

FOR RELEASE UPON DELIVERY

JUSTICE IN THE  
RECONSTRUCTION PERIOD

AN ADDRESS

BY

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PREPARED FOR DELIVERY

BEFORE THE

NORTH CAROLINA STATE BAR

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It is a great pleasure for me to be here with you this afternoon in Raleigh, North Carolina.

I am also glad that my subject today is "Justice in the Reconstruction Period."

That is directly aligned with one of the most important problems which confronts us today and closely allied with what has absorbed a good deal of my attention lately.

I think, and I am sure you will agree with me, that it is something to which we can well devote a little time and thought this afternoon.

More than a year ago hostilities ceased in the Western Pacific in World War II. Legally, the war is not yet over, but of course for practical purposes, we are now well into the postwar period -- what I may term the "reconstruction" period.

A more fitting title, perhaps, would be the "transition" period between wartime conditions and the enduring peace for which our whole country, and by no means least, your own State of North Carolina, contributed and sacrificed so valiantly.

But the term "reconstruction" is appropriate to my subject today, for we have realized for some time in the Department of Justice that some reconstruction in the wheels of justice would be essential to meet and solve the problems confronting our courts in the period following the victorious conclusion of hostilities against the Germany controlled by the Nazi Party and the Japan controlled by its war-mongering military clique.

We harbored no wishful thoughts that the coming of the long anticipated VE Day and VJ Day would be a magic panacea curing all the ills of crime.

On the contrary, we feared that those ills, which have been festering

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ever since Pearl Harbor, would break loose and spread their poison at an unparalleled rate when society, released from the threat of danger from enemies on both sides and flooded by the sudden return of millions of men who had been trained for total warfare and inculcated with doctrines completely alien to all concepts of our peacetime civilization, would be forced almost overnight to readjust itself from war to postwar economy.

Those fears, I can assure you, were borne out by crime statistics which, beginning even before the last year of peace, rapidly mounted to unprecedented heights.

Nineteen forty-two, 1943, and 1944, all saw a mounting crescendo of crime.

Nineteen forty-five was worst of all.

That year saw the greatest increase in crime in the fifteen years since the Federal Bureau of Investigation started keeping nation-wide statistics.

The estimated number of major infractions of law committed in 1945 was nearly one million six hundred thousand, an increase of practically one hundred sixty-two thousand over 1944.

This, of course, does not include several million lesser offenses.

I was shocked to learn that in two thousand cities, with a combined population of sixty-five million, the actual increase in serious crimes in 1945 came to 12.4%.

Robberies 23%, auto thefts 18%, burglaries 17%, murder 10%, manslaughter 16%, rape 5% -- these figures make sorry reading and provide food for thought.

You have doubtless read articles in your newspapers discussing the arrival of a postwar crime wave and making dire predictions for the future.

We have files of clippings in the Department from newspapers in nearly every city in the country which remind me, every time I look at them, of the

stereotyped simile that so and so, if laid end to end, would reach to the Fiji Islands and back three or four times with enough left over to cover a couple of counties a foot deep.

The Uniform Crime Reports for the first half of 1946, issued by the Federal Bureau of Investigation, contained the first ray of light, such as it is, which has penetrated the clouds of the bleak outlook for rising crime.

They do not paint a rosy picture or dispel the gloom by any means.

Quite the contrary -- they show that crime is generally still on the upswing.

However, they do reveal the first statistical decline in years, and that in one of the most important fields, - juvenile delinquency.

Against this, however, must be balanced the fact that the total number of arrests rose 13%; that although the crime rate remains highest in the large cities, it rose sharply in the smaller ones and increased nearly 20% in rural areas; and that young offenders constituted the largest single group of law violators.

Thirty-five percent of all persons arrested were either youthful or juvenile offenders, but half of them were in the 21 to 24 year-old bracket and a substantial number of the remainder were 19 and 20, above the usual conception of childhood.

This may mean that the juvenile delinquents of the war years are now approaching and entering their 20s, but it also seems to show that the children now reaching adolescence are less of a police problem than their immediate predecessors.

When we look at the over-all picture, we realize that a big job confronts us all -- the courts, the government, federal, state and local, and the people -- in the administration of justice in the reconstruction period.

It is impossible to find any one clear cut reason for the upswing in criminal activities.

Most analysts seem to agree that the so-called "brutalizing" effect of war isn't the cause, at least so far as returning servicemen are concerned.

Some police authorities and sociologists are said to attribute the so-called crime wave to unemployment and plant shut-downs in the reconversion period, and to the war's effect in disrupting homelife.

However, reconversion adjustments have not produced any wide-spread economic depression which might tend to promote serious unrest and disorderliness.

Only some two million employable persons are without jobs and many fields of industry and commerce are still trying to obtain sufficient help.

We do know that war's effect on home life, homes broken by entry upon military duty, by parents' employment in war plants, and by the high divorce rate, has contributed its share and more to the up-turn in crime, particularly juvenile delinquency.

But that is only one factor and sounds like a rather vague explanation at best -- almost as vague as referring to "general postwar unsettlement" in trying to explain conditions of this kind.

On the whole, we are still a long way from knowing what we need to know about the reasons for these crime waves that sweep the nation from time to time; and perhaps still further from knowing how to prevent them.

Apparently no nation has solved them yet.

Criminal offenses in London's metropolitan area have been averaging around fifteen thousand per month; in Germany, France and Italy the volume is even greater; and lawlessness has been so common in some areas that it appears to be the normal condition.

DEPARTMENT OF JUSTICE

CORRECTION - ADDRESS OF HONORABLE TOM C. CLARK BEFORE  
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Kill paragraph 5 on page 5 and make it read as follows:

"It has been estimated that there are six million law violators in our population today, who have transgressed all types of law, both major and minor."

We know what to do after the crime is committed.

But now is the time to turn our efforts, like the proverbial Chinese doctor, to prevention rather than cure.

What can we do now to ease the transition from war to peace, to insure that the symbol of justice will not stand still but will stride forward, its torch held high, in the reconstruction period?

The war has left its imprint upon both the lawbreaker and the law enforcer.

~~We now have an army of six million criminals larger than the armies which were on the actual field of combat against Germany and Japan.~~

Arrayed against them are some one hundred fifty thousand enforcement officers.

That they need the help of everyone against these heavy odds as never before is evident.

I cannot help but think of four youthful New York criminals who might well be called pioneers in the application of war-developed scientific techniques to their business of burglary.

Police found these four youths using walkie-talkie radio equipment to keep in touch with each other while they were committing their crimes.

Besides, they were developing special infra-red light equipment in order to be able to see in the dark without being seen by the police.

They were finally caught -- not because of any flaw in their ultra modern scientific apparatus, but because they succumbed to the age-old human failing of spending too much money in public places.

While one perhaps feels an inward measure of admiration for such youthful ingenuity, which does at least reflect the adaptability of the younger genera-

tion to the scientific age in which we are living, we are sobered by the thought of just how far the underworld may go in making use of modern science to commit its crimes.

If criminals do adopt the latest methods, we are in for some hard work.

There is comfort in the fact, however, that even walkie-talkie crooks will have to go some to keep ahead of the Federal Bureau of Investigation in evading its brand of scientific crime detection.

The surest deterrent to crime that I know of is certainty of quick and severe punishment.

If respect for and observance of the law is to be maintained, redoubled effort and cooperation is necessary to insure swift and sure justice.

Not only do criminals take every advantage of antiquated enforcement methods in a day when speed must match speed, but they have all too often learned from experience that they stand a good chance, if caught, of having the case break down through long delays or, at worst, of being released from prison after serving only a short time.

All too often, conditions seem made to order for the arrested criminal.

Local jails are sometimes dilapidated, and badly managed, easy for prisoners to escape, and destructive of the morale of the men who work there.

Criminal laws sometimes seem designed for technicalities, loopholes and legal absurdities that hamstring prosecutions.

Even after conviction, local parole and probation procedure may break down.

Scarcely a week passes without news of some parolee's relapse into crime.

I dare say that often his release was a product of bad judgment, faulty rules, or both.

Escaped convicts and those improvidently released most obviously create a hazard to society.

You recall the notorious John Dillinger, perhaps the all-time public enemy number one.

In the short space of a year, he was paroled by Indiana state authorities, engineered the jail break of ten convicts from an Indiana state prison, and escaped twice himself from county jails in Lima, Ohio, and Crown Point, Indiana, before the Federal Bureau of Investigation finally put a stop to his murderous career.

Unfortunately, many of our states and localities are ill prepared to cope with widespread crime.

We need throughout the country adequately paid, well-manned police departments -- not a national police system, because law enforcement in a democracy should rest in the community where it is administered -- but thoroughly trained, up-to-the-minute, non-partisan controlled local police.

We need throughout the country reforms in criminal laws which will make it impossible for unscrupulous lawyers to effect delays by quibbling over words and technicalities until the question of guilt or innocence is lost sight of and forgotten in a maze of demurrers, pleas in abatement and other dilatory tactics.

Law suits have been turned into games of wits with victory hinging upon the success of counsel in dusting off some forgotten relic of medieval English law and using it to confound the court.

We have abolished many of these tactics in the federal procedure and I urge the states to follow suit.

We need throughout the country a crusade to clean up dilapidated, obsolete jails, to tighten up parole and probation laws, and to have them administered by trained, experienced personnel.

We need criminal courts which will impose, when the facts warrant it, stiff enough sentences to deter the lawbreaker and his partners in crime from future depredations.

I can say to you without fear of contradiction that the wheels of justice and the procedural machinery in the federal criminal courts are now oiled as never before.

The machine has undergone a transformation from a timeworn, hand-cranked model to a sleek streamlined postwar job.

The new Federal Rules of Criminal Procedure, effective last March, eliminate most of the old technicalities and provide for simple, uniform and inexpensive justice in all the federal courts in the United States.

As lawyers, I can assure you that they stress the protection of every defendant.

They give him many new benefits in proper cases -- a summons instead of a warrant of arrest; change of venue to a different judicial district for local prejudice, even to a different state if the prejudice is state wide; additional time to appeal; and two years instead of two months to move for a new trial for newly discovered evidence.

For the indigent defendant, the courts, in their discretion, can subpoena witnesses at government expense anywhere in the United States instead of only within a hundred miles of the place of trial, and they can direct the government to pay his lawyer's expenses in taking depositions.

But the government and the criminal courts themselves, to say nothing of the general administration of justice, benefit just as greatly as the defendant.

The Rules make two of the most effective and long needed reforms in history for speeding up criminal cases.

Eighty-five percent of all defendants in the federal criminal courts plead guilty and do not fight the charges against them.

Rule 7 permits them to waive indictment and consent to the filing of an information, and Rule 20 permits fugitives arrested far from the scene of the crime to transfer the case to the place where they are arrested for entry of guilty pleas.

The amount of time and expense already saved by eliminating grand jury and removal proceedings in countless cases where all the defendant wants to do is plead guilty and get it over with is beyond description.

Moreover, a defendant may no longer cause delay by stepping across a state or district line and resisting removal.

There are cases in the federal reports where it took the government as much as two years to remove a defendant, though the actual distance might have been no greater than from downtown Manhattan to Brooklyn in another district of the same state, or to Newark just across the river in New Jersey.

Now, when an arrest is made in any district of the same state or in a different state, but within one hundred miles of the place where warrant was issued or the crime committed, Rule 40 eliminates the elaborate removal proceedings of the past.

I am sure that you will pardon me for digressing into the new Federal Criminal Rules.

I know that as lawyers you have a profound interest in them because our profession was so instrumental in advocating them and in helping the Supreme Court draft them.

It would be hard to omit them from my subject because they add as much or

more, so far as the federal criminal courts are concerned, to the administration of justice in the reconstruction period as any other one thing.

They came at an auspicious time.

But some other measures would help justice to emerge victorious in the fight against increasing crime.

The need for certain things to aid the federal criminal courts becomes more apparent every day.

We need a public defender system in the federal courts.

My predecessors in the Department and I have advocated this for years.

While Rule 44 of the new Rules assures every poor defendant of the opportunity to have assistance of court-appointed counsel, it does not and cannot provide for the lawyers' recompense.

Only legislation could do that.

In conformity with the Constitution and in fairness to the defendant, he must be given legal aid if he cannot pay for it; and in the federal courts we see to it that he is so provided.

But in fairness to the legal profession, as I am sure you will agree, lawyers should not be forced to bear an oppressive burden of work for which they are not compensated.

For example, take the recent sedition case in the District of Columbia where the court-appointed lawyers went through month after month of trial without pay while their own practice suffered.

A public defender system would be a great boon to the bar, would assure the needy of adequate legal assistance, and would relieve courts with swollen criminal dockets of the burden of making appointment after appointment in individual cases.

We need uniformity in the qualifications of jurors in the federal courts.

At present, their competency varies from state to state, depending on the laws of each.

Neither the Federal Civil Rules nor the Criminal Rules could solve this problem for we cannot have the qualifications of jurors in the same court depend upon one thing in civil cases and upon another in criminal cases.

A statute on the subject would be a notable reform.

I hope that the excellent work done by the Judicial Conference of Senior Circuit Judges will solve this problem.

We need to solve the problem of juvenile delinquency and the youthful offender.

This is one of the subjects which has long been at the head of my "must" list and has been brought home to me more and more since becoming Attorney General.

Not long after I took office, I visited a correctional institution near the District of Columbia.

What I saw was appalling -- crowded housing conditions, first offenders mixed with repeaters, and a lack of supervision in educational and recreational programs.

This convinced me that we must get busy and I came to realize that juvenile delinquency -- its prevention, control and correction -- can not be segregated to federal, state or community levels, because it is too big an issue.

So we decided to tackle the problem and last February we invited a relatively small group of people to help us.

They came from federal departments, state groups and private welfare agencies.

Their report was short and sweet.

Teen-age crime must be attacked on the broadest possible basis.

We're working on that right now together with hundreds of public and private agencies.

In November, our Department is going to hold a three-day National Conference for the Prevention and Control of Juvenile Delinquency.

This will be only the start.

Based on the Conference report, we will pick up the ball and work out something concrete and constructive in this vital field.

We have had a Federal Juvenile Delinquency Act since 1936, which has gone far in helping us rehabilitate our erring youngsters.

But it does not go far enough in two important respects.

First, it does accomplish the important objective of prosecuting the child offender on an information charging juvenile delinquency instead of on an indictment charging whatever felony the boy or girl committed.

But even this leaves an inevitable stigma; its specter may return to haunt the youth later on when he applies for a job.

My answer is the so-called Brooklyn Plan which has been successfully used in the Eastern District of New York.

It is a sort of informal probation system.

There is no formal prosecution; instead the youngster is placed under the probation officer's supervision and, if he makes good, he enters maturity with a clean record.

Second, the federal statute leaves off at too early an age.

Its first section says that it applies to persons seventeen years of age and under.

We have always interpreted this language to include boys and girls up to their eighteenth birthday, but there is some feeling that the Act stops at the

seventeenth birthday.

Legislation is pending which would make it plain that 17-year-olds are within the Act's protection, but even that is not enough.

In the opinion of physiologists and psychiatrists, twenty-four years is the age which represents final arrival at physical, intellectual and emotional maturity.

That is the age taken in youth correction legislation in Great Britain and California.

There is an hiatus between the point where the Juvenile Delinquency Act stops and the point where the youth becomes a man.

The erring youngster from eighteen to the early twenties must be given every opportunity for rehabilitation so that he may take his place with our useful citizens of tomorrow.

He needs more specialized attention and a very different kind of treatment than the adult offender.

A tragic reminder of the fact that somewhere along the line, we -- everyone of us and government as well, state and federal -- have fallen down confronts us in the cold figures showing that 39.2% of all twenty-year-olds who are arrested, are repeaters.

Over 41% of the boys and a fraction less than 28% of the girls.

Two-fifths, close to one-half of our wayward youngsters, are second offenders even before they are old enough to vote.

This must not continue.

I say to you that we have no higher obligation than to insure that the boy or girl who makes one mistake is given a great deal better chance than this of not becoming a second offender.

We are badly in need of legislation along the lines of the proposed Federal Corrections and Youth Authority measure on which so much excellent work has been done by your own Judge John J. Parker and the Judicial Conference.

It is my hope that their efforts will soon bear fruit in Congress.

Yes, it is true enough that we are having a lot of crime, too much.

It is true that some of the criminals are young men who only a few months ago were wearing the uniform of their country.

But it is also true that many are the children of the war years, the neglected victims of homes and society disrupted by a world conflict whose seeds were sown before they were born.

The remainder of the criminal element is drawn from everywhere; truly the army of lawbreakers finds its recruits in every segment of our population.

We are fighting postwar crime with every means at our command.

Months ago I directed all United States District Attorneys to redouble their efforts and to insist upon the severest penalty for serious federal offenses.

It is the only means whereby the decent lawabiding citizen can be assured of the protection his government owes him from the depredations of a rising criminal element.

This handing out of adequate punishment to lawbreakers convicted before the bar of justice should be followed by every court in the land -- federal, state, county, and city.

But you can be sure that my Department though exerting every effort to stamp out crime wherever found, will embark on no program of "witch hunting" or hysterical purging of groups whose ideologies differ from yours and mine.

That is the way of the totalitarian government which, to exist, must persecute and inflict the concentration camp on everyone whose views do not go right down the line with the dictator.

That tenet has no place in the United States either in the reconstruction or any other period.

Our nation was not founded, nor has it grown to its present greatness, on any concept of oppression of those who disagree, rightly or wrongly, with the majority.

I can assure you that I shall never cease to strive to protect the civil rights and the liberty of everyone -- to treat all alike and fairly -- so long as I hold office.

I have no fears for justice in the reconstruction period.

We need not be alarmed by the situation which the war has left.

There may be criminals, crimes, strikes, black markets and high prices, but there are decent people, too.

They are the men and women, by the millions, who are going about minding their own business and dealing straight from the shoulder with their neighbors.

They are the average Americans, the people who won the war abroad and on the home front.

They are the people who, cooperating with the courts and with federal, state and local law enforcement authorities, will win the battle against postwar crime and insure that justice reigns in the reconstruction period.