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**Law and Order: Beyond the Code Word - Remarks by Senator
Edmund S. Muskie to the Texas Trial Lawyers Association**

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REMARKS BY SENATOR EDMUND S. MUSKIE

TEXAS TRIAL LAWYERS ASSOCIATION

DALLAS, TEXAS

JULY 1, 1971

"LAW AND ORDER:
BEYOND THE CODE WORD"

We meet today as the trustees of a free tradition.

Every lawyer, every politician -- and especially those of us who are both -- will always have a special responsibility to the past and for the future. As the men who make and serve the law, our common inheritance is American principles -- and our common profession is to make the American system work. If we fail -- in Washington or in Dallas -- as Senators or as trial lawyers -- our country will perhaps survive in name, but certainly not in spirit.

And in 1971 there are signs of failure on every side. In the one hundred and ninety-fifth year of our history, our people's faith in America's fate is profoundly shaken. A recent survey tells us that almost half of them now expect our national divisions to lead to national breakdown.

That is so easy to say, so hard to comprehend. Most of us have always assumed the durability of the system which is our life's work. Through time and trials and in the toughest moments, our country and our country's principles have always prevailed. Despite the dangers and the doubts, most of us have felt a sure sense of security about our place in America and America's place in the world.

Our unease now is unusual -- and it will not be easy to cure. We are told that our most urgent task is to heal division and build confidence and restore trust. But no one can fulfill the promise to bring us together unless he can also show us where we are going. We must believe again that we can find out what is wrong and begin to make things right.

So it is not possible, in a borrowed phrase, to just "cool" America. There is too much people will not be cool about. They see

their sons sent to war and their jobs disappear. They are living everyday with the disquieting question a national newsmagazine asked more than a year ago: "Why doesn't anything work anymore?"

And nowhere is there less cool and more worry than in the tide of anger and apprehension about crime in America. Too often, on the nighttime streets of any town, there is no one to see and the only thing on the sidewalks after dark is fear. In the last decade, the crime rate across the country climbed by an incredible 120% -- and violent crime alone increased 104%.

Those numbers were election issues in 1968 and 1970. They are likely to be an issue again in 1972. But those numbers are also people -- and in 1971 it is people who are in trouble.

A cabdriver in the city of New York refuses to change anything larger than a five dollar bill -- but he still worries that his next passenger may kill him for the petty cash.

A father in the slums of Detroit does his very best with the very little he has -- and then one day he finds heroin and a hypodermic needle hidden on his fourteen-year-old's closet shelf.

A housewife in the suburbs of Los Angeles wants to read the late evening edition of the next morning's paper -- but yesterday's news warns her not to test her safety with an 11 p.m. walk to the corner store.

A merchant in the center of Dallas buys burglar alarms and safety locks and shatter-proof glass -- but repeated robberies drain his profits and finally destroy his business.

And the same thing is happening to people everywhere in America. It has changed the way we live.

No matter what else we do for our country, we must do far more to combat the mounting wave of crime. So much is at stake.

What will we gain from prosperity -- if crime continues to threaten our livelihood and our lives?

What tranquillity will come from peace -- if crime turns more urban streets into virtual free fire zones?

Americans will not settle for that -- and they should not have to settle for it. Public leaders and lawyers alike must offer new hope.

There are men in high places -- men of the law who should surely know better -- who tell us to find our hope in tough talk and a turn toward repression. They are trying to enforce order by stretching the law. They are trying to preserve the country by whittling away at constitutional rights. And their tactics are a real danger to justice in America.

American justice is endangered when an official voice proclaims the guilt of a suspect still presumed innocent -- and when, in the midst of the Calley case, it takes a letter from a young army captain to remind the President of the United States of his responsibility to the Rule of Law.

And American justice is endangered when disrespect for legal principles becomes an accepted public practice. Disrespect in the form of wiretapping without a court order -- which is simply and plainly unconstitutional. Disrespect in the form of preventive detention -- which the Administration's own study tells us will not work. And disrespect in the form of "no knock" procedures -- which violate a man's precious right to privacy in his own home -- a right carefully guarded in the Texas Constitution.

And perhaps the worst tragedy is that repressive tactics like this have made no gains against rising crime. In the last two years -- years when we were promised success -- we have seen more and more failure as the crime rate continued to climb. Tough talk and repression may satisfy a psychic longing to strike back at lawlessness. They may win a few more precincts or a few more votes. And they will also defeat the cause of liberty and distract us from the real work of fighting crime.

But I believe that there is hope -- that we can make our streets safer and our homes more secure. I believe in this America -- that the system has not failed, though some leaders may

have failed the system. I believe we can use our country's principles to build law and order -- and law with order -- and crime control instead of code words.

We will not find what we must in campaign speeches or epithets or sudden dramatic shifts in the Supreme Court. It can come only from tough, tedious nuts and bolts work -- the kind of work lawyers do because we realize that is the only kind that finally makes a difference. Like the lawyers we are, we must ask hard questions, settle for no easy answers, and insist on solutions which can really turn the tide against crime.

We have already been told much of what must be done. Presidential Commissions and executive task forces and Senate committees have parsed and analyzed the crisis. In 1969, the Commission on Violence estimated that it would cost an additional \$6 billion to mount an effective fight for law and order. But we are still spending far less than we should -- and accomplishing far less than we must. It is time to act -- in all the ways we know are critical.

Because we have been warned again and again, we know that our system of criminal justice is overburdened with victimless crimes. Too often, we have tried to deal with personal problems that are social problems by outlawing them. Now federal help and local reform must develop alternative methods to treat offenses like drunkenness. We can no longer afford to tolerate the policies which force the police and the courts to waste their time instead of protecting people and property from crime.

Police departments should not be a dumping ground for our neglected social ills. And neither should policemen be forced to act as clerks. Yet a recent study in a medium-size city reported that over 50% of police time was committed to administrative assignments. A patrolman belongs on his beat, not behind a desk -- and Washington must make that possible with money to train and hire administrative help. Washington must support our local police -- to make them as effective as they can be and as fair as they should be. They deserve

-- more --

better pay, better equipment, and better training. Only then will society deserve and command the best possible law enforcement.

But enough police with enough resources are not the whole answer because police cannot do the whole job alone. So much ultimately depends on our courts and our correctional system. And their persistent defects have led to repeated disaster.

If justice delayed is justice denied, there is far too little justice in America's courts. Across the United States, according to the Census Bureau, over half of the persons in prison or jail are not there because they have been judged guilty of a crime. Most of them are simply waiting, often as long as eighteen months, for a day in court. It is like the Red Queen's jurisprudence in Alice in Wonderland: First the punishment, then the trial. And the results should not be surprising. To clear the backlog, judges and prosecutors allow thousands of defendants to plead guilty to reduced charges. In the end, whatever sentence is passed is frequently less than it should be and usually long after the offense. No wonder the Violence Commission concluded that court delay was contributing significantly to a nationwide breakdown in law and order.

I think we can change all that. We can act at the national level to pay at least some of the bill for modernizing court procedures, hiring professional administrators, and streamlining jury selection. If computers can program our intercontinental defense, they can surely program court calendars to assure swifter justice for every suspect -- and a stronger defense for every city and neighborhood. With the right investment, we can achieve Chief Justice Burger's goal of a 60-day limit before trial -- and that would mean fairer law and more order everywhere in America.

And we must make a similar investment in our correctional system. Today, we are giving less than 3% of our criminal justice funds to penal reform and convict rehabilitation. What are we getting in return? Prisons that are schools for crime -- prisons that turn first-time criminals into repeat offenders instead of productive

citizens. How ironic that we are willing to spend so much to catch a thief -- and so little to change him so we will not have to catch him over and over again.

So I am convinced that a commitment of will and resources to reform the criminal justice system can build law and order. But I am also convinced that we must do more.

We must try to root out the causes of crime. I am not talking about deteriorated housing or the shame of poverty -- we must respond to them because response is right, not for the sake of a distant relief from crime. And I am not talking about Supreme Court decisions -- few prospective lawbreakers hear of them and even fewer read them.

I am instead talking about the evil white powder Stewart Alsop calls the "city killer."

I am talking about the epidemic of heroin which is responsible for 50% of our urban crime.

And I am talking about people twisted into addicts and lawbreakers:

-- About a section of New York City, where 18,000 men and women -- out of a total population of 58,000 -- are helpless slaves to a heroin habit.

-- About the city of Washington, where 67% of the addicts are less than 26-years-old -- because very few addicts live to be very old.

-- About the soldiers who did not go to jail or flee to Canada -- and are now carrying a horrible curse home to their towns and their families.

-- About 250,000 Americans who attack countless fellow citizens and steal billions of dollars to feed an expensive, murderous, implacable addiction.

A large part of the answer to the question of what causes crime is heroin. But for heroin itself, there are no easy answers and there is no single answer. So much has failed and so little

-- more --

has succeeded.

But at least part of the reason for failure is our half-hearted effort. Together, federal, state, and local programs are today reaching less than 10% of America's addicts.

Over a month ago, I sponsored new narcotics legislation in the Senate -- and the President called for very similar legislation two weeks later. But because the heroin threat is so urgent, I am now certain that every recent proposal from every source is too little and too late. We are accomplishing and even asking for much less than we should.

What can we achieve? Obviously, there are both strengths and drawbacks in every current treatment method -- from antagonist drugs to methadone maintenance. But those methods in combination can cut sharply into the rate of addiction. One authority tells us that methadone alone can become a heroin substitute for half of our potentially criminal addicts.

We cannot neglect such an opportunity. The federal government must guarantee a comprehensive drug treatment program in every city and town facing a serious drug problem. And every local program must have enough room for every local addict -- whether he volunteers for treatment or is required to take it after arrest. There must be no more waiting lists -- while addicts wait, citizens are robbed and mugged. And there must be no competition for scarce federal funds -- we must find enough money to combat heroin wherever it strikes, in our cities and among our soldiers.

A truly broad national program would cost \$5 billion in the first five years. That is a lot of money -- but it is only a fraction of the financial loss in the same period from the crime spawned by addiction -- and it is a small price to pay for the security of our families, our friends, and our fellow citizens.

That's why Senator Hughes and I introduced yesterday a bill to reform the entire federal attack on dangerous drugs. The bill will provide desperately needed funds to state and local govern-

ments to establish and evaluate their own treatment systems. It will provide new dollars for research and experimental programs. And it will expand nearly four-fold the federal commitment to treat addicts through local community centers. In all, it will add almost half a billion dollars to the war against narcotics.

That is a great advance, but we still have a long way to go. The bill will create the basic structure for a comprehensive attack. We must use that structure to the maximum by appropriating more and more money for it over the next few years until we reach the level of a billion dollars a year -- enough for a comprehensive federal guarantee. We owe that much to our children and ourselves.

There is no cheap way to conduct a war against heroin or a war against crime. There will be no gains without financial pains. And there is no escape from a fundamental choice.

We must decide to put our priorities where our problems are -- in the streets of our own cities and the farms of our own land. We cannot tolerate a \$14 billion cost overrun in a dubious ABM system -- a 400% price increase in two years -- when the drought-stricken families of Texas and Oklahoma are denied relief that will cost far less than one day of war in Vietnam. In West Texas and New York City, in crime control and every other field of domestic endeavor, we must now turn again to the vital goals Lyndon Johnson so well advanced in the middle years of the last decade. We must find a new direction for America so we can bring Americans together.

That is our common task -- yours and mine.

You must fight for it in Dallas and in Texas -- and you must speak up for it in the nation.

The American system has been good to every person in this room. It now asks in return for our voices, our energy, our faith, and our trust in each other.

I hope we are ready to try -- because together we can succeed.

And success for America is the only aim worthy of our common profession -- which teaches us how good and how great our country can be.