

Speech by:

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WHAT ARE THE ELEMENTS OF THE CRIMINAL JUSTICE SYSTEM?

My topic today is not a new or innovative one, for crime and society's means for coping with its crimes are as old as man himself. We live in an age when technological achievements seem to be limited only by one's imagination. But, at the same time, society finds it increasingly difficult to deal with the problem of human relations and interaction.

Each of you here today will undoubtedly agree that there is a great and growing concern about our present criminal justice system. This concern is shared not only by members of the public but by those of us directly involved in the administration of justice itself.

I know this because as Attorney General of my State, I receive letters of complaint every day. Most of them are matters over which I have no jurisdiction but nevertheless, they serve a good purpose. They constantly remind me not to be complacent; that the criminal justice system is far from perfect and that even when the system is functioning properly, many persons do not understand its workings.

This is a serious matter. It is serious when a witness loses faith in the system because cases are continued time and time again without apparent reason - causing that witness to lose time on the job and to suspect the good faith of court officials.

It is serious when victims of crimes hesitate to report them to authorities because they do not want to involve themselves in the criminal justice process and fear that justice will not be the end result.

It is serious when conduct of investigating officers is such as to imply incompetence and persons feel that no real effort was made to apprehend the offender.

It is serious when the workings of the court are so shabby that cases properly disposed of still smack of a "fix" and destroy public confidence.

And I could go on and on and on.

When we speak of the criminal justice system in America, what exactly are we talking about?

The system of criminal justice America uses to deal with those crimes it cannot prevent, and those criminals it cannot deter, is not a monolithic, or even a consistent, system. But its philosophic core is that a person may be punished by the Government if, and only if, it has been proved by an impartial and deliberate process that he has violated a specific law.

Around that core, layer upon layer of institutions and procedures, some carefully constructed and some improvised, some inspired by principle and some by expediency, have accumulated. Parts of the system - magistrates' courts, trial by jury, bail - are very old. Other parts - juvenile courts, probation and parole, professional policemen - are relatively new.

All in all, the entire system represents an adaptation of the English common law to America's peculiar structure of government, which allows each local community to construct institutions that fill its special needs. In some states, every village, town, county and city, has its own criminal justice system, and there is a Federal and State system as well. While all of them operate somewhat alike, no two of them operate precisely alike, even where a supposedly "uniform court system" has been established.

Any criminal justice system is an apparatus society uses to enforce the standards of conduct necessary to protect individuals and the community. It operates by apprehending, prosecuting, convicting, and sentencing those members of the community who violate the basic rules of group existence.

The action taken against lawbreakers is designed to serve three purposes beyond the immediately punitive one.

- (1) It removes dangerous people from the community;
- (2) It deters others from criminal behavior; and

(3) It gives society an opportunity to attempt to rehabilitate lawbreakers.

What most significantly distinguishes the system of one country from that of another is the method used to determine guilt and impose punishment. Our system of justice deliberately sacrifices much in efficiency and even, sometimes, in effectiveness to preserve local autonomy and to protect the individual. Sometimes it may seem to sacrifice too much. For example, the American system was not designed with professional or organized type criminal operations in mind, and it has been notably unsuccessful to date in preventing such organizations from preying on society.

The criminal justice system has three separately organized parts - the police, the courts, and corrections - and each has distinct tasks. However, these parts are by no means independent of each other. What each one does and how it does it has a direct effect on the work of the others. The courts must deal, and can only deal, with those whom the police arrest; the business of corrections involves only those referred to it by the courts.

How successfully corrections is in reforming offenders determines whether they will once again become police business, and influences the sentences the judges impose; police activities are subject to court scrutiny and are often determined by court decisions. And so reforming or reorganizing any part or procedure of the system changes or affects other elements.

Furthermore, the criminal process, the method by which the system deals with individual cases, is not supposed to be a hodge-podge of random actions. It is designed to be a continuum - an orderly progression of events - some of which, like arrest and trial, are highly visible and some of which, though of great importance, occur out of public view.

The popular theory of everyday criminal process oversimplifies in some respects and over-complicates in others what usually happens. This theory is that when an infraction of the law occurs, a policeman finds, if he can, the probable offender, arrests him and brings him promptly before a magistrate. If the offense is minor, the magistrate disposes of it forthwith; if it is serious, he holds the defendant for further action and admits him to bail.

The case then is turned over to a prosecuting attorney who charges the defendant with a specific statutory crime. This charge is subject to review by a judge at a preliminary hearing of the evidence. And in many cases, if the offense charged is a felony, the charge is subject to review by a grand jury that can dismiss the charge, or affirm it by delivering it to a judge in the form of an indictment.

If the defendant pleads "not guilty" to the charge, he comes to trial; the facts of his case are marshalled by prosecuting and defense attorneys and presented, under the

supervision of a judge, through witnesses, to a jury. If the jury finds the defendant guilty, he is sentenced by the judge to a term in prison, where a systematic attempt to convert him into a law-abiding citizen should be made, or to a term of probation, under which he is permitted to live in the community as long as he behaves himself.

Some cases do proceed much like this, especially those involving offenses that are generally considered "major": serious acts of violence or thefts of large amounts of property. However, not all major cases follow this course, and, in any event, the bulk of the daily business of the criminal justice system consists of offenses that are not major - of victimless crimes, of breaches of the peace, crimes of vice, petty thefts, assaults arising from domestic or street-corner or barroom disputes. These and most other cases are disposed of in much less formal and much less deliberate ways.

So, when we talk about what are the elements of the criminal justice system, we can broadly say they are the police, the courts, and corrections. In order to really understand the problems of the system, we must break the broad elements down and look at the specific elements of each system. We must look at what crimes are being reported and investigated, the investigation, the arrest, the formal arrest or booking, the initial appearance, the bail procedure, the preliminary hearing,

the pre-trial detention, the grand jury, the arraignment, the trial itself, the sentencing procedure, probation, prison, parole, habeas corpus.

We must look at the distinctions built into our system: for handling petty crimes or traffic crimes as opposed to major crimes, and for handling the juvenile offender as opposed to the adult. We must also look at the people and positions that run the system - city police, sheriffs offices, State and Federal law enforcement, special administrative agency officers, magistrates, bail bondsmen, prosecutors, jail custodians, attorneys, lower court judges, higher court judges, clerks of court, probation officers, prison officials, parole officers, the Governor and President, and members of the Legislature and Congress.

What a complex picture this becomes.

We have looked at the system and the way it tries to operate. But all of us know that in many cases the system is not working properly. Our criminal justice system has been described as a non-system in which the police do not catch criminals, the courts do not try them, and the prisons do not reform them. The system is in trouble.

The real crisis of American justice is the slow, steady corrosion of the system and the nation's confidence in it. Our criminal system must be just and effective. But instead, our

system has deteriorated into what one Yale law professor calls a "mosaic of discontent" - a fragmented series of processes through which those offenders who are caught bump along from arrest to jail to court to improvised punishments that often fit neither the criminal nor the crime.

We do have a tremendous fragmentation problem in our criminal justice systems. Three or four police agencies may be investigating an individual or a crime without knowing that the others are doing it. Police constantly have to use discretion in deciding which cases to pursue and the result may be that a particular crime may bring arrest one day and not the next, or the prosecutor may decide he is not interested in that particular crime. Bail procedures and sentences are not consistent. Numerous continuances and poorly made dockets tend to undermine the system. Extended pre-trial prison confinement may completely undermine a progressive post-trial corrections system. These are just a few examples of the fragmentation that exists.

As another example, a recent article discussing the criminal justice system points out that the juvenile aspects of the criminal justice system are characterized by an overlapping of jurisdictions, a diversity of philosophies, and a hodge-podge of organizational structures which have little contact with one another.

A tremendous lack of coordination is evidenced in every facet of the criminal justice system. In general, the system functions so that the total is less than the sum of its parts. Most state systems are made up of several interrelated parts, usually separately administered at different levels of government. Thus in many states no one body oversees the entire system and allocation of funds for programs and personnel are generally uncoordinated.

A well known safecracker and self-styled professional thief in North Carolina recently told one of my SBI agents that he had no visible means of support, therefore he knew the State would furnish him a lawyer. And if he did not like the one that was first appointed, judges in the State would appoint him another. If he were found guilty in one court and kept appealing, someone was bound to make an error which at worst could end up in a retrial which usually took several years. Therefore, by the time of the retrial, the prosecuting witnesses would have died, moved away, or lost interest. And all this at no expense to him. The man was willing to continue breaking the law because he felt it was worth the risk of getting caught.

Oftentimes we keep a man on probation even though he has committed crimes while on probation. There may be several reasons for this, but many times a judge would rather leave the man on the streets knowing that he is likely to continue

committing crimes, hopefully of a petty variety, than put the man in prison where he will learn to be an expert criminal. Make no mistake about it - the prisons are universities of crime.

I firmly believe that providing a speedy trial and certainty of punishment for those who break the law would be a giant step toward increasing the efficiency of our system and reducing the crime rate. As a result of shortcomings in our system, most persons committing criminal acts are never detected, arrested, or brought to trial. Those who are arrested and charged are generally not tried promptly because we have allowed unnecessary delays. Due to delays with the appellate process, convicted persons are not institutionalized promptly, either under a rehabilitative or punitive theory. Those who are sentenced and imprisoned are not rehabilitated, and, upon their release, commit further crimes against society.

We have now seen the elements of the criminal justice system and some of the various ways in which our present system is not working. The purpose of this speech is not to discuss ways of improving the system. As I understand it, that is the purpose of your conference. However, I would like to mention some suggestions that have been made. I do not necessarily condone or condemn the ideas but I ask you to think about them and whether they would work in your systems of criminal justice.

The problems with our criminal justice system are directly related to our ever-increasing crime rate which in many instances can be attributed to our inability to cope with human relations. We should all remember that the criminal justice system has a great potential for dealing with individual instances of crime, but it was not designed to eliminate the conditions in which most crime breeds. In the broadest terms, the system needs help.

Warring on poverty, inadequate housing and unemployment, is warring on crime. Laws giving equal rights are laws against crime. Money for schools is money against crime and for improving our criminal justice system. Medical, psychiatric, and family-counseling services are services against crime. More broadly, and most importantly, every effort to improve life in America's cities is an effort against crime. Overall, a community's most enduring protection against crime is to right the wrongs and cure the illnesses that tempt men to harm their neighbors.

While each of us is working to generally improve the lives of our communities, there are other means available with more immediate effects on the criminal justice system.

According to a recent survey, both experts and 68 % of the general public agree that a problem which severely affects the quality of justice in America is that it takes too long before accused people are brought to trial.

In North Carolina 67.6% of the crimes tried by our courts involve minor traffic offenses. It has been suggested that these offenses be decriminalized, removed from the criminal courts and handled on an administrative basis with a right of appeal to an administrative review board. Further appeals would be allowed only by a petition for writ of certiorari to be granted if a substantial constitutional question or a novel point of law exists. All such offenses could be made purely civil in nature. The United States Supreme Court has indicated there would be no requirement for a jury trial.

Another area which needs study is the so-called "victimless crimes", such as public drunkenness. In North Carolina, public drunkenness cases represent almost 10% of all crimes before our State courts. It is my belief that public drunkenness should be abolished as a crime and handled otherwise. A bill to do just this received the backing of North Carolina law enforcement officials but failed to pass our Legislature. We think it will next time.

With overcrowded dockets, some jurisdictions have enticed members of the local Bar to serve as temporary prosecutors. In addition, some courts have started night trials in criminal cases, thus relieving physicians and witnesses from the necessity of leaving their jobs and being required to wait until a case is called.

It has been suggested that we review the method of jury selection with the thought of placing the major responsibility of jury selection with the judge. This could be made less cumbersome by distributing form questions in advance. For minor cases, the possibility of six man juries should be considered, along with the possibility of eliminating the grand jury.

Judges should be provided with information to aid in sentencing defendants and some jurisdictions have adopted uniform sentencing. Without doubt, substantial differences in sentences given for similar crimes creates the impression of inequity and injustice in our criminal system.

I feel the very best place to start in correcting our system of justice is with the juvenile. Some improvements suggested are: uniform procedures for handling the juvenile, set forth in handbooks for use throughout the State; Juvenile Bureau or Juvenile Service Officers in each county; creation of a Juvenile Affairs Officer in the Attorney General's Office; centralized training for juvenile officers; and instructions for judges of general courts of justice as to proper handling of juvenile problems.

First of all, I believe the problems of the criminal justice system can best be solved at the local level. This is where the action is. It is not just a coincidence that the system in one county will function smoothly and efficiently while in a neighboring county or district, you have a total breakdown.

Secondly, we all realize that with enough money and the right people, we can solve most of the problems of the criminal justice system. But we also all know that we are not going to get all the money we need, nor are we going to be able to replace all the less proficient people in our system with proficient ones. This does not mean we should throw up our hands in disgust and say "I quit".

We should look hard for practical ways to improve the operation of the system in every community. Many times some of the best and most practical suggestions come from members of the criminal justice system at the local level - the men who work in the system every day - the policeman on the beat, the clerk of the court and his staff, the prosecutors, magistrates, attorneys, judges, and probation officers. And many times the most significant improvements are the least expensive.

The suggestions of these men must be actively solicited because often times they are reluctant to come forward with new ideas for fear of rocking the boat.

(May insert FELLOWSHIP PROGRAM this past year)

In summary, America's system of criminal justice is overcrowded and overworked, undermanned, underfinanced, and very often misunderstood. It needs more technical resources. It

needs more coordination among its many parts. It needs more public support. The system needs the help of community programs and institutions in dealing with offenders and potential offenders. It needs, above all, the willingness to re-examine old ways of doing things, to reform itself, to experiment, to run risks, to dare. It needs vision, it needs the help you can provide. While you are in Atlanta, I ask you to look at the system in your community, find out what is wrong with it, and see if YOU can't do something to correct the wrong.

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