ON THE NEED FOR REVISING AND RESTATING THE CRIMINAL LAWS OF NORTH CAROLINA (without introductory remarks)

ON THE NEED FOR REVISING AND RESTATING THE CRIMINAL LAWS OF NORTH CAROLINA

Speech by Robert Morgan
Attorney General of North Carolina

Greensboro Bar Association

March 20, 1969

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 Intestate Succession Act enacted in 1959; 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 all these changes in the statutory law of North Carolina have been in the area of <u>civil</u> 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 prefer not to be reminded of the criminal law. It would seem to have little to do with an insurance retainer, a corporate account, to title practice at the Building and Loan - that it, in fact, appears to have 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, in the past few months, 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, dedicated to rendering 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 and codifying as much of the common law that deals with this field as possible. The need exists and is being voiced by almost everyone interested and involved in this judicial process: solicitors and judges, defendants and complainants, and the general public.

Much of the criminal law in this State, as you know, is

derived from the common law, and in the opinion of many, the common law no longer affords guidelines sufficiently modern and precise to educate laymen to understand, 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 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 in which the courts are almost completely dependent on general principles of the common law to give content to the criminal law of North Carolina.

There is a lack of coherent organization of the present statutory criminal laws. All too often laws have been enacted to remedy particular situations. 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.

And this has been so down through the years. Four years ago and two years ago we enacted a rash of laws designed to cope with violence which supposedly was being committed by white militants in this State.

Now, we find it necessary to enact a new rash of laws to deal with violence and lawlessness committed by a new type of militant, both black and white.

We have had to enact stop-gap legislation to deal with the question of providing attorneys for indigents and with post conviction hearings involving a multitude of questions which have been brought to the forefront by the recent Supreme Court decisions.

The end result of all this fragmented effort is many defects, lack of organization, gaps in our criminal laws, and overlapping crimes.

The several hundred sections of our criminal code lack almost any kind of coherent organization. They are the end product of more than 150 years of legislative tinkering. They may be thought of as a vast blackboard on which the legislative teachers write their lessons in chalk and new sections are added in any relevant space. Old sections are amended by inserting and erasing words, clauses, sentences and paragraphs. And surely a great deal of expert skill and effort have gone into each addition or deletion. But no one in decades has ever tried to reorganize and harmonize this vast body of law to which all of us are expected to conform, at peril of criminal prosecution

with its attendant disgrace and punishment.

I think that those of you who have had some experience in the practice of criminal law will 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 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 and we find ourselves again in the position of reacting to these decisions by stopgap methods.

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, we have accomplished very little. 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.

And 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 laws and procedures. 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 instructions of their funds.

I would 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 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.

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 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 the prople 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 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 the prohibited conduct. At the same time, it should not be so detailed that it runs the

risk of omission of specific acts not thought of when the enumeration was made and invites technicality in the administration of criminal justice.

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 insufficient. Our present scheme of criminal law and procedure is working - but it is not working as well as it should. 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.