Speech by Robert Morgan
ATTORNEY GENERAL
Goldsboro Jaycees
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I appreciate very much the opportunity to be with tonight and be a part of your annual DSA banquet. I always look forward to this time of the year---the time when Jaycees around the State gather in their local communities to honor those who have rendered outstanding service. I always look forward to it because it gives me an opportunity to meet with North Carolina's young leaders, North Carolina's civic leaders and share with you my thoughts concerning government in our State and problems we face.

This year I particularly welcomed the opportunity because I had something on my mind that had been worrying me for a long time---the problem of tremendous backlogs in our courts, and our apparent inability to insure speedy trials. Jaycees are committed to the rule of law as is evidenced by your creed. What better organization, then, could one choose to use as a forum for a discussion of this kind? What better group to bring about needed change than the active and enthusiastic young civic leaders who make up the Jaycee organizations throughout this State. I can think of none.

This topic, however, is controversial. That does not bother me for the purpose in this series of speeches concerning the court system is to bring about public recognition of the problem and to prompt open and frank debate. I think we have made a start.

About a week ago, I spoke to the Raleigh Jaycees Banquet and for the first time commented about problems within the State's courts system. I stated then that my remarks might be disputed and that some would disagree with my conclusion that "(a)ll is not well with the courts system in North Carolina."

It didn't take long to get a reaction. The Administrator of the Courts criticized my speech and described it as an "unwarranted attack" on what he says is the best court system in the country. I do not agree with him but I am glad at least that he replied.

On the other hand, many persons have come forward to express a similar concern based on personal contact with the courts. It is significant that many court officials involved in the day-to-day operations of the court have indicated there wholeheartedly agreement.

Some have implied that I am meddling in an area which is not my legitimate concern, that I have no jurisdiction or responsibility over the courts, and therefore, I should not be talking about problems in the courts system. Then why am I doing so?

In English law, the Attorney General was referred to as "the chief law officer of the realm." Black's Law Dictionary says he is "the chief law officer of the State and head of the legal department."

Because of a long tradition of being the "chief law officer" of the State, the responsibility and concern of the Attorney General must by necessity be for the effective administration of the entire criminal justice system and not exclusively for any one portion.

I know from practical experience from reading the mail which comes into my office, from talking on the phone and visiting throughout the State, that the general public expects the Attorney General of this State to be concerned about every aspect of the administration of justice, regardless of whether he has jurisdiction over the matters complained of. For example, in North Carolina I have no jurisdiction over the district solicitors, the men who

prosecute all the criminal cases in the trial courts. However, if something goes wrong in a local courtroom concerning a criminal prosecution, I am quick to hear about it. I have no juriscition over the docketing of cases but if a case is continued or postponed for an inordinate length of time, my phone is apt to ring.

So you can see, the public expect the Attorney General to be concerned about the administration of justice.

He would be derelict in his duty, I think, if he failed to use the influence of his office to bring about improvements where improvements should be made and to boost the public's confidence where confidence is lacking.

In my opinion the court system in this State does have problems---I believe this quite strongly---and I feel compelled to speak out in spite of the criticism I know my statements are sure to draw. As many of you who have been associated with me know, however, I have never been particularly frightened by criticism or afaid of public debate.

We have had a great deal of sucess at both the state and local level, I think, but it is becoming apparent that improvements in law enforcement alone are insufficient

to solve the grave problems facing the criminal justice system today. Law enforcement is but one link in the chain which forms the criminal justice system. To strengthen it and not strengthen other important links would be sheer folly. As I have said previously, the courts system is a weak link which Now demands immediate attention.

North Carolina a few years ago adopted a new court system, and it has now been implemented in all our countries. It is in fact a "model system" for it follows closely a plan prepared and suggested for ultimate adoption throughout the United States. And it looks mighty good on paper.

I have not criticised its structure. But just because it might have been designed right does not mean it also is operating perfectly, that dockets are not crowded, and that all is well with the system. It is like saying here is my brand new car, straight from the drawing boards and assembly line of Detroit. It must run perfectly.

When you start the motor, it may not run well at all. It would be less than wise, I think to ignore the problems and still insist that the car is in prime running condition.

I hear from people almost daily who have been in the courtroom as witnesses, as plaintiffs, and as defendants who say that the courts are bogged down, that justice is not being administered efficiently or expeditiously, and that their contact with the court has diminished their respect for it. This is a modern tragedy.

All is not well with the courts system in North Carolina. And I do not think that we should attempt to say that past accomplishments, the recent court reform legislation and the changes made as a result thereof, have created a perfect and flawless system which functions without a hitch to the satisfaction of everyone. To do so not only ignores present problems but creates new ones; to do so denies the validity of the legitimate complaints of thousands of North Carolinians who have watched the courts attempt to do justice and fail.

I wish we did have a "model system"---not just on paper but in practice. My comments concerning the courts are made with the idea in mind that we can move closer to that ultimate goal if we recognize our shortcomings and move to correct them. But we can't do this by ignoring the fact that "the new car doesn't run well."

It is not enough that the system just look good on paper. It must be effective in fact and justice is only effective "when it is fairly administered without delay." (Alfred Murrah) Note, I have said "without delay". In my opinion, delay is the major problem facing us today. It is perhaps the greatest challenge to the strength and effectiveness of our system that we have faced in our history.

In his opening address to the National Conference on the Judiciary held in Williamsburg, Virginia, last March, President Nixon pointed to this very problem.

> "Justice dictates not only that the innocent man go free, but that the guilty be punished for his crimes... [j]ustice delayed is not only justice denied - it is also justice circumvented, justice mocked, and the system undermined."

I agree wholeheartedly and have said time and time again that swift and sure justice, not harsh punishment, is certainly the most effective deterrent to crime. The constant delay in getting cases tried has been defended by some court

officials on the ground that it is the defendants and their attorneys who are delaying the trials and, therefore, no one's rights are being abused.

Now I ask you if the rights of the prosecuting witness are not abused when he has been victimized and yet sees the lawbreaker remain free and unconcerned since the lawbreaker knows that he may never have to answer for his wrongdoing.

I ask you if witnesses are not abused when they are subpoenaed to court over and over again, when they lose time on their jobs and income, and often even put their jobs in jeopardy because cases are repeatedly postponed, usually without advance notice.

I ask you if the citizens of this State are not being abused when defendants are allowed to sidetrack the judicial mechanism and delay it to their advantage. I ask you if law enforcement officers are not being abused when they waste hours and days in court waiting to be called for cases in which they are witnesses.

Now I know that "[c]riminal adjudication will never be a completely efficient process but there is a good reason

to believe that it can become a more efficient process than it is now, without losing anything that is worth keeping." (Richard G. Kleindienst)

President Nixon issued this warning in Williamsburg and we should consider it carefully as we consider possible improvements:

> "...[i]f we limit ourselves to calling for more judges, more police, more lawyers operating in the same system, we will produce more backlogs, more delays, more litigation, more jails and more criminals. 'More of the same' is not the answer. What is needed now is genuine reform, the kind of change that requires imagination and daring, that demands a focus on ultimate goals."

That goal President Nixon said "is not to put more people in jail or merely to provide a faster flow of litigation - it is to resolve conflict speedily but fairly, to reverse the trend toward crime and violence, to reinstill a respect for law in all our people."

One step toward "reinstilling a respect for law" in our people is to modernize the docketing procedures of our courts.

Surely, court dockets can be handled in a more efficient manner than they are. There is no reason why, with preplanning, the courts cannot determine with greater accuracy what cases will be called on a particular day prior to the time that a horde of witnesses, plaintiffs, and defendants cram into the courtroom to be told either that they must sit for days or that their case will not be called until another term of court. Worse yet, often they are told nothing.

Chief Justice Warren Burger has commented on what he describes as "the continued use of ... old equipment and old methods." He drew an analogy between the court system and hospitals. Both have been subjected to the same stresses and strains but the hospitals responded long ago by recognizing the importance of system and management in order to deliver adequate medical care. He than points to the development of hospital administrators and notes that every hospital of any size has a trained administrator dealing with management and effective utilization of the institutions resources.

"Courts and judges have, with a few exceptions." says Justice Burger, "not responded in this way. To some extent, imaginative judges and court clerks have moved

partially into the vaccuum, but the function of a clerk and the function of a court executive are very different, and a court clerk cannot be expected to perform both functions."

In our State, we still expect the Solicitor to effectively prosecute the cases in his district just as we have for decades. At the same time he is faced with administrative duties which exceed anything we could ever have imagined a few years ago---and often with little or no special training for this task, even if he had time to devote to it.

In some jurisdictions we have given the solicitor administrative assistants and investigators on an experimental basis. But we have done very little more.

The critical nature of the problem we face is indicated by statistics from the Administrative Office of the Court.

On January 1, 1967, in the Superior Courts in North Carolina, where our more serious crimes are tried, there were 10,819 criminal cases pending. By the end of 1967, there were 11,903 cases. By the end of 1968, there were 12,278; by the end of 1969, there were 12,640 and by the end of 1970, there were 16,919 pending cases. This represents an increase over four years of 56%. During 1970 there was a 33.8% increase in criminal pending cases in the Superior Courts.

The District Courts, where traffic and less serious criminal offenses are tried, showed an increase in pending cases from January 1, 1969 when there were 50,422 cases on the docket to December 31, 1970, when there were 78,506 on the docket - in just two years an increase of 55.7% in our backlog. During 1970 alone, the rate of increase was 22%.

Statewide statistics are not available for 1971 but the magnitude of the problem can be shown by statistics for the year ending December 31, 1971, from ten counties selected at random.

In Wake County, for example, at years end there were 8,640 criminal cases pending in the District Court and 1,544 pending in the Superior Court for a total of 10,188 criminal cases pending of which 300 were drug law violations. The Superior Court criminal docket backlog increased 63% in one year!

In Cumberland County there were 4,050 criminal cases in the District Court and 363 in the Superior Court for a total of 4,413 cases pending.

In Mecklinberg there were 6,313 cases in the District Court and 875 in the Superior Court for a total of 7,188 criminal cases pending.

Guildford County, including High Point and Greensboro, had 9,750 cases pending in the District Court and 602 in the Superior Court for a total of 10,352 criminal cases pending.

Forsyth County had 681 cases pending in the District Court and 846 in the Superior Court for a total of 1,527.

Buncombe County had 3,520 criminal cases pending in the District Court and 528 in the Superior Court for a total of 4,048 pending criminal cases.

These figures are from our more populous counties where court administration should be the best in our State, yet the backlog of cases is staggering and steadily getting worse.

In ten counties: Bertie, Buncombe, Clay, Cumberland, Davidson, Forsyth, Guilford, Mecklenberg, Wake, Wayne and Wilson randomly selected as representative of the entire State, there were at the year's end 36,866 criminal cases pending in the District Court and 5,646 in the Superior Court - a total of 42,512 cases. This total figure represents an increase of 15%

in our criminal case backlog over a period of just one year.

Let me digress for a moment to just comment on the effect of this backlog on our most pressing law enforcement problem - drug law violations.

In Cumberland County there are approximately 125 narcotics cases awaiting trial in the Superior Court and many more in the District Court. In Wake County there are 250 drug cases in the Superior Court backlog. The practical effect of this delay in trial of drug offenders is to frustrate the dedicated law enforcement officer and to convince the violator that punishment is remote if at all.

In addition, long delays cause evidence to grow stale and the memory of witnesses to dim. Often vital witnesses die or move from the area and their testimony, and many times the case, is gone forever. The law officer in a criminal action often must sit by and see time alone destroy a perfect case he has made. A party in a civil action sees the chance of justice being done eroded by passing days and months.

I point out that in the backlog of pending criminal cases, approximately one in three has been continued or postponed at least one time. While these continuances may be

necessary or desirable in some cases, the abuse of this practice has had the effect of compounding our courtroom delays.

It is easy to see that these increasing backlogs and continuous delays are a critical matter. They erode the effectiveness and credibility of the court. They further weaken an already overburdened system.

I have suggested that our State may need legislation which would impose a mandatory time limit after arrest during which criminal trials must be begun. If the flow of cases in our courts does not substantially improve, my present intention is to recommend legislation of this type for the consideration of the 1973 General Assembly.

This may be bitter medicine, but it might be what we need to help cure an ailing court system.

Senator Sam Ervin has introduced legislation of this general character in an effort to expedite trials in the federal courts. Governor Jimmy Carter of Georgia has recommended similar laws for his State.

Though various time limits have been suggested, I now favor a 90 day maximum period during which trial must have begun.

Mandatory dismissal with prejudice would follow except where the court makes a finding that the ends of justice would not be met by trial within the mandatory period. Delays requested by the accused would be granted sparingly and then only for good cause shown to the court.

There are other possible solutions to our problems. I sincerely hope that court officials in our State will begin to explore them, arrive at some definite recommendations for expediting justice and then take whatever steps are necessary to implement them. I feel certain that if they do, they will have the wholehearted support of the citizens of this State who, in my opinion, are more than justified in demanding that we find new ways to insure a speedy trial.

I do not pretend that I have the answer to all the problems of the criminal justice system; I do not. I do believe as strongly as I believe anything, that you don't solve problems by ignoring them. You don't solve problems by stating all is well when many times are wrong, and it is obvious to everyone. You don't inspire public confidence this way, and, in fact, you contribute to public disrepute and the deterioration of the system.

North Carolinians are known for facing up to their problems squarely and proposing definite and realistic solutions. It is time now for public officials and private citizens alike to look carefully at the situation in our courts and honor this tradition.

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