Department of Justice

ADDRESS BY

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AMERICAN BAR ASSOCIATION

HOUSE OF DELEGATES

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I am delighted to have this chance to speak today before this convention of the American Bar Association. Our system of judicial administration requires the closest possible cooperation between the Department of Justice and the lawyers of the land; and as Attorney General, I appreciate the opportunity to discuss matters of common concern with the distinguished representatives of the bar who I find in this room today.

Every department in the Executive Branch regards its mission as indispensable to the functioning of our democracy. But I cannot help feeling that the Department of Justice has a special and urgent responsibility, for the quest for justice is the very heart of the democratic experiment.

This, in my view, is a central and continuing obligation of the Attorney General's office as it must be for every lawyer. In meeting that responsibility I am heartened by the knowledge that we have the support, not only of our whole ethical and political tradition, but more particularly of the men and women who must see that the system operates and expands in this modern society of immense and unforeseen problems, of men, like yourselves, trained in the ideals and processes of Anglo-Saxon justice.

It has never been more important than it is today that free society display its capacity for justice. For here at home and all around the globe our system stands on trial before the world -- our beliefs and our actions are pitted against a determined and resourceful and disciplined adversary -- while in our own land urbanization, automation, the demand for equal rights in an age of bigness, all bear down upon us with a host of new and pressing problems.

Today, the advances of technology have become so rapid that frequently they tend to outstrip our capacity to deal with their impact upon our social and industrial system. Land urbanization has intensified a host of old problems, besides introducing new ones.

Automation is causing a situation in many areas of our country similar to 19th century England when the handicraft of a feudal age was replaced by the machine-craft of the industrial age. The rise of associational activity has brought its special problems into the field of monopoly and restraint of trade, into the organizational activities of labor unions, and into the dark and dirty world of crime.

The very complexity of modern life makes it easy for individual liberties to be disregarded. More and more the American people must rely on the law for the protection of these liberties.

It is here that you and I have such a heavy responsibility. For it rests on us to be certain that the legal protections so necessary for the individual do not become merely fine declarations in the lawbooks but that they actually have some real and genuine meaning for the human beings to

whom they have been granted. This task requires the care and attention of the whole legal profession.

At the Department of Justice, we are just part of this effort and as such have our limitations.

We recognize for instance that the line between what the Federal Government can and should do and what state and local authorities can and should do is often shadowy. Frequently it is the sum total of these efforts that counts. For this reason it is vital that we work closely and continuously with local authorities in achieving our common objectives.

No issue brings the role of the individual into sharper focus than that of civil rights. I am proud of the record of the Department of Justice in recent months in striving to assure all citizens the full rights guaranteed them under the constitution of the United States.

Assistant Attorney General Burke Marshall and his aides are performing a distinguished service in this respect -- a service which goes far beyond instituting and prosecuting cases in the Federal courts. We have not filed a single civil rights case without first going to the local authorities. We have informed them of what appears to us to be a violation of the law, for, the Constitution being the law of the land, the local authorities -- judges, prosecutors and lawyers -- have an equal obligation to protect and defend it.

In the majority of cases, the local officials have taken action and nothing further has been required of the Federal Government. There are no front page news stories, but there are changes; there are results and they are brought about by local officials -- not the Government in Washington. In the long run this is what is of real importance in this country.

Sometimes the local authorities have disagreed with us about the law, and we have gone to court. On other occasions, local authorities were unwilling to remedy the situation, or could not because of what they believed to be the political facts of life, and so court action was necessary.

In all this effort Burke Marshall has been in the forefront, negotiating, prodding, advising, persuading -- working with explosive problems and devising solutions which fulfill the law of our land and the ideals of our nation. This is the historic role of the lawyer in the fullest sense.

I am proud, too, of those Federal judges who have seen and done their duty under difficult circumstances. A judge's popularity or unpopularity is of no proper concern to him in the performance of his judicial duties. Yet to do that duty -- to give an honest reading of the constitution and of the law of the land -- may and often does require great courage.

I might add that this is also the sworn obligation of every lawyer. If the bar has done much to assist in the orderly realization of constitutional rights, I would be less than candid if I did not tell you that I believe more can and should be done.

Another area of concern to every private citizen - and to every lawyer - is the war against organized crime. Crime is not only a cause of economic waste, but far worse than that, it is a reproach to the moral pretensions of our society - and advertises to the world the gap between our pronouncements and our performance.

The battle against crime must have a top priority in protecting individual rights. We have heard much about the rights of the individual and with this I have no quarrel - but the general public also has some rights that need to be protected. We have made some encouraging gains in the last twenty months.

The criminal division for the first time is spearheading a coordinated drive by all Federal law enforcement agencies to reduce the entrenched power and wealth of organized crime to the point where it can be controlled by local authorities. Desperately needed legislation has been enacted in a bipartisan effort. Intensive investigations are being conducted into the corruption of public officials where unfortunately the inroads of organized crime are particularly frightening. We are moving forward in a systematic way but we have far to go.

A third field of prime consequence to individual rights is the protection of the competitive forces in our system of private enterprise. This is, perhaps, the most technical and complicated field with which the Department is concerned.

Obviously, there are certain areas of the Antitrust law where the guidelines have been set so definitively that no excuse for transgressing them properly can be made. This is true, for example, of conspiracies to fix prices or to apportion territories. In such cases there can be no hesitancy on the part of the Government to act.

In many other areas, however, there are complex economic situations which require deep study and understanding when action is contemplated. The Antitrust laws should be vigorously enforced but they are weapons which should be utilized to help the consumer, the businessman both large and small - and to protect and preserve the free enterprise system. That is our intention. That is our effort.

In all of these matters, as well as the many others that come within our mutual area of responsibility, I cannot help but be concerned as to whether, despite the efforts of dedicated public officials and conscientious lawyers -- there is in fact equal justice before the law here in the United States. I am speaking now of a concern for whether there is true equality in the administration of justice.

I ask you -- do members of ethnic or political minorities or people who speak our language imperfectly or who have low mentality or disturbed minds; or the largest group, those who are poor really receive the same protection before the courts as the rest of our citizens? I say that all too often they do not.

I need hardly say to this audience that everyone in this land -- whether immigrant or pauper, alleged crook or communist -- is innocent until proven guilty and is entitled to as fair a trial and as competent representation as say, leading citizens accused of price-fixing in business or of corruption in labor.

It seems to me that our obligation - your obligation as attorneys in private practice and my obligation as Attorney General -- is to make the assurance of fair and equal treatment to all before the law one of our first concerns.

Judge Learned Hand, speaking at the 75th Anniversary of the Legal Aid Society of New York, said if we are to keep our democracy, there must be one commandment:

"Thou shalt not ration justice."

Let me discuss with you just a few of the areas which must cause us all concern. One is the problem of the representation of indigent defendants. This is not a problem of charity, but of justice.

Mr. Justice Black points out in Griffin v. Illinois, "there can be no equal justice where the kind of trial a man gets depends upon the amount of money he has."

This is true not only at the time of trial, but during the entire range of legal procedure until the last issue is resolved.

Over a year ago, I asked a distinguished committee, headed by Professor Francis Allen of the University of Michigan Law School, to study what could be done to protect the rights of indigents in the Federal courts. The committee has found that much is being done in certain areas of the country. But its study shows that much, much more needs to be done.

Last year, almost thirty percent of the defendants in the 34,008 criminal cases in Federal court could not afford counsel. In the District of Columbia, where the Federal District Court hears all felony cases, over half the defendants had to be assigned attorneys. The situation in the states is comparable.

Federal and most state jurisdictions now hold that the right to counsel at trial is an affirmative right which must be extended by the Government when the defendant cannot provide his own.

Last June, the Supreme Court called for argument upon the question of right to counsel and whether the decision in Betts v. Brady should be overruled.

The recent decision in Mapp v. Ohio suggests by analogy that a majority may now hold that the Fourteenth Amendment requires states to provide counsel for indigent defendants in all cases involving serious crimes. And a recent decision by the Oregon Supreme Court has held that in serious crimes the state must not only provide counsel but experienced, competent counsel.

The provision of counsel is indispensable to a democratic system of justice. But translating this principle into practice is difficult. As with most problems, one of the stumbling blocks is lack of money.

And as Professor Allen's committee discovered the problem does not end by merely providing an attorney. There are the added frequently expensive problems such as bail, pretrial investigations and appeal.

The problem of bail for instance is one that has received too little attention. Professor Allen's committee has established conclusively that the question of whether a man will be kept in jail pending trial or be free is directly influenced by how wealthy he is.

A study of cases in the Southern District of New York indicates that over one-third of those required to post bail of $500 or less could not do so. When the bail was set between $500 and $1500, over half were unable to post it. And there is reason to believe that many of those unable to provide bail presented no substantial risk of non-appearance. Their poverty deprived them of their liberty.

Further, the problem of establishing innocence during the crucial pretrial period was made that much more difficult.

Bail protects the interests of society in assuring a defendant's appearance at trial and it also protects the interests of the individual in allowing him to be free to establish his innocence.

But the indigent defendant who cannot offer security for his appearance is denied this opportunity. He cannot provide for his family and for his defense, and cannot take an active part to prove his innocence.

Preliminary studies in the Southern District of New York also indicate that those who cannot make bail are more often convicted and receive stiffer sentences than those who can.

The rights of the indigent after the trial is over -- in the appeal stage -- is equally a matter of concern.

A series of court decisions in the last twenty years has greatly expanded the responsibility of society to help the indigent perfect his appeal. He is now pledged virtually the same treatment as one who can pay, and this is as it must be.

But, again, the problem of translating this right into reality is difficult. Appellate work is time consuming and requires the highest professional ability.

It usually is an undue burden to call upon counsel, who has contributed his services at trial, to continue on appeal without compensation. Competent new counsel is sometimes difficult to obtain. In this connection I wish to congratulate the bar of the city of San Francisco on what effort it has made in providing counsel for indigent persons on appeal.

We have come a long way since 1876 when a group of German immigrants banded together in New York to form the first Legal Aid Society, but we have not come far enough.

Since 1937, the Department of Justice and for many years the American Bar Association have supported legislation which would appropriate funds to help indigent defendants in Federal courts.

Now 25 years later it is still pending before the judiciary committees of both houses of Congress. The time to translate good intentions into law is long overdue. I ask for your help as a group and as individuals in working for its enactment.

I recognize that much has been done in many local areas to cope with this problem. I congratulate you on what you have done. Yet, the problem is far from solved. Whatever device is used, it is to the bar that society must turn for legal services to be provided for the indigent. It is inescapably a responsibility of the legal profession - a responsibility that none of us can avoid.

Another problem which is closely related and in some ways is even more difficult is the defense of those who do not fall in the category of indigent but who have limited resources available for their defense. Over forty percent of our families have incomes of less than $5,000 a year. These families cannot bear the cost of a complicated and extended trial and appeal which could easily equal their annual income.

Indeed, it can be the case that an indigent defendant, through the services of a first-rate volunteer attorney, may receive a better defense than one who pays a small fee and gets incompetent or indifferent counsel.

Legal services, particularly defense in criminal cases, are not like houses or automobiles where those with more money can buy better products without affecting the basic functioning of society. When one defendant cannot afford a complete defense justice is being rationed.

Today the cost of adequate defense can be high. Psychiatric and highly technical issues require expensive research, investigation and expert witnesses for the defense as well as for the Government.

In a recent case in which the Government was involved the defendant spent nearly $500,000 in legal and accounting fees in defending himself. He is now in prison. But the point is that we must be certain that the average citizen of a family income of $5700 -- the national median -- can afford comparable efforts to protect his freedom. There is no question that a man prepared to spend $500,000 is far more likely to retain his freedom than a man who can afford only a few thousand dollars.

The amount of money which can be expended on defense should not affect the outcome of the trial. If justice is priced in the market place, individual liberty will be curtailed and respect for law diminished.

There is no easy answer to this problem; again, it lies with the bar itself. Professor Allen's committee is continuing its study of the problem and will have recommendations to make before the end of the year. I would like to ask for recommendations and ideas from the bar. I think they could be most important, and from all of this I would hope that we would develop methods whereby our finest legal talent would not be reserved solely for those who could pay without difficulty and an occasional indigent defendant.

I would hope from this effort that leading lawyers and legal scholars would be in court on a regular basis pleading for defendants of moderate circumstances. As long as a man is handicapped before the bar of justice because of his poverty, our task as lawyers is not done.

I thank you for this opportunity to speak.

Fortunately, no generation of lawyers as yet has lost that desire for a just society that will preserve the dignity of man and his individual right to search for happiness.

This association and its kindred associations in our fifty states and hundreds of counties and cities will, I feel sure, keep that desire aflame.

Let us as lawyers - as Americans - as Theodore Roosevelt said, "Boldly face the life of strife, resolute to do our duty well and manfully; resolute to uphold righteousness by deed and by word; resolute to be both honest and brave, to serve high ideals, yet use practical methods. Above all, let us shrink from no strife moral or physical."

A bar dedicated to the preservation of our basic freedoms, pledged to the search for truth, is a main bulwark of our democratic society which can aid mightily to achieve what President Kennedy recently described as a "world of law and free choice, banishing the world of war and coercion."