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ADDRESS BY

ATTORNEY GENERAL NICHOLAS deB. KATZENBACH

NATIONAL CONFERENCE ON LAW AND POVERTY

Benjamin Franklin Room
Department of State
Thursday, June 24, 1965

Mr. Conway, ladies and gentlemen:

We meet in an age of challenge and change. Man today is confronting and conquering problems about which past generations could only have dreamed. In one century, we have gone from railroads linking Atlantic and Pacific to rockets linking Earth and moon. We have gone from discovering the nature of diseases to exterminating them. Ours is a time of ambition, pride, adventure, and self-confidence.

And yet today, we meet at this conference not so much in pride as shame and not so much in confidence as humility. We may have learned to overcome so fundamental a physical force as gravity. But though the problems of poverty and of justice are as old as history, the time has not yet come when justice and opportunity are equal for all.

Just as the problems are not new, neither is our social awareness of them. We have all long known that the poor do not drink equally from the fountain of justice. In recent years, substantial progress has been made in the area of criminal procedure, to assure indigent defendants of fairer treatment regarding bail, of the right to counsel, to investigative services, to transcripts on appeal. And in the civil area, legal aid societies, lawyer referral programs, and individual lawyers have worked for decades -- assiduously, often anonymously -- to bring legal services to those who could not afford them.

But only recently have we come to recognize, in the spirit awakened by President Johnson's assault on the dark world of poverty, how comparatively slight are even these advances of sensibility and sensitivity. We are coming to recognize that the legal assistance we have given some poor men has been only a beginning. And we are coming to recognize how fundamental is the role of the law in providing every man membership -- and not merely existence -- in our society.

"Laws should be adapted," Lord Acton once wrote, "to those who have the heaviest stake in the country, for whom misgovernment means... want and pain, and degradation and risk to their own lives and to their children's souls."

There is no more widespread domestic concern, for example, than the growth of crime. But it is too simple to say only that poverty is a direct cause of crime -- that the hungry steal bread, or in terms of the 1960s, that the drug addict steals to support his even greater hunger.

More damaging, poverty breeds crime indirectly, because it breeds isolation from society and fundamental resentment against its laws. We may talk of gains in criminal law procedure, but for the poor man, there is no neat distinction between civil and criminal. For him, it is simply "the law" and what it does to him is definable by a single verb: to take.

Too often, the poor man sees the law only as something which garnishes his salary; which repossesses his refrigerator; which evicts him from

his house; which cancels his welfare; which binds him to usury; or which deprives him of his liberty because he cannot afford bail. The adversary system on which our courts are based fails whenever one side goes unrepresented and judgment is entered by default.

Small wonder then that the poor man does not respect law. He has little reason to believe it is his guardian; he has every reason to believe it is an instrument of the Other Society, of the well-off, the well-educated, the well-dressed, and the well-connected. The poor man is cut off from this society -- and from the protection of its laws. We make of him a functional outlaw. "The poor of the earth," says the Book of Job, "hide themselves together."

Seldom, in his struggles with a finance company, a merchant, a landlord, or a rigid official, is the poor man even aware that he has rights which are perhaps being violated. If he knows, he may have no way to protect them. And finally, even if he is aware of legal services, he might well be deterred by irrational fear of cost, shame, or further exploitation.

When Kafka, in his allegory The Trial wrote of a man set upon by mysterious and overwhelming forces of an incomprehensible society, he cast these forces in the form of law and lawyers. No one who has read Patricia Wald's extraordinary working paper for this conference can question the validity of Kafka's symbolism.

The poor have been isolated because we have let them be isolated. There are a variety of reasons and here you will be considering a variety of remedies. Justice, for example, could be made more accessible. Courts usually are open only during working hours. Extending their hours and perhaps sending them on circuit might not only expand justice in thousands of specific cases, but might, with equal importance, help demonstrate to the poor man the general lesson that justice and law is a process in which he shares.

Similarly, reforming court procedures might lessen the inherent disadvantage faced by the poor. Too often, small claims courts serve as little more than collection agencies. Uninformed, unrepresented poor persons are subjected, scores at a time, to a parody of adversary procedure in which a droning clerk recites name and number, and the plaintiff's attorney, unchallenged, responds "judgment".

Even more basic to the alienation and isolation of the poor is the inaccessibility of lawyers. If the rights of a slum-dweller about to be evicted onto the street are to be protected, someone will have to go tell him what those rights are.

The poor man should be able to find a lawyer in his neighborhood. The lawyer should be no more a stranger than is the clergyman or doctor. Yet too few of us have been willing to bridge the gap to the poor.

There has been reason for this reluctance -- the precept that lawyers should not seek out clients. Indeed, the historic strictures of our profession against barratry and champerty have endured because their aim is the

maintenance of high professional standards.

These standards have served us well and will continue to do so. But I cannot believe their purpose is to prevent legal services from being offered to individuals who desperately need them but do not know how to seek them out.

I think it is becoming increasingly clear to all of us that the legal profession is going to have to go out to the poor rather than wait, and that to do so may require some modification of our historic model. To be reduced to inaction by ethical prohibitions against profiteering when the client might well be penniless is, on its face, anomalous. To be reduced to inaction by ethical prohibitions against promoting litigation when unfair treatment abounds is to let the canons of lawyers serve injustice.

Mr. Powell and the American Bar Association warrant our congratulations for initiative and vision in undertaking a study to reexamine the canons of ethics.

I have no doubt that the same legal ingenuity which has made the common law a continually evolving framework for justice can now be applied to the canons themselves.

Finally, beyond the accessibility of courts and attorneys, there is another source of counsel for the poor -- interested lay citizens. The problems of the poor are often confused and ensnared in complexity and technicality. They may involve family, money, and medical matters which fall far short of legal action.

The struggling mother of a child held back a grade because he threw an eraser at a teacher may, for instance, be reluctant to complain to the principal for fear of intensifying the problem. The school officials may well have exceeded their authority, but there is no one to challenge their excess.

A widow with seven children, living on welfare, endures a fire which burns the roof of their home. But when officials respond to her misfortune by removing her from welfare rolls on the ground that she was living in an unfit house, she is afraid to protest.

For problems like these, calling a lawyer is not required. It would be analogous to calling a surgeon to treat a cut thumb. Laymen can help counsel the poor on many problems, like installment purchase agreements which only ultimately may involve a legal question and a need for lawyers.

In discussing this subject last winter, I suggested that what is in fact needed is a system of legal first-aid, a new, broad involvement of lay advocates for the poor -- human beings from all professions, committed to helping others who are in trouble, to standing up for the poor, and to helping the poor stand up for themselves.

I received considerable reaction from attorneys to this suggestion --

not, I might add, in unanimous endorsement. The common thread was that the problems I cited could indeed become legal problems and that for me to suggest that laymen should help solve them was to suggest a dangerous course both for counselor and subject.

It is hardly likely that a former teacher of law now serving as Attorney General of the United States would be insensitive to the wisdom and skills of lawyers; I understand and of course share the view that legal questions ought to be left to lawyers.

The part of the argument I find it impossible to follow, however, is that because some problems of the poor might someday become legal problems, it is therefore mandatory that a lawyer deal with them from the outset.

I know of no lawyer, however devoted he may be to our profession, who would seriously offer such a suggestion about society at large. Within a framework of law, policemen make legal decisions repeatedly, yet does anyone suggest that they must all be attorneys? Administrative personnel in government and in industry make quasi-legal judgments every day; must they, therefore, be attorneys?

I can see no reason why similarly instructed persons cannot provide some of the assistance needed by the poor. Social workers and family counselors, for example, can be taught to appreciate when an attorney is needed, just as a nurse knows when to call a doctor.

I do not, however, come today to argue on behalf of any particular method. It is not for us in the federal government to direct the choice. Our role is to provide a forum and to provide assistance. The choices, the imagination, and the impetus must come from the bar in each community.

That imagination and impetus are implicit in your presence here; they are essential to making the law meaningful for the poor. Indeed, through participation in neighborhood programs, the poor can learn to help make law meaningful for themselves. The hardest job ahead of us is to convince the poor man that his stake in the law is as great as ours that the law can be his shield as well as ours; that this society is his as well as ours.

President Johnson has described the anti-poverty program as one which "keeps faith with and puts faith in the dignity and capacity of the individual."

The scales are now tipped against the poor. The solution is not to tip them in the other direction, but to assure a fair balance. The solution is not charity, but justice.