



Department of Justice

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FOR RELEASE 6:30 P.M. EDT,
MAY 1, 1964

ADDRESS

BY



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LAW DAY
MAY 1, 1964

Law Day is a day which is set aside for all of us to re-affirm our faith in a government of law. We lawyers can celebrate it in two ways: by speeches which praise the law and, by implication, ourselves; or by using it as an occasion to examine the problems which face our society and whose resolution should challenge us as lawyers.

Tonight I wish to do the latter.

We meet here today at a great law school in the heart of a great metropolitan center. In the area surrounding this school there live thousands and tens of thousands of people who are daily coping with--or failing to cope with--the problems which beset an urban and industrial society. In this area are problems of crime and delinquency, of education and over-crowded housing, and all the other problems which accompany poverty.

This is not a unique area. These are not unique problems. They are the problems of an urban and industrial society.

And because law does not exist in a vacuum, they are the problems which law faces today in the United States.

I think the solution to these problems should be a challenge to all of us--and particularly to young people who are now embarking upon

professional careers. I am deeply concerned over whether, as a profession dedicated to the rule of law, we are meeting--or even seeing--the challenge which the peculiar character of our urban society is daily making. We concentrate too much on the traditional stuff of the law--on lawsuits, courts, and formal legal learning--too little upon the fundamental changes in our society which may, in the final analysis, do much more to determine the fate of law and of the rule of law as we understand it.

No single set of experiences has brought this point home to me more forcibly than the contacts I have had with juvenile delinquency.

The Justice Department's traditional concern is with law enforcement. But in coping with an ever mounting trend in young offenders, law enforcement is a small part of the total picture. In formulating our program on juvenile delinquency it quickly became clear to us that the emphasis could be not upon law violations and law violators, but upon the causes of violation. To put it differently, youth offenses are not the illness to be dealt with. They are merely symptoms of an illness that goes far deeper in our society.

To arrive at this conclusion one need not be a sociologist, or a social worker or a planner. One simply needs to walk the slums of Washington, or New York, or Chicago, or through the communities of Appalachia, and talk with the young people.

For many of these young people law violation is not the isolated outburst of a social misfit. It is part of a way of life where all conventional routes to success are blocked and where law abidingness has lost all meaning and appeal.

You cannot look into their eyes or look up and down the asphalt jungle or the desolate hollows in which they live without sensing the despair, the frustration, the futility and the alienation they feel. One is strongly impelled to do something, to make some gesture that says: "People do care; don't give up".

Surely the answer to this problem is not simply to provide more and better juvenile courts, more and better juvenile institutions or more and better lawyers in the process to prosecute or defend young people who then return to the same desolation which caused their difficulty in the first place.

What is needed are programs which deal directly with the causes of delinquency. These are programs to impart skills, to instill motivation, to create opportunity. These are programs which urge young people to stay in school. These are summer job programs for high school students.

These are programs to provide decent recreational facilities. --These are, in short programs which indicate that all young people do count in this society.

The model programs developed through the President's Committee on Juvenile Delinquency all involve expanding our concept of law enforcement--from detection, punishment and treatment--to prevention. We seek to help communities build programs which deal not with law violation but with eliminating its underlying causes.

The idea of social action programs rather than simply programs of law enforcement is not a new one. But it is an idea which threatens to leave the lawyer behind--to cut him adrift from day-to-day involvement with the major social issues of our times. Let me tell you why.

The lawyer helps to frame the legislation for the programs dealing with these problems; he writes the grants to agencies to carry on these programs. He preserves the form, ignores the substance, and then he goes his way.

As a profession, we have conveniently--perhaps lazily--abdicated responsibility for dealing with major social problems to other professions--to sociologists, educators, community organizers, social workers, psychologists.

Rarely, if ever do the best lawyers and the best law firms work with the legal problems that beset the most deprived segments of our society. With some outstanding exceptions, that work is done--if it is done at all--by the members of the bar who have least prestige, who are likely to be poorly trained and who are themselves engaged in a struggle for economic survival.

There remain whole areas of the law where no more than a handful of lawyers go to assist those most in need of legal help. How often does one find the needy represented by counsel in dealing with social welfare agencies, unemployment compensation review boards, or school and welfare officials, finance companies, or slum landlords?

In the realm of criminal law we are now beginning to fulfill our professional responsibility. To the indigent, we are witnessing a series of steps toward fairer representation for those without funds. No small portion of the credit is due to your own Professor Allen who headed our committee which has made an excellent report on the problems of the poor in obtaining equal justice in the federal courts.

That report has spurred efforts on both the state and federal level. To these efforts must be added full recognition of the monumental work of the legal profession. Law schools have contributed much and should contribute more. Legal aid societies, often staffed in part by law students, have done extremely worthy work. This University's program, sparked by Dean Levi, provides a notable example of public service, community concern, and intellectual inquiry.

But these efforts are in large part due to the Supreme Court's decision in Gideon v. Wainright, which made representation by counsel mandatory in criminal proceedings. All these efforts notwithstanding, the fundamental question remains: Should there ever have been a need for the Gideon decision? Did we need a Constitutional determination to tell us our professional responsibilities?

Lawyers could ask themselves similar questions about other problems which are central to our society but which exist on the fringes of the law. The social protest of the American Negro is not, as such, a legal problem. But the voluntary Lawyers' Committee for Equal Rights Under Law, for example, has generated the effective assistance of many lawyers, normally devoted to more formal legal pursuits, in the cause of civil rights.

There is a great need for America to live up to its political promise of civil rights for all its citizens. But there is a parallel need for America to live up to the economic promise of social rights, of social -- and thus equal -- justice under law.

The place to start is to ask ourselves what is our responsibility in dealing with those problems which stem from poverty -- from that phenomenon of massive privation to which our nation is now awakening and to which our legal profession must now respond.

We, as a profession, have an obligation to enlist our skills and ourselves in the unconditional war on poverty to which President Johnson has summoned all of us.

And in asking where do we begin, we must first recognize that poverty is not simply a condition of want.

In the final analysis, poverty is a condition of helplessness--of inability to cope with the conditions of existence in our complex society.

We know something about that helplessness. The inability of a poor and uneducated person to defend himself unaided by counsel in a court of

criminal justice is both symbolic and symptomatic of his larger helplessness.

But we, as a profession, have backed away from dealing with that larger helplessness. We have secured the acquittal of an indigent person--but only to abandon him to eviction notices, wage attachments, repossession of goods and termination of welfare benefits.

To the poor man, "legal" has become a synonym simply for technicalities and obstruction, not for that which is to be respected.

The poor man looks upon the law as an enemy, not as a friend. For him the law is always taking something away.

It is time to recognize that lawyers have a very special role to play in dealing with this helplessness. And it is time we filled it.

Some of the necessary jobs are not very different from what lawyers have been doing all along for government, for business, for those who can pay and pay well. They involve essentially the same skills. The problems are a little more difficult. The fees are less. The rewards are greater.

First, we have to make law less complex and more workable. Lawyers have been paid, and paid well, to proliferate subtleties and complexities. It is about time we brought our intellectual resources to bear on eliminating some of those intricacies.

A wealthy client can pay counsel to unravel--or to create--a complex tangle of questions concerning divorce, conflict of laws and full faith and credit in order to straighten out--or cast doubt upon--certain custody and support obligations. It makes no kind of sense to have to go through similarly complex legal mazes to determine whether Mrs. Jones should have been denied social security or Aid to Dependent Children benefits. To put a price tag on Justice may be to deny it.

Second, we have to begin asserting rights which the poor have always had in theory--but which they have never been able to assert on their own behalf. Unasserted, unknown, unavailable rights are no rights at all.

Lawyers must bear the responsibility for permitting the growth and continuance of two systems of law--one for the rich, one for the poor. Without a lawyer of what use is the administrative review procedure set up under various welfare programs? Without a lawyer of what use is the right to a partial refund for the payments made on a repossessed car?

What is the price tag of equal justice under law? Has simple justice a price which we as a profession must exact?

Helplessness does not stem from the absence of theoretical rights. It can stem from an inability to assert real rights. The tenants of slums, and public housing projects, the purchasers from disreputable finance companies, the minority group member who is discriminated against--all these may have legal rights which--if we are candid--remain in the limbo of the law.

Third, we need to practice preventive law on behalf of the poor. Just as the corporate lawyer tries to steer company policy away from the antitrust, fraud, or securities laws, so too, the individual can be counselled about leases, purchases and a variety of common arrangements whereby he can be victimized and exploited.

Fourth, we need to begin to develop new kinds of legal rights in situations that are not now perceived as involving legal issues. We live in a society that has a vast bureaucracy charged with many responsibilities. When those responsibilities are not properly discharged, it is the poor and the helpless who are most likely to be hurt and to have no remedy whatsoever.

We need to define those responsibilities and convert them into legal obligations. We need to create new remedies to deal with the multitude of daily injuries that persons suffer in this complex society simply because it is complex.

I am not talking about persons who injure others out of selfish or evil motives. I am talking about the injuries which result simply from administrative convenience, injuries which may be done inadvertently by those endeavoring to help--teachers and social workers and urban planners.

These are not unusual tasks. Lawyers do them all the time in every major field of law.

It is time we used those traditional skills--our precision, our understanding of technicalities, our adversary skills, our negotiating skills, our understanding of procedural maneuvers--on behalf of the poor.

Only when we have done all these things, when we have created in fact a system of equal justice for all--a system which recognizes in fact the dignity of all men--will our profession have lived up to its responsibilities.

That job is not going to be done by simply writing a check for \$100-- or \$1,000-- to the legal aid society. These are jobs that will take the combined commitment of our intellectual, and ethical energies--a sustained commitment--a pledge to donate not once or twice but continuously the resources of our profession and our legal system.

Our professional mandate goes far beyond protecting the presumption of innocence throughout a criminal trial. Our obligation extends to championing a larger presumption--the presumption of individual sanctity and worth which must attend all--rich and poor alike--if the rule of law is to prevail in reality as it does in Law Day speeches.

These are obligations of the legal profession. But here at this University they are peculiarly yours. That is so because--whether you welcome it or not--graduating from a great school puts an obligation squarely upon you.

Last October, President Kennedy--visiting Amherst College, said:

"There is inherited wealth in this country and also inherited poverty. And unless the graduates of this college and other colleges like it who are given a running start in life--unless they are willing to put back into our society those talents, the broad sympathy, the understanding, the compassion--unless they are willing to put those qualities back into the service of the Great Republic, then obviously the presuppositions upon which our democracy are based are bound to be fallible."