

Speech by

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I am pleased to have an opportunity to come to Charlotte tonight and meet with such a distinguished group of citizens and civic leaders. Certainly you are to be commended for the concern which fostered these programs and the concern which prompted each of you to attend.

The American Society today, like any dynamic society at any point in its history, is plagued with a host of problems. The fact that we have recognized many of ours, that we have begun to pinpoint them and zero in on them is a pretty good indication to me that we are on our way to finding some solution for them.

You have asked me here tonight, I understand, to discuss with you one of the most pressing problems of our time - how to revive an ailing criminal justice system and convince the lay public, the man in the street, that our system of jurisprudence in fact deserves his respect.

I believe quite strongly that the only way we can expect men to love their country, their government and their system of justice is to give them the kind of country and government

and system of justice that inspire respect and love. Unfortunately, our Country has come to a point where its ability to preserve law and order and administer justice fairly, equally, and most importantly, quickly, has been seriously questioned and, consequently, its ability to inspire respect and love diminished.

Needless to say, as an attorney, as an officer of the court, as the Chief Law Officer of this State, as your Attorney General, I am distressed and, like you, for some time I have been seeking solutions.

North Carolina's Senator Sam Ervin recently stated that "WE must face the fact that our criminal justice system is breaking down." His concern has been echoed across the Country and in the last few weeks we have seen article after article published in national magazines trying to explain what is happening to our criminal justice system.

One has only to look at the headlines of a recent Life magazine feature, titled "Logjam in our Courts", to get a quick picture of the problem we are facing throughout the Nation and certainly here in North Carolina and Charlotte. Boldface print reads:

NEW YORK: If you commit a serious crime, the odds are 200-1 that you will never go to prison on that charge.

WASHINGTON: The average delay between a felony arrest and trial is ten months.

LOS ANGELES: The caseload is growing ten times faster than the population.

DALLAS: A defense attorney says, "Delay is my best weapon. Time will beat any case if you have enough of it."

Flip the page and the next headline tells you one result. "OUR OVERLOADED SYSTEM BENEFITS ONLY THE GUILTY", it says. And those of you who have had any experience in the courts know this is in fact the result of the "LOGJAM IN OUR COURTS".

We have been taught to believe that the Sixth Amendment to the Constitution insures the right of any accused to a swift trial. But how far we have strayed from this Constitutional mandate.

A swift trial in our day, in our State and in our Nation, is the exception rather than the rule. Every court docket has stale cases on it. Many are six months old, a year old, or even two or three years old.

I need not tell you that these delays make a mockery of justice and have brought the whole criminal justice system into disrepute. Delay is by far the most effective tool of the guilty. They can rest assured that as time passes, witnesses will die or leave the jurisdiction or their once vivid memories of the criminal act will fade. And in the end, the guilty are the direct beneficiaries of these by-products of time.

Recently I talked with Superior Court Clerks from several counties in North Carolina concerning the number of cases pending on their court dockets. I discovered that the number ranged from 112 in one county to 380 in another to 718 in still another. And here in Mecklenburg County, the number of cases on the docket stands at 1,070. In six counties there was a total of 3,000 cases pending on the Superior Court dockets. Of these cases, almost a hundred were murder cases, most of them over a year old, and four of which had been on the books since early 1968. In these six counties, there were over 300 cases of narcotic violations awaiting trial, and you can see as well as I what chance those offenders have for a speedy trial.

Judge Stacey of the North Carolina Supreme Court, some forty years ago, commented on the alowness of justice, saying, "Though Justice sometimes treads with leaden feet ... she strikes with an iron hand." I cannot agree with Justice Stacey on this point. I believe that when Justice treads with leaden feet, she seldom packs any wallop at all and surely any deterrent effect is reduced to almost zero.

Delayed punishment cannot be a deterrent to other crime, to other potential criminals, when it comes so long after the crime is committed that cause and effect become remote and unrelated. Ask yourself if you punish your child a week after he has disobeyed you, whether he will learn any lesson from the punishment.

Certainly not, for if punishment is to work, it does not necessarily have to be severe, but it does have to be swift.

Chief Justice Warren Burger of the United States Supreme Court has expressed the same idea by saying, "Many people, though not all, will be deterred from serious crimes if they believe that justice is swift and sure. Today no one thinks that it is."

He goes on to spell out what he thinks the consequence is. "If there is a general impression that the administration of justice is not working," says Justice Burger, "one important result is that the deterrent effect of law and punishment is impaired or lost."

"If people generally - the law-abiding and the lawless alike - think that the law is ineffective, two serious consequences occur: decent people experience a suppressed rage,

frustration and bitterness, and the others feel they can 'bet by' with anything", says Justice Burger. And I believe he has pretty well summed up the situation we now have in our society.

I would be less than candid, I think, if I did not say that attorneys practicing in the courts must ~~also~~ do their part to break the logjam. The practice of requesting numerous continuances should be abandoned and instead attorneys should press for speedy trial.

The result of repeated continuances is illustrated vividly by one extreme case recently reported by the media. The attorney said,

"I had a client accused of attempted murder. He shot another man several times and the victim nearly died. Over several months I managed to get the case adjourned eight or nine times. Each time, the victim and the police officers were in court, but at each appearance I got a new judge and told him I needed more time to prepare. Finally the victim just got fed up, I guess, because he stopped coming to court, and then it was the district attorney who had to ask for adjournments. After the victim failed to show up three times, the charge was finally dismissed."

There is always the danger that the same result will occur when a prosecutor continues cases without previously notifying parties or witnesses. The inconvenience of repeated trips to the courthouse often dulls the desire to see justice done.

In England, if a man is convicted in Old Bailey today, by a jury of his peers, his case is heard just three weeks later by the British Court of Criminal Appeals and even more amazing, a decision is handed down by the appellate court that very day. Contrast that, if you will, with our system which has allowed a death penalty case of mine to remain pending in the United State Supreme Court for more than a year.

Let me hasten to point out that under the English system the punishment which is administered is often much less severe than that which one would receive for committing the same crime in the United States. The difference is that in England justice is administered swiftly and there remains respect for the court and the criminal justice system in England while in this Nation we are losing it.

Lord Denning, Master of the Rolls of London's Royal Court of Justice, stated in a recent speech made here in the States, that in England everyone arrested is tried within eight weeks and this, he said, is the "greatest length between arrest and trial."

We must begin to move toward making this true in America or else see the complete breakdown of the American criminal justice system.

But we cannot hope to do so unless responsible citizens, people like you here tonight, understand the seriousness of the situation and begin to speak out and urge change.

I believe we already are taking some steps in the right direction. This year the American Bar Association established the Institute for Court Management and after six months of intensive training will graduate its first class of thirty-two court executives. More efficient handling of the paper work which has become so much a part of the operations of the court is imperative.

Equally important is the proper scheduling (docketing) of cases for trial. When cases are put on the calendar they should be called and tried. It is unreasonable to expect witnesses and parties to show up time and time and time again for trial only to have the cases continued because someone docketed many more cases for trial than could be heard.

In the Attorney General's office we have appointed an Ad Hoc Committee to study the criminal laws and suggest any

revisions which might be needed. This Committee is also considering changes in criminal procedure for no changes in the substantive criminal law will do much to improve the administration of criminal justice if we allow procedural problems to create "logjams" in the courts.

I think we should look at the number of cases of public drunkenness crowding our dockets. We need to look at this charge to see whether it should continue as a criminal offense. As an illustration of the countless hours spent in dealing with an individual committing these offenses, I know of a man from Harnett County who has been charged 53 times in the past 15 years with public drunkenness, or petty crimes stemming from public drunkenness. The time and effort expended by the judicial system as exemplified by this common example is readily apparent.

To give you some idea of the paper work involved with a person of this type, the Clerk of the Superior Court has one 5-drawer file cabinet full of documents pertaining to this individual alone. We certainly need to look at the pros and cons of what the charges of vagrancy, drunkenness, etc., are doing to our court calendars.

The Governor's Committee on Law and Order recently voted unanimously to recommend that public drunkenness be

eliminated as a criminal offense. And it is surprising the amount of support this recommendation is receiving from law enforcement officers, prosecutors, and judges.

Without doubt, when we begin to look at any established system with an eye toward change, we are going to create controversy. But if controversy prompts thought, discussion and constructive change, then it has served a good purpose.

We must be prepared to make bold changes. A judicial system vamped two centuries ago to protect four million people might not now be the answer for a country whose population numbers 200 million. A good illustration of the rapid change occurring within the system is statistics released last week by Chief Justice Burger show that the Federal Courts in 1940 handled 89 habeus corpus petitions. Last year, they received 12,000. Yet our procedure for handling them has hardly changed in two decades.

I mentioned to you a few moments ago the speedy justice of the British Courts. The latter part of September and the first of October, I hope to visit England and perhaps bring back some information that will be of some value. I believe that we must examine the courts of other countries to see if some of the better aspects of their judicial systems cannot be incorporated into ours.

Certainly I do not pretend to know all the answers to this problem, but I do believe that as a member of the criminal justice system, I have a responsibility to bring the problems of the system to the people for their consideration. In turn, if the people want the system improved, they must demand it and be willing to provide the support necessary to implement new ideas and overcome natural resistance to change.

I do not believe we should stand by and allow our judicial system, a system upon which the law, order and justice of this Nation rests, remain a system for which those who are accused and those who are victimized alike have little or no respect. This Nation must be a Nation of laws and not of men; our society must be based upon order and not chaos and our rights and liberties must be preserved and justice assured to all men.

If this Nation is to continue to flourish, its government, and especially its system of justice, must inspire the respect and love of the people.

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