

SPEECH - MORGANTON, 22 OCTOBER 1969 - DISTRICT BAR MEETING

LADIES AND GENTLEMEN, IT IS A PLEASURE FOR ME TO BE ABLE TO TALK WITH YOU AND DISCUSS SOME OF THE PROGRAMS AND NEW IDEAS WHICH WE ARE MOVING FORWARD TO IMPLEMENT IN NORTH CAROLINA. IN EACH OF THESE NEW ENDEAVORS, THE SUPPORT OF THE ORGANIZED BAR AND THE CONSCIENTIOUS AND CANDID COMMENT OF INDIVIDUAL PRACTITIONERS IS ESSENTIAL TO OUR SUCCESS, AS OUR OVERALL AIM IS IMPROVEMENT IN THE ADMINISTRATION OF JUSTICE AND A FAIRER AND MORE EFFECTIVE SYSTEM OF LAW. WHO IS BETTER QUALIFIED TO ASSIST AND ADVISE IN THESE IMPORTANT PROJECTS THAN THE PRACTICING LAWYER, YOU—THE MEMBERS OF THE LOCAL BAR?

IN THE LAST FEW YEARS, WE HAVE SEEN MUCH CHANGE IN OUR LAWS—SOME WOULD EVEN SAY TOO MUCH CHANGE. WE NEED CITE ONLY THE NEW CORPORATION CODE ENACTED IN 1955; THE NEW INTERSTATE SUCCESSION ACT ENACTED IN 1959; THE UNIFORM COMMERCIAL CODE OF 1967; THE NEW JUDICIAL ACT WHICH IS GOING INTO EFFECT RIGHT NOW ON A COUNTY-BY-COUNTY BASIS; AND FINALLY, THE NEW CODE OF CIVIL PROCEDURE WHICH WILL BECOME EFFECTIVE JANUARY 1, 1970.

HOWEVER, ALL THESE CHANGES IN THE STATUTORY LAW OF NORTH CAROLINA HAVE BEEN IN THE AREA OF CIVIL LAW. IT HAS BEEN SEVERAL DECADES SINCE WE TOOK A CLOSE LOOK AT THE CRIMINAL LAWS OF OUR STATE. I BELIEVE THAT THIS SHOULD BE A CAUSE FOR SOME CONCERN, ESPECIALLY AMONG MEMBERS OF THE LEGAL PROFESSION.

I KNOW THAT MANY PERSONS IN PRIVATE PRACTICE WOULD RATHER NOT BE REMINDED OF THE CRIMINAL LAW. IT WOULD SEEM TO HAVE LITTLE TO DO WITH

AND THUS TO OBEY, THE COMMANDS OF THE STATE PROSCRIBING ANTI-SOCIAL CONDUCT OR TO ENABLE LAW ENFORCEMENT OFFICERS OR COURTS TO ENFORCE THEM.

THIS IS NOT A NEW PROBLEM. THIS WAS TRUE SIXTY YEARS AGO. IN HIS MEMORABLE ADDRESS TO THE AMERICAN BAR ASSOCIATION IN 1906, ROSCOE POUND EMPHASIZED THE LAYMAN'S DISSATISFACTION WITH THE COMMON LAW IN THESE TERMS:

"THE DEFECTS OF FORM INHERENT IN OUR SYSTEM OF CASE LAW HAVE BEEN THE SUBJECT OF DISCUSSION AND CONTROVERSY TOO OFTEN TO REQUIRE EXTENDED CONSIDERATION. SUFFICE IT TO SAY THAT THE WANT OF CERTAINTY, CONFUSION AND INCOMPLETENESS INHERENT IN ALL CASE LAW... (IS OBVIOUS EVEN) TO THE LAYMAN. THE COMPENSATING ADVANTAGES OF THIS SYSTEM, AS SEEN BY THE LAWYER AND BY THE SCIENTIFIC INVESTIGATOR, ARE NOT APPARENT TO HIM. WHAT HE SEES IS ANOTHER PHASE OF THE GREAT GAME; A CITATION MATCH BETWEEN COUNSEL, WITH A CERTAINTY THAT DILIGENCE CAN RAKE UP A DECISION SOMEWHERE IN SUPPORT OF ANY CONCEIVABLE PROPOSITION."

THERE ARE LARGE AREAS OF OUR CRIMINAL LAW IN WHICH THE COURTS ARE ALMOST COMPLETELY DEPENDENT ON GENERAL PRINCIPLES OF THE COMMON LAW TO GIVE SUBSTANCE AND MEANING TO THE STANDARDS WE SEEK TO ENFORCE.

THERE IS A LACK OF COHERENT ORGANIZATION OF THE PRESENT CRIMINAL STATUTES. ALL TOO OFTEN, LAWS HAVE BEEN ENACTED TO REMEDY PARTICULAR SITUATIONS OR IN AN ATTEMPT TO CORRECT SPECIFIC COURT DECISIONS. FOR INSTANCE, DURING MY FIRST TERM IN THE SENATE IN 1955, WE SUDDENLY LEARNED THAT AN OFFICER COULD NOT ARREST A PUBLIC DRUNK WITHOUT A WARRANT, AND SO WE HURRIEDLY AMENDED THE LAWS WITH REGARD TO ARREST WITHOUT WARRANTS.

THIS IS A FAMILIAR PATTERN DOWN THROUGH THE YEARS. FOUR YEARS AGO AND TWO YEARS AGO, WE ENACTED A RASH OF LAWS DESIGNED TO COPE WITH VIOLENCE AND DISORDER WHICH SUPPOSEDLY WAS BEING COMMITTED BY WHITE MILITANTS IN THIS STATE.

THIS PAST LEGISLATIVE SESSION, WE FOUND IT NECESSARY TO ENACT A NEW "RIOT LAW" PROPOSAL TO DEAL WITH VIOLENCE AND LAWLESSNESS COMMITTED BY A NEW TYPE OF MILITANT, BOTH BLACK AND WHITE.

STOP-GAP LEGISLATION HAS BEEN NECESSARY TO DEAL WITH THE QUESTION OF PROVIDING ATTORNEYS FOR INDIGENTS AND WITH POST CONVICTION HEARINGS INVOLVING A MULTITUDE OF QUESTIONS.

THE END RESULT OF ALL THESE FRAGMENTED EFFORTS IS DRAFTING DEFECTS, A LACK OF ORGANIZATION, GAPS IN OUR CRIMINAL LAWS AND OVERLAPPING CRIMES.

OUR PRESENT CRIMINAL CODE IS THE END PRODUCT OF MORE THAN 150 YEARS OF LEGISLATIVE PATCHING AND TINKERING. IT MAY BE THOUGHT OF AS A VAST BLACKBOARD ON WHICH THE LEGISLATIVE TEACHERS WRITE THEIR LESSONS IN CHALK, ERASURES ARE MADE AND NEW SECTIONS ARE ADDED IN ANY AVAILABLE SPACE. OLD SECTIONS ARE AMENDED BY INSERTING AND ERASING WORDS, CLAUSES, SENTENCES AND PARAGRAPHS. WE MUST NOT MINIMIZE OR OVERLOOK THE FACT THAT A GREAT DEAL OF EXPERT SKILL AND EFFORT HAS GONE INTO EACH ADDITION, DELETION AND CHANGE.

BUT NO ONE IN DECADES HAS EVER TRIED TO REORGANIZE AND HARMONIZE THIS VAST BODY OF LAW. YET ALL OF US ARE EXPECTED TO CONFORM TO THE LAW, AT PERIL OF CRIMINAL PROSECUTION WITH ITS ATTENDANT DISGRACE AND PUNISHMENT.

ALL OF YOU WHO HAVE PRACTICED IN THE CRIMINAL LAW FIELD WILL PROBABLY AGREE WITH ME THAT OUR CRIMINAL LAWS HAVE "GROWN LIKE TOPSY," THAT THEY ARE TOO MUCH A HODGE-PODGE OF OLD STATUTES AND HASTY REVISIONS, OF COMMON LAW SCATTERED THROUGHOUT THE STATE'S REPORTER SYSTEM OFTEN TOO OBSCURE TO BE OF ASSISTANCE TO EITHER LAW ENFORCEMENT PERSONNEL, COURT OFFICIALS, OR DEFENDANTS. I SUGGEST AGAIN THAT NOW IS THE TIME TO GIVE SERIOUS CONSIDERATION TO REVISING AND CLARIFYING, TO COLLECTING AND ORGANIZING OUR CRIMINAL LAWS AND PROCEDURES.

WE CAN TALK FOREVER ABOUT ENFORCING THE LAW, MAINTAINING PUBLIC ORDER AND INSURING JUSTICE IN OUR STATE AND NATION. WE CAN TRAIN LAW ENFORCEMENT OFFICIALS AND PROVIDE THEM WITH ADEQUATE COMPENSATION. WE CAN ELECT COMPETENT, TRAINED AND DEDICATED SOLICITORS AND JUDGES. WE CAN PUT GOOD AND REPUTABLE PEOPLE ON OUR JURIES.

BUT UNLESS WE HAVE CLEARLY WRITTEN LAWS ON OUR BOOKS, DESIGNED TO DEAL WITH THE CRIMINAL PROBLEMS OF TODAY, WE HAVE ACCOMPLISHED VERY LITTLE. IF WE HAVE ADEQUATE LAWS BUT THE JUDICIAL PROCESS IS SO FILLED WITH PROCEDURAL SNAGS THAT JUSTICE CANNOT BE ACHIEVED SIMPLY, WE AGAIN HAVE ACCOMPLISHED NOTHING. IN FACT, THIS IS A SURE WAY TO CAUSE THE CRIMINAL LAW TO BREAK DOWN COMPLETELY UNDER THE STRESS OF OUR MODERN SOCIETY'S DAILY DEMANDS.

I DO NOT PRETEND THAT A REVISION OF THE CRIMINAL LAWS AND PROCEDURE OF OUR STATE IS A CURE-ALL FOR ALL OUR PROBLEMS. BUT I DO THINK IT CAN BE A VITAL AND EFFECTIVE MEANS TO INCREASE RESPECT FOR OUR CRIMINAL LAWS; TO ENABLE LOCAL LAW ENFORCEMENT OFFICERS TO ACT WITH MORE ASSURANCE AND, CONSEQUENTLY, MORE EFFECTIVENESS; TO GIVE SOLICITORS BETTER TOOLS FOR PROSECUTION; TO SPELL OUT THE LAW SO THAT NEITHER THE STATE NOR DEFENDANTS HAVE TO WONDER WHETHER A VIOLATION HAS OCCURRED; AND TO DEVISE A JUDICIAL PROCEDURE THAT WILL GUARANTEE DUE PROCESS, UNCLOG THE COURTS AND RESTORE SOME LOST FAITH IN CRIMINAL PROCEDURE IN NORTH CAROLINA.

SHOULD WE NOT IN THESE DAYS OF STRESS, WHEN CRIME IS INCREASING BEYOND OUR WILDEST FEARS, WHEN CRIMINAL LAWS ARE BEING TESTED CONTINUOUSLY IN THE COURTS, WHEN LAW ENFORCEMENT OFFICIALS NEED STATUTORY SUPPORT TO MAINTAIN PUBLIC ORDER AND PREVENT VIOLENCE, WHEN COURTS ARE CLOGGED AND ATTORNEYS ARE UNSURE WHAT PROPER PROCEDURE IS, WHEN PROSECUTORS AND

DEFENDANTS' ATTORNEYS ALIKE ARE BEGGING FOR CLARIFICATION OF THE LAW-- SHOULD WE NOT IN THESE DAYS OF TRIALS BE TAKING A HARD LOOK AT THE WHOLE AREA OF CRIMINAL LAW AND PROCEDURE? I THINK WE SHOULD IF THE SYSTEM IS TO BE EFFECTIVE AND WORTHY OF THE CONFIDENCE OF THE PEOPLE.

THIS TASK IS OF VITAL IMPORTANCE, FOR I BELIEVE WE MUST MAKE SURE THAT CRIMINAL LAWS ARE SUFFICIENTLY MODERN AND PRECISE TO BE EFFECTIVE TOOLS FOR THOSE OF US IN THE LEGAL PROFESSION AND TO EDUCATE LAYMEN TO UNDERSTAND AND OBEY THE COMMANDS OF THE STATE LIMITING ANTI-SOCIAL CONDUCT.

THE OBJECTIVES OF SUCH A STUDY SHOULD BE, AMONG OTHERS:

1. TO REMOVE DUPLICATIONS, INCONSISTENCIES, INVALID PROVISIONS AND OBSOLETE MATERIALS.

2. TO STATE IN CLEAR, SIMPLE AND UNDERSTANDABLE TERMS THE ELEMENTS OF THE CRIME; AVOIDING OVER-GENERALITY ON THE ONE HAND, AND DETAILED ENUMERATION (SO CHARACTERISTIC OF PRESENT PROVISIONS) ON THE OTHER.

THE STATEMENT OF THE OFFENSE SHOULD NOT BE SO GENERAL THAT A READING OF THE STATUTE LEAVES UNCLEAR WHAT CONDUCT IS PROHIBITED. AT THE SAME TIME, IT SHOULD NOT BE SO DETAILED THAT IT RUNS THE RISK OF OMISSION OF SPECIFIC ACTS SOUGHT TO BE PROHIBITED BUT LEFT UNLISTED. IT SHOULD BE SUCCINCT AND CLEAR SO AS TO ELIMINATE INSTANCES OF JUSTICE TURNING ON THE USE OF A TECHNICALITY.

3. TO CONFORM THE LAW TO ACCEPTED MODERN STANDARDS AND CONCEPTS WITHIN THE FIELD OF THE SPECIFIC CRIME CONSIDERED.

4. TO CODIFY WHEREVER POSSIBLE THE MANY CRIMES FOUND THROUGHOUT THE COMMON LAW TO THE END THAT THEY MAY BE CLEARLY UNDERSTOOD AND DEFINED; FOR IN THE FINAL ANALYSIS, IT IS OBVIOUS THAT AN EFFECTIVE RESPONSE TO CRIME WILL NOT BE POSSIBLE AS LONG AS THE POLICE AND THE PUBLIC ARE REQUIRED TO

UNDERSTAND AND ENFORCE LAWS WHICH ARE VIRTUALLY UNENFORCEABLE, CONFLICTING, AMBIGUOUS OR UNRELATED TO PRESENT NEEDS.

I DO NOT MEAN TO SUGGEST BY THIS PROPOSAL THAT OUR PRESENT CRIMINAL LAWS ARE COMPLETELY INADEQUATE. OUR PRESENT SCHEME OF CRIMINAL LAW AND PROCEDURE IS WORKING—BUT IT IS NOT WORKING AS WELL AS IT SHOULD. IT IS, IN FACT, SOMETHING OF A WONDER THAT IT WORKS AS WELL AS IT DOES CONSIDERING THE FACT THAT MUCH OF IT WAS INITIATED CENTURIES AGO.

So, I DO NOT MEAN TO IMPLY THAT WE ARE ON THE VERGE OF A TOTAL BREAK-DOWN OF LAW ENFORCEMENT. HOWEVER, IT MUST BE SAID THAT THOUGH WE HAVE BEEN CONSTANTLY IMPROVING OUR CIVIL LAW, AND DEVOTING MUCH TIME AND EXPERT KNOWLEDGE TO THESE EFFORTS, WE HAVE VIRTUALLY IGNORED THE PRESSING NEED FOR CHANGE AND REVISION IN CRIMINAL LAWS AND PROCEDURE. I DO BELIEVE QUITE FIRMLY THAT WE MUST NOW END THE PRACTICE OF HASTILY LEGISLATING ANSWERS TO NEW COURT DECISIONS, OF RELYING ON OUTDATED AND REPETITIOUS CRIMINAL STATUTES TO DEAL WITH PROBLEMS OF THE '60'S AND '70'S, AND OF ALLOWING SO MUCH OF OUR CRIMINAL LAW TO REMAIN BURIED IN THE COMMON LAW, DIFFICULT FOR EVEN THE BEST LEGAL MINDS TO FIND AND INTERPRET.

WE SIMPLY CANNOT CONTINUE TO BUILD AND MAINTAIN A SOCIETY BASED ON LAW, ORDER AND JUSTICE IF THE TOOLS WE USE ARE NOT SUITED TO THE TASK.

IN STRESSING THE NEED FOR MEANINGFUL DISCUSSIONS OF OUR CRIMINAL JUSTICE SYSTEM AND THE POSSIBILITY THAT A MAJOR REVISION IS NECESSARY, I HAVE HEARD FROM MANY PRACTICING LAWYERS AND JUDGES WHO AGREE THAT THE TIME FOR A CRIMINAL CODE REVISION PROJECT IS LONG OVERDUE. THESE SAME MEN STRESSED TO ME, AND I STRESS TO YOU, THE NEED FOR CARE AND CAUTION IN EXAMINING OUR CRIMINAL LAW AND CRIMINAL PROCEDURE PREPARATORY TO MAKING CHANGES. I DO NOT PROPOSE TO YOU, AND I SHALL GUARD AGAINST, ANY PROGRAM OR PROPOSAL ADVANCED WHICH WOULD RISK JEOPARDIZING OUR PRESENT SYSTEM OF ADMINISTRATION

OF CRIMINAL JUSTICE UNTIL IMPROVEMENTS HAVE BEEN DRAFTED, DEBATED, DISCUSSED AND EVALUATED BY OBJECTIVE MEN AND WOMEN OF ABILITY AND GOOD WILL AS WELL AS BY RECOGNIZED LEADERS IN THE BENCH, BAR AND LAW ENFORCEMENT AGENCIES. I DO NOT INTEND TO BE GUILTY IN THIS PROPOSED CRIMINAL CODE REVISION OF "THROWING OUT THE BABY WITH THE BATH."

IN THE COMING WEEKS, I WILL APPOINT AN AD HOC COMMITTEE FOR THE PURPOSE OF EXAMINING OUR PRESENT STATUTORY AND CASE LAW, REVIEWING THE NEEDS OF OUR SYSTEM OF ADMINISTRATION OF JUSTICE AND OUR SOCIETY IN THE FIELD OF CRIMINAL JUSTICE, AND ARRIVING AT SOME CONCLUSIONS UPON WHICH A RECOMMENDATION CAN BE BASED, AS TO WHETHER A CRIMINAL CODE REVISION PROJECT IS NECESSARY AND DESIRABLE. IF THE COMMITTEE CONCLUDES THAT A PROJECT IS NECESSARY, THEIR NEXT TASK WILL BE TO RECOMMEND THE SCOPE OF THE REVISION; THAT IS TO SAY, WHETHER THE REVISION SHOULD TAKE THE FORM OF PARTIAL CHANGES, AFFECTING ONLY CERTAIN SECTIONS OR ARTICLES OF THE GENERAL STATUTES; OR WHETHER THE REVISION SHOULD BE GENERAL IN SCOPE, AFFECTING ALL THE STATUTORY AND CASE LAW RELATING TO CRIMINAL JUSTICE; OR SOME COURSE IN BETWEEN. THE COMMITTEE WILL BE ASKED TO STUDY AND SUGGEST REVISION TECHNIQUES AND TO ESTIMATE THE AMOUNT OF EFFORT, TIME AND MONEY INVOLVED IN SUCH A PROJECT.

TO INSURE THAT THESE CONCLUSIONS AND RECOMMENDATIONS ARE THE PRODUCT OF THE BEST THAT NORTH CAROLINA HAS TO OFFER, I AM CAREFULLY SOLICITING FROM THE JUDGES AND SOLICITORS OF OUR STATE THE NAMES OF QUALIFIED CITIZENS—LAWYERS AND LAYMEN, FOR PARTICIPATION IN THIS AD HOC COMMITTEE. THE RESPONSE FROM THE BAR AND FROM THE BENCH HAS BEEN AND CONTINUES TO BE GRATIFYING. WE ARE FINDING THAT WHILE THE MEN SUGGESTING NOMINEES FOR THIS COMMITTEE ARE NOT CONSULTING TOGETHER AND ARE THEMSELVES

FROM DIVERSE FIELDS OF ENDEAVOR, THEIR SUGGESTIONS OF OUTSTANDING LAWYERS AND CITIZENS TO PARTICIPATE OFTEN MENTION MANY OF THE SAME LADIES AND GENTLEMEN TO SERVE.

THIS COMMITTEE WILL BE ASSISTED AND COORDINATED BY A RECENTLY NAMED ASSISTANT ATTORNEY GENERAL, SUPPLEMENTED BY THE FULL RESOURCES OF OUR STAFF. WE ANTICIPATE THAT WITH DILIGENT EFFORT, THE REPORT OF THE AD HOC COMMITTEE CAN BE SUBMITTED IN APPROXIMATELY SIX MONTHS. THE COMMITTEE'S COURSE OF ACTION AND TECHNIQUE IN CONSIDERING THE QUESTIONS ASSIGNED TO THEM IS IN THEIR SOLE DISCRETION. I BELIEVE THAT THEY WILL FIND FROM WITHIN THEIR OWN GROUP MANY YEARS OF VALUABLE EXPERIENCE AND GREAT EXPERTISE. NO DOUBT THEY SHOULD FEEL FREE TO CALL ON ANY OF YOU AS PRACTICING LAWYERS AND JUDGES AND INTERESTED CITIZENS FOR YOUR ADVICE AND HELP. THEY WILL, I AM SURE, BE MOST RECEPTIVE TO YOUR VOLUNTEER COMMENTS AND CRITICISMS OF THEIR WORK AND OF THE IDEAS WHICH THEY ARE CONSIDERING.

THE REPORT OF THE AD HOC COMMITTEE IS NOT A FOREGONE CONCLUSION; YET I CANNOT HELP BUT FEEL THAT SOME FORM OF CRIMINAL CODE REVISION IS CALLED FOR. OUR RAPIDLY MOVING SOCIETY, THE ADVANCED STATE OF COMMUNICATIONS AND TRANSPORTATION IN THIS STATE, THE HIGH INCIDENCE OF MAJOR AND MINOR PROPERTY THEFTS AND THE ENCROACHMENT OF ORGANIZED CRIME IN NORTH CAROLINA RAISE PROBLEMS WHICH CANNOT EFFECTIVELY BE DEALT WITH USING TOOLS OF THE NINETEENTH CENTURY. THE ADVANCES OF MODERN TECHNOLOGY HAVE BEEN FULLY UTILIZED BY THE CRIMINAL ELEMENT. THE DECISIONS OF OUR COURTS HAVE IN THE LAST FEW YEARS ACCORDED TO THE ACCUSED A GREATER DEGREE OF PROTECTION THAN EVER BEFORE IN OUR HISTORY. OUR CRIMINAL LAWS, WE FEEL, MUST BE MODIFIED



SO THAT WE CAN RAPIDLY, EFFECTIVELY AND EFFICIENTLY ADMINISTER THE CRIMINAL LAW, DISPENSE JUSTICE AND MEET THE RISING TIDE OF CRIME IN OUR SOCIETY,

(OUR ESTIMATES OF THE TIME INVOLVED WILL VARY ACCORDING TO THE SCOPE OF REVISION AGREED UPON BY THE AD HOC COMMITTEE. A PARTIAL REVISION COULD POSSIBLY BE ACCOMPLISHED IN 18 MONTHS TO TWO YEARS--READY FOR SUBMISSION TO THE 1973 GENERAL ASSEMBLY. A BROADER RE-EXAMINATION AND REVISION OF OUR CRIMINAL LAW AND PROCEDURE WOULD PROBABLY REQUIRE FROM 24 TO 30 MONTHS OF ACTUAL WORK AND STUDY AND COULD NOT BE PRESENTED TO THE LEGISLATURE IN FINAL FORM EARLIER THAN 1973. IN ANY EVENT, OUR HOPE IS TO BE ABLE TO OFFER OUR PROPOSALS TO THE 1973 LEGISLATURE, EFFECTING ENACTMENT THEN WITH A DEFERRED EFFECTIVE DATE UNTIL 1975 (IF NECESSARY), AS HAS BEEN UTILIZED IN OTHER MAJOR ITEMS OF LEGISLATION.)

IN ANY TASK OF THIS MAGNITUDE, THE COOPERATION AND ENTHUSIASTIC SUPPORT OF THE PERSONS AFFECTED, THE BENCH, THE BAR AND LAW ENFORCEMENT AGENCIES--IS VITAL. I HOPE THAT WE CAN COUNT ON YOU FOR THE NECESSARY SUPPORT.

THANK YOU.