Speech by

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ON PROBLEMS IN OUR CRIMINAL COURTS

The Attorney General occupies a unique position. Many of his duties are spelled out by statute and are perfectly clear to everyone. Others are a part of the "common law" and really have come to him more by tradition than by specific legislative action over the years.

The effectiveness of the office is due in part both to statutory duties and traditional common law duties. I am glad that the responsibilities of this office are as diversified and numerous as they are because with diversity and volume come opportunities and challenges in many areas of service.

Probably no other statewide office has as rich a tradition as that of the Attorney General. Frankly, I was surprised, at the richness of its historical background.

I would like to comment on one description of the office of Attorney General which is found in almost every commentary on the office. 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."

Please note that I said "law officer," and not "law enforcement officer" for the two are not synonymous but often are confused.

Because of this long tradition of being the "chief law officer," 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 have direct responsibility for and jurisdiction over the State Bureau of Investigation, its investigative and technical operations. I have other specific duties pertaining to the criminal justice system, including

representing the State in every appeal taken from the criminal trial courts. But my interests in the criminal justice system cannot stop at that point.

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 jurisdiction over the docketing of cases but if a case is continued or postponed for an inordinate length of time, I am apt to hear about that, too.

If bail is set too high, if a case if nol prossed without good cause, or if a warrant is amended to charge a less serious crime, my phone is sure to ring even though it is beyond my power to reach in and correct the situation.

So you can see, the public expects the Attorney General to be concerned about the administration of justice. And he ought to be concerned because as chief law officer of the State he also is the chief spokesman for the criminal justice system.

Any Attorney General would be derelict in his duty, 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. Since becoming Attorney General of North Carolina, I have devoted a major portion of my efforts to trying to improve law enforcement in North Carolina. We embarked on an ambitious program dedicated to the improvement of the SBI, to expansion and improvement of the Bureau's technical facilities and generally to the upgrading of the quality of service extended to local law enforcement officials across the State.

At the same time, local officials have in their own way embarked on programs just as ambitious as those instituted at the State level. They have done so with the aid of funds from LEAA

coming to them through the Governor's Committee on Law and Order. They are continuing to improve, and I think for the most part are now dedicated to an overhaul of local law enforcement services in North Carolina.

It is becoming apparent, however, that our efforts alone are insufficient to solve the grave problems facing the criminal justice system today - we are but links in the chain which forms the criminal justice system. To strengthen law enforcement and not strengthen other important links would be sheer folly. And, in my opinion, there is today a link in the chain which is weak and demands immediate attention.

I refer to that important link in our criminal justice system - the courts.

True, the criminal justice system has three separately organized parts - the police, the courts, and corrections - and each has a distinct task. 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.

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. In years past, we have encouraged private citizens, especially students, to go to the courthouse and observe the court in progress in order to increase their understanding and their appreciation for the judicial system. I suspect that if we want to preserve what confidence the public has left, we should instead ask them to stay away and hope that they will not become involved in the disposition of a case.

North Carolina, a few years ago, adopted a new court system, and it has now been implemented in all our counties. 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 am not criticizing its structure. But just because it might have been designed right does not mean it is also operating perfectly, that dockets are not crowded, and that all is well with the system. It is like saying there 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. To ignore present problems only creates new ones; and to deny the validity of the legitimate complaints of thousands of North Carolinians who have watched the courts attempt justice and fail is inexcusable.

So, I am disturbed when I hear statements by public officials to the effect that North Carolina's courts are functioning beautifully, that dockets are not crowded, and that all is well with the courts system. All is *not* well with the courts systems 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.

Certainly, North Carolina in the past has responded to the call for court reform and we have made progress. But, we cannot fail today to recognize the desperate need for further changes and improvements.

As stated earlier, I have no criticism of the structure that is on paper. However, the system 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 and it is a challenge to the strength and effectiveness of our system.

This was brought home to me very forcefully last November. When I returned home late one night, I found a young man from my home town waiting at my house. I have known him for many years, and I had known for sometime, in my own mind, that he was using drugs. This particular night, he was actually panicky and he admitted to me that he had been smoking marijuana since his release from service which was several months prior to this night. He said he and his young friends had been able to buy all they

wanted in a nearby town until that week, and during that week, each time he approached one of the pushers he was told that they had no "pot" but that they had plenty of "smash" or heroin.

If I had not already known that big-time criminals were involved in the drug traffic in this State, this would have been a clear indication for these people get youngsters psychologically dependent upon the lesser drugs, then cut off the supply and switch them to hard drugs. This young man told me if I would accompany him to that town and wait in his car, he would buy all of the herion within my view that I would furnish the money for.

I didn't go with him, but I did relate this story to Mr. Charles Dunn, Director of the State Bureau of Investigation, the following morning. I asked him if he thought this was true, and he replied that, in his opinion, it was true. I then asked Mr. Dunn why didn't the Bureau do something about it. He replied, "Mr. Morgan, in that particular county, we have more than a hundred major drug cases on the docket in Superior Court. We have three cases against one man that we believe to be the biggest heroin pusher in the State. He is out on bail, waiting trial, and is still selling drugs."

"Now," he said, "If you think we should pull our Agents off other important cases and put them back in the area and continue to bring cases under these circumstance, we will, but I just think we can better use our resources elsewhere."

I had to agree with him and when we looked at the docket in the other counties and saw how many other cases were waiting trial around the State, I wondered how we had done as well as we had in cases involving drugs.

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

> A system of criminal justice that can guarantee neither a speedy trial nor a safe community cannot excuse its failure by pointing to an elaborate system of safeguards for the accused. 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.

One step toward "reinstilling a respect for law" in our people is to bring our courts and their docketing procedures into the twentieth century.

Surely, court dockets can be handled in a more efficient manner than they are now. There is no reason why, with preplanning, the courts cannot determine to a greater degree what cases will be called on a particular day prior to the time that a hoard 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.

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 of 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 were tried, showed an increase in pending criminal 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 35.7% 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 the end of the year, 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 Mecklenburg, there were 6,313 cases in the District Court and 875 in the Superior Court for a total of 7,188 criminal cases pending.

Guilford 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, Mecklenburg, 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 reiterate again on the effect of this backlog on our 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 pusher that punishment is remote if at all. You can see why Mr. Dunn said, "What is the use?"

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 come to believe that our State now needs 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. Senator Sam Ervin has introduced legislation of this general character in an effort to expedite trials in the federal courts.

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. In computing the time elapsed, period attributable to delay requested by the accused or his counsel, or unavailability or inability of the accused to stand trial would not be included. Delays requested by the accused would be granted sparingly and then only for good cause shown to the court.

We need to move carefully if we do enact this change in our law. Certainly, we do not want the experience which Florida had when its Supreme Court promulgated a rule providing all defendants who requested it a trial within 60 days. The trial courts were incapable of meeting this trial date immediately and several hundred cases were dismissed.

We must proceed more cautiously than this, but I think the public is justified in demanding speedy trials. This pressure will be felt by legislators, many of whom share this concern, and they are apt to respond with new laws. At this point, I tend to agree with some who have suggested that if we impose mandatory time limits, we should do so very carefully with a relatively flexible system rather than with an inflexible statutory mandate.

It is apparent that Chief Warren Burger is correct in his observation that the continued use of old equipment and old methods simply will not work in our modern day world when the rate of crime in this country is so much greater than it was when our judicial system was first established.

Justice Burger 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 then 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 institution's resources.

Justice Berger hailed the creation of the Institute for Court Management at the University of Denver as one of the most significant developments of court reform in a generation.

I agree with this, and I believe that our court system should have more professionally trained administrators. In England's Royal Court of Justice, they have an administrator who is known as "Master of the Lists." His responsibilities include assuring that cases docketed are docketed expeditiously, and that each court has its fair share of the load. His goal is full use of courtroom facilities and available judges.

Another area which needs study is the so-called "victimless crimes," such as public drunkenness. According to the Division of Law and Order, a study conducted of 83 counties from January through April of 1969 indicated that 34% of all criminal cases other than motor vehicle are public and social misconduct. And this category is largely composed of drunkenness and disturbing the peace. Public and social misconduct is the second largest category of all criminal offenses docketed, motor vehicle violations being the first. These cases require just as much administration by the courts as a full-blown homicide.

As an illustration of the countless hours spent in dealing with an individual committing these offenses, I know of a man from my home county of Harnett who has been charged 53 times in the past 15 years with public drunkenness, disturbing the peace, or

crimes stemming from drunkenness. To give you some idea of the paper work involved with a person of this type, the Clerk of the Superior Court has one five-drawer file cabinet full of documents pertaining to this individual alone.

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.

In North Carolina 67.8% 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.

Today, nearly every law journal, magazine or newspaper you pick up has some article on the crisis in our courts, and while North Carolina is in a better position than many states because of the work of the Courts Commission and the newly adopted court system, I believe that we cannot rest now. Backlog of case statistics demand otherwise. North Carolinians responded once, and I believe they will again if we, within the criminal justice system, stop saying that all is well!

Let me make it clear that I do not have the answers to all of the problems, and I have submitted here just a few suggestions, which you may disagree with - others may have different answers and perhaps better ones. 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. The suggestions of these men should be actively solicited. Unfortunatley, often times they are reluctant to come forward with new ideas for fear of rocking the boat.

I do believe, as strongly as I believe anything, that you don't solve problems by ignoring them. You don't inspire public confidence this way - when they are reading every day facts to the

contrary. If those of us within the system keep playing ostrich then we are contributing to public disrepute of the courts and the deterioration of the system.

As I have traveled about the State, I have found that many people place a substantial share of the responsibility upon the judges for their failure to conduct the court in a businesslike way. I have tried to explain that while it is true that some of our courts do not function as efficiently as they should, we do not want to administer justice on an assembly line basis here in North Carolina. We do not want any defendant to be so hurried through our courts in such a way that he will feel that he has not had an opportunity to present adequately his side of the case.

And, please bear in mind, that while I am advocating change to alleviate backlogs, I strongly urge that any changes made must not be made to the detriment of justice. I realize and have explained again and again that judges cannot operate their courtrooms as a business because you are dealing in human lives not dealing in commodities. Mass production of justice is not possible.

While some are placing responsibility for the breakdown on the judges, others are placing the blame upon the trial lawyers for their supposedly irresponsible requests for continuances.

Again, I have tried to explain that most lawyers are anxious to bring their cases to trial for that is the only way that they can make criminal law practice pay. Each time a case is continued, the lawyer has to spend additional hours reviewing the case. However, as long as the backlog in our courts is as great as it is now, continuances will be granted and when this is done, an attorney must continue to make the request if his client insists. If the defendant knows that continuances are being handed out as a matter of routine, then he is sure to insist that his attorney asks for it. If the attorney refuses, the client very likely will feel that his representation is not aggressive or vigorous enough and is apt to request that the court appoint new counsel. If he is actually brought to trial and convicted, the defendant will probably then petition for a post-conviction hearing and ask for a new trial on the ground that his lawyer did not adequately represent his interest.

In many cases, solicitors are forced to bear the brunt of the

responsibility - particularly the failure to properly plan his calendar. It must be remembered that our prosecuting attorneys are faced with an almost insurmountable task of interviewing witnesses and preparing for trial without adequate administrative or secretarial assistance. They cannot bear the burden of blame if they are not given the resources or administrative help to do the job.

I hope that there can be a public airing of this growing problem and above all in this discussion, I trust there will be no charges or countercharges as to blame. Answers will not be found in this manner, but with a concerted effort by all, meaningful improvements can be made.

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