



# Department of Justice

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TRANSCRIPT OF AN

ADDRESS

BY

THE HONORABLE EDWIN MEESE III  
ATTORNEY GENERAL OF THE UNITED STATES

BEFORE

THE J. FRANK COAKLEY NATIONAL SYMPOSIUM ON CRIME

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THE NATIONAL COLLEGE OF DISTRICT ATTORNEYS

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AMELIA ISLAND PLANTATION, FLORIDA

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Thank you very much, ladies and gentlemen. I appreciate that warm welcome very much particularly because I regard that as a welcome from comrades, many of whom I have had the pleasure of working with in the past. It is very much appreciated.

Needless to say, I am happy to be with you tonight and happy to be here under these auspices. As I mentioned, I see many friends out there. I am also happy because this is really the first event in my reentry into the practicing membership of the legal profession.

I have been, for the last four years, among a group of people. There were a lot of lawyers there to be sure, but we were also in essentially a nonlawyer environment. We had some people there, as a matter of fact, who liked to tell jokes about lawyers, one of them being the President of the United States himself. In our morning meeting that we had every morning at 9:00 he could hardly wait to tell his latest lawyer joke.

I will share only one of them with you. There was this one occasion when he said, "Ed, do you know why it is that the medical researchers are now using lawyers instead of white rats for the most dangerous medical experiments?" And what could I say, "No, Mr. President. Why?", knowing what I was opening myself up for. He says, "Well, there are two reasons. First of all, in the United States we now have more lawyers than we do white rats." (Laughter.) "And secondly, with the lawyers, the scientists don't get that same feeling of affection they sometimes get for the rats." (Laughter.)

I guess I ought to say at the outset, too, that I won't be formally sworn in until Thursday the 14th of March, and therefore, my remarks tonight are my own views and do not necessarily represent the policies of the Justice Department. (Laughter.)

I am particularly honored to have been asked to be here and to present the opening address of this Frank Copley National Symposium on Crime. Frank Copley, as you have heard in Jack Meehan's very fine letter, was one of the outstanding prosecutors of all time. I had the pleasure of working with him very closely on many of the things that Jack talked about here.

In legislative work, I served as his representative in Sacramento, and one thing that you always looked forward to in that job is every three weeks he came to Sacramento for a day just to make sure that everything was going all right. He was a vigorous individual.

At that time, Frank Copley was Chairman of the Joint Law and Legislative Committees of the District Attorneys and Peace Officers of California, and Bill Parker, the famous Chief of Police of Los Angeles, was the Vice Chairman.

As some of you Californians know, they didn't always see eye to eye on everything, and one of the real pleasures was to see the arguments between these two Irishmen on what position ought to be taken on legislation. It was, indeed, one of the foremost parts of my education.

But Frank Copley was everything that Jack Meehan said that he was. He had a tremendous influence on the criminal justice system throughout the nation. He was an advanced thinker. He was a very thoughtful, dedicated person. His leadership, as you heard, resulted in the creation not only of the National District Attorney's Association--at that time it was called the National Association of County Prosecuting Attorneys, but he and Frank Hogan together founded it, and then he was also instrumental in the creation of National College of District Attorneys, because he felt that prosecution was more than just lawyers going to court, that was an integral part of the criminal justice system and that the quality of district attorneys, prosecutors, really set the tone of the whole criminal justice system.

His efforts at enacting legislation in California created models which were emulated in other state legislatures throughout the country and had a major effect on some of the criminal justice legislation passed by the Congress.

His personal example set the standard for the country for integrity, skill and dedication as the qualities of successful prosecution, and his devotion to the training of young lawyers was reflected even in his own office where we were privileged to sit many nights until 8:00, 9:00, and sometimes 10:00 listening to how a case should be tried. This same spirit went throughout the country and through the California District Attorney's Association, and as you heard, through national organizations

such as the National District Attorneys' Association and this college.

It is a great temptation to spend most of my time telling Frank Copley stories because as all of us here can remember, there is a rich volume of those stories, but I am sure you will hear some of them in the days ahead and so I will refrain from giving into that temptation. Let me just say that perhaps nothing that I've been invited to do is quite as poignant to me as to be part of this particular symposium.

I would like to commend the National College of District Attorneys and Dean Douglas for sponsoring this symposium. First, it is a most appropriate means of honoring the memory of Frank Copley for the reasons that Jack Meehan said in his letter.

Secondly, I think it is most advantageous to the country to bring together leading prosecutors from all over the country to discuss the critical issues of the criminal justice system. I think individually you will benefit from taking the time to think about your work and its ramifications in terms of policies, procedures, new ideas in the future, and certainly the nation will benefit from the results of your thinking.

I would suggest to you, and I'm sure you have thought of this yourself from time to time; that the prosecutor occupies a unique position in the criminal justice system. At the most direct level, his decisionmaking ability, the critical prosecutorial decision whether or not to charge a case or what to charge in a particular case and his advocacy skill, not only his

but that of his office, determines the real quality of justice in your particular communities.

Beyond that, your role in regard to the police, the standards you set, your role with the public, your role with other officials has a profound impact on law enforcement and the administration of justice, in terms of the police and setting the standards of investigation, of police conduct, of how well they can search for evidence. It is your role in the training which has a tremendous effect on the quality of the police work done in your communities.

This was one of the things that Frank Copley was particularly strong on, and many hours of his own time and even more hours of his deputies' time was spent dealing with the police both in training and in going in on investigations with them and to provide that input on the legal side which materially influenced and improved the investigatory process.

In terms of the public, your responsiveness to the concerns of the community, your articulation of the criminal justice system, has a big effect upon how people feel about the criminal justice system.

In regard to other officials, legislatures, governing boards and so on, as a powerful advocate, you determine, to a great extent, the laws, the legislation, the resources and the processes which protect the lives and property of our citizens.

And so as a result of this broad role, the prosecutor possesses knowledge and expertise that is not found elsewhere in

the system. It's the prosecutor who sees and knows the work of the police and of the trial courts, of course, because that's where you practice.

The prosecutor knows the appellate process both in the cases that are taken there which originated in the trial court and also the impact of judicial review on the ability to investigate and prosecute crimes.

The prosecutor knows the impact of legislation, and indeed is usually the resource person who testifies before the legislature on matters pertaining to criminal procedures and the substantive criminal laws. And, obviously, the prosecutor knows the results of the correctional process as he sees the criminal defendants being released from that process and coming back through the criminal justice system again.

And so I think it's particularly important that this symposium brings together the expert and enlightened thinking as represented by this group and focuses upon the key issues of criminal justice policy and practice that you'll be discussing over the next few days.

As a result, I predict that the nation will benefit from your ideas and that you and your offices will benefit individually from this investment of your time.

Tonight, in kicking off the sessions that you will be having, I'd like to suggest that holding this symposium tonight at this particular juncture puts it at a most opportune time in the history of crime and law enforcement.

I don't think it's overstating the case to say that this is a particularly critical juncture or crossroads for the nation in terms of where we are going in the quest for public safety and the effective and efficient administration of justice.

This was described by the National Research Council when it opened a 1981 report of its Committee on Research on Law Enforcement and the Administration of Justice by summing up the state of the law in this way. It said criminal justice policy in the United States is in a state of flux. Past practices are being challenged, current policy is marked by contradictions and controversy, and future directions are uncertain.

Certainly, that is a description of a situation, or diagnosis of a situation, in which some enlightened and expertise-type thinking is very definitely needed.

The past 20 years have been replete with all kinds of attention given to the problem of crime. Almost two decades ago, President Johnson appointed the President's Commission on Law Enforcement and the Administration of Justice, which reported to this nation in 1967 with a sweeping series of recommendations on how the criminal justice system should be improved.

Then, in 1968, in response to that report, the Law Enforcement Assistance Administration was created and began its 12-year existence devoted to seeking to reduce crime. Indeed, Don Santorelli, one of the administrators, is with you and will be an observer at your conference here.



In the early 1970s, the National Project on Law Enforcement Standards and Goals was launched, incorporating all elements of the criminal justice world and adding private bar associations and voluntary organizations in addition to the governmental agencies at all levels.

Then more recently in the 1980s, task forces on the national level covering such subjects as violent crime, victims and family violence have provided further knowledge of the problems and the requirements at the working level of the criminal justice process.

Well, in addition to these particular projects, and I could go on naming others, there have been innumerable conferences, symposia and projects which have been conducted during these two decades. To a great extent supported by LEAA grants, the literature in all aspects of criminal justice has virtually exploded during this period of time. The amount of new publications and materials has increased several thousand percent in just this 20 years.

Now, although public officials, legislators and scholars vary in their estimates of the results of all this activity, I would like to suggest to you as a kind of a starting point for your deliberations that at least there have been four beneficial results which have emerged from this increased national attention which is given to public protection and the rule of law.

First of all, I think we can say without qualification that today there is better communication among the various elements of

the criminal justice system than we had a quarter of a century ago. Police, district attorneys, judges, correctional officials, and so on, to a much greater extent are talking to each other through law enforcement planning agencies, and so on.

Secondly, within the disciplines that are represented in the system, greater attention is being given to education, training and professional standards. We think, for example, of what has emerged in the various states in terms of police standards and training commissions and police standards and training funds; the judges' college which has been established and now more recently established by legislation last year the National Institute for Judges' Training, the Law Enforcement Accreditation Commission which has begun to accredit police agencies throughout the country, and the Federal Law Enforcement Training Center are just a few of the things that fall into this category.

Thirdly, I would suggest to you that there is much greater cooperation and understanding between the practitioners of criminal justice and those people who in a more academic setting are conducting research in this field.

James Q. Wilson observed recently in an article he wrote, that relations between scholars and practitioners in the field of law enforcement are much better today than was once the case.

The two groups no longer view each other in quite such stereotypical terms as "fuzzy-headed academics" versus "heavy-handed cops," and indeed the result of this has been a much more cooperative attitude between these groups.

And perhaps because of this, or perhaps as a result of the changes in viewpoints, better research data is beginning to emerge which provides useful information on which to base both policy and management decisions.

I'm thinking now, for example, of such things as the Rand Report, which I'll refer to in greater detail later, on probation. They've also done some very good things on criminal demographics, as well as on the incapacitation of convicted offenders.

The National Institute of Justice, particularly in the last three or four years, under the guidance of Chip Stewart, has produced a much more practical body of research information, such as the actual costs of the exclusionary rule and the economic aspects of crime.

The Bureau of Justice Statistics, with its specialized studies on various aspects of justice activities, likewise is providing data that can actually be used by those in the field.

And so it is because of these and other developments -- these four particular conclusions that I've made and other developments that have taken place -- I would suggest to you that we are at an important crossroads today.

The Institute of Contemporary Studies, a San Francisco-based think tank, published in 1983 an excellent book on crime and public policy which summarizes our situation as follows.

They said that experience as well as systematic research has cast serious doubt on a number of key concepts that have shaped

policymakers' decisions concerning control, arrest, prosecution, sentencing, incarceration and release of offenders.

They said that various elements of our crime-fighting strategy which had prevailed during the '60s and the '70s were also called into question, including the effectiveness of police control methods, the accuracy of processing and sentencing choices, and the potential of broader social reforms for reducing crime.

Two lessons emerged from the experiences of the decade, they said; first, that crime was a far more intractable problem than we had earlier been led to believe; and, secondly that there was clear room for improvement in our deployment of resources to control crime.

Well, in your sessions in the next three days, you will be wrestling with that intractable problem of crime. You have established three important areas for study: crime and criminals -- Judge Fleming here will be providing the resource for that, as you have heard earlier -- prosecutor and the media, and prisons and the alternatives, Professor Dow being the resource person there.

I would suggest that these three topics provide an ideal framework within which to assess, project and prescribe the future of the criminal justice system. When we talk about crime and criminals, it would be an opportunity to utilize the new information that is available on how criminals are handled and what the results might be.

In this regard, I call your attention particularly to the new Rand Corporation on Felony Probation, which is sponsored by the National Institute of Justice and which was released just one month ago. I'm sure many of you have heard of it already.

But this study found, for example, that taking two typical counties in California, two large counties in which the cases were roughly typical of the entire state, they found that 65 percent of the people who were placed on probation were rearrested while still on probation; that 51 percent of them were convicted of a new crime; and that 34 percent of them were given a jail or prison sentence, and that of the new charges filed against the probationers, 24 percent were for robbery or other violent crimes and 51 percent were for burglary, theft, forgery or motor vehicle theft.

The fact that this is the way in which the system is finally waking up, that there is, in effect, now statistical proof of the revolving door that some of you have talked about in the past, gives validity, I think, to the need for new theories, new plans, new systems which will be more effective in protecting the public than some of the traditional methods that we've used in terms of handling criminals.

Now, I would also say that in the last year we have perhaps had more significant new developments in regard to crime and criminals than we have had for some time. For one thing, we now have a two-year, and perhaps if the statistics hold up, a three-year trend where for the first time in a quarter of a century we

will have had consecutive years in which the crime rate has started to go down.

And that, I think, is worthy of consideration because there have been some changes that have been made which have resulted in this. Many people talk about demographics as being one of the reasons, and I think there are few of us who would argue that it is only one of the contributing factors.

But many other things are happening that have to be recognized. The fact that more people are going to jail or to prison and that those who are criminals are being held for longer periods of time undoubtedly contributes to this reduction in the crime rate, or at least a trend towards a reduction in the increase in the crime rate. And this is a very important factor that ought to be included in your thinking about crime and criminals.

And another important factor is that the Supreme Court has begun to take a new approach in its consideration of the criminal law cases that are referred to it. In the several cases decided this year, such things as the recognition of a good-faith exception to the Exclusionary Rule marks a real point of departure that we have not seen the likes of since 1961 when the infamous Mapp case came down.

And particularly important, I think, is not just the action in regard to the Exclusionary Rule, but the fact that in the language of the Court they were willing to balance the public

safety with the rights of criminal defendants in arriving at what the public policy ought to be in terms of deciding that case.

I would also suggest to you that that series of cases in the Supreme Court this year has very important implications for district attorneys because the quality of your adaptation of those cases to the training of police officers and to the standards that you work with police executives to impose upon their departments will mark the difference of whether the Supreme Court feels comfortable with continuing with this line of cases or whether they will feel, as did some Justices in the 1950s and the 1960s when the original Exclusionary Rule was applied to the states, that the police were not capable of handling increased discretion such as that granted under this particular series of cases.

So, again, in discussing crime and criminals, I would suggest to you that this is a fruitful area of discussion.

Your second topic, the matter of prosecution and prosecutors and the media, of course, brings into your arena one of the foremost topics of contention and discussion in many other areas of our society today.

For example, the media being the means whereby the public gains its viewpoint of the justice process is a very important part of every trial, of every investigation, of every prosecution.

I think the importance of the media is reflected in a statement that was quoted by Judge Griffin Bell, one of my

predecessors as Attorney General, when in an article not long ago he said that he had seen a sign behind the desk of a newspaper editor advising those who would take on the press that it is never wise to do battle with anyone who buys printer's ink by the barrel. Well, I think that's a very good guideline initially.

But I would suggest that just as the military leaders of our country after the news media controversy that surrounded the Grenada operation took stock of their relationship with the press, that this is a good time for prosecutors and the news media to be thinking about developing rules of engagement, or at least rules of cooperation, but perhaps to develop guidelines which would be involved with protecting the interests of all parties -- the police, the prosecutor, the defendant, the court, the victims and the public -- so that the interests of all of these could be considered in the guidelines that would govern them.

I think all of us, as prosecutors or former prosecutors, have been concerned with, at the end of the trial day in certain well-publicized trials around the country, there is a foot race between the defense attorney and the prosecuting attorney to see who can get to the back of the courtroom or out in the hall first in order to get his side of the case before the public on the TV cameras for the evening news.

Likewise, there was one celebrated case recently where they even went to the extent of the defense attorney having marks for



where his feet had to stand to be sure to get the right camera angle when he was explaining his side of the case.

Well, we are in a new media age where a much greater amount of public attention through the media, particularly with television, is focused upon trials and prosecution, and where the electronic media has changed some of the groundrules and where the print media is now catching up with the electronic media in the intensity of their coverage. And I think, therefore, your deliberations on prosecution and the media certainly are very important.

Your third topic, prisons and alternatives, come at a time when hardly a week goes by that some national magazine or national television channel doesn't have a presentation on the problem of our prisons.

And, again, the work of a prosecutor, while not directly involved with corrections, is certainly influenced by the correctional climate within your state or within your jurisdiction.

We are doing several things at the federal level at the present time in this area. The National Institute of Justice particularly has devoted a great deal of attention to this matter of prisons.

For one thing, what is happening both in the federal system and in many state systems now is to expand prison capacity and trying to find ways where that can be done at less cost.

I think it's significant that in the last three or four years, for the first time that I can remember in history, citizens of several of our states have been willing to vote funds for prison construction because they realize that unless there is adequate prison capacity, the sentencing of convicted offenders to prison just is not going to happen.

A second approach that is being looked at both in the federal and local jurisdictions, an approach to crowding, is to improve the efficiency and cost effectiveness of existing prisons. And here a lot can be done, and perhaps one topic of interest that will be included in your deliberations is what is now being started on a trial basis in some states of providing private sector prisons or having the private sector involved in different aspects of the correctional process.

Last week, a conference was held in Washington, D. C. in which some of these experimental programs were presented and discussed by a variety of officials in the criminal justice system. And it appears, at least, there are some things in that direction which can be possibly used.

A third strategy to relieve crowding in prisons is to develop alternative forms of punishment to incarceration. And here, again, your resource person is an expert, having written in this field. But I think, again, it's important to have the prosecutor's viewpoint represented in this so that there can be a balance between reasonable alternatives to incarceration and the

costs in terms of public protection which may be involved by not incarcerating convicted offenders.

And, fourth, research is being conducted on a widespread basis now into matters affecting policy decisions about crime. For example, a recent study by the National Institute of Justice found that the costs of having people kept out of prisons may be much greater than the costs to the community in actual dollars and cents. They may be much greater than the costs combined of building new prisons as well as the annual cost of keeping people in prison.

Simply put, it means that we are having researchers look at the crucial issue of the cost of imprisonment measured against the cost of the crimes that would otherwise be committed by an offender who is not restrained by incarceration.

Well, these are some of the things that are happening in the three fields which you will be discussing over the next few days.

In closing, let me say that I believe you have a rich agenda of controversial subjects ahead of you. The context for your deliberations might best be described by quoting the first paragraph of James Q. Wilson's closing chapter in that Institute for Contemporary Studies' book on crime and public policy.

He says there that if this book had appeared 15 years ago, its contents would have been very different. Depending on the political inclinations and professional affiliations of its authors, it would have either drawn attention to the possibility of improving human nature and man's social arrangements or

vigorously condemned the changed legal context within which crime control objectives were being pursued.

In the first case, we would have been treated to skepticism that crime is increasing. We would have been treated to a demand for the redirection of police efforts towards community relations instead of catching criminals, a belief that crime would go down automatically if social progress were accelerated, and a call for greater resources to be spent on proven methods of rehabilitating offenders, and a reminder that imprisonment for crime therefore should be used as rarely as possible. I'm sure those are sentiments that are familiar to some of you, having heard them over the last two decades.

In the second case, on the other hand, we would have been told that crime has gone up rapidly in large measure because courts have handcuffed the police, and we would have been urged to remedy this by appointing new judges and a better Attorney General.

Beyond that, bringing back capital punishment would help put an end to increased levels of violence. We've not only heard that; some of us have preached that in 20 years.

Well, in any event, I think the important thing is that Wilson goes on to say that the task is not necessarily to reject any or all of these views, but to expose them to a far more thoughtfully and scientifically informed opinion than would have been possible in prior years.

That, I would suggest to you, is your challenge over these next few days in this J. Frank Copley National Symposium on Crime. From your deliberations will come conclusions that will benefit your colleagues and all of those involved in protecting our people, as well as benefitting the nation itself. I commend you and wish you well in the task ahead.

Thank you.

(Applause.)

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