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ADDRESS  
OF  
THE HONORABLE BENJAMIN R. CIVILETTI  
ATTORNEY GENERAL OF THE UNITED STATES  
BEFORE  
THE JUSTINIAN SOCIETY OF LAWYERS

7:00 P.M.

WEDNESDAY, SEPTEMBER 26, 1979

GRAND BALLROOM  
THE PALMER HOUSE  
CHICAGO, ILLINOIS

1 THE ATTORNEY GENERAL: Bona serra. Reverend  
2 Father Cozi, Chief Judge Fairbanks, Chief Judge Parsons,  
3 former, I guess, President Leonard Marri, the new President  
4 Roger Moratolli, Presiding Officer Charley Fortulino, other  
5 distinguished members of the audience, both judges and public  
6 officials, and servants of justice, ladies and gentlemen:

7 My congratulations to the scholarship recipients.  
8 I share the pride they have and their parents have for them  
9 in their achievements. My congratulations to Joe Keppo for  
10 his award. He made me wince a couple of times about Keith  
11 and other anglo names. One of my sons is named Andrew, and  
12 his name is Drew--his nickname is Drew. You could hardly  
13 have a more anglo name. Some of the forecasts for the future  
14 about assimilation I believe have already occurred, but so  
15 has the pride in our ancestry and the great contributions  
16 of the Italian-American people.

17 To Mike, that was a great introduction. I thought  
18 for a good while he was talking about someone else till he  
19 talked about some of those down-home things in Baltimore,  
20 and I knew he had done his homework too well. The only  
21 trouble with having Mike as an introducer for the attorney  
22 general is he's a little too handsome. [Laughter]

23 Other than that, it was a very fine introduction.  
24 I'd like to say hello to Phil Corboy, who is in the audience,  
25 who not only is a great trial lawyer from Chicago and known

1 throughout the country, but now heads a 22,000 roughly--or  
2 maybe 24,000 by now--section of the American Bar Association,  
3 which is my fondest section. I've served on it since I  
4 entered the Department of Justice's litigation section. And  
5 it does this city proud as well as the profession proud by  
6 its contributions. [Applause]

7 I am deeply privileged and honored to be here as  
8 an Italian-American--I guess that's coincidence--but also  
9 as attorney general. And I looked over briefly the past  
10 recipients, and I blush to compare myself to their quality,  
11 to their achievements, including of course Congressman  
12 Rodino, Chairman Rodino, who has been so kind to me in  
13 Washington; Frank Annunzio, who is Mr. Congressman as far as  
14 I'm concerned throughout the country, particularly here from  
15 Chicago; and of course Ambassador Volpe; and my dinner  
16 companion tonight who has been so delightful, the Honorable  
17 Judge Sorrentino.

18 If any one of you has any doubt about the position  
19 of attorney general, let me dispel that doubt by saying it's  
20 a very good job. [Laughter]

21 I like it. And I prepared for it. I've been  
22 waiting for about--Judge Bell told me he was about ready to  
23 leave in December, and it started to sound like that record,  
24 old record, "Release me, please release me." And finally the  
25 president decided to do that and exercised exquisite wisdom

1 in his selection of a successor. [Laughter]

2 There was made mention of the fact that Charles J.  
3 Bonaparte was the first Italian-American attorney general  
4 under President Roosevelt. And the pronunciation of his  
5 name is important. If you say BONE-a-part, he was French  
6 from Corsica. If you say bone-a-PAR-tee, he is Italian-  
7 American, ancestors from Corsica. But, more important than  
8 that, he was from Baltimore, which is of course fond to me  
9 since I have been in Baltimore since I was 17, and my wife  
10 is a Baltimorean and all my children were born there. So  
11 then my staff had to look around for a first. They couldn't  
12 say the first Italian-American. They thought for a while  
13 they'd say, "The first fellow who'd ever been an assistant  
14 attorney general and a deputy attorney general and then  
15 attorney general," but they found that several other people  
16 have done that, including Ramsey Clark, whose name I don't  
17 mention lightly since in a prior election he was used as a  
18 principal vehicle for campaigning. And then they thought  
19 about, "Well, maybe he's the first assistant attorney  
20 general or assistant U.S. attorney who became attorney  
21 general," and that washed out. To make a long story short,  
22 I am the first nearsighted, grey-haired, Italian-American  
23 attorney general. [Laughter, applause]

24 Of course, the position is what counts. The  
25 attorney general's position is important. It rests near the

1 heart of all Americans regardless of your ancestry because  
2 it's near the heart of the administration of justice, of  
3 equal justice with the principles of fairness and of the due  
4 administration particularly of criminal law. And I'm well  
5 aware of that, and I'm proud to be the attorney general, of  
6 course. And I'm particularly proud that I represent all of  
7 the peoples of the United States regardless of their hue or  
8 their color or their sex or ethnic origins. But you'll  
9 forgive me I think this evening if I am particularly proud  
10 to be an Italian-American attorney general because from time  
11 to time, with intention and without intention from people  
12 with good spirit or light humor, we are referred to--we  
13 Italian-Americans with names ending in vowels, i or o, u,  
14 as being associated with people under investigation. And it's  
15 particularly fitting that millions of Italian-Americans  
16 throughout their lives and their children's lives and their  
17 parents' lives have contributed as patriots to this country  
18 that we now have a symbol only on the side of justice and  
19 truth and dignity which we have all worked so hard to  
20 achieve in this country. So, I carry that flag high and  
21 proudly and squarely and hope that I can do some good as  
22 attorney general. [Applause]

23 The office though has a humbling part about it. I  
24 travel around the country a great deal. And I was in Dallas  
25 not long ago for the International Association of Chiefs of

1 Police convention. Dallas is a great city. I have been  
2 there a number of times. And the chiefs of police--I'm  
3 particularly proud to participate in their activities  
4 because I'm a strong advocate of effective law enforcement,  
5 strong, vital, but fair. And on the way back, I got on the  
6 plane and I sat in the front seat. The  
7 stewardess went past me a couple of times and--a very attrac-  
8 tive stewardess, by the way [laughter]--and stopped and said,  
9 "Are you somebody?" [Laughter]

10 And I said, "Yes, I am."

11 She said, "I thought so." [Laughter]

12 I think it was the seat position really. She went on  
13 again. And she came back and she said, "I hope you don't  
14 mind if I'm curious," she said, "but who are you?"

15 And so I said, "I'm the attorney general."

16 And her eyes got big around and she said, "You are?"

17 And I said, "Yes, I am."

18 She said, "Are you the attorney general of Dallas?"

19 [Laughter]

20 So, there are lots of moments that remind you that  
21 you do hold the office and the office is important but that  
22 you as an individual are not terribly important.

23 I have special attire on tonight because I thought  
24 the award was special, and therefore I'm in black tie. It's  
25 a coincidence really of circumstance. And there may be an

1 occasion in the near future where the event will fit the  
2 dress. I appeared before the Third Circuit Judicial  
3 Conference, which is a very prestigious occasion, and it was  
4 black tie. And I appeared in a very nice business suit, and  
5 I was the only member there. And I apologized for that  
6 circumstance. I have, as proof that I do own a black tie,  
7 worn it and brought it to Chicago this evening; and there  
8 may be occasion in the near future when the event will be  
9 black tie and I will have a black tie. [Laughter]

10 It's a privilege and a distinct honor to be with  
11 you as the recipient of the Justinian Man of the Year  
12 Award. This association, as Leonard has said, as Roger  
13 has promised, is all positive in its scholarship effort,  
14 in its membership effort in its bringing together members of  
15 the bar and the community in honoring men of dignity and  
16 achievement such as Joe. And there can't be too much of  
17 that in a society which is frequently fraught with anxiety  
18 and frustration and difficulty on all sides.

19 In anticipation of this occasion I decided to  
20 examine the celebrated Justinian Code for the insight it  
21 might provide into some of our present endeavors in the  
22 field of justice; not having had the time aside offstage or  
23 the education to pursue the Latin text, I opted against my  
24 better judgment for Scott's translation. I shall share some  
25 of my findings with you in a moment. But fairness dictates

1 that I report some other findings as well. It seems that  
2 the sixth century Byzantium was not quite as idyllic and  
3 orderly a place as our cliches about the Justinian Code  
4 would have us believe. As in many other cases known to us  
5 all, the truth will out through that time-honored mechanism  
6 much abhorred but frequently used, as Joe knows, of the leak.  
7 In this case the leak took the form of an entire book,  
8 written by the same Procopius who had written the official  
9 history of the emperor's reign. He called this unofficial  
10 book The Secret History. And although its veracity is also  
11 quite doubtful, it provides some great entertainment as well  
12 as some particular insights.

13 Of Justinian, for example, he writes, with all  
14 due respect to our founder's name: "If there were any ill-  
15 gotten gain in sight, he was always ready to establish laws  
16 and to rescind them again. And his judicial decisions were  
17 made not in accordance with the laws he had himself enacted,  
18 but as he was led by the sight of a bigger and more splendid  
19 promise of monetary advantage. There was no security for  
20 those who had signed contracts, no law, no oath, no written  
21 guarantees, no legal penalty, no other safeguard whatever,  
22 except to toss money into the lap of the emperor. But not  
23 even this could ensure that he would continue in the same  
24 mind. He was quite prepared to sell his services to the  
25 other side as well; for since he had invariably robbed both



1 sides, it never crossed his mind that to treat with supreme  
2 indifference those who had put their trust in him and to  
3 act against their interest was in any way discreditable.  
4 In his eyes, so long as profit came his way, there was no  
5 discredit in his playing a double game." That's a quote.

6 The lesson lurking here, that even the best laws  
7 can be subverted by improper intentions on the part of the  
8 authorities charged with executing the laws, should not be  
9 lost on any society in any age, particularly ours.

10 Incidentally, it goes without saying that that  
11 secret history was published posthumously. But to turn to the  
12 Justinian Code itself, which stands as a landmark in our  
13 jurisprudence history, I found there in addition to some  
14 timeless principles of justice several anomalies in the  
15 penal laws which a millenium and a half has not succeeded in  
16 overcoming for us today. One of the more significant  
17 findings in this area pertains to the sentencing of criminals,  
18 about which I have a particular concern. Whereas, on the  
19 one hand, the code exhorts judges to impose sentences which  
20 are neither too severe or too lenient, there are, on the  
21 other hand, specific provisions with which we may be less  
22 comfortable.

23 For example, a thief of the lowest stratum of  
24 society was to be sentenced to death. A thief of higher  
25 status was to be sentenced only to slavery. And a thief

1 who acquired money or properties through fraud was to be  
2 sentenced simply to pay double the value he had fraudulently  
3 obtained. We find, I fear, discomfoting parallels in the  
4 application of our criminal laws today.

5 Certainly in federal criminal cases our goal is the  
6 sentence which is neither more nor less severe than the case  
7 demands. Certainly the responsibility for achieving this  
8 goal is entrusted, as it should be, to as confident and as  
9 honorable a body of judges as, in my view, this nation has  
10 ever assembled at one time. The chief judges here before you  
11 of the district court and the circuit court bear that out  
12 more nobly than I could express in words.

13 Yet some of the old discrepancies in punishment  
14 that were correlated to the status of offenders still  
15 persist, and they do so in three major forms. First, a  
16 white collar offender today is less apt to have his crime  
17 detected and his involvement established than his blue  
18 collar counterpart. This is largely due to the covert  
19 nature of such offenses and the sophistication of their  
20 operation.

21 In addition, a white collar offender is less likely  
22 to be convicted when charged, owing to the complexities of  
23 such cases and to the fact that he or his corporation will  
24 usually retain highly paid, highly competent attorneys to  
25 ferret out and exploit all of the deficiencies in the

1 applicable laws. Finally, a white collar offender, once  
2 convicted, is apt to receive a less severe sentence,  
3 relatively speaking, than his blue collar counterpart. This  
4 last disparity is more readily documented than explained.

5 For example, in the federal system today 53 percent  
6 of those individuals convicted of felony involving theft or  
7 larceny are sentenced to terms of imprisonment. However, of  
8 those individuals convicted of felonies involving not direct  
9 theft but rather embezzlement or income tax fraud or sophis-  
10 ticated fraud, only 31 percent and 42 percent respectively  
11 are sentenced to terms of imprisonment.

12 Moreover, the average term for an individual in  
13 prison for theft is about two years or a little more, while  
14 the average term for an individual convicted of embezzlement,  
15 regardless of amount, is about half of that. And that for  
16 an individual convicted of tax fraud is about nine months,  
17 regardless of amount.

18 It is true that these are but statistical averages,  
19 representing a wide range of cases and individual histories.  
20 It is also often true that those convicted of embezzlement  
21 and of fraud may be more susceptible than those convicted of  
22 other forms of theft to additional civil actions based  
23 upon the same misconduct. Nevertheless, those who are  
24 devoted to a society of laws which prescribe equal treatment  
25 for equal offenses must find such statistical variations

1 and sentencing practices troubling at least. It is no more  
2 comforting to leave the statistical averages and to look at  
3 individual cases. Some recent income tax evasion cases  
4 serve to illustrate the common disparity between the amount  
5 of money involved in the offense and the magnitude of the  
6 sanction. In one case, for example, two corporate officers  
7 who caused a corporation to attempt evasion of over \$12  
8 million in excise taxes were each sentenced to a \$10,000 fine  
9 and six months of community service during two years' proba-  
10 tion. In another case a conviction for evading \$69,000 in  
11 taxes brought a sentence, if you call it that, of \$1,200  
12 of community service and no fine.

13 Examples of similar sentencing patterns appear in  
14 recent antitrust cases. In one of these, involving hundreds  
15 of millions of dollars of commerce, the government  
16 recommended that the maximum fine be \$1 million, allowed by  
17 law and imposed on five of the defendant companies, and that  
18 three of the corporate officers be sentenced to terms of  
19 imprisonment. The fines ultimately imposed ranged from about  
20 sixty thousand to six hundred thousand dollars on those  
21 corporations, and none of the corporate officers were  
22 imprisoned.

23 Finally I submit for your consideration the case  
24 of \$200 million in nationwide fraud in which the most  
25 severe fine levied was \$40,000 or one part in 5,000 of the

1 sums the defrauder stood to gain by engaging in that enter-  
2 prise. These examples and scores like them cause me as  
3 attorney general grave concern. They tend to trouble all  
4 of us because they strongly suggest that in the domain of  
5 white collar crime, which even excluding antitrust and fraud  
6 violation cost the American public, you and I, staggering  
7 billions of dollars, not millions but billions of dollars in  
8 losses every year. There is very little in the way of  
9 effective deterrence. Odds of 5,000 to 1 are very hard to  
10 resist in the best of us.

11 And there is yet another reason why such instances  
12 are troubling, and here I would quote a more serious comment  
13 of our friend Procopius. Summing up the alleged injustices  
14 of the Byzantine society, he said, quote: "Those whom  
15 miscreants have injured the most cruelly are relieved of  
16 most of the misery resulting from a disordered society by  
17 the constant expectation that the laws and the government  
18 will punish the offenders. For when people are confident of  
19 the future, they find their present troubles more tolerable  
20 and easier to bear. They fall into utter despair through  
21 the hopelessness of expecting justice. And Justinian  
22 betrayed his subjects because he absolutely refused to uphold  
23 the victims of wrong," unquote.

24 If we cannot see to it that this unconscionably  
25 large and costly category of crime is adequately dealt with,

1 we have despaired our citizens just as they were despaired  
2 in the Byzantine society.

3 Current laws pertaining to sentencing are of little  
4 assistance to federal judges. The first section, for  
5 example, in the sentencing chapter specifies that federal  
6 judges may not impose a sentence that would work, quote,  
7 "corruption of the blood." The second section specifies  
8 that a federal judge should not impose a sentence that would  
9 require the defendant to stand in the local pillory. In  
10 many respects, the ensuing sections are even less helpful.

11 Penalty levels vary inexplicably. Maximum fines  
12 that may be imposed are so unrealistically low as to be  
13 almost totally ineffective. And little authority is provided  
14 to judges for the effective collection procedures with  
15 respect to those fines that are assessed.

16 As for imprisonment, the imposition of sentences  
17 is a two-step process now in which long terms imposed by the  
18 judges are often substantially reduced in the parole  
19 commission even though the latter may base its determination  
20 solely upon the same factors which were available to the  
21 judge at the time of sentencing. This artificial bifurca-  
22 tion of the sentencing process is a major fault of our laws,  
23 for it leaves prisoners and the public confused and uncertain  
24 about the consistency and the fairness of our system of  
25 criminal justice under the federal law. The net result of

1 these combined factors is the disparity of federal sentencing  
2 which, despite the best efforts of individual federal judges  
3 seems to be an inevitable product of the current system  
4 itself. The broad sentencing changes supported by the  
5 Department of Justice and President Carter and the Attorney  
6 General and incorporated in the proposed new federal criminal  
7 code are designed to achieve a rationality and a consistency  
8 in sentencing that simply had not existed before. The new  
9 code will articulate for the first time the legitimate  
10 purposes of sentencing, including that of deterring others  
11 from criminal activity. It will specify certain actions  
12 which may be taken in addition to the traditional penalties.  
13 These include notification of fraud victims, of the  
14 defendant's criminal conviction, in order that they might  
15 initiate civil action to recover losses and ordering  
16 restitution by the defendant to the victims of his or her  
17 or the corporate crime. It will specify innovative condi-  
18 tions of probation or sentencing under which, for example,  
19 a white collar defendant may be temporarily barred from  
20 engaging in the business or profession in the context in  
21 which he committed the crime in question so that he doesn't  
22 prey upon society and the citizens again and again with the  
23 same scam. Fines would be dramatically increased to a maxi-  
24 mum of \$250,000, not \$10,000 for individuals convicted of a  
25 felony, and \$1 million for an organization or corporation so

1 convicted.

2 Finally with respect to imprisonment, the proposed  
3 code calls for the terms imposed to be the terms actually  
4 served so that no more do we have a judge guessing at what  
5 the parole commission will do and imposing 20-year sentences  
6 to be shocked by the release of an offender after four years  
7 ...of service.

8 Important as these reforms are, they are far less  
9 important than the device that would be employed by the new  
10 code to ensure that sentences are meted out in a fair and  
11 consistent manner. This bill envisions a special sentencing  
12 commission in the judicial branch which, based upon careful  
13 research and on public hearings for public participation,  
14 will develop guidelines for use by federal judges imposing  
15 sentences in all individual cases. For each category of  
16 federal crime there will be several guideline ranges to  
17 allow for particular characteristics of the defendant and for  
18 any aggravating or, on the other hand, mitigating circum-  
19 stances. And after finding the range applicable to the case  
20 before him or her, the judge would be expected to sentence  
21 within that range, allowing him decent discretion. Should he  
22 even feel that unusual circumstances warrant a departure  
23 from the guidelines, either a graver sentence or a lesser  
24 sentence, that is permissible. But there will be a require-  
25 ment that the judge explain the reasons on the record; and



1 for the first time in federal law the judge could be overruled  
2 by an appellate court on review in the circuit courts of  
3 appeal.

4 In the interim, until the comprehensive criminal  
5 code can be enacted, the judiciary can and must--and we who  
6 serve the judiciary from the federal side and the defendant  
7 side--consider the devastating harm which white collar crime  
8 causes at all levels of society. Because its effects are  
9 felt acutely by the poorest among us and most vulnerable  
10 members of our society and because they undermine the general  
11 confidence in the equity of our system of justice, I would  
12 most strongly urge federal judges to increase the costs of  
13 such crimes to those who commit them wilfully and maliciously  
14 and wantonly. The advantaged defendant, the white collar  
15 defendant, who is found responsible for such violence to our  
16 national ideals has a claim to less, not greater, leniency  
17 from our courts; and only when prison sentences coupled with  
18 substantial fines become the rule for treating white collar  
19 criminals will there be effective deterrence and the concom-  
20 itant assurance to the public that justice is administered  
21 fairly and truly in the United States.

22 The laws of Justinian's time were numerous and  
23 complex, as indeed they are today. Justinian did not take  
24 them as he found them, but to a significant degree he  
25 simplified them, clarified them, and made them more rational,

1 Procopius's carping aside. This is what we are trying to  
2 achieve today with the federal criminal laws. It is a  
3 necessary task and a worthwhile goal. I'm speaking now  
4 directly to you. I know of no group to which such an effort  
5 should have greater appeal than this group of outstanding  
6 and dedicated jurists and lawyers of the city of Chicago.  
7 I am proud to be among you. I am greatly honored by the  
8 Man of the Year Award of the Justinian Society of Lawyers.  
9 I hope not to trip in my duties as attorney general, which  
10 some people describe as awesome. I would agree with them.  
11 But despite their burdens, I enjoy the job, I am well prepared  
12 for it, and I'm having great fun executing it. It's a pleasure  
13 to be with you tonight, and I certainly have enjoyed the  
14 occasion. [Applause]

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