

Attorney General Thornburgh, keynote speaker at Ninth Circuit Judicial Conference, Laguna Niguel, California: "An Agenda for Justice," July 10, 1989 (33:50)

>> Introduction: Dick Thornburgh became the 76th Attorney General of the United States on August 12, 1988. He was director of the Institute of Politics at Harvard's John F. Kennedy School of Government. Prior to that outstanding service, he was partner in the Pittsburgh law firm of Kirkpatrick & Lockhart. He served two terms as the governor of the state of Pennsylvania, and before that, was United States attorney for Western Pennsylvania and assistant attorney general in charge of the Criminal Division of the Department of Justice. The country has been blessed that he has accepted responsibility for a major role in our government, and we are blessed that he is here to keynote our conference. I am honored to present Dick Thornburgh, Attorney General of the United States.

[Applause]

>> Thornburgh: Thank you very much. Thank you. Thank you. Thank you.

[Applause continues]

Thank you...very much for a warm welcome here today. I appreciate the generosity of your introduction. All of us, I think, kind of quake when we're about to be introduced to an auspicious group like this. I was in my hometown of Pittsburgh, Pennsylvania, not long ago when an eager master of ceremony sprang to the microphone and said, "I know you all want to hear the latest dope from Washington, so here's the Attorney General."

[Laughter]

I...I think you ought to know, in addition, how I happened to come to be here today. Shortly after the first of the year, when I'd assumed my new position in the new administration, I had a call from your chief judge, and he extended congratulations and said, "Dick, you now hold the highest legal office in the land. You're charged with enforcing the rights of all of our citizens, ensuring that their liberties are honored. And I want to ask you a question." He said, "Do you still believe in free speech?"

[Light laughter]

I thought for a moment. I said, "Yes, I do." He said, "Well, how about coming to the judicial conference and giving one?"

[Laughter]

Well, let me say, Chief Judge Goodwin and Judge Farris and all the distinguished judges and lawyers and associates and friends and well-wishers of this distinguished assemblage, I am extremely pleased to be with you today and to ponder with you some of the enormous challenges that face those of us who are involved in the administration of justice in these United States. It is, I must admit, somewhat akin to a criminal offense to come to this beautiful spot for less than half a day. And I am green with envy for those of you who have little interstices in your schedule that permit you to enjoy fully such a glorious spot. But I'm sure a lot of business is to be transacted as well, and I'd like to spend some time this afternoon as you begin to work yourself into your agenda, talking about an agenda for justice. By this, I mean an agenda for the Department of Justice as well, but not limited to that, because our concerns go beyond the four walls of the Department, and intertwine with those of you who are judges and practitioners in the courts of the United States across this nation. As was indicated, I am a repeat offender at the Department of Justice, having served time previously as a United States attorney and as an assistant attorney general. And it is a great privilege -- indeed, an honor -- for me to return to an institution for which I have so much respect and affection. And this is a very special year for the Office of Attorney General. The same Judiciary Act of 1789 which created the court system within which you serve also created the Office of Attorney General. It was, in those days, a part-time job. It has grown today to the supervision of some 75,000 employees administering a budget of \$6.4 billion this year. That would be, I think, strange to contemplate for the first Attorney General of the United States, Edmund Randolph, who, as many of you know, was George Washington's personal attorney -- what might in today's terms be called a crony of the President. He was paid \$1,500 a year, which was not only meager by our terms, but reflected some discrimination against the Attorney General because the first Secretary of State and the first Secretary of Treasury were paid \$3,500 a year, while the Secretary of War -- the equivalent of our Secretary of Defense -- was paid \$3,000 a year. Why the discrepancy? In the history of the Department of Justice, the following rationalization occurs, and I quote, "Congress reasoned that the Attorney General could augment his salary through private practice." "The prestige of the office," one observer said, "would be so great that it would be well worth the while of any lawyer to

accept the office with only a nominal compensation." In fact, when Attorney General-to-be Randolph had first balked at the job, the history of the Department of Justice tells us, he had been persuaded to accept the office of Attorney General by Washington himself, who enticed him with the prospect that the office would "confer pre-eminence upon the incumbent and accord him a decided preference of professional employment." Needless to say, they had no independent counsel or special prosecutor in those days, and the task finally, in 1853, became a full-time job, and the specter of conflict of interest disappeared thereafter, they say.

[Laughter]

Nonetheless, the office has survived and prospered over the years, and it is quite an historic event to observe, along with the celebration of the 200th birthday of the Judiciary Act of 1789 in September of this year, the observance of the 200th anniversary of this office. It is said that it is a wise speaker who knows his audience. Therefore, I want to begin some observations with a reminder that this administration is firmly committed to a 25% judicial pay raise.

[Laughter]

[Applause]

Now, if that's not an applause line, I never heard one. But in all seriousness, the President and I are committed to a redress of the situation, which has seen a 30% decline in purchasing power since 1969, and no coincidence that more judges have left office in the federal court system since 1969 than in the entire 180 years preceding that year. We hope to work on the Hill to pick up the pieces from the recommendations of the Quadrennial Commission and to secure a situation that will not only aid those who are present incumbents in closing the gap between what they need to survive and what is presently provided, but also to once again enable us to continue to attract the best from the private sector and from state judicial posts to the federal judicial system. In that regard, Judge Goodwin, we are working to fill the presently existing judicial vacancies. We have found some resistance in recruiting prospects because of the pay situation. But a process is in place to review and recommend to the President those who assume the very high office of federal judge in the district and circuit courts. That process has been worked out by our consultations with the White House and the Senate Judiciary Committee. We have been obliged to broker with the Standing Committee on the Judiciary of the American Bar Association some contentious issues, but agreement has been reached in that regard

that will enable the Department, the President, and the Senate to continue to take advantage of the ABA committee's assessments of the professional competence of those who are considered for these offices. The first four nominees of the Bush administration have been confirmed. Pleased to say that three of them are here today. Four new appointments were announced today, and there are about two dozen more in position for early action by the President upon his return from Europe. We are sensitive to the shortfall in judicial man- and womanpower that results when these vacancies occur for too long and hope to move as expeditiously as possible to see that they are filled. We're also working with the Federal Courts Study Commission, established last year and chaired by Circuit Judge Joseph Weis of the Third Circuit. Our Assistant Attorney General, head of the Criminal Division, Edward Dennis, represents the Department of Justice on this effort, which is a 15-month study, a top-to-bottom review so styled by Chief Justice Rehnquist, so that a long-range plan can be developed for the federal court system. It offers a remarkable opportunity, including the chance, among other things, to consider alternate methods of dispute resolution, the structure and administration of the federal system, including, no doubt, a consideration of the arguments for and against the division of the Ninth Circuit, upon which this speaker wisely takes no position today. The methods of resolving inter- and intra-circuit conflicts and the types of disputes that are properly brought within the federal courts for resolution, including, no doubt, a review of diversity jurisdiction and other unique characteristics of the federal court system. This promises to be an exciting and challenging effort, one that deserves the attention of all of us involved in the administration of justice, toward the goal of providing a more expeditious, fair, and comprehensive federal court system.

Let me finally share with you, briefly, some of the substantive priorities of the Department of Justice in this administration of President George Bush. Not surprisingly, those substantive priorities are founded in the expectations and concerns of the American people. First and foremost, in today's society, Americans expect an aggressive effort against the problem of drugs. What President Bush has accurately characterized as the scourge of drugs in this country must command every resource that we can muster to deal with the vast international network that is responsible for the importation and distribution of drugs within this country. At the same time, I have to state my own personal concerns about the efficacy of relying upon only a law-enforcement effort to deal with the drug problem. When I was last in Los Angeles, I somewhat shocked an audience by saying, "If we want to lose the war on drugs, we can just leave it to law enforcement."

That obviously doesn't reflect any lack of gratitude or faith in the efforts of the men and women who literally put their lives on the line day in, day out. But it contains a message for all of us -- the war against drugs is never going to be won only in the courtroom. It will be won in the classroom, in the workplace, in the community, in our places of worship, and yes, in our families. It will be won when we change the value structure that makes drug use and drug dependency an admissible lifestyle in this country. We in law enforcement will do our share, but it's everybody's job to deal with the demand side of the problem. And everybody isn't doing their share of that task.

Secondly, the American people properly call for and expect the integrity of their governmental and financial institutions, which means that we have a task to perform in the area of dealing with white-collar crime -- what was once called "crime in the suites." The President's commitment in this regard is before the Congress now, and the request of \$50 million additional appropriations to double the number of investigators and prosecutors to deal with the scandal of the fiasco in the savings and loan industry.

Third, the American people expect a maximum effort against those who would deny the civil rights and civil liberties of our citizens and those persons and practices which erect barriers to equal opportunity for all of our citizens. In the civil-rights area, we have a particular federal responsibility, one that is being advanced by the legislation presently before the Congress -- the Americans with Disabilities Act -- that would extend hard-fought and hard-won civil-rights benefits for those who have received them on account of color, religion, gender, ethnic background to those who do not enjoy them and who labor under the disabilities, physical and mental, that would be addressed by the Americans with Disabilities Act, an act which has the full support of this administration.

Fourth, increasingly, as we reach the end of this decade and look forward to a new one, American citizens expect a clean environment -- clean air and water, a strong attack on those who generate unlawfully toxic and hazardous wastes. Our effort is combined with that of the Environmental Protection Agency, and as chairman of the President's Domestic Policy Council, we have moved to a new era in air-pollution assaults by the introduction of the Clean Air Act Amendments which the President set forward last month.

Fifth, American business expects firm action against predatory practices and expects an antitrust law which is pro-competitive, particularly in the climate in which we deal today, where most

major American companies deal in international markets. When I was a law student and a young lawyer working in the antitrust field, I remember the kinds of debates that we used to get into in advising clients or representing them in court, the kind of thing that would arise in a Clayton Act case involving a merger as to whether the relevant market for that particular merger included Chillicothe, Ohio, as well as Massillon, Ohio. A great deal of legal and judicial time and resources were spent on questions such as those that make absolutely no sense in today's worldwide markets. And we have to ensure that we've adjusted our focus and the reach of the antitrust laws to take that into account.

Finally, most recently, the President has proposed a new priority, an effort to deal with the threat of violent crime, particularly where the criminal use of firearms is concerned. A package that he has sent to the Congress deals particularly with the problem of domestic violence. It is designed to protect in ways that the American people expect with the protection of what I've always regarded as the first civil right of every American -- the right to be free from fear in our homes, on our streets, and in our communities.

These priorities are set forth clearly and will be followed assiduously. The principles that underlie those priorities rely not only upon the expectations of the American people, but involve the application of the traditions of Federalism and the unique and particular role that federal government has always played in law enforcement. What kinds of cases are those which we choose to bring before the federal courts? They are cases that depend upon the reach of federal law -- the long arm of federal jurisdiction -- which is often the only kind of jurisdiction that can be used to reach those criminal activities which are interstate in character or international in character. And I must say, when I return to the Department of Justice after a 12-year absence, the single biggest change that I noted was in the explosion in our international activity. Fully 50% of my time is taken up in dealing with aspects of international terrorism, the drug trade, involved international money laundering and white-collar and organized-crime schemes, and in dealing with my counterparts in countries around the world. But that is a unique and special responsibility of the federal government because of the broad reach of our jurisdiction.

At the same time, we recognize the need and pursue the goal of greater cooperation with state and local law-enforcement officials. Earlier today, I presented checks to law-enforcement agencies here in Southern California on account of a joint effort

that had been carried out against a major drug-trafficking and money-laundering operation in this area. It was done cooperatively, and the \$1.5 million that was seized in cash from the ill-gotten gains of the traffickers was shared proportionately, offering and added incentive for greater cooperation. Over \$600 million of drug assets have been seized in the last four years, and \$250 million of that has been plowed back, recycled, into more effective state and local law enforcement. And if you don't think that's not an incentive for greater cooperation, you would disregard a facet of human nature. But through our law-enforcement coordinating committees and this type of asset sharing, equitable sharing of seized assets, we have moved closer together and more fully integrated the law-enforcement capabilities of state and local authorities with the federal authorities.

Finally, in the matter of resources, both the quality and quantity of resources that we in the Justice Department can bring to bear in particular kinds of cases, dictates the types of prosecutions that you are likely to see in your courts. The quantity of resources is always in short supply, and I think when you look at the continuum of the criminal-justice process and recognize the need to advance on a common front in making up that shortfall, it becomes readily apparent that sound management and vision is necessary to keep abreast of the problem of crime and law enforcement and the administration of justice. Investigators can never be discouraged from following leads in important cases because they suspect there aren't enough prosecutors to present the case. Prosecutors should never be discouraged from taking cases to a grand jury for indictment or to a court for trial because they suspect that judicial power is in such short supply that their case will not be reached expeditiously or at all. And judges should never be dissuaded from imposing appropriate sentences for fear that the prison system is so overcrowded that it cannot accommodate in a decent and humane manner those who must serve there. That means that investigators, prosecutors, judges, and prisons, must all be looked at in the broad sense when we're talking about the resources that we have to bring to bear on the criminal-justice process.

Indeed, I suggest that the most significant element of President Bush's crime package is the \$1 billion that he has proposed to more than double the capacity of our federal prison system when one takes into account expenditures already authorized and undertaken. Because without that prison space, the deterrent capability of the criminal-justice process loses its credibility. If criminals and prospective criminals know that they are unlikely

to have to serve real time, then the deterrent capability of our laws drops. But we're concerned not only with the quantity of resources, but with the quality of those resources and what we bring to bear in that continuum of the administration of justice. Many of the cases that I've outlined to you as being typical of what we will pursue are complicated. In the white-collar-crime area, the most sophisticated schemes are devised and disguised in order to permit those who are involved to maximize their illegal profits. I was once a corporate lawyer, and I know how involved legitimate business transactions can be. When they are overlaid with the desire to conceal and disguise the true nature of the transaction, they become a massive challenge for even the best investigators and prosecutors to unwind that paper trail, which reaches often through many countries and through a variety of financial institutions and the like.

And in this regard, I think it's important to note that it's not just concern about the pay level for judges that should command the attention of the congress and the American people. There's another change that has to be looked at, and that is the level of pay for prosecutors and investigators. Assistant United States Attorneys in many parts of the country today enter on to duty at about one-third or one-half what the going rate is for new associates in major law firms in metropolitan areas -- a level that has now reached \$75,000 to \$85,000 a year in New York and other major centers. I was told by one of our U.S. Attorneys that he felt his office was really kind of a finishing school for major law firms, that after a year or two, the brightest and best of his assistants would move on -- logically -- in the face of the enormous disparity that exists between pay levels in the public and private sector. The FBI, the Drug Enforcement Administration, the Bureau of Prisons -- others labor under the same handicap.

That's another change that I noticed in coming back to the Department after 12 years. When I left in 1977, without doubt, these agencies were the elite, the top -- pay and benefits, prestige. And in that 12 years, that situation has in many areas almost been reversed 180 degrees. Here in California, for example, a survey of 89 law-enforcement agencies -- federal, state, and local -- showed 83 with entry-level pay higher than the Federal Bureau of Investigation. They receive in many areas less than recruits in major metropolitan state and local police forces. The Drug Enforcement Administration Special Agent entry level is between a half and two-thirds of what it is in Los Angeles, New York, and the District of Columbia. And the Bureau of Prisons, which now pays a first-year entry-level position of \$18,000 if they have 3.5 years' experience or 4 years of college, must

compete in California and Texas, where there are 13 major U.S. institutions paying \$18,000 to \$26,000 a year with a high-school degree and no experience.

This is not all bad, I recognize, because it means that state and local agencies and state and local governments have recognized that they must pay at a decent level to attract good men and women into their efforts. But it is long since past the time when that catch-up, that recognition, ought to be made that we need to pay not just the judges, but the lawyers who appear before those judges and the investigators who make the cases and the prison guards who deal with the results. Fortunately, a Federal Study Commission is hard at work examining these various levels and will report later this summer, and I hope will be better received than the Quadrennial Commission report, a lamented report that came in earlier this year.

When you get right down to it, I guess I'm ending kind of where I started, and that's talking about what we do to attract and keep people in public service. We're often pleased and rightfully proud of observing that this United States of America is a government of laws and not of men, but unless good men and good women continue to be attracted to public service, not just for the money, because one can't ever compete dollar for dollar with the private sector, but for the satisfaction that many of us know here of doing a job in the public interest, of improving the quality of life for our fellow citizens, and in contributing to, yes, the continuum of American democracy, then we will find ourselves shortchanged -- not shortchanged in the financial sense, but shortchanged in the quality of the system that we have devised for the administration of justice. I, like many of you, am proud to be part of that system, and I appreciate the chance to be with you today and aspire to being what your conference theme has recognized and designated as being a partner in the process. Thank you very much for the opportunity to visit with you.

[Applause]