LAW AND POVERTY

The role of final speaker at a two and one half day conference is not an enviable one. Obviously, it is one I did not seek. The truth is, as could be anticipated, that your spirited discourse since we began on Wednesday has left little for me to say.

Indeed, while many different points of view have been expressed, we can surely agree that there has been a commendably thorough and objective consideration of the problem which brought us together.

If this were the customary type of conference, the final session would be devoted to reaching a consensus - something that could be published as reflecting the general opinion of the conferees. But this was not the purpose of our meeting. At this stage, and with so large a group, it would have been unrealistic to expect - as the end product of our labors - a neat package of answers and conclusions.
The basic overall purpose of the conference was educational. There can be no doubt that this purpose has been achieved. Nor can there be any doubt that we have all been stimulated and inspired, as well - indeed - as sobered, by what we have heard.

I am sure I speak for all of us in commending the Department of Justice and the Office of Economic Opportunity for arranging the conference, and for the high motives of public service which have been so manifest. We are particularly grateful to those responsible for the planning and implementation of this conference. They have been efficient and dedicated - as well as tolerant and good humored.

It is not inappropriate, I think, also to commend the participants. As was predictable, and as indeed the agenda contemplated, we have had a broad spectrum of opinion and there have been wide differences. But there has been a fine spirit, and a common devotion to the same ends, a respect for the views of others, and a genuine appreciation for critical appraisal.
It has been fortunate that all of these conditions have existed during this conference. This has enabled us to go much further toward the eventual formulation of effective programs than we perhaps realize today.

And this spirit, if carried over into our continuing efforts, will help assure the broad consensus among government, the organized bar and the community which will be necessary if the goal of improved legal services for the poor is to be achieved.

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My every inclination at this point is to sit down and not subject you to further speaking. Yet, as welcome as this would be - to you and to me - it seemed appropriate to the program planners that I express some concluding thoughts.

Let us think again, quite briefly, of our common concern and the ideal that unites us all.
Equal justice for every man is one of the great ideals of our society. This is the end for which our entire legal system exists. It is central to that system that justice should not be withheld or denied because of an individual's race, his religion, his beliefs or his station in society. We also accept as fundamental that the law should be the same for the rich and for the poor.

But we have long known, and our discussions this week have emphasized, that the actual attainment of this ideal of equal justice is not an easy task. It requires sensitivity, vigilance and a willingness to experiment.

Looking at contemporary America realistically, we must admit that despite all of our efforts to date - and these have not been insignificant - far too many persons are not able to obtain equal justice under law. This usually results because their poverty or their ignorance has prevented them from obtaining legal counsel.

Our system of justice is based in large part on advocacy - on battle, if you will, in which lawyers have replaced warriors. When there is no one to do battle for an individual, his chances of
obtaining justice are lessened. And if many of our fellow citizens are denied justice because of their poverty, it may well be asked how long will the adversary system survive.

As lawyers, we are fully aware of the effectiveness of advocacy. It lies at the heart of our system of justice. We know of no better way for ascertaining truth and at the same time protecting and preserving the individual freedom that is the transcendent value of our American society.

The nature of the broad challenge that confronts us is therefore clear. There is a gap between the need for counsel and the actual availability of counsel. Until this gap is bridged, there is a partial failure of our system to serve all who need legal services.

This does not mean that the system itself is a failure and should be replaced. On the contrary, in spite of its faults and shortcomings the Anglo-American system of justice has
preserved liberties and provided opportunities that are the envy of much of mankind. Under this system, the ideal of individual liberty has been preserved realistically for more people for perhaps the longest sustained period in all history.

And yet a gap between our ideals and their fulfillment does exist - perhaps to a greater degree than most lawyers realize. Thus, our purpose must be to preserve our system and to strengthen it by assuring in fact equal justice for all. This can only be attained when the advocacy of competent counsel is available to all - especially to the ignorant and the impoverished.

The legal profession has long recognized its duty in this respect. Other speakers have documented the record of generous service without compensation by countless lawyers, of the splendid work of the NLADA spanning three-quarters of a century, of the concern of the bar at all levels for adequate legal aid programs, of the ABA's leadership in bringing about the enactment of the Criminal Justice Act of 1964, of its vigorous action - in cooperation with state and local bars - to assure implementation of Gideon v. Wainwright.
As recently as our annual meeting of 1964, the House of Delegates of the American Bar Association formally declared that the legal profession "has no more important or pressing task than to see that adequate provision is made everywhere to assure that competent counsel are provided for indigent defendants in criminal cases."

And here may I emphasize that the legal profession has certainly not been acting alone. The problem of providing legal services to the poor is a broadly based public responsibility. The social service agencies, the bar and local governments have all worked together - as indeed they must. Financing - never really adequate - has come from state and local governments, community chests, and other charitable sources. The generous support of the Ford Foundation at the national level has been indispensible and a continuing inspiration.

The major new element is the recently authorized participation by the Federal Government. Perhaps the first step was the Criminal Justice Act of 1964, limited to criminal
litigation in the federal courts. The Economic Opportunity Act extended federal interest and funds far more broadly to encompass legal services generally.

The War on Poverty is now established national policy. Our profession, long committed to working with local governments in providing legal aid, must extend a like cooperation to the Federal Government. Indeed, the House of Delegates of the American Bar Association - in recognition of this imperative - unanimously authorized full cooperation with the Office of Economic Opportunity in the development and implementation of programs for expanding the availability of legal services to indigents. *

In taking this action, the House recognized the existence of the gap which I have mentioned already. It acknowledged - as the discussions this week have driven home - that there are indeed major unfilled needs for legal services, especially by the poor.

As we all know, these needs have been accelerated and complicated by the growing complexities of modern society.

* Resolution, ABA House of Delegates, February 8, 1965
by the shifts of large segments of our population to urban centers, and by the vastly increased demand for legal services - a demand resulting primarily from pyramiding laws and regulations which affect the daily lives of citizens to an extent undreamed of by our founding fathers.

I have had occasion, during my term of office, to speak of the serious crime problem which confronts our country. President Johnson has described this as a "malignancy" in our midst. About 50% of all major crimes are committed by indigents. This not only accentuates the need for counsel; it also strongly suggests the necessity of broadly based programs to minimize the conditions that breed and nourish crime.

Poverty quite obviously has a significant relationship to crimes against property. Less obvious, but perhaps more important, is poverty's role in crimes of personal violence. Poverty's warping of mind and spirit leads many to strike out blindly against their fellow man and against society.
To the extent that legal aid and advice can help alleviate poverty and its effects, they will also assist in reducing the burden and incidence of crime. Timely legal advice can resolve many personal problems of the poor before they lead to despair and violence.

Of perhaps greater long-range importance, is the attitude of the poor towards the law. Many have come to regard the law as an enemy. If this image can be changed, so that the law becomes a symbol of fairness and assistance, there will be far greater respect for its processes.

We must ever remember that broadly based public respect for law and order is essential not merely to the enforcement of our criminal laws but more fundamentally to the preservation of our system of freedom under law.

There has never been a time when there was a greater need for respect for law and especially for its orderly processes.

It is thus evident that there are practical as
well as compassionate reasons why the bar, as the special
guardian of our legal system, must welcome every opportunity -
and assistance from every source - to assure the availability
of adequate counsel to the poor.

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In a concluding talk such as this, perhaps I should
stay with generalities and avoid specifics - especially those
which are troublesome. But there are some specific comments
which I do want to share with you.

So long as this program stays within the broad
framework of legal aid concepts, there should be few serious
problems. I refer here not to any specific legal aid organi-
zation or agency but to the concept of legal aid as this is
widely understood by lawyers, social workers, community
leaders and local governments.

We can remain within this concept and still
achieve significant gains, especially in broadening the scope
of services rendered, in liberalizing definitions of indigency, and in making service more readily available through neighborhood centers. It is to be hoped that the concentration of effort will be towards these ends.

Surely we must do our best to avoid creating competitive agencies. We must build upon and benefit from the experience of established legal aid agencies - most of which have served with little recognition and great devotion for many years.

Where new agencies are created, in response to special local needs or desires, there must be full and generous cooperation by all concerned.

The OEO's tentative Guidelines for Legal Services have been discussed at this conference. In the days ahead, they should be applied wisely to permit the flexibility necessary to adapt local solutions to local needs. In short, they should be aids, not stumbling blocks, to wholehearted cooperation by local bars and legal aid agencies with the Federal war on
The traditional concept of legal aid has normally not emphasized the use of law as an affirmative instrument to remedy social injustice or improve economic conditions. There are no doubt many situations where the poor can be properly served in this way.

With the availability of increased resources, we must also seek opportunities to practice preventive law and to educate the poor as to their legal rights. We must keep an open mind and have an affirmative attitude towards all possible legal remedies.

In the past, most of our reforms in both procedural and substantive law have evolved out of the experiences of lawyers with the day to day problems of their clients. As more and more lawyers, and the organized bar, acquire a much broader understanding of the legal problems of the poor, it is inevitable that needed changes will result.

As this expanded program unfolds, new frontiers of legal service will thus be explored. It is here that we must
reconcile contemplated action with the ethical standards of the legal profession.

To those of you who are not lawyers, I ask that you try to understand the reasons which underlie our Canons of Ethics. These standards - against solicitation, against the use of lay intermediaries, and for the assurance of a genuine client-attorney personal relationship and responsibility - were not designed for the benefit of lawyers. Had this been their purpose they would not have been tolerated by the public down through the years.

The fact is that these ethical concepts were intended to safeguard the interest of clients, and to assure the fidelity and independence which are implicit in the attorney-client relationship.* They were also designed to prevent the commercialization of a learned profession - a result as unfortunate for the public as it would be for the bar.

* In recognition of these deeply-rooted traditions, the House of Delegates resolution authorizing cooperation with the OEO expressly stated that the legal services to the poor must be "performed by lawyers in accordance with ethical standards of the legal profession." The tentative Guide Lines for Legal Service Proposals to the OEO also reminds that "legal service programs (must be operated) legally and ethically."
But to my fellow lawyers, I point out that the precise and detailed standards as expressed in our Canons of Ethics are not immutable. They require, and are presently receiving, a thorough and thoughtful re-evaluation. This was authorized by the House of Delegates in August last year, and is now in the hands of a distinguished national committee - the Chairman of which has addressed this conference.

No one can say at this point what changes will be recommended. We can be certain, in an area so difficult and delicate, that no solutions satisfactory to all will be found. Yet this audience may be assured that the American Bar Association is not afraid of change.

Our resolution of February 1965 recognized expressly the need "to improve existing methods and to develop more effective methods for meeting the public need for adequate legal services." You can therefore be sure that this entire problem will receive the thorough and sympathetic reexamination which the public interest requires.

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*The Board of Governors, in May 1965, authorized the creation of a new special committee on Availability of Legal Services, with a broad mandate to study this problem with the research assistance of the American Bar Foundation.*
And now, in conclusion, may I say quite simply that no subject has a higher priority within the ABA than the assuring that legal services are in fact available to all who need them, and especially to the impoverished. We have therefore welcomed this historic conference of bar and lay leaders, and we pledge our continued deep interest and full cooperation.