

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. And 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. And frankly, I was surprised, myself, at the richness of its historical background.

Tonight I wanted 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 is not processed 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, 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. 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, however, we recognized that the primary responsibility for law enforcement still lies at the local level. Therefore, it is not enough just to improve the SBI; local law enforcement agencies must begin to improve the quality of their services as well.

Many of these 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 a major overhaul of local law enforcement services in North Carolina.

It is becoming apparent, however, that their efforts alone are insufficient to solve the grave problems facing the criminal justice system today. They recognize that they are but one link 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 are today links in the chain which are weak and demand immediate attention.

I continue to be 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. Well compared to what?

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 they don't become involved themselves in the disposition of a case.

All is not well with the courts system in North Carolina. 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.

Now the call for improvement in our courts is not new. North Carolinians heard it most recently in 1965 when court reform became a major item for legislative attention. Revisions in the structure of the system enacted then became effective over a three-year period (1967-1970).

The noted jurist, Roscoe Pound, in 1906, made a speech calling for court reform which is still quoted today. In his words, "(a)s long as there have been laws and lawyers, conscientious and well-meaning men have believed that the attempt to regulate the relations of mankind in accordance with law has resulted largely in injustice. We must not be deceived by this innocuous and inevitable discontent with all law into overlooking or underrating the real and serious dissatisfaction with courts and lack of respect for laws which exists in the United States today."

Judge Pound went on to call for more modern techniques including management techniques in the courts. Fifteen years later William Howard Taft, as Chief Justice of the United States, asked for the same thing - that we bring "modern management processes to the business of administering the courts." The Wickersham Commission's report, prepared in the '20's and studies through the '30's, repeated the call for reform. Arthur Vanderbilt in the '40's and Earl Warren in the '50's and others in the '60's have had the same objective." (Ernest C. Friesen, Jr.)

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

It is not enough that the system may 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.

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. 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)

Certainly, for the most part in our State we are blessed with qualified and capable judges and solicitors. Why then are we faced with such a problem of delay in the courts? Why then are our courts so overburdened? Perhaps President Nixon supplied part of the

answer in Williamsburg when he said:

"The Nation has turned increasingly to the courts to cure deep-seated ills of our society - and the courts have responded; as a result, they have burdens unknown to the legal system of a generation ago. In addition, the courts have had to bear the brunt of the rise in crime - almost 150% higher in one decade, an explosion unparalled in our history . . . . Our Courts are overloaded for the best of reasons: because our society found the courts willing - and partially able - to assume the burden of its gravest problems. Throughout a tumultous generation our system of justice has helped America improve herself; there is an urgent need now for America to help the courts improve our system of justice."

President Nixon issued this warning, which I think we should consider carefully:

". . . (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 reinstalled a respect for law in all our people."

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. 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.

But these problems cannot be solved by court officials alone. The legal profession in our State has an obligation here too. David Naply, an English solicitor, writing for "Nations' Business" magazine, said, "British advocates are expected to assist the court in attaining justice and avoiding delays and the legal profession as a whole so performs."

In the United States and in North Carolina, it is understood that attorneys are officers of the court and, therefore, have an obligation to contribute to its decorum and

efficiency. I think we should re-examine and give renewed emphasis to this duty of the legal profession to the total system of justice, as well as to individual clients. Hopefully, as a result, we can "develop a partnership between the legal profession, the courts and the public in the organization and improvement of the courts and other projects devoted to the effective administration of justice." (Justice Tom C. Clark)

". . . (A)s an officer of the court, the lawyer has a duty to uphold and serve the responsibility of the courts to afford speedy justice. His opportunity here is often far greater than that of the judge. His responsibility is proportionate to his opportunity." (Alfred P. Murrah)

I think it important to note that as a practical matter lawyers usually will ask for very little more than they have been led to believe court officials will grant. If they know continuances are handed out as a matter of routine and that a continuance enhances a particular client's case, then they are sure to ask for it. The alternative is to refuse, have the client feel his representation is not aggressive and vigorous enough, and have him seek the counsel of another attorney who will obtain for him the advantage that a continuance offers.

I believe that most attorneys would actually welcome a less relaxed attitude by the court concerning the continuance of cases. They are the first to recognize that a continuance may benefit a particular client but necessarily slows the judicial process and prejudices the interests of his other clients who desire and are entitled to a speedy trial. A relaxed attitude of the court in fact forces him to serve the interest of one client to the expense of others - a proposition contrary to the tradition of the legal profession.

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 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 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 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 pusher that punishment is remote if at all.

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.

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.

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, periods 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.

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.

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 that we should do so very carefully with a relatively flexible system rather than with an inflexible statutory mandate.

I am not one to come before you and 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 things 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.

My remarks here tonight will probably be disputed by some, and that's fine. Some will vigorously disagree with my conclusions about the need for changes in our system, and that's fine, too. I hope that there will be discussion and a public airing of this growing problem, for I believe that only through an informed and aware public can any meaningful improvements be made.

North Carolinians are known for facing up to their problems squarely 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.

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