

SPEECH BY:

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I BELIEVE THAT NO MEETING OF LAWYERS ENGAGED IN THE PRACTICE OF CRIMINAL LAW AT THIS TIME IN OUR HISTORY WOULD BE COMPLETE WITHOUT SOME ATTENTION BEING GIVEN TO WHAT I CONSIDER TO BE THE MOST IMPORTANT PROPOSAL IN THE AREA OF CRIMINAL LAW THAT OUR LEGISLATURE HAS HAD BEFORE IT IN THE LAST FIFTY YEARS. THE MATTER THAT I'M REFERRING TO, OF COURSE, IS THE PRETRIAL CRIMINAL PROCEDURE ACT PROPOSED BY THE CRIMINAL CODE COMMISSION.

SOME OF YOU HAVE READ THIS BILL AND HAVE FOUND THINGS THAT YOU DO NOT CARE FOR. BY THE SAME TOKEN, THOSE OF YOU WHO HAVE VIEWED THE BILL IN PERSPECTIVE HAVE FOUND THAT IT CONTAINS MANY IMPROVEMENTS OVER THE PRESENT STATE OF THE LAW IN NORTH CAROLINA.

I BELIEVE CANDOR REQUIRES US TO SAY THAT THIS BILL IS NOT A PROSECUTOR'S BILL BUT IT IS LIKEWISE NOT A DEFENSE LAWYER'S BILL; IT IS CLEARLY, IN THE TRUEST SENSE, A CITIZEN'S BILL. IT IMPOSES SOME INCONVENIENCES AND SOME REQUIRED

CHANGES IN WAYS OF DOING BUSINESS ON THE DEFENSE BAR OF THIS STATE, IT IMPOSES SOME BURDENS ON THE PROSECUTION IN THIS STATE AND WILL ALSO IMPOSE SOME ON THE DISTRICT COURT AND SUPERIOR COURT JUDGES.

WHILE THERE ARE SOME INCONVENIENCES, I DO NOT BELIEVE THAT THESE BURDENS ARE UNREASONABLE, AND I BELIEVE THAT THE SAVINGS IN TIME AND CONVENIENCE OF THE CITIZENS WILL MORE THAN MAKE UP FOR THE PROBLEMS WHICH YOU AS PROSECUTORS AND OTHERS AS DEFENSE LAWYERS CAN ANTICIPATE FROM YOUR PERSONAL POINTS OF VIEW.

MEMBERS OF THE HOUSE SELECT SUBCOMMITTEE THAT ARE CONSIDERING THIS BILL HAVE WORKED HARD. THEY HAVE MET ON FIVE WEEKENDS SINCE EARLY AUGUST. THEY HAVE DISCUSSED THE BILL ON A LINE-BY-LINE BASIS AND DEBATED ITS PROVISIONS BACK AND FORTH. I DO NOT HAVE A COPY OF THEIR REPORT IN ITS TENTATIVE FORM AND I HAVE NOT BEEN IN ON THEIR DISCUSSIONS BUT I UNDERSTAND THAT THEY ARE CONSIDERING A NUMBER OF CHANGES, MOST OF WHICH ARE TECHNICAL IN NATURE AND INVOLVE NO BROAD POLICY QUESTIONS.

I UNDERSTAND THEY ARE ALSO CONSIDERING THE IMPOSITION OF A REQUIREMENT FOR A MANDATORY PROBABLE CAUSE HEARING. THIS WAS NOT THE POSITION OF THE CRIMINAL CODE COMMISSION BUT IT IS ONE WHICH IS BEING CAREFULLY CONSIDERED BY THE

HOUSE SELECT SUBCOMMITTEE AND MAY WELL BE RECOMMENDED BY THEM TO THE FULL HOUSE JUDICIARY COMMITTEE.

THE HOUSE SELECT SUBCOMMITTEE IS ALSO CONSIDERING SEVERING FROM THE BILL THE ELECTRONIC EAVESDROPPING STATUTE. THIS, TOO, VARIES FROM THE RECOMMENDATIONS OF THE CRIMINAL CODE COMMISSION. AND THERE ARE OTHER CHANGES WHICH I UNDERSTAND THE HOUSE COMMITTEE IS LIKELY TO RECOMMEND IN THEIR REPORT.

MY OWN POSITION IS THAT THE BILL, AS PUT FORWARD BY THE CRIMINAL CODE COMMISSION, IS THE BEST APPROACH FROM A BALANCED POINT OF VIEW TO THE LAW OF NORTH CAROLINA. THE TECHNICAL AMENDMENTS AND CHANGES THAT HAVE BEEN MADE UNDOUBTEDLY IMPROVE THE BILL IN SOME RESPECTS. SOME FUNDAMENTAL CHANGES, SUCH AS THE MANDATORY IMPOSITION OF A PROBABLE CAUSE HEARING, EVEN IN A SITUATION WHERE THE DISTRICT ATTORNEY CAN, AFTER A FINDING OF NO PROBABLE CAUSE, GO AHEAD WITH A BILL OF INDICTMENT, ARE NOT, IN MY OPINION, THE BEST WAY TO ACCOMPLISH THE DESIRED RESULTS IN THE CRIMINAL JUSTICE SYSTEM.

FRANKLY, I CAN LIVE WITH THE BILL WITHOUT THE ELECTRONIC EAVESDROPPING STATUTE. AS A MATTER OF PHILOSOPHY, I AM OPPOSED TO ELECTRONIC EAVESDROPPING BECAUSE OF THE ABUSES WHICH I HAVE SEEN, HEARD OF, AND READ ABOUT. BUT I BELIEVE THAT THE BILL, AS DRAWN BY THE CRIMINAL CODE COMMISSION, IS

AS CAREFULLY DRAWN, AND AS WELL DESIGNED TO PREVENT THESE ABUSES AS ANY I HAVE RUN ACROSS. I DO NOT THINK THAT IT WOULD DO VIOLENCE TO INDIVIDUAL LIBERTIES TO INCLUDE IN THE BILL THE ELECTRONIC SURVEILLANCE PORTIONS. HOWEVER, I AM NOT HERE TO QUARREL WITH THE HOUSE COMMITTEE ON THIS MATTER.

I THINK IT IS IMPORTANT AT THIS POINT FOR YOU, AS THE FIELD COMMANDERS OF THE FORCES OF THE PROSECUTION OF THE STATE, TO MAKE KNOWN TO THIS LEGISLATIVE COMMITTEE AND TO ITS SENATE COUNTERPART, WHICH IS CHAIRED BY MY GOOD FRIEND AND YOURS SENATOR TOM STRICKLAND OF GOLDSBORO, YOUR FEELINGS ABOUT THE PROPOSED AMENDMENTS AS SOON AS THEY BECOME PUBLIC. I WOULD URGE YOU INDIVIDUALLY TO LET THEM KNOW HOW YOU FEEL ABOUT THE PROPOSED CHANGES TO THE BILL ITSELF.

I THINK IT WOULD BE UNREASONABLE AND SHORTSIGHTED FOR YOUR ORGANIZATION, WITH ITS GREAT INFLUENCE, TO BLINDLY OPPOSE ALL OF THE RECOMMENDATIONS IN THE CRIMINAL CODE COMMISSION'S BILL. THE ULTIMATE LEGISLATIVE PRODUCT, WHETHER IN THIS SESSION OR IN ANOTHER SESSION, SHOULD PROPERLY REFLECT THE LEADERSHIP WHICH YOUR GROUP CAN GIVE IN THIS VITAL AREA OF THE LAW AND I ASK FOR YOUR SUPPORT AND COOPERATION.

I URGE YOU TO SUPPORT THE BILL NOT ONLY IN PUBLIC AND IN CIVIC GROUPS AROUND THIS STATE BUT TO SUPPORT THE BILL AND THE BALANCED APPROACH WHICH THE BILL BRINGS IN PRESENTATIONS TO THE HOUSE COMMITTEE AND TO THE INDIVIDUAL HOUSE MEMBERS

AND TO THE SENATE COMMITTEE AS IT BEGINS ITS CONSIDERATION; AT THE PUBLIC HEARINGS SET FOR DECEMBER 7 AND AT SUBSEQUENT MEETINGS OF THE SENATE COMMITTEE. I BELIEVE THAT THEREBY YOUR GROUP CAN MAKE ITS IMPACT FELT AND RENDER A CONSTRUCTIVE SERVICE IN IMPROVING THE LEGISLATION UNDER WHICH WE'RE CALLED ON TO ADMINISTER JUSTICE IN NORTH CAROLINA.

ONE LAST COMMENT. I HAVE HEARD LAWYERS FOR WHOM I HAVE GREAT RESPECT SAY THAT THIS BILL CONTAINS ITEMS WHICH ARE SO OFFENSIVE TO THEM THAT THEY BELIEVE THAT THE BILL AS A WHOLE SHOULD BE OPPOSED. I WANT TO TAKE STRONG ISSUE WITH THIS.

NO DOUBT THERE ARE SOME ITEMS WHICH WILL BURDEN THE DISTRICT ATTORNEYS AS THEY PERFORM THEIR JOB. HOWEVER, THERE ARE OTHER ITEMS WHICH GIVE THE PROSECUTION A DISTINCT ADVANTAGE AND ASSIST LAW ENFORCEMENT BY MAKING POLICE AND LAW ENFORCEMENT DUTIES ON ARREST AND AT OTHER STAGES CLEAR TO THE NON-LAWYER POLICEMAN WHO MUST DEAL WITH THEM ON A DAY-TO-DAY BASIS IN THE FIELD. THE PROPOSED REFORMS TO THE BAIL LAWS ARE VITAL TO CONTINUED RESPECT FOR LAW AND ORDER IN NORTH CAROLINA.

I THINK A CAREFUL, OBJECTIVE LOOK AT THIS BILL WILL CONVINCED YOU, AS IT HAS CONVINCED ME, THAT ALTHOUGH THERE ARE SOME ITEMS IN HERE THAT I WOULD HAVE DONE DIFFERENTLY HAD I DRAWN THE BILL PERSONALLY, THIS BILL REPRESENTS THE

BEST EFFORTS OF A BLUE-RIBBON PANEL, SINCERE EFFORTS WERE MADE TO COMPROMISE AND FAIRLY AND EQUITABLY REPRESENT THE INTERESTS NOT ONLY OF THE PROSECUTION AND THE STATE, NOT ONLY OF THE DEFENSE BAR AND THE ACCUSED; NOT ONLY OF THE A.C.L.U AND YOUR ASSOCIATION, BUT OF THE CITIZENS AT LARGE WHO HAVE NO AX TO GRIND IN THE MATTER OF ADMINISTRATION OF JUSTICE.

THIS BILL IS TRULY A CITIZEN-ORIENTED BILL AND I URGE YOU TO SUPPORT IT. I URGE YOU TO MAKE YOUR OBJECTIONS AND YOUR CRITICISMS KNOWN TO THE HOUSE AND SENATE AT THE APPROPRIATE TIME, STRIVING TO AMEND THE BILL TO MAKE IT EVEN MORE EFFECTIVE AND MORE WORKABLE FOR THE DISTRICT ATTORNEY IN THE COURTROOM. BUT I HOPE YOU WILL SUPPORT THE BILL AS A WHOLE AS RECOMMENDED BY THE CRIMINAL CODE COMMISSION.