

President's Address to the Judiciary

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Recommended Citation

Richard M. Nixon (2017) "President's Address to the Judiciary," *The Catholic Lawyer*: Vol. 18 : No. 1 , Article 3.
Available at: <https://scholarship.law.stjohns.edu/tcl/vol18/iss1/3>

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PRESIDENT NIXON ADDRESSES THE JUDICIARY*

Mr. Chief Justice, Mr. Justice Clark, Mr. Attorney General, Governor Holton, Senator Hruska, Senator Byrd, Senator Spong, all of the distinguished guests here on the platform and all of the distinguished people in this audience:

As the various celebrities were being introduced by the Governor, I remarked to Mr. Justice Clark that I was getting more exercise than I have had in a week standing up and down. That is an indication of the importance of this audience, the fact that so many times with very great appropriateness we have stood to honor the top people in the field of law enforcement and also in the field of the administration of justice.

I want you to know, too, that I have, as I am sure everybody here who is not from Virginia, a deep sense of the history of this moment. I was glad that Governor Holton reminded us of what Virginia has done for America.

We think, of course, of Washington and Jefferson and Madison and Monroe, and then in this century Wilson. But sometimes we forget Marshall. And when we think of the contribution that Virginia has made, certainly in terms of the Executive, in terms of the Judiciary, no State in the Union has contributed more to America than Virginia. And it is appropriate that we meet in Virginia, Governor Holton.

Also, I would like to express my appreciation to Mr. Justice Clark for his very generous comments.

I remember him during the period when I served as Vice President and prior to that time as a Congressman and Senator when he was first

* These remarks were made by President Nixon on March 11, 1971 in Williamsburg, Virginia to the National Conference on the Judiciary.

Attorney General and then served as a member of the Supreme Court of the United States.

This nation owes him a very great debt of gratitude for his splendid work in both of those positions.

And I think, too, that he has set an example, an example that he referred rather facetiously to when he pointed out that he had been introduced as the late Mr. Justice Clark. Let me say that if all men who retire could do as much as he is now doing for his profession, this country would be a much better place in which to live.

Just so I am not misinterpreted, I am not suggesting that anybody else retire from the Supreme Court.

My remarks today will be to this sophisticated group, I am sure, somewhat routine, routine in the sense that you have thought of most of the things that I will refer to.

But I do want you to know that I had some consultation, consultation not this time with the Senate, although I greatly respect the Senate, particularly when Senators are present, but consultation with the Chief Justice and the Attorney General. I hold them not responsible for anything that I say, but I did let them read my remarks and they made some very good suggestions.

And I would begin simply by saying that as one who has practiced law; as one who deeply believes in the rule of law; as one who now holds the responsibility for faithful execution of the laws of the United States, I am honored to give the opening address to this National Conference on the Judiciary.

It is fitting, as I have already indicated, that we should meet here at Williamsburg. Like this place, your meeting is historic. Never in the history of this nation has there been such a gathering of such distinguished men of the judicial systems of our States. And I salute you all for your willingness to come to grips with the need for court reform and for modernization. And I would like to salute especially the man who has been the driving force for court reform; he is a man whose zeal for reshaping the judicial system to the need of the times carries on the great tradition begun by Chief Justice John Marshall—the Chief Justice of the United States, Warren Burger.

I recall that when I took my second bar examination—incidentally, I passed the first time in California, but my second one was in New York when I moved there a few years ago. I had to write an essay on our system of Government and I dwelt on the wisdom of the separation of powers. My presence here today indicates in no way an erosion of that concept; as a matter of fact, I have come under precedents established by George Washington and John Adams, who both spoke out on the need for judicial reform. And President Lincoln, just 100 years ago, a little over 100 years ago, in his first annual message to the Congress, made an observation that is strikingly current—listen to what he said: “The country generally has outgrown our present judiciary system.”

There is also a Lincoln story—an authentic one—that illustrates the relationship of the judicial and the executive branches. When Confederate forces were advancing on Washington, President Lincoln went to observe the battle at Fort Stevens. It was

his only exposure to actual gunfire during the Civil War—and he climbed up on a parapet, against the advice of the military commander, to see what was going on. Suddenly, not five feet from the President, a man was felled by a bullet. A young Union Captain shouted at the President: “Get down, you fool!” Lincoln climbed down and said gratefully to the Captain: “I’m glad you know how to talk to a civilian.”

The name of the young man who shouted “Get down, you fool” was Oliver Wendell Holmes, who went on to make history in the law. From that day to this there has never been a more honest and heartfelt remark made to the head of the Executive Branch by a member of the Judicial Branch—though I imagine a lot of judges over the years have felt the same way.

But let me address you today in more temperate words but in the same spirit of candor.

The purpose of this conference is “to improve the process of justice.” We all know how urgent the need is for that improvement at both the State and Federal level. Interminable delays in civil cases; unconscionable delays in criminal cases; inconsistent and unfair bail impositions; a steadily growing backlog of work that threatens to make the delays worse tomorrow than they are today—and all of this concerns everyone who wants to see justice done.

Overcrowded penal institutions; unremitting pressure on judges and prosecutors to process cases by plea bargaining, without the safeguards recently set forth by the American Bar Association; the clogging of

court calendars of inappropriate or relatively unimportant matters—all of this sends everyone in the system of justice home at night feeling as if he had been trying to brush back a flood with a broom.

Many hardworking, dedicated judges, lawyers, penologists, law enforcement officials are coming to this conclusion: that 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.

When the average citizen comes into court as a party or a witness, and he sees that court bogged down and unable to function effectively, he wonders how this was permitted to happen. Who is to blame? Members of the Bench and the Bar are not alone responsible for the congestion of justice.

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 a generation ago. In addition, the courts had to bear the brunt of the rise in crime—almost 150 percent over the past ten years, an explosion unparalleled in our history.

And now we see the courts being turned to, as they should be, to enter still more fields—from offenses against the environment to new facets of consumer protection and a fresh concern for small claimants. We know, too, that the court system has added to its own workload by enlarging the

rights of the accused, providing more counsel in order to protect basic liberties.

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 tumultuous generation, our system of justice has helped America improve itself; there is an urgent need now for America to help the courts improve our system of justice.

But if 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, just as you have indicated imagination and daring and are focusing on ultimate goals.

The ultimate goal of changing the process of justice 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 reinstill a respect for law in all of our people.

The watchword of my own Administration has been reform. As we have undertaken it in many fields, this is what we have found. “Reform” as an abstract is something that everybody is for, but reform as a specific is something that a lot of people are against.

A good example of this can be found in the law: everyone is for a “speedy trial” as a constitutional principle, but there is

a good deal of resistance to a speedy trial in practice.

The founders of this nation wrote these words into the Bill of Rights: “the accused shall enjoy the right to a speedy trial and public trial.” The word “speedy” was nowhere modified or watered down in that Constitution or any time since by a court opinion. We have to assume they meant exactly what they said—a speedy trial.

It is not an impossible goal. In criminal cases in Great Britain today, most accused persons are brought to trial within 60 days after arrest. Most appeals in Britain are decided within three months after they are filed.

Let’s look at the situation in the United States. In case after case, the delay between arrest and trial is far too long. In New York and Philadelphia the delay is over five months; in the State of Ohio, it is over six months; in Chicago, an accused man waits six to nine months before his case even comes up.

In case after case, the appeal process is misused—to obstruct rather than to advance the cause of justice. Throughout the State systems, the average time it takes to process an appeal is estimated to be as long as a year and a half. The greater the delay in commencing a trial, or retrial resulting from an appeal, the greater the likelihood that witnesses will be unavailable and other evidence difficult to preserve and present. This means the failure of the process of justice.

The law’s delay creates bail problems, as well as overcrowded jails; it forces judges to accept pleas of guilty to lesser offenses just to process the caseload—in other

words, as some have said, to "give away the courthouse for the sake of the calendar." Without proper safeguards, this can turn a court of justice into a mill of injustice.

In his perceptive message on "The State of the Federal Judiciary," Chief Justice Burger makes the point that speedier trials would be a deterrent to crime. I am certain that this holds true in the courts of all jurisdictions, not just the Federal courts.

Justice delayed is not only justice denied, it is justice circumvented, justice mocked, and the system of justice undermined.

What can be done now to break the logjam of justice today, to ensure the right of a speedy trial—and to enhance respect for law? We have to find ways to clear the courts of the endless stream of what are termed "victimless crimes" that get in the way of serious consideration of serious crimes. There are more important matters for highly skilled judges and prosecutors than minor traffic offenses, loitering and drunkenness.

We should open our eyes—as the medical profession is doing—to the use of paraprofessionals in the law. Working under the supervision of trained attorneys, "parajudges" could deal with many of the essentially administrative matters of the law, freeing the judges to do what a judge only can do: and that is to judge. The development of the new office of magistrates in the Federal system is a step in that right direction. In addition, we should take advantage of many technical advances such as electronic information retrieval, to expedite the result in both new and traditional areas of the law.

But new efficiencies alone, important as they are, are not enough to reconstitute respect in our system of justice. A courtroom must be a place where a fair balance must be struck between the rights of society and the rights of the individual.

We all know how the drama of a courtroom often lends itself to exploitation, and, whether it is deliberate or inadvertent, such exploitation is something we all must be alert to prevent. All too often, the right of the accused to a fair trial is eroded by prejudicial publicity. We must never forget that a primary purpose underlying the defendant's right to a speedy and public trial is to prevent star-chamber proceedings and not to put on an exciting show or to satisfy public curiosity at the expense of the defendant.

In this regard, if I may step into controversial territory for a moment, I strongly agree with the Chief Justice's view that the filming of judicial proceedings, or the introduction of live television to the courtroom, would be a mistake. The solemn business of justice cannot be subject to the command of "lights, camera, action."

The white light of publicity can be a cruel glare, often damaging to the innocent bystander thrust into it, and doubly damaging to the innocent victims of violence. Here again a balance must be struck: The right of a free press must be weighed carefully against an individual's right to privacy.

Sometimes, however, the shoe is on the other foot: Society must be protected from the exploitation of the courts by publicity seekers. Neither the rights of society nor the rights of the individual are being pro-

tected when a court tolerates anyone's abuse of the judicial process. When a court becomes a stage, or the center ring of a circus, it ceases to be a court. The vast majority of Americans are grateful to those judges who insist on order in their courts and who will not be bullied or stampeded by those who hold in contempt all this nation's judicial system stands for.

The reasons for safeguarding the dignity of the courtroom and clearing away the underbrush that delays the process of justice go far beyond the questions of taste and tradition. They go to the central issue confronting American justice today.

How can we answer the need for more and more effective access to the courts, for the resolution of large and small controversies, the protection of individual and community interests? The right to representation by counsel, the prompt disposition of cases—advocacy and adjudication are fundamental rights that must be assured to all of our citizens.

In a society that cherishes change; in a society that enshrines diversity in its Constitution; in a system of justice that pits one adversary against another to find the truth—there is always going to be conflict. Taken to the street, conflict is a destructive force; taken to the courts, conflict can be a creative force.

What can be done to make certain that civil conflict is resolved in the peaceful arena of the court and criminal charges lead to justice for both the accused and the community? The charge to all of us is very clear.

We must make it possible for judges to spend more time judging, by giving them

professional help for administrative tasks. We must change the criminal court system, provide manpower—in terms of court staffs, prosecutors, defense counsel—to bring about speedier trials and appeals.

We must insure the fundamental civil rights of every American—the right to be secure in his home and on the streets. We must make it possible for the civil litigant to get a hearing on his case at least in the same year that he files it.

We must make it possible for each community to train its police to carry out their duties, using the most modern methods of detection and crime prevention. We must make it possible for the convicted criminal to receive constructive training while in confinement, instead of what he receives now usually—an advanced course in crime.

The time has come to repudiate once and for all the idea that prisons are warehouses for human rubbish; our correctional systems must be changed to make them places that will correct and educate; and, of special concern to this conference, we must strengthen the State court systems to enable them to fulfill their historic role as the tribunals of justice nearest and most responsive to the people.

The Federal Government has been treating the process of justice as a matter of the highest priority, as you know. In the budget for the coming year, the Law Enforcement Assistance Administration will be enabled to vigorously expand its aid to State and local governments. Close to one half billion dollars a year will now go to strengthen local efforts to reform court procedures, police methods, correctional action and other related needs. In my new special

revenue sharing proposal, law enforcement is an area that receives increased attention and greater funding—in a way that permits States and localities to determine their own priorities.

The District of Columbia, which, as you know, is the only American city under direct Federal supervision, now has legislation and funding which enables us to reorganize its court system, provides enough judges to bring accused to trial promptly, and protects the public against habitual offenders. We hope that this new reform legislation may serve as an example to other communities throughout the nation.

And today I am endorsing the concept of a suggestion that I understand Chief Justice Burger will make to you tomorrow: The establishment of a National Center for the State Courts.

This will make it possible for State courts to conduct research into problems of procedure, administration and training for State and local judges and their administrative personnel; it could serve as a clearinghouse for the exchange of information about State court problems and reforms. A Federal Judicial Center along these lines, as you know, already exists for the Federal court system. It has proved its worth; the time is overdue for State courts to have such a facility available for them. I will look to the conferees here in Williamsburg to assist in making recommendations as to how best to create such a center, and what will be needed for its initial funding.

I can pledge our cooperation in what you recommend.

Speaking for the Executive Branch of the Federal Government, we will continue

to try to help in every way. But the primary impetus for reforming and improving the judicial process must come from within the system itself. Your presence here is evidence of your deep concern; my presence here bears witness to the concern of all of the American people regardless of party, occupation, race or economic condition, for the overhaul of a system of justice that has simply been neglected too long.

I began my remarks by referring to an episode involving Justice Oliver Wendell Holmes. There is another remark of Holmes that is not very well known, but it reveals an insight it would be well for us to have today.

Judge Learned Hand told of the day that he drove Justice Holmes to a Supreme Court session in a horsedrawn carriage. As he dropped the Justice off in front of the Capitol, Judge Learned Hand said, "Well, sir, goodbye. Do justice." Mr. Justice Holmes turned and said, most severely, "That is not my job. My job is to play the game according to the rules."

The point of that remark, and the reason that Learned Hand repeated it after he had reached the pinnacle of respect in our profession, was this: Every judge, every attorney, every law enforcement official wants to "do justice." But the only way that can be accomplished, the only way justice can truly be done in any society, is for each member of that society to subject himself to the rule of law—neither to set himself above the law in the name of justice, nor to set himself outside the law in the name of justice.

We shall become a genuinely just society only by "playing the game according to the

rules,” and when the rules become outdated or are shown to be unfair, by lawfully and peaceably changing those rules.

The genius of our system, the life force of the American way, is our ability to hold fast to the rules that we know to be right and to change the rules that we know to be wrong. In that regard, we would all do well to remember our constitutional roles: for the legislatures, to set forth the rules; for the judiciary, to interpret them; for the executive, to carry them out.

The American Revolution did not end

two centuries ago; it is a living process. It must constantly be reexamined and reformed. At one and the same time, it is as unchanging as the spirit of laws and as changing as the needs of our people.

We live in a time when headlines are made by those few who want to tear down our institutions, to those who say they defy the law. But we also live in a time when history is made by those who are willing to reform and rebuild our institutions—and that can only be accomplished by those who respect the law.