use of these drugs. I think our rule is we bring a federal case if there is seventy pounds of marijuana involved, some such thing--we got a

breaking point, and the rest is left to the local government.

But these big ship loads and airplane loads are the people that we are after.

I don't know about the army, navy, and air force --that's beyond my ---

QUESTION: Well, the federal government has been working on one item, and that is to make that innocuous as far as marijuana goes. But if that is what the people think, then they are going to keep using it, and ---

ATTORNEY GENERAL BELL: No, we are not working on that. I think there is something in the Criminal Code--it did not legalize it, you had to pay a penalty of some sort-- I don't think you have to go to jail, as I remember it.

But essentially the federal level of government has nothing to do with the use of drugs; that's a local problem.

What we ought to do is interdict the importation of these drugs. Most of them, as you know, have to be brought in here from somewhere. That is what we are working on.

QUESTION: How soon before we get another federal judge?

ATTORNEY GENERAL BELL: I told somebody **today--** and yesterday I made the same statement--that if **we can get** 75 to 80 percent of the 152 judges in six months, **I think** we have done a pretty good job. We might **get one here--may** be the first one--but you can't obviously **get anybody con-** firmed until about the first of **February, because Congress** won't come back till January. In the **meanwhile, you have** got to get the names; the names have to be **developed; you** have got to have an FBI investigation run. We have **put a** new rule in, that you have to take a **physical examination.** Then I have to get that, study all **that out, send it over** to the President; then it has to go to the **Senate--so it** takes a little time.

But we have **tooled up to get these judges as fast** as we can, because we need the judges. We are very **much** aware that we need the judges. After all, we have **a lot of** cases in court ourselves that we need to get resolved. I **guess** we are the chief litigant in the federal courts.

QUESTION: I saw you on TV Saturday night **cheering** for the Yanks in New York. What is your prediction **who is** going to win ---

[Laughter]

ATTORNEY: Well, I will have to confess that I am

- a Yankee fan, and have been one since I was a small boy. I don't understand how I got to be one, but I am. I have never seen the Yankees lose in a World Series, and I have attended three Series. I think the Yankees are going to win, but I am not a gambling man.

[Laughter]

QUESTION: Are there any prospects for increasing the maximum amount of compensation for lawyers appointed under the Criminal Justice Act?

ATTORNEY GENERAL BELL: Under the Criminal Justice Act? I haven't seen any movement in that direction. I know inflation's on.

QUESTION: [Inaudible]

ATTORNEY GENERAL BELL: I will take that back and I will report it to President Carter who holds lawyers in the highest regard.

[Laughter and applause]