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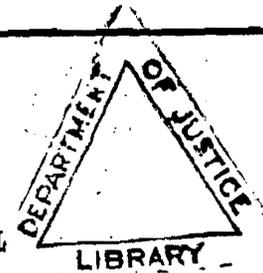
ACTING ATTORNEY GENERAL NICHOLAS deB. KATZENBACH

TO THE

CONFERENCE ON EXTENSION OF LEGAL SERVICES TO THE POOR

SENRATON-PARK HOTEL

1 P.M. THURSDAY, NOVEMBER 12, 1964



Dr. Winston, ladies and gentlemen:

It is a pleasure for me to join today with such a distinguished group. And, in view of the general importance of the subject that brings us here, I am pleased to see that this group consists of experts in administration, sociology, welfare, social work and other fields -- and not just lawyers. You may, as a result, be able to get something done. Thomas Jefferson once had occasion to observe that for "one hundred and fifty lawyers (to) do business together is not to be expected."

But it is fit that this group includes both lawyers and the others of you who are expert in the broader fields of social service. For ours is a time in which we are experiencing not an expanded sense of charity, but what is really an expanding sense of justice.

This expanding sense of justice has, in the past two years, resulted in a series of advances in our attitude toward justice for the poor:

The Supreme Court's decision in the Gideon case established the right of poor defendants to have attorneys appointed for them in state cases. The recently enacted Criminal Justice Act established standards for representation in federal courts which had been sought unsuccessfully for 25 years. The National Bail Conference last spring already has prompted 60 bail reform projects or studies. And a new Office of Criminal Justice is just beginning its broad-ranging work in the Department of Justice.

All of these developments demonstrate a growing national concern for the legal rights of the poor. So far, that concern has focussed on the rights of a poor person accused of a crime. Now, the concern is extending beyond the confines of criminal law. And this is as it should be. Hopelessness and poverty do not observe neat jurisdictional lines between civil and criminal.

Indeed, there is irony in our devoting great attention and substantial resources to give legal help to poor people when they are accused of a crime, but failing to provide such help until that point. Certainly our concern for the indigent accused is not misplaced. But it must not become exclusive. We must be concerned with the jail sentence which a poor defendant might or might not receive. But we must be equally concerned with the broader difficulties of the 20 percent of our population which is, in Attorney General Kennedy's phrase, serving a life sentence of poverty. It is justice, rather than charity, which calls on us to see to it that the law and the lawyer are involved in the effort to reverse that life sentence.

I am sure there is little quarrel with such a high-minded solution. I am sure all lawyers -- and all citizens -- subscribe unanimously to the relevant platitudes. The interesting aspect of this problem is how little it is understood to be a problem in the first place. When I described this conference to one acquaintance and explained that it did not refer to attorneys for indigent defendants, he asked -- well-meaning -- what then, was this conference about, helping poor people do things like prepare wills?

His question is not to be scoffed at. Michael Harrington has aptly described the millions living in poverty in this country as the invisible poor. It is no less certain that the problems of the poor which a lawyer can help solve are so far outside the experience of most of us that they are invisible problems. But for the poor person, living in helplessness, they are overpowering.

Most of us have little contact with welfare laws or with housing codes aimed at rat infestation or with minimum wage laws or with protections against usurious loans or instalment purchase contracts. And even if we did have that contact, we are equipped as articulate, educated citizens, to deal with such matters. To us, laws and regulations are protections and guides, established for our benefit, and for us to use. But to the poor, they are a hostile maze, established as harassment, at all costs to be avoided.

Consider, for example, what happened to five men in upstate New York in January of last year. For six months, they had participated faithfully in a work program for unemployed fathers whose families were receiving public assistance. But on January 30, they refused to carry out their day's assignment. Their reason? It was near zero temperature and the task was to cut brush along a country road where the snow was waist-deep.

The five men offered to do different work -- indeed, they requested to do so. But they were sent home and reported to the district attorney, who secured their conviction for "a willful act designed to interfere with the proper administration of public assistance and care." They were sentenced to terms of four to eight months. It took until this past May to have the convictions reversed by New York's highest court.

This reversal did not just happen. It took extensive work by two lawyers provided by the American Civil Liberties Union. It will take the extensive work of many more lawyers -- and laymen -- to right the wrongs which we can prevent but which the poor cannot. For there are thousands of other examples, less dramatic perhaps, but equally unjust and equally demoralizing, which occur every day, throughout the country.

There is the case of the man caught up in debts who could have gotten a clean start with counseling and assistance in going into bankruptcy. He did, finally, receive legal assistance. A defense attorney was appointed to represent him after he committed a petty offense. He wanted to be arrested so that his family would then become eligible for welfare.

There are large numbers of poor people who discover that they have a binding obligation to pay a finance company for furniture never delivered or for a TV set that never worked. There are large numbers whose cars or washing machines are repossessed after months of payments -- who have no idea they are entitled to the return of their equity. There are large numbers whose public assistance is reduced or revoked -- who have no concept of their rights of appeal.

These are the people on whose behalf President Johnson has undertaken the war against poverty. These are the people whose problems constitute the new area of public concern -- indeed the new area of law -- with which we are dealing at this conference.

To be sure these are not new problems. It is our appreciation of them that is new. There has been long and devoted service to the legal problems of the poor by legal aid societies and public defenders in many cities. But, without disrespect to this important work, we cannot translate our new concern into successful action simply by providing more of the same. There must be new techniques, new services, and new forms of inter-professional cooperation to match our new interest.

Legal scholarship is beginning to enter this new field -- to analyze the rights of welfare recipients, of installment purchasers, of people afflicted by slum housing, crime, and despair. There are signs, too, that a new breed of lawyers is emerging, dedicated to using the law as an instrument of orderly and constructive social change.

The Law Students Civil Rights Research Council which previously focussed on discrimination is now expanding its area of concern to include the legal problems of the poor. Some of the best law schools -- Yale, Harvard, Pennsylvania, Columbia -- are adjusting their curricula so that, for instance, administrative law deals not only with the SEC but also with ADC. Experimental internship programs like those run by Georgetown Law Center are beginning to infuse academic training with experience drawn from the reality of life, rather than the disembodied "facts" of appellate decisions.

Finally, we are beginning to see the growth of new forms of organizations to provide legal service to the poor. The Committee on Group Legal Services of the California Bar Association has just produced a report proposing a massive revision of the rules governing group legal practice. The Legal Aid Committee of the Judicial Conference here in Washington has just given unanimous approval to a proposal for neighborhood law firms to supplement the services of the lawyers referral service, legal aid and the public defender agency. Similar plans are underway in New Haven, Los Angeles and Boston.

Other communities planning comprehensive anti-poverty programs can be expected to include similar provision for the extension of legal services to the poor. And the Office of Economic Opportunity has indicated a willingness to support such programs, both as part of a community action program and also as a separate research and demonstration project undertaken by law schools, bar associations and other institutions.

With new resources available, and with the increased involvement of the legal profession in the war against poverty, we can anticipate a rapid acceleration in the extension of legal services for the poor. Your meeting here this week should provide a major impetus to this movement.

One of the threshold problems in this new area is simply to make rights known. Laws do little good unless people know about them. For a poor person to hold rights in theory satisfies only the theory. We have to begin asserting those rights -- and help the poor assert those rights. Unknown, unasserted rights are no rights at all.

Second, even if rights are known, they can provide and protect little if they are entangled in a maze of technicality, detail, and subsections. Faced with such complexity, even the informed poor are given the choice of walking through life with a lawyer at their side, or surrendering to the "can't fight city hall" philosophy.

Third, the protection of the rights of the poor depends on advocacy. If the poor are to be treated with fairness and with dignity, their side must be presented fully and forceably. There must be lawyers from all parts of the law, not merely from legal aid societies willing to represent the poor man in trouble.

And fourth, we must generate an understanding that law alone is no answer. If we thought that courts were the place to resolve every dispute, we should be devoting our attention not to providing legal services for the poor, but to immediately finding thousands of judges for our courts.

The realization of rights in our society is only ultimately -- and inefficiently -- achieved in courts. We do well to recall the late Karl Llewellyn's description of the right to obtain damages for breach of contract:

"That right could rather more accurately be phrased somewhat as follows: If the other party does not perform as agreed, you can sue, and if you have a fair lawyer, and nothing goes wrong with your witnesses or the jury, and you give up four or five days of time and some ten to thirty percent of the proceeds, and wait two to twenty months, you will probably get a judgment for a sum considerably less than what the performance would have been worth -- which, if the other party is solvent and has not secreted his assets, you can in further due course collect with six percent interest for delay."

Our legal system works because litigation is the exception, not the rule. For rights to be worth anything, they must be honored -- without lawyers; courts are not the only forums in which rights are adjudicated. There are administrative proceedings, there are dealings with landlords, merchants, social workers, and welfare officials -- with all the people whose decisions can deeply change the lives of the poor. It is in these areas, far more often than in the courts, that the poor person needs a counselor and an advocate.

You and I, in our daily lives, act as our own advocates. The poor do not. They concede defeat. They fear to argue because they fear retaliation. The poor need advocates, not simply to present their side of the story but to give them hope, to demonstrate that the law is not an enemy, but a guardian, and that public officials are not their masters, but their servants.

And this is a function which can and must be filled not only by lawyers, but by concerned laymen. It does not take a lawyer to right every wrong. It does not even take professional training. It takes only a human being with the capacity to recognize and respond to injustice.

As an example, let me recall the case on the West Coast of a woman with seven children, supported by welfare. A fire destroyed the roof of their house. The woman was too poor to move or repair the damage. The response of the welfare agency was to cut off her welfare payments. She was living, they said, in unsuitable housing.

It does not take a lawyer to react to such a determination -- and it did not. A young woman who heard about this case took it upon herself to become an advocate -- to go to the welfare authorities and indignantly ask what was the legal authority for the suspension of welfare. The welfare check was issued immediately.

It is this kind of example which we must follow, and inspire in others. It is this kind of problem which can be solved without a law degree. Not every injury requires a surgeon; not every injustice requires an attorney. The need is for a spirit and a system of legal first-aid. We need more people like the young woman I just described. We need what is, in effect, a new profession--a profession of advocates for the poor, made up of human beings from all professions, committed to helping others who are in trouble. That job is too big--and, I would add, too important--to be left only to lawyers.

Until we can achieve that kind of broad involvement, that willingness to stand up for the poor and to help the poor stand up for themselves, old wrongs will go unredressed and new wrongs will occur. And neither the poverty nor the injustice suffered by the poor will be remedied. The aim of the anti-poverty program, after all, is not simply to put money in people's pockets. It is to put hope in their hearts and pride in their step. 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."

There is no more essential ingredient of such dignity than justice-- not only justice in our courts, administered by judges and by lawyers, but justice in our society, with each of us playing a part. The Hebrew prophets spoke not to lawyers alone when they commanded: "Justice, justice, shall ye pursue."