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# IMMEDIATE PROBLEMS FOR THE BAR

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Address by

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NEW YORK COUNTY LAWYERS' ASSOCIATION

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# IMMEDIATE PROBLEMS FOR THE BAR

Mr. President, Members of the New York County Lawyers' Association,
Ladies and Gentlemen:

As, of course, you are aware, the Department of Justice has, for nearly a year, been conducting what is popularly known as "a campaign against crime." Manifestly, the situation is one calling for unusual and intensive effort.

The cost of crime has cast upon the people of the United States an annual burden of appalling proportions. In nearly every sizable community throughout our country heavy tribute is exacted from honest enterprise by the threats and violence of the racketeer. Roving criminals, engaged in various kinds of predatory offenses, constitute a serious menace to life, property, and personal freedom. Instructed as to the relative security which lies in the twilight zone between Federal and State authority, these roaming groups seek safety there - and all too often find it.

Moreover, it must be confessed that there exists a distressing breakdown of the law enforcement agencies in many parts of our land. Interwoven with these various factors are to be found the subtle and evil influences which characterize the alliance between the lower grade of politicians and the criminal classes. We are forced, also, to recognize the fact that certain members of the bar, skirting close to the verge of criminality, permit the cloak of our profession to protect notorious enemies of society.

I do not pause to discuss the manifold aspects in which the crime problem presents itself. It is enough to say that there is no question confronting the American people which is of more immediate and vital consequence.

In the difficult and important business of meeting this emergency some degree of leadership must be afforded by some agency that can deal with the subject with a fair degree of authority, and with a nation-wide approach. It is for this reason that I have felt that a high duty rested upon the Department of Justice.

I have not entered into this matter impulsively or with any illusions. I have fully realized that it presents difficulties which cannot be solved by a dramatic coup or by sporadic and intermittent attack. It presupposes a long and persistent campaign, supported and encouraged by the earnest cooperation of all who respect law and believe in orderly government.

At the outset the Department of Justice set up a special division to deal with racketeering and kidnaping. We strove, also, to bring about a more intimate, friendly, and cooperative spirit between the Federal and local law enforcement agencies. This was a matter of the highest consequence. We have sought also to improve our scientific facilities, strengthen our organization, advance the training of our personnel and, last but not least, stiffen our own morale. I am happy to report that the results already achieved have been distinctly gratifying.

Moreover, the Department of Justice, (in collaboration with the Senate Committee on Crime, represented so efficiently by Senators Copeland, Murphy and Vandenberg), has caused to be presented to the Congress a "twelve point program" of proposed laws. I do not pause to discuss these bills because I desire quickly to pass on to certain problems with which we here tonight are more intimately concerned. It is enough to say that these measures are not calculated to place the Federal government in control of the crime situation

of the country. It is not our purpose to invite local organizations to turn over their problems to the Federal government. Law enforcement, now and hereafter, must, for the most part, be a matter of local concern. Moreover, there are constitutional limitations which have ever been kept in view. The bills, in general, deal with the menace of an armed underworld and with that aspect of the problem which has been brought so dramatically forward of late by roving groups of criminals, passing and repassing state lines and bent constantly upon predatory crimes of violence.

I cannot rid my mind of the insistent thought that all of the matters I have heretofore mentioned, merge into certain other problems with which we, as members of the Bar, are related by direct obligation. "The law's delay" has been a by-word since Shakespeare's time, and the activities of certain unscrupulous lawyers who seek to bridge the gap between respectability and crime, have brought grave reproach upon the profession.

Let me take up these two problems in their order:

I am persuaded that if the Federal courts could reform their procedure and render it not only simpler but more responsive to actual needs, the example of such a system would have a powerful and corrective effect upon the practice in the several States.

Courts exist to vindicate and enforce substantive rights. Procedure is merely the machinery designed to secure an orderly presentation of legal controversies. If that machinery is so complicated that it serves to delay justice or to entrap the unwary, it is not functioning properly and should be overhauled.

When the details of procedure are prescribed by statute, errors can

be cured only by legislation. Regulation follows regulation with bewildering multiplicity until there is created a morass of laws in which the whole profession is mired. Thus, the Field Code of Procedure adopted in New York in 1848 contained only 391 sections. It later grew to 3,397 sections. The California code was amended 340 times in 10 years. Manifestly, procedural questions are too technical and too lacking in popular appeal, to receive adequate consideration by any legislative body.

The Federal Conformity Act of 1872, regulating actions at law in the district courts, provides that practice and procedure in such actions shall conform, "as near as may be", to that which is followed in the State in which the Court sits. Whenever the Congress has legislated as to a particular matter the statute thus enacted is, of course, controlling. The words "as near as may be", under the liberal interpretation given to them, have introduced a bewildering mass of exceptions. A litigant in an action at law in a Federal District Court is, therefore, compelled to study, first, the State system of practice, second, Federal legislation relating to procedure and, third, judicial decisions sanctioning departure from State practice. As the practice is not uniform in the 48 States, a serious burden is imposed upon lawyers who appear before Federal courts in more than one State, and, also, upon judges who are assigned to sit outside their immediate jurisdictions. Perhaps, the most vital objection is that the Federal courts are tied to the antiquated system of statutory regulation now generally prevailing in the various States. Reform and improvement are, therefore, hopelessly stalled at the outset.

Let me turn, by way of contrast, to the manifest advantages of a system under which rules are adopted by the Courts. Clearly, this centers

authority and responsibility in qualified hands. If changes are required, they are readily perceived by those who function under them. Surely, rules of court can be applied with less rigidity than statutory provisions. Under such an arrangement we would have every right to anticipate fewer decisions based upon technical questions of procedure while the attention of the bench and bar could be directed to the substance of right rather than to its form. Moreover, such a system tends to preserve the true balance between the legislative and judicial branches of the government, and is, therefore, in harmony with basic constitutional principles.

The policy I am advocating is not an untried, theoretical reform. It has been in full force in England since the Judicature Act of 1873. The English administration of justice is rightly renowned. Legal writers attribute no small share of its celerity and success to the fact that practice and procedure are regulated by rules prescribed by a Rules Committee, consisting of 8 judges and 4 lawyers.

In our country, for more than a century, the United States Supreme Court has been permitted to regulate practice and procedure in equity cases. The results have been highly satisfactory. If this power could be extended to actions at law the Court would be in a position to unite the equity and law practice so as to secure one form of civil action and procedure for both. This would constitute a legal reform of the first magnitude.

For more than 20 years the American Bar Association has advocated the granting of such power to the United States Supreme Court. A bill of this character was first introduced in 1912 and, although it has never reached a vote, it has been brought forward in almost every succeeding Congress.

The proposal was endorsed by Attorneys General McReynolds, Gregory, Palmer, Stone and Sargent. Mr. Elihu Root and the late Judge Alton B. Parker have personally appeared before a Committee of Congress in favor of the measure. In 1921 a questionnaire submitted to Federal judges disclosed that, of those replying, more than 80% of the circuit judges and 75% of the district judges favored the proposal.

Legal, commercial and business organizations have, with striking unanimity, approved this reform. It has been endorsed by 46 State bar associations, the conference of Commissioners of Uniform State Laws, the executive committee of the Association of Law Schools, the United States Chamber of Commerce, the National Association of Credit Men, the Commercial Law League, the National Civic Federation and the Southern Commercial Congress. It has been approved by present or former deans of many important law schools including Harvard, Yale, Cornell, and Virginia.

In 1910 in a message to Congress, President Taft, sponsored the proposal. Two years later it was unofficially approved by President Wilson. In a message to Congress, President Coolidge made similar recommendations. I am authorized to say here tonight that this proposed reform also carries the endorsement of President Franklin D. Roosevelt.

Persuaded that this is the course of right and reason, I have recently communicated with the Chairmen of the appropriate Senate and House Committees suggesting the reintroduction of this bill. I earnestly urge its passage.

Our one great enemy is inertia. But surely the hour has struck. Let us not confess that we are so disorganized, so indifferent, so lazy, so ineffectual and so impotent that we cannot marshal our forces in behalf of a measure of reform which the leaders of the bar have so long and so overwhelmingly approved.

The other matter of major importance to which I direct your attention has to do with the problem growing out of the improper activities of certain members of the profession in their contacts with the criminal classes.

There are, at least, three methods of dealing with lawyers of this type.

Under certain circumstances they may be prosecuted for the violation of Federal or State criminal law. There are many available statutes which seem to have fallen into relative disuse. Other offenses may be reached by fine or imprisonment for contempt of court. Finally, there is the powerful weapon of censure, suspension or disbarment.

A wider use of these powers would, I am sure, not only bring about a better discipline and eradicate many evil practices, but would rid the profession of undesirable elements we have suffered far too long. Courts, bar associations, grievance committees and individual practitioners should not shrink from performing their full duty in this crucial matter.

The privilege of practicing law is a public trust. Of course, no one challenges the duty of a lawyer to represent his client with loyalty and to the utmost of his ability, but it must not be forgotten that his paramount obligation is to the Court of which he is an officer. An attorney

who prevents or obstructs justice, or attempts so to do, is guilty of a grave breach of duty. Even if his conduct is not sufficiently serious to warrant indictment for a crime, there is no reason in justice or decency, or in self-respect which requires honorable members of the bar longer to tolerate his presence.

I am pleading here tonight, not only for the cooperation of those present at this meeting but for the support of those who are doing me the honor of listening in over the radio. I have sketched earlier in the evening the things done, the new laws proposed, and the immediate program of tonight. I cannot leave this latter topic with a mere admonition and appeal. I realize that adequate means of contact must be set up, so that what has been achieved will not be lost, and that further gains may be made. With this in view, I have asked three eminent members of the bar to act as a Board of Advisors, with headquarters at Washington. These gentlemen have consented to serve without remuneration, and simply from a sense of public and professional duty. I also expect, after consultation with them, to designate a Special Assistant to the Attorney General who will devote the greater part of his time to following up the various matters to which I have referred, supplying, as it were, a clearing house for information and mutual help. This non-partisan Board of Advisors will be made up of Honorable Frank A. Thompson, of the Saint Louis bar, Honorable George W. Whiteside, of the New York bar, and Honorable Donald Defrees, of the Chicago bar.

In essence, I am placing at the disposal of the Courts, the bar associations, and the grievance committees of the bar, the facilities of

the Department of Justice, with a view to bringing about a greater co-ordination of effort, in this matter of grave and common concern.

I say to you with the utmost earnestness, that this subject has become a matter of such widespread interest that its consideration has reached far beyond the limits of our profession. The press and the public are watching, I fear somewhat critically, our efforts to speed up justice, to simplify procedure, and to purge the profession of its unworthy members. The task, admittedly, is one of great difficulty, but I am persuaded that it is far from being impossible. And, above all, it is one that cannot be delayed. The dignity of our calling, the progress and development of the law, the security of our institutions, the protection of property, the safety of our people, the sanctity of life--all these things, and many more, plead to us here at this hour, that we shall not fail in our duty to the profession we love and to which we have given the devotion of our lives.