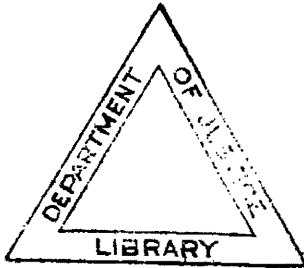


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ADDRESS

BY

HONORABLE HERBERT BROWNELL, JR.
ATTORNEY GENERAL OF THE UNITED STATES

Prepared for Delivery

Before

The Annual Meeting of the National Legal Aid Association

The Statler Hotel

Washington, D. C.

Wednesday, October 28, 1953

10:30 A.M.

Your President, Mr. Harrison Tweed, has told me of the notable progress made during the past year by the National Legal Aid Association in furnishing legal aid to the indigent. It was particularly gratifying to learn of the Ford Foundation donation of \$120,000, for this means operating capital to extend organized legal aid into many more communities. The Department of Justice is keenly aware of your accomplishments. We are indebted to you for your splendid progress. Closing the unfortunate void in our system of justice by providing legal assistance to those who cannot afford to employ counsel is, indeed, an important and worthy cause.

Perhaps at no other time in the history of our Nation has the need for responsible action on the part of members of the bar been so great. Our democratic system of government is on trial. People of the free world are looking to America for guidance and leadership. We must therefore demonstrate, not only by words but by actions, our right in every respect to this position of leadership.

Any injustice in our judicial system is an ally upon which the Communists are relying in their attempts to obtain new adherents. The Communists are using every available device to discredit our court procedures. The Soviet-controlled press falsely depict our trials as totally lacking in fairness and impartiality. And because of the length and expense of judicial proceedings, they exploit the argument (sometimes very unfairly, it is true) that only the wealthy can afford to prosecute or defend a lawsuit in a court of law.

The Communists sometimes find ready adherents in indigent persons, who, for lack of funds to employ counsel, have pled guilty to criminal charges of which they believe themselves innocent. They at least find some sympathetic listeners in those who have suffered wrongful loss of valuable property rights without recourse to court in righteous indignation. This is no small group. It is estimated that eight out of every thousand people in need of legal

assistance cannot afford to employ counsel -- over half a million people annually.

Resentment and anger arising from injustice inflict wounds far more painful and lasting than physical injury. Yet no person in need of medical care is turned away for lack of money. The complexity of modern government with its thousands of rules and regulations make plain that we, as members of the bar, have a duty to provide representation to all persons, whether rich or poor.

Fortunately, this is being done. Individual members of the bar always respond when called upon by the courts. Through the efforts of this Association almost all of the major cities now have legal aid societies established on a permanent basis and staffed with lawyers of competence and integrity.

Moreover, the public defender system on the state and local level is no longer a matter of mere speculation. In addition to the voluntary systems that exist in some communities, nine states have provided by law for a public defender. Two of the States, Connecticut and Rhode Island, provide effective state-wide coverage. The Standing Committee on Legal Aid of the American Bar Association reported this year that there are now functioning 38 public and voluntary defenders. To our knowledge, 26 of these have been governmentally established in state, county, or city systems. This is indeed an encouraging development.

On the other hand, despite the growth of federal jurisdiction and the importance it plays in the lives of each one of us, the Federal Government has no provision to provide compensation to counsel assigned to defend indigent defendants in federal courts. There are now 85 Federal District Courts in the United States. In the fiscal year 1953, 36,601 criminal cases were disposed

of involving 43,330 defendants. Almost 4,000 cases came to trial. Statistics of the Administrative Office of the United States Courts show that in approximately 11 per cent of all cases the Court was required to appoint counsel to represent the indigent. Another 22 per cent were represented by counsel who received no compensation for their services. In other words, approximately 12,000 persons were indicted for federal crimes who were unable to afford counsel to defend them.

What makes the lack of any federal statute to compensate counsel most striking is that the Sixth Amendment to the Constitution provides that: "In all criminal prosecutions the accused shall enjoy the right . . . to have the assistance of counsel for his defense." As construed by the Supreme Court, this means that the assistance of counsel "is an essential jurisdictional prerequisite to a federal court's authority to deprive an accused of his life or liberty". Johnson v. Zerbst, 304 U.S. 458, 467. And Rule 44 of the Federal Rules of Criminal Procedure provides that: "If the defendant appears in court without counsel, the court shall advise him of his right to counsel and assign counsel to represent him at every stage of the proceeding unless he elects to proceed without counsel or is able to obtain counsel." *[Italics added.]*⁷

Judge Augustus N. Hand has described the present haphazard system of appointing counsel in federal courts accurately when he said:

"It is clear that when the cases of poor persons needing defense become numerous and occur repeatedly, the voluntary and uncompensated services of counsel are not an adequate means of providing representation. To call on lawyers constantly for unpaid service is unfair to them, and any attempt to do so is almost bound to

break down after a time. To distribute such assignments among a large number of attorneys in order to reduce the burden upon any one, is to entrust the representation of the defendants to attorneys who in many cases are not proficient in criminal trials . . . Too often under such circumstances the representation becomes little more than a form."

I am convinced that the time to remedy this defect in the federal criminal system by legislation is long overdue. For over a decade the matter has been pending, but necessary legislation has been impeded because support has been sharply divided between those who favor exclusively a public defender system and those who would provide only a system of compensating counsel on an individual case basis. Two proposals are now pending in the 83rd Congress, H. R. 398 and H. R. 2091, which have the endorsement of the Department of Justice and the Judicial Conference of the United States. Both bills would provide for the appointment by the several district courts of the United States of public defenders either as full-time or part-time officers as the volume of work, in the judgment of the courts, may require. Salaries would be based upon the services to be performed, in no case exceeding \$10,000 per year, to be fixed by the Judicial Conference. In districts that do not contain a city of over 500,000 population, the court, if it considers that representation of the indigent would be more economical, may appoint counsel for individual cases. Such counsel would be compensated at a rate not to exceed \$35 per day, plus expenses reasonably incurred as approved by the Court. H.R. 2091 would vary this slightly by making the controlling population 300,000 and the maximum compensation \$40 per day. Compensation would also be provided where the District Court or Appellate Court find reasonable grounds for an appeal. Both

measures, however, have a \$5,000 ceiling on the amount to be spent in compensating appointed counsel in any district in any fiscal year.

Either bill would make use of the best that can be derived from both the public defender and assigned counsel systems. In districts containing large metropolitan cities, full-time salaried public defenders are contemplated. In less populated districts, it seems to me that with the court in control the per diem method offers the flexibility which would permit adjustments in accordance with particular needs and, at the same time, result in effective representation of the rights of indigent persons at less cost to the taxpayers. I know that this organization has long advocated the enactment of legislation such as this and we hope, with your active support, to obtain favorable action on one of these bills at the next session of Congress.

The Department of Justice is charged with the heavy responsibility of administering our federal criminal laws resolutely, with equal treatment for all, and with due regard for the rights and privileges accorded our people by the Constitution. Our function is not merely to win lawsuits but to see that justice is done. Wealthy defendants, of course, such as the professional "white-collar" overlords of crime syndicates, are able to afford a battery of lawyers to represent them if they so desire. But our constitutional rights apply equally to the indigent. It is not enough that we finance an independent and impartial court system or that the Department of Justice employ only lawyers of ability and integrity to represent the Government in litigation. The Sixth Amendment requires that in all criminal prosecutions the accused, no matter what his financial standing, shall have the assistance of counsel.

Accordingly, we are looking forward to cooperating with you in supporting legislation for a public defender system in the Federal Courts, and thereby reaching one more goal on the road of "equal justice for all."