

ON THE NEED FOR REVISING AND RESTATING THE
CRIMINAL LAWS OF NORTH CAROLINA
(with introductory remarks)

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March 20, 1969

I consider it a real honor to be asked to speak to the Guilford County Bar Association here today, for the fine reputation which your Bar enjoys is known throughout the State and is certainly to be envied. As we all know, this reputation is not just of recent origin.

Personalities who have stood high in the affairs of our State have proudly called Guilford County "home." They are many and time will not permit a review of the entire list.

But let me mention Major L. P. McLendon, who gave himself tirelessly as an advocate of causes in both the political and legal arenas. Aubrey Lee Brooks also carried the banner of the legal profession high as a member of your Bar. I know how proud you must be of your new Congressman, Rich Preyer, who served with ability and dignity upon both the State and Federal

bench. Judge Stanly, also a member of your Bar, has distinguished himself as a member of the Federal Judiciary. And we would be remiss, I think, if we did not note the recent passing of Julius Smith, which was a great loss to your Bar.

This is a proud tradition you have, a continuing tradition for our friend Bill Adams at this time is serving as President of the North Carolina Bar Association and those of you here are serving your clients, your community, and your State with great ability and distinction.

This Bar has served with distinction and with a kind of fearlessness, for while being a part of a profession which all too often, perhaps, has resisted constructive change, you have dared to experiment. I recall that it was the members of this Bar, a few years ago, who took the lead in area of legal aid to the indigent. If my memory serves me correctly, it was members of this Bar who took the lead in the early 1950's in changing the emphasis of our Bar Association programs from social to continuing

educational and professional growth. The wisdom of that move is borne out by many awards won by the North Carolina Bar Association since that time.

So I think it is fitting that I take this opportunity here tonight to talk about the need for some changes in our laws -- it is fitting because this Bar has, during the years, pioneered much of the new thought in Tar Heel legal circles.

Already 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 1957; the new Interstate Succession Act enacted in 1960; the Uniform Commercial Code of 1967; the new Judicial Act which went into effect in this county a few months ago; and finally the new Code of Civil Procedure which will become effective July 1, 1969.

But note, if you will, that these changes in the statutory law of North Carolina are in the area of civil law. It has

been more than three decades since we took a close look at the criminal^{laws} of our State. I believe that this should be cause for some concern, especially among members of the legal profession -- especially in a Bar with a tradition such as yours.

Needless to say, most persons in private practice would prefer not to be reminded about the criminal law. It would seem that it has little to do with an insurance retainer, a corporate account, to title practice at the Building and Loan --- that it in fact has little to do with anything other than the hardened criminals most of us wish we never had to represent.

Nothing could be further from the truth, and I must admit that I have just come to fully realize this.

During the recent campaigns, I made the statement on one occasion that I did not feel a particular need for enacting new criminal statutes or even revamping those now on the books. I said that probably better enforcement of existing law was the answer to

many of our problems in the criminal field. I now know that more is required.

The present criminal laws of North Carolina, in my opinion, are not sufficient to meet the needs of our twentieth century society.

Our present laws relating to criminal procedure in North Carolina clearly are not sufficient to cope with the increasing volume of our criminal courts and many of our solicitors, determined to render good service to the State, are becoming increasingly frustrated.

Therefore, it seems to me that the time has come for us, as members of the Bar, to give serious consideration to the merits of revising Chapters 14 and 15 of the General Statutes of North Carolina. The need exists and is being voiced by everyone interested in the judicial process: solicitors and judges, defendants and complainants, and the general public.

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 our day, on which a conviction can be based, we have accomplished nothing. If we have adequate laws but the judicial process is so filled with procedural snags that justice simply cannot be achieved, we again have accomplished nothing. In fact, this is a sure way to cause the criminal law to break down completely.

A breakdown of the criminal law could easily be the forerunner of a breakdown in the civil law.

A person who knowingly violates a criminal law will just as

readily violate and look with scorn on our civil procedures and laws. The man who steals outright another's goods would just as soon use devious, though not criminal means, to steal another's lands, to deny another his inheritance, and to defraud insurance companies and public institutions of their funds.

I would not pretend for one moment that the revision of the criminal laws and procedure of our State is a cure-all for all our problems -- But I do think that it can be a vital and effective means to increase ~~eng~~ 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 so spell out the law so that neither the State nor defendants have to wonder when a violation has occurred; and to devise a judicial process that will insure due process, unclog the courts, and restore some lost faith in criminal procedure.

I think that those of you who have had some experience in the practice of criminal law will agree with me that our criminals have "grown like topsy", that our criminal laws too much are a hodge-podge of old statutes and hasty revisions, of common law scattered throughout the State's Reporter system often too obscurely to be of assistance to either law enforcement personnel, court officials, or defendants. Again, I suggest that it is time to give serious consideration to revising and clarifying, to collecting and organizing our criminal laws and procedures.

If nothing else, recent decisions of the United States Supreme Court would seem to make such action imperative. The criminal law is changing drastically through judicial decisions. Recently, the Court in State v. Morris held in a unanimous opinion that an indigent defendant charged with a crime punishable by a sentence in excess of \$500. fine or 6 months in jail is entitled to counsel. Our law relating to the death penalty, entangled with amendments and provisos, has been declared unconstitutional. We find ourselves now in the position of reacting to these decisions again by stopgap methods.

Should we not in these days of trials, 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 defendant attorneys alike are begging for clarification of the laws --- should we not in these days 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 the people are to maintain their faith in it.

And I think it should be done before the State Legislature convenes in 1971. This task is of vital importance, for I believe we must make sure criminal laws are sufficiently modern and precise to be effective tools of those of us in the legal profession and to educate laymen to understand, and thus to obey, the commands of the State ^{limiting} ~~prescribing~~ anti-social conduct.

I do not mean to suggest by this proposal that our present

criminal laws are completely insufficient. Our present scheme of criminal law and procedure is working -- but it is not working well. I suspect it is working in spite of the fact that it is the product of little design and of little planning. 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 anarchy or a total breakdown of law enforcement. I do mean to say that though we have been constantly improving whole areas of our civil law, and devoting much time and expert knowledge to this effort, 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 1960's, and of allowing so much of our criminal law to be buried in the common law, difficult for even the best legal minds to find and interpret.

We simply cannot build and maintain a society based on law, order and justice if the tools we use are not suited to the task.