

# The Washington Post

AN INDEPENDENT NEWSPAPER

SATURDAY, JULY 10, 1971

PAGE A14

## The Chief Justice's Views: A Concurrence

The views expressed by Chief Justice Warren E. Burger in his address on Monday to the American Bar Association and in a recorded conversation with ABC News National Affairs Editor William H. Lawrence broadcast Monday evening were constructive and, on the whole, unexceptionable, dealing mainly with administration of the courts rather than with philosophical issues in the field of jurisprudence. Indeed, the Chief Justice himself referred to his Bar Association remarks as a "nuts and bolts" speech; and the television interview merely enlarged on certain aspects of it. We comment on what he said, therefore, only by way of concurrence.

There were but two aspects of the Chief Justice's twin statements involving any degree of sensation or novelty. One was the contrast observable between his exclusion of all broadcast equipment from the room in which he spoke to the lawyers, on the one hand, and his selection, on the other, of a single broadcaster for his recorded confidences about the shortcomings of the bar, the bench and the press. Members of the Supreme Court, and especially Chief Justices of the United States, are usually aloof and reticent, expressing themselves publicly as a rule only through their formal opinions in specific cases. But Chief Justice Burger has chosen for himself a more activist role appealing to the nation annually in a state of the judiciary address.

The other slightly startling aspect of what Chief Justice Burger had to say to Mr. Lawrence was his bland observation that "the court was actually unanimous . . . on the basic problems of First Amendment rights of newspapers." Frankly, we had counted the Chief himself as a dissenter, along with Justices Harlan and Blackmun. In point of fact he not only wrote a separate dissenting opin-

ion of his own but also joined in Mr. Justice Harlan's dissent. It is true, however, that they looked only to an extension of the temporary restraining order not to a permanent injunction or to outright censorship. It is reassuring to have the Chief Justice say that there was unanimity on the basic principle of press freedom. The differences, nevertheless, seem considerable.

If the Chief Justice is going to discuss conduct in courtrooms, he ought, we think, to say a good deal more than he has yet said. Everyone, presumably, would agree with him that we ought not "have to try one criminal case five times or six times, over a period of eight-ten years." But when trials are repeated in this way it is generally because some appellate court has found prejudicial error in the trial procedure—much more an indication that there is need for retrial than that the case can be forgotten.

Speed in the administration of the criminal law is, of course, immensely desirable. But it cannot be achieved by resort to drumhead procedures without doing injury to the essential fabric of American justice. We share the Chief Justice's regard also for civility in the adjudication of legal issues. But there must be no sacrifice of the robust advocacy with which good lawyers sometimes fight for the defendants they represent.

Civility is a symptom of the temper of the times. It characterizes public life when the institutions of a community seem commensurate with its needs and when there is a general acceptance of fundamental values. The Chief Justice is right in saying that "we have just got to have a pervasive civility in dealing with all our problems, and it is more important when the problems are difficult than when the problems are easy." We agree. Perhaps the road to civility lies through a restoration of mutual confidence.