

REMARKS OF THE ATTORNEY GENERAL
BEFORE THE HOUSE OF DELEGATES
AMERICAN BAR ASSOCIATION
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There is a story told about the late Conrad Hilton at a large party on his eightieth birthday. Following a number of flattering testimonials, the emcee turned to the famous man and said:

"You've been living all these years, Mr. Hilton. You grew up in a desert town in New Mexico. You helped your father turn the family's adobe home into an inn for traveling salesmen. You went on to expand the family business, throughout Texas and the Southwest, and then the United States, and indeed the entire world. You're a rich man. You've had countless experiences that few men could ever hope to equal. Based upon all of those years, is there a particular thought you could leave with us tonight?"

At this, Mr. Hilton rose from his chair, and responded, "As a matter of fact, there is: Always remember to put the shower curtain inside the bathtub."

Even the grandest achievements depend upon an understanding of common experience. The administration of justice itself depends upon a due regard for the common experiences of our citizens. And those experiences dictate occasional adjustments in our laws. Surely, as the citizens most experienced in dealing with our legal system, members of the ABA are in the best position to recognize both the need for changes in law and the nature of the changes needed.

Some suggest, however, that lawyers are more interested in the manipulation of our legal system for the benefit of their individual clients and themselves, than they are in improving the legal system for the benefit of everyone. These critics of the bar would define a lawyer as the humorist Ambrose Bierce did: "one skilled in the circumvention of the law."

I prefer to believe that lawyers are not only skilled in the use of the law, but also interested in the improvement of our laws. The organized bar -- the ABA --

is more than a trade association meeting here to sample the newest in legal wares. It is a professional organization founded more than a century ago expressly to foster improvements in our laws. As Woodrow Wilson observed nearly 75 years ago:

"You are not a mere body of expert business advisers in the field of civil law or a mere body of expert advocates for those who get entangled in the meshes of the criminal law. You are servants of the public, of the state itself. You are under bonds to serve the general interest, the integrity and enlightenment of law itself, in the advice you give individuals. It is your duty also to advise those who make the laws, - to advise them in the general interest, with a view to the amelioration of every undesirable condition that the law can reach, the removal of every obstacle to progress and fair dealing that the law can remove, the lightening of every burden the law can lift and the righting of every wrong the law can rectify."

Like the ABA, the Department of Justice has since its beginnings had a special responsibility to seek improvements in the administration of justice. A duty to enforce federal law vigorously implies a similar duty to suggest necessary changes in the laws we enforce. Today, I would like to ask this House of Delegates to join with me in considering a few of the most important legislative changes needed in federal law.

The reform of the federal criminal laws has been one of our most important priorities. The devastating impact of crime on the American people requires attention not only to law enforcement efforts, but also to our criminal laws themselves. Although we have made many improvements in law enforcement, major improvements are also needed in our criminal laws in order to redress the imbalance between law and lawlessness.

The Administration's "Comprehensive Crime Control Act of 1983" contains 42 separate provisions to improve the administration of justice in the federal criminal system. To make prison sentences more certain, for example, we are proposing a system of determinate sentencing. To ensure that courts admit more probative evidence of crime -- while continuing to deter any police misconduct -- we have proposed enactment of the

reasonable, good-faith exception to the Exclusionary Rule -- the same exception already followed in the Fifth and Eleventh Circuits. To protect the public from those defendants who pose a danger to the community or are likely to jump bail, we have proposed reform of the federal bail system. To enhance our ability to combat drug trafficking and organized crime, we have proposed a more effective criminal and civil asset forfeiture law. To alleviate at least some of the pressing need for prison space, we have proposed that the Federal Government be permitted to transfer surplus property to the states for correctional use at no cost. To restore public confidence in a highly visible area, we have proposed limiting use of the insanity defense to those situations in which a mental disease or defect prevents the defendant from appreciating the wrongfulness of his conduct.

These and the numerous other reforms we have proposed would help restore balance to our system of criminal justice. They would better secure the safety of our people against crime, while preserving the rights of those accused of crime. As the great jurist Benjamin Cardozo once wrote: "Justice, though due to the accused, is due to the accuser also."

Immigration is another area of law badly in need of reform. Simply put, we have lost control of our borders. And government's inability to regain control has spawned a widespread public disrespect for our legal system.

Some years ago, a delegation of American Indians visited Washington to dramatize the plight of their people. The leader of the delegation, Chief Ben American Horse of the Sioux, stopped at the Capitol to visit Alben Barkley, who was then Vice President of the United States. After a long discussion, the Chief rose to leave. He then paused for a moment, looked the Vice President in the eye, and said: "Young fellow, let me give you a little advice. Be careful of your immigration laws. We were careless with ours."

The bipartisan Simpson-Mazzoli bill now pending before Congress is a carefully wrought vehicle for improving our immigration laws and their enforcement. Among other things, the bill seeks to deter future illegal immigration by banning employers from knowingly hiring illegal aliens and thereby eliminating the economic incentive for illegal migration. Employer sanctions are the only remaining credible enforcement

tool left that shows any promise of restoring control of our borders. The bill would also deal realistically and humanely with illegal aliens already in this country by establishing a mechanism for many of them to obtain legal status.

Just as criminal law and immigration law need improving, the courts themselves need new attention. A staggering increase in litigation has strained the capacity of our courts and threatened their ability to settle disputes. The Administration is actively supporting a wide range of legislative initiatives to lessen the burden on federal courts. For example, we favor eliminating the Supreme Court's mandatory jurisdiction, which now accounts for up to one-fourth of all the cases it sets for oral argument. And we support the elimination of diversity jurisdiction, which accounts for sixty percent of all federal civil jury trials.

Another way to reduce the burden on our courts is to develop alternatives to litigation for resolving disputes. We are therefore supporting proposals that would encourage parties to use mediation, arbitration, and negotiation.

We have also sought a major revision of federal habeas corpus law. By imposing a statute of limitations and according deference to decisions of state courts in which the issues were fully and fairly adjudicated in state court, Congress could lessen another unnecessary burden on federal courts.

One of the most pressing needs in the area of court reform concerns the Bankruptcy Act of 1978. In its Northern Pipeline decision more than a year ago, the Supreme Court held that the bankruptcy courts created by that Act could not constitutionally exercise the broad jurisdiction conferred upon them. The Court stayed its judgment until December 24, 1982, in order to allow Congress time to reconstitute the bankruptcy court system. When Congress failed to act, an Interim Rule proposed by the Judicial Conference was then adopted to prevent the breakdown of the bankruptcy court system.

In Congress, which has still not acted to meet this emergency, two separate approaches to restructuring the bankruptcy system have been advanced. The Senate has approved a bill that would re-establish the Article I bankruptcy courts provided by the 1978 Act. This bill would address the constitutional concerns the Supreme Court identified by increasing district court control

over bankruptcy courts. Under this approach, 232 bankruptcy judges would be appointed by the President, with the consent of the Senate, for 14-year terms. The House Judiciary Committee has reported a bill that would establish a separate bankruptcy court staffed by 227 Article III judges with lifetime tenure and a protected salary. These judges would, of course, be appointed by the President with the advice and consent of the Senate.

Various objections have been raised to both the Article I and Article III solutions. One or the other must, however, be passed very soon before the Interim Rule expires. Without a bankruptcy court system, bankruptcy litigation would inundate our federal district courts. Clearly, after more than a year of considering the issues, Congress should get on with the reconstituting of our bankruptcy court system.

In the past thirty months -- as the President indicated here on Monday -- the Justice Department has vigorously enforced our Nation's civil rights laws. To cite just one example, we have filed more criminal civil rights actions than any Administration in history during a comparable period. Although much has been done under existing law, legislative improvements are necessary to strengthen civil rights law in one area -- the Fair Housing Act of 1968. That Act prohibits discrimination against any person in the sale or rental of a dwelling because of race, color, religion, sex, or national origin. It authorizes the Department of Housing and Urban Development to resolve housing discrimination complaints through "informal methods of conference, conciliation, and persuasion." The Department of Justice may bring an action for equitable relief in cases such as those involving a "pattern" or "practice" of discrimination, and we have been doing just that. Unfortunately, our enforcement authority ends there. Individuals who have been victims of housing discrimination must seek court relief on their own.

Authorization is needed for the Department of Justice to sue in federal court on behalf of individual complainants and to seek fines against those found guilty of discrimination. Our bill, "The Fair Housing Amendments Act of 1983," would accomplish this. And, it would for the first time extend protection under the Fair Housing Act to the mentally and physically handicapped.

I believe that the various initiatives I have briefly outlined today represent needed improvements in our legal system. They are the kind of initiatives upon

which the public needs the disinterested views of the organized bar. As Woodrow Wilson wrote, "It is your duty ... to advise them in the general interest."

In closing, I would like to note some words of Daniel Webster that are inscribed on the Justice Department building in Washington. "Justice," he said, "is the great interest of man on earth." Those words are taken from Daniel Webster's "Funeral Oration on Mr. Justice Story," which continues:

"... whoever labors on this edifice with usefulness and distinction ... connects himself ... with that which is and must be durable as the frame of human society."

Today, I urge the ABA to join with us, to labor on the edifice of justice, and to contribute not only to your own careers but also to "that which is and must be durable as the frame of human society." The initiatives I have discussed are proposed in that spirit -- and I urge you to evaluate and to support them in the same spirit.